

Courting Ignorance: Why We Know So Little About Our Most Important Courts

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Abstract: Most of the United States' judicial work takes place in the country's state trial courts. These tribunals preside over everything from traffic tickets to murder trials, from routine debt collection to massive environmental torts. Given their expansive role, the manner in which these courts function is of immense significance. But ultimately, we know very little about these institutions. Our ignorance flows both from trivial bureaucratic turf battles and from deeply rooted principles of local government, a phenomenon I have called "data federalism." In the last few decades, we have begun to form a partial image of the activities of these organs of government; but we know almost nothing about their past, and the little we do know suggests the dangers of extrapolation. This essay explores the extent of our ignorance of state trial courts and the difficulties of overcoming it.

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Moving into the second decade of the twenty-first century, the United States finds itself in a paradox. To an extent not always recognized, the United States depends on state trial courts to run the world's largest economy and coordinate its mechanisms of social control. But as we drown in data about everything else under the sun, we know remarkably little about how those courts actually work. We are struggling our way to some information about the current situation, but we know almost nothing about the workings of our local-level judicial system for any period before the 1980s. This essay seeks to explore how little we know and explain why we know so little. Beyond that, it traces the roots of our ignorance to choices about fundamental political structure that date to the founding of the American republic. These choices did not make our ignorance inevitable, but they made it likely, and they continue to make it difficult to overcome (however desirable that may be).

Start with the obvious: courts matter. Courts are basic retail-level agencies of government that have the added burden of dealing almost entirely with people in conflict. Genuinely uncontested divorces

aside, the parties in civil and criminal cases are unhappy with either each other or the government, and at the end of the day, a court will order one party to do something he or she does not want to do. That role alone commands our attention. But further, much of what the courts do involves the ground-level implications of our economic system. Courts' principal work lies in enforcing contracts (mostly through debt collection) and hindering noncontractual transfer of property (through various branches of the law of theft and of tort liability). These behaviors and their consequences all deserve our careful study.

And when we do pay attention to courts, our gaze should rest on those that do the heavy lifting: state trial courts. The federal courts handle a minuscule proportion of judicial business: less than four hundred thousand civil and criminal cases annually, or only 2 percent of the country's judicial "business" (the addition of the recent tsunami of bankruptcy filings brings the proportion to only 10 percent). By contrast, state trial courts logged just over one hundred million "cases" (one filing for every 3.5 Americans) in 2010, the most recent year for which compiled data are available.¹ Yet when we ask about these cases and these courts, the trail quickly becomes tangled and obscured.

Histories of American law tend to focus on the U.S. Supreme Court, about which we know almost too much. But when they descend into state judiciaries, writers of such narratives have little to say. Their silence is rooted in ignorance: we simply know almost nothing about state judiciaries prior to the 1980s.

We do know a modest amount about the present. Just over half (54 percent) of the hundred million annual state trial cases are traffic cases, 20 percent are criminal (22 percent if we lump in the juvenile caseload, much of which involves matters that would come to the criminal courts but for

the defendants' age). Civil cases account for 18 – 24 percent if we add in the domestic relations cases, most of which are a specialized version of the civil docket. Stepping back, the image comes into focus: putting the traffic cases to one side, the dockets are almost evenly divided between civil and criminal matters. The civil dockets are dominated by contract claims, which make up about 60 percent of all civil cases. And as one might expect, most of the criminal docket (about 75 percent in most states) consists of misdemeanors. The largest single category of felony cases (about one-third) involve drug offenses.²

Looking back a decade, those statistics hold almost constant, rising or declining only marginally from year to year, with the civil, criminal, and juvenile dockets all declining slightly over the decade (only the domestic relations cases have increased during that period). Not surprisingly, the same is true of the number of state trial court judges, and thus, over the same decade the caseloads per judge have tended to remain stable (the national median floats around 1,600 "cases" per judge per year). The aggregated data, however, conceal large state-to-state variations: New Jersey residents filed civil suits at a rate of 11,416 per 100,000 residents, Idaho residents filed only 647 per 100,000; South Carolina judges faced an average annual caseload just over 5,000, while their Yankee counterparts in Massachusetts dealt with only 379 cases per year. The criminal filings show the same variation, with a median 3,334 criminal charges per 100,000 population, and a variation from 5,847 (North Dakota) to 442 (New York) per 100,000.³

In recent years, the state courts have "cleared" – that is, disposed of in one way or another – slightly fewer civil cases than have been filed during the same period, thus falling slightly further behind each year (with, again, substantial interstate

variations: Utah and Connecticut “gaining” on their caseloads, Nevada losing ground rapidly). State courts do a better job with their criminal cases, in part because they have to: the Constitution requires criminal defendants receive a speedy trial.

