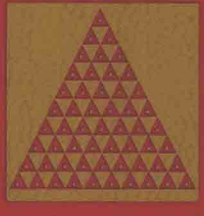
AMERICAN COURTS



Daniel John Meador

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PREFACE

This little book is the result of my experiences over the years in dealing with two quite different groups of people. One has consisted of judges and lawyers from other countries; the other, of beginning American law students. These groups have in common an initial difficulty in understanding the extraordinarily complicated American judicial scene—the most complicated in the world.

It is difficult to explain to judges and lawyers from elsewhere the judicial arrangements stemming from the state-federal division of authority in the United States and the coexistence of fifty state judicial systems alongside the federal judicial system. Though American law students do have a general awareness of their country's governmental structure, they too are largely unacquainted with the organization and complexities of the multiple judicial systems. For many years I have attempted to convey to both groups, accurately and succinctly, an understanding of these matters. This book is a distillation of what I have found to be most important for this purpose.

As with a brief exposition of any complicated subject, this treatment runs the unavoidable risk of oversimplification. The book is not intended to take the place of a treatise; details and underlying explanations must be sought elsewhere.

The view of the American judiciary afforded by this book is analogous to a view of the American landscape from a jetliner on a transcontinental flight from Washington to San Francisco at 40,000 feet. From that vantage point one sees the key features—

the Blue Ridge Mountains, the Mississippi River, the Great Plains, the Rocky Mountains—but little detail. So it is with this view of the American courts; there should be enough here to give the foreigner and the beginning student the essential features. This book may also be useful to graduate and undergraduate students in government, as well as to other persons interested in the courts of this country.

The political and legal changes sweeping the world have increased interest almost everywhere in American law and government. The mobility afforded by the jet age increasingly brings lawyers and judges from other countries on visits to the United States. Many of them are eager to learn quickly about the American legal order. Thus there is a growing need for a concise yet comprehensive description of the American court systems, their structure, business, personnel, and interrelationships. My hope is that this short work can at least partly fill that need and, in so doing, further world-wide understanding of these important institutions.

At the same time, I hope to provide a helpful tool for beginning American law students, one that helps them to comprehend more quickly this complex judicial scene which they, first as students and then as lawyers, will need to understand.

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January 1991

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TABLE OF CONTENTS

CHAPTER ONE

INTRODUCTORY OVERVIEW

American courts are not embraced within a single judicial or governmental structure. Properly speaking, there is no such thing as *the* American judicial system. Instead, there are multiple systems, each independent of the others. There are also multiple sources of American law. The courts of one system are often called upon to apply and interpret the law generated in another. Moreover, there is often duplicative, concurrent jurisdiction over the same case in two or more judicial systems. These circumstances and others combine to give the United States its extraordinarily complicated legal order.

The great divide in the American legal landscape is the state-federal line. It derives from the United States Constitution, pursuant to which the federal government was created in 1789 to "form a more perfect Union" of the existing states. The federal government and the state governments coexist, with a broad range of powers delegated to the former and all others reserved to the latter. Each of these governments has its own court system, autonomous and self-contained.

Today there are fifty states and thus fifty state judicial systems. Separate court systems, analogous to those in the states, are maintained in the District of Columbia and the Commonwealth of Puerto Rico. There are also territorial courts in the Virgin Islands, Guam, American Samoa, and the Northern Mariana

Islands. Collectively, these American courts extend over an immense geographical expanse, from the northeastern seaboard in Maine to the far Pacific islands and from Puerto Rico to Alaska.

The federal judiciary and the fifty state judicial systems are each constructed like a pyramid. In broad outline these systems are similar, but they vary in the details of their organization and business. Across the base are the trial courts, the courts of first instance. At the apex is the court of last resort, usually called the supreme court. In most states and in the federal system there is a middle tier, the intermediate appellate courts. All of these courts draw their style and their conceptions of judicial power from the English common-law and equity courts, the legal order that was transplanted to North American shores by the British colonists in the seventeenth and eighteenth centuries. Louisiana, however, is a unique hybrid because of its roots in the French civil-law system.

Two features distinguish American courts from the English courts and from those of any other country: the separation of powers and the doctrine of judicial review. The American concept of the separation of powers calls for all governmental authority to be divided into three parts—legislative, executive, and judicial. Each part must be in the hands of different officials or official bodies. Put in its simplest form, the doctrine requires that the legislative branch make the law through the passage of statutes, the executive branch enforce the law, and the judicial branch interpret and enunciate the meaning of the law through the adjudication of disputes. By thus dividing power, the doctrine aims to protect citizens from abuses of official authority stemming from its concentration in the hands of too few persons or in a single body. In the mystique of American politics, this arrangement is viewed as fundamental to liberty and to government under law. It is embodied in all American governmental structures; hence, the set of federal and state courts functions as a separate branch of government, independent of the legislative and executive branches.

