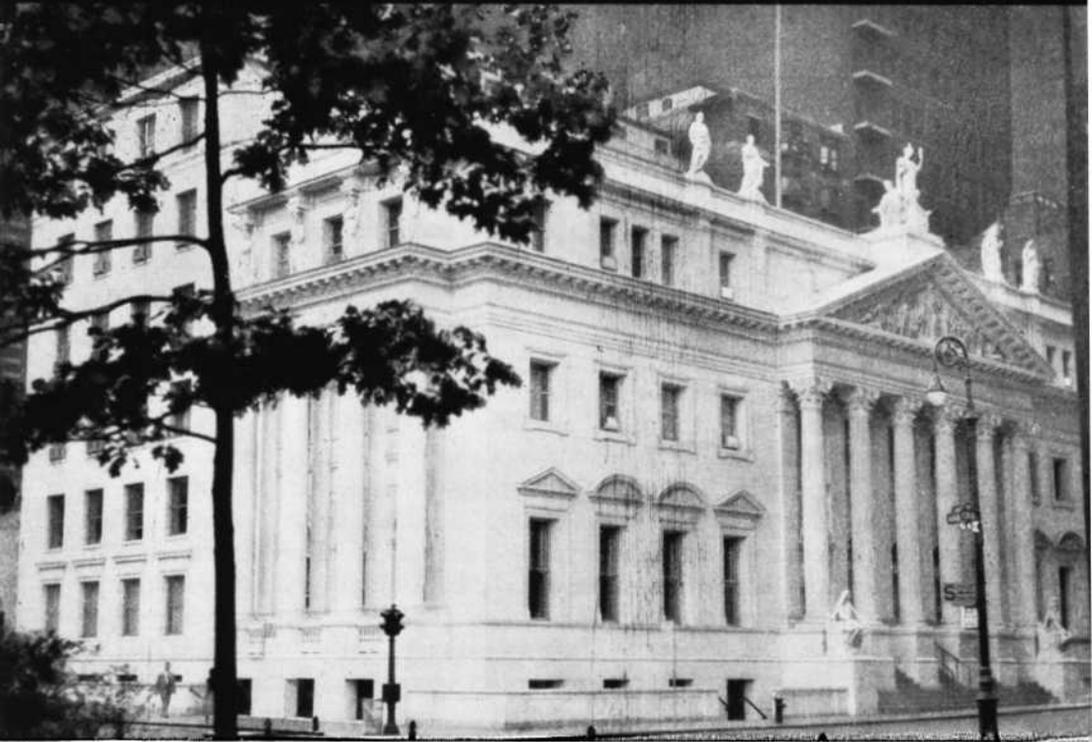


# 54. The State Court Systems



George S. Flohn

**S**TATE court systems are extremely important in the administration and enforcement of law in the United States. One authority has estimated that ninety per cent of the total number of cases at law arising during a single year are handled entirely by the State courts. A State court system has much the same relation to the Governor, the State legislature, and State administrative agencies that federal courts have to the President, Congress, and the national administrative organization. State court systems have structures, procedures, and functions similar to those of the federal system, for they both deal with patterns of laws which, although they apply to separate jurisdictions, are in many respects alike. But here the similarity ends. Each State court system is individual, differing, to a greater or lesser extent, from all other State court systems.

## STRUCTURE OF STATE COURT SYSTEMS

The structure of a State court system includes all courts in the State that are not part of the federal court system. Hence, although some courts bear the title of some subordinate geographic areas, such as "municipal courts" and "county courts," they are not elements in the government of a municipi-

pality or of a county; they are State courts. The structure of a State court system, like that of the federal courts, rises through a series of grades, from the lowest and most numerous trial courts at the base, to a single appellate court at the apex that is supreme over all other courts in the State system. (In Oklahoma and Texas, however, there is a separate Court of Criminal Appeals.) In any given State the system of courts has three principal levels: (1) trial courts of limited jurisdiction, (2) trial courts of general jurisdiction, and (3) courts of appeal. Moreover, these types are often further broken down into subtypes; for example, there may be two levels of trial courts with limited jurisdiction, and two levels of courts of appeal.

### ***Trial courts of limited jurisdiction***

*Justices of the Peace:* The justice of the peace is the lowest court in most State systems. The office of justice of the peace is very old, having existed in England long before the founding of the first British colonies in North America. Today in the United States most justices of the peace are elected to office, although in a few States they are appointed. They are chosen from quite small areas, such as voting precincts (Alabama), districts into which counties have been divided for this purpose (Florida), townships (Michigan), or towns (Vermont).