Readers not already familiar with these statistics may arrive at a number of related questions, and perhaps even some ideas for change. The questions likely belong to one of two branches: first, what accounts for present-day interstate variation; second, how does the present compare with the past? For different reasons, we lack good answers to either question, however valuable they might be.

Beginning with the present, why do litigation rates vary by a factor of seventeenfold between Idaho and New Jersey? The answer is that we are not, in fact, even sure that the apparent differences are real. The numbers cited above, as well as a great deal of more granular information, come from the National Center for State Courts, a nonprofit organization that for about forty years has both gathered statistics and offered training to judges and court administrators. If this essay has a hero, the National Center is it; but our hero is both young and fragile. The text that accompanies the National Center’s statistics gives an inkling of how uncertain and stumbling even our current knowledge is. Many of the National Center’s notes depict the continuing struggle of state-level court administrators to gather basic statistics on their courts. And the National Center’s newsletters and training programs reflect a constant – though often unsuccessful – effort to persuade states to gather and report data uniformly.⁴ Due in large part to the National Center’s efforts, most states now collect and forward statistics that purport to be statewide. But when we dig beneath the surface, we discover that courts in various counties often record the data accord-

ing to criteria that differ across and within state lines, thereby reporting the same phenomenon in different ways and casting suspicion over the pool of statewide statistics.

For example, some states count a criminal filing with several defendants as one case unit; other states actually count each defendant as a separate “case.” The National Center’s staff struggles to convert these mixed data sets into a shared format that invites interstate comparison, but these efforts have sharp limitations. As a result, while some of the apparently dramatic interstate variation may be real, some may simply be a data-reporting artifact. Thus, even for the present, we have fragmentary data that make it impossible to do robust interstate comparisons or speak with great surety about national trends or best practices.

But the difficulties in comparing the present to the past dwarf those presented by efforts to form present-day interstate comparisons. The National Center began to gather statistical information about state courts in 1978, and began to promulgate good data series (accommodating the difficulties noted above) only in 1984. And so a rounded historical perspective eludes us. And because current patterns may prove to be quite ephemeral – and the very limited data we do have suggests that is the case – that is important.

To demonstrate simultaneously how little we know about the past and how valuable the missing knowledge is, consider the handful of islands in this sea of historical ignorance, the few detailed longitudinal studies of the functioning of state trial courts. For example, Francis Laurent, a student of the legendary legal historian Willard Hurst, undertook a survey of a century of records of a trial court for Chippewa County, Wisconsin.⁵ In the early 1980s, legislators and scholars fretted over a “torts tsunami,” with interested parties propos-

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ing a variety of remedies. Looking back on a century of litigation, however, Laurent found that from 1855 to 1954, not torts but “conflicts of economic interests predominated in the business of the courts.”⁶ That again appears to be the case today, suggesting that the surge of tort actions in the 1980s were, like the Prohibition prosecutions in the 1930s, the defaulted student loan cases that swamped the federal courts in the 1980s, and perhaps, our current drug prosecutions, a temporary phenomenon. But at the same time, this study reminds us not to make easy assumptions: today about two-thirds of civil litigation involves contracts; historically, the Chippewa county rate was about half that.⁷

The same study teaches us not to assume that the current proportion of criminal cases is a permanent phenomenon. Unlike today’s dockets, Chippewa County saw mostly civil cases, which composed 88 percent of that court’s business over the span of a century. Though civil, not criminal, business dominated, there were substantial variations in the rate of civil litigation, doubling from one decade to another before dropping sharply in the next. These data remind us that it is dangerous to assume that any trend will persist. And it would be just as wrong to assume that the historical patterns from a single county in western Wisconsin are typical; other studies suggest significant intercounty variation even within the same state.⁸

Beyond increased knowledge of trends, both policy-makers and scholars would like to know which features of procedural design produce which outcomes. To borrow an example from current debates, the legal community accepts that lower pleading standards likely produce more weak cases, thereby increasing delay and costs as the cases’ weaknesses eventually become apparent. Conversely, higher pleading standards will weed out some cases whose strength would become apparent only as

they progressed toward trial. Over long periods of time, experiences with different procedural regimes might allow for estimates regarding the magnitude of the effects of either higher or lower pleading standards. But we have no such long-term data, and so judges and legislators must guess about the weight of the policies’ effects. To further reinforce the point, consider that about half of the dockets of contemporary courts consist of criminal cases. Laurent’s Wisconsin study suggests that over the longer term, this rate may be anomalous. Other studies suggest that the criminal side of the docket – arrests, charges, convictions, and imprisonment – is much more malleable than the civil side, a consequence of police behavior, criminalization and decriminalization, public perceptions about the threats of disorder, and budget cycles.⁹ These fragmentary studies thus caution us against making assumptions about the permanence of any given state of affairs on the criminal side of the docket.