The other distinctive feature of American courts is the doctrine of judicial review. Under this doctrine, a court has power to hold a legislative act (a statute) to be contrary to either the Federal Constitution or a state constitution and hence unenforceable. Similarly, courts also exercise power to hold unconstitutional the acts of executive officials. Constitutional adjudications of these sorts can occur in any civil or criminal case. There are no special constitutional courts in the United States. Any court, state or federal, can pass on the constitutionality of a statute or of executive action, state or federal, whenever the question is necessary to the resolution of a case before it. State courts must apply both the state constitution and the Federal Constitution; if there is any conflict between the two, the Federal Constitution will prevail. Federal courts apply the Federal Constitution; they also have authority to apply state constitutional provisions when the meaning of such provisions is drawn in question, but they will normally defer to state courts on a question of that sort. The power of judicial review, unknown in England and not employed by the ordinary courts in civil-law countries, clothes American courts with the authority to set aside actions of the elected representatives of the people on the ground that they are contrary to the higher law of the constitution.

Judicial review and separation of powers are major elements in the American conception of the "rule of law." They guarantee an independent judiciary authorized to apply the basic charters of government to control executive and legislative action. The rule of law also implies a body of principles, standards, and rules to which all are subject and which will be applied objectively by independent judges acting through established procedures. The legal order, as ultimately enforced by the courts, embraces all; no one is above, below, or outside the law.

The United States, with its English legal inheritance, is known as a "common-law country." This means that case law has

traditionally formed a large part of the legal corpus administered in American courts. This case law is the body of legal principles and rules derived from the written opinions issued by intermediate appellate courts and courts of last resort to explain their decisions. Under the doctrine of precedent, or stare decisis, these decisions are binding in later cases unless they can be distinguished or, as occasionally happens, overruled. Although case law remains a major part of American jurisprudence, litigation is now as likely to involve enactments of federal and state legislative bodies (statutory law) as it is to involve common-law rules (case law). In addition to statutory enactments, regulations issued by various administrative agencies have proliferated, and they too are frequently involved in litigated controversies.

When opinions of American courts are published, they are collected in various sets of bound volumes known as reports. Most states have their own official reports, and decisions from all states are included in regional reports provided by private publishers for the convenience of users. There are other reports for federal decisions. Legislative enactments are published separately. In each state there is a multi-volume set of its statutes, sometimes referred to as its code. Federal statutes are compiled in the *United States Code*. There are also multitudes of published volumes of administrative regulations in both the federal and state spheres.

In addition to being published in bound volumes, many court decisions, statutes, and regulations are now available nationwide through electronic data retrieval systems. The two major systems of this sort are WESTLAW and LEXIS. The statutes and regulations, combined with the reports of court decisions, constitute a formidable mass of material that American lawyers and judges must research and analyze. Furthermore, each judicial system has its own written rules of civil and criminal procedure that must be followed in all the courts of that system.

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American courts adhere to the adversary process, as distinguished from the inquisitorial process that prevails on the continent of Europe and in numerous countries elsewhere. In both civil and criminal cases, the parties through their lawyers are solely responsible for presenting the facts to the court. In civil cases, before trial both parties' attorneys may conduct discovery—identifying witnesses, gathering relevant information, and learning about the opposing party's witnesses and evidence. A large majority of civil actions are disposed of at this pretrial stage; only some 5 to 10% actually go to trial. At trial the lawyers call and question the witnesses. The testimony elicited in court, along with all other items admitted into evidence by the judge, forms the trial record. Based on this adversarial "party presentation," the trial court makes determinations of fact, applies the pertinent law, and enters judgment accordingly.

If either party is dissatisfied with the outcome of the case, he may appeal. Although a large proportion of all criminal convictions are appealed, only a relatively small percentage of judgments in civil cases are taken beyond the trial court. Appeals are based solely on the record made in the trial court. No witnesses appear and no new evidence can be offered at the appellate level; normally no questions can be raised there for the first time. Unlike trial courts, over which a single judge presides, appellate courts are multi-judge forums acting collegially. Appellate courts generally confine themselves to reviewing questions of law raised in the trial court proceedings; factual determinations made by the trial court are not normally disturbed. The appellate court's sole function is to determine whether, as a matter of law, the trial court's judgment should be affirmed, reversed, or modified in some way. If the appellate court concludes that the lower court erred in its application of the law, the appellate court may reverse the lower court's decision. It will do so unless the reviewing judges

conclude that the error was relatively minor and probably did not affect the outcome in the trial court.

The dominant concern in American courts since the 1960s has been the ever-increasing rise in the quantity of cases. While this growth has varied from one place to another, it has been significant almost everywhere. In many trial courts the number of cases commenced annually has tripled over the past three decades. As a result, delays in getting to trial can be lengthy, running up to five years in some courts. In many appellate courts the increase in caseload has been even greater. Although the explanation for this growth is not clear, this crisis of volume appears to result from a combination of an expanding population, rising affluence and mobility among the American people, spreading governmental regulation, erosion in the influence of family, neighborhood, church, school, and other institutions, and a heightened contentiousness among racial, religious, and other groups in society. Whatever the cause, the rising tide of litigation has engendered additional numbers and types of personnel in the courts and modifications in judicial procedures.

