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## THE UPC & JUDGES: REFORMING THE TRADITIONAL ROLE

Orley R. Lilly, Jr.\*

*This article is based, in part, on an address to the Oklahoma Judicial Conference, Tulsa, Oklahoma, November 30, 1976.*

On January 13, 1969, court reform became a reality in Oklahoma.<sup>1</sup> Among the reforms was abolition of the county courts as separate courts with probate jurisdiction; all original jurisdiction was consolidated into a single district court in each county.

In general, the new system has served the public well;<sup>2</sup> few, if any, would advocate return to the system that predated court reform.

But court reform should not be a one-time or once-in-a-lifetime effort. Wisely, the bench and bar of Oklahoma have continued to study the workings of the system. One major goal of the study is to maximize effective use of available judicial manpower. Changes to effectuate that goal have been considered and will, no doubt, be proposed in the legislature and to the people.<sup>3</sup>

Probate reform is also ripe for serious consideration. In the second quarter of the nineteenth century, a New York law professor, David Dudley Field, drafted what was thought at that time to be a model probate code. As did a few other states including California, Oklahoma adopted the Field code. Relatively unchanged, that code still is Oklahoma's law today.<sup>4</sup>

Bills proposing the Uniform Probate Code have been introduced

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1. OKLA. CONST. art. VII, § 14.

2. See generally Lilly, *Some Thoughts for Judicial Reform in Oklahoma*, 10 TULSA L.J. 91 (1974).

3. Law of June 15, 1976, ch. 269, § 6, [1976] Okla. Sess. Laws 522.

4. Lilly, *The Uniform Probate Code and Oklahoma Law: A Comparison*, 8 TULSA L.J. 159, 159-60 (1972).

into both houses of the Oklahoma Legislature.<sup>5</sup> The Code was not hastily conceived; it was drafted by enormously talented judges, practicing attorneys and law professors and was approved by the National Conference of Commissioners on Uniform State Laws and by the American Bar Association in August, 1969. At least ten states have either adopted the Code or adopted its philosophy in revising prior law.<sup>6</sup>

The Uniform Probate Code most frequently is praised, or condemned, for the new and different solutions it provides to age-old people/property problems. But the Code and court reform go hand-in-hand. The most frequently overlooked side effect of Code adoption is the salutary effect it has on the court system. Basically the UPC places greater responsibilities on personal representatives, attorneys and other persons concerned with or interested in estate matters; correspondingly it contemplates a substantial reduction in the over-all and day-to-day involvement of the judge in those matters. In short, the Code gives judges less to do and others more to do than does Oklahoma's current law; and, though the judge does less, what is done in a UPC state is judge-like.

#### CODE SUBJECT MATTER

To put the functions of the judge in a Code state in perspective, the subject matter with which it deals, both as to matters of substance and as to matters of procedure, should be noted. It is concerned with all matters "relating to (1) estates of decedents, including construction of wills and determination of heirs and successors of decedents and estates of protected persons; (2) protection of minors and incapacitated persons; and (3) trusts."<sup>7</sup> Substantive changes are many. For example, testation is easier to accomplish; homestead and other family protections are made more even-handed for all; the search for heirs at law and next of kin is shortened; the basic moiety of the surviving spouse is increased, and the forced share concept is reworked to permit a testator to plan the entire estate and provide for the spouse by assets that will not be transmitted through the will. The concepts are not new; the solutions are.<sup>8</sup>

5. H.R. 1783, 35th Okla. Legis., 2d Sess. (1976); H.R. 1683, 35th Okla. Legis., 2d Sess. (1976); S. 290, 35th Okla. Legis., 1st Sess. (1975).

6. *Editor's Corner*, UPC NOTES, March 1976, at 2. South Dakota has repealed the Code. Wellman, *The UPC Defeat in South Dakota*, UPC NOTES, Oct. 1976, at 5.

7. UNIFORM PROBATE CODE § 1-302 [hereinafter cited as U.P.C.]. It also deals with non-probate transfers of a testamentary-like nature. U.P.C. art. VI.

