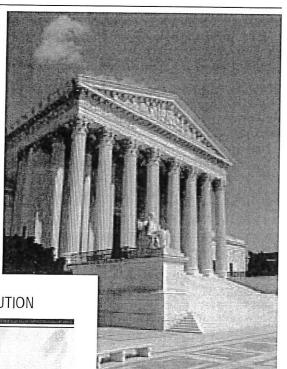


ADMINISTRATIVE OFFICE OF THE U.S. COURTS

Leonidas Ralph Mecham, Director

# The Constitution and the Federal Judiciary



Article III of the United States
Constitution establishes the judicial
branch as one of the three separate and
distinct branches of the federal
government. The other two are the
legislative and executive branches.

The federal courts often are called the guardians of the Constitution because their rulings protect rights and liberties guaranteed by the Constitution. Through fair and impartial judgments, the federal courts interpret and apply the law to resolve disputes. The courts do not make the laws. That is the responsibility of Congress. Nor do the courts have the power to enforce the laws. That is the role of the President and the many executive branch departments and agencies.

The Founding Fathers of the nation considered an independent federal judiciary essential to ensure fairness and

equal justice for all citizens of the United States. The Constitution they drafted promotes judicial independence in two major ways. First, federal judges are appointed for life, and they can be removed from office only through impeachment and conviction by Congress of "Treason, Bribery, or other high Crimes and Misdemeanors." Second, the Constitution provides that the compensation of federal judges "shall not be diminished during their Continuance in Office." which means that points on the Provident

Continuance in Office," which means that neither the President nor Congress can reduce the salary of a federal judge. These two protections help an independent judiciary to decide cases free from popular passion and

political influence.

# U.S. CONSTITUTION

# Article III

e judicial power of the United States all be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

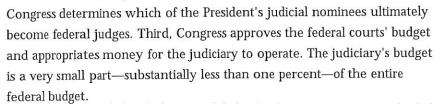
# The Federal Courts in American Government

The three branches of the federal government—legislative, executive, and judicial—operate within a constitutional system known as "checks and balances." This means that although each branch is formally separate from the other two, the Constitution often requires cooperation among the branches. Federal laws, for example, are passed by Congress and signed by the President. The judicial branch, in turn, has the authority to decide the constitutionality of federal laws and resolve other disputes over federal laws, but judges depend upon the executive branch to enforce court decisions.

# The Federal Courts and Congress

The Constitution gives Congress the power to create federal courts other than the Supreme Court and to determine their jurisdiction. It is Congress, not the judiciary, that controls the type of cases that may be addressed in the federal courts.

Congress has three other basic responsibilities that determine how the courts will operate. First, it decides how many judges there should be and where they will work. Second, through the confirmation process,



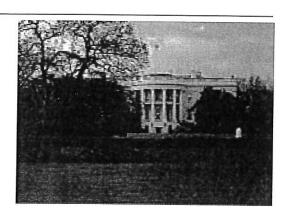


# The Federal Courts and the Executive Branch

Under the Constitution, the President appoints federal judges with the "advice and consent" of the Senate. The President usually consults senators or other elected officials concerning candidates for vacancies on the federal courts. The President's power to appoint new federal judges is not the judiciary's only interaction with the executive branch. The Department of Justice, which is responsible for prosecuting federal crimes and for



representing the government in civil cases, is the most frequent litigator in the federal court system. Several other executive branch agencies affect the operations of the courts. The United States Marshals Service, for example, provides security for federal courthouses and judges, and the General Services Administration builds and maintains federal courthouses.



Within the executive branch there are some specialized subject-matter courts, and numerous federal administrative agencies that adjudicate disputes involving specific federal laws and benefits programs. These courts include the United States Tax Court, the United States Court of Military Appeals, and the United States Court of Veterans Appeals. Although these courts and agencies are not part of the judiciary established under Article III of the Constitution, appeals of their decisions typically may be taken to the Article III courts.

# The Federal Courts and the Public

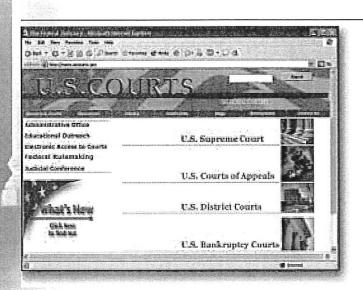
With certain very limited exceptions, each step of the federal judicial process is open to the public. Many federal courthouses are historic buildings, and all are designed to inspire in the public a respect for the tradition and purpose of the American judicial process.

