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What the Lower Courts Do: The Work and Role of Courts of Limited Jurisdiction

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The Work and Role of Courts of Limited Jurisdiction

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PREFACE

On June 21, 1979 I was asked to prepare an essay on the limited jurisdiction courts for consideration at the September meeting of the Council on the Role of Courts. The essay was to indicate the kinds of limited jurisdiction courts currently in operation nationwide and the types of cases they handled, the criteria for evaluating the performance of these courts and an assessment of the specific institutional capacity of the lower courts. If possible, the essay would suggest the extent to which matters now handled in the general jurisdiction courts ought to be diverted to the lower courts, or matters there diverted to alternative fora. The paper was to provide as full descriptive statistics as were available on these courts, and provide an analytic summary of what we know about the limited jurisdiction courts.

The paper presents a framework for discussing the particular competences of the courts without drawing any clear boundaries around them. Its analyses and conclusions are clearly tentative, given the constraints of time and data with which we had to work. It is intended to stimulate discussion and focus debate about an appropriate division of labor within the judicial system. Anything further would be premature at this time.

The limitations on available data proved to be greater than even our original skeptical expectations assumed. Therefore, I have incurred the debt of many persons and institutions in these short weeks, without whose cooperation and ready assistance this project would have been impossible. I would like to thank the people at the American Judicature Society, the National Center

for State Courts in Williamsburg; the U.S.Department of Justice, Statistics and Information Service, and the Office for Improvement in the Administration of Justice; the National Judicial College, Reno, Nevada; Professor John Irving, Ralph Cavanagh, Al Berns, Clerk of Court, Middlesex County Court, Cambridge, Massachusetts. I would like to especially thank John Cratsley, Sally Merry and Egon Bittner for their advice and criticisms.

Thanks are also owed to Susan Mileff who helped code and prepare the descrptive data, and to Martha Adams and Vera Spanos for the typing assistance.

OUTLINE

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Attitudes toward the lower courts seem schizophrenic. At one and the same time, the inferior courts are described as invisible and without appropriate attention from the bar, scholars and the citizenry, and as the critical and often exclusive judicial experience for those who enter the court system. It is repeatedly suggested that they be done away with, at the same time it is suggested that they perform vital functions at the juncture of several official public hierarchies and systems. They are applauded for being flexible and informal, and chided for failing to fulfill due process forms and techniques. They are recognized to be responsive to local community situations and needs and criticized for their diversity. They are second class citizens in the eyes of the bar and the judiciary but constitute the majority of our trial courts and hear ninety percent of the nation's criminal cases.

It is commonplace now to state that the limited jurisidction courts have not been sufficiently studied and that we need good research on these first level 'inferior' courts. Although this has been said, and indeed studies have followed the call, we urgently need to know more about these courts. Kenneth Dolbeare has suggested that if "we seek to understand the nature of the judicial task, we should study it where it is most practiced, and not some relatively specialized situation, such as appellate courts". (1) This paper will explore some of the major aspects of the limited jurisdiction courts in an effort to identify the predominant roles and functions of these

courts. There are so many limited jurisdiction courts, over eighteen thousand, and such very incomplete data on these courts, that this paper must necessarily be incomplete. Although the literature on the limited jurisdiction courts is not extensive, we cannot say all that could be said within the confines of time and space for this paper. It is a brief overview of particularly relevant issues.

The paper will address the following questions: What are the lower courts doing that is different from general jurisdiction courts such that the adjudicative model of rule bound decisionmaking does not seem to apply? What is the unique institutional capacity of these courts? We suggest that while the lower courts do not conform to our model of the rule of law - adversarial due process with full protection of the rights of disputants - their informality flexibility, and diversity can function to provide responsive justice for the kinds of situations and cases these courts are asked to handle.

Section II. will summarize the data which is available on work and operations of the limited jurisdiction courts. Using primarily data available in state court reports and collected at the National Center for State Courts, information at the American Judicature Society, surveys published by the Department of Justice and data collected from judges attending National Judicial College in July and August 1979, we shall describe the courts of limited jurisdiction. What sorts of limited jurisdiction courts are currently in operation nationwide? How many courts are there, what are their names and what patterns of organization predominate? How do the general and limited jurisdiction courts compare with respect to the quality of their personnel, the

resources available and the nature of their caseloads? What kinds of dispositional options prevail in these courts?

The data suggest that the courts are extremely numerous and diverse. They carry an enormous share of the states' trial caseload with considerably reduced resources. There is a great range of organizational patterns, range of personnel qualifications. Without further research very few explanations for the diversity present themselves. Obviously population density, geographical distance and some effort to distinguish serious from petty offenses and appropriate process for each explains some of the variation and characteristics of the lower courts. The caseload statistics suggest that there may be distinctions between 'major' limited jurisdiction courts and 'minor' limited jurisdiction courts, based upon which courts hear the largest proportion of the limited jurisdiction cases, but also based upon which courts hear more civil than criminal cases. The principal distinction between the caseloads of the general and limited jurisdiction courts is the proportion of their caseloads which are civil versus criminal. General jurisdiction courts hear a significantly greater proportion of civil cases

Section III. will review the history and criticisms of these courts. From their inception in the fourteenth century, the 'lower' courts were designed to provide rapid, localized justice for less serious offenses and matters. A distinction between 'important' issues and petty matters rested upon which ones required fuller more procedurally regular handling through the developing common law courts. The criticisms which have been levied against the lower courts have concentrated upon their informality, lack of due process and therefore lack

of equal and uniform justice.

There are several lines of converging thought about the work of the courts. One, there is repeated concern that adjudication is not appropriate for the problems being brought before the courts, especially the limited jurisdiction courts flooded with 'petty' disputes or offenses which, however, reflect rather serious and seemingly insoluble social disorders. Courts are reactive, that is passive, institutions, which deal with only two-party issues, on a case to case basis; they can provide only simple coercive solutions. They can provide no follow up or supervision and therefore they can have only marginal effect upon the situations or conditions which generate the problems.(2) Two, the courts are not adjudicating the cases before them in a properly procedurally regular fashion. They are failing to adhere to the rules of law, perhaps because the problems are inappropriate, or that there are too many of them. The courts are not models of adversarial adjudication.

There seem to be two issues of relevance: How to enlarge the scope of the judicial system in order to handle whatever comes up and needs resolution, and how to formalize the procedures in order to provide equitable access and handling of these problems.

The dilemma is apparent. We cannot leave grievances and problems unresolved. We have taken heed of Pound's warning about allowing small injustices to fester in the body politic. Therefore, we are urged to create alternatives to courts that can more appropriately deal with the 'polycentric' problems, and leave the courts to deal with matters more consistent with their particular although limited competence. If we can reduce the load of the court's work to more manageable volume, we are told, perhaps the courts will be able to more closely follow the rules and procedures of law.

The core issue for legality is accountability. Procedure and formal regularity is what we hold courts accountable to, e.g. on appeal. But, if the process is informal, or broadened to encompass issues the handling of which is difficult to formalize, how will accountability be provided? Messinger and Bittner have recently remarked upon this.

> "One might imagine that we exclude the mechanical application of legal norms because the aim of the law is justice. And justice is too elusive a catch for a mere network of norms. In our world justice probably cannot be caught without norms, but there is a need for 'discretion ...to know through law what is just'. Law alone would yield greater certainty, but the quest for justice forces us to settle for mere 'reasonable regularity' which Professor Lewellyn assured us, would come close to 'drying up the bubbling flood of words about rule and discretion'. Reasonable regularity seems like a modest standard, but judging by what one reads in our times even this has eluded us by quite a wide margin." (3)

We must be very skeptical about purifying the functions and availability of any social institutions to an extent which makes it remote from practical concerns. We cannot change the social problems which demand resolution so that courts can do what courts can do best. Rather, courts ought to adapt to the demands which necessitate their existence in the first place. Why are we limited to a definition of law in terms of a narrowed conception of adversarial adjudication? And, do we really want to take social disputes and grievances out of the courts? Finally, isn't it possible to conceptualize the lower courts in a way which takes account of their unique capacity for informal, responsive, individualized adjudication and places it squarely within the rule of law?

The criticism of the lower courts suggests that in attempting to do too many jobs, the lower courts do no job well. Therefore, if these courts have a distinctive capacity, perhaps it derives from

their availability, informality and diversity. The problems which have plagued these courts and raised the cry for their eradication may be the source of their justification and function. The paper will argue that the limited jurisdiction courts can function as a major resource for community based dispute resolution. Their informality, lack of scrutiny and availability make them particularly capable institutions for just such service.

The threads of the argument are not woven firmly as yet, but the paper will present some of the ideas upon which such an argument could be made. The tensions inherent in a modern legal system between substantive and procedural justice seem to be particularly ripe at the level of the lower courts. Perhaps they have a peculiar role because of their greater informality, closeness to the parties, and their greater reliance upon empirical rather than logical concerns, to provide personally and community responsive justice. The question arises as to whether the rule of law, as a bulwark against arbitrary and naked exercises of power and coercion, is achieved solely through adversarial adjudication as we have developed it through the forms of due process. Much of the work of the lower courts is rule bound in much the same way and extent as general jurisdiction courts, but simply involves lesser crime, smaller amounts of money or specialized matters or persons. But, much of the work of these courts cannot be fit into a classical adjudicative model. But, does that mean that it is any less law?

Section IV. will present a sketch of this argument based upon a broad notion of the rule of law which can incorporate more than adversarial due process as an ordinary procedure. The limited jurisdiction courts perform a role fundamentally unlike that performed by general jurisdiction courts. They cannot be described in exclusively the same terms as general jurisdiction courts except for handling smaller, less serious cases. It is possible, however, to place the work of the limited jurisdiction courts within a broader framework.

The standard picture of these courts as "rote mechanical processors of vast numbers of cases, engaged strictly in wholesale high volume business"(4) is only partially correct. Evidence will be presented which suggests that 1) limited jurisdiction courts are more predominantly criminal courts; they may not have developed the formal regularity of general jurisdiction courts because important business and commercial interest for which regular and predictible processes have been essential, are not the ordinary clients of these courts; 2) limited jurisdiction courts do process different cases differently; all cases are not subject to assembly line treatment; 3) when citizens go to court, they require a public authoritative forum for compulsory resolution of their disputes.

There is no question that many of the lower courts, perhaps most, have been correctly described by critics as providing bargain basement justice, an insult to our revered notions of the rule of law. "Traffic courts, the very model of rote processing of cases that have become 'non-judicial' in everything but name"(5) are the most readily apparent example. And, it is also true that

some limited jurisdiction courts effectively channel problems toward appropriate services and solutions, for example, juvenile courts. However, this work has been able to identify an entire domain of important lower courts which are neither traffic courts, nor juvenile courts and whose business - the everyday disputes between citizens, misdemeanors and lesser felonies - are not inappropriate for judicial attention; but, indeed, are often the very stuff of life that demands a public remedy.

Nevertheless, it may also be true that there are areas or issues which may be losing their 'kernel of real adversariness', and we ought to devote increasing attention to identifying just those types of disputes. In fact, much contemporary research on disputing process in neighborhoods and communities is working in this direction. Any serious attempt to direct dispute to appropriate fora will require an equally serious assessment of the capacities of alternative institutions and settings. The blanket condemnation of the lower courts without recognition of their inherent diversity and variety, as well as their distinctive channeling functions, too easily throws out the baby with the bath water. Because the current mood is most decidedly against the limited jurisdiction courts, condemning all for the failures of some, I have specifically attempted to create an argument which would encourage policymakers, legal practitioners and scholars to stop and consider the positive aspects and possibilities within these courts and their role in society. Clearly, this is meant to stimulate debate and will engender criticism.

The movement, in both limited and general jurisdiction courts, toward negotiated settlements, mediation and social service treatment, does not necessarily deny the need for courts as umbrella institutions for dispute resolution in highly developed, heterogeneous, industrialized societies. The issues become a matter of creating access, review and formalizing the alternative styles and procedures of a variety of kinds of adjudication within a judicial framework. Cratsley's work on "Community Courts: Offering Alternative Dispute Resolution Within the Judicial System"(6) begins this effort. This paper will only suggest the theoretical and experimental framework within which diverse styles of justice in the limited jurisdiction courts can be justified. Future research on the institutional capacity of the lower courts, and specifically on the nature of disputing, can be directed toward more careful and complete examination of this thesis.

If the variety and informality of the lower courts can be justified within the rule of law, it will depend upon the most open access, careful review and formalization of the alternatives which these courts present. They will be judged by the availability of recourse from them, less than their adherence to the criteria of adversarial due process. Moreover, the relationship between the limited and general jurisdiction courts will be one of creating channels for distinguishing cases which are 'appropriate' for adjudication in the formal senses, from those problems and cases which require other forms of inquiry and resolution. But, all will be contained within a rubric of rules which limit the ultimate imposition of socially legitimate coercion against any individual.

There is, indeed, some historical support for a conception of the lower courts as sifting devices. The Roman "praetor" functioned as the chief legal officer who formulated issues such that they had the character of a legal question, which was then heard by a lay judge. The system retained the limitation on what could be a relevant matter for judicial hearing, legal determination, but assigned the disposition of the case and consideration of its merits and effect to a member of the community, not a professional.(7) It removed lawyers from the disposition and perhaps from the detailed handling of cases which may exacerbate or distort dispute. The layering of the handling and resolution of disputes avoided serious intrusion and tyranny of the official system over the persons involved, by efforts to 'get to the heart of the question'. It created a mechanism for structuring them into legally relevant questions, but provided a community based and therefore more responsive justice.

II. DESCRIPTION OF COURTS OF LIMITED JURISDICTION

A. Introduction

State court systems in the United States usually include at least two levels of trial courts, general jurisdiction and limited jurisdiction courts. General jurisdiction courts have unlimited original jurisdiction in civil and/or criminal cases. They are often called "major trial courts." On the other hand, courts of limited jurisdiction are trial courts of original jurisdiction, whose jurisdiction covers only a particular class of cases, e.g., probate, juvenile, traffic, or cases where the amount in controversy or allowable fine or penalty is subject to specific restrictions, e.g., courts limited to hearing civil cases with a maximum of $500 in controversy or criminal cases with a maximum penalty of $500 fine or six months sentence.

Limited jurisdiction courts constitute over ninety percent of all state trial courts and are staffed by eighty-one percent of all the judges (Table 1). Despite the preponderance in numbers of courts, judges, and cases heard, the importance of limited jurisdiction courts is often understated. These courts are usually the courts with which the average citizen has contact, frequently the only contact, with the judicial system. Limited jurisdiction courts handle most of the disputes between landlords and tenants, insurers and

Table 1

Number of State Trial Courts*

	Courts	Judges
General Jurisdiction	1,532	5,000
Limited Jurisdiction	18,469**	21,255**

*Source of data - Appendix I.

**This total is short by approximately 400 localized courts and judges in Georgia for which no descriptive or statistical data could be obtained and includes limited jurisdiction sessions of general jurisdiction courts in Idaho, Illinois, Iowa and South Dakota.

claimants, and debtors and their creditors. They also grant annulments, and divorces, legitimize adoptions, probate wills, administer estates and perform marriages. Moreover, limited jurisdiction courts are the usual forums for traffic offenses, petty larceny, drunkenness, prostitution and violations of local ordinances. In addition, they set bail and hold preliminary hearings in felony cases. In some states, limited jurisdiction courts hear not only misdemeanors and petty offenses, but also lesser felonies, and in some jurisdictions, felonies punishable by five years imprisonment or more. With power over bail setting and probable cause, as well as misdemeanors and some felonies, these lower courts exercise enormous powers.

The power of lower court judges is extensive, not only in terms of formal jurisdiction, but in terms of their freedom of action and ability to affect a person's life without supervision and without review. Their sentencing and disposition decisions affect not only the defendant, but his/her relationship with other persons. And often, local courts have oversight responsibility for municipal offices such as health inspectors, safety offices, or dog catchers. Their decisions directly affect the level of enforcement and administration of local ordinance regulation. Therefore, lower court judges can have a major impact not only upon individuals but upon the entire community. Finally, only a small percent of the cases initiated in lower courts eventually receive ap-

pellate review; consequently these courts usually have both the first and last word over a citizen's judicial experience and the impact which these courts have is that much more striking. Limited jurisdiction courts, therefore, can be considered limited in only a very narrow sense.

Despite this potential and quite real impact, limited jurisdiction courts go relatively unnoticed and unstudied. The first statement that must be made with regard to these courts is the actual paucity of specific information and research about them relative to the other one tenth of American trial courts. The information contained in this section has been collected from four principle sources, and supplemented by less general data collections from individual states and courts: the National Center for State Courts, the American Judicature Society, the National Criminal Justice Information and Statistics Service and a sample of lower court judges attending judicial college during July and August 1979. But, it must be stated at the outset, that there is no complete data available for all the limited jurisdiction courts in the United States. Many of the courts, indeed courts in thirty six states provided no, or incomplete, caseload statistics and the information about court organization, staffing and personnel was eratic and conflicted from one report to the next, although purportedly they covered the same years. It appears that some official reports rely upon "reported" courts,

that is the number that have responded to a survey, or were identified via some such "reporting" system; other official reports name and number the courts according to those that are authorized to exist, while some other documents report the names and number of courts according to those that are in actual existence at the time of the report. We have adopted this latter method.

Most often, the data will be based upon 1976 figures, but will be supplemented by information from earlier years, if unavailable for 1976, and later years where changes have been reported. Also, the data will sometimes represent different samples depending upon the available information. Each table will identify the source and the sample. Therefore, given the restrictions of available and reliable information, the tables presented below have been designed to give a qualitative impression of the limited jurisdiction courts in the United States.

Caseload data will be presented for fourteen states, those that have supplied complete statistics for the general and limited jurisdiction courts to the National Center for State Courts for 1976. Those fourteen states are: Alaska, Arkansas, California, Connecticut, Hawaii, Kentucky, Massachusetts, New Jersey, North Carolina, Oregon, Texas, Virginia and Washington. They cannot be considered to be an accurate and representative sample of the state court systems. They

represent 28% of the states and 37.6% of the population. Nevertheless, they are distributed well by population size, geographical locale and environment, range of organization and with regard to patterns or styles of court organization. While one might surmise that this group of states would be heavily weighted in favor of the simplest and most unified court systems, those most likely to have complete statistics, this is not entirely so. It does not include a proper proportion of the most complex systems, which is probably half of the states depending upon the way it is calculated, but it does nevertheless include seven rather complex systems, each of which contained at least four types of limited jurisdiction courts: New Jersey, Oregon, Massachusetts, Michigan, Texas, Arkansas and Kentucky in 1976. It is, nevertheless, a sample of convenience and availability.

The available data have been used to answer the following questions about limited jurisdiction courts: (1) What sorts of limited jurisdiction courts are currently in operation nationwide? We will describe these courts by identifying their names, the numbers of courts and the number of judges sitting in each court and conceptualize the variety of court systems now in operation. We will identify the jurisdiction of each court and attempt to place it in the state court system. Further, to the extent possible, we will identify the sources of revenue, funding and quality of the

resources and personnel available to these courts. We will describe the courts in terms of the limitations and controls upon judicial discretion available through jury trials and review procedures.

(2) What types of cases do the limited jurisdiction courts handle? Using the sample of fourteen states, we will present data on the numbers of cases filed in each of the limited jurisdiction courts in these states. It will indicate the proportion of cases which are civil, traffic, juvenile and non-traffic criminal.

(3) What kinds of dispositional options and dispute resolution mechanisms are available in the lower courts? From a survey of judges attending judicial college, and from state court statistics, we will describe the range of dispositions currently used in lower courts.

B. State Court Systems of Courts of Limited Jurisdiction

There are over 18,469 courts of limited jurisdiction operating at state and local levels of government as of Jan-

uary 1, 1977. They vary in name, jurisdiction, staffing requirements and area served. Appendix I contains a complete list of all limited jurisdiction courts in the United States with their names, the number of such courts and the number of judges sitting in them as well as their criminal, civil and special jurisdiction. These courts are proportioned unevenly among the states, in many states without regard to population, geographic area or workload of the courts. Table 1a displays the number of limited and general jurisdiction courts for each state, with the number of judges sitting in these courts, with the state rank ordered by population. The number of courts of limited jurisdiction in a single state range from none in four states, Idaho, Iowa, Illinois and South Dakota to over two thousand courts in Georgia, New York and Texas. It should be noted that although Idaho, Illinois, Iowa and South Dakota do not have separate limited jurisdiction courts, each state provides a separate session of the general jurisdiction court to hear minor cases such as misdemeanors, traffic offenses, ordinance violations, some felonies and to hold preliminary felony hearings. For our purposes, they will be counted, where appropriate, as limited jurisdiction courts because they function as such. Therefore, in every state there is at least one limited jurisdiction court, or a special class of judges within a general trial court.

Although there are very few similarities among the states with regard to the organization of limited jurisdiction courts, (Appendix II.), we have attempted several ways of conceptualizing the court systems. They can be categorized according to the varieties and types of limited and special jurisdiction courts available within the state, (Table 2), or they can be typed according to the political subdivisions by which they are organized. (Table 3). Special courts are hereafter referred to as a distinct category from limited jurisdiction courts to identify those courts whose jurisdiction is limited to the kinds of cases heard, e.g., juvenile, probate, family/domestic relations. Nine states, Alaska, California, Florida, Hawaii, North Carolina, Virginia, Kansas, Oklahoma and Wisconsin have a single statewide system of district, county or municipal courts. There are two types of courts in California and Alaska, organized statewide depending upon the population in the district. Maryland, Maine and Vermont have a single statewide system of district courts, supplemented by only Probate or Juvenile/Family courts at either county or municipal level. Four states, Arizona, Montana, Nevada and Ohio, also have a single statewide system of district or county courts, but are supplemented by minicipal or town courts. The other thirty states have considerably more complex court systems.

Table 1a

Limited and General Jurisdiction Courts and Judges for Each State, Rank Ordered by Population*

State	Population in 1,000's	Number of General Jurisdiction Courts	Number of General Jurisdiction Judges	Number of Limited Jurisdiction Courts	Number of Limited Jurisdiction Judges
California	21,522	58	520	229	600
New York	18,053	11	257	2483	2961
Texas	12,599	251	251	2295	2306
Pennsylvania	11,302	59	285	567	599
Illinois	11,193	21	364	21*	239
Ohio	10,690	88	296	934	858
Michigan	9,113	48	138	196	344
Florida	8,353	20	273	272	369
New Jersey	7,339	21	201	568	445
Massachusetts	5,791	14	46	94	212
N. Carolina	5,462	30	56	30	117
Indiana	5,313	37	77	178	201
Virginia	3,052	30	104	62	67
Georgia	4,984	42	88	2173	1691
Missouri	4,787	45	111	745	672
Wisconsin	4,610	96	180	136	217
Tennessee	4,234	63	113	324	390
Maryland	4,125	29	85	36	149
Minnesota	3,954	10	72	196	344
Louisiana	3,875	35	139	672	686
Alabama	3,633	38	106	471	552
Washington	3,611	28	101	311	338
Kentucky	3,436	56	87	1184	1184
Connecticut	3,102	9	45	151	196
Iowa	2,874	8	89	8*	237
S. Carolina	2,844	16	25	485	482
Oklahoma	2,770	24	77	182	182
Colorado	2,575	22	99	260	280
Mississippi	2,365	39	65	667	671
Oregon	2,326	29	63	221	527

*Source:—National Center for State Courts; State Court Caseload Statistics, 1976 Annual Report

Table 1a (cont.)

Limited and General Jurisdiction Courts and Judges for Each State, Rank Ordered by Population

State	Population in 1,000's	Number of General Jurisdiction Courts	Number of General Jurisdiction Judges	Number of Limited Jurisdiction Courts	Number of Limited Jurisdiction Judges
Kansas	2,299	29	63	221	527
Arizona	2,249	14	70	154	174
Arkansas	2,117	35	49	270	435
West Virginia	1,832	31	50	456	499
Nebraska	1,552	21	45	98	107
Utah	1,232	7	21	199	209
New Mexico	1,172	13	32	187	186
Maine	1,071	16	14	29	36
Rhode Island	936	4	17	53	61
Hawaii	884	4	22	4	16
Idaho	833	7	25	66	7*
New Hampshire	827	10	13	69	131
Montana	755	18	28	199	199
South Dakota	686	9	36	115*	125
North Dakota	645	6	19	271	249
Nevada	613	9	25	68	80
Delaware	582	6	14	36	89
Vermont	477	14	7	34	30
Alaska	408	4	19	60	84
Wyoming	391	7	13	65	94

Table 2

Typology of State Court Systems of Limited Jurisdiction Courts

by Number of Kinds of Structurally and Jurisdictionally Distinct Courts

by State*, 1976

Number of Courts		N	State
no limited jurisdiction cts.**		4	Idaho; Illinois; Iowa; S. Dakota
LOW	One	5	Florida; Hawaii; N. Carolina; Virginia; Wisconsin
	Two	10	Alaska; California; Maine; Maryland; Nevada; Oklahoma; Vermont; Wyoming; Montana; Arizona
	Three	5	Connecticut; New Hampshire; Washington; W. Virginia; Utah
MEDIUM	Four	10	Kentucky; Mississippi; Ohio; New Jersey; New Mexico; N. Dakota; Oregon; Rhode Island; Pennslyvania; Nebraska
	Five	7	Colorado; Massachussetts; Michigan; Minnesota; Missouri; Texas; Delaware
HIGH	Six +	9	Alabama; Arkansas; Georgia; Indiana; Louisiana; New York; S. Carolina; Tennessee, Kansas

*Source: National Survey of State Court Organization, 1977 Supplement to State Judicial Systems, U.S. Department of Justice; L.E.A.A.: National Criminal Justice Information and Statistics Service, Effective January 1, 1977.

** These states have limited jurisdiction sessions in the general trial court.

Table 3

Typology of State Court Systems of Limited Jurisdiction Courts

by Political Subdivisions by State*, 1976

Jurisdiction Limits	N	States
No limited jurisdiction	4	Idaho; Illinois; Iowa; S. Dakota
Limited only at one level		
Statewide and district	6	Alaska; California; Florida; Hawaii; N. Carolina; Virginia
Municipal and township	3	Kansas; Oklahoma; Wisconsin
Limited at two levels		
Statewide and district; County	1	Maryland
Statewide and district; Municipal and township	5	Arizona; Maine; Pennslyvania; Rhode Island; Vermont
County; Municipal and township	15	Colorado; Delaware; Indiana; Kentucky; Missouri; Montana; Nebraska; Nevada; New Jersey; New Mexico; N. Dakota; Ohio; Tennessee; Texas; Wyoming
Limited at three levels Statewide and district; County; Municipal and township	16	Alabama; Arkansas; Connecticut; Georgia; Louisiana; Massachusetts; Michigan; Minnesota; Mississippi; New Hampshire; New York; Oregon; Rhode Island; S. Carolina; Utah; West Virginia, Washington

*Source: See Appendix I

Table 4

Rank Ordering of State Courts Systems
by Complexity of Structure 1976

Simplest	South Dakota
	Idaho
	Illinois
	Virginia
	Iowa
	Maine
	North Carolina
	Hawaii
	Montana
	Alaska
	Nevada
	Wyoming
	Vermont
	Wisconsin
	Arizona
	California
	Florida
	Maryland
	Connecticut
	Utah
	New Hampshire
	West Virginia
	Washington
	Rhode Island
	Nebraska
	North Dakota
	Kentucky
	New Mexico
	Mississippi
	Ohio
	Minnesota
	Kansas
	Alabama
	Arkansas
	Pennslyvania
	Delaware
	Missouri
	South Carolina
	Massachusetts
	New Jersey
	Michigan
	Oklahoma
	Oregon
	Texas
	Colorado
	Louisiana
	Tennessee
	New York
	Indiana
Most Complex	Georgia

One last, rather interesting, attempt to bring some order to the diversity of court systems is to rank the states according to the complexity of their court systems. By using the charts of organization of each state and visually categorizing the states according to the number of courts, levels of courts and a variety of specialized courts, simplicity of routes of appeal, one arrives at a rather neat and phenomenologically understandable progression from simple to complex court structures. It corresponds in great measure to the typologies according to political structure and varieties and kinds of courts. The states are rank ordered by complexity of their court structure in Table 4.