8. See generally Lilly, *supra* note 4.

Insofar as procedure is concerned, the primary purpose of the Code is to describe *how* various functions shall be carried out and not by whom or where they shall be performed.<sup>9</sup> As drafted, the Code contemplates a Court of Probate separate from the court of general jurisdiction.<sup>10</sup> It is recommended, however, that each state “select the organizational arrangement which best meets its needs.”<sup>11</sup> Slight modification of the Code will adapt it to the existing systems of divisions and docketing; a return to the system that predated court reform is unnecessary. “The important point is that the [probate] court, whatever it is called, should have unlimited power to hear and finally dispose of *all matters* relevant to determination of the extent of the decedent’s estate and of the claims against it,”<sup>12</sup> including any “proceeding concerning a succession or to which an estate, through a personal representative, may be a party.”<sup>13</sup> Although each proceeding relating to an estate is independent of any other proceeding concerning the same estate,<sup>14</sup> nonetheless once an estate has come before the court the same judge could, for example, hear a wrongful death action brought against it; or the same judge could hear cases where title to property is in dispute. Today this may or may not be the case. Insuring that, whenever possible, a judge already familiar with an estate will hear all matters and actions relating to it should result in better utilization of judicial manpower.<sup>15</sup>

#### “FLEXIBLE SYSTEM OF ADMINISTRATION”

Article III of the Uniform Probate Code describes a “Flexible System of Administration of Decedents’ Estates.”<sup>16</sup> It provides for formal and informal proceedings for determination of a will’s validity (probate) or of intestacy and for appointment of a personal representative. A formal proceeding is adjudicative in nature; that is, issues presented in the proceeding are determined by a judge, after notice and

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9. U.P.C. § 3-105, comment.

10. U.P.C. § 3-106, comment.

11. U.P.C. § 3-105, comment.

12. *Id.* (emphasis added).

13. U.P.C. § 3-105.

14. U.P.C. § 3-107.

15. It would appear that the scope of matters determinable in a probate proceeding is circumscribed by OKLA. STAT. tit. 58, § 1 (1971). Estate of Kizziar, 47 OKLA. B.A.J. 1983 (1976) has made it clear, at least, that disputed claims of title may not be heard as part of the probate proceedings, but must be separately filed as suits to be placed on the court’s civil docket. It would, of course, be possible to assign such a case to the judge supervising administration of that estate. Docketing or case assignment procedures should be modified where necessary to accomplish this desideratum.

16. U.P.C. art. III, General Comment.

a hearing.<sup>17</sup> An informal proceeding, on the other hand, is not adjudicative, but more administrative in nature;<sup>18</sup> a judge may not be required to sit in informal proceedings,<sup>19</sup> and notice may be given after an administrative act is done rather than before.<sup>20</sup> Furthermore, an administrative act done or to be done in an informal proceeding, on petition of an interested person, may be reviewed or blocked by a judge in a formal proceeding.<sup>21</sup> Insofar as estate administration is concerned, it may be either independent or supervised by the court.<sup>22</sup>

#### SUPERVISED ADMINISTRATION

Supervised administration more nearly resembles existing Oklahoma practice than does independent administration. Even so, there are significant differences between them.

First: Supervised administration is not required by the Code for any estate; in Oklahoma, on the other hand, every administration is supervised. In a Code state supervised administration may be requested in a testator's will or petitioned for at any time by a personal representative or other person interested in an estate. After a petition is filed and any required notice is given, the court determines the validity of a proffered will or that the decedent died intestate as well as any questions relating to the priority or qualifications of the personal representative: these matters are finally adjudicated whether or not supervised administration is ordered by the court. Supervised administration is not to be routinely ordered but

the Court shall order supervised administration of a decedent's estate: (1) if the decedent's will directs supervised administration, it shall be ordered unless the Court finds that circumstances bearing on the need for supervised administration have changed since the execution of the will and that there is no necessity for supervised administration; (2) if the decedent's will directs unsupervised administration, supervised administration shall be ordered only upon a finding that it is necessary for protection of persons interested in the estate; or (3) in other cases if the Court finds that supervised administration is necessary under the circumstances.<sup>23</sup>

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17. U.P.C. § 3-401.

