Improving the Structure of Courts

By Maxine Boord Virtue

IT is pointless to consider the structure of courts apart from their operation. As the design of an automobile relates to the driver's skill, the road conditions, and the density of traffic, so the structure of courts can be analyzed usefully only by taking cognizance of the caliber of the judges, the subject matter comprising the case load, the incidence of business, and the participation of the bar. The best court design will not result in good judicial administration if operating techniques and personnel are not of good quality. Given these things, the most cumbersome and outmoded court structure can be and is being made to purr like a 1953 Cadillac.

The point is being labored because most discussions of court structure are sooner or later thrown out of focus by an assertion that all will be well if every judge will come to work at nine and stay until five, or that juvenile delinquency will disappear and divorce cases cease to be difficult if judges hearing such cases will (1) remember to be kind and (2) take a course in social work. The object of this article is to discuss court structure, though not in a vacuum. It will be assumed that the structure sought is that which will offer the most scope to good personnel and provide maximum protection against bad personnel, and that good operating techniques must be enforced in order to give meaning and utility to the machinery.

It may be useful to look at some typical defects in present court structure, the results of the defects, and the methods being evolved to achieve court reform.

Multiplicity of Courts

In 1948 there were 145 separate tribunals in the Detroit metropolitan area, of which 104 were township justices, 18 city justices, and 6 municipal courts.[1] In 1932 there were 556 autonomous courts in the Chicago region, of which 205 were in Cook County.[2] A recent state-wide Minnesota study lists 19 state district courts, 48 probate courts, 80 municipal courts, and 690 justices of the peace—a total of 837.[3] Judicial council reports or any standard court study will yield further evidence of the plethora of autonomous judicial tribunals existing in most states. This multiplicity is most exaggerated in metropolitan areas.

Reasons for the costly and inefficient piling up of courts include (1) retention of the outmoded justice of the peace system, (2) population shifts resulting in demand for new courts, and (3) ephemeral local pressures to create a new court for each specialized set of issues. In metropolitan districts, multiplication of courts is only one manifestation of the tangle of overlapping governmental units characterizing these centers of population, in which more than half our inhabitants dwell. "Sibling rivalry" among these governmental units, and heavy case loads in congested popula-

[1] Maxine Virtue, *Survey of Metropolitan Courts: Detroit Area* [Michigan Legal Series] (1950), p. 6.

[2] Albert Lepawsky, *The Judicial System of Metropolitan Chicago* (1932), p. 41.

[3] Forrest Talbott, *Intergovernmental Relations and the Courts* (1950), pp. 23–24, 47, 54, 61.

tion centers, also contribute to the pressure for more courts.

Justices of the peace

Local justices of the peace constitute the overwhelming majority of courts in most states. Originally established to serve communities wherein litigants went to court on horseback or in buggies traversing muddy country roads, the system is tenacious of life, though superseded in usefulness by local tribunals easily accessible by automobile in our generation. The best-known studies of the subject are those of Edson R. Sunderland, who wrote in 1932 of the Michigan township system of justices that in six typical counties having 290 justices in all, 269 justices did no business whatever; the other 21 did all the business that was done outside the cities.[4] Professor Sunderland said:

> These figures show that the supposed popular demand for a Justice of the Peace court in every township . . . does not exist. The people do not want them and will not use them. . . . A county court, properly organized and housed, having a trained judge, a competent clerk, office equipment sufficient for the keeping of proper records, and sitting . . . as the needs of the community should indicate, ought to replace the obsolete Justice of the Peace courts.[5]

The same scholar in 1945 presented a comparative survey of constitutional and other provisions governing justices of the peace in all states, and an analysis of requisites for an adequate state-wide minor court system.[6] But though these researches originated in Michigan, ironically the justice of the peace system still obtains there. It is said that an association of justices, formed to combat the county court bill, was able to accomplish its objective.

Several other states have also felt the strength of the opposition which can be rallied when an outmoded court system is threatened. But in Missouri, Kansas, and California, *inter alia,* efforts to replace justices of the peace by flexibly designed minor tribunals structurally integrated into state-wide court systems have been successful. Chief Justice Vanderbilt discusses the present status of the justice system in his *Minimum Standards.*[7]

The problem of adequate judicial manpower

The general problem of judicial selection is touched upon elsewhere in this symposium. It suffices here to note that multiplicity of courts is accompanied by difficulty in obtaining enough qualified persons adequately to discharge the judicial function. The "lay justice" evil has been mentioned. Another is that of the lay probate judge. In states having a separate probate court in each county, the rewards of judgeship are insufficient (particularly where the fee system still obtains) to interest good lawyers except in heavily populated areas. In 1950 I found that more than half the probate judges in Michigan were not listed as lawyers by Martindale-Hubbell. The Minnesota study previously cited notes that of 87 probate judges in Minnesota in 1950, only 38 were members of the bar.[8]

It is surprising that the bar and the public have shown so little concern about this widespread problem, for the basis of probate practice is the making of a precise record and the adequate discharge of many minute and complex procedural requirements. Where the

[4] Judicial Council of Michigan, *Fourth Annual Report* (1934), p. 169.

