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The Straight-Line Method of Determining Personal Jurisdiction

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There seems to be a substantial measure of agreement that the law for determining personal jurisdiction is a stinking bog, at once incoherent, absurd, unhealthy, and boring. Scholars blunder from one part of the swamp to another, vainly searching for a path. A number of silly ideas have found favor at one time or another. The current state of jurisdiction law perhaps can best be established by quoting from a recent article by a leading scholar:

> The Supreme Court's recent decisions on personal jurisdiction are far from satisfactory. In the past fourteen years, the Court has decided thirteen cases dealing with due process limitations on the bases for state court personal jurisdiction. However, these cases have not given us a coherent philosophical foundation for the constitutional restrictions they recognize. The Court has talked confusingly about such considerations as fairness to the parties, litigational efficiency, interstate federalism, territorial power, and protection of state interests. Sometimes the cases seem contradictory. We are not sure whether the Fourteenth Amendment's Due Process Clause is an instrument of interstate federalism. We do not know whether the "stream of commerce" theory can be used to satisfy the purposeful availment requirement in product liability suits against manufacturers. In two recent cases, the Court unanimously supported the actual holdings, but gave completely different explanations, none of which commanded a majority of the Court.[1]

Not only is the law asserting jurisdiction a mess; there also is a vast literature about efforts to *avoid* jurisdiction.[2] This confusion at the top is not without its benefits, of course: lawyers naturally prosper whenever the law becomes unclear, and—closer to home—many a professor has received tenure for yet

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1. Robert C. Casad, Personal Jurisdiction in Federal Question Cases, 70 Tex. L. Rev. 1589, 1589 (1992) (footnotes omitted).
2. See, e.g., William L. Reynolds, The Proper Forum for a Suit: Transnational Forum Non Conveniens and Counter-Suit Injunctions in the Federal Courts 70 Tex. L. Rev. 1663 (1992) (unnoticed article brilliantly arguing some theories or others).

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another brilliant attempt to reconcile jurisdictional theory and law.[3] But we professors understand (vaguely) that there is another society out there, one that is not happy about transferring its wealth to those few of us who benefit from a confused legal system. Accordingly, in the spirit of fervent public-mindedness that has long characterized the legal profession, we propose a radical, yet simple, solution to jurisdictional problems.

The Idea

We have a really quite brilliant idea, hallmarked[4] with the simplicity of true genius, possessing the elegance of Occam's Razor. Let jurisdiction be determined by one simple, straight line.[5] Let the plaintiff determine his, her, or its choice of forum and let the defendant do the same; draw a line between the two towns or cities chosen. If Pennoyer, from Pennoyervania, sues Neff, from Neffada, a map would look like Figure 1.

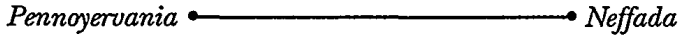

Figure 1

Next, bisect the line.[6] Find the courthouse[7] containing a court of general jurisdiction nearest this halfway point. This will be the forum, a place which should be of about equal inconvenience to plaintiff, defendant, and the forum itself.

For example, if a plaintiff, choosing Los Angeles, sues a defendant, choosing Philadelphia, the case would be tried near Salina, Kansas. (See Figure 2.) What could be more elegant?[8]

Figure 2

3. Would you really want to read this stuff? Then why look at the footnote for citations?
4. You might suppose from this term that at least one of the authors knows more about trademarks than about jurisdiction. If so, you would be correct (although it is not clear which of us that is). On the other hand, the use of "hallmark" to suggest an impression on an intangible argues a certain lack of knowledge, or lack of elegance, or both.
5. You might suppose from this term that one of the authors knows more about geometry than about jurisdiction. This may be true. We both know that you can't draw a straight line on the surface of a sphere, but there is such a thing as a great circle, we think (or at least a Great Circle Route). At any rate, we can leave to the American Law Institute, the Rules Committee, or the *National Geographic* the determination of an official map to be used in our process.
6. To bisect a straight line, we are informed, you take a compass (not the magnetic kind, but the kind with a pencil on one side and an opportunity for blood poisoning on the other), spread the arms (of the compass, not its operator) to more than one-half the distance between the two points, place the spike at each point in turn, and draw arcs through the line. Then draw a straight line between the two points where the arcs intersect. The line is bisected at the point at which this new line crosses the original one. Even lawyers should be able to follow these simple directions. If not, obtain a ruler.
7. This is the first thing a lawyer is supposed to learn how to do after leaving law school. If you took a clinic, it is barely possible that you learned this even before leaving law school.
8. We refer to the idea, not to the unexamined spot near Salina.