As limited as our data on state courts are, we are able to make four general inferences about their history. First, the record suggests that for most of their history, American courts have primarily concerned themselves with private disputes, not with criminal law enforcement. Second, the scattered studies show great variation from decade to decade both in the number and type of cases, presenting changes that cannot be mapped onto a simple linear model in which litigation grows with population. Third, these studies – which, again, are few – suggest that the disappearance of jury trial, currently a much debated phenomenon, is not strictly a recent condition: for more than one hundred years, American courts seem to have used jury trials sparingly. Fourth, and as with the present, the data suggest the danger of generalizing from one or two instances, revealing substantial variation from state

to state and from county to county within the same state. Simply, there are just enough of these data islands to inform us of how varied the world is that lies beneath the seas of our ignorance.

Academics always want to know more about their subjects, as demonstrated by the countless calls for “further study” that conclude their research papers. But there’s more than that routine request for investigation at stake here. Courts are a fundamental social service that every government needs. For the same reasons that we want to know what schools, medical providers, and social service agencies are doing with tax dollars, we should care how courts are using them. Although court budgets are orders of magnitude smaller than those of these other state-funded services, they deliver an even more essential service. We could and have survived without governmentally funded schools and hospitals, but it is hard to imagine what would happen if the courts disappeared.

The comparisons to education and medical care provide another reason to regret the absence of good data about the courts: that is, the unmet necessity of establishing baselines and criteria for the competent delivery of justice. The United States is currently engaged in rancorous discussions about criteria for evaluating schools and medical care, conversations that arise from the data we have about schools and medical providers. For example, we have recently found astonishing interstate variation in the frequency and cost of various common medical procedures, knowledge that is stimulating both professional introspection and questions from policy-makers. Admittedly, part of that conversation involves asking whether we are collecting the *right* data – always a fair question – but we cannot even ask that question until we have *some* data to review. Are there interstate and locality variations in the granting

of domestic restraining orders, summary judgments, and punitive damages that parallel those variations in medical care provision? That illuminating data might only start the conversation, but even that is far more than is possible at present.

The judicial data we have on the federal courts has produced significant findings. For example, in the early 1980s, the accepted wisdom in judicial and professional circles was that “case management” – early judicial guidance in the pretrial process – would make civil litigation faster and cheaper. The Federal Judicial Center conducted a study on case management using a control district to compare other districts that were using various management techniques. The study’s findings suggested that the accepted wisdom was dead wrong: judicial management techniques had either no effect or actually made things slightly worse. Such a finding is golden; and if heeded, it heads off years of expensive and fruitless experimentation to find the “best” litigation management technique. The state courts do not have any such opportunity to discover and establish best practices.

The federal data, which go back for more than a century, also form a time series that illustrates the extent to which changes in political course affect courts and litigants. Prohibition is one obvious example, having swamped the federal courts in runner charges. But there are also less dramatic examples: in the 1980s, the Reagan administration decreed that collecting unpaid, federally guaranteed student loans was a national priority. Within a year, student loan cases had become the largest single category of the federal civil docket, a category that has all but disappeared since loan collection began to be outsourced to private collection agencies. Given the magnitude of the effect, we can be certain that states’ run-up in drug offense prosecutions has had a Prohibition-

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like effect on state courts. But we remain clueless about other, smaller-order effects. Simply to know that a change in social policy affects the courts is not to reach any conclusion about its wisdom. And we cannot reach a conclusion about its wisdom unless we have some sense of its effect, which of course requires data for the states.