18. See U.P.C. § 3-303.

19. See text accompanying notes 56-58 *infra*.

20. See U.P.C. §§ 3-306(b) (an optional subsection), -705; *cf.* U.P.C. §§ 3-306(a), -310 (prior notice required in certain instances).

21. U.P.C. § 3-401.

22. See U.P.C. § 3-501, comment.

23. U.P.C. § 3-502.

"[S]upervised administration will be valuable principally to persons who see some advantage in a single judicial proceeding which will produce adjudications on all major points involved in an estate settlement."<sup>24</sup>

The mere availability of independent or unsupervised administration for Oklahoma estates would promise the probability of a substantial saving in judicial manpower. As Oklahoma attorneys became familiar with the advantages of such an administration, that saving no doubt would materialize to the benefit of the judicial system and thus to the public it serves. A prominent Texas attorney has commented:

In Texas, the device we know as independent administration is the cornerstone of our probate practice. . . . Those of us who are familiar with the blessings of the flexible approach wonder how practitioners who must live with more rigid systems manage to serve their clients. Indeed, I am inclined to believe that our Texas courts would rule that the plaintiff could make out a prima facie case of malpractice against a lawyer who drew a will that omitted independent administration.<sup>25</sup>

Independent administration has been available in Texas since 1843.<sup>26</sup>

Second: Assuming supervised administration appropriately is ordered by the court, the only restriction automatically placed by the Code on the exercise of the powers of the personal representative is that no distribution of the estate will be made without prior order of court.<sup>27</sup>

The Code confers broad powers on a personal representative whether the administration is supervised or independent. Code powers are modeled after the Uniform Trustee's Powers Act,<sup>28</sup> which also is the source of the powers conferred upon an Oklahoma trustee by the Oklahoma Trust Act.<sup>29</sup> A Code personal representative can do for an estate everything Oklahoma law permits a trustee to do. Thus, for example, even a supervised Code personal representative could borrow money,<sup>30</sup> could mortgage or sell real estate,<sup>31</sup> and could pay his own

24. U.P.C. § 3-502, comment.

25. Saunders, *A Texas View of Independent Administration and Other Devices for Probate Flexibility*, UPC NOTES, Nov. 1974, at 3. See also Saunders, *Who's Afraid of Independent Administration and Other Resourceful Concepts*, 48 OKLA. B.A.J. 823 (1977).

26. See *id.*

27. U.P.C. § 3-504.

28. U.P.C. § 3-715, comment.

29. Compare OKLA. STAT. tit. 60, § 175.24 (1971) with UNIFORM TRUSTEE'S POWERS ACT.

30. Compare U.P.C. § 3-715(16) with OKLA. STAT. tit. 60, § 175.24 I. 2. (1971).

31. Compare U.P.C. § 3-715(23) with OKLA. STAT. tit. 60, § 175.24. I. 2. (1971).

compensation<sup>32</sup>—all without prior order or confirmation of the court. The Code “contemplates that personal representatives will proceed with all of the business of administration without court orders.”<sup>33</sup>

A court which orders supervised administration probably has in mind the need for more restrictions than on distribution only, however. “Any other restriction on the power of a personal representative . . . must be endorsed on his letters of appointment . . . .”<sup>34</sup> By making an endorsement the court could actually supervise the exercise of every power. Probably a court will pick and choose among the powers and restrict only those that relate to the reasons which warranted supervision in the first place. In any event some judicial time-saving should accrue in supervised administrations in areas where the court permits the personal representative to act without its intervention.