Finally, these attempts to group and typify the court systems of the states, in order to categorize in some meaningful and intepretative fashion the array of limited jurisdiction courts, should not be allowed to obscure the fundamental uniqueness and diversity of most of the state court systems, and the limited jurisdiction courts.

C. What is the Jurisdiction of the Limited Jurisdiction Courts?

The limited jurisdiction courts are predominantly criminal courts whether one calculates this according to their formal

jurisdiction, or as we have done below, according to their caseload distribtuion. Twenty-seven percent of the courts hear criminal matters only, while another sixty-six percent hear criminal cases in combination with civil matters. Six percent of the courts have specialized jurisdiction, that is probate, juvenile or domestic relations or some combination of these. Of course, some of this work is criminal too. Relatively few courts, however, less than one percent of the limited jurisdiction courts, hear only civil cases. Table 5 summarizes this information, and Table 6 presents the jurisdiction of the limited jurisdiction courts for each state.

An earlier study of 13,221 limited jurisdiction courts, 71.6% of the courts we have studied, reported that eighty-three percent of the courts heard lesser criminal cases including felony preliminaries, misdemeanors and minicipal ordinance violations.(1) About the same percentage of courts heard traffic cases, usually in combination with lesser criminal cases.(2) Eleven percent heard felonies but their jurisdiction is limited to certain types of felonies.

Another way of conceptualizing the criminal jurisdiction divisions of the lower courts is to categorize the states to the extent that their lower courts share responsibility for processing criminal cases with a trial court of general jurisdiction or another trial court of limited jurisdiction.

Table 5

Jurisdiction of All Limited Jurisdiction Courts in the United States* 1976

Jurisdiction	Number of Courts	Percent of Courts
Criminal only	5,023	27.2
Criminal & Civil	12,186	66
Civil only	76	0.4
Special only**	1,184	6.3
Total	18,469***	99.9

*Source: See Appendix I.

**Special court: one whose jurisdiction is limited to a special class of cases, i.e., Juvenile, Probate, or Domestic Relations

***Total is short of master count (Table I, Appendix A) by approximately 400 localized general courts of varying jurisdiction and includes LJ sessions of Illinois; Idaho; Iowa; S. Dakota.

Table 6

Jurisdiction of Limited Jurisdiction courts by State, 1976*

STATE	Number of courts					Percent of courts				
	TOTAL	CRM'L	CRM'L /CVL	CIVIL	SPEC'L	TOTAL	CRM'L	CRM'L /CVL	CIVIL	SPEC'L
AL	∿471[4]	330	73		68	100	70	16		14
AK	60		60			100		100		
AZ	154	70	84			100	45	55		
AR	270		182	13	75	100		67	5	28
CA	259		259			100		100		
CO	260	197	63			100	76	24		
CT	151		19		132	100		13		87
DE	36	15	18		3	100	42	50		8
FL	272	205	67			100	75	25		
GA	∿1773	12	1726[2]		35	82[1]	1	79		2
HI	4		4			100		100		
ID	7		7			100		100		
IL	21		21			100		100		
IN	∿178	27	141	8	2	100	15	79	5	1
IA	8		8			100		100		
KS	221	192	29			100	87	13		
KY	1184	120	1084			100	90	10		
LA	672	229	440		3	100	34	65		1
ME	29	2	13		16	100	34	65		1
MD	36		12		24	100		33		67
MA	94		73	3	18	100		78	3	19
MI	196		113		83	100		58		42
MN	340		338		2	100		99		1
MS	667	∿150	516		1	100	22	78		
MO	745	501	129		115	99[3]	67	17		15

[1] ∿400 vary in jurisdiction (18%) and are excluded from this Table.

[2] 159 of these courts handle only Probate and Traffic cases.

[3] rounding error. [4] The symbol "∿" signifies approximation; no exact figure reported.

* Source: Appendix I.

Table 6 (Continued)

STATE	Number of courts					Percent of courts				
	TOTAL	CRM'L	CRM'L /CVL	CIVIL	SPEC'L	TOTAL	CRM'L	CRM'L /CVL	CIVIL	SPEC'L
MT	∿199		199			100		100		
NB	98		95		3	100		97		3
NV	68		68			100		100		
NH	69		59		10	100		86		14
NJ	568		547		21	100		96		4
NM	187	83	72		32	100	44	39		17
NY	2483	1	2360	1	121	100		95		5
NC	30		30			100		100		
ND	∿271	180	53		38	100	66	20		14
OH	858	690	168			100	80	20		
OK	∿182	182				100	100			
OR	244	165	70		9	101[3]	68	29		4
PA	567	2	565			100		100		
RI	53	2	8		43	100	11	15		74
SC	485	82	341		62	100	17	70		13
SD	115		115			100		100		
TN	324	113	93		118	100	40	29		31
TX	∿2295	∿1016	1190	51	38	100	44	52	2	2
UT	199		194		5	100	3	97		
VT	34		15		19	100		44		56
VA	62		31		31	100		50		50
WA	311	238	73			100	77	23		
WV	456	54	347		55	100	12	76		12
WI	136	136				100	100			
WY	65	31	34			100	48	52		

In Table 7 we have summarized the criminal jurisdiction of state limited jurisdiction courts. As indicated, 41.7% of the limited jurisdiction courts share misdemeanor jurisdiction with the general trial courts. Seventeen percent of the lower courts have exclusive jurisdiction overall misdemeanors. Less than one percent of the courts have felony in addition to misdemeanor jurisdiction. Nine percent of the courts are limited to some lesser or minor misdemeanors, and the jurisdiction of thirty-one percent of the courts is further limited to ordinance violation, traffic and/or felony preliminaries only.

The courts also differ to the extent that their misdemeanor jurisdiction is defined differently, that is, to the extent to which they can hear cases involving penalties of varying degrees of severity. For example, although both Colorado and Minnesota give their county courts jurisdiction over all misdemeanors, there is considerable difference between each state's definition of a misdemeanor. Colorado County courts can impose penalties up to two years, while Minnesota calls for a maximum of three months. Table 8 summarizes the variation of the maximum penalties allowed in the limited jurisdiction courts. As indicated there is extensive variation, although a maximum of one year is most common, representing over forty percent of the courts - more than one half of the courts have a maximum of one year or less. However, over thirty percent of the courts which have

Table 7

Criminal Jurisdicion of State Limited Jurisdiction Courts*, 1976

Jurisdiction	Number of Courts	Percent of Courts
All misdemeanors: concurrent with General Trial Court	7,172	41.7
All misdemeanors: exclusive	3,023	17.6
All Misdemeanors: some felonies	108	0.6
Some Misdemeanors	1,548	9.0
Ordinance violations; traffic, felony preliminary only	5,358	31.2
Total	17,209**	100.0

*Source: Appendix I.

**Sample includes limited jurisdiction sessions of general jurisdiction courts in Iowa, Idaho, Illinois and South Dakota.

Table 8

Criminal Jurisdiction of Limited Jurisdiction Courts

by Maximum Time of Imprisonment*, 1976

Maximum Penalty	No. of Courts	% of Courts	Cumulative %	% without fine only Courts	Cumulative %
One month	567**	3.5	3.5	4.	4.
Two months	229	1.4	4.9	1.6	5.6
Three months	930	5.7	10.6	6.5	12.1
Six months	1339	8.2	18.8	9.3	21.4
One year	5936**	36.2	55.0	41.4	62.5
Two years	108	.7	55.7	.8	63.3
Three years	12	.1	55.8	.1	63.4
Five years	74	.5	56.3	.5	63.9
Seven years	21	.1	56.4	.1	64
Other than in penitentiary	157	1.0	57.4	1.1	65.1
Misdemeanors without a specific definition	566	3.5	60.9	3.9	69
Ordinance violations	4414	26.9	87.8	30.8	99.8
Fine only	2029***	12.4	100.2	—	—
Total	16382****	100.2			

*Source: See Appendix I.

**South Dakota lay magistrates can impose terms of up to one month; attorney magistrates to one year. The South Dakota courts have been divided into two categories.

***Texas traffic courts inflate this category.

****Total is less than all limited jurisdiction courts having criminal jurisdiction because within a state, jurisdiction sometimes varies from court to court of a single named type, and this variation is not recorded.

Table 9

Civil Jurisdiction of Limited Jurisdiction Courts

by Maximum Amount in Controversy*, 1976

Amount in Controversy	Number of Courts	Percent	Cumulative Percent
Under $1,000	5,812	49.4	49.4
Up to $1,000	3,430**	29.2	78.6
$1,001 – 3,000	1,349**	11.5	90.1
$5,000	496	4.2	94.3
$5,001 – 10,000	492	4.2	98.5
$20,000 or more	180***	1.5	100
Total	11,759****	100.0	

*Source: See Appendix I.

**In Iowa, Judicial magistrates may hear cases up to $1,000, and associate judges may hear cases up to $3,000. They have been divided appropriately between these two categories.

***This category includes the Illinois associate judges division, which has the same the same jurisdiction as the general court.

****The total is less than all courts having civil jurisdiction, it does not include special probate or domestic relations courts, or courts which can hear only uncontested civil cases.

Table 10

Juvenile Jurisdiction of State Courts* 1972

Juvenile matters heard in:	N	States
Only general jurisdiction courts	17	Alaska; Arizona; California; Hawaii; Idaho; Illinois; Iowa; Montana; Nevada; New Mexico; N. Dakota; Oklahoma; Pennslyvania; S. Dakota; Washington; Wisconsin; Wyoming
Only in limited jurisdiction courts**	6	Kentucky; Maine; New Hampshire; N. Carolina; Michigan; Vermont
Only in special courts***	8	Connecticut; Delaware (Family Courts); Kansas; New Jersey (Juvenile and Domestic Relations Court); New York (Family Court); Rhode Island; Utah; Virginia (Juvenile and Domestic Relations Court)
Both limited and general jurisdiction courts	5	Arkansas; Maryland; Minnesota; Missouri; Oregon
Special courts and limited jurisdiction courts	1	Massachusetts
Special courts and general jurisdiction courts	3	Colorado; Georgia; Ohio
Special Courts, limited and general jurisdiction courts	10	Alabama; Florida; Indiana; Louisiana; Mississippi; Nebraska; S. Carolina; Tennessee; Texas; West Virginia

*Source: National Survey of State Court Organization, 1972

**Limited jurisdiction court: one whose jurisdiction is limited by a maximum allowable penalty or amount in controversy.

***Special court: one whose jurisdiction is limited to a special class of cases, i.e., Juvenile, Probate, or Domestic Relations.

Table 11

Probate Jurisdiction in the State Courts, 1976*

Probate matters heard in:	N	States
Special***	13	Alabama, Connecticut, Georgia, Maine, Massachusetts, Michigan, Missouri, New Hampshire, New Mexico, Rhode Island, South Carolina, Tennessee, Vermont
Limited Jurisdiction Courts**	7	Kentucky, Maryland, Nebraska, New York, North Dakota, Texas, Minnesota[1]
General Jurisdiction Courts	20	Arkansas, California, Delaware, Florida, Idaho, Illinois, Iowa, Kansas, Louisiana, Mississippi, Montana, Nevada, Oklahoma, Pennsylvania, South Dakota, Utah, Washington, West Virginia, Wisconsin, Wyoming
General Jurisdiction Courts and/or Limited and/or Special Jurisdiction Courts	10	Alaska, Arizona, Colorado, Indiana, New Jersey, North Carolina, Ohio, Oregon, Virginia, Hawii

[1]Minnesota has two specialized probate courts which handle Hennepin and Ramsey counties.

*Source: K.M. Knab, Ed., Courts of Limited Jurisdiction, A National Survey, N.I.L.E.-C.J., L.E.A.A., U.S. Dept. of Justice, 1977. And, U.S. Dept. of Justice, L.E.A.A., National Criminal Justice Information & Statistics Service, NATIONAL SURVEY OF COURT ORGANIZATION, 1973.

**Limited jurisdiction court: one whose jurisdiction is limited by a maximum allowable penalty or amount in controversy.

***Special court: one whose jurisdiction is limited to a special class of cases, i.e., Juvenile, Probate, or Domestic Relations.

D. Limited Jurisdiction Court Organization and Resources

"Although organization and administration are subordinate to the task of adjudication, these matters have direct bearing upon the performance of the courts in administering justice".(4) Almost from the beginnings of the limited jurisdiction courts, with the establishment of the justice of the peace, the shortcomings of these courts were apparent. For example, efforts were made, quite early and through the creation of appeal de novo, to restrict the power of these courts to impose severe punishment because of the recognized inferior status and qualifications of the justices and magistrates. Yet it is clear from the numbers, that despite the presumably lower quality of justice available, the states came to rely quite heavily upon these "poorly trained and inadequate facilities".(5) Each of the national studies which has attempted to assess the quality of justice in the lower courts has pointed to the poor quality of the personnel and facilities as a recurrent concern.

Tables 12-18 describe the qualifications, methods of appointment and terms of office of the limited and general jurisdiction judges in American state court systems. There are differences in the qualifications, methods of selection and terms of office between the limited jurisdiction and the general jurisdiction judges but they are not as radical as one might expect. In each case there is a shift of concen-

tration to longer terms of office, or higher qualifications, or more selective modes of appointment for the general jurisdiction judges. The most apparent distinction, however, is in the less extensive variation in categories for the general jurisdiction judges and which is necessary to describe the limited jurisdiction court systems. In other words, here again the limited jurisdiction courts exhibit greater variation and diversity than do the general jurisdiction courts.

For these tables, a court system is a kind or type of court without respect to the number of each kind in the state. For example, Alabama has three limited court systems, the district, probate and minicipal courts and one general jurisdiction court system, the circuit courts. We have chosen to use court systems rather than numbers of judges because, if one weighted the figures by the numbers of judges, we would certainly find that the proportion of judges having no legal training would be much higher. However, this is not necessarily an accurate description in terms of impact. One would have to know how many cases these judges heard in order to assess the relative weight of lawyer vs. non-lawyer judges upon the systems. Indeed, we have made the calculation for the fourteen sample states and the figures appear on Tables 13a, 14a and 17a.

Table 12 summarizes the qualifications for office for the limited and general jurisdiction judges in state courts

authority to imprison defendants, have ordinance violation jurisdiction only.

Table 9 summarizes the variation in the civil jurisdiction of the limited jurisdiction courts. It indicates considerably less variation; over three quarters of these courts' jurisdiction is limited to cases in which less than or up to $1000 is in controversy, and 90% of the courts have jurisdiction only up to $3000.

Of the courts with special jurisdiction, juvenile courts have received the most attention.(3) The type of court with jurisdiction over juvenile delinquency, neglected children, children in need of supervision etc., varies from state to state and even from county to county with a single state. Table 10 summarizes the juvenile jurisdiction of the state courts of limited and general jurisdiction. Eight states have established a statewide system of juvenile or family courts with exclusive jurisdiction of juvenile cases. In six states, juvenile jurisdiction is exercised by a single court of limited jurisdiction. In seventeen states, juvenile cases are heard only in general jurisdiction courts. Often, these courts have separate divisions that handle juvenile matters. In the remaining nineteen states, juvenile jurisdiction is shared among several courts.

Table 11 displays the variation in probate jurisdiction among the states.

Table 12

Summary of Judges' Qualifications by Court Systems 1976*

	Limited Jurisdiction	%	General Jurisdiction	%
Members of the Bar	94.8	58	38.7	62
Learned in Law	3	2	18	29
Not a Member of Bar	51.7	32	2.3	4
Other, or qualified experience**	14.5	9	3.5	6
	164	101	63	101

*Source: Knab.

**Qualified experience: specified experience such as having been judge of a court. It is often specified within a time frame, For example, in California, having been a judge in a court of record for at least ten years immediately preceeding election defines qualified experience.

Table 13

Qualification for Office of Limited and General Jurisdiction Judges by Court Systems 1976*

Qualification	Limited Jurisdiction		General Jurisdiction	
	N	%	N	%
Member of the Bar	62.8	38	33.2	53
Member of the Bar with Experience	32	20	5.5	9
Learned in Law	3	2	18	29
Not a Member of Bar but Special Training	7.8	5	---	---
No Legal Qualifications or Training	43.9	27	2.3	4
Other	12	7	---	---
Qualified Experience**	2.5	2	3.5	6
	164	101	63	101

*Source: Knab.

**Qualified experience: specified experience such as having been judge of a court. It is often specified within a time frame. For example, in California, having been a judge in a court of record for at least ten years immediately preceeding election defines qualified experience.

Table 13a

Qualifications for Office of Limited and General Jurisdiction Judges by Courts, in Fourteen Sample States*

Qualification	Limited Jurisdiction		General Jurisdiction	
	N	%	N	%
	(5728)	(99)	(578)	(100)
Members of the Bar**	2616	46	389	67
Learned in Law	254	4	17.5	3
No legal Qualification	1779	31	-	-
Not a Member of the Bar, but with Special Training	468	8	-	-
Qualified Experience	76.5	1	171.5	30
other	534.5	9	-	-

* Source: Knab.

** In Massachusetts, although there are no formal requirements for judges to be lawyers, usually only lawyers are appointed, Juvenile and Housing Courts do have requirements. This is also true for North Carolina.

systems, and Table 13 displays some of the variation within these categories. Over sixty percent of the limited jurisdiction courts systems require the judges to be members of the bar or learned in law, while over ninety percent of the general jurisdiction court systems have these qualifications. Therefore, it appears that indeed, general jurisdiction court judges are "more qualified" and one is likely to find more judges who are not lawyers in the lower courts. If legal training is a prerequisite for judgement and knowledge of the law, then indeed the quality of personnel in the lower courts is often inferior. Thirty-two percent of the systems do not require judges to be members of the bar. This is made even more apparent when one takes a closer look at the experience requirements appended to the judges qualifications. For general jurisdiction courts, the experience requirements are usually higher, never less than five years, and often more. While limited courts system often stipulate less than five years experience. Moreover, even when the qualifications for office do not stipulate a number of years experience, they often require the judge to have been a member of the bar for a specified number of years, whether or not he/she was in practice. For example, the Hawaii circuit court, a court of general jurisdiction, requires that judges "must be admitted to practice law before the court for at least ten years." Very few of the limited jurisdiction courts invoke this type

of restriction. Finally, the tendency for general jurisdiction court systems to specify years as members of the bar is also borne out in the learned in law and qualified experience categories.

Table 14 summarizes the methods of selection of limited and general jurisdiction judges, by court system. It is apparent that a fairly equal proportion of the judges are elected in partisan elections, forty-six percent for limited jurisdiction and forty percent for general jurisdiction judges. A larger proportion of the general jurisdiction judges, however, are elected in non-partisan elections, and are selected through the Missouri plan of appointment followed by a confirming election. The major difference lies in the fact that thirteen percent of the limited jurisdiction judges are selected by some local authority, mayor, local governing board or the like. Of course, this does not apply to any of the general jurisdiction judges. Ten percent, however, of the limited jurisdiction judges are appointed by the judge of the general jurisdiction court.

The terms of office for the judges in the state courts systems is indicated in Table 15. Again, the general jurisdiction courts are weighted toward longer terms of office than the limited jurisdiction courts, and the limited jurisdiction courts show greater variation in specified terms.

The criticisms levied against the lower courts for their

Table 14

Modes of Selection of Judges in Limited and General Jurisdiction Court Systems*

Selection by	Limited Jurisdiction		General Jurisdiction	
	N	%	N	%
	164	100	63	99
partisan election	75	46	25.5	40
non-partisan election	10.5	6	14.5	23
appointed by governor	3.5	2	1.5	2
appointed by governor with consent of some other official body (usually legislature)	17.5	11	11.5	18
appointed, reconfirmed by election	8.5	5	6.5	10
selected by local authorities	22	13	–	–
appointed by higher court judge	16	10	.5	1
other	11	7	3	5

*Source: K. M. Knab, Limited Jurisdiction Courts: A National Survey, American Judicature Society, N.I.L.E.-C.J.; L.E.A.A., U.S. Department of Justice, 1977. National Survey of Court Organization, 1972, 1977, U. S. Department of Justice.

Table 14a

Modes of Selection of Judges in Limited and General Jurisdiction Courts in Fourteen Sample States*

Selection by	Limited Jurisdiction		General Jurisdiction	
	N	%	N	%
	5728	100	578	100
paritsan election	3009.5	53	290	50
non-partisan	381	7	190	33
appointed by governor	–	–	16	3
appointed by governor with consent of some other official body (usually legislature)	22	–	52	9
appointed, reconfirmed by election	309	5	–	–
selected by local authorities	1716.5	30	–	–
appointed by higher court judge	185	3	–	–
other	105	2	30	5

*Source: K. M. Knab

Table 15

Terms of Office for Judges in Limited and General Jurisdiction Court Systems*

Term	Limited Jurisdiction		General Jurisdiction	
	N	%	N	%
	164	101	63	101
one to five years	86.5	53	17	27
six to ten years	41	25	38	60
over ten years (specified)	3	2	3.5	6
at pleasure of appointing body	5	3	.5	1
life	2	1	4	6
good behavior	6	4	–	–
other	21.5	13	–	–

*Source: K. M. Knab, Limited Jurisdiction Courts: A National Survey, American Judicature Society, N.I.L.E.-C.J.; L.E.A.A., U.S. Department of Justice, 1977. National Survey of Court Organization, 1972, 1977, U.S. Department of Justice.

Table 16

Part-time and Full-time Employment of Limited Jurisdiction Judges, by Court System, 1976*

	N	%
part-time	50	30
full-time	66	40
varies (court has both)	34	21
no answer	14	9
	164	100

Table 17

Prohibitions Against Judges Practicing Law While On the Bench in Limited Jurisdiction Court Systems, 1976 *

	N	%
no prohibition	59.5	36
some prohibitions	21.5	13
prohibited from practing law	64	39
varies within a jurisdiction	19	12
	164	100

* Source: K. M. Knab, Limited Jurisdiction Courts: A National Survey, American Judicature Society, N.I.L.E.-C.J.; L.E.A.A.; U.S. Department of Justice, 1977.

Table 17a

Prohibitions Against Judges Practicing Law While on the Bench in Limited Jurisdiction Courts in Fourteen Sample States*

	N	%
no prohibition	2966.5	52
some prohibitions	693	12
prohibited from practicing law	1842.5	32
varies within a jurisdiction	286	4
	5728	100%

*Source: Knab.

unqualified personnel has often referred to the proliferation of part-time judges, the inevitable conflicts of interests when judges serve part-time and the lack of professionalism that results from these and consequently undermines the quality of justice available. Data is not available on the number of part-time judges sitting in the general jurisdiction courts, and while the number is believed to be very low, we know that some states have only recently required that all judges be full time.(6) Of the limited jurisdiction court system, thirty percent have part-time judges, forty percent have full time, and in the other twenty-one percent of the court systems, some judges are full time and some are part time. Nine percent of the systems did not provide data. It is more significant, perhaps, that thirty-six percent of the court systems do not prohibit their judges, whether full time or part time from the practice of law while they are servicing on the bench. Thirteen percent of the systems prohibit practicing where there may be conflicts of interest, practicing in the same court, or of having a partner appear in the same court. Thirty-nine percent of the court systems prohibit their judges from practicing law while serving as judges.

Perhaps the more accurate indicator of the low status of the personnel in the limited jurisdiction courts is the fact that they are often paid considerably lower salaries than general jurisdiction court judges. Kenneth Pye observes

that an average of "model" lower court judges in a big city will earn just about the average of a partner in a law firm in the same city, but that it will be less than one half of the average income of the top one quarter of the bar.(7) A 1968 survey of judicial salaries indicated that in eighteen states the schedule of salaries for lower court judges was often one half that of general jurisdiction court judges. In twelve states the scale showed a range between one half and two thirds, and in at least eleven states, the salaries of lower court judges was often only ten percent less than the general court judge and sometimes the same.(8) A 1976 survey indicated again an enormous variety in salary schedules and ranges of pay. The lower court salaries were consistently lower, but the differences between the compensation of lower and general court judges was not quite as great. Table 18 lists the range of salaries for limited jurisdiction judges and general jurisdiction judges in fourteen sample states. A complete listing of salaries is found in Appendix III. The wide range of indicated salaries for the limited jurisdiction judges reflects the variety of expected judicial workload. Many judges are part time, and the salaries reflect this. Some courts are major courts with respect to the limited jurisdiction caseload, and the salaries reflect this too.

A similar stratification is apparent if one considers the salaries and compensation of court personnel in the sev-

Table 18

Salaries of State Trial Court Judges, 1976*
(fouteen sample states)

State	Limited Jurisdiction	General Jurisdiction
Alaska	$6,000 - 25,000	$ 48,576
Arkansas	$2,400 - 25,000	$ 29,000
California	$1,200 - 41,677	$ 45,299
Connecticut	$28,500	$ 34,500
Hawaii	$40,000	$ 42,000
Kentucky	up to $14,300 - up to $25,000	$ 26,000
Massachusetts	$30,168	$ 36,203
Michigan	$1,500 - 35,530	$ 26,500 - 43,372
New Jersey	up to $25,00 - 40,000	$ 40,000
North Carolina	$23,500	$ 30,000
Oregon	$3,000 - 28,600	$ 31,900
Texas	$600 - 40,000	$ 31,000
Virginia	$28,215	$ 31,350
Washington	up to $34,250	$ 34,250

* Source: Council of State Governments. State Court Systems, Revised 1976., Lexington, Kentucky.

eral courts. For example, a court appointed attorney in the limited jurisdiction courts in Massachusetts, the District Courts, is paid at one half the rate of a colleague practicing in the general jurisdiction court. The personnel in the lower courts not only receive less compensation but handle the larger share of the state's trial work with fewer managerial resources. In contrast to the appeallate and general trial courts, nearly all of which have court clerks, a 1972 study reported that only fifty-eight percent of the courts of limited jurisdiction have clerks at all, and only one-quarter have clerks employed on a full-time basis.(9)

The consequences of the consistent differentials in resources and personnel between the general and limited jurisdiction courts reflects a social judgement about the value of these courts, or the business of these courts. The informality and personalized styles of justice are almost inevitable where judges must also be managers of the courts, responsible for docketing, collecting fees, budgeting and similar functions. There is an unavoidable confusion of function and attendant dimunition of the quality and spirit of disinterested adjudication when judges are required to conduct trials without prosecutors, where they must manage the case flow and administer court records and financial affairs.