The authority of justices of the peace extends usually to three types of cases: (1) They may try, and render decisions in, cases involving minor violations of the law; (2) justices of the peace may conduct preliminary hearings in the instance of more serious violations of the law, and "bind over" the suspect for trial in a superior court; (3) they may hear civil suits involving limited amounts of money—for example, a maximum of \$100.00 in Iowa, of \$200.00 in Mississippi, and of \$300.00 in West Virginia. Finally, justices may conduct wedding ceremonies and, in certain southern States, are members of the board that governs a county.

The office of justice of the peace has been the target of a great deal of criticism. Seldom does either the law or constitution require that justices have any legal training or experience; in fact, only a small minority are lawyers. Decisions are often rendered with little respect for the provisions of the law. The fee system has been found objectionable, since fees usually may be assessed only when judgment has been passed against the defendant; detractors note that the initials "J.P." may represent not only "justice of the peace" but also "judgment for the plaintiff." In some States, such as New Jersey, the office has been abolished, in others its authority has been drastically curtailed, and in some the government has undertaken to instruct and closely supervise the justices. Change is difficult to accomplish, however; often it requires constitutional amendment, and it is apt to be opposed by the justices, who may be quite influential in their communities.

*Police and Magistrate Courts:* Police courts—or magistrate courts, as they are sometimes called—perform in the cities of some States the tasks that justices of the peace carry out in rural districts in the field of criminal offenses. That is, police courts are designed chiefly to hear cases of alleged

violations of municipal ordinances. In a few areas police courts also have the same civil powers as justices of the peace. Sometimes police judges are ex officio justices of the peace in their county; in other places, justices of the peace are ex officio police judges in any incorporated towns in their county. Police and magistrate courts have been stigmatized even more severely than justice courts. It is said that not only is supervision lax, and legal experience uncommon, but also that corruption is rife. Actually in matters of this sort it is difficult to prove that a city is any more "impure" than a rural area.

*Municipal Courts:* Municipal courts are courts that certain States have authorized to handle legal matters beyond the jurisdiction of either justices of the peace or police courts. For instance, in Cleveland the municipal court has authority over civil cases involving disputes over matters whose value does not exceed \$5,000. Membership in municipal courts sometimes specifically requires legal training. Generally speaking, municipal courts are highly praised by lawyers. Municipal courts are sometimes courts of record. In great metropolitan centers municipal courts may be subdivided along functional lines; in Chicago, for example, there are special courts to hear cases respecting traffic violations, juvenile offences, domestic upheavals, misdemeanors, and civil suits. In New York City, by comparison, the municipal court is subdivided on geographic lines.

*County Courts:* County courts are courts instituted by some States as intermediaries between justices of the peace and the courts of general jurisdiction. As in the case of municipal courts, some legal experience may be required of county court members; also, county courts are sometimes courts of record. The jurisdiction of this type of court is always restricted, but encompasses authority over cases that involve more money than justices' courts may handle. For example, in Nebraska justices of the peace may hear only those cases not involving more than \$200.00, but county courts may deal with cases in which as much as \$1,000.00 is at stake.

*Probate Courts:* Probate courts, found in a number of States, deal with the property of deceased persons. Some people leave a will or testament that declares who shall receive their property upon their death; others leave no will. Inheritance laws are very complex, and wills of rich persons are sometimes contested by those who believe they should be heirs. The functions of a probate court are to determine whether or not a will is sound; whether its provisions can be enforced; and, should a person die without leaving a will, what distribution of his estate should be made. Sometimes, when an estate is left to children, a probate court administers the estate until the recipients achieve legal maturity.

Finally, as will be seen in a following chapter, judges of probate courts are sometimes the presiding officers of county boards. It should be noted that although a probate court is a court of limited jurisdiction, the authority of the court is limited in terms of the subject of its competence, rather than in terms of how much money may be involved. For this reason the probate court stands somewhat above other courts of limited jurisdiction in the measure of its actual power and influence.

## ***Trial courts of general jurisdiction***

In every State there are trial courts of general jurisdiction, which have a variety of names. These courts have jurisdiction over all cases not in the province of the lesser, or inferior, courts. Sometimes they share jurisdiction with the lower courts over specified types of cases. They are courts of first instance for the bulk of major cases under State law. They handle almost all cases in which a person is charged with having violated a law and committed an offense that may send him, on conviction, to the State penitentiary for a term longer than one year. These trial courts also deal with civil cases—charges of torts, breaches of contract, and the like—that concern sums of money surpassing those that fall under the jurisdiction of lower courts. Another major task of the State trial courts of general jurisdiction is to serve as courts of appeal for cases that have been initiated in courts of limited jurisdiction.