Finally, on order of the court, a supervised administration may be converted to an independent administration prior to complete settlement of the estate. In the usual case, however, a supervised administration will terminate with a final accounting and an order of settlement and distribution and discharge of the personal representative.<sup>35</sup>

#### INDEPENDENT ADMINISTRATION

Once you leave supervised administration, the Code blazes new trails for Oklahoma judges and attorneys. The Code’s flexible system “accepts the premise that the Court’s role in regard to probate and administration . . . is wholly passive until some interested person invokes its power to secure resolution of a matter.”<sup>36</sup> Interested persons

may use an “in and out” relationship to the Court so that any question . . . relating to the estate, including the status of an estate as testate or intestate, matters relating to . . . claims, disputed titles, accounts of personal representatives, and distribution, may be resolved . . . by adjudication after notice without necessarily subjecting the estate to the necessity of judicial orders in regard to [any] other . . . questions.<sup>37</sup>

It should be pointed out also, however, that the Code does require that [p]ost-mortem probate of a will must occur to make a will

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32. Compare U.P.C. § 3-715(18) with OKLA. STAT. tit. 60, § 175.48 (1971).

33. U.P.C. § 3-715, comment.

34. U.P.C. § 3-504.

35. See U.P.C. § 3-1001.

36. U.P.C. art. III, General Comment.

37. *Id.*

effective and appointment of a personal representative by a public official after the decedent's death is required in order to create the duties and powers attending the office of personal representative. Neither are compelled, however, but are left to be obtained by persons having an interest in the consequence of probate or appointment.<sup>38</sup>

#### A TWO-THIRDS REDUCTION

Idaho was the first UPC state; the Code became effective there on July 1, 1972. Judge Gerald F. Schroeder, of Boise, has compared his role after more than two years under the Code with his traditional role under Idaho's prior law: "The changes are great, and the role of the court is much different."<sup>39</sup> "Much of what I was doing as a judge was a waste of time, unjudicial, and often a token compliance with the statutes . . . ."<sup>40</sup> "As a judge I have enjoyed a substantial reduction in the amount of time I [formerly] spent both in court and in the office on routine and unnecessary matters."<sup>41</sup> "I spend only about a third of the court and office time in probates that I did two and a half or even five and a half years ago."<sup>42</sup>

Imagine a reduction of two-thirds in the amount of time an Oklahoma judge has to spend on probates and administrations. Certainly that time saved could well be utilized to the benefit of increasing case loads in other areas.

Many of the chores Judge Schroeder deemed wasteful in former Idaho practice are closely analogous to chores Oklahoma judges must still perform today. He routinely had to sign orders requiring notice to creditors, orders appointing appraisers, orders approving creditors' claims not in dispute, and orders fixing inheritance taxes "simply to get them to the tax commission,"<sup>43</sup> to name but perhaps a few. He observes: "While none of these actions was in and of itself overwhelming, the accumulation was great."<sup>44</sup> Examination of the comprehensive work on Oklahoma probate practice by the late Roy Huff<sup>45</sup> reveals an astounding number of orders still today which require the signature of an Oklahoma judge sitting in probate.

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38. *Id.*

39. Schroeder, *The Altered Role of the Court Under the UPC*, UPC NOTES, Nov. 1974, at 1.

40. *Id.*

41. *Id.*

42. *Id.* at 7.

43. *Id.* at 2.

44. *Id.* at 7.

45. 1 & 2 R. HUFF, OKLAHOMA PROBATE LAW AND PRACTICE (*passim*) (1957).

Under the Uniform Probate Code, except in supervised cases, administration of an estate is not in the court. The personal representative will publish notice to creditors only if the bar of their claims by a statute of limitations is desired.<sup>46</sup> The personal representative will employ an appraiser only when the value of an estate asset is in doubt.<sup>47</sup> The personal representative alone will disallow or allow and pay creditors' claims.<sup>48</sup> The personal representative "has the same power over the title to property of the estate that an absolute owner would have."<sup>49</sup> The personal representative can thus mortgage or sell estate property just as an absolute owner could,<sup>50</sup> no order or confirmation of the court is required.<sup>51</sup> The personal representative alone will bear responsibility for satisfying tax authorities.<sup>52</sup>

Few can fail to see in these examples how an Oklahoma judge would save an enormous amount of time under Code practice. Most Oklahoma attorneys who have been involved in estate administration probably can recall cases in which intervention of the court in situations such as those enumerated frequently has been unnecessary and a cause of unwarranted delay in the settlement of an estate.

It should be kept in mind, however, that the court in a Code state is readily available to check the exercise of any power of the personal representative on petition of a person interested in an estate. One philosophy of the Code is that "[t]he state, through the Court, should provide remedies which are suitable and efficient to protect any and all rights regarding succession, but should refrain from intruding into family affairs unless relief is requested, and limit its relief to that sought."<sup>53</sup> The philosophy is not strange to Oklahomans, but is the same that governs the state's approach to ordinary civil litigation: when a person wants or needs a court's help, that help is sought; the court resolves the issues presented in the petition and sends the litigants on their way. The same is true under the Code: "[E]ach proceeding . . . is independent of any other proceeding involving the

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46. See U.P.C. §§ 3-801 to 803.

47. See U.P.C. § 3-707. Three court-appointed appraisers are required in Oklahoma, and they are compensated at not exceeding \$25.00 per day. OKLA. STAT. tit. 58, § 282 (Supp. 1976).

48. See U.P.C. §§ 3-715, -806, -807.

49. U.P.C. § 3-711.

50. U.P.C. § 3-715(23).

51. See U.P.C. § 3-711.

52. U.P.C. §§ 3-709, -715(18).

53. U.P.C. art. III, General Comment.

same estate . . . ."<sup>54</sup> and "the scope of the proceeding if not otherwise prescribed by the Code is framed by the petition."<sup>55</sup> When the Code court resolves the issue presented, the estate is no longer before it.

#### MORE TIME SAVERS

Although freeing the court of the requirement of supervising every estate administration would furnish the greatest saving of judicial time that can be realized by adoption of the Code, two other time-saving features may be briefly mentioned.

For informal probate of a will and informal appointment of a personal representative, which are non-adjudicative in nature,<sup>56</sup> the Code suggests creation of the position of Registrar. The Registrar may be "a person, including the clerk, designated by the Court."<sup>57</sup> The functions of the Registrar may, however, as in Idaho,<sup>58</sup> be performed by a judge, although informal proceedings will still be non-adjudicative in nature.

The functions of the Registrar are administrative in nature. When presented with an application for informal probate or for informal appointment of a personal representative, the Registrar determines whether the requirements of an application are satisfied.<sup>59</sup> The Registrar must deny an application for informal probate if a personal representative has been appointed in another county in the state<sup>60</sup> or if the latest of a known series of testamentary instruments does not expressly revoke the earlier;<sup>61</sup> the application may be denied if for any other reason the Registrar is not satisfied.<sup>62</sup> The Registrar may also deny an application for informal appointment of a personal representative.<sup>63</sup> Denial of an application may not be appealed; however, formal proceedings before a judge may be instituted to determine the propriety of the denial.<sup>64</sup>

The granting of an application by the Registrar, on the other hand, does produce legal effects: (1) "Informal probate is conclusive as to

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54. U.P.C. § 3-107(1).

55. U.P.C. § 3-107, comment.

56. See text accompanying notes 16-21 *supra*.

57. U.P.C. § 1-307.

58. IDAHO CODE § 15-1-307 (Supp. 1976).

59. See U.P.C. §§ 3-301 to 303, -307, -308.

60. U.P.C. § 3-303(b).

61. U.P.C. § 3-304.

62. U.P.C. § 3-305.

63. See U.P.C. §§ 3-309, -308(b) to 311.

64. See U.P.C. § 3-305, comment.

all persons until superseded by an order in a formal testacy proceeding"<sup>65</sup> and (2) "The status of personal representative and the powers and duties pertaining to the office are fully established by informal appointment."<sup>66</sup>

The availability and use of informal proceedings should serve to keep simple wills and appointments which generate no controversy from the necessity of becoming the subjects of formal proceedings,<sup>67</sup> and thus permit additional significant savings of judges' time.