Arguments for Some Supposed Difficulties Resolutely Rebutted

To guard against the consequences if certain strategically located towns were to become meccas of litigation, attracting large numbers of cases, we could provide that the parties be assessed the true costs, including overhead, of holding trials in those places. This would at once encourage settlements and provide revenue and perhaps even substantial repopulation incentives for the towns of Middle America.[9] The Rust Belt could be renamed the Legal Belt,[10] or perhaps the Testimonial Truss.[11]

To prevent a new kind of forum shopping—picking an artificial spot solely because it will produce, in combination with your opponent's selection, a forum to your liking—we would require each party to submit a sealed bid before learning of the other's choice. In the case of multiple plaintiffs, there would have to be an agreement among them as to a selection, or a method provided for picking a spot in a different way. In a three-party case, for example, one might have each party select a spot, draw a triangle with its corners at the three spots, bisect the angles of the triangle, and pick the spot where the three bisecting lines meet.[12] It seems that once a forum is selected, later intervening parties should have no say in shifting the forum to a different place.

Finding the Courthouse, Etc.

There remain a few practical problems to be considered. Let us suppose that the two litigants select Savannah, Georgia, and Baltimore, Maryland. The trial would be held in North Carolina somewhere in the Raleigh/Durham/Chapel Hill area. (See Figure 3.)

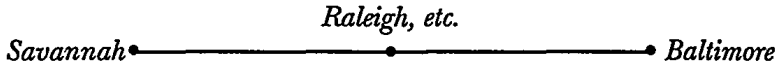

Figure 3

The nearest courthouse might be a difficult question of fact, but the law is full of difficult questions of fact. As long as we can place the forum clearly within a particular state, we see no reason why the exact location of the trial could not be treated as a question of venue for the forum state to decide.[13]

9. An unintended side benefit (what the economists call an "extremity"—or is it "externality"?) is that lawyers bring a nice class of nonpolluting—at least physically—business with them. See generally Nevada and Delaware (happy results produced by influx of legal business).

10. A delicious irony: Dan Quayle would then live in the Legal Belt.

11. If our duller readers miss the point, litigation is maneuvered into a more desirable area, preventing a rupture of the system.

12. We are pretty sure that they do meet at a single point. If they don't, let the lawyers argue about the consequences of our mistake in theory. They should be able to draw on impossibility doctrine in the law of contracts, if they can figure *that* out (talk about "impossible").

13. A Salt Lake City/Denver/Albuquerque triad puts the trial at a spot which may be too distant for practical purposes. While we want to encourage the building of motels, shopping malls,

Choices of Milwaukee, Wisconsin, and Portland, Maine, would produce a trial near Toronto, in Canada. This might be refreshing, but it would require an international treaty to implement. More questionable would be the choices of Brownsville, Texas, and San Juan, Puerto Rico: the nearest city is Havana, Cuba. One might exclude the foreign forum either by designating the nearest United States town to the foreign spot originally derived or by casting out foreign countries, treating them as though they did not exist.[14] For example, a straight line on our map between Anchorage, Alaska, and Fayetteville, Arkansas, originally giving us something near Edmonton, Alberta, as a forum, provides instead a spot in the vicinity of Ainsworth, Nebraska,[15] if we simply subtract the part of the line that runs through Canada and divide the number of inches in the remainder in half.

No doubt, there are problems of implementation,[16] but we think that our theory is about as simple, as fair, and as logical as a theory can get.

A Dream of the Future

We would be disingenuous if we did not disclose that we have an agenda which goes beyond choice of forum in civil cases.[17] *Why not solve choice-of-law problems in the same way?* For ease of administration, it might be best to simply adopt the law of the forum! Because that choice would be made in an arbitrary albeit neutral manner, choice of law could tag along with jurisdiction. Attorneys, of course, would have to consider choice-of-law problems in deciding which forum to select. We could then say a fond farewell to such tedious problems as *renvoi* and perhaps say goodbye to the course in Conflicts as well.[18]

and the like, to provide services for the participants in legal proceedings in previously underpopulated areas, an idea can be carried too far. A state might properly claim the right to shift the trial to another spot within its borders in such cases. (One of the authors dissents. He believes that any rational system of government should maximize inconvenience for litigants and lawyers.)