## ***Appellate courts***

*Inferior Appellate Courts:* In thirteen States, including all of those more populous than Michigan, there are inferior appellate courts, established chiefly to lessen the burden of the State supreme courts. These courts deal with cases that have been appealed from the State trial courts of general jurisdiction, and those that have been appealed from State administrative agencies.

*State Supreme Courts:* State supreme courts, which are called by a different name in several of the States, are the apex of the State court system. All of them have as their primary task the hearing of cases that have been appealed from some lower State court, usually a trial court of general jurisdiction. Hearings in these courts are typically appellate, revolving about an appeal of a decision from some lower State court, whose record is sent to the supreme court for study. Occasionally State supreme courts are also courts of first instance for suits against the State government. Finally, they sometimes have the authority to issue advisory decisions, as will be noted subsequently. As in the national government, the supreme court in every State is a "collegiate" court; that is, it contains several judges, in almost all States an odd number such as three, five, seven, or nine. These justices are usually chosen at large from the State, although in eight States they are elected from particular districts.

## **THE STATE JUDICIARY**

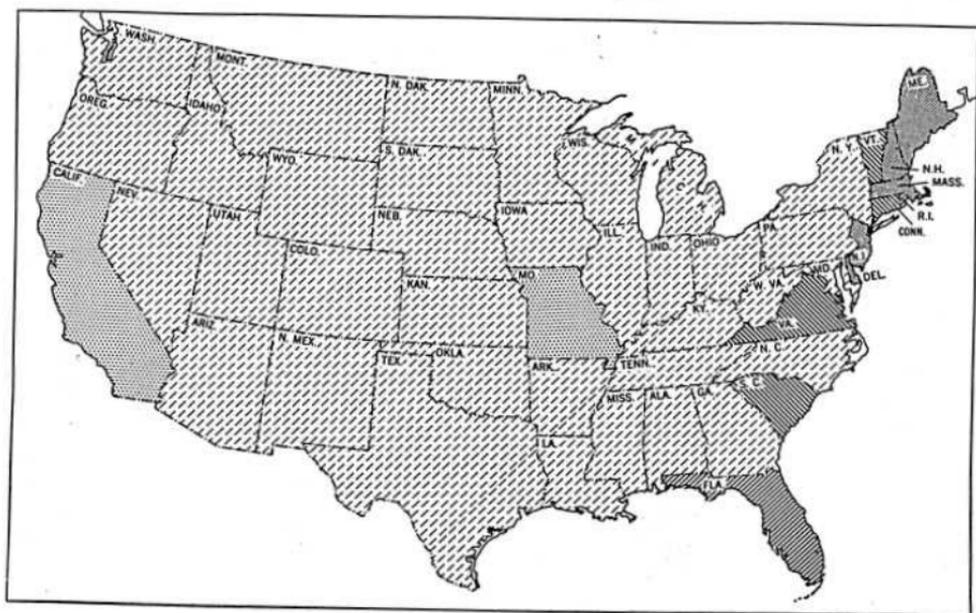
### ***Selection of State judges***

The method by which State judges are selected is one of the most sensitive issues concerning State court systems. Yet, despite this, State judges, at least in the chief appellate courts, are usually honest, efficient, and well-trained.

*Election:* In most States, judges at all levels are elected to their posts. The map in Figure 129, which shows how judges are chosen in every State,

reveals the frequency of election. American politics being what they are, judges in many States run on partisan tickets and must campaign for both the primary and the general elections. This method for selecting the judiciary has been subjected to heavy criticism. The weightiest charge has been that the voters are not competent to choose men who are capable of serving them on the bench. Another attack is based on the feeling that the elected judge, obligated to the party or group that has supported him, may render a biased decision if confronted by a defendant who is associated with that party.