An individual citizen who wishes to observe a court in session may go to the federal courthouse, check the court calendar, and watch a proceeding. Anyone may review the pleadings and other papers in a case by going to the clerk of court's office and asking for the appropriate case file. Unlike most of the state courts, however, the federal courts generally do not permit television or radio coverage of trial court proceedings.

Court dockets and some case files are available on the Internet through the Public Access to Court Electronic Records system (known as "PACER"), at www.pacer.uscourts.gov. In addition, nearly every federal court maintains a web site with information about court rules and procedures. A list of these web sites is available on the judiciary's official website at www.uscourts.gov, or at the end of this booklet.

The right of public access to court proceedings is partly derived from the Constitution and partly from court tradition. By conducting their judicial work in public view, judges enhance public confidence in the courts, and they allow citizens to learn first-hand how our judicial system works.

In a few situations the public may not have full access to court records and court proceedings. In a high-profile trial, for example, there may not be enough space in the courtroom to accommodate everyone who would like to observe. Access to the courtroom also may be restricted for security or privacy reasons, such as the protection of a juvenile or a confidential informant. Finally, certain documents may be placed under seal by the judge, meaning that they are not available to the public. Examples of sealed information include confidential business records, certain law enforcement reports, and juvenile records.



# Structure of the Federal Courts

The Supreme Court is the highest court in the federal judiciary. Congress has established two levels of federal courts under the Supreme Court: the trial courts and the appellate courts.

# **Trial Courts**

The United States district courts are the trial courts of the federal court system. Within limits set by Congress and the Constitution, the district courts have jurisdiction to hear nearly all categories of federal cases, including both civil and criminal matters. There are 94 federal judicial districts, including at least one district in each state, the District of Columbia and Puerto Rico. Each district includes a United States bankruptcy court as a unit of the district court. Three territories of the United States—the Virgin Islands, Guam, and the Northern Mariana Islands—have district courts that hear federal cases, including bankruptcy cases.

There are two special trial courts that have nationwide jurisdiction over certain types of cases. The Court of International Trade addresses cases involving international trade and customs issues. The United States Court of Federal Claims has jurisdiction over most claims for money damages against the United States, disputes over federal contracts, unlawful "takings" of private property by the federal government, and a variety of other claims against the United States.

# **Appellate Courts**

The 94 judicial districts are organized into 12 regional circuits, each of which has a United States court of appeals. A court of appeals hears appeals from the district courts located within its circuit, as well as appeals from decisions of federal administrative agencies. In addition, the Court of Appeals for the Federal Circuit has nationwide jurisdiction to hear appeals in specialized cases, such as those involving patent laws and cases decided by the Court of International Trade and the Court of Federal Claims.

# **United States Supreme Court**

The United States Supreme Court consists of the Chief Justice of the United States and eight associate justices. At its discretion, and within certain guidelines established by Congress, the Supreme Court each year hears a limited number of the cases it is asked to decide. Those cases may begin in the federal or state courts, and they usually involve important questions about the Constitution or federal law.

# THE UNITED STATES FEDERAL COURTS

SUPREME COURT

**UNITED STATES SUPREME COURT** 

APPELLATE COURTS

U.S. Courts of Appeals

12 Regional Circuit Courts of Appeals 1 U.S. Court of Appeals for the Federal Circuit

TRIAL COURTS

**U.S. District Courts** 

94 judicial districts U.S. Bankruptcy Courts

U.S. Court of International Trade
U.S. Court of Federal Claims

FEDERAL COURTS
AND OTHER ENTITIES
OUTSIDE THE
JUDICIAL BRANCH

Military Courts (trial and appellate)
Court of Veterans Appeals
U.S. Tax Court
Federal administrative agencies and boards



# The Jurisdiction of the Federal Courts

Before a federal court can hear a case, or "exercise its jurisdiction," certain conditions must be met. First, under the Constitution, federal courts exercise only "judicial" powers. This means that federal judges may interpret the law only through the resolution of actual legal disputes, referred to in Article III of the Constitution as "Cases or Controversies." A court cannot attempt to correct a problem on its own initiative, or to answer a hypothetical legal question.

Second, assuming there is an actual case or controversy, the plaintiff in a federal lawsuit also must have legal "standing" to ask the court for a decision. That means the plaintiff must have been aggrieved, or legally harmed in some way, by the defendant.