14. This may be closer to the American spirit. See American foreign policy, *passim.*

15. Ainsworth is a very nice town, incidentally. One of the authors has passed through it often. (The other author hopes never to get within a hundred miles of it.) (The first author notes that this sour remark nicely illustrates the second author's unpleasantly negative personality.) (The second author replies that he has long regarded the first author as a mindless Pollyanna.) (The first author asks the second author to remember that the second author's heart is God's little garden, and to cultivate it accordingly.) (The second author knows where to find the fertilizer.)

16. How, for example, would it be possible for Honolulu to be selected as the forum? Wiseacres who suggest that, if both parties selected Honolulu, the choice of forum would presumably *be* Honolulu, overlook several points. (1) Opposing litigants are almost certain to disagree about everything. (2) The very heart of our theory is that inconvenience be created. (3) One could draw a great circle route all around the world, beginning and ending in Honolulu, and finding the forum as near the point halfway round the world as possible.

17. It might seem that nothing much could be done with our theory in forum choice in criminal cases, but we hope to squeeze another article out of this topic. Prospects are good if we amend the Constitution to allow criminal trials outside the state of the prosecution. Federal trials also provide interesting possibilities for forum shopping.

18. This would cause one of the authors enormous financial hardship for he would lose vast royalties on his Conflicts books. If that be the price of progress, so be it. Justice must prevail.

Incidental Benefits

Of course, there will be some professional naysayers who object to our proposal as arbitrary.[19] No doubt these doubters believe that jurisdiction decisions are rendered scientifically. Once that delusion has been left behind, however, our solution makes eminent sense. Transaction costs are reduced and at the same time a clear and workable rule, equally objectionable to all, is provided. The utilitarian calculus is satisfied.[20]

The true elegance of the straight-line proposal can be appreciated only when it is understood that under the straight-line proposal—incredibly—both the public and the professoriate will profit. The public obviously will benefit because of greatly reduced litigation expenses due to greatly reduced litigation. The academic benefit may be harder to see at first glance, but it is every bit as real.

Think, for example, of the tenure pieces to be written by the game theorists.[21] If plaintiff really wants her case heard by a court in, say, Pittsburgh, she will have to try and file suit initially in a court at a proper distance *and direction* from Pittsburgh so that Pittsburgh is at the halfway point between her choice and the place she calculates defendant will select. Think of the brainstorming, the late-night debating (and drinking), that plaintiffs' attorneys will indulge in before making their choice. Think of the billable hours. Think of the money to be made consulting. Think of the tenure pieces.

Conclusion

We believe we have demonstrated that the parameters of our praxis interface redundantly, except, possibly, on Tuesdays.[22] Beyond that, we leave it to our readers to work out the lessons of our labors.

19. But see Brainerd Currie's suggestion that, in a true conflict, the court should apply the law of the state that comes first in the alphabet. This stroke of genius has been justly ridiculed: after all, why give precedence to the laws of Alaska, Alabama, or Arkansas? Currie's problem lay in not recognizing the wisdom of our method of random selection.

20. See Jeremy Bentham, *passim.* (Although there is little utility in doing so.)

21. Consider this the obligatory reference to the path-breaking (or is it tie-breaking?) work on game theory by von Neumann and Morgenstern—or is it Rosencrantz and Guildenstern? Often cited by law professors, it has never been read. Also in this category is some book about scientific paradigms. Not only is that often cited but never read, it is ludicrous to refer to science and law in the same work. (Brumbaugh, who did not compose the earlier part of this footnote, points out that Reynolds just did what he himself calls ludicrous, at least if we can dignify this article by calling it a "work." Brumbaugh further notes that he has, with great wisdom and incisiveness, questioned the relationship between scientific method, as loosely applied in psychological studies, and the law. See his review of James Marshall, Law and Psychology in Conflict (Indianapolis, 1966), 27 Md. L. Rev. 93 (1967). While this book review is not especially relevant, and has probably never been cited by anyone, or even read, after—or maybe even before—publication, Reynolds has cited some of his stuff, so why shouldn't Brumbaugh advertise as well?)

22. We mean, of course, that there may or may not be a Tuesday interface, not that our demonstration may fail on Tuesdays.