Yet despite the fact that most limited jurisdiction

courts operate without sufficient personnel such that there is a merging of adminstrative, prosecutorial and judicial functions, researchers report judicial satisfaction with available resources and procedures.(10) The results of our survey of limited court judges attending judicial college in July and August 1979 confirm the fact of general, if moderate, satisfaction with the job the courts are doing, and resources available. When asked for clues as to the sources of whatever problems do exist in these courts, fifty-six percent of the judges responded that insufficient resources were a major factor. Fifty-one percent also cited too many cases as a problem, but suggested that upgrading the personnel (fifty-three percent responded) would help change the system.

But these studies must, at present, be accepted with some skepticism. The Misdemeanor Management Study questioned a larger sample of judges about more specific court issues and found that the judges were more satisfied with procedures than with resources and more satisfied with repetitive daily procedures such as accepting guilty pleas, and scheduling first appearances than less frequently used procedures. They were satisfied with probation and less with diversion and pretrial screening. This suggests that familarity with routine procedures may have a lot to do with how well satisfied judges are with lower court resources. On the other hand, it may be that judges use those facilities with which they are most satisfied. Appropriately, the researchers are also skeptical of judicial responses and reports of satisfaction be-

cause of the inconsistencies they observed between reports of satisfaction and their own evaluation of the quality and availability of the courts' resources and facilities.

Although the budgets, supplies, equipment, records management and administration of lower courts are usually separate not only from the state's court of general jurisdiction, and from other limited jurisdiction courts, they are not thoroughly isolated institutions. The ties, however, may be conflicting, inconsistent and not necessarily conducive to independent, uniform and equal justice. The most obvious consequences of the isolated administration of the courts are duplication and waste, as well as inefficiency. Table 19 displays the variation in the sources of the procedures used in the limited jurisdiction courts. Eighty-eight percent of the courts operate under procedures which are in some way governed by a higher authority, most often the highest court in the state. Forty-six percent of the courts can adopt no rules or procedures locally, but another forty percent of the courts can adopt local procedures if they do not conflict with rules already set by a higher authority. The effectiveness of such a restriction depends upon the management skills and effiency within the state system and may indeed create considerable leeway for individual courts to provide very personal and local styles of procedure. Six percent of the courts have completely localized procedures, and another six percent operate on a completely ad hoc basis or have no spe-

Table 19

Source of Procedures Used In Limited Jurisdiction Courts 1976*

	N	%
no local procedures, completely regulated by some other judicial authority	8313	46
courts may adopt procedures locally, but only with the approval of some higher body	442	2
courts may adopt procedures locally, provided that they do not conflict with ones established by a higher judicial authority	7177	40
procedures are completely localized	1038	6
procedures sat on ad hoc basis	782	4
no provision established	386	2
	18,138	100

* Source: K. M. Knab, Courts of Limited Jurisdiction: A National Survey, American Judicature Society, N.I.L.E.-C.J., L.E.A.A., U.S. Department of Justice, 1977.

cific provisions governing their discretion to establish procedures within their courts. Thus it is quite possible that over fifty percent of the courts may be effectively operating without procedural review or regularity imposed by some higher or general authority.

Table 20 summarizes the variation in the sources of funding for the limited jurisdiction courts. Very few states assume the full costs of maintaining the court system; the local courts are primarily supported through local tax revenues. It is usually a complex and shared arrangement and because reporting and accounting requirements vary, it is very difficult to assess the extent of independence and local financing. Carl Baer's report on court budgeting concluded that there has been no significant trend away from local financing.(11) "This remains true despite the conclusion of many judges and scholars that the independence role of the judiciary is best protected through total funding by the state government."(12)

Twenty percent of the courts are funded by some governmental unit other than their own local budgets. Twenty-two percent are funded jointly through their own local budgets and some other authority. There is, however, some skewing in this figure due to the fact that fifty percent of the courts in this category (2240) are the town courts in New York. When the numbers are recalculated, without these courts, the

Table 20

Source of Funding of Limited Jurisdiction Courts, 1976*

Funding	N	%	(without New York town courts) N	%
funded by some governmental unit other than the local one	3704	20	3704	23
funded by some governmental unit, and locally	4024	22	1784	11
funded locally	7898	44	7898	50
funded primarily through fees	2517	14	2517	16
	18,143	100	15,903	100

* Source: Knab,

percentages change slightly for the other categories but falls by fifty percent, to eleven percent for jointly funded courts. Fifty percent of the courts are funded entirely out of local funds, and an additional perhaps fifteen percent of the courts are funded through fees.

The fee system has been called the worst feature of the local court, justice of the peace system because it creates such a strong likelihood of official bias. It has been abolished in most states and remains in only four, Arkansas, Delaware, Minnesota and Mississippi. In 1964, twenty-four states still retained a fee system in some of their courts.(13) Compensation by fees invariably seems to raise questions concerning the fairness and disinterestedness of the justice being meted out. In 1927 in Tumey v. Ohio, the Supreme Court ruled that a judge in a misdemeanor case is disqualified when his compensation for conducting the trial depends upon his verdict. Several states instituted a system whereby the justice is paid by the state if the defendant is acquitted, and the defendant if convicted, and some states considered this a satisfactory compensation system for a while. However, there are obvious objections to such an arrangement. The judges are no doubt aware of the limitations under which the local budgets are constructed and may be induced to find more defendants guilty. Moreover, payment even in part by fees, may induce judges to be lenient toward overly zealous law enforcement officers. Bias cannot be avoided in a system where compensation is tied

to the volume of business, as if justice were indeed a business. Moreover, the fee system whether it be justice fees, or fines paid for being found guilty, often differ widely from court to court. There is a great variation in the kinds of offenses which get fined, and the fines which are assessed. Sheridan writes that when traffic violations bureaus are employed for handling traffic cases, the often excessively emphasized schedule of fines, creates the impression that a fee has been set for the privelege of violating the law.(14) The same impression seems to adhere to the justice system when it is supported by fees.

The limited jurisdiction courts exhibit a large degree of independence in their funding and procedures, but might on first glance appear to be subject to greater constraints when it comes to reporting and record keeping. Table 21 displays the variation in reporting procedures for the limited jurisdiction courts. Over seventy-five percent of the courts are required to file periodic reports with at least some other agency in the state. However, the vast majority of the reporting regulations concern financial accounting, and very little caseload recordkeeping is mandated. This is reflected in the fact that we could create a sample of only fourteen states for which caseload statistics were collected and available. The higher authority to which the courts must report ranges from the highest court in the state, the state court

Table 21

Limited Jurisdiction Courts Reporting Requirements, 1976 *

Requirement	N	%
courts reporting to a higher authority in the state government	12,920	71
courts reporting to more than one higher authority in the state government	870	5
courts reporting to both a higher authority, and to some local governmental unit	260	1
courts reporting to only a local governmental unit	2,409	13
courts without reporting provisions	1,679	9
	18,138	100

* Source: Knab.

administrator, several state agencies including automobile registrars, welfare agencies, state highway patrol, and the state auditor. Much of the reporting is therefore peripheral to the adjudicative functions of the court. It is required as a means of keeping the bookkeeping legitimate, and the licensing records reasonably accurate; it does not after all reflect centralized control.

Funding, procedural rules, and reporting mechanisms indicated some of the extent of the localization of the limited jurisdiction courts. It is not possible to know from formal rules how extensive or limited the established procedures are with regard to routine casehandling in the courts.

Most observers report however that procedures in the lower courts are "often casual, sometimes slipshod and not always productive of a careful review of law and fact."[15] Sheridan's study of the limited jurisdiction courts in Tennessee detailed a vast array of procedural irregularities which included: no provision of information to litigants about procedures in the court, no reasons given for the judge's decisions, inconsistent punishments from one case to another, no

weighing or evaluation of testimony, no testimony taken for guilty pleas, no establishment of facts in some cases, violations of state law, violations of jurisdiction, and no orderly procedure for continuances. Sheridan presented a picture of the most arbitrary, capricious and apparently corrupt forms of justice.

Several of Sheridan's findings have been confirmed by other researches in studies in other courts. Two aspects of lower court justice, the quickness of it and the unpleasantness of the physical surroundings, have been consistently noted to the extent of almost becoming the hallmarks of "inferior" justice.(16) Mileski's study of a Connecticut court stated that seventy-two percent of the cases she observed took less than one minute.(17) Sheridan observed sixty cases in less than two hours in Tennessee, and Richard Harris reported that he observed twenty-four cases in the Boston Municipal Court during a two and one-quarter hour period. The Bing and Rosenfeld study of the Boston courts also commented upon the short duration of the hearings.(18)

The courtrooms in rural, less populated areas, are often not courtrooms per se, but areas within some official, sometimes private, building, that is used for a variety of purposes.(19) It seems impossible not to conclude that the entire experience has been designed to degrade the participants.(20) Perhaps more naive notions about deterrence and

punishment can justify such methods and procedures, but they seem more likely as the Task Force Report stated, to confirm to the defendent, his marginal place in society. Charles Silberman describes the court setting as a physical representation of organized society's unwillingness and inability to care and to do other than "process" the people who come through the lower courts.

> "Indeed it is impossible to spend time in criminal court without being appalled by the churlishness of the physical and social environment; the peeling paint and scuffed linoleum floors, the noise and movement, the general surliness and lack of decorum. In atmosphere and tone - the impoverishment of their commitment to the people they 'process' - the courts are strikingly reminiscent of the other bureaucratic institutions with which poor people have to deal, such as welfare departments, hospital emergency rooms, and outpatient clinics, and public housing authority offices. Officials who may be models of civility, sensitivity, and concern in their private lives display a public face of callousness and indifference; their behavior is a prime example of what Thorstein Veblen called 'trained incapacity'.(21)

One cannot come away other than convinced that criminal justice is not meant to be anything like civil justice.

No system can guarantee that decisions will always be made in a procedurally correct, fair or equitable manner. In fact, one of the principal intentions behind finely elaborated procedural rules is the attempt to reduce the influence of any individual upon the systematic outputs or effects, in other words, the fairness of the whole system. One way of

protecting against individual errors is to institutionalize opportunities for collective decisionmaking; another way is to create avenues of appeal and review which are opportunies for correction and which encourage uniformity in administration and judgment. Neither mechanism is in effect to any practical extent in the lower courts.

The inclusion of juries of laymen provided, according to Llewellyn, the basic focus of much of what we know of as courtroom procedure, rule of evidence and the general principles of the adversary process.(22) The dramatic combat between opposing parties has been structured to narrow the attention and win the favor of this body of laymen. Although we use juries very rarely, at all levels of the judicial system, their existence and theoretical availability can be regarded as a check upon unfettered discretion by the judge. Seventy percent of the lower courts can provide a jury trial, if the defendant requires it and the statutory definition of the offense call for it. Of course, juries are always available in the general jurisdiction courts. But despite the differences in theoretical availability, jury trials account for less than five percent of either limited or general jurisdiction trials.(23) The judges in our survey reported that jury trials were time consuming, and while few admitted actively discouraging the use of juries, apparently neither the prosecutor, plaintiff, or defense perceived any particular

Table 22

Availability of Juries in Limited Jurisdiction Courts, 1976*

	N	%
jury trial available	14,301	79
juries not available	3,870	21
	18,172	100

* Source: Knab.

advantage which merited a demand for a jury trial. Therefore, while juries can provide limits to the judicial process, and although this limit is more available in general rather than limited jurisdiction courts, it is particularly effective in neither.

Nevertheless, a more telling and final commentary upon the freedom and lack of systematic regulation either through organizational controls or judicial scrutiny in the lower courts is the attenuated effect of the processes of appeal and review in many states. Eleven states (Alabama, Arkansas, Idaho, Iowa, Kentucky, Montant, Nebraska, North Carolina, North Dakota, Washington and Wisconsin) comprising 45% of the court systems, provide trial de novo as the principal appeal mechanism in the limited and special jurisdiction courts. Table 23 summarizes the figures which have been obtained from the descriptions and specifications for the limited jurisdiction courts in the American Judicature survey, M. Knab editor, Courts of Limited Jurisdiction, A National Survey. The figures vary depending upon how the calculation is made. Somewhere between forty-five and fifty-one percent of the courts retain trial de novo appeals. If one calculates this by court system it is 73/164 or thirty-nine percent. This forty-five percent of the court systems, twenty-two percent of the states, contain fifty-one percent of the courts. Forty-nine percent of the courts provide appeal on the record.

Table 23

Appeals from Limited Jurisdiction Courts,

by Court System and Courts*, 1976

		Appeal de novo		Appeal On Record	
		N	%	N	%
Court systems	164	73	45	91	55
Courts	18,277	9,375	51	8,902	49

*Source: K.M. Knab, Ed., Courts of Limited Jurisdiction, A National Survey, N.I.L.E.-C.J., L.E.A.A., U.S. Dept. of Justice, 1977.

Table 24

Appeals from Limited Jurisdiction Courts

by States*, 1976

Appeals	N	States
De novo, from all limited jurisdiction courts and divisions	11	Alabama, Arkansas, Idaho, Iowa, Kentucky, Montana, Nebraska, North Carolina, North Dakota, Washington, Wisconsin
On Record	15	Alaska, Colorado, Georgia, Hawaii, Illinois, Maine, Michigan, New Hampshire, New Jersey, New York, Oregon, South Dakota, Vermont, Virginia, Wyoming
De novo and/or on record, depending upon court	24	Arizona, Connecticut, Delaware, Florida, Indiana, Kansas, Louisiana, Maryland, Mississippi, Missouri, Nevada, New Mexico, Ohio, Okalahoma, Pennslyvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, West Virginia

*Source: K.M. Knab, Ed., Courts of Limited Jurisdiction, A National Survey, N.I.L.E.-C.J., L.E.A.A., U.S. Dept. of Justice, 1977.

Trial de novo provides the defendant with the opportunity for an entirely new trial before another court, if he/she is found guilty in the original proceeding. It is not a review of the original process and therefore does not provide any scrutiny of the first judge's conduct. Indeed our survey of limited jurisdiction court judges reported that the judges felt the greatest scrutiny, not from review via appeals, but from the public presence in the courtroom.

E. What is the Work of the Limited Jurisdiction Courts

This section will describe the case load work of the limited jurisdiction courts, based upon the sample of fourteen states for which we have complete caseload statistics for the general and limited jurisdiction courts. The limited jurisdiction courts handle the major share of the states' trial work. Indeed, the lower courts handle over 80% percent of the states' trial work. Table 25 displays the number of cases filed in the general and limited jurisdiction courts for the fourteen sample states, rank ordered by population. (The number of cases filed has been adjusted so that the limited jurisdiction case load is calculated without traffic cases which greatly inflate the numbers.) The share of the cases carried by the limited jurisdiction courts ranges

Table 25

Rank Order of States by Population, for Cases Filed in Limited and General Jurisdiction Courts, Omitting Traffic Cases, 1976*

State	Population in 1,000s	Cases filed General Jurisdiction cts.	Cases filed** Limited Jurisdiction Cts	% Limited / all Cases
California	21,522	667,122	1,486,465	69.
Texas	18,053	361,949	1,134,662	79.5
Michigan	9.113	1,033,069 154,227	726,719 1,607,451	41.3*** 91.2***
New Jersey	7,339	96,557	771,876	88.9
Massachusetts	7,791	68,693	654.851	90.5
North Carolina	5,462	63,321	613,902	90.7
Virginia	3,052	106,319	777,157	88.
Washington	3,611	121,811	179,725	59.
Kentucky	3,436	70,699	298,154	80.8
Connecticut	3,102	30,559	296,987	90.7
Oregon	2.326	83,754	121,045	59.1
Arkansas	2.117	72,729	126,190	63.4
Hawaii	884	28,139	53,721	65.6
Alaska	408	13,250	31,849	70.6

* Source: National Center for State Courts, State Court Caseload Statistics, Annual Report, 1976.

** Total limited jurisdiction caseload, without traffic cases.

*** Michigan's figures are significantly different than the other states because of the Detroit Recorder's Court's heavy criminal caseload. If one adds the caseload of the Recorder's court to the limited jurisdiction total, and subtracts it from the general jurisdiction total, the proportion of limited and general jurisdiction cases for Michigan is more consistent with other states.

from fifty-nine to ninety percent.

Michigan represents an anomolous situation. If one considers the Detroit Recorder's court to be a general jurisdiction court, then the limited jurisdiction courts in Michigan hear only forty-one percent of the states criminal and civil cases, but if one considers the Recorder's court to be a limited jurisdiction court, then over ninety percent of the civil and criminal cases are heard in limited jurisdiction courts, a number more consistent with the other states.

Appendix III contains a complete list of all the states rank ordered by population, with the number of limited and general jurisdiction courts and judges, and the number of cases filed in these courts for 1976. Because the data is unavailable, except for the states listed on Table 25, the numbers cannot be adjusted to remove traffic cases, and in many instances the numbers are very incomplete. But it does suggest the magnitude of the limited jurisdiction caseload.

Table 26 presents a more refined picture of the nature of the limited jurisdiction caseload. As one can see, the work of the lower courts is primarily criminal. Indeed, criminal, non-traffic cases consistitute approximately 91.3 (+/-4.7)% of the limited jurisdiction caseload. The civil jurisdiction caseload, however, exhibits much greater variation. Arkansas hears twenty-one percent of its civil cases in limited jurisdiction courts, while North Carolina hears

Table 26

Limited Jurisdiction Court Share of A State's Civil and Criminal Caseload, 1976*

State	% of the state's civil caseload	% of the state's criminal caseload
Alaska	45.4	95.8
Arkansas	21.3	88.9
California	60.4	92.6
Connecticut	88.1	95.2
Hawaii	39.1	95.4
Kentucky	51.3	94.9
Massachusetts	92.6	85.3
Michigan	46.1	23.1 97.8**
New Jersey	84.6	91.3
North Carolina	95.4	94.2
Oregon	52.7	80.2
Texas	51.1	91.6
Virginia	86.2	86.1
Washington	41.8	88.9

* Source: National Center for State Courts, State Court Caseload Statistics, Annual Report, 1976

** Michigan's figures have been adjusted to take account of the heavy criminal caseload of the Detroit Recorder's Court.

ninety-five percent of its civil cases in its limited jurisdiction courts.

The limited jurisdiction courts in each state do not necessarily share proportionately the limited jurisdiction caseload in these states. In most states one court or court system handles the majority of cases, indicating that where there is a variety of limited jurisdiction courts, some are clearly "major" courts and others are "minor". We have already indicated the varying jurisdictional limits of the lower courts which suggests that this is so. There are several additional ways of seeing this. Table 26 displays each lower court's share of a state's entire civil nontraffic criminal, caseload, and its share of the state's limited jurisdiction caseload. It appears that those courts which are greater in number and have more judges, are not necessarily carrying the greater share of the state's caseload. Moreover, the table suggests a confirmation of the commonplace notion that there is a great number of very minor courts, but that while limited jurisdiction courts carry the lion's share of the state trial work, this is not the majority of the limited jurisdiction courts, but only a sample of them, the "major" lower courts.

Further, conventional wisdom suggests that the large array of limited jurisdiction courts is inflated by a profusion of justices of the peace, and localized ordinance courts

Table 27

Each Limited Jurisdiction Court's Share of A State's Entire Civil, Non-traffic Criminal Caseload, and, Share of A State's Limited Jurisdiction Caseload, 1976*.

State/ Court	% of the State's Entire Caseload Civil	Non-traffic Criminal	Juvenile	% of all Limited Jurisdiction Cases
Alaska				
District	43.9	89.3	-	97.2
Magistrate	1.5	6.5	-	2.8
Total	45.4	95.8		100.
Arkansas				
County	.4	-	100	1.3
Court of Common Pleas	.3	-	-	.04
Municipal	20.0	85.4	-	93.8
Justice	.3	.5	-	.9
City/Police	.3	3.0	-	4.0
Total	21.3	88.9	100	100.
California				
Municipal	55.8	81.8	-	93.0
Justice	4.6	10.8	-	7.0
Total	60.4	92.6	-	100.
Connecticut				
Common Pleas	64.5	95.2	-	87.5
Probate	23.6	-	-	9.8
Juvenile	-	-	100.	2.8
Total	88.1	95.2	100.	100.
Hawaii				
District	39.1	95.4	-	100.
Kentucky				
All Limited Jurisdiction Courts without breakdown	51.3	94.9	-	n/a

Table 27 (cont.)

State/ Court	% of the State's Entire Caseload Civil	Non-Traffic Criminal	Juvenile	% of all Limited Jurisdiction Cases
Massachusetts				
District	57.3	79.4	75.9	72.4
Probate	24.2	-	-	4.8
Boston Municipal	7.4	3.9	-	21.3
Juvenile	-	.02	24.1	.6
Land	.138	-	-	.4
Housing	.138	2.0	-	.6
Total	92.5	85.3	90.0	100.1
Michigan				
Detroit Recorders	-	74.6	-	**
District	31.0	19.7	-	76.8
Probate	12.2	-	100.	4.2
Municipal	3.0	3.5	-	11.1
Common Pleas	30.8	-	-	7.8
Total	77.0	23.1 97.7**	100.	100.0
New Jersey				
County District	69.9	.6	-	8.8
Juvenile/Domestic Relations	14.7	-	100	3.4
Municipal	-	90.7	-	87.7
Total	84.6	91.3	100	99.9
North Carolina				
District	95.4	94.2	100	100
Oregon				
County	.2	-	1.8	.1
District	50.0	54.3	-	70.3
Justice	2.5	6.7	-	12.4
Municipal	-	19.2	-	17.2
Total	52.7	80.2	1.8	100.
Texas				
County Law	23.5	18.2	10.5	5.6
Municipal	-	47.0	-	74.6
Justice	27.6	26.4	-	19.8
Total	51.1	91.6	10.5	100.
Virginia				
District and Juvenile	86.2	86.1	100.	100.

Table 27 (cont.)
% of the State's Entire Caseload

State/ Court	Civil	Non-traffic Criminal	Juvenile	% of all Limited Jurisdiction Cases
Washington				
Municipal	-	31.	-	28.2
District/Justice	41.8	88.9	-	71.8
Total	41.8	88.9	-	100.

* Source: National Center for State Courts.
** Michigan's figures have been adjusted to take account of the caseload of the Detroit Recorder's Court.

which are primarily traffic courts. But, the picture of "major" and "minor" courts does not change significantly even when we include traffic cases into the case totals. It appears that while there are a great many "minor" courts, in terms of the share of the state's caseload which they carry, they are not carrying a major share or disproportionate share of the traffic cases. The data suggest that there is no real division of labor between the "major" and "minor" limited jurisdiction courts so that non-traffic criminal cases are handled differently, or in a different setting or court, from nonserious traffic violations. Table 28 displays each limited jurisdiction court's share of a state's limited jurisdiction caseload by civil, non-traffic criminal, traffic and juvenile cases, and its share of the entire limited jurisdiction caseload with and without traffic cases.

Even if one takes a closer look at the distribution of cases within an individual court, we see that traffic does not represent a significantly greater proportion of some court's caseload. Table 29 indicates the distribution of caseload within each limited jurisdiction court by civil, criminal, traffic and juvenile cases. Table 30 summarizes the data on Table 29 and displays the variation in percent of a court's caseload which is devoted to traffic cases in courts with criminal and traffic jurisdiction. Of the nine states which share their limited jurisdiction caseload among

Table 28

Each Limited Jurisdiction Court's Share of A State's Limited Jurisdiction Caseload by, Civil, Non-traffic Criminal, Traffic and Juvenile, and Share of Total Limited Jurisdiction Caseload Without Traffic Cases. 1976*

State/ Court	Civil	Non-traffic Criminal	Traffic	Juvenile	% of L.J. Total	% of L.J. total without Traffic
Alaska						
District	96.6	93.2	98.7	-	97.2	94.2
Magistrate	3.4	6.8	1.3	-	2.8	5.8
Arkansas						
County	1.8	-	-	100.	1.3	5.5
Common Pleas	1.5	-	-	-	.04	.2
Municipal	94.0	96.0	94.7	-	93.8	90.7
Justice	1.4	.6	.9	-	.9	.7
City/Police	1.2	3.4	4.4	-	4.0	2.9
California						
Municipal	92.4	88.4	93.2	-	93	90.5
Justice	7.6	11.6	6.8	-	7.0	9.5
Connecticut						
Common Pleas	73.2	100.	100.	-	87.5	77.9
Probate	26.8	-	-	-	9.8	17.2
Juvenile	-	-	-	100.	2.8	4.9
Hawaii, only one court						
Massachusetts						
District	61.9	93.0	72.0	75.9	72.4	73.3
Probate	26.2	-	-	-	4.8	15.5
Boston Municipal	8.0	4.5	28.0	-	21.3	6.3
Juvenile	-	.02	-	24.1	.6	1.8
Land	2.0	-	-	-	.4	1.2
Housing	1.9	2.4	-	-	.6	1.9
Michigan						
District	40.3	85.1	87.3	-	76.9	55.7
Probate	15.8	-	-	100.	4.2	12.8
Municipal	3.9	14.9	12.7	-	11.1	7.9
Common Pleas	40.0	-	-	-	7.8	23.6
New Jersey						
County District	82.6	.7	2.3	-	8.8	38.4
Juvenile/Domestic Rel.	17.4	-	-	100.	3.4	
Municipal	-	99.3	97.7	-	87.7	

Table 28 (cont.)

State/ Court	Civil	Non-traffic Criminal	Traffic	Juvenile	% of L. J. Total	% of L.J. total without traffic
North Carolina, only one court						
Oregon						
County	.3	-	-	100.	.1	.4
District	95.0	67.7	68.3	-	70.3	81.5
Justice	4.7	8.4	13.4	-	12.4	6.5
Municipal	-	23.9	18.3	-	17.2	11.6
Texas						
County Law	46.0	19.8	1.3	100.	5.6	26.5
Municipal	-	51.3	82.1	-	74.6	38.4
Justice	54.0	28.9	16.7	-	19.8	35.1
Virginia, only one court						
Washington						
Municipal	-	34.9	29.8	-	28.2	21.8
District/ Justice	100.	65.1	70.2	-	71.8	78.2

* Source: National Center for State Courts

Table 29

Distribution of Caseload Within Each Limited Jurisdiction Court, by Civil, Criminal, Traffic and Juvenile, 1976*

State/ Court	%Civil	%Criminal	%Traffic	%Juvenile	Total
Alaska					
District	9.7	24.0	66.3	-	100
Magistrate	11.9	61.4	26.8	-	100.1
All L.J. Courts	9.8	25.0	65.2	-	100
Arkansas					
County	4.4	-	-	95.6	100.
Common Pleas	100	-	-	-	100.
Municipal	3.0	19.6	77.4	-	100.
Justice	4.9	12.7	82.3	-	99.9
City/Police	.9	16.2	82.9	-	100.
All L. J. Courts	3.0	19.2	76.6	1.2	100.
California					
Municipal	5.0	4.5	90.5	-	100.
Justice	5.4	7.8	86.8	-	100.
All L. J. Courts	5.0	4.7	90.3	-	100.
Connecticut					
Common Plea	30.6	19.9	49.6	-	100.1
Probate	100.	-	-	-	100.
Juvenile	-	-	-	100.	100.
All L. J. Courts	36.5	17.4	43.3	2.8	100.
Hawaii					
District	1.9	7.0	91.1	-	100.
Kentucky					
All Limited Jurisdiction Courts	8.7	28.9	58.9	3.6	100.1
Massachusetts					
District	15.5	13.1	68.9	2.4	99.9
Probate	100.	-	-	-	100.
Boston Municipal	6.8	2.2	91.0	-	100
Juvenile	-	-	.4	99.6	100
Land	100	-	-	-	100
Housing	59.0	41.0	-	-	100.
All L. J. Courts	18.2	10.2	69.3	2.3	100.
Michigan					
District	10.2	13.7	76.1	-	100.
Probate	72.5	-	-	27.5	100.
Municipal	6.7	16.5	76.7	-	99.9
Common Plea	100.	-	-	-	100
All L. J. Courts	19.4	12.3	67.1	1.2	100.
New Jersey					
County District	78.0	.6	21.4	-	100.
Juvenile/ Domestic Rel.	42.3	-	-	57.7	100.
Municipal	-	8.8	91.2	-	100.
All L. J. Courts	8.3	7.8	81.9	2.0	100.
North Carolina					
District	17.4	28.3	52.5	1.8	100.