[5] *Ibid.,* pp. 169, 172.

[6] Judicial Council of Michigan, *Fifteenth Annual Report* (1945), p. 57; see *Sixteenth Annual Report (Tentative Draft of an Act to Establish County Courts)* (1946), p. 67.

[7] Arthur T. Vanderbilt, *Minimum Standards of Judicial Administration* (1949), pp. 314–16.

[8] F. Talbott, *supra* note 3, pp. 47–49.

judge is unequipped to comprehend the professional problems, the burden of the attorney increases manyfold.

Further, in many states this separate county probate court exercises jurisdiction in juvenile cases, through a separate division or otherwise. Here the legally unqualified judge is particularly damaging, for the juvenile case load comprises an area where attorneys appear infrequently, where the need for social techniques tends to outweigh legal rights and procedural requirements, and where inadequate legal practices often produce results which are bad both legally and socially.

COMPLEXITY IN STATE-WIDE COURT SYSTEMS

The court system of Massachusetts has been described as a "statutory omelet"; that of Chicago, in the phrase of a local reporter, is "as full of tangle and movement as a canful of angleworms"; Professor Fuller of Harvard says that the Pennsylvania system "presents an imposing complexity probably unequaled in any other state." It seems generally perceived that ephemeral changes in population, in case load, and in the aggressiveness and skill of court personnel have brought about haphazard piecemeal shift and redistribution of court structure until most present systems are mere conglomerations. Defects most often complained of are those arising out of lack of integration and poor jurisdictional coverage.

Lack of integration relates not only to court structure but also to the scope of the rule-making power of judges. Where many courts independently coexist, judicial manpower is immobilized so that individual judges may not be assigned in accordance with current need. This same defect is expressed as needless duplication and conflict in case handling, lack of proper uniform record and statistical methods, and a general dearth of good housekeeping practices such as a strong presiding judge with authority over the entire system can develop.

Overspecialization is another manifestation of lack of unified structure. As special dockets (for instance traffic, domestic misdemeanors) are carved out and assigned to judges having a special interest in or flair for such cases, they tend in time to develop into separate courts, cut off first in practice and then in structure from the parent tribunal. An example is the Detroit traffic court, an offshoot of the recorder's court, itself a specialized criminal tribunal with jurisdiction in part carved out of that originally exercised by the Circuit Court of Wayne County.

Jurisdictional defects

Jurisdictional defects inevitably occur when many separate courts are evolved haphazardly without over-all planning. Typical jurisdictional faults are the following:

There are gaps, such as lack of effective legal procedures to control known sex offenders, lack of jurisdiction over actions against municipal corporations, or lack of court authority to enforce a mother's duty to support children.[9]

There is duplication, such as that found in Detroit whereby any one of six legal procedures in any one of four courts may be chosen to deal with paternity out of wedlock. In Chicago, the circuit and superior courts, serving the same physical community, have completely duplicating jurisdiction but are functions of different units of government. In the city of New York we may choose from among many examples that of the Municipal Court (civil jurisdiction to $3,000) and the City Court (civil jurisdiction to $6,000).

[9] Examples chosen at random from those coming to mind through recent contact with Michigan courts and statutes.

Overlap is perhaps the most frequently encountered jurisdictional defect arising out of structural complexity. Actions involving small amounts may often be brought either in the justice court (or its municipal successor) or in the court of general jurisdiction. In one year three-fourths of the work of the Circuit Court of Wayne County was done in cases involving less than $1,500, which thus might, and most of which should, have been brought in the Court of Common Pleas.[10]

Another facet of the same overlap is provision for trials *de novo* of small claims and other cases appealed to the court of general jurisdiction. In Detroit, Chicago, and New York, to the writer's knowledge, the maximum monetary jurisdiction of local small claims courts has recently been increased, and various localities have done away with the *de novo* appeals. These devices are said to have a tremendous ameliorating effect upon docket congestion in the court of general jurisdiction. Whether the trend will in time adversely affect the existence of small claims courts as such, is a question which needs attention.

Conflict of jurisdiction is most often experienced in the family problem area. In a recent article, Judge Jayne notes eight different courts in Detroit which may deal, without co-operation or even knowledge of one another's efforts, with the same family breakdown situation. Personal guardianship proceedings for minors are often used to undo the work of a divorce court's child custody and support decree. Space limitations prevent citing further examples, which are legion in this type of case. Judge Alexander lists half a dozen courts involved in an Ohio problem family case; [11] a recent Connecticut comment shows domestic relations jurisdiction parceled out among six different courts.[12]

INTEGRATED COURT MOVEMENT

In 1938 the American Bar Association took the lead in trying to bring about a unified judicial system in each state, with power and responsibility centered in one judge. The American Judicature Society, the National Municipal League, and many state bar associations have been striving towards the same goal. A recent check of judicial council and bar association reports from ten states, selected at random, shows that in all ten, bar associations or similar professional groups either have committees working on studies leading to court reform, or are actively pressing for a fully integrated system.