Our ignorance is rooted deep in our political culture. We know so little about state courts because no one collected the information on a statewide – never mind national – scale prior to the third quarter of the twentieth century. This gap in knowledge flows from the basic structure of state government. Unlike the federal judiciary, the desirability of state courts occasioned no political controversy at the nation’s founding. The fateful decision of that period, which also seems never to have been debated, was that the state courts should be creatures not of the state governments themselves, but of counties, towns, and cities. Perhaps that decision was inevitable. As many have noted, most of the colonists’ exposure to courts had been to local entities – such as manorial and municipal courts – not to the royal courts, which were in any case viewed as contemptuous symbols of a distant and unresponsive government. Moreover, without regard to these political and sociological matters, state governments were then such frail and evanescent creatures that establishing and operating a court system would have been beyond their capabilities.

Beyond history, sociology, and the constitutions of infant institutions lies the matter of finance. The only remotely stable source of public revenues in the early republic were taxes on property ownership, which were collected by local authorities. In the case of the courts, local tax revenues were supplemented by the courts’ own income, derived from filing fees, fines, and other charges to claimants. So because

virtually all stable public revenue was collected at the local level, it was natural that judges were paid by local governments, usually at the county level. And since they were paid by counties, trial court judges thought of themselves, and were thought of by their constituents, as essentially local officials (though they continued to apply what state statutes and precedents that there were). While much has changed in the centuries dividing us from the Constitutional era, that feature has not: state trial court judges, whether elected by the public or appointed by a statewide official or body (typically the governor or, less common, the legislature), still come from the localities that they serve. It would be very rare – and in some states, unlawful – for a governor to appoint an “outsider” who did not reside in the county to a trial court judgeship.

This localism stands in contrast to judicial appointments in other systems. In a concerted effort to prevent local biases from seeping into their official acts, Japanese and German judges are systematically moved around the nation. Imperial China took things a step further, forbidding judges from ever sitting in districts with which they had any close association. My point is not normative (we can imagine either system working well or badly); rather, it is descriptive: we must conceive of the judges that staff our nation’s state courts as closely tied to the localities that they serve.

Because they reported to no state official, the trial courts were, from the nation’s infancy, a basic but anomalous part of state government. With the power to reverse judgments, appellate courts provided a crude measure of centralized control, but there was no administrative supervision or mechanism to hold the trial courts accountable. As legal scholar Lawrence Friedman put it, in the late nineteenth century the “[t]ypical state system was still a pyramid of courts, imperfectly manned and badly

paid at the bottom. No administrator ran, controlled, or coordinated the judicial system."¹⁰

Bureaucracies produce data, and as Friedman's statement suggests, it is hard to imagine any government officials less bureaucratic than state trial judges. Prodded by litigants, clerks' offices eventually began to keep a rough record of individual cases, producing a document that the trial's winner could brandish to compel law enforcement to collect a debt or arrest a miscreant. But neither the litigants, the clerks, nor the judges much cared about how the system as a whole functioned or how it was changing over time.

Governments tend to want to know what the people they pay are doing with their time, typically requiring periodic reports on projects, budgets, and activities. Thus, branches of state and federal governments regularly report to their sources of funding. In the case of the federal courts, the funding comes from Congress, and there is more than a century of data on federal court caseloads, first recorded in the annual report of the Attorney General and now featured in reports issued by the Administrative Office of the United States Courts. As explained above, there have been, until recently, no equivalent reports for state courts. Where they existed at all, they took the form of reports to the courts' paymasters, who were usually officials of the county in question. Moreover, because the consequences of data collection were indeterminate, the motivation to require reports was limited. Unlike, for example, a government-funded road maintenance crew, an inefficient or bad judge could not simply be replaced by county officials. The county's only official course of action was to decline to increase the court's budget.

As a result of these circumstances, the data from which long-term studies of the state trial judiciaries might be constructed, where it was collected at all, lies molder-

ing in the basements of a thousand county courthouses, unless it has already been destroyed by floods, eaten by vermin, or discarded to make space for newer records or an air-conditioning system. While state governments might have had an abstract interest in how the state courts were performing, they were not, until recent decades, willing to pick up the tab for an unusually incompetent or expensive set of county judges. The costs, both financial and governmental, were borne locally, and the records, if any, went no further than the local unit of government.

My argument thus far has proved too much: in explaining why we do not have historical data, I have suggested that logically, we should *still* have no data. Most of the elements of localism that marked our state trial courts from the beginning of the republic persist today. Judges still are appointed and serve entirely in one county or city, except in rare instances when asked to serve temporarily in another county struggling with an unwieldy caseload. Judges are still drawn from the bar of that county or city, and many will have spent most of their lives there. But at least in part, one element has changed.