Table 29 (cont.)

State/ Court	%Civil	%Criminal	%Traffic	%Juvenile	Total
Oregon					
County	46.9	-	-	53.1	100.
District	10.6	7.2	82.2	-	100.
Justice	3.0	5.1	91.9	-	100.
Municipal	-	10.4	89.6	-	100.
All L. J. Courts	7.9	7.5	84.6	.03	100.03
Texas					
County Law	35.4	45.5	18.7	.4	100.
Municipal	-	8.8	91.2	-	100.
Justice	11.7	18.6	69.7	-	100.
All L. J. Courts	4.3	12.8	82.9	.02	100.02
Virginia					
District	25.1	16.6	51.4	7.0	100.1
Washington					
Municipal	-	15.0	85.0	-	100.
District/Justice	10.2	11.0	78.8	-	100.
All L. J. Courts	7.3	12.1	80.6	-	100.

*Source: National Center for State Courts.

Table 30

Traffic Caseload in Courts with Criminal and Traffic Jurisdiction, 1976*

State/Court	% of the Court's Caseload which is Traffic
Alaska	
District	66.8
Magistrate	26.8
Arkansas	
Municipal	77.4
Justice	82.3
City/Police	82.9
California	
Municipal	90.5
Justice	86.8
Connecticut	
Common Pleas	49.6
Hawaii	
District	91.1
Kentucky	
All L.J. courts	58.9
Massachusetts	
District	68.9
Boston Municipal	91.0
Michigan	
District	76.1
Municipal	76.7
New Jersey	
County District	21.4
Municipal	91.2
North Carolina	
District	52.5
Oregon	
District	82.2
Justice	91.9
Municipal	89.9
Texas	
County Law	18.7
Municipal	91.2
Justice	69.7
Virginia	
District	51.4
Washington	
Municipal	85.0
District/Justice	78.8

*Source: National Center for State Courts.

several courts, four states, (Alaska, Massachusetts, New Jersey, and Texas) show wide variation in the proportion of traffic cases heard in the limited jurisdiction courts. The source of the variation is not immediately apparent, and any further analysis would require data and time beyond that presently available.

When the distribution of cases is considered for each court, without the traffic cases, there remains a considerable body of non-traffic criminal matters in most limited jurisdiction courts. This was already suggested from the figures in Table 27 which displayed the limited jurisdiction court's share of the state's criminal caseload. However, it also appears that the courts which are "minor" with regard to their share of the state's caseload, may also be minor because they seem to hear less civil cases. Table 26 suggested this, but it is confirmed by noting that the proportion of civil cases within these courts is consistently lower. Table 31 displays the caseload of state limited and general jurisdiction courts by civil, criminal and juvenile cases, without traffic cases.

There seem, therefore, to be two criteria which help to identify "minor" courts: the share of the state's caseload which they carry and what proportion of their own caseload which is civil. This latter point is particularly interesting, because when we compare the proportion of the caseload

Table 31

Caseload of State Limited and General Jurisdiction Courts by Civil, Criminal and Juvenile, Without Traffic, 1976*

State/ Courts	% Civil	% Criminal	% Juvenile	Total
Alaska				
General Jurisdiction Courts	81.1	7.5	11.4	100.
Limited Jurisdiction Courts	28.1	71.9	-	100.
District	28.9	71.7	-	100.
Magistrate	16.2	83.8	-	100.
Arkansas				
General Jurisdiction Courts	82.4	17.6	-	100.
Limited Jurisdiction Courts	12.9	81.9	5.2	100.
County	4.4	-	95.6	100.
Common Plea	100.	-	-	100.
Municipal	13.3	86.7	-	100.
Justice	27.9	72.1	-	100.
City/Police	5.3	94.7	-	100.
California				
General Jurisdiction Courts	75.2	8.6	16.2	100.
Limited Jurisdiction Courts	51.5	48.5	-	100.
Municipal	52.6	47.4	-	100.
Justice	40.9	59.1	-	100.
Connecticut				
General Jurisdiction Courts	85.1	14.9	-	100.
Limited Jurisdiction Courts	64.4	30.7	4.9	100.
Common Plea	60.6	39.4	-	100.
Probate	100.	-	-	100.
Juvenile	-	-	100.	100.
Hawaii				
General Jurisdiction Courts	65.8	7.4	26.8	100.
Limited Jurisdiction Courts	21.7	78.3	-	100.
Kentucky				
General Jurisdiction Courts	84.2	15.8	-	100.
Limited Jurisdiction Courts	21.0	70.2	8.7	100.
Massachusetts				
General Jurisdiction Courts	45.3	54.7	-	100.
Limited Jurisdiction Courts	59.2	33.3	7.6	100.
District	50.0	42.2	7.8	100.
Probate	100	-	-	100.
Boston Municipal	75.8	24.2	-	100.
Juvenile	-	.4	99.6	100.
Land	100	-	-	100.
Housing	59.0	41.0	-	100.

Table 31 (cont.)

State/ Courts	% Civil	% Criminal	% Juvenile	Total
Michigan				
General Jurisdiction Courts	12.4	87.6	-	100.
Limited Jurisdiction Courts	59.0	37.5	3.5	100.
General Jurisdiction Courts**	82.9	17.1	-	100.
Limited Jurisdiction Courts**				
District	42.7	57.3	-	100
Probate	72.5	-	27.5	100.
Municipal	29.0	71.0	-	100.
Common Plea	100.	-	-	100.
Detroit Recorders Court				
New Jersey				
General Jurisdiction Courts	67.2	32.8	-	100.
Limited Jurisdiction Courts	46.1	43.0	10.9	100.
County District	99.3	.7	-	100.
Juvenile/ Domestic Rel.	42.3	-	57.7	100.
Municipal	-	100.	-	100.
North Carolina				
General Jurisdiction Courts	17.0	83.0	-	100.
Limited Jurisdiction Courts	36.6	59.7	3.7	100.
Oregon				
General Jurisdiction Courts	6616	17.2	16.1	99.9
Limited Jurisdiction Courts	51.2	48.6	.2	100.
County	46.9	-	53.1	100.
District	59.7	40.3	-	100.
Justice	37.0	63.0	-	100.
Municipal	-	100.	-	100.
Texas				
General Jurisdiction Courts	75.3	21.6	3.1	100.
Limited Jurisdiction Courts	25.1	74.8	.1	100.
County	43.6	56.0	.4	100.
Municipal	-	100.	-	100.
Justice	38.5	61.5	-	100.
Virginia				
General Jurisdiction Courts	59.9	40.1	-	100.
Limited Jurisdiction Courts	51.6	34.0	14.4	100.
Washington				
General Jurisdiction Courts	77.4	11.5	11.0	99.9
Limited Jurisdiction Courts	37.6	62.4	-	100.
Municipal	-	100.	-	100.
District/Justice	48.1	51.9	-	100.

* Source: National Center for State Courts.

Table 32

Partial Comparison of Limited and General Jurisdiction Courts' Caseloads, 1976*

State	General Jurisdiction %Civil	%Criminal	Limited Jurisdiction %Civil	%Criminal
Alaska	81.1	7.5	28.1	71.9
Arkansas	82.4	17.6	12.9	81.9
California	75.2	8.6	51.5	48.5
Connecticut	85.1	14.9	64.4	30.7
Hawaii	65.8	7.4	21.7	78.3
Kentucky	84.2	15.8	21.0	70.2
Massachusetts	45.3	54.7	59.2	33.3
Michigan	12.4	87.6	59.0	37.5
New Jersey	67.2	32.8	46.1	43.0
North Carolina	17.0	83.0	36.6	59.7
Oregon	66.6	17.2	51.2	48.6
Texas	75.3	21.6	25.1	74.8
Virginia	59.9	40.1	51.6	34.0
Washington	77.4	11.5	37.6	62.4

*Source: National Center for State Courts.

of general and limited jurisdiction courts which is civil to that which is criminal, we find the same tendency. Limited jurisdiction courts have a consistently lighter civil caseload than general jurisdiction courts. Table 32 summarizes the data on Table 31, in terms of the proportion of cases which are civil and criminal for the limited jurisdiction courts in total, and the general jurisdiction courts. [The data is merely suggestive, but interestingly so. One would need to know more about the nature of the communities, the particular jurisdiction of the courts, and distribution of jurisdiction among the states' courts to be able to offer a more definitive analysis.] In eleven of the fourteen states in our sample, the civil caseload of the general jurisdiction court is at least fifty percent. Again, if one considers Detroit's recorders court to be a limited jurisdiction court, then this is true for twelve of the states. But, in only six of the states is this true for limited jurisdiction courts, but the numbers imply that the business of the general jurisdiction courts is business, while the business of the limited jurisdiction courts is primarily dealing with "crime".

CONTINUED

1 OF 3

F. Dispute Resolution Alternatives and Dispositionial Options in the Limited Jurisdiction Courts.

During July and August 1979, thirty nine judges out of a class of forty-eight attending the National Judicial College at the University of Nevada, were surveyed to elicit responses about the nature of the work of the limited jurisdiction courts. The questionaire solicited the judges' opinions about what lower courts do, inquired as to what forms of case disposition were used in each court, and for statistical purposes, requested some background information about the courts. The principal purpose was to establish the range of decisional modes available in the lower courts.

The population surveyed was distributed throughout the nation, with heaviest representation coming from the south-east, southwest and then the north central states. They were primarily from rural, nonmetropolitcan areas, with sixty percent of the judges' jurisdiction's having populations below 250,000 persons. Ninety-two percent of the judges had legal training, and eighty-six spent full-time on the bench. Seventy percent sat in multi-judge courts. The range of their jurisdiction is summarized with the class profile on Table 33. Nearly all the courts had limited civil and criminal jurisdiction, with traffic and ordinance violations making up the bulk of the courts' work. Less than a third heard probate, family or felony matters, and thirty five percent did hear juvenile cases. Eighty-five percent of the judges had never attended judicial college

Table 33

Survey of Limited Jurisdiction Court Judges, July and August 1979, Class Profile*

Geographical Area:

Northwest	4%
Southwest	27%
North Central	17%
South Central	8%
Northeast	8%
Southeast	33%
Alaska/Hawaii	2%
Foreign	

Legal Training:

Legally Trained	92%
Not Legally Trained	8%
No Response	( )

Bench Time:

Full-Time	86%
Part-Time	13%
No Response	(1)

Population of Jurisdiction

0 - 50,000	38%
50,000 - 250,000	30%
250,000 - 500,000	13%
500,000 - plus	19%
No Response	(1)

Number on Court:

Single Judge Court	30%
Multi-Judge Court	70%
No Response	(2)

Proximity to Metropolitan Area:

Within	28%
Adjacent to	8%
Rural	41%
Other	22%
No Response	(2)

Length of Service:

Less Than One Year	29%
1-5 years	49%
5-10 years	13%
10 years or more	9%
No response	(3)

Jurisdiction:

Limited Civil	98%
Unlimited Civil	
Preliminary Hearings	71%
Criminal Misdemeanor	96%
Criminal Felony	15%
Juvenile	35%
Probate	23%
Family Court	13%
Equity	4%
Traffic	88%
City Ordinances	65%
Jury Trials	67%
Other (Tribal Judge)	2%

Prior Nat'l College Participation:

Before 1974	2%
During or after 1974	10%
Both	2%
None	85%

TOTAL ENROLLMENT 48

( ) Indicates number not percentage

Percentages reflect total class enrollment less the number of no reponses for each category.

* Source: American Bar Association, The National Judicial College, University of Nevada, Rena Nevada 89557. July 1 - July 13, 1979.

before, and over three quarters of them had served on the bench less than five years.

The judges' responses to several attitudinal questions about the functions of the courts suggests that while they are distinctly less experienced judges, their perceptions are consistent with other surveys of judicial attitudes.(24) Ninety-seven percent of the judges believed that the lower courts major objective was to assure justice which was timely and uniformly applied, and impartial. Eighty-nine percent also believed that availability of judicial services was equally important. Seventy-two percent believed that the courts ought also to provide flexibility and responsiveness, in order to meet changing community needs. While more than one half thought that the court ought to provide a vehicle for redress of grievances, only thirty-six percent viewed their role as enforcing officially determined rules of conduct. While service was high on the list of objectives, more specific definitions or examples of service such as providing mediation mechanisms, access to social services, ranked among the least well answered responses. Nevertheless, the judges did respond strongly to claims for flexibility which would tend to encourage a variety of services within the court. In general, the judges saw their function in larger more diffuse terms of encouraging respect for law, educating the public and providing some less specified, but intuitively perceived sense of justice. The responses to the survey are not inconsistent with the range of goals one discoveres in the literature about the lower courts,

and succinctly summarized by Friesen, Gallas and Gallas as "individualized justice in individual cases".(25)

When questioned further about their perceptions of the function of the courts in comparison to other institutions, fifty-four percent responded that they agreed that courts were indeed reactive, passive, institutions, who can provide no follow through or supervision of cases. And, again fifty-four percent responded that courts ought to be able to be more responsive to immediate and different social needs. Thirty-one percent stated that they believed that courts were already doing this. The majority of the judges, ninety percent, responded that while the rules of law often distort the nature of disputes and grievances, this was not the dominant pattern, and occurred less than half the time. Only ten percent of the judges felt incapable of responding to citizen demands for dispute resolution. The judges were strong in their belief that the courts ought to be able to provide for the resolution of citizens' grievances, even though formal adjudication and adversarial proceedings may not be the most appropriate process for all cases, although they were for most cases. Seventy-two percent of the judges felt that the courts were either moderately or very successful in meeting these goals. If they fell short, it was because of insufficient resources, and too many cases.

The judges described a wide variety of decisionmaking processes that were available in their courts in order to meet the needs for responsive, individualized justice. Seventy-one percent of the courts have some form of diversion, which is used in criminal cases and involves no admission, or adjudication of guilt. It is usually a 'voluntary'

rehabilitative program to which defendants are sent in lieu of sentencing, or even adjudication of their case. Most of the time, diversion is recommended by the prosecutor, but all members of the courts sometimes have a role in suggesting diversion, including the judge, probation officer, defense counsel and even the police. Where diversion programs are available, ninety-two percent of the judges responding stated that it was used in less than one quarter of the cases. Eight percent responded that it was used in one-quarter to one half the cases, and practically all drunk and disorderly cases. Diversion is perceived to be an option at various stages of the criminal process from arrest through sentencing. In response to the question, "At what stages of the criminal process is diversion possible?", judges listed initial appearance, arraignment, preliminary hearing, trial and sentencing. Diversion programs usually (84%) include the possiblity of return to court on the same charges if the defendant somehow fails in his obligations to the program. Therefore, the 'volunatriness' of the diversion programs is always questionable.

Sixty-six percent of the judges responded that they sometimes used a disposition referred to as 'Continued without a finding" in criminal cases. This is a continuance of a case without a guilty finding, to a specific date in the future. Often, this is six months to a year, with one year being most common. It usually but does not always include supervision, after which the case can possibly be dismissed and sealed. When a 'continuation without a finding' is available, it is used, according to these judges, in less than one quarter of

the cases. It is, like diversion recommended by any member of the court family, with the prosecutor, judge, and defense counsel have the most prominent roles. The police and probation, on the other hand, have less influence in determining or suggesting 'continuation without a finding'.

Thirty-seven percent of the judges report that they also use a disposition entitled 'Filing". This refers to a process where the case is put 'on file', either after a hearing on the facts at trial, or before. It can be taken 'out of the file' at any time. There is, unlike the 'continuation without a finding', no limit of time and no sealing of the record. It constitutes a form of suspended animation, with the possibility of official review and action at any time. The range of involvement by the court personnel in recommending 'filing' and the stages of the process at which it can be recommended, is similar to the other dispositional options.

Finally, twenty-two percent of the judges describe a fourth type of criminal disposition other than dismissal, guilty or not guilty. A 'Finding of Sufficient Facts" usually occurs after trial and is an adjudicated outcome in most cases. It implies that the judge finds sufficient facts for the charge, but does not wish to create a guilty record for the defendant. Having found 'sufficient facts', several options are available: dismissal, continuation, filing, paying court costs, diversion. It is not, therefore, a distinct disposition from the others discussed above, but often a complimentary disposition where it is available. It implies a completion of the fact finding process with a determination by the judge

that there has been a sufficient finding of facts to establish or prove the charges, but that the disposition will not read 'guilty as charged'. It represents a more serious option for disposing of criminal cases, without formal sentencing. The trial has been completed, witnesses have been heard, evidence presented. If the case needs to be reopened in the future, only sentencing remains. In the 'filing' or 'continuation without a finding' option, the case has often not been presented. There is no transcript or record of the evidence and witnesses. Any future opening of the case will less likely have as deleterious effect upon the defendant because prosecution will be more difficult with the passage of time. Where 'finding of sufficient facts' is an available option, ninety percent of the judges report that dismissal with court costs is the most common ultimate disposition.

Sixty percent of the judges report that over three quarters of their criminal cases are found guilty and another twenty-nine percent report that somewhere between fifty-one and seventy-five percent are found guilty. Only twelve percent of the judges report that less than one half of the cases are adjuged guilty. Of the cases which are found guilty, the judges, consistent with their description of the range of dispositonal options, describe an array of sentencing options, which are used in varying proportions of the time, but none exclusively. Most often the judges describe a combination of sentencing determinations. Fines are the most common sentence. Probation and suspended sentence are also heavily used, but a majority of the judges report that

Table 34

Sentencing Options

"If a defendant is found guilty, what sentencing options do you have, and how often are they used?"

Sentence	Percent of Cases Adjudged Guilty: 0-25	26-50	51-75	76-100
Filed	3	-	-	-
Fined	6	7	11	10
Probation	13	9	2	1
Suspended Sentence	22	7	1	-
Jail	31	3	-	-
Other	3	-	-	-

35 Juges responding.

they are used in less than one quarter of the cases. Jail is infrequent. Table 34 displays the variation in sentencing dispositions described by thirty-five judges. The numbers do not total to thirty five for any one category because the majority of judges report using several options in combination.

The judges report a similar array of non-adjudicated dispositions for civil as well as criminal cases. Forty-four percent of the judges responding stated that more than half of the civil cases are resolved without final adjudication by the judge. Twenty-four percent reported that this was true for more than three quarters of the cases. Forty-five percent of the judges claimed that they, nevertheless, participated in this 'non-adjudicated' resolution by either suggesting grounds for resolving the dispute(26%), holding pre-trial conferences between the parties (34%), suggesting mediation or conciliation of the dispute(31%). Thirty-one percent of the judges reported that they had a program, associated with their court, for mediating or conciliation of disputes. Fifty-eight percent of the programs were official parts of the court. Twenty seven percent were less than a year old, and eighteen percent were more than three years old. The majority were between one and three years old, reflecting the current interest in creating alternative dispute resoltuion fora. Most often, seventy-two percent of the time, the program was begun by the judge of the court. The cases are referred by a variety of sources: the police, social service agencies, court clerk, counsel, individual disputants. But, most often, in seventy percent of the cases, the judge refers cases to

the mediation program. The programs have no enforcement capabilities to speak of, relying almost exclusively upon voluntary consensual agreements. In twenty-nine percent of the programs described, there lurks behind mediation, the possibility of returning to court and resubmission of the case. The case matter of these programs is primarily disputes between persons with on-going relationships and neighborhood disputes. Often, they arise from minor criminal complaints. The judges' descriptions of the programs in their courts is consistent with national surveys of dispute resolution alternatives, and again suggests the representativeness of this sample of judges.(26)

Finally, the judges report that they feel themselves under scrutiny in several ways, but most strongly through public observation of them in court(85%). Thirty-six percent of the judges feel scrutinized by review procedures, but a larger percent (64%) feel that the local bar has more influence in terms of review of judicial behavior. Although twenty six percent feel that this scrutiny is very real, twenty one percent feel that it is not significant. Fifty-three percent report that review of their activities is of moderate import. They could give no specific information with regard to which kinds of issues review was more or less effective.

G. Interpretation and Conclusions

The data which we have been able to collect and tabulate raise more questions than are answered. They present a very bare sketch of the limited jurisdiction courts. The study of limited jurisdiction courts requires a great deal more work. In the first place, we have to construct an accurate sample of courts for which we can have complete information with regard to demographic and economic characteristics of the community as well as information about each court. Moreover, we must be able to determine what kinds of procedures are used in the courts, modes of funding, selection of personnel and processes of review. While we have been able to review this kind of information in a general way, it is not uniformly available and several sources provide conflicting information making the creation of a reliable data base difficult. A majority of the courts provide no caseload statistics and more often where there are a very large number of courts such as in New York, Georgia, and Texas, there is even less information for each court. Indeed, the work of the National Center for State Courts is partially intended to encourage the creation of such a base for future research. But this needs to be supplemented by intensive, observational and first-hand research in individual court systems. Formally reported characteristics are unlikely to fully or accurately describe the actual working procedures in the courts. Until this type

of research is further along, the numbers and data we have can only be suggestive of the kinds of experience and justice the lower courts provide.

The figures and tables present a picture of a diverse and complex array of limited jurisdiction courts, but they do not explain very much. With additional time and data, one might begin to look for correlates, if not explanations for this variation. For example, what is the relationship between geographical distance, population density, and court structure? Are courts in less populated areas more often of necessity operating with fewer resources? Must they share staff positions, have part-time judges, operate without clerks and judges with less training? We have some evidence that the qualifications for office and the type of judgeship is dependent upon population in several states.(27) To what extent is this true for other states and for how many aspects of the lower courts is it true?

Is there a relationship between the jurisdiction of a court and its caseload? And is there a clear relationship between caseload and staffing? Rationality would suggest that this is so, and it appears that the staffing of the general jurisdiction courts is partially correlated to population and caseload. It appears, however, to be untrue for the limited jurisdiction courts, but is geographical distance and population density the only explanation for this

variation? The vast majority of minor limited jurisdiction courts seem to be one person courts. How significant is this and for how much of the limited jurisdiction caseload do they account? If limited jurisdiction courts proliferate in order to provide a ready service within local communities, how shall this availability be balanced against the quality of the service? And is the quality dependent upon the resources which are more available with increasing density?

The lower courts deal with an enormous array of persons and do the most difficult and seemingly impossible tasks. They seem to have irremedial problems in doing these irradicable tasks. And yet we know that some lower courts are models of fair and equitable justice.(28) What accounts for this? What is the relationship between court structure and organization and the political structure of the community? It will require a detailed political analysis to explain the idiosyncrasies of one style of organization and another. For example, why are some systems changing and unifying and others are not? How and why are some forms of unification more popular than others? At the same time, it ought to be noted that it is not clear that unification is a predictor of high quality justice. And, it should also be recorded that all systems, unified or not, have some separate limited jurisdiction sessions, and have been painted with the same brush of criticism.(29) Is there a common thread among court systems which have been responsive

to reform movements in the past or the present? What place does the juvenile court movement, and the movement for small claims courts, have in the general scheme of limited jurisdiction court development? Have they directed attention away from efforts to understand misdemeanor justice in its own right?

Recognizing that diversity is the key to the limited jurisdiction court phenomonon, it is critical to direct attention to the common functions of these courts. We have begun to delineate the distinctive role of these courts. The efforts to explain, group and typify the limited jurisdiction courts provide a picture of accessibility. The lower courts are entry points to the judicial system, nerve endings and receptors for the "law" as an integrative mechanism for society.(30) The effective transmittal through these receptors depends upon review and scrutiny. The caseload statistics strongly suggest a stratification between the general and limited jurisdiction courts beyond the quality of the personnel and resources. There is a clear distinction between major and minor courts which needs to be explored. The criticisms which have persistently dogged the lower courts may be correct, but it is not clear that they apply to all limited jurisdiction courts. Moreover, it is not clear whether the quality of justice is correlated with being a "minor" lower court, or is more random or is related to other factors.

The distinctions between general and limited jurisdiction courts go beyond jurisdictional limitations and the difference between petty and serious offenses. The court systems are distinguished by the nature of their caseloads, between civil business and criminal matters. The segregation of civil and criminal courts without official jurisdictional identification of such is a significant finding and suggests a stratification of the legal system that may be rooted in the foundations of the liberal state.(31) Finally, without any further political and sociological analysis, the clearest explanations for the diversity and complexity of the limited jurisdiction court systems derives from the history and evolution of these courts.

III. HISTORY AND CRITICISM OF THE LOWER COURTS

A. Brief History of the Lower Courts

The current state of the lower courts derives from a tradition which melded community courts in neighborhood settings with primary administrative and enforcement responsibility, and staffed by district notables and country squires, into inferior courts of state court systems. In the Anglo-Saxon period, the courts reflected the customs of the local community. Freemen of shires and towns, with first hand knowledge of the issues and their context, applied the many and varied local customs as deciding principles in the local forum. After the Norman conquest, the King's judges began to weld this customary law into a single body of uniformly applied general principles of the common law. By the fourteenth century, England had developed a system of county courts for hearing serious criminal offenses, and assizes for hearing civil matters. Both, however, were served by a set of itinerant judges, many of whom were also judges of the common law courts who considered that their duty was to develop and later apply the emergent law.(1) Lesser crimes were dealt with in local and Franchise courts. Their jurisdiction was extremely limited, and yet "too much of the time of the itinerant judges was taken up in hearing criminal cases of no great importance."(2) As a result, the office

of the justice of the peace was created to keep the peace, and hear and determine felonies, and thus to remove these 'cases of no great importance' from clogging the dockets of the King's judges.

In the beginning, the justice of the peace was an administrative rather than a judicial officer. A large part of keeping the peace and being a 'conservator of the peace' involved criminal investigation and preliminary examination of accused persons. The fourteenth century statutes extended their judicial responsibilities with "the proviso that difficult cases were to be reserved for the assizes."(3) Their powers were again increased in the fifteenth and sixteenth centuries, but remained in essentially the same form until the nineteenth century. When the justices were paid lawyers, they were known as magistrates. The justices and magistrates retained three major functions. First, they had the power to hear and determine petty offenses in a summary fashion. Second, they were also entrusted to enforce and administer the parish's poor law obligations. Also, debt collection, writ service, enforcement of local ordinance codes and licensing provisions eventually came under the justices and magistrates. And finally, the justices were instructed to hold preliminary inquiries into allegations of crime. This was a police effort and not a judicial activity but necessary in a society that lacked a regular police force.