In a few States certain judges are appointed to office. For instance, in New Hampshire and Massachusetts all judges are appointed. Both California and Missouri have an unusual arrangement with respect to appellate judges, much like that urged by the American Bar Association. When a judicial post becomes vacant, the Governor appoints a judge to fill it, basing his appointment on the recommendation of a special group. In California this group consists of the Chief Justice of the Supreme Court, the presiding justice of the district court of appeal in the relevant district, and the State attorney general. In Missouri the group includes the Chief Justice, three private citizens named by members of the bar, and three persons selected by the Governor, one from each of the three appellate districts into which the State is divided. In these two States the Governor may appoint judges

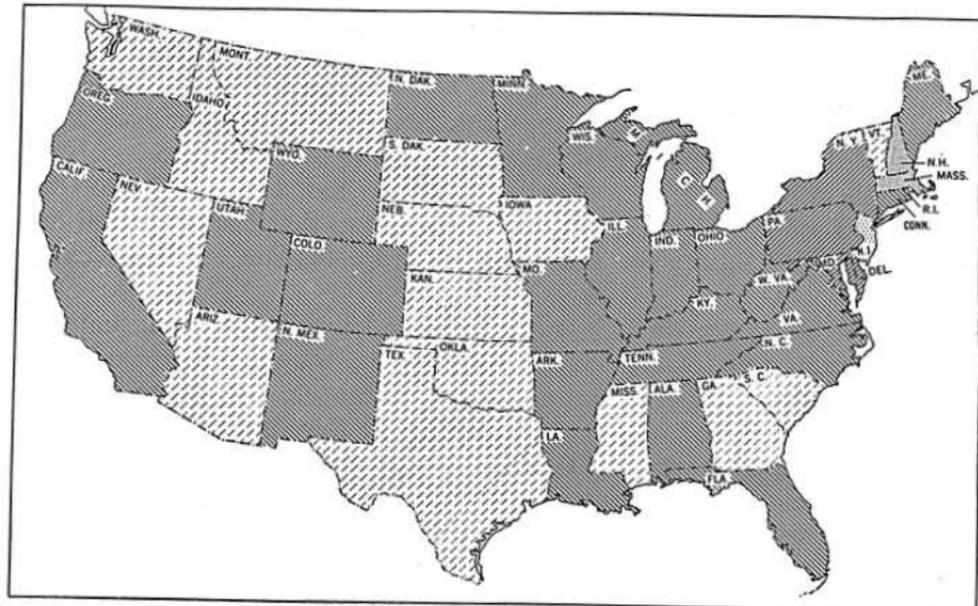


#### Selection of Judges—Principal Modes

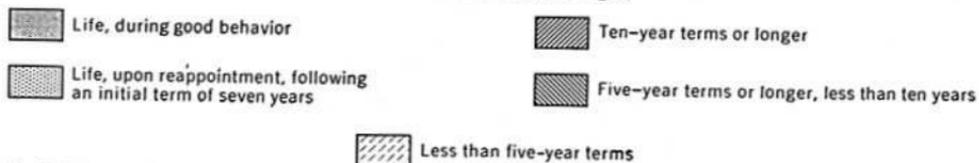
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|--|---|
|  Appointment by executive subject to confirmation, some minor exceptions in some states |  Trial judges appointed by executive, others selected by popular or legislative vote |
|  Modified appointment plans, applicable to appellate judiciary, others elected          |  Selection by legislature  |
|  Elected by popular vote, with minor exceptions in some states                        |   |

A. T. Vanderbilt, "Minimum Standards of Judicial Administration" (New York: National Council of Judicial Officials, 1949), p. 7

Figure 129. Methods of Judicial Selection in the States.



Tenure of Trial Court Judges'



Vanderbilt, *op. cit.*, p. 19

Figure 130. Tenure of Office of State Judges.

only from the list presented to him by the particular group. Then, after the lapse of a given period of time, these judges must win the support of the electorate.

Whether judges are elected, appointed, or chosen by a method such as that prevailing in California and Missouri, the lawyers of the given State may have considerable influence upon the election, or at least upon the choice of candidates for the election. In certain parts of Illinois and New York, the lawyers must be consulted regarding the candidates for the bench. In about half the remaining States the bar has an evident influence upon the selection of judges. In all States, however, it can be assumed that the State bar association either formally or informally has a considerable influence upon the choice of judges.

### **Qualifications, term, salary, retirement**

In most States either the constitution or the laws establish certain qualifications for appointment to the judiciary. Only in New Hampshire, Massachusetts, and Connecticut, are there no constitutional or legal qualifications for members of the judiciary. Such qualifications refer primarily to United States citizenship, State and judicial district residence, age, education in the law, and legal experience. Such requirements bear the stamp

of the law associations in the various States, and their pressure upon the legislatures.

Terms of State judges have a wide range, as Figure 130 discloses. The terms of appellate judges, ranging from as short a time as two years, in Vermont, to life, in Rhode Island and Massachusetts, are commonly longer than those of trial judges. In no State where judges hold office for life or during good behavior are they popularly elected to their posts. Judges may be removed from office by a variety of means. In all States except Colorado there is some method for removing an unfit judge. For instance, in twenty-two States judges may be impeached. In some other States judges may be removed by a special court. In Louisiana, for example, a judge of the State supreme court may be removed by a court of seven judges comprising members of the supreme court and the senior judges from the State court of appeals. In some States the Governor is empowered to remove a judge, and in some the legislature may do so by adopting a concurrent resolution to that effect.