No sudden burst of enlightenment produced this shift. Rather, various reformers had for decades bewailed the absence of data that would track trends on a statewide basis and allow for comparison across states. But because no legislature seemed inclined to spend serious money on such a project, writings on judicial administration share a longing for good data and the sensible conclusions that could be drawn from it. But where these pleas failed, two political movements produced new knowledge.

The first was the drive for "unification." Arthur Vanderbilt, the indefatigable president of the American Bar Association and Chief Justice of New Jersey, helped lead the

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court reform movement of the early and mid-twentieth century. Using New Jersey as a laboratory for judicial experimentation, Vanderbilt helped unify the state's court system, abolishing the many overlapping trial courts with limited jurisdictions and replacing them with a single set of trial-level courts, overseen by the state Chief Justice. With the American Bar Association behind the idea, a number of other states soon followed suit. As a result, individual states began to assume responsibility for paying at least part of their judges' salaries.

The second impetus for change derived from an American tax revolt. Taxes supporting state trial courts, generally collected at the county level, typically came from assessments on real property. As assessed real property values rose or fell, so did the taxes levied on them. In the 1960s and 1970s, real property values, especially in the West and Southwest, rose substantially faster than wages or the rate of inflation. They rose to the point that some property owners alleged that they were living in homes whose taxes they could no longer afford. That perception, whether accurate or not, coupled with the belief that government had grown too big, spawned the protests and political agitation that came to be viewed as a tax revolt. In California, that revolt led to a state constitutional amendment that capped the rise in assessed valuation and made it more difficult for the state legislature to raise taxes that might substitute for the property levy. Eighteen other states adopted similar provisions.

These two political currents – court unification and tax revolt – contributed to the same end: that state governments would assume at least partial financial responsibility for trial courts. And with state funding came state curiosity about the courts' performance. Legislatures and governors, like their county predecessors, suddenly wanted to know what judges and staff were

doing with their money. So state officials began to ask for reports on cases processed, "court days," and other measurable data. Following this call for information, the state governments soon realized that each county collected data in different ways. In many states today, including my own state of California, the reports of the agency that collects state trial court data include both signs of movement toward a common data template and pleas for more uniformity. Thus, even at a statewide level, the gathering of uniform data remains very much a work in progress.

But beyond their inconsistencies, these state-level data have substantial problems, most of which stem from the agendas spurring their collection. When paymasters request that courts report on what they are doing, the motive is usually limited: are you spending our money wisely, and can you make do with less? The courts' reports thus respond to those questions, even when they are not asked explicitly. On the whole, the courts try to show the state legislators that they are doing a heroic job with the limited resources they have been granted, and that they would do an even better job were they given more funding. That story may often be true. But regardless, it doesn't approach the more expansive set of questions that would lead to a detailed picture of the state justice system.

Once states began a central collection of data, the stage was set for a national assembly of local data. But setting the stage did not guarantee that the play would open. To read the reports of the National Center for State Courts is both to admire and despair. One admires the indefatigable, cheerful competence of the staff that massages and interprets the data collected from state agencies. One despairs as, year after year, the reports acknowledge that many states persist in employing inconsistent data collection criteria and report

incomplete data. The result is what I have called *data federalism*: data shaped by local concerns and traditions that allow neither good interstate comparison nor good tracking of trends across time. It is still a considerable improvement on total ignorance, but compared to what we know about many other areas of national life, it is remarkably deficient.

The courts are not alone in this respect: education information suffers from some of the same defects. But the processes of the state courts are in some ways more resistant to change than are schools. And once again, the reasons lie in funding mechanisms. With the War on Poverty in the 1960s, the federal government began to fund some aspects of public education. As noted above, when governments fund, governments count; thus, schools now have for generations reported some aspects of their operation to the national government, on a basis the national government specifies. In theory, such a mechanism might have served the state courts as well. There were brief signs of it under the federally funded Law Enforcement Assistance Administration (LEAA), which was in effect between 1968 and 1982. An agency whose primary focus was criminal enforcement, the LEAA also had a statistical arm that collected information about state courts. That funding produced some national data on state courts, covering both the civil and criminal dockets. But Congress eventually defunded the LEAA, in large part because its mission – “stop crime by next Thursday,” as one former administrator put it¹¹ – created expectations that could not be met.

Since then, the only significant federal data-gathering efforts have come from the Bureau of Justice Statistics, an arm of the U.S. Department of Justice. The Bureau, mostly concerned with issues of crime and punishment, makes occasional sallies into the civil docket, and has promulgated a

few useful reports based on multistate samplings of state courts. But while useful, these efforts are episodic and address only particular issues (have trials disappeared? are verdicts in civil cases typically large?) rather than creating a sustained data pool from which researchers and policy-makers could derive trends and comparisons relating to topics of their choosing.