This system was in effect during colonization and, in the United States, we adopted many of the forms of the English system including a hierarchy of local courts analogous to the English petty session, justices of the peace, quarter sessions, assizes and superior courts.(4) Some of the local petty sessions were staffed by aldermen or mayors; and, some boroughs and towns established courts under local charters. The jurisdiction of these municipal courts was often concurrent with county and, in the United States, state tribunals. We also adopted the system of having laymen conducting preliminary examinations and administering justice as magistrates. The result is a system of numerous petty tribunals, manned by laymen sharing administrative and judicial responsibility with other agencies and courts.

B. A History of Criticism

These courts have been the source of repeated criticism and derision. "By general consensus," the lower, limited jurisdiction courts, "constitute the principal weakness in most state court systems."(5) "The old-time country squire, a leader in his community, exercising a sort of patrimonial jurisdiction,"(6) has given way to local judges administering a form of informal, rough, perhaps personal and perhaps arbitrary justice. Today, the legacy of communal justice, administered locally, and responsible to neighborhood values

and customs through local appointment and short tenure survives in justice, municipal, aldermanic, magistrate and district courts in all fifty states. (Four states, Idaho, Illinois, Iowa and South Dakota have no limited jurisdiction courts. But each of these states has a special session with associate judges and/or magistrates to hear lesser offenses and suits.)

In nearly every decade for the past seventy years, we have seen renewed warnings about the condition of the nation's lower courts. Roscoe Pound sounded the first alarm in 1901 when he noted the lack of serious attention to the handling of minor offenses and warned of the dangers to the body politic of ignoring the little injustices of everyday life.(7) In 1919 Charles E. Hughes repeated this advice when he admonished the New York State Bar Association to look "after the courts of the poor, who stand most in need of justice. The security of the republic will be found in the treatment of the poor and ignorant, in indifference to their misery and helplessness lies disaster."(8) In 1922, the Cleveland Foundation Survey of the Administration of Criminal Justice, authored by Frankfurter and Pound concluded that "as a deterrent of crime, the Municipal Court is more important than any other of our institutions with the possible exception of the police force."(9) A year later, the Baltimore Criminal Justice Commission reiterated the earlier

observations.(10) Again in 1931, the Wickersam Commission (The National Commission of Law Observance and Enforcement) concluded that the lower courts were the most important courts in the criminal justice system and yet the most neglected.(11)

The law reform efforts of the nineteen twenties which followed the barrage of criticism reflected the progressive belief that structural alterations could solve political and social problems. Yet the widespread corruption, incompetence and politicization of the lower courts persisted despite efforts to institute professional court administration and accountability. The attempt to "exorcise the problems with procedural and structural changes ... seldom succeeded."(12)

More recently, in 1967, the Courts Task Force Report of the President's Commission on Law Enforcement and the Administration of Justice echoed the voices of earlier decades, stating that none of its findings were more disquieting than those relating to the condition of the lower courts. It concluded that no program of crime prevention would be "effective without a massive overhaul fo the lower criminal courts." Moreover, the conditions in these courts were said to exacerbate the problems of crime by demonstrating to the persons who encountered them that "the ideals of fairness, equality and rehabilitation expressed in theory" did not apply to them. The result of which was a hardening of anti-social attitudes counterproductive to rehabilitation.(13)

In 1973, the Task Force on Courtsof the National Advisory Commission on Criminal Justice Standards and Goals again noted that "the courts which are lower, minor, and inferior in nomenclature, financing, facilities, rehabilitative resources and quality of personnel conduct the overwhelming majority of criminal trials and sentencing and have the most enormous crime-control potential. Yet these courts have been treated as the step-child of the judicial system.(14) The commission recommended the unification of all trial courts in each state into a single trial court with general criminal as well as civil jurisdiction.(15) One year later, in 1974, the American Bar Associations Commission on Standards of Judicial Administration also recommended that the courts of original jurisdiction in each state be organized as a single court, and thus abolish the lower courts.(16)

Since 1967, twenty states have made major changes in their trial court systems either through statutory or constitutional provisions. Eleven of the states (Indiana, Kansas, Michigan, Minnesota, New Mexico, Ohio, Oklahoma, Pennslyvania, Rhode Island, West Virginia and Wyoming) upgraded their lower courts but preserved one or more lower courts on a localized basis. Six states created single statewide trial courts of limited jurisdiction. Florida, Maryland, Nebraska, Vermont, Virginia and Alabama created single statewide courts but allowed each municipality to retain or eliminate local courts

on a local option basis. And three states, Idaho, Iowa and South Dakota, followed Illinois' earlier example by forming limited jurisdiction courts while retaining a limited jurisdiction session of the general trial court.

Clearly the recommendation to abolish these courts has not been uniformly accepted on the state level. Indeed court organization studies conducted on the state level have more often suggested a two tier trial system than have followed the federal recommendations for eliminating the lower criminal courts altogether.(17) And some noted scholars have voiced independent doubt about the efficacy and appropriateness of the proposals to create a unified single trial court.(18)

1. Failure to control crime

More recent studies of the criminal justice system have begun to focus upon specific problems as much as upon the general quality of justice within the courts. The Vera Institute report on sentencing in New York, and the Twentieth Century Fund Task Force on Criminal Sentencing are two prime examples.(19) The Twentieth Century Fund report summarized popular conception and criticism of the courts when it focused upon the inability of the courts to control crime in our society. It was not referring specifically to the lower courts, but what was said of the criminal justice system generally must be taken to apply most particularly to the lower courts

which process ninety percent of the criminal cases in the nation. "The greatest indictment of the criminal justice system in the U.S. is simply that it fails in providing equitable justice.... Lacking credibility, it fails in its essential purpose of protecting society by deterring criminal and violent actions.... By failing to administer either equitable or sure punishment, the sentencing system...undermines the entire criminal justice structure."(20)

The Twentieth Century Fund Task Force voices the public's often repeated criticism of the courts, that they fail to control crime. The Warren Court's 'overly solicitous' concern for the rights of criminal defendants has eroded the rights of non-criminal citizens to be protected from violence. The courts in general have become too lenient; they let known felons go free; criminals regularly 'get-off' because of technicalities of law or because of lax sentencing policies. Indeed, it is difficult to determine if there is a sentencing policy, it all seems so haphazard and particularistic. Plea bargaining is destroying the criminal justice system. There is not predictable, ordered justice, just compromising and bargaining. Too many guilty persons go free under such a system.

Charles E. Silberman, in Criminal Violence, Criminal Justice takes the critics of the criminal justice system to task. He states that the critics are wrong -

"wrong in the 'facts' they cite, wrong in the way they interpret them, and wrong in the policy conclusions they draw, as well as in the remedies they propose.

-It is not true that the courts have been hamstrung by the exclusionary rule or other decisions of the Warren court; except for drug cases, few convictions are lost because 'tainted' evidence is excluded from court.

-It is not true that the courts are more lenient than they used to be; the available data indicate that a larger proportion of felons are incarcerated now than in the 1920's.

-It is not true that disparate sentencing practices undermine the deterrent power of the criminal law. Within any single court system, the overwhelming majority of sentences -- on the order of 85 percent -- can be predicted if one knows the nature of the offense and the offender's prior record. (There are disparities from one court system to another, reflecting differences in attitudes and values from one community to another; for the most part, these disparities would be untouched by the sentencing reforms now under discussion.

-It is not true that plea bargaining distorts the judicial process. Contrary to popular impression, plea bargaining is not a recent innovation, nor is it the product of heavy caseloads; it has been the dominant means of settling criminal cases for the last century.

-Most important of all, it is not true that the guilty escape punishment; when charges are dropped, it usually is because the victim refuses to press charges, or because the prosecutor lacks the evidences necessary to sustain a conviction.(21)"

2. Failure to achieve the rule of law.

The often repeated criticisms and recommendations for reform, of the lower courts also focuses upon the disjunction between the ideal of the rule of law and the practices in those courts, which seem to 'represent' the judicial system to most litigants and for whom the lower courts are the

only experience of the court system. The most basic criticism concerns the observation that within these courts there is very limited adversarial process, the result of which is an attenuation of the due process rights of defendants. The diminished impact of formal due process in the lower courts results in gross inequalities of power between the defendant and the state, just that against which due process rights are meant to be a protection. Moreover, the lack of review and accountability of lower court judges makes the lack of formal due process that much more salient. Instead of witnessing a practical play of formal models of adversarial adjudication, the lower courts emphasize rapid case handling and volume control, outcome rather than process. Observers report that judicial arbitrariness is common, that non-compliance with rules, racial discrimination and corruption, and nonfeasance are pervasive.

a. Volume. Each of the presidential commissions has identified the volume of cases before these courts as the principal source of stain upon the court system and the 'rule of law.' "More than in any other courts in the system, the problems of the lower courts center around the volume of cases."(22) "A central problem of many lower courts is the gross disparity between the number of cases and the personnel and facilities available to deal with them."(23) "A major contributant to the problem is the almost overwhelming volume of cases entering the lower courts."(24)

A word ought to be said, at the outset, about the 'volume' problem. Our review of the caseload statistics of the limited jurisdiction courts has suggested that these courts seem able to handle the cases coming before them. The evidence suggests that there is little delay or clogging of the dockets. Cases get heard within a reasonable time and there are few pending cases from year to year. Admittedly the data is incomplete, but observers seem to agree that delay is not a factor in the lower courts. Moreover, one ought to note that in whatever the setting, when processing is part of the organizational responsibility, cries of volume overload are universal.(25) The volume problem, therefore, must be conceived of not as it is in general jurisdiction courts, in terms of making the courts unavailable, but of reducing the quality of the attention which is given to each case. It becomes a matter of what case handling or processing means.

Arnold Enker suggests that there are really only two possible solutions to the volume problem; to either reduce the number of cases in some way or to increase the resources and personnel available to handle the cases.(26) The volume of cases is the product of legislative action which defines crimes and allocates jurisdiction for dealing with them. But it is also a product of social forces which

generate the crimes and cases. We (the legislature) can redefine certain behavior to be non-criminal and thus eliminate certain categories of conduct from the criminal justice system. Efforts to decriminalize drunkenness fall into this category. But one wonders whether this really will reduce the burden of work of the lower courts. First, there is considerable evidence, which we will consider again in the next section, to suggest that while certain offenses constitute a large proportion of the court's caseload, they do not constitute a proportionate amount of the court's judge time.(21) Second, there is some evidence to suggest that perfunctory treatment in some kinds of cases is likely to occur irrespective of the court's volume of cases.(28) Third, one must question the premises upon which certain kinds of behavior become subject to official processing, of treatment, without the availability of a day in court and the possibility of invoking in this traditional fashion the protections of the law, whatever the shortcoming of that process may be at present. As Arnold Enker as written, "some procedure will have to be developed at a minimum for sorting out those cases in which the defendant...wishes to contest the issues."(29) Transferring the process to an administrative forum will not relieve the official decision making apparatus of the responsibility for handling such cases, but will merely have displaced it to a less visible locus.

Efforts to reduce the volume of cases in the courts can also spring from sources outside the courts and in the community. Social work efforts, training programs, and educational reforms work in this direction but are indeed outside the immediate province of the courts. There is an exception to this, however. The rehabilitative efforts, treatment facilities, and social service programs that emanate from the lower courts, were they ultimately successful, can be considered, not only as humane nonpunitive dispositions for socially condemned behavior, but organizationally rational means of regulating the courts' workload.

Contemporary efforts to create alternative forums for resolving interpersonal disputes can also fall under this rubric of relieving courts of caseload pressure. The crowded dockets and inattention to particular case demands are thought to erode the quality of justice available to citizens. They are, in addition, efforts to create not only more accessible but more appropriate forums for particular kinds of disputes for which it is asserted adjudication is not the most suitable means of resolution or 'handling.'(30) But again, as above, one wonders whether the creation of mediation alternatives to adjudication, are not also effective denials of the availability of that elaborate structure of protection against officially sanctioned coercion which we have created under the name of the rule

of law, and which is activated only through the courts.(31)

The second means of alleviating the heavy volume of cases is by increasing the resources available to deal with them. Creating alternative forums, again fits under this category, and its attractiveness may lie in the fact that it appears to be a remedy to many problems. Here again, some skepticism has been voiced. The volume problem in the courts, if there is one, may not easily be remedied by creating additional judgeships. First, there is evidence to suggest that the present pool of judges are putting in less than full time at their jobs, and that many of the delays and time-pressing concerns of the courts are created by poor scheduling, no-shows, and generally poor managerial skills rather than unavailable judge time. Second, "a massive increase in the number of judges raises serious questions concerning the availability of sufficient qualified personnel, even assuming nominations procedures assured the selection of the most fit. "To rape the bar in order to conceive more judges makes little sense."(32)

b. Inferior or inadequate personnel. In addition to a volume problem, the Task Force report suggested that the quality of personnel in the lower courts was also a principal concern. "It is clear that the lower courts are generally manned by less competent personnel than the courts of general jurisdiction. There are judges, attorneys and

other officers in the lower courts who are as capable in every respect as their counterparts in more prestigious courts, but the lower courts regularly do not attract such persons."(33) Indeed, the salaries are consistently lower in the limited jurisdiction courts and resources are more limited. There is also a wider range of qualifications for office. The cumulative effect of this variation and the administrative isolation of the courts is the clearly diminished status of the personnel in the limited jurisdiction courts, which cannot help but influence the quality of their work. Perceiving the lower prestige, and therefore the limited importance of what they do relative to other sectors of the judicial hierarchy, personnel in limited jurisdiction courts are more likely to treat their work with the same lower regard that society holds of them.

c. Trial de novo. The 1973 National Advisory Commission on Criminal Justice Standards and Goals suggested that a third problem of the lower courts was their reliance upon the trial de novo system. Several studies in Massachusetts have reported that "the existence of the trial de novo system has a negative impact upon the quality of justice in the district courts."(34) "Ironically," report Bing and Rosenfeld, the continued existence of trial de novo "contributes to the very problems -- trials without juries and unprofessional procedures -- it was designed to minimize."(35)

In a trial de novo system, every criminal trial is held initially by a judge, without a jury. If the defendant is dissatisfied with the decision of this court, he/she has the right to be retried before a jury in this court, or in another court, depending upon the particular organization of that state. "In either event, the defendant obtains an entirely new trial. This second trial or retrial of the offense is referred to as a trial de novo or appeal de novo."(36)

The system is at least three hundred years old and was invented to limit the power of justices of the peace to impose 'unjust' penalties upon defendants. The justice of the peace tried and punished defendants charged with a variety of offenses including and primarily offenses against the public order. But these courts were from the beginning,

"at best forums for rough and ready adjudications."(37) Little training or professionalism was required or guided the process. It was, as we have already noted, a formally informal mechanism outside of or adjunct to the major trial or law courts. Moreover, these courts often provided no trials by jury. And, the notion that one had a right to a jury of one's peers was a well accepted principle of criminal justice in England and the colonies and then the United States. The trial de novo system was a happy remedy to both of these perceived defects in the justice courts. Justice courts were available immediately within each community and provided that immanent judicial presence required for speedy and responsive justice. Recourse from the deficiencies of these proceedings could be had, but in the general sessions courts which were only available for a few months each year. If desired, a defendant could assert his/her right to a new trial in the court of general session at its next sitting.

But the times have changed. The jurisdictions of the lower 'limited jurisdiction' courts have been increased and the appointment process of lower court judges in some states is no different from that for general jurisdiction court judges (see Table 14). The availability of juries is more widespread at the lowest level court and the informality and personalized justice of the justice courts may be

less prevalent. If informality and arbitrariness pervade, it is questionable whether trial de novo provides the appropriate remedy, given the existence of permanent, accessible general trial courts. Under these conditions, the existence of appeal de novo, having an entirely new trial, in another court, precludes exactly what is needed for the lower courts, effective review of the first court's proceedings. The work of the initial court is neither scrutinized by review, nor are its decisions monitored by appellate tribunals. Indeed our survey of judges attending judicial college in July 1979 reveals that few judges considered themselves scrutinized by appeal mechanisms or by colleagues. Most often, judges report, they feel that the most effective or persistent scrutiny is provided by the presence of the public in court. The judges of the lower courts are thus able, unlike judges in other courts providing appeal on questions of law, that is review on the record, to conduct their courts in whatever fashion they please, perhaps to "operate with improper procedures and under erroneous assumptions about the substantive law."(38)

Moreover, several observers have suggested that the existence of trial de novo not only insulates the lower courts from observation and review, but is abused by lower court judges so as to be costly and penalizing to the defendant who asserts this right.(39) In order to prevent too many

cases from appearing in the higher court de novo, and thus implying some general deficiency with the qualtiy of justice available in the lower courts, some judges have systematically imposed stiffer punishments upon or denied bail to those defendants who would choose to appeal their cases.

The consequences of the existence of trials de novo fall upon the general jurisdiction court and the system in general as well as upon the lower court. The dockets of the higher court are crowded with de novo appeals and the court system has had to process at trial level the same case twice. (In Massachusetts, fifty percent of the Superior Court caseload are appeals from the district courts.(40)) Moreover, evidence suggests that the disposition of cases via trial de novo results in fewer convictions and lighter sentences, and frequent defaults. It is not suggested, however, that many of the cases were misjudged in the lower courts, but that the delays encountered in waiting for trial in the superior court erode the saliency of the events for the witnesses and participants, making them more difficult to prosecute. The result is that "public perception of justice being accomplished diminishes or is lost altogether. The criminal process eventually loses its meaning and the victim and all affected by the initial crime perceive the entire system as unresponsive and ineffectual."(41) The time which the defendant spends waiting for the new trial becomes in

effect a time of supervised probation, possibly a time of rehabilitation. But "more typical is the case of a defendant who commits multiple offenses while his appeal is pending so that when the appeal is finally heard the original case is one of several dealt with together."(42)

There is, however, according to some sources, a movement away from the trial de novo system.(43) While our survey of the court jurisdictions and procedures has revealed that ~50% of the courts still retain the trial de novo system, these courts are located in only eleven states.

d. Administration of the courts. The fourth problem which is believed to plague the lower courts is one of administrative disorder and deficiencies. The Misdemeanor Court Management Research Program identified three sets of misdemeanor court problems which were general to misdemeanor courts, a total of eleven specific problems, seven of which were particularly administrative or management issues.(44) These included underutilization of available resources that result in the withholding of general court services such as probation and diversion, lack of case processing standards, failure to monitor case progress and to maintain case and caseflow information statistics, inability to adequately resolve scheduling conflicts, inability to deal with continuance requests, heavy case "fall out" on the day of trial resulting in the inefficient use of judicial time, underutilization of jurors and inconvenience to police officer and civilian witnesses, and indecorous and somewhat chaotic courtroom environments.(45)

"The pervasive lack of statistical data necessary for any attempt to improve operations in the lower courts"(46) was mentioned in the 1967 Task Force report and must be repeated again. In preparing this report, we relied upon the statistics available at the National Center for State Courts which has been attempting to encourage state court administrators to keep and collect caseload and caseflow data in

fairly uniform and usable formats so as to provide a usable data base for analysis of state court caseloads and work. Yet, we have had to rely upon a sample of fourteen states for our descriptive data; 9 states provided incomplete data and the other 27 states did not supply any data for the limited jurisdiction courts. Moreover, even the information supplied for these fourteen states was limited and did not include very specific information about case types, appeals records, use of juries, or dispositional options. The President's Task Force Report concuded that "the lack of data makes it difficult to pinpoint critical areas of need, renders comprehensive assessment of the performance of the courts impossible, and restricts sound management control over court business"(47) which is that much more necessary in the lower courts because of their heavy case loads. The absence of reliable data highlights the administrative inadequacies of court systems which are by definition decentralized, and therefore, if justice is to be general and applied equally, need to be supervised, reviewed and coordinated in some ways.

e. Neglect and low status. The fifth and final problem which is thought to erode the quality of justice in the lower courts reflects and is exacerbated by the previous four issues. These courts seem to suffer from what one authority has called 'benign neglect.' The low regard of the work

of these courts, joined to the fact that many of the judges are not attorneys, that their pay, when they are paid by salary and not fees, is often lower than general jurisdiction courts, that there is minimal legal interest in the cases, that they are serviced by a distinct strata of the bar, makes these courts indeed the stepchildren of the judicial system. They are in sociological terms lower class citizens enjoying all of the disabilities and stigma of being of lower status than general jurisdiction courts. Lack of review, isolation from the rest of the judicial system, make these courts attractive arenas for corruption. However, we have little evidence to corroborate what is a logical supposition, supported only by limited journalistic accounts.

After each detailed listing of the failings of the lower courts, commissions, study groups and research panels have suggested that unification of the court system would remedy the most prominent deficiencies. Groups from the 1931 Wickersham Commission to the 1967 Presidential Task Force, and the National Advisor Commission, all recommended unification as a solution to the lower court problem. Unification would provide that organization and administrative coordination necessary for uniform, speedy and equitable justice. It would provide internal review and supervision and better case monitoring.

Court reorganization plans have taken two forms. The

first is an attempt to improve individual lower court defects such as the quality of the personnel by upgrading educational requirements, increasing salaries, augmenting staffing, etc. Operational changes have also included the elimination of the fee system, replacement of the justices of the peace with lawyers or trained laymen, increasing support services and rationalization of financing and budgeting.

A second approach to reform has been structural and it has tended to take either of two roads; consolidation of all lower courts or abolition of the lower courts and creation of a 'unified' trial court structure. The integration of the variety of lower courts among themselves into a lower court system is considered of high priority by most observers.(48) The diversification of lower courts is often arbitrary and places unusual and again arbitrary limits upon a court's powers and jurisdiction. Indeed, it sometimes results in limiting the state's power to impose uniform sentences upon defendants. In some courts jurisdiction is limited by maximum penalty rather than the nature of the offenses which can be prosecuted. "The result is that although the legislature has decided that a particular crime may under certain circumstances warrant, say, a year in prison, if that crime is prosecuted before one of these courts the most that the judge can do is impose a $50 fine. The

inconsistency inherent in a system which in its Penal Code authorizes one sentence and in its judicial code allows the same crime to be prosecuted before a court not empowered to impose the authorized sentence does not, to say the least, promote consistent administration of policy."(49) Separation of courts according to different functions is also criticized. Again, Enker writes that "the underlying problems in many lower court cases cut across the statutory definitions of the offenses which bring them into court, so that a division of jurisdiction along the lines of different offenses is inappropriate. Specialized courts should be subdivisions of an integrated court so that any case appropriate for handling in the division may be redirected there."

If unification into a single lower level trial court seems universally desirable, it is not clear that unification of the state courts into a single trial court, eliminating any lower level court, is as equally acceptable. As we noted above, only four states have adopted this system and those states have retained divisions of their single trial court for minor offenses. Enker's final comments upon this 'solution:'

> "The introduction into a single court of large numbers of unqualified judges and possibly corrupt court personnel is just as likely to lower the quality of justice for felony cases as it is to improve the judicial handling of misdemeanors."

Enker is referring in part to the practice of 'grandfathering' judges and justices of the peace until their terms expire, and new judges with higher qualifications can be appointed to fill the positions.

> "Integration may merely aggravate the volume problem in felony prosecutions, thereby giving felony defendants even more leverage in plea bargaining than they have now. Raymond Moley's follow-up studies of the integration of Chicago's Municipal Court in the 1930's should have demonstrated convincingly the limited capacity of integration to bear the load of improvement." (50)

C. Conclusion.

For a long time, Enker was one of the few commentators skeptical of the conventional solutions. But others have joined him. The Misdemeanor Study Group of the American Judicature Society has recently written that the attention that has been centered upon unification, or abolition of the lower courts, has directed efforts away from improvement within these courts.(51) Each of the recommendations for abolition has assumed that these courts perform unimportant, eradicable functions. The report has been examples of just that which they have described, a lack of serious consideration for the actual work of the lower courts. These courts have been labeled as unnecessary, unimportant, expendable. The criticisms, without saying as much, have mirrored the popular, although false notions that justice cannot be done in these

courts.

Rather than adopt a critical and reformist stance, it seems reasonable to conclude that lower court practices are adaptations to systemic and situational demands and needs. The practices, and problems, of the courts may reflect corruption, incompetence, and abuse, but they are not the results of these. What is common to the critiques and analyses of the 'crisis' of the courts is an unarticulated recognition that the boundary maintenance function of the courts is under stress. Limited jurisdiction courts sit at the boundary of the legal system, the entry point of petitioners and clients to the official legal-judicial hierarchy of goods and remedies. They regulate access to several official hierarchies, not simply access to judicial remedies but to administrative and political benefits and institutions as well. They are officially authorized to unlock or enjoin these official goods through judicial action.(52) If the lower courts are too often the point of access between citizen and the official world, it therefore behooves us to examine in what ways, lower courts have a unique capacity to regulate, channel, and monitor these demands.

IV. WHAT THE LOWER COURTS DO

A. Brief Review of the Literature

To this point, we have been able to establish that the courts of limited jurisdiction handle the major share, often more than ninety percent of the trial work of the states' court systems. They are diverse, often isolated, although accessible, efficient and economical. More often than not, they operate with inferior resources, less qualified personnel and without effective scrutiny.

Despite this enormous institutional capacity for responsive and accessible community based justice, these courts are the subject of repeated criticism. They are said to neither conform to the rule of law, nor to perform needed social functions of controlling crime or resolving social and legal disputes. In attempting to do too many jobs, they are doing no job well.

Each set of criticisms has reflected an alternative set of conceptions of what the courts ought to be doing. Herbert Packer has modeled these assumptions in terms of a set of crime control values and a set of due process-rule of law values for the criminal justice system.(1) Griffith has offered an alternative model based upon principles of consensus, and the rehabilitative functions of the adjudicative process itself, analogous to the kinds of punishment that inhere in

family discipline.(2) And, Kenneth Dolbeare has suggested that conceptions of the role of courts ought to take account of the critical political functions that courts perform. They sit at the juncture of both the legal and political systems and therefore bear an extraordinary burden for monitoring and channeling demands for social change.(3)

Indeed several commentators have begun to characterize our court 'crisis' in terms of an overload not simply in the volume of cases, but an overload in the volume of burdens, that is, the kinds of problems, demands and functions which the courts are asked to serve.(4) Citizen's expectations for legal solutions and what can be achieved through law are escalating.(5) "Legal remedies are now deemed appropriate for a vast array of social problems which were formerly dealt with privately within the context of families, schools and churches.(11)

One of the few systematic efforts to address the particular role of the lower courts as distinct from general jurisdiction trial courts, has unfortunately tended to vacillate between adopting a position which incorporates the most prevalent criticisms of these courts as corrupt and incompetent, and one which explains the activities of the lower courts in terms of a multiplicity of socially, legally, and organizationally demanded functions.(7) Nevertheless, Robertson does suggest, quite strongly in fact, that the 'crisis' of

the lower courts is one of conflicting demands. Because the courts are members, frequently gatekeeping members of several organizational systems, the legal system, the social system, the political and the judicial system, they must often respond to incompatible demands. The courts process traditional demands for the legal means of social and crime control, demands for social service and rehabilitation, demands for redistribution of social and political costs and benefits, generalized legal order maintenance functions and demands for organizational self-maintenance of the judicial hierarchy as well as the self-maintenance of the lower courts themselves.