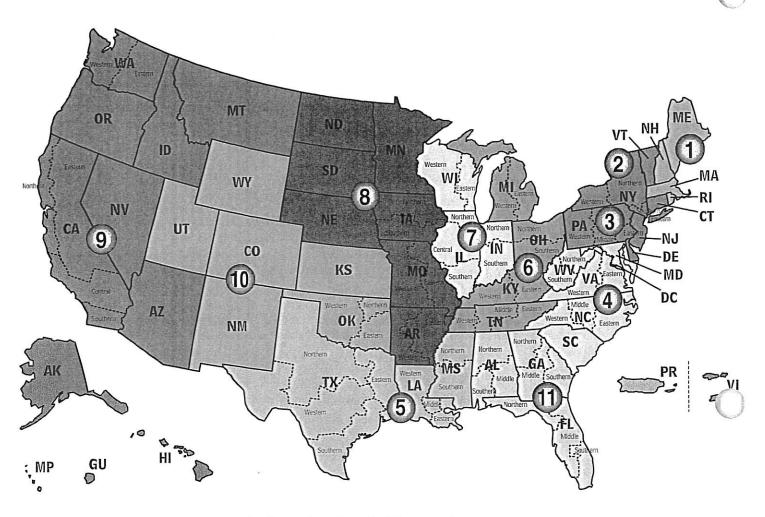
Third, the case must present a category of dispute that the law in question was designed to address, and it must be a complaint that the court has the power to remedy. In other words, the court must be authorized, under the Constitution or a federal law, to hear the case and grant appropriate relief to the plaintiff. Finally, the case cannot be "moot," that is, it must present an ongoing problem for the court to resolve. The federal courts, thus, are courts of "limited" jurisdiction because they may only decide certain types of cases as provided by Congress or as identified in the Constitution.

Although the details of the complex web of federal jurisdiction that Congress has given the federal courts is beyond the scope of this brief guide, it is important to understand that there are two main sources of the cases coming before the federal courts: "federal question" jurisdiction, and "diversity" jurisdiction.

In general, federal courts may decide cases that involve the United States government, the United States Constitution or federal laws, or controversies between states or between the United States and foreign governments. A case that raises such a "federal question" may be filed in federal court. Examples of such cases might include a claim by an individual for entitlement to money under a federal government program such as Social Security, a claim by the government that someone has violated federal laws, or a challenge to actions taken by a federal agency.

# **GEOGRAPHIC BOUNDARIES**

OF UNITED STATES COURTS OF APPEALS AND UNITED STATES DISTRICT COURTS

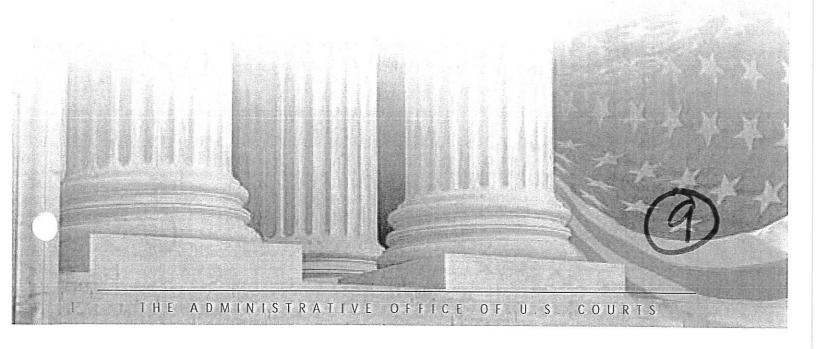


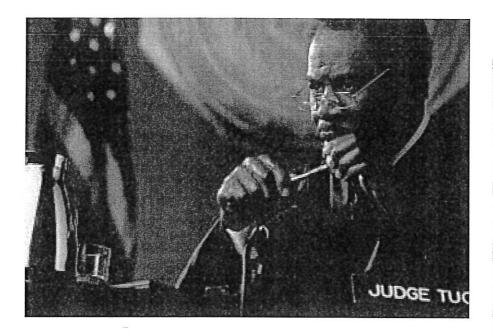
A case also may be filed in federal court based on the "diversity of citizenship" of the litigants, such as between citizens of different states, or between United States citizens and those of another country. To ensure fairness to the out-of-state litigant, the Constitution provides that such cases may be heard in a federal court. An important limit to diversity jurisdiction is that only cases involving more than \$75,000 in potential damages may be filed in a federal court. Claims below that amount may only be pursued in state court. Moreover, any diversity jurisdiction case regardless of the amount of money involved may be brought in a state court rather than a federal court.



Federal courts also have jurisdiction over all bankruptcy matters, which Congress has determined should be addressed in federal courts rather than the state courts. Through the bankruptcy process, individuals or businesses that can no longer pay their creditors may either seek a court-supervised liquidation of their assets, or they may reorganize their financial affairs and work out a plan to pay off their debts.

Although federal courts are located in every state, they are not the only forum available to potential litigants. In fact, the great majority of legal disputes in American courts are addressed in the separate state court systems. For example, state courts have jurisdiction over virtually all divorce and child custody matters, probate and inheritance issues, real estate questions, and juvenile matters, and they handle most criminal cases, contract disputes, traffic violations, and personal injury cases. In addition, certain categories of legal disputes may be resolved in special courts or entities that are part of the federal executive or legislative branches, and by state and federal administrative agencies.





# **United States Judges**

The work of the federal courts touches upon many of the most significant issues affecting the American people, and federal judges exercise wide authority and discretion in the cases over which they preside. This section discusses how federal judges are chosen, and provides basic information on judicial compensation, ethics, and the role of senior and recalled judges.

# Appointment and Compensation

Justices of the Supreme Court, judges of the courts of appeals and the district courts, and judges of the Court of International Trade, are appointed under Article III of the Constitution by the President of the United States with the advice and consent of the Senate. Article III judges are appointed for life, and they can only be removed through the impeachment process. Although there are no special qualifications to become a judge of these courts, those who are nominated are typically very accomplished private or government attorneys, judges in state courts, magistrate judges or bankruptcy judges, or law professors. The judiciary plays no role in the nomination or confirmation process.

# CODE OF CONDUCT FOR UNITED STATES JUDGES

A judge should uphold the integrity and independence of the judiciary.

A judge should avoid impropriety and the appearance of impropriety in all activities.

A judge should perform the duties of the office impartially and diligently.

A judge may engage in extra-judicial activities to improve the law, the legal system, and the administration of justice.

A judge should regulate extra-judicial activities to minimize the risk of conflict with judicial duties.

A judge should regularly file reports of compensation received for law-related and extra-judicial activities.

A judge should refrain from political activity.



Bankruptcy judges are judicial officers of the district courts and are appointed by the courts of appeals for 14-year terms. Magistrate judges are judicial officers of the district courts and are appointed by the judges of the district court for eight-year terms. The President and the Senate play no role in the selection of bankruptcy and magistrate judges. Judges of the Court of Federal Claims are appointed for terms of 15 years by the President with the advice and consent of the Senate.

Each court in the federal system has a chief judge who, in addition to hearing cases, has administrative responsibilities relating to the operation of the court. The chief judge is normally the judge who has served on the court the longest. Chief district and court of appeals judges must be under age 65 to be designated as chief judge. They may serve for a maximum of seven years and may not serve as chief judge beyond the age of 70.

All federal judges receive salaries and benefits that are set by Congress. Judicial salaries are roughly equal to salaries of Members of Congress.

# Judicial Ethics

ADMINISTRATIVE OFFICE

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Federal judges abide by the Code of Conduct for United States Judges, a set of ethical principles and guidelines adopted by the Judicial Conference of the United States. The Code of Conduct provides guidance for judges on issues of judicial integrity and independence, judicial diligence and impartiality, permissible extra-judicial activities, and the avoidance of impropriety or even its appearance.

Judges may not hear cases in which they have either personal knowledge of the disputed facts, a personal bias concerning a party to the case, earlier involvement in the case as a lawyer, or a financial interest in any party or subject matter of the case.

Many federal judges devote time to public service and educational activities. They have a distinguished history of service to the legal profession through their writing, speaking, and teaching. This important role is recognized in the Code of Conduct, which encourages judges to engage in activities to improve the law, the legal system, and the administration of justice.

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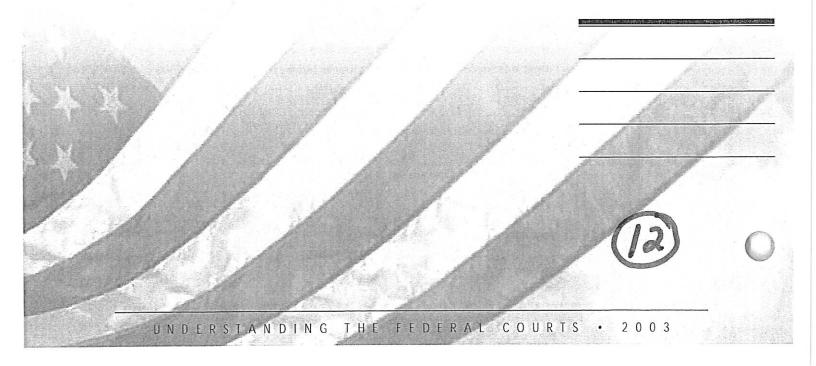
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# Senior and Recalled Judges

Court of appeals, district court, and Court of International Trade judges have life tenure, and they may retire if they are at least 65 years old and meet certain years of service requirements. Most Article III judges who are eligible to retire decide to continue to hear cases on a full- or part-time basis as "senior judges." Retired bankruptcy