Beyond the fact that federal interest in state courts has been sporadic, there is a more basic reason that we should not expect the federalization of state trial court data. Courts, more than schools or medical care (both of which the federal government funds in part), are essential parts of every government, even corrupt or incompetent governments. Because we have a federal system, and because the Constitution limits the scope of national law, there will never be a single, unified judicial system in which federal courts hear all cases. It is extremely unlikely that the federal government will ever assume significant responsibility for funding state courts, nor – to the extent that we want to preserve a system that divides power among various sovereigns – should the federal government do so. Under these conditions, data federalism will likely persist.

Let us take stock of what we know and what we do not know about the functioning of state trial courts. We have relatively reliable data covering the last thirty years. It is not uniformly gathered, so there remain many interstate comparisons we cannot make, but it is reliable and regular, and appears sufficiently institutionalized that we can expect it to continue indefinitely. So, unless the states revert to county-level funding of courts, we will in sixty years have a century’s worth of data – enough to draw cautious conclusions about long-term trends.

But without waiting that long, we can draw some very modest lessons from the

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scattered historical data we do possess. The civil caseload appears to be a more permanent fixture than the criminal docket, which waxes and wanes with changing policies. The civil caseload is also distinguished by its independence from state funding, a luxury that the criminal docket does not have. Prosecuting and incarcerating criminals is expensive; thus, criminal dockets fluctuate not only with public perception of the threat of crime but with public budgets. In contrast, the parties to civil cases bear most of the costs of litigation, which to some extent protects the civil caseload from the unreliability of public funding.

The variability and the expense of the criminal docket caution us against making sweeping pronouncements based on the current position of state courts. In fact, there are now faint signs that the electorate may be rethinking the great wave of criminalization and “law and order” legisla-

tion that characterized the second half of the twentieth century. Recent reports suggest that even the right of the political spectrum may be wondering how many criminals we can afford to bring to trial and incarcerate. Were such a movement to catch hold, the state courts in twenty-five years might look quite different from what exists today.

It is depressing to conclude with another reminder of the extent of our ignorance. Yet facing our ignorance may save us from harmful policies predicated on the belief that we know more than we really do. We need state courts. We will continue to need them; and we would like them to work well. But we know precious little about the present, and virtually nothing about how the present compares with the past. That is frustrating but true, and it ought to chasten our policy-making.

ENDNOTES

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- ¹ National Center for State Courts, *Court Statistics Project*, <http://www.courtstatistics.org/>.
- ² *Ibid.*
- ³ National Center for State Courts, *Examining the Work of State Courts: An Analysis of 2010 State Court Caseloads*, Trial Court: Overview, http://www.courtstatistics.org/Other-Pages/~media/Microsites/Files/CSP/DATA%20PDF/CSP_DEC.ashx.
- ⁴ See National Center for State Courts, *Court Statistics Project*, “Guide to Statistical Reporting,” <http://www.courtstatistics.org/Other-Pages/Publications/Guide-to-Statistical-Reporting.aspx>; and National Center for State Courts, *Court Statistics Project*, “Reporting Excellence Awards, 2012,” <http://www.courtstatistics.org/Other-Pages/Awards.aspx>.
- ⁵ Francis W. Laurent, *The Business of a Trial Court: 100 Years of Cases* (Madison: University of Wisconsin Press, 1959).
- ⁶ *Ibid.*, 73.
- ⁷ *Ibid.*, 49.
- ⁸ Stephen Daniels, “Caseload Dynamics and the Nature of Change: The Civil Business of Trial Courts in Four Illinois Counties,” *Law & Society Review* 24 (1990): 299.
- ⁹ Eric H. Monkkonen, *Police in Urban America 1860–1920* (Cambridge: Cambridge University Press, 1981); and Lawrence M. Friedman and Robert V. Percival, *The Roots of Justice: Crime and*

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¹⁰ Lawrence M. Friedman, *A History of American Law* (New York: Simon & Schuster, 1973), 336.

¹¹ *LEAA/OJP Retrospective: 30 Years of Federal Support to State and Local Criminal Justice* (Washington, D.C.: Office of Justice Programs, United States Department of Justice, July 11, 1996), <https://www.ncjrs.gov/pdffiles1/nij/164509.pdf>.