Some of the literature on the juvenile courts reports similar observations. Robert Emerson writes that the juvenile court functions primarily as a mediating agent between children in 'trouble' and available social services.(8) The courts have become, from this perspective, the official means not only for distributing facilities and services to those in need, but for generating the clientele necessary to justify the continued existence of the welfare service trial agencies as well.

Another focus of debate about the role of courts attempts to identify the particular functions of the courts as distinct from the jobs they do. Richard Lempert has rightly pointed to the shifting senses in which we use the word

'function' when talking about courts. In sociology, the term is quite clear. When we speak about the function of something, we are asking how that thing contributes to the viability of some institution, organization or system.(10) But 'function' is also used, and often when speaking about courts, to refer to what courts do, to how they operate and act. "The question of what courts do is not unrelated to the question of what functions they serve. When courts stop doing something, -- e.g., settling disputes -- it is unlikely they will continue to fill the correlative function (e.g., dispute settlement) for some larger system. However, if we are interested in what courts do, we are likely to analyze our data differently than if our concern is with the functions courts serve."(11)

The discussion about the role of the courts has tended to concentrate upon either conflict resolution or rule enforcement functions. Several authors have suggested that rule enforcement has become the principal function of courts in more industrialized and developed societies. Friedman and Percival argue that the courts they studied became functionally less important to community dispute settlement with increasing socio-economic development. The proportion of cases which were devoted to administration, where the courts seemed to certify solutions worked out privately seem to increase with time. The courts role, on the other hand, in resolving real

disputes seemed to diminish.(12)

M. Mileski suggests that this pattern is supported by anthropological studies of small scale societies. One characteristic of many preliterate societies is the fact that they are basically informal, nonbureaucratic; social control tends to occur in nonbureaucratized ways. Contemporary societies, on the other hand, are characterized primarily in terms of their bureaucratized systems of control. The difference can be identified in terms of the degree to which a society has developed functionally distinct specialized roles for rule enforcement and/or conflict resolution. Mileski suggests that the prevalence of a conflict resolution model of legal control in anthropolotical studies, and the prevalence of a rule enforcement model in sociological works, is really a reflection of the differences in the empirical cases studied.

> "This analytical difference is no doubt to some extent a result of empirical difference. The extent to which the outputs of the two polar types of control systems differ -- whether primarily rule enforcement or conflict resolution -- may in part be due to differences in the structures into which legal problems are poured and from which solutions emerge. Conflict resolution or order maintenance literally takes time and requires attention to individuals on a case by case basis. Highly bureaucratized courts with caseload problems lend themselves more easily to rule enforcement than to conflict resolution. Legal decisionmaking with a goal of conflict resolution almost necessarily entails particularism, with a rule enforcement end, and it entails a greater degree of universalism." (13)

The distinction between particularistic dispute resolution and universalistic rule enforcement is analytic and therefore aspects of each do appear within any system. It is the tendency toward one of the other polar extremes that research is attempting to identify. Such conceptual schemes serve to synthesize our knowledge about the courts and have been the basis for much of our most fundamental understandings about the history and development of legal systems. Weber and Maine based their work upon a notion of a progression from particularistic, ascriptive, status, and communal to universalist, achievement, contractual and associational societies.(14 It would be interesting to see to what extent Packer's and Griffith's models of the lower courts can be fit into this scheme.

The Due Process model places strongest emphasis upon the unique and inviolable integrity of the individual to be free from wrongful infringement upon his liberty. The model assumes that all human judgements are subject to error, and that the imposition of punishment is an awesome and stigmatizing deprivation of individual liberty. Legally imposed punishment is an expression of such great power, which is subject to equally great and facile abuse that it need not be efficiently deployed, but rather subject to extensive control via our traditional models of adversarial due process. Any imposition of the state's collective and legitimate force can only

be imposed after a most careful, guarded, protected examination of the <u>particular individual</u> and the <u>particular circumstances</u> as e.g. the applicability of general rules. Although the values of the model are distinctly modern, based upon conceptions of the individual as a contractural member of society, a bureaucratized system of adjudication is antithetical to liberal conceptions of due process.

The crime control model, on the other hand, suggests a strong affinity for a more consistently modernized apparatus for rule enforcement but assumes a traditional notion of more homogeneous society and values, as well as rules. It relies upon the expertise of the pre-trial screening mechanisms, that is, the professional competence of police and prosecutors, to correctly identify wrongdoers and bring them before the courts for official certification and imposition of punishment. It explicitly acknowledges the virtues of bureaucratically efficient and responsible processing of criminal offenders. It portrays the united group of organized solidarity in a Durkheimian sense, pitted against the individual deviant who threatens the social fabric by the violations of its norms.

Griffith's family model is interesting because it shares in common with many proposals for alternative mechanisms for dispute resolution a radically different conception of the social order. Rather than viewing society as an organization of conflicting interests and values, Griffith suggests that

we structure the criminal process on the basis of shared values, a consensus of purpose and interest between the individual and society. It suggests a desire to return to a simpler, less heterogeneous community, one where the common interests of the individual and the group are easier to perceive.(15) It suggests an effort at retribalizing American society, without perhaps sufficient recognition of the tyranny inherent in informal, personalized means of social control, e.g., rumor or ostracism.(16)

Indeed, it is not possible to fit descriptions neatly into conceptual schemes. What is apparent is the consistent tension between efforts to free the individual from oppressive bureaucratized power that is generalized and impersonal in the courts and police, and a desire to systematize and protect the modern individual's right to be treated individually and particularlistically. There is a desire to respond to problems individually and yet generalize the responses.

While the functional approach directs attention to the external aspects of courts, to their contribution to the societal whole, the approach of organizational theorists focuses attention upon the internal aspects of courts as organizations. Although some criticism has been levied

against organizational theory as an explanatory tool for understanding courts, there are several very interesting observations that have come from this effort. Organizational theorists tend to study individual courts, and the interaction of the participants in these courts. There is some difference of opinion as to what constitutes the setting and boundaries of courts as organizations, whether one studies only that which goes on in the courtroom or whether one studies "any interaction involving the task of processing and disposing of cases docketed in a trial court."(17) Nevertheless, several studies have begun to identify a variety of methods, schemes or styles of handling cases in trial courts.(18) It appears that all cases do not get handled the same way, even in the same court. This suggests that there are 'switching' mechanisms, and means of selecting cases for 'appropriate' styles of adjudication. This seems to be one of the most interesting clarifying observations about the courts and one we will return to below.

Finally, a word ought to be said about the civil caseload of the lower courts. Indeed, there is little research on this aspect of the limited jurisdiction courts apart from a burgeoning literature on the small claims jurisdiction. Our survey of the caseload statistics revealed that a very minor part of the work of these courts is civil and the research literature barely deals with it apart from small claims.

The small claims literature is extensive and well reviewed in Yngvesson and Hennessey. The small claims court is, like the criminal sessions of the lower courts, a "forgotten court." (19) The recent spurt of research on this aspect of the limited jurisdiction courts has tentatively concluded that they are often used to the disadvantage of the poor. They are being taken over by business organizations, who although not the majority of plaintiffs, nevertheless represent a substantial and clearly influential proportion of the plaintiff population. The courts are becoming debt collection agencies for business. The evidence also suggests that the plaintiff is almost always the winner in small claims courts. A structural equality of position between the plaintiff and the defendant, business and consumer, will not remedy the situation. Yngvesson and Hennessey suggest that "if the success of business plaintiffs is to be curbed...some means must be found of making the consumer defendant a little more than equal." (20) The small claims courts provided what was intended, a rapid, efficient, inexpensive and simple handling of small claims. The question remains whether this provides justice for the litigants. Among the reform proposals again is the creation of alternative, non-legalistic forms for dispute settlement. The concerns are for creating legitimate, accessible and understandable forums for airing and resolving citizen disputes and grievances.

Despite the fact that the courts are being asked to do more and more jobs in society, knowledge about them seems to be low. "The public appears to be largely uninformed about the courts." (21) Yet, those who know most about the courts "voice the greatest dissatisfaction and criticisms." Yet despite limited knowledge and dissatisfaction, the Yankelwich report states that the interest of the public in courts is high although confidence by the public in the courts is low. Other observers suggest that the inconsistent evaluations and perceptions of the courts may be explained by the fact that courts are just not salient features of the social environment. (22)

Yet support for reform is high among the public, if not among the judges and those who work in the courts. The effort for reform seems to come from two sources which again mirror the constantly re-emerging dichotomy of attitudes, perceptions and recommendations for these institutions. On the one hand, reform is an effort to rationalize the justice system, and not only make it efficient and "productive," but also to make it consistent with ideals of adversarial adjudication and due process. (23) On the other hand, reform efforts spring from a desire to make courts less oppressive, more accessible and therefore from this vantage, more effective mechanisms for resolving disputes and social grievances.

B. Lower Courts: Gatekeepers to a System in Tension

Each attempt to make sense of the literature, attitudes and work of these courts returns again to persistently diverse and conflicting views. Thus we begin with the existence of an inherent dualism within the legal system. To the extent that general jurisdiction courts adhere to the formal rules of due process and rationalized justice, they predicate the need for other less formal judicial agencies. This has been a pattern throughout the history of western legal systems, a tension created by formal law and its circumvention due to immediate and empirical demands. This tension requires some restraint. It is possible that the limited jurisdiction courts can provide a forum for this moderation of the conflicting tendencies within the law.

Weber pointed out that there are antiformalistic tendencies which make the characteristics of modern systems somewhat ambiguous and difficult to define. He wrote that there has been an increasing specialization in modern law which has been the result of "occupational differentiation and the increasing attention which commercial and industrial pressure groups have obtained for themselves. What they expect from these particularistic arrangements is that their legal affairs will be handled by specialized experts".(24) In addition, there has been a "desire to eliminate the formalities of normal legal procedure for the sake of a settlement that would be both expeditious and better adapted to the concrete case. In practice, this trend

signifies a weakening of legal formalism out of considerations of substantive expediency..."(24)

Within patterns of modern legal development, which has been particularly responsive to economic interests in rationalization and systematization in law, there have been persistent "tendencies favorable to the dilution of legal formalism". Weber marshalls examples from labor law, criminal law, rules of evidence and commercial law of Roman and modern periods to suggest that whenever questions of justice are raised, we depart from legalistic formalism. "In reality, a judicial system which would practice such ideals (of Kantian morality, e.g. Swiss Civil Code) would in view of the inevitability of value compromises, very often have to forget about abstract norms and, at least in cases of conflict, would have to admit concrete evaluations, i.e. not only non-formal but irrational law-finding".(25)

"Inevitably, the notion must expand that the law is a rational technical apparatus, which is continually transformable in the light of expediential considerations devoid of all sacredness of content."(26) Very early in English legal development, the chancellor performed the gatekeeper functions similar to the Roman praetor. He was able to shape inchoate issues into judicial forms. By the fourteenth and fifteenth centuries, his shaping and defining techniques - the writs - were developed into an independent equity jurisdiction. This constant reworking of the procedures and forms of law to accomodate circumstantial and practical demands in the face of increasing formalization is characteristic of Roman and common law.

The paper is arguing quite simply then, that the sense that is to be made of the limited jurisdiction courts lies in a reasoned acceptance of the tensions and dichotomies that lie within the institution, and the legal system. We are suggesting that tension between competing conceptions and competing functions is indeed the principle characteristic of the institution.

If the limited jurisdiction courts have a unique institutional capacity "to provide effective resolution to the cases they handle," it derives from their placement at the entry points or boundaries of the legal system. They are dispersed throughout the nation and embedded within local communities. They are the place where all problems come that may require certification that someone do something "forcefully" about this trouble.(27) The problems are not always simple, and perhaps too often are polycentric in Fuller's sense.(28) They may be incapable of being formulated so that arguments and evidence can be presented clearly for one or the other side, or so that a single solution or issue can be identified. But in whatever form the problems arise, they are in court because someone wants an end to the problem or trouble, and wants some solution that will be compulsory and legitimate.

But, if the boundary maintenance mechanisms of the lower courts are not functioning to screen out unsuitable issues and conflicts from the legal system, if they are attempting to do too many jobs in society, and to do them to the detriment of the less affluent and poor classes of society, it is not so much a reflection upon the limited jurisdiction courts as upon the legal system as a whole. As boundaries or gatekeepers to a system which is by its nature and total effect a multifunctional device, they reflect that diversity of purpose and function.(29) The tensions inherent in the legal system between justice, conflict resolution, social control and due process, rule enforcement and dispute resolution, between substantive and procedural rationality are particularly salient at the entry points to the system. Because most legal business takes place in these courts, very little of which filters to higher courts, the lower courts simply present the problem of legal pollution in its most exaggerated form.

Within any legal system there are conflicting tendencies and propensities for working out the essential properties of the rule of law, functions of law if you will. The lower or limited jurisdiction courts happen to represent, because of their unique position both at the point of access and as the forum for the major share of judicial business, the tensions between substantive and procedural justice

in its most blatant form. Quite simply, I wish to argue that the lower courts provide a different kind of justice than general jurisdiction courts. They are more particularistic, empirical, individualized and responsive to local communities. The work of the "higher" courts, on the other hand, is procedurally regular, more generalized, more rule bound and therefore more consistent with our conventional notions of the rule of law. But this does not mean that the lower courts are less legal, less legitimate and that there is no room within the conception of a rule of law for such courts. The rule of law, as it has developed in western culture, does not bind us to only one way of decision making, even one form of adjudication. Our notions of the rule of law and the function of legal systems are products of advanced rationality, a feature of highly developed society and of very recent historical development, even within the West. Moreover, our legal experience and development has not been of a single piece, and the attempt to impose singular models of appropriate and proper adjudication to the exclusion of those aspects of courts and adjudication which do not fit the ideal of a formally legal-rational model of law would be naive and foolhardy.

The rule of law in its most essential features is a regularization of the use of communally sanctioned force employed to handle disputes, grievances; "trouble."

Varieties and kinds of legal systems can be distinguished depending upon the explicitness and rationality of both the substance and procedures of those rules or regulations of the use of force. But in all legal systems, and especially in liberal democratic ones, tensions arise between substantive and procedural justice. This tension is particularly apparent in the lower courts to which all problems come before there is any screening of those which are particularly appropriate for formal adjudication, before and without being transformed and channeled into questions of law, which may be more appropriate for formal adjudication. The key to understanding the particular role and capacity of the limited jurisdiction courts, as the locale where tensions inherent within entire systems are especially ripe, is to look at them as gatekeepers, receivers, channels and transmitters of the raw material or stimuli for the legal system. Finally, I would like to suggest that the limited jurisdiction courts represent, within a system which tends toward formal rationality, toward generalized and universalistic principles of law, a forum for individualized and responsive community based justice.

Of course, many if not most of the limited jurisdiction courts, are quite rightly characterized as Kangaroo courts, as Alice in Wonderland charades. But it is also clear that even if one eliminated the profusion of justice of the peace

courts, municipal police courts, traffic courts and minor courts which dot the rural and urban landscape, a need persists for special forums for handling less serious matters, for limited jurisdiction courts. Those states which have formally eliminated the limited jurisdiction courts have retained the function in separate divisions of their general trial court. And those states which have simplified their court systems have also retained a system of limited jurisdiction courts. Therefore, the remarks that follow are meant to apply not to the local sinecures of petty and corrupt officials, but to the concept, and reality in many states, of limited jurisdiction courts which handle the majority of a state's criminal jurisdiction and a significant share of its civil jurisdiction.

C. Evidence

There are three bits of evidence which lend support to the conception of the limited jurisdiction courts as gatekeepers to the legal system where the tensions inherent in the system are especially prominent and troublesome. The first comes from the difference between the proportion of the general and limited jurisdiction courts' caseloads which is civil or criminal. The second set of data which suggests that lower courts are receptors and channels for legal issues is the increasingly common observation that the courts con-

tain switching mechanisms, that is, they handle different cases differently and are able to respond to the demands of individual cases in particular and appropriate ways. Finally, the variety of service and procedure which is available within the limited jurisdiction courts is justified not only within a philosophical understanding of the rule of law, but in citizens' conceptions of the function of courts and the service they demand of them.

1. Civil vs. criminal caseloads.

The numbers vary somewhat, and the means overlap to some degree, yet there is a clear tendency for a greater proportion of general jurisdiction courts' caseloads to be civil, while the greatest proportion of limited jurisdiction courts' cases are criminal, even without traffic matters. (See Table 26). A great deal more research needs to be done, but this suggests that the Weberian typologies of legal systems with the attendant analyses of the organizational and political tendencies inherent in each system, may be appropriate and worth further inquiry along these lines. Quite briefly, if general courts are primarily civil courts, can we assume, and further can we establish, that they are the preferred forum for business interests to take their cases to? Further, is there not, according to the Weberian analysis, a relationship between formal and procedural regularity and the long range interests of business and capitalist

accumulation? If this is so, and the limited jurisdiction courts are not the preferred forum for business interests, there is perhaps less impetus for them to develop in ways which serve this type of constitutency. The data is merely suggestive and perhaps worthy of further study.

However, we know that while criminal matters have remained firmly ensconced within the judicial administration of criminal justice, civil matters have been relegated to administrative forums. They are no longer perceived to contain serious conflicts of interests or values requiring formal adjudication. Rather, they are particular cases which need to be administered within a framework of principles formally and previously established by the courts. Exceptional matters may eventually appear in court, but petty civil issues involving a wide variety of subjects from licenses, rights of way, workmen's compensation, are handled routinely by administrative boards. On the other hand, petty small, unserious criminal cases have no where else but the court to go to. Criminal issues are handled only through the courts. Therefore, the proportion of criminal to civil cases is bound to be large. While this must be so in principle, and theory, it nevertheless invites several observations.

--The disproportion of criminal and civil matters which is theoretically reasonable given the division of responsibility for their routine administration also reflects a social segregation and stratification of the bar and the legal system. Criminal law and criminal lawyers are held in low esteem by the bar and in general by the public. They fall at the less prestigious end of a stratification spectrum which in many aspects also parallels the moral division of labor within the profession.(30) Patterns of adherence to and deviation from the stated and highly

moralized norms of the legal profession coordinate closely with the stratification within the profession. Prestige, status, economic rewards and power are attributes of members of large firms which deal almost exclusively with corporate and financial problems of big business. The recruitment, work patterns, compensation, strains and dilemmas of criminal practice have encouraged some observers to characterize aspects of it as a confidence game.(31) The practice of the common criminal lawyer does not fit well into the hallowed marble chambers reserved for disputes, the consequences of which alter the nature of our law and society.(32)

Moreover, the modern ethic of equity justice with individualized tailored solutions to individual problems creates a paradox for the system. Within such a framework of individualized justice, emphasis is placed upon information and perspectives which are inconsistent, as Weber suggested, with formal legal rationality. They seem jarring and out of place in many formal legal settings. For example, a defendant is charged with assaut against his wife. He is recognized to be suffering from several disadvantages, unemployment and alcoholism which have caused serious strain to an otherwise stable and legally uneventful marriage and family. It is apparent to the probation staff that a job and treatment or therapy for the alcoholic 'symptons' would take care of this family's problems. It does not however eradicate the fact that or the legal status of the assault that was committed. The psychological 'evidence', therapeutic diagnoses, social history of the family are relevant to a just and equitable consideration of the case and yet become uncomfortably out of place when they are tailored to the requirement of legal evidence, proof of guilt considerations of legal responsibility. Yet they are the 'stuff' of decisionmaking and adjudication in the lower cours.(33)

Observations in the district courts of Massachusetts

have produced volumes of descriptions of how the disposition of cases involves a dialogue between complainants, prosecutor, defendant, counsel, social worker, probation officer, and judge, without any necessarily formal ordering, about the 'nature of the problem' and a reasonable solution.(34) The nature of the problem is not the assault. That is simply the precipitant act which has mobilized this array of problem solvers. Our survey of judges attending judicial colleges confirmed this observation. The judges reported that a variety of court personnel participated in the suggestion of appropriate disposition of cases. This informal, almost collegial, decisionmkaing is inconsistent with expectations about legal process, to which we expect greater congruity in the general jurisdiction courts.

Finally, the stratification of the personnel who serve the criminal process is mirrored in terms of the persons whose problems come to the lower courts. They are in these ways, truly 'inferior' courts. The litigants are more often the less affluent and disadvantaged classes in society. Their quarrels are not about reordering corporate relations or consequential contractual agreements. Their problems are criminal, or at least, defined as criminal problems because they are socially, economically and politically subordinate classes.(35)

2. Courts a Channeling Devices.

The literature on the lower courts presents a picture of informal highly individualized courts that do not seem to follow the precise forms of adversarial due process. Plea bargaining (which exists in general jurisdiction courts as well) distorts the conflict model of the court, and decisions do not necessarily

follow carefully staged and dramatic trials. The lower courts have the appearance of not conforming to law. In the previous sections, we began to suggest that through their informality and diversity the limited jurisdiction courts can be seen to be providing a place within the legal system for balancing the claims of procedural formality and substantive justice. It could be argued that they represent the tensions inherent within the legal system between these two conflicting strains of legal development.

From this perspective, the lower courts have a distinctive institutional capacity for informal, individualized, and responsive justice. The literature on these courts is conflicted because the lower courts are not totally disordered, completely arbitrary or entirely unreasonable institutions. The processes within the courts are not random, punishments are designed to meet the situations and the full panoply of procedural rights do come into play, when the circumstances demand them. Instead of inquiring as to why courts or particular organizations do not seem to meet preestablished goals, why law in action is different than the law on the books, we ought to try to account for the plurality of alternative processes of decisionmaking within these organizations.

The literature is beginning to remark that courts are single institutions processing disputes in several different fashions.(37) Mohr suggests that the processes may be analogous to what socio-linguists call code-switching(38) from one type of decisional situation to another. These situations or decisionmaking models are based upon models which emerge from the organizational literature. They share the common assumption that systems of decisionmaking are

organizations of goals and structure which are dependent upon technological and environmental forces, rather than properties to be managed at will.(39) The four models he suggests, the firm (bargaining and satisfying); the rational system (analysis and persuasion, maximizing); the garbage can (coming and going, waiting and strategic agglomeration), and political (contention, struggle, force and domination) refer to contextual variables of goal compatibility, consistency of participation, resource constratints and norms agains redistribution.

Drawing upon the most prominent court studies, Mohr suggests that courts switch from the firm model of plea bargaining to the political model of adversarial decision-making. The key to this conception is to identify why this switching takes place and under what conditions. Mohr's analysis suggests that the institutional capacity of lower courts is broad and enables them to respond to situations which demand specific kinds of attention and handling.

In Mather's study of the L.A. county courts, eighty-seven percent of the cases not dismissed were settled by implicit or explicit plea bargaining.(40) The analysis strongly suggests that, by tradition, certain cypes of cases were expected to go to trial. These were the cases in which the goals of the participants would understandably be the least compatible, where the cooperation implicit in plea-bargaining was absent.

The prime example is the case that must be considered "serious" and that also contains a reasonable doubt as to the guilt of the defendant. These factors, seriousness and reasonable doubt, suggest that one can switch from a "crime" control model relying upon the efficiency of the pre-trial screening to a due process model. The latter relies upon the adversary process for determining guilt or innocence when indeed the pre-trial processes have not succeeded in sufficiently eliminating all doubt, and where the offense is sufficiently serious as to merit special care in making any final determination about punishment.

Because of tradition, resource constraints and norms against redistribution are lower in serious and doubtful cases, just as the compatibility of goals is lower. It appears to be understood by all major participants that the limited time and energy available for adversarial, redistributive processes, would be reserved for just such cases. The process of selection of cases for trial appears not to be random, nor arbitrary nor even for the most part unilateral. The same flavor of rationed, and rational justice is imparted by many of the examples scattered throughout the literature.

There has always existed a recognized distinction betwen "cases of no importance" and others, and the hierarchical divisions of labor within the judicial system has from

earliest times reflected this.(42) The creation of misdemeanor and limited jurisdiction courts rperesents a judgement that certain offenses -- especially very numerous petty offenses -- can be handled in a way which meets the needs of mass production, without seriously demeaning the constitutional ideals of due process.(43) But with serious felony cases, every protection of constitutional right ought to be available and the system ought to be 'corrected' to 'withstand the stress placed upon it by the assertion of constitutional rights by large numbers of defendants".(44)

It appears, however, that the distinction between serious and petty, and the consequent processes, are not co-extensive with the distinction between misdemeanor and felony, but are a reflection of experientially developed understandings of crime and society. Sudnow's early study constructed categories of 'normal' crimes from typical patterns of committing procedures and the characteristics of the offender.(45) Mather observed that cases could be typed by constructing a matrix along two axes, one distinguishing serious from light offenses, and the other distinguishing 'dead bang' from cases with reasonable doubt.(46) Most cases are light/dead bang and do not demand the full array of constitutionally protected procedures. The more serious and especially those with reasonable doubt enjoy the fully panoply of adversary procedure. Researchers are beginning to identify more fully the characteristics of serious offenses, those which merit and demand different proceedings.

Arnold Enker has proposed a scheme for identifying the seriousness of limited jurisidiction cases in terms of whether they seem to require counsel, and therefore a more faithful adherence to adversarial process. His criteria refer to the clarity of the definition of the offense and the likelihood

that the defendant can make a competent judgement about his/her own guilt or innocence. He suggests that drunkenness cases represent one extreme of clarity where there is little ambiguity about the evidence, and little doubt as to the guilt of the party. At the other extreme of a continuum, there is disorderly conduct, which is a vague offense and therefore often difficult to determine whether the particular behavior falls within the legally proscribed boundaries. For these kinds of offenses, counsel will have a greater impact upon the system and the person. Enker suggests that non-support cases, gambling, shoplifting, minor vices and theft are more like drunkenness in that proscribed behavior is rather specific and clear and the defendant can fairly well know whether or not he is guilty. Vagrancy, breaches of the peaces are more like disorderly conduct charges and more in need of counsel. Enker places minor assaults somewhere in the middle, and suggests that they are often just the tip of some more complicated set of events. "While the elements of the prima facie crime are simple, the liklihood of an issue of self-defense being so great and the ambiguities of this defense being what they are, I would probably put simple assault next in my order of priorities after the disorderly conduct group," in need of counsel and therefore more serious, in terms of demanding more due process.(47)

Serious cases can be distinguished not only by the nature of the offense, which usually mans personal violence or a "professional" crime, but by the relationship between the victim and the offender. The Vera study reported that in nearly half of the cases studied in New York City, the

victim and offender had a relationship in nearly half of the "victim" crimes.(48) The range varied from twenty percent in automobile thefts, to sixty nine percent in assault and eighty three percent in cases of rape. Even among traditional stranger cases of burglary (thirty-nine precent) and of robbery (thirty six percent) a relationship between the victim and offender was discovered.

The presence of a previous relationship places these cases into the category of less serious or "junk" cases, because they are more difficult to prosecute and because they usually involve circumstances, because of the relationship of the parties, which mitigates against determining any clear guilt on the part of the offender. Often, too, the victim will not cooperate in the prosecution because of the relationship. Frequently the event is the result of some long standing or simmering dispute, after which the parties have reconciled and the victim is no longer interested in seeing the offender punished. The prosecutor has lost his witness. These types of cases, which according to the study represent nearly half of the criminal caseload in the lower courts, suggest a need for conflict resolution mechanism as much as rule enforcement.