Judges in all States are paid a regular annual salary, except, of course, the justices of the peace who are compensated by fees. As might be expected, in most States the judges do not receive as large a salary as that enjoyed by members of the federal bench. As an illustration, salaries of members of State supreme courts run from a low of \$8,500, in Idaho, to a high of \$35,000, in New York. Judges of inferior courts receive correspondingly less. In twenty States the chief justice is paid slightly more than other members of the supreme court.

## THE PROSECUTING ARM

The prosecuting arm of the State court system is the group of personnel charged with conducting trials and suits to which the State is a party, in behalf of the State.

As in the federal government, so also in every State there is an important official in the administrative branch—the attorney general. In the majority of States the attorney general is an elected officer; only in a few is he appointed by the Governor. The attorney general is the principal legal officer of the State. Yet, unlike his federal counterpart, he is not likely to be in charge of the trials of persons accused of breaking the law. He does represent the State in civil suits to which the State is a party. Also, he is the chief legal advisor of the Governor. When the attorney general is of the same political party as the Governor, especially when he has been appointed to office, he may have a great deal of influence upon the Governor's policies.

Prosecution in the trial courts of general jurisdiction is entrusted to a prosecuting attorney, one of whom serves in every State judicial district. Because there is almost invariably far more business than the prosecuting attorney can manage alone, he is usually empowered to appoint one or more assistant district attorneys for his district. The prosecuting attorneys bear various official titles, among them district attorney, public prosecutor, and

simply prosecuting attorney. They are ordinarily elected by the voters of their judicial districts; whatever may be the boundaries of these districts, the attorneys are officers of the State government. The principal duty of the prosecuting attorney is to bring to trial the persons accused of violating the law in his district and to secure conviction of the guilty.

The office of district attorney often has important political overtones. By winning a conviction of a person charged with committing an especially heinous crime, a prosecuting attorney catches the eye of the public and may hope to obtain popular support for a higher office. Hence, young and politically ambitious men seek election as district attorney preliminary to seeking election to Congress or the office of Governor. Thomas E. Dewey and Earl Warren are outstanding illustrations of district attorneys who have succeeded in using their post as a springboard to higher office.

## PROCEEDINGS IN STATE COURTS

Proceedings in State courts, whether criminal or civil, are quite similar to those in federal courts. It is true that procedural rules vary somewhat in different States. Also, in some States, a defendant is not hedged about with as many actual protections as he can have in a federal court—although the State constitution may guarantee these protections. (Indeed, several States guarantee more procedural protection than the federal courts do, and actually fulfill those guarantees.) However, the elements of legal proceedings in each State resemble those in every other State, and in all States these proceedings resemble those in federal courts. Louisiana may be cited as a partial exception to this principle, inasmuch as a fair-sized portion of the laws of Louisiana are based on the French Napoleonic Code from the time that the State was a French colony.

### *Advisory opinions*

An advisory opinion is an opinion rendered by a court regarding the constitutionality of a given law or the meaning of a statute, under circumstances in which there is no case before the court involving the given law. It was noted in a prior chapter that federal courts do *not* render advisory opinions; that is, a federal court will rule on the constitutionality of a statute only in hearing a genuine case in which the law is at issue. In some States, however, courts are authorized to hand down such opinions. Ordinarily they do so on the application of the Governor, the State attorney general, or some other official charged with the enforcement of the law.

The impact of an advisory opinion is not the same in all States. In some States, for instance, it is an "opinion," and nothing more. That is, it reflects the court's feelings respecting the law, but is in no way binding. In certain other States, however, an advisory opinion is equal to an opinion or ruling handed down in an actual court trial; it may be cited as a legal precedent, and is as binding on an executive official or another court as a true legal precedent.

## QUESTIONS AND PROBLEMS

1. Name the three principal levels of the State court systems and describe briefly their functions. What are their precise names in your home State?
2. Compare police and magistrate courts with the courts of justices of the peace.
3. Is the probate court a trial court of general jurisdiction? Is it the same as a county court?
4. Distinguish between the State supreme courts and trial courts of general jurisdiction.
5. How are judges chosen in your home State? Are these ways typical of the methods used in other States?
6. Compare the organization of the State prosecuting systems with that of the Federal government.