The major change in trial courts has been the introduction of affirmative case management by judges. The tradition in the common-law adversarial system of letting the opposing lawyers control the progress of cases, with the judge being merely a passive umpire, has been significantly altered in many of the busiest trial courts. Today many judges hold conferences with parties' lawyers to take control of cases at an early stage, setting schedules for pretrial activities and often encouraging settlement discussions, all for the purpose of moving cases to conclusion without undue delay and expense. While this development has been somewhat controversial, many judges and court administrators believe that such judicial management is essential to avoid unreasonable backlogs of cases.

At the appellate level two new developments have resulted from the unprecedented rise in the quantity of appeals. One is the employment of central staff attorneys—lawyers working for the court as an entity (as distinguished from law clerks who are legal assistants working directly with individual judges)—to screen appeals preliminarily, to prepare memoranda on the cases, and sometimes to draft proposed opinions. The other development has been the introduction of truncated processes. These typically involve the routing of appeals deemed to be relatively simple through a shortened process that may involve no oral argument and no formal conference of the judges, leaving the court to rely primarily on the lawyers' written submissions (briefs) or staff-prepared memoranda. The opinion in this type of case is likely to be terse, without elaborate discussion about the judges' reasoning. The more difficult and complicated cases, on the other hand, are routed through the traditional appellate process (oral argument, conference of the judges, fully explanatory opinion). In many appellate courts today, over half of the appeals are decided without oral argument, and a sizable number are decided by a short written statement giving little or no explanation for the decision. Most such decisions are not included in the published reports.

Despite the increase in litigation and the changes it has wrought, the right to jury trial remains a key feature of American procedure. The jury is the means whereby citizens are involved in the judicial process. Traditionally juries consisted of twelve persons. An evolution has occurred in that respect, however, and today juries are often of fewer numbers, but usually no smaller than six. Laypersons never sit with judges as members of the court, and juries do not participate at the appellate level. The jury's role is to decide contested issues of fact; the judge decides the issues of law. The jury functions under the control of the judge. The judge instructs the jury as to what it is to do, and he

has the authority to set aside the jury's verdict if he thinks the jury acted improperly.

In all of the federal and state courts, a defendant charged with a serious crime has a right to trial by jury. In civil litigation, either party has a right to trial by jury in cases of the type inherited from the English common-law courts, typically cases in which money damages or the recovery of property is the remedy being sought. In other civil cases, largely those of the type heard in the English Court of Chancery, there is no right to trial by jury; typically the remedy sought in these equity cases is an injunction, an order by the court requiring the defendant to do or not to do something. Some cases are mixed; that is, the plaintiff seeks both money damages and an injunction. In most such cases there is a right to trial by jury.

The state courts are the front-line adjudicators in the United States. They overshadow the federal courts in both the number of cases they handle and the number of persons involved as litigants, lawyers, and judges. In the trial courts of the fifty states more than 29,000,000 cases, civil and criminal, are filed annually, compared with fewer than 300,000 in the federal trial courts. In other words, there are nearly one hundred times as many cases commenced in the state courts as in the federal courts. In numbers of judges, the state courts likewise eclipse the federal. There are over 27,000 judges in the state trial courts, while there are little more than 1,000 federal trial judges.

Although in volume of business and number of judicial personnel the federal courts are far smaller than the state courts collectively, those figures belie the importance of the federal courts; much of their business significantly affects the operations of government throughout the country and touches the lives of many persons well beyond the parties in particular cases. Still, for the average citizen in the great mass of everyday affairs the main courts are the state courts.

It is appropriate, therefore, to proceed in Chapter Two with a description of the state court systems, their structure, and the nature of their work. Chapter Three then similarly describes the federal court system. Next, Chapter Four sketches some of the complications stemming from these multiple judiciaries' functioning together in contemporary American society. Chapter Five describes the judges and other persons, including lawyers for litigants, involved in the work of American courts. Finally, Chapter Six indicates some of the trends and possible future directions concerning American courts. The appendices provide additional details on court structures and types of courts and judgeships in the fifty states and the federal judiciary. For those interested in pursuing the subject further, a list of selected readings and sources appears in Appendix E.

CHAPTER TWO

THE STATE COURTS

Each of the fifty states has its own written constitution. These documents, like the Federal Constitution, embody the principle of separation of powers, establishing the state's legislature (sometimes called the General Assembly) as the lawmaking body, the Governor as the chief executive officer, and a court system to exercise the judicial power. In some states the constitution itself creates the entire court system at both trial and appellate levels. In others the constitution does little more than authorize the legislature to establish the judicial structure.

Whether created by the state constitution or by enactments of the legislature, the judicial systems of the fifty states resemble each other in broad outline. Like all other aspects of state governments, however, they vary in detail. Any generalizations risk the portrayal of a judicial structure that is not quite like that in some or even many states. What follows is a description of the key components of the state court systems, with an indication of the typical patterns and variations. Diagrams of five state judicial systems, illustrating the variations, are contained in Appendix A. Tables listing the courts in each of the fifty states, with the number of judges on each court, are contained in Appendix B.

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