The data further suggest that conviction rates are lower where there has been a prior relationship, and where there are "real" crimes, offenses against strangers, the conviction rates are higher. Moreover, where the offense is one between strangers, there is rarely a reduction to a misdemeanor. The study reported a seventy five percent conviction rate on "stranger" cases, and a fourteen percent conviction rate on cases where there had been a prior relationshp, thus confirming the observation that there is a correspondence between the outcome of the process and the offense.

The evidence suggests quite strongly that the adjustment within the criminal process, through plea bargaining, charge reduction, and discretionary sentencing reflects reasoned accomodations to circumstances. These situations are not accidental or unavoidable, but aspects of real situations which distinguish certain behavior as dangerous, serious, 'criminal' and in need of careful judicial handling from behavior which is less serious. The credibility of the witnesses, evaluations of the worth of the crime and convictability of the person are decisions which professionalism and experience of the criminal process train the participants to be able to make.

The crux of the evidence demonstrates, therefore, that the switching and triage is not irrational. Moreover, legal historians have begun to point out that flexibility has been a characteristics of the criminal process for a long time, and that plea bargaining is not necessarily a modern or pathological feature.(49) More than being a resonse to overcrowing, low quality personnel, laziness, stupidity, and financial rewards, plea bargaining is becoming described in terms which suggest that it provides that opportunity for substantive justice which we have argued is characteristic of lower courts. Feeley states that critics of plea bargaining ignore the fact that "many charge reductions are made 'in the interests of justice'"(50) He puts plea bargaining in the same category as other legal fictions, such as equity processes which facilitate an adjustment between procedures and substantive goals.

A consensus is beginning to emerge, therefore, that models of the courts are not exclusive, but descriptions of activities

occurring at one or another time, depending upon the circumstances. This accounts for the two faced appearance of the courts. From the bottom up, from the perspective of the litigant, the courts are formalistic, often time-consuming irrelevant rituals. From the top down, from the perspective of the professional elite, and the higher courts, they appear informal, disordered, 'non-legal'.

Perhaps one can regard the court as a market place of dispute resolution devices, decisionmaking systems in Mohr's terminology and begin to formalize the switching devices and accessbility of the different processes in order to insure equity and regularity of access. Perhaps it is possible to regard Mohr's four dimensions of decisionmkaing as more of less predominate models in different kinds of courts, that different styles of adjudication and decisionmaking exist in different setting and that the style and work adjust and accomodate to each other.

Cratsley's conception of the limited jurisdiction courts as community courts offering alternative dispute resolution within the judicial system speaks directly to this issue of formalizing the access to a variety of decisionmkaing processes. Cratsley (51) describes the lower courts as fora for a variety of alternatives including but not exclusively adjudication. The range of mechanisms varies but also includes less formal adjudication in specialized housing, traffic and even juvenile courts arbitration and an array of screening processes. It also includes several fact finding mechanisms, diversion programs, mediation, information and referral services. Cratsley suggests that the creation of alternative dispute resolution mechanisms will have little effect upon the volume or duties problem in the lower courts because the courts are not really

overwhelmed with work, judges hours are not excessive, and judges would of necessity have to have some additional involvement in the alternative mechanisms. Further, if avoidance is a common technique of dispute resolution, many disputes do not come to court and for those that do, a non-binding mechanism would have little effect upon the conflicts where a coercive institution is necessary. Disputants will continue to need advice about legal rights and the proliferation of fora would only exacerbate our already diminished capacity to provide professional and competent legal counsel.

The argument that the courts can and do provide a range of decisionmaking processes, or dispute resolution mechanisms which are responsive to both substantive and procedural concerns, is persuasive. Moreover, it is compelling because it rests upon a reasoned and experientially developed understanding that courts have a unique capacity which alternative mechanisms do not share: the ability to provide legitimate and compulsory solutions to problems.

3. Demand Responsiveness. Why People Go to Court.

Although many studies report that none of the participants in court wish to be there, they are there nonetheless.(52)

There must be something available in court, that is available no where else. Several pieces of recent data confirm the notion that when people go to court they seek an authoritative third party decision, a third party with an independent voice and power as a sanction to best their opponent, or as a means to end the issue. Sally Merry's study "Going to Court" details the disputing strategies of members of an urban housing project and indicates that the members of the community who take their dispute to court, are adopting one of several possible options for resolving disputes. The utilization of any particular option depends upon the particular tactical position of the parties, but in all cases, the parties seek an end to the conflict, or a victory. Lumping it, avoidance, endurance, violence are other options, but it is recognized that the court provides its own distinctive effect, legitimate and compulsory resolution.(53)

Recent testimony before a Senate hearing on the creation of alternative dispute resolution fora confirmed this observation. A Boston resident who had visited a local 'urban' court, stated that when she went to court for help, she was seeking "someone in authority to tell him(her husband) to leave me alone".(54) Those who use the law, administrators, lawyers, law enforcement officers and citizens, seek to align the powers of the polity on a given side of the issue. They seek to have a resolution to a dispute imposed as a non-otpional solution.

During July and August 1979, we asked 786 citizens who brought complaints to the Cambridge District Court, Cambridge Massachusetts, why they came to court and what they expected to happen. Over eighty percent filed complaints seeking some form of resolution of their problem. They were not anxious to have

the matter prosecuted. Of those eighty percent, many sought intervention and service, especially in cases of abuse or assault. One third of the complaints were business related issues: bad checks, frauds, deceptions of some sort. And these complainants also sought resolution, in this case restitution, in preference to prosecution. Of the 786 complaints 40 were for wife abuse. They were referred to the court from a variety of sources: 85 came from the Welfare department, 80 were requesting hearings on motor vehicle citations, 260 were recommended by some official peacekeeping or prosecutorial officer, 248 were business losses, 12 were sent by neighbors, 8 by legal services, 4 by a hospital and 7 from a social worker.

If citizens bring to court a vast array of problems, and can be satisfactorily serviced by a variety of mechanisms and processes within the court, it suggests that the core of our dilemma or "crisis" in the courts lies in too strict adherence to a conception of law conceived only in terms of a narrow definition of adversarial adjudication. Skolnick clued us to this when he noted that the dilemma of the adversary system, the basic model of our legal system, arose from the fact that the tendencies toward coercion inherent in the Americal administration of justice, deviated from the conflict model of adversariness but did not demonstrably impede the quality of representation, and implicitly, justice.(55) This raised a suspicion about the wisdom of perpetually applying a model which is inoperative. It suggests, perhaps, a preoccuption with straw men. In the attempt to make sense of the legal process, its complexities and vagarities, we perceive patterns, and roles, and functions. We see that law does indeed involve rule enforcement, and that it does offer a means of settling disputes. But we tend to look too close. We forget to look at the roots.

Perhaps it is too simplistic, or on the other hand, too theoretical and abstruse, too removed from what we think we see in the courtroom.

We have to take a closer look at what we expect of the adversary system. It seems to be understood primarily in the context of adjudication, and vice versa. Lon Fuller has defined adjudication in terms of the institutionally protected opportunity it affords an affected party to present proofs and argument for a decision in his favor. Fuller's definition is offered, however, in the context of a discussion of the kinds of issues which are particularly appropriate for adjudication, and as a criteria for siphoning off those that are inappropriate. It is a formulation which is intended to provide contextual meaning to the notion of having one's day in court.

> "Adjudication is a form of social decision which is characterized by a pecular mode of participation accorded to the affected party, this participation consisting in the opportunity to present proofs and arguments for a decision in his favor. Whatever impairs the meaning and force of that participation impairs the integrity of adjudication itself. This participation is seriously impaired where an attempt is made to deal with problems where the polycentric element, as here defined, is important and significant. Adjudication is a mode of decision badly suited for the solution of polycentric problems. When it is seriously misused in this direction the rule of law is itself impaired." (56)

It is a conception of adjudication and law based upon democratic, participatory values. It asserts that truth, or

the proof of one's guilt can only, and ought only, to be determined through an argument or open debate. It does not mean, however, that if lawyers talk to each other, confer, and negotiate, are not enemies, that adversariness or the adversary process is destroyed. While the model is theoretically of conflict and battle, it can be so only in a symbolic sense. Cooperation, collegiality, and negotiation do not in principle challenge the working assumption that through a contest of wits and argumentation, the truth will out. If adjustment, resolution or remedy without regard to truth, is an objective, adversariness may indeed be less relevant. But one must, then question, and examine carefully the premises of a process, for example mediation, which is less concerned with 'truth'. (57)

But Fuller stated the problem himself when he wrote that "the essence of the judicial function lies not in the substance of the conclusions reached but in the procedures by which the substance is quaranteed". (58) The procedure is not solely, however, the adversary process, but the delegation to a third party of the ability to compel solution to a problem and issue before it and ability to secure review of this. If we take a careful look at what adjudication-judging-means, we see that whatever functions can be identified and indeed a myriad are possible, in all his jobs, and all his functions, whatever else a judge does, he/she authorizes the use of force, implicitly, if not explicitly to compel solution to a problem. (59) It is for this reason that people go to court, and this procedure that characterizes adjudication.

Citizens demand resolution of their troubles and the courts respond. Because the court provides this responsiveness, people go there. But, the myriad of remedies, and resolutions which the court provides to citizens' troubles appears chaotic

because we want to understand what is legal about it. By providing therapy to an alcoholic, job training for the unemployed, rehabilitation for a drug addict, the courts respond to problems rather than crimes. It appears that they go beyond narrowly assigned powers, that is judgement of guilt or innocence, determinations of winners and losers in fashioning individualized solutions to cases of grievance, trouble or differences of interests and values. But, it is not a chaotic enterprise. People come to court because the courts respond to their trouble.

An analogy between the courts and the practice of medicine was recently suggested to me in order to illustrate the thematic unity of the judicial enterprise, and work of responsive agencies. If a doctor diagnoses a child to be in need of ascorbic acid, he/she may suggest to the parents that they feed the child great quantities of orange juice. The parents may respond that their child does not drink orange juice or eat any citrus fruits, and is generally a 'difficult' eater. The doctor will often provide hints, suggestions, advice about child rearing, and discipline, ways of regulating children's habits. Is this strictly a medical problem? Will the advice about discipline be strictly related to the child's need for ascorbic acid? In the same way, that the judge may do many things in the course of adjudicating a case, a catalog of which they would be difficult to justify in terms of judging , the would nevertheless be subsumed and ordered by it. It is not, just as the doctor's excursions into family discipline are not, irrational, irrelevant disordered or chaotic.

D. Conclusion.

The suggestion that courts can provide alternative styles of adjudication, and justice, within the framework of the rule of law raises critical questions about our fundamental understanding of the role of law in society. I can provide no definitive answers to such questions; I hope, however, that I can shed some light on these issues and indicate some directions for future research.

By the rule of law we mean something more generalize than the specific legal rules of a particular time, or class; more than the particular procedures of some court, or culture.(60) I think our understanding of courts, and particularly of limited jurisdiction courts as a distinct adjudicative forum, needs to be placed within an unabashed affirmation of this most elemental notion of law as the regulation of the use of force and provision of authoritative compulsory remedies in a society.(61) Once done, it becomes clearer that within the rule of law, as a regulation of the use of force, there lies the possibility of a variety of forms and styles of adjudication.

Not all legal systems operate the same way. And while they may be producing for society similar results in terms of general social purposes, such as the regulation of the use of force, rule enforcement, dispute resolution, they may do it in different ways.

We have too great a need for neat and tidy categories, for rationality of a simple sort. The impulse in modern societies toward bureaucratization, impersonal rules apllied impersonally, the tendency toward what Weber called logical formal rationality, leads us to reject those aspects of the laws which do not

fit squarely within the formal outlines of the model we have evolved and adopted. The tensions inherent in a procedurally formal rational system of law arise from the inability to fit human behavior into neat and tidy categories. And, the tensions are particularly great in a system where democratic values and a participatory ethos prevails.

The adversarial system of Anglo-American law has within it aspects of formal rationality, merged with concerns for substantive justice. Moreover, it contains, because of its substantive concerns with democratic principles, aspects of substantively irrational 'democratic' law, such as the jury, and even procedurally irrational aspects such as oaths. The desire to 'do justice', but have it done in a regular, procedurally correct way, according to the rule of law characterizes the dilemma of western legal systems. It is perhaps the "crisis of the liberal state" as one author has stated it.(62) It arises from two sources: factual inequality coupled to formal legal equality and the need to achieve substantive ends that conflict with procedural formal rationality.

The lower courts have repeatedly been talked about in terms of providing a kind of Khadi justice, antithetical to logical formal rationality. Weber described the English justices of the peace in this way. "The courts of the justices of the peace, which dealt with the daily troubles and misdemeanors of the masses, were informal and represented Khadi justice to an extent completely unknown on the continent".(63) They provided a kind of substantive, irrational, empirical justice inconsistent, Weber says, with capitalist interests in procedural, regular and predictable adjudication. They provided a kind of safety valve against

formalism. "In Khadi justice, there are no 'rational' bases of 'judgement' at all, and in the pure form of empirical justice we do not find such rational bases, at least in the sense that we are using the term."(64) Weber used the term rational to mean an ordered, structured relationship between means and ends, which was not limited to being reasonable. Khadi justice is understood as being blatantly empirical decisionmaking, particularistic and not subject to ordered principles of substance or procedure. It is not rational in the sense of being part of an 'ordered scheme' but it may nevertheless be reasonable in that it flows from a due exercise of reason.

To identify aspects of Khadi justice in the limited jurisdiction courts as a reversal or anomaly within the rule of law may be mistaken. Criticism of Khadi justice as irrational or not consistent with modern conceptions of the rule of law ignores a history of unclear boundaries between substantive rationality and procedural rationality, between legislative forums and adjudicative forums. There are abundant examples of the lack of clarity between official forums for determing rights, establishing rules, and settling disputes. The historical incidents of a mix of judicial and legislative, between deciding rights and creating rights, is not the exception but more the rule.(65) For example, the legislature of Massachusetts is called and was in the seventeenth century the General Court. In the eighteenth century, divorces were obtained by personal laws passed by the Commonwealth. Rather, it would seem that the lower courts are simply the forum within the legal system where its inherent tensions are being worked out.

Perhaps the crisis of the adversary system, as an example

of the several tensions inherent within the rule of law, and as the major focus of criticism within the limited jurisdiction courts, can best be understood in more experiential terms if we conceive of its in terms of a litigant in the courtroom

Adversariness is taken to set limits to adjudication in terms of the litigants right to present evidence. On the basis of the evidence presented, and not on the basis of anything else, a decision is to be made. This is the litigant's interest in the matter and the guarantee of participation in a politically independent, modern and rational system. But, the litigant is hurting in some way and has a need, and a desire, otherwise why be in court, to have that pain mended.

However, the public has an interest in generalizing the solution to this litigant's problem, of providing a universally or communally available remedy. Problems are resolved in an enormous variety of ways, only one of which, we now know, is law. Bohannon described the difference between informal modes of settling disputes and this legal way, in terms of a process or re-institutionalization of the norms and solutions arrived at in more informal methods.(65a) The legal system provides a means for redoing, so to speak, and generalizing, what is culturally and informally developed. The price of law, as a re-institutionalization of socially arrived at solutions, is that the solutions to particular problems be based only upon the evidence and proof that can be presented through those institutional forms and procedures, and not upon the personal litigant's hurt. The solutions which the law provides, it can only provide through its own unique legal procedures.

This is what E.P.Thompson was referring to when he wrote in history of the Black Acts of the English ruling class creating a remedy which allowed others to use it as well; that was the price the English gentry paid for their privilege to be free from the tyranny of the king.(66)

But, this is an important but, there is also a public interest in mitigating the force of law. There is a social interest in seeing that when a hurt is translated into an issue, formulated in legal terms, that the hurt gets taken care of too. There is the public interest in preventing the damages that flow from the accumulated personal hurts, such as alcoholism, drug abuse, child neglect etc.

What Weber so articulately identified and I am struggling to convey is the distance between a litigant's conception of his trouble, hurt and pain, and the judge's ability, within the law, to deal with it. This distance needs some modulation. Moreoever, there is a tendency in legal systems of increasing rationality to develop increasingly formal rules and procedures, generalizations of instances of hurt which increase the distance between the litigants hurt and the court's ability to remedy it. This is the tension that persists between the Weberian types of legal systems, between legal formal rationality and substantive justice.

The need to have ready fora for dispute resolution is agreed upon. The complexity of social grievances, and disputes is also appreciated. Whether it be the sources of alcoholism, drug abuse or familial instability, the problems which show up in court do not often allow of easy answers. And, Pound's warning about the consequences of allowing small injustices to fester in the body politics is also well heeded.

But, somehow the courts are deemed inappropriate. Again, as always, the problem admits of two approaches. Either the courts are not measuring up to the procedural formality we expect of law, and are therefore unable to provide the semblances of justice which are essential to the legitimate resolution of disputes; or, the techniques, procedures, special competence of the courts is too narrow to adequately handle the complexity of modern disputes. There is an effort in current reform movements to avoid the damages from traditional legal solutions, from procedrual regularity and formality. We want what the courts can offer in terms of regularity, generality, predictability and equality of treatment, of judgments on the facts not of persons. We want that authoritative resolution of disputes without the price of distortion of complaint or hurt.

Yet, we are not so naive as to assume that our disagreements are that much more complex than our ancient forbearers were. Have problems all of a sudden become polycentric? Isn't it more likely that we have developed, as is the tendency in rational legal systems, sufficiently narrower and narrower conceptions of appropriate matters to be handled through defined and specified legal procedures that we have lost the opportunity of making use of its unique services.(67) Surely, this has been the pattern throughout our legal history. Increasing formalization of one process which has limited its social utility has led to the development of alternative mechanisms for handling those issues. But, we have not gone outside the law. Rather, we have incorporated those alternatives within the law.

What would it mean to have managers or mediators resolve interpersonal, or social disputes? What would it mean to assign familial disputes to mediators and therapists? Who ought these non-judicial dispute handlers be? What incentives would they have to induce parties to negotiate, or to settle their differences? These are the kinds of questions which are being asked about the creation of alternatives to adjudication for the resolution of disputes.

The literature on small scale societies and socialist countries, as well as labor relations in the United States, where mediation has often served as the predominant mode of handling disputes, suggests several characteristics of the process which may or may not occur in the American context. Mediation is occasionally coercive, settlements are subject to community social norms and it is under the control of prominent political powerful figures. Moreover, where mediation exists, there is a pressing need to settle. In the American setting, does mediation in fact rely implicitly on the coercion of social norms and community structures? Can it be effective without this coercion? Can mediation provide settlements perceived as satisfactory only in certain kinds of limited social relationships and restricted kinds of disputes? And, does mediation fundamentally assume a level of consensus not demanded by adjudication, here understood simply as third party decisionmaking, and which may not exist in American society? Finally, do we wish to assign this kind of personalized influence to institutions unregulated by some generalized, universally applicable rules, i.e.law.

The questions come down to determing how far judges can

go in the direction of dispute resolution beyond the bounds and outside of the formal procedures of adversarial adjudication? What means can be established for variable responsive decision-making, able to deal with complex social issues, and yet retain that rubric of law, which we understand regulates and legitimates the use of force in society, and shrouds the individual from unwelcome, illegitimate intrusions upon his person and personality.

Perhaps a legal system can incorporate within itself different styles of adjudication; we know from the examination of the limited jurisdiction courts that it does. But this variety, be it Khadi justice, formal legal rationalty, due process, must remain within the legal system and not outside of it. We require that protection of limited and regulated coercion for the existence of predictable and peaceful coercion. The alternative to this is personalized and particularistic, rooted in more consensual and less conflicted societies, where the norms and rules of behavior are clearer, and the sphere of individuality more constricted. If the price of law is procedural formality and technicality at certain stages, if not throughout, then that is the price we pay for insuring the anonymity, freedom to deviate, go against the rules, which is necessary for justice.(68)

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61. See Silbey, Susan S. (1978) "Consumer Justice: The Massachusetts Attorney General's Office of Consumer Protection 1970-1974." Unpublished Ph.D. Dissertation University of Chicago.

See also, Bobbio, Norberto (1965) "Law and Force" 48 The Monist 321: Olivecrona, Karl (1959) Law as Fact. London: Oxford University Press; Ross, Alf (1958) On Law and Justice London: Steiner and Sons. Seagle, William (1941) Quest for Law. New York: Knopf, and Seagle, William (1971) Men of Law.

62. Balbus, op. cit.

63. Weber, p. 230.

64. Ibid, p. 351.

65. Ibid, p. 300

65a. Bohannon, Paul "The Differing Realms of the Law" in Nader, L. ed. The Ethnology of Law, 67 American Anthropologies (1965)

66. Thompson, E. P. op. cit.

67. See generally, Friedman, Lawrence. A History of American Law.

68. See for example, Sennett, Richard (1979) "The Desire to Know" A review of Michel Foucault, Madness and Civilization, The New Yorker, July 16, 1979, p. 102.

APPENDIX I

Limited Jurisdiction Courts: 1976

STATE	Number of courts/ Number of judges	COURT	CRIMINAL JURISDICTION	CIVIL JURISDICTION	OTHER JURISDICTION
AL	73 / 87	District**	OTP; FP; T	$5,000	Juvenile
	∿330 / 397	Municipal	OV	--	
	68 / 68	Probate	--	--	Probate
AK	4 / 28	District	12/$500; FP; OV	$10,000	
	56 / 56	Magistrates Division	12/$500; FP; OV	$10,000	
AZ	84 / 84	Justice	6/$300; FP	$1,000	
	70 / 90	City Magistrate	6/$300; T; OV	--	
AR	75 / 75	County	--	--	Claims vs.
	13 / 75	Court of Common Pleas	--	$1,500	
	91 / 95	Municipal	12/$250; FP	$300	
	9 / 9	Justice of Peace	12/$250; FP; T	$300	
	2 / 2	Police	12/$250; T; OV	$300	
	80 / 80	City Courts*	12/$250; T; OV	$300	
CA	84 / 425	Municipal	OTP; FP; T; OV	$5,000	SC $500
	175 / 175	Justice	12/$1,000; FP; T; OV	$1,000	SC $500
CO	63 / 106	County	24/; T	$1,000	
	197 / 174	Municipal	T; OV	--	

* Disagreement in number of courts cited by National Center for State Courts, State Court Caseload Statistics Annual Report 1976 and American Judicature Society, Courts of Limited Jurisdiction: A National Survey (1975). The National Center figure was used.

** This court will be eliminated or reorganized (see text). ∿ Signifies no exact figure reported.

number/$ amount Indicates maximum penalty allowed under the courts criminal jurisdiction (i.e., 12 months/$500).

FP	Felony preliminary hearings.	DR	Domestic relations.
T	Traffic jurisdiction.	OTP	Other than in penitentiary.
OV	Ordinance violations.	MISD	Misdemeanor jurisdiction.
P	Probate	Some MISD	Some misdemeanors.
J	Juvenile	AvJ	Offenses by adults against juveniles.

STATE	Number of courts/ Number of judges	COURT	CRIMINAL JURISDICTION	CIVIL JURISDICTION	OTHER JURISDICTION
CT	19 / 61	Court of Common Pleas	12/$1,000; FP	$5,000	SC $750
	129 / 129	Probate	--	--	Probate
	3 / 6	Juvenile	--	--	Juvenile
DE	3 / 5	Court of Common Pleas	MISD	$3,000	
	3 / 11	Family	--	--	Family / Divorce
	1 / 3	Municipal (Wilmington)	MISD; FP; T; OV	--	
	14 / 7	Alderman	T; OV	--	
	15 / 53	Justice	Minor MISD; FP; T	$1,500	
FL	67 / 64	County	12/; FP; OV	$2,500	
	205 / 205	Municipal**	OV	--	
GA	159 / 159	Probate	T	--	Probate
	35 / 32	Juvenile*	--	--	Juvenile
	∿1500 / 1500	Justice*	Warrants	$200	
	60 / 2	State*	12/; FP	unlimited	Probate
	12 / 2	City	MISD; T; OV	--	
	∿400 /	Localized courts	varies	varies	
HI	4 / 16	District	12/$1,000; OV	$5,000	SC $300
ID	7 / 66	Magistrates Division	12/$1,000	$5,000	SC $300
IL	21 / 239	Associates Judges Division	12/; jurisdiction of general jurisdiction court	General	General
IN	53 / 62	County*, ***	12/$1,000; T; OV	$3,000	
	87 / 87	City	6/$500; T; OV	$500 - $2,500	
	2 / 2	Probate	--	--	Probate; Juvenile
	2 / 2	Justice***	6/$500	--	
	∿25 / 25	Town***	6/$500	--	
	1 / 15	Municipal (Marion)	12/$1,000; T; OV	$10,000	
IA	8 / 191	Jud. Magistrates Div.	12/; FP	$1,000	
	8 / 46	Assoc. Judges Division	12/; OV	$3,000	Juvenile;
KS	29 / 141	Magistrates Div.**	FP	$2,000	Juvenile; Probate
	192 / 386	Municipal	12/$499; T; OV	--	
KY	120 / 120	Quarterly**	12/$500	$500	
	344 / 344	Police*	12/$500; OV	$500	
	120 / 120	County	12/$500; FP	--	Juvenile; Probate
	600 / 600	Justices	12/$500	$500	

STATE	Number of courts/ Number of judges	COURT	CRIMINAL JURISDICTION	CIVIL JURISDICTION	OTHER JURISDICTION
LA	390 / 390	Justice*	FP	$100	
	229 / 229	Mayors	OV (2/$500)	--	
	50 / 60	City/Parish	varies; FP; T; OV	varies	
	3 / 7	Juvenile	--	--	Juvenile
ME	13 / 20	District*	OTP; FP; OV	$20,000	Juvenile
	16 / 16	Probate	--	--	Probate; Family
MD	12 / 80	District	36/$2,500; T; OV	$5,000	
	24 / 69	Orphans	--	--	Probate
MA	72 / 164	District***	60/OTP; FP; T; OV	unlimited	Juvenile; SC
	14 / 27	Probate	--	--	Probate
	4 / 6	Juvenile	--	--	Juvenile
	1 / 9	Municipal Ct. Boston	60/OTP; felony to 5 yrs; OV		SC $400
	3 / 6	Land, Housing Courts		unlimited	Land, Housing
MI	86 / 185	District	12/fine; FP; T; OV	$10,000	SC $300
	83 / 106	Probate*	--	--	Probate
	3 / 20	Municipal Ct. of Record	12/fine; FP; T; OV	$10,000	SC $300
	24 / 33	Mun. Ct. Not of Record	12/fine; T; OV	?	
MN	67 / 106	County*	3/$300; FP; T; OV.	$5,000	Juvenile, Probate
	2 / 2	Probate	--	--	Probate
	2 / 28	Municipal	3/$300; FP; OV	$6,000	
	269 / 269	Justice*	T; OV	$100 uncontested	
MS	16 / 20	County	MISD; FP	$10,000	Juvenile
	/	Family		--	AvJ
	∿150 / 150	Municipal/Police	FP; OV	--	
	∿500 / 500	Justice	MISD	$500	
MO	115 / 115	Probate	--	--	Probate
	129 / +55	Magistrate	12/$500 - 1,000; T	$2,000	
	∿500 / 500	Municipal*	6/$500; T; OV	--	
	1 / 2	St. Louis Criminal Ct.	12/$500 - 1,000; FP; OV	--	
MT	∿93 / 93	Justice	6/$500; FP	$1,500	
	106 / 106	Municipal/City	6/$500; FP; T; OV	--	
NB	93 / 86	County	FP; T; OV 12/$12,000	$5,000	Juvenile, Probate
	2 / 13	Municipal	12/$1,000; FP; T	$5,000	
	2 / 3	Juvenile	--	--	Juvenile
	1 / 5	Workmen's Compensation	--	--	Workmen's Compensation

STATE	Number of courts/ Number of judges	COURT	CRUMINAL JURISDICTION	CIVIL JURISDICTION	OTHER JURISDICTION
NV	15 / 26	Municipal	6/$500; OV	$300	
	53 / 54	Justice	6/$500; FP	$300	
NH	41 / 77	District	12/$1,000; FP; OV	$3,000	Juvenile; SC
	10 / 10	Probate	--	--	Probate
	18 / 44	Municipal**	12/$1,000; FP; T; OV	$300	Juvenile
NJ	21 / 34	County, District	MISD; OV	$3,000	
	21 / 29	Juvenile & Dom. Rela.	--	--	Juvenile, Dom. Rela.
	526 / 382	Municipal	FP; OV; some minor MISD	$100	
NM	32 / 32	Probate		--	Probate
	83 / 83	Municipal*	Warrants; OV (3/$300)	--	
	71 / 70	Magistrates	12/$1,000; FP	$2,000	
	1 / 1	Small Claims	FP; OV	$2,000	
NY	57 / 100	County	unlimited conc. w. gen'l.	$10,000	
	62 / 35	Surrogates	--	--	Probate
	1 / + 51	Court of Claims	--	--	Claims vs. State
	58 / 132	Family	--	--	Juvenile
	1 / 98	N.Y. City (branches)	12/; FP; OV	--	
	1 / 120	N.Y. City (branches)	--	$10,000	SC $1,000
	2 / 49	District	12/$1,000; FP	$6,000	
	61 / 136	City (outside N.Y.C.)	12/$1,000; FP	$6,000	SC $1,000
	2,240 / 2,240	Town/Village	12/$1,000	$1,000	SC $500
NC	30 / 117	District	24/fine; FP	$5,000	Juvenile; Domestic
ND	15 / 15	County Ct., Inc. Juris.	12/1,000; FP	$1,000	Probate
	38 / 38	County Probate	--	--	Probate
	38 / 38	County Justice	12/$1,000	$200	SC $500
	∿180 / 158	Municipal*	OV	--	
OH	58 / 63	County*	12/$1,000; T; warrants	$500	SC $150
	110 / 181	Municipal*	12/$1,000; FP; T; OV	$10,000	SC $150
	690 / 690	Mayors	T	--	
OK	2 / 2	Municipal Ct. of Record	T; OV	--	
	∿180 / ?	Mun. Ct. Not of Record	T; OV (3/$300)		
OR	23 / 47	District	12/$3,000; FP; T; OV	$3,000	SC $500
	9 / 10	County	--	--	Juvenile, Probate
	165 / 165	Municipal*	T; OV	--	
	47 / 47	Justice***	12/$500; FP; T	$1,000	SC $500

Appendix I. 4.