Some time-saving may accrue in respect to closing estates. The Code requires nothing to be done; what is done to close depends upon how much protection the personal representative wants. Releases received from persons with whom the personal representative has dealt may be sufficient.<sup>68</sup> The personal representative may merely file a closing statement in the court, which action triggers a six-month statute of limitations on claims of successors and creditors,<sup>69</sup> and serves as notice that the office will terminate after one year.<sup>70</sup> Finally, however, the personal representative may choose to close the estate in a formal proceeding before the court and conclude matters much in the same way as is done in Oklahoma today.<sup>71</sup>

#### PERSONS UNDER DISABILITY

Article V of the Code is entitled: "Protection of Persons Under Disability and Their Property." "[T]he Article contains many provisions designed to minimize or avoid the necessity of guardianship and protective proceedings, as well as provisions designed to simplify and minimize arrangements which become necessary for care of persons or their property."<sup>72</sup> Those provisions of the Code which reduce the necessity or frequency of court action in respect of minors and incapacitated persons may be briefly described.

The Code permits a parent or a guardian of a minor or incapacitat-

65. U.P.C. § 3-302.

66. U.P.C. § 3-307(b).

67. See U.P.C. § 3-302, comment. *But cf.* ASSOCIATION OF CONTINUING LEGAL EDUCATION ADMINISTRATORS, UNIFORM PROBATE CODE PRACTICE MANUAL 94 (1972) (questioning whether formal probate can be required in every case by the Registrar consistently denying informal petitions).

68. U.P.C. § 3-1003, comment.

69. U.P.C. § 3-1005.

70. U.P.C. § 3-1003(b).

71. Compare U.P.C. §§ 3-1001 to 1002 with OKLA. STAT. tit. 58, §§ 631, 691 (1971).

72. U.P.C. art. V, General Comment.

ed person, by power of attorney and without the need of court approval, to delegate certain powers to another for a period not exceeding six months.<sup>73</sup> The principal purpose is to minimize the problems of consent for emergency medical treatment.<sup>74</sup>

A facility of payment provision in the Code should reduce the need for conservators by permitting sums not exceeding \$5,000 per year to be paid to the person with whom a minor resides or into a federally insured savings account in the minor's name.<sup>75</sup>

Both Oklahoma law and the Code permit the surviving parent of a minor to designate a guardian by will.<sup>76</sup> The Code goes even further, however, and permits a parent or spouse, by will, to designate a guardian for an incapacitated person.<sup>77</sup>

The Code permits the court to approve single transactions or to establish protective arrangements for minors and incapacitated persons as alternatives to guardianships and conservatorships. Thus the court could itself act directly in behalf of such persons to make a transfer of land or securities possible.<sup>78</sup>

When a conservator is appointed, administration of the property of the protected person may, as in the case of administration of a decedent's estate, be independent of court supervision.<sup>79</sup> The conservator basically is a trustee<sup>80</sup> and has all of the powers<sup>81</sup> and obligations<sup>82</sup> of a trustee. The conservator is not required to account to the court except upon resignation, removal or as the court otherwise orders.<sup>83</sup> The court may, however, limit the powers of a conservator, but to do so must endorse the restrictions upon the letters of appointment.<sup>84</sup> Adoption of

73. U.P.C. § 5-104.

74. *Id.*, comment.

75. Compare U.P.C. § 5-103 with OKLA. STAT. tit. 58, §§ 898.1 to .2 (1971).

76. OKLA. STAT. tit. 30, § 6 (1971); U.P.C. § 5-202.

77. U.P.C. § 5-301. See U.P.C. § 5-304, comment for a discussion of the meaning of "incapacitated." Both Oklahoma and the Code permit a person who is *sui juris* to plan for his possible incapacity in the future by authorizing a power of attorney which is not affected by disability of the principal. Compare OKLA. STAT. tit. 58, §§ 1051-1062 (Supp. 1976) with U.P.C. § 5-501 to 502. Oklahoma also permits execution of an instrument which nominates a guardian in the event later incompetence occurs. OKLA. STAT. tit. 58, § 896 (1971).

78. U.P.C. § 5-409; *id.*, comment.

79. See U.P.C. §§ 5-416, comment, -420, comment. See notes 36-37, 46-51 *supra* and accompanying text.

80. See U.P.C. § 5-420.

81. U.P.C. §§ 5-424 to 425. See notes 28-33 *supra* and accompanying text.

82. U.P.C. § 5-417.

83. U.P.C. § 5-419. Under Oklahoma law, a guardian must account annually OKLA. STAT. tit. 58, § 871 (1971).

84. U.P.C. § 5-426.

the independent administration concept for conservatorships should substantially reduce the amount of time an Oklahoma judge must devote to guardianship estates.<sup>85</sup>

#### PROTECTION OF THE PUBLIC

As desirable as court reform is, it certainly should not be accomplished in any manner that will be detrimental to the public. The Uniform Probate Code frequently is criticized as being too "flexible," as providing too little protection to persons interested in an estate when it is compared to the protection of supervised administration as required, for example, by Oklahoma law.

But does Oklahoma's supervised administration really provide so much protection? Judge Schroeder feels that Idaho's comparable prior requirement did not: "Aside from the reduction of time on probate matters, my role as a judge is much more comfortable under the UPC than it was under our old law."<sup>86</sup>

One of the most uncomfortable duties a judge can have is signing orders that he either does not understand or has insufficient information to enter and to defend himself for having signed. . . . [O]ur [previous] law required a judge to do something he was not qualified to do unless evidence was actually submitted in a hearing with adequate time to deliberate and research the issue. . . . [T]he point . . . is that the philosophy of our previous law interjected the judge into areas of estate administration that were not in dispute, that were beyond his abilities in terms of time and information to adequately determine, and that needed no judicial determination. This created an appearance of judicial supervision and a seal of approval that were both artificial and time consuming. It either misled the public into believing that the court was doing more than it really was or caused the public to resent or mistrust the courts for appearing to burden estates with unnecessary and time-consuming proceedings.<sup>87</sup>

Judge Schroeder concludes:

The question that arises is, of course, whether removal of the court from the routine supervision of estates has placed the public in jeopardy. To date [November, 1974] there has been no indication of any greater degree of wrong being done to beneficiaries and creditors under the UPC than occurred

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85. See generally 1 R. HUFF, *supra* note 45, §§ 566-570.

86. Schroeder, *supra* note 39, at 7.

87. *Id.* at 2, 7.

under our old, theoretically protective, law. While a little over two-years experience is certainly not conclusive, the lack of evidence of ill effects from the change must be balanced against the very obvious benefits to the court . . . . In short, removal of the court from the supervision of routine estates has had no noticeably detrimental effects upon the public. On the other hand, it has had very positive results upon the court, which is a benefit to the public it serves.<sup>88</sup>

#### CONCLUSION

Just as the Field probate code represented the best thinking of the 1830s and-40s, so does the Uniform Probate Code represent the best thinking of the 1960s and-70s. Just as the horse has given way to the train, the automobile and jet planes; just as the pony express has given way to the telegraph, the telephone and satellites, so *maybe* ought the thinking of the 1830s give way to the thinking of today.

Probably no one is satisfied with every section of the Uniform Probate Code; probably no one is satisfied with every provision of Oklahoma's current probate law. There is much in the Code to recommend it.

The cases for probate reform and for additional court reform appear to be well made. That the accomplishment of the one may contribute materially to the accomplishment of the other makes it doubly important that major probate reform, such as would occur by adoption of the Uniform Probate Code, be given thoughtful consideration by Oklahoma's legislators, judges, bar and people.

Whatever form court or probate reform takes, the people of Oklahoma should be given the right to choose independent administration as a means of avoiding unwanted and unwarranted court intrusion into matters predominately of family concern.

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88. *Id.* at 7.