But such reforms are hard to bring about, partly because it is difficult to interpret this need to a sufficient portion of the public to kindle the requisite enthusiasm at the polls, partly because up-state legislators are deeply unwilling to bestir themselves about changes which they believe will principally benefit city dwellers, and partly because politically entrenched personnel and structures take a good deal of dislodging.

The excellent Minnesota plan [13] has had more effect in exciting interest outside Minnesota than in bringing about remedial legislation in that state. Important changes recommended by the Connecticut court study have not been

[10] Ira W. Jayne, "The Mouse in the Mountain," 16 *The Detroit Lawyer* 237 (1948); see Judicial Council of New York, *Fourteenth Annual Report* (1948), pp. 63–66.

[11] Paul W. Alexander, "The Family Court of the Future," 36 *J. Am. Jud. Soc'y* 38 (1952); see also Professor Koos's article in this volume.

[12] 26 *Conn. Bar. J.* 303 (1952).

[13] Judicial Council of Minnesota, *Report of the Committee on Unification of the Courts* (1942).

accepted by the legislature.[14] A long succession of studies and reform programs in New York (where, it is said, hundreds of thousands of pages have been written about the inefficiency of the system) has thus far resulted in no basic changes. The present status of the court reform movement can be learned by consulting the summaries of judicial administration legislation published periodically by the *Journal of the American Judicature Society*.

The New Jersey court reorganization is the inspiration for all groups working for better court structure. In 1947 a new constitution was adopted there which

> attains most of the objectives for which the American Judicature Society and others have contended. . . . The three-level system of supreme court, superior court and county courts is set up just about as most of the numerous court unification plans chronicled in these pages through the years have envisioned it.[15]

METROPOLITAN COURT SYSTEMS

Dean Pound called attention several decades ago to the distinctive nature of the problems of metropolitan trial courts, pointing out that Huck Finn's father could not have had as good a trial in a big city, even if the same number of man-hours were applied to it, as he did in the home town which knew him deeply. The American Judicature Society came forward in 1916 with a model act for a metropolitan court divided into several specialized divisions but comprising a single tribunal.[16]

After the abortive "municipal court" movement of the twenties and thirties, no attention was given to the special problems of metropolitan trial courts until 1947. Then the Section of Judicial Administration of the American Bar Association, through a special metropolitan trial court committee under the chairmanship of Judge Jayne, embarked on the first of a series of studies designed to determine what the special metropolitan court problems are, and, finally, to serve as the basis for recommendations concerning the proper structure, organization, and procedures for such courts.

The first study of Detroit was financed and supervised by the University of Michigan Law School. The Section of Judicial Administration is sponsoring similar inquiries in at least half a dozen metropolitan areas with various cultural and court problems. Plans for studies in New York and Philadelphia, to be conducted by Columbia Law School and Temple University Law School respectively, have been approved by the section and by local directors. A local committee is working on a prospectus for Los Angeles, and consultations are under way to develop studies in London, in San Francisco, and in other metropolitan areas.

Each local study is to be independently directed and financed, with continuing section sponsorship to ensure objectivity and to obtain fully comparable data through co-ordination of all the studies. A representative of the section's special committee is to integrate the studies and direct the over-all operation, which will include (1) the development of local plans and joint preparation of a written prospectus for section approval in each area, (2) the making of selected intensive studies in various localities during the local study period, and (3) the preparation of a final analysis and recommendation based on the completed series.

The first study has demonstrated that the metropolitan trial court, with its

[14] 35 *J. Am. Jud. Soc'y* 43 (1951); see Charles E. and Eli Clark, "Court Integration in Connecticut: A Case Study of Steps in Judicial Reform," 59 *Yale L. J.* 1395 (1950).

[15] 31 *J. Am. Jud. Soc'y* 131, 142 (1948).

[16] IV-B *J. Am. Jud. Soc'y* 1 (1916).

many specialized and departmentalized employees and multi-judge courts, and with a predominance of mental, criminal, and domestic relations cases in its case load, has unique problems not only of procedure but also of subject matter. In his foreword to the Detroit study, Judge Jayne remarked that "it appears that court administration in a metropolitan district is a problem distinct from the administration of courts in the state as a whole," [17] and that this special problem could not be solved by state-wide court integration alone.

As one reviewer pointed out,[18] this does not mean that state-wide integration of all courts is not proper and of pressing importance. It does mean that integration of all courts in the state, including the metropolitan courts, is a major goal to be pursued with spirit and determination; and that integration of courts on a state-wide basis will not alone solve the problems of metropolitan trial courts, which in addition to being integrated with those in the state must also be closely co-ordinated, both structurally and in operation, with other courts in the same metropolitan area.

[17] M. Virtue, *supra* note 1, p. viii.

[18] Stephen H. Clink, 49 *Mich. L. Rev.* 927, 928 (1951).

SUMMATION

In conclusion, then, achievement of good court structure appears to this writer to require a program containing all of the following components: (1) state-wide integration; (2) metropolitan integration for metropolitan districts within the state-wide system; and (3) county and/or circuit integration of petty tribunals in rural districts.

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