STATE	Number of courts/ Number of judges	COURT	CRIMINAL JURISDICTION	CIVIL JURISDICTION	OTHER JURISDICTION
PA	564 / 564	Justice	3/$500; FP; T	$2,000	
	1 / 22	Phila. Mun. Ct.	60/$5,000; FP	$500	
	1 / 6	Phila. Traffic	T	--	
	1 / 7	Pittsburgh City	3/$500; FP; OV	--	
RI	8 / 13	District	12/$500; FP; OV	$5,000	SC $500
	4 / 9	Family		--	Domestic Relations
	39 / 39	Probate	--	--	Probate
	2 / ?	Municipal	OV: Parking	--	
SC	46 /45	Probate	--	--	Probate
	8 / 8	County*	MISD; F	$1,000 - 2,000	
	16 / 14	Fam. & Dom. Relations	--	--	Domestic Relations
	11 / 11	Civil/Criminal*	varies	$1,000 - 300,000	Juvenile
	322 / 322	Magistrates*	1/$100; FP	$200 - 1,000	
	82 / 82	Municipal	1/$100; OV	--	Juvenile
SD	115 / 15	Magistr. Sess. (Att'y)	12/$500; FP; OV	$1,000	
	115 / 110	Magistr. Sess. (lay)	1/$100; FP; OV (guilty plea)	$500 uncontested	
TN	95 / 95	County*	--	--	
	91 / 91	General Sessions	$50; FP	$7,500	Probate, Juvenile
	7 / 2	Probate	--	--	Probate, Juvenile
	16 / 8	Juvenile**		--	Probate
	2 / 2	Justice***	$50; FP; warrants	$7,500	Juvenile
	113 / 192	City	OV (1/$50)	--	
TX	254 / 254	Constitutional County	12/$2,000	$1,000	Juvenile, Probate
	16 /]	County Court, Crim.	varies	--	
	51 / } 85	County Court, Vivil.	--	$5,000	
	7 /]	County Court, Probate	--	--	
	31 / 31	Dom. Rel./Juvenile	--	--	
	∿936 / 936	Justice	$200 fine; FR; T	$200	Juv., Dom. Rel.
	∿1000 / 1000	Municipal	$200 fine; OV	--	
UT	5 / 8	Juvenile			
	17 / 24	City*, ***	6/$300; FP; OV	$2,500	Juvenile
	177 / 177	Justice*, ***	6/$300; FP; OV	$300	SC $200
VT	15 / 11	District	"less than life" (24/)	$5,000	SC $200
	19 / 19	Probate	--	--	Juvenile
VA	31 / 88	General District	12/$500; FP; OV	$5,000	Probate
	31 / 59	Juvenile/Dom. Rela.	--	--	Juv., Dom. Rel.

STATE	Number of courts/ Number of judges	COURT	CRIMINAL JURISDICTION	CIVIL JURISDICTION	OTHER JURISDICTION
WA	69 / 96	District Justice	6/$500; FP; T	$1,000	SC $500
	4 / 4	Justice*	6 / $500; FP; T	$1,000	SC $500
	238 / 238	Municipal*	6/$500; FP; OV	--	
WV	347 / 275	Justice of Peace*, ***	12/$1,000; FP; T	$300	
	54 / 54	Municipal***	12/$1,000; OV; FP	--	
	55 / 170	County Commissioner	--	--	Probate
WI	136 / 217	Municipal*	OV (6/$200)	--	--
WY	31 / 60	Municipal*	OV (3/$200)	--	
	34 / 34	Justice*	6/$100; warrants	$1,000	

Appendix II.

Table 35

Courts of Limited and Special Jurisdiction by Level of Organization, by State, January 31, 1977 *

State	Statewide and district	County	Municipal and township
Alabama	District courts	Family Court (Jefferson County) Probate courts	Municipal courts Recorder's courts
Alaska	District courts	None at this level	Magistrate courts
Arizona	Justice courts	None at this level	Magistrate and police courts
Arkansas	Justice of the peace courts	County courts Courts of common pleas	City courts (formerly called mayors' courts) Municipal or municipal criminal courts Police courts
California	Justice courts Municipal courts	None at this level	None at this level
Colorado	None at this level	County courts	Denver Juvenile Court Denver Probate Court Denver Superior Court Municipal courts also known as: City courts Magistrate courts Police magistrate courts Town courts
Connecticut	Juvenile courts	Courts of common pleas	Probate courts
Delaware	None at this level	Courts of common pleas Family courts Registers' courts	Aldermen's courts Justice courts Municipal Court (Wilmington)
District of Columbia	(1)	(1)	(1)
Florida	None at this level	County courts	None at this level
Georgia	Justice of the peace courts. (fee).	County courts also known as: City courts (Dougherty and Washington Counties) County Recorder's Court (DeKalb County) Criminal Court (Fulton County) Probate Courts also known as: Courts of Ordinary Traffic courts Juvenile or juvenile and domestic relations courts Magistrates' courts (Clarke and Glynn Counties) Municipal and civil courts Small claim courts State courts	Recorders' courts also known as: City courts Mayors' courts Municipal courts Police courts
Hawaii	District courts	None at this level	None at this level
Idaho	(1)	(1)	(1)
Illinois	(1)	(1)	(1)
Indiana	None at this level	County courts Juvenile Court (Indianapolis-Marion) Probate courts (St. Joseph County and Indianapolis-Marion)	City courts Municipal Court (Indianapolis-Marion) Town courts
Iowa	(1)	(1)	(1)
Kansas	None at this level	None at this level	Municipal or police courts
Kentucky	None at this level	County courts Justice of the peace courts (magistrates) Quarterly courts	Police courts also known as: City courts Municipal courts
Louisiana	Justice of the peace courts	Family Court (East Baton Rouge Parish) Juvenile courts (Caddo, Jefferson, and Orleans Parishes) Parish courts (Jefferson Parish)	City courts Mayors' or municipal courts Municipal Court of New Orleans Traffic Court of New Orleans
Maine	District courts	None at this level	Probate courts
Maryland	District courts	Orphans' court	None at this level
Massachusetts	District courts	Courts of probate and insolvency Juvenile courts	Housing courts (Boston and Hampden County) Municipal Court (Boston)

See footnotes at end of table.

* Source: National Survey of Court Organization. 1977.

Table 35 (con't.)

State	Statewide and district	County	Municipal and township
Michigan	Court of Claims District courts	Probate courts	Common Pleas Court of Detroit Municipal courts
Minnesota	County courts	Conciliation courts (Hennepin and Ramsey Counties) Municipal courts (Hennepin and Ramsey Counties) Probate courts (Hennepin and Ramsey Counties)	Justice courts
Mississippi	Justice of the peace courts (fee).	County courts Family Court (Harrison County)	Municipal courts also known as: City courts Mayors' courts Police or police justice courts
Missouri	None at this level	Cape Girardeau Court of Common Pleas Magistrate courts Probate courts	Municipal or police courts St. Louis Court of Criminal Correction
Montana	None at this level	Justice courts	City courts Municipal courts
Nebraska	None at this level	County courts Juvenile courts (Douglas, Lancaster and Sarpy Counties)	Municipal courts (Lincoln and Omaha)
Nevada	None at this level	Justice courts	Municipal courts also known as police courts
New Hampshire	District courts	Probate courts	Municipal courts
New Jersey	None at this level	County district courts Juvenile and domestic relations courts Surrogate courts	Municipal courts
New Mexico	None at this level	Magistrate courts Probate courts Small Claims Court (Albuquerque)	Municipal courts
New York	Court of Claims	District courts (Nassau and Suffolk Counties) Family courts Surrogates courts	City courts City justice courts City police courts Civil Court of New York City Criminal Court of New York City Recorders' courts Town and village justice courts
North Carolina	District courts	None at this level	None at this level
North Dakota	None at this level	County courts (including those with increased jurisdiction) County justice courts	Municipal and police courts
Ohio	None at this level	County courts	Municipal courts Mayors' courts
Oklahoma	None at this level	None at this level	Municipal courts not of record also known as: City courts Police courts Municipal criminal courts of record (Oklahoma City and Tulsa)
Oregon	District courts	County courts Justice courts	City or municipal courts
Pennsylvania	Community courts[2] Justice of the peace courts	None at this level	City Court of Pittsburgh Housing Court of Pittsburgh Municipal Court of Philadelphia Traffic Court of Philadelphia Traffic Court of Pittsburgh
Rhode Island	District courts	Family courts	Municipal courts (Pawtucket, Providence and Johnston) Probate courts
South Carolina	Magistrate courts	Civil and criminal courts County courts Family courts Probate courts	Municipal courts also known as: Mayors' courts Police courts Recorders' courts
South Dakota	([1])	([1])	([1])
Tennessee	None at this level	County courts General sessions courts Justices of the peace courts Juvenile courts Probate courts (Davidson and Shelby Counties)	City courts also known as: Mayors' courts Municipal courts Recorders' courts

See footnotes at end of table.

Table 35 (con't.)

State	Statewide and district	County	Municipal and township
Texas	None at this level	Constitutional county courts (civil and criminal) Justice courts Juvenile and domestic relations courts Special county courts	Municipal courts (formerly called corporation courts)
Utah	Juvenile courts	Justice courts	City courts also known as: Corporation, municipal or town courts
Vermont	District courts	None at this level	Justice courts-(fee) Probate courts
Virginia	District courts	None at this level	None at this level
Washington	District courts	Justice courts	Municipal and police courts
West Virginia	Justice courts	County commissions (formerly called county courts)	Municipal courts also known as: City courts Mayors' courts Police courts Town courts
Wisconsin	None at this level	None at this level	Municipal courts
Wyoming	None at this level	County courts[3] Justice courts	Municipal and police courts

Note: Fee-paid justices of the peace appear in this listing with the designation (fee).

[1]These States have no courts below the level of general jurisdiction.
[2]These courts are authorized but none had been established as of January 31, 1977.

Appendix III.

Table 36

Compensation of Judges of Courts of Limited Jurisdiction

State or other jurisdiction	Probate	County	Municipal	Justice, magistrate, or police	Other
Alabama	Fees or salary	Fees or salary	...	$5,000-12,000	Set by county commission(a)
Alaska	...	...	...	6,000-25,000(b)	$41,068(c)
Arizona	...	...	...	15,000(d); 32,718(e)	...
Arkansas	...	$1,800-5,000	$2,400-25,000	Fees &/or salary set by local govt.	100-900(f)
California	...	...	41,677(g)	1,200-33,703(h)	...
Colorado	$28,000	2,000-25,000	(j)	...	28,000(k,l)
Connecticut	Fees	...	...	...	28,500(f,k)
Delaware	...	...	13,695-32,750	13,000	38,000(t)
Florida	...	26,000-34,000	Up to 18,500	...	...
Georgia	Fees & salary	...	...	Fees & salary	Fees(m); 25,000(n)
Hawaii	...	...	...	...	40,000(c)
Idaho	...	...	...	(o)	...
Illinois	...	...	...	...	...
Indiana	26,500-31,500	23,500	29,500(q)	3,000-4,800 (part-time)	12,000-23,500(k)
Iowa	...	...	...	...	...
Kansas	9,000-30,032	N.A.	Up to 17,544	Up to 27,029	3,780-8,400(r)
Kentucky(bc)	...	Up to 14,300	...	Up to 25,000	...
Louisiana	...	...	Up to 35,500(s)	Fees	45,000(k,t)
Maine	4,800-11,394	...	...	...	23,000(c)
Maryland	15-25/day(u)	...	...	...	33,000(v)
Massachusetts	31,738(w)	...	30,168(x)	...	36,203(y); 30,168(k); 30,168(c)
Michigan	21,798-37,523(z)	...	1,500-30,000	...	35,530(f); 21,500-34,000(c)
Minnesota	33,500	23,500-29,000(aa)	29,000(aa)	...	...
Mississippi	...	5,400-20,000(ab)	Salary(ac)	Fees(d)	18,500(t)
Missouri	16,200-31,000(ad)	...	Varies	16,200-22,400(ae)	29,000(af)
Montana	...	...	(ag)	(d,ah)	25,000(ai)
Nebraska	...	24,000-29,000(aj)	29,500	...	32,500(k); 30,500(ai)
Nevada	...	...	(j)	(d)	...
New Hampshire	11,357(ak)	...	(p)	...	3,300-30,000(c)
New Jersey	...	...	Up to 25,000(al)	...	40,000(k); 37,000(am)
New Mexico	720-5,280	...	300-20,000(p)	3,410-18,150	15,000(in)
New York	36,000-48,998(an,ao)	36,000-48,998(ao)	Up to 42,000 outside NYC(ap); 42,451 in NYC(ao)	(aq)	48,998(ar); 39,030-42,000(c,ap); 36,000-48,998(t,ao)
North Carolina	...	...	...	...	23,500(c)
North Dakota	7,600-10,400(as)	15,500-23,000(at)	Salary as agreed	Up to 7,700	...
Ohio	...	4,000-8,000	21,000-31,000(at)	...	(bb)
Oklahoma	...	...	Varies	...	...
Oregon	...	3,000-12,915(b)	Varies(b)	Up to 10,608(b)	28,600(c)
Pennsylvania	...	...	20,000-35,000(au)	6,000-16,500	18,500-35,000(zu)
Rhode Island	200-11,440	...	...	5,075(av)	28,520(c,aw); 28,000(t,aw)
South Carolina	Varies(j)	6,000-10,000	Varies(j)	500-3,000	Varies(j,t)
South Dakota	...	...	...	Varies(b)	...
Tennessee	...	Salary	Varies(j)	...	Up to 10,000(ax); 15,000 (zy); Varies(j,k)
Texas	5,764-39,088(az)	600-40,000	Up to 26,500	18,000-24,000	5,764-40,088(az)
Utah	...	...	14,000-24,750	Fees & salary	27,500(k)
Vermont	6,500-21,600	...	...	...	22,700(c)
Virginia	...	...	...	...	28,215(b,ns)

Compensation of Judges of Courts of Limited Jurisdiction

State or other jurisdiction	Probate	County	Municipal	Justice, magistrate, or police	Other
Washington	...	...	Up to 34,250(at)	...	Fees or salary, up to 29,000(c)
West Virginia	...	...	1,200-12,000	Salary(b)	...
Wisconsin	...	...	Salary(p)	...	...
Wyoming	...	...	Salary	2,500-7,200(d)	...
Dist. of Col.(i)	...	N.A.	...	...	...
Guam	...	...	...	...	N.A.
Puerto Rico	...	...	12,000	6,000	19,300(c)

N.A.—Not available.

(a) Recorder's courts.

(b) Ranges due to region and population served. Alaska: on qualifications and hours worked. Oregon: part-time judges receive $1,000 to $13,500. Virginia: part-time district judges $2,600-$20,500.

(c) District courts. Maine, North Carolina, Rhode Island, and Vermont: chief judges receive an additional $1,000. Massachusetts: chief judge receives an additional $1,570; part-time justices receive $10,016-$12,189. Michigan: State pays $21,500; counties may supplement up to $12,500. New Hampshire: salary based on caseload of district but salary so determined cannot exceed $30,000. New York: Nassau County presiding judge receives $44,500; Suffolk County presiding judge receives $43,170.

(d) Justice of the peace. Arizona: salaries depend on number of registered voters. Montana: fixed by board of county commissioners, with consideration given previous salary based on fees. Nevada: set by board of county commissioners. Wyoming: according to assessed valuation.

(e) City and town magistrates.

(f) Common pleas courts. Arkansas: salary listed is additional for county judge who presides over common pleas court. Connecticut: chief judge receives $32,500 annually.

(g) Salary set by State, paid by county. Salary increased every year by percentage which California consumer price index, compiled by California Department of Industrial Relations, increased in the previous year.

(h) May continue private practice.

(i) Reflects 1974 survey. Later information not available.

(j) Depending on municipal charters and ordinances or other local determinations.

(k) Juvenile courts. Colorado: Denver juvenile and probate courts. Connecticut: chief judge receives $32,500 annually. Massachusetts: Boston juvenile courts, $31,738; Nebraska: $1,500 county supplement in counties over 100,000 population. New Jersey: juvenile and domestic relations courts.

(l) Superior courts (Denver).

(m) Small claims courts.

(n) Civil and criminal courts of record. Georgia: $30,000 for judges of criminal and civil courts of Fulton County.

(o) Magistrate's Division of District Court. Salaries depend on qualification, experience, ability, and location: $12,500-$17,000 for lay magistrates; $22,000 for lawyer magistrates.

(p) Salaries of municipal judges fixed by ordinance of governing board.

(q) Presiding judge receives $30,500.

(r) City court judges with countywide jurisdiction—set by local government.

(s) City court judges in New Orleans receive $35,500 (State contributes $14,600 of this amount); municipal and traffic court judges in New Orleans receive $28,000. In most other city courts, the State, parish, and city each pay a portion of the salary.

(t) Family courts. Mississippi: salary for Class 1 county with 80,000 or more population.

(u) Several counties and Baltimore City now pay annual salaries ranging from $600-$18,000. The chief judge of the Orphan's Court of Baltimore City receives an additional $500 (total, $18,500).

(v) District Court judges' annual compensation. Chief judge receives $41,400, same as associate member of Court of Special Appeals.

(w) Chief judge receives an additional $1,256. Part-time judges receive $11,343.

(x) Municipal Court of Boston. Chief judge receives an additional $1,570.

(y) Land Court and housing courts.

(z) Full-time judges' salary set by Legislature at $21,798, paid ¼ by State and ¼ by county; county may supplement. Part-time judges paid $7,058-$10,899, ½ by State and ½ by county; county may supplement.

(aa) Fixed by Legislature. County court judges not learned in the law receive $23,500; those learned in the law receive $27,500; metropolitan counties, $29,000.

(ab) Salaries (lower end is for part-time), as fixed by State, vary by class of county according to assessed valuation and population. Certain Class 1 counties may supplement up to $4,000.

(ac) Salaries of police court justices fixed by municipal authorities. Mississippi: usually varies according to size of city.

(ad) Salary based on county population.

(ae) Magistrates. In counties of 30,000 or less, probate judge is ex officio magistrate and salary as probate compensates for both offices. Salary also based on population.

(af) St. Louis Court of Criminal Correction; $17,000 paid by State, $12,000 by city.

(ag) Municipal court judges' salary set by ordinance.

(ah) City court judges' salary set by ordinance.

(ai) Workmen's Compensation judge.

(aj) $29,000 salary applies only in counties over 150,000 population, which may provide additional $2,500 supplement.

(ak) County probate courts.

(al) Top of range applicable to Newark with presiding judge receiving an additional $2,500. Ranges due to local determination or optional local supplements.

(am) County District Court.

(an) Surrogate's Court.

(ao) Includes $17,825 in state aid to locality (county or New York City) for each judge's salary; statutory minimum of $36,000 may be supplemented by locality.

(ap) Set locally; includes $10,000 in state aid for each full-time city court judge with a salary of $30,000 or more in cities with over 50,000 population and for each district court judge's salary.

(aq) Town and village courts; set locally.

(ar) Court of Claims. Additional $2,629 paid to presiding judge.

(as) Minimum $7,600; for counties over 8,000 population $8,000 and additional $100 per year for each 1,000 population over 8,000.

(at) Based on population. North Dakota: $15,500 in counties with population not exceeding 10,000; $16,000 for population 10,000-18,000; $19,000 for population 18,000-40,000; $25,000 for population over 40,000. Ohio: part-time judges receive range of $11,000 to $20,000 based upon population; presiding judge receives an additional $1,500. Washington: top salary paid in Seattle.

(au) Municipal Court and Traffic Court of Philadelphia. Lawyer judges receive $35,000; non-lawyer judges $20,000 and $18,500, respectively; President Judges receive $1,500 and $1,000 additional, respectively.

(av) Justices of police courts.

(aw) Salary supplemented by longevity of state service.

(ax) Courts of general sessions. Including supplements to state salary which may be paid to municipal court judges.

(ay) Domestic relations courts. Municipal or police court tries misdemeanors in city; terms interchangeable. If judge, salary.

(az) County courts at law and probate, $5,764-$39,088; domestic relations and juvenile courts, $19,900-$40,088.

(ba) District judge (general district and juvenile and domestic relations) may be supplemented to $36,180. A district judge's base and supplement cannot exceed 90% of amount that can be paid to circuit judge ($40,200).

(bb) Court of claims. May be an incumbent judge of the Supreme Court, court of appeals, court of common pleas, or retired judge, any of whom sit by temporary assignment of the Chief Justice of the Supreme Court.

(bc) See footnote (d) on Table 10.

Table 37

Limited and General Jurisdiction Courts and Judges for Each State, Rank Ordered by Population*

State	Population in 1,000's	Number of General Jurisdiction Courts	Judges	Cases Filed	Number of Limited Jurisdiction Courts	Judges	Cases Filed
California	21,522	58	520	667,122	229	600	15,243,315
New York	18,053	11	257	142,677	2483	2961	847,198
Texas	12,599	251	251	361,949	2295	2306	6,645,113
Pennsylvania	11,302	59	285	292,186	567	599	3,461,410
Illinois	11,193	21	364	3,484,512	21*	239	—
Ohio	10,690	88	296	464,319	934	858	1,959,617
Michigan	9,113	48	138	1,033,069	196	344	2,206,717
Florida	8,353	2	273	373,672	272	369	4,267,273
New Jersey	7,339	21	201	96,557	568	445	4,267,273
Massachusetts	5,791	14	46	68,593	94	212	2,135,065
North Carolina	5,462	30	56	63,321	30	117	1,292,751
Indiana	5,313	37	77	281,185	178	201	377,970
Virginia	3,052	30	104	106,319	68	67	1,598,016
Georgia	4,984	42	88	143,612	2173	169	450,575
Missouri	4,787	45	111	109,483	745	672	20,330
Wisconsin	4,610	96	180	682,475	136	217	N/A
Tennessee	4,234	63	113	112,811	324	390	N/A
Maryland	4,125	29	85	121,676	36	149	1,124,138
Minnesota	3,954	10	72	30,562	196	344	653,911
Louisana	3,875	35	139	163,571	672	686	564,753
Alabama	3,633	38	106	103,482	471	552	N/A
Washington	3,611	28	101	121,811	311	338	926,235
Kentucky	3,436	56	87	70,699	1184	1184	724,600
Connecticut	3,102	9	45	30,559	151	196	524,194
Iowa	2,874	8	89	587,921		8*	
South Carolina	2,844	16	25	53,925	485	482	616,376
Oklahoma	2,770	24	77	403,014	182	182	N/A
Colorado	2,575	22	99	121,255	260	280	231,899
Mississippi	2,365	39	65	59,638	667	671	N/A
Oregon	2,326	20	68	83,754	244	269	787,040

* Source: National Center For State Courts, State Court Caseload Statistics; 1976 Annual Report.

Table 37 (cont.)

Limited and General Jurisdiction Courts and Judges for Each State, Rank Ordered by Population

State	Population in 1,000's	Number of General Jurisdiction Courts	Judges	Cases Filed	Number of Limited Jurisdiction Courts	Judges	Cases Filed
Kansas	2,299	29	63	45,066	221	527	311,647
Arizona	2,249	14	70	84,774	154	174	275,190
Arkansas	2,117	35	49	72,729	270	435	539,579
West Virginia	1,832	31	50	53,697	456	499	N/A
Nebraska	1,552	21	45	24,447	98	107	352,118
Utah	1,232	7	21	28,601	199	209	549,669
New Mexico	1,172	13	32	43,955	187	186	99,563
Maine	1,071	16	14	12,384	29	36	177,845
Rhode Island	936	4	17	10,010	53	61	70,043
Hawaii	884	4	22	28,139	4	16	603,038
Idaho	833	7	25	262,636	7*	66	
New Hampshire	827	10	13	24,189	69	131	38,984
Montana	755	18	28	22,583	199	199	N/A
South Dakota	686	9	36	4,210	115*	125	N/A
North Dakota	645	6	19	9,685	271	249	23,065
Nevada	613	9	25	32,082	68	80	N/A
Delaware	582	6	14	11,385	36	89	151,232
Vermont	477	14	7	74,657	34	30	4,523
Alaska	408	4	19	13,250	60	84	91,531
Wyoming	391	7	13	9,310	65	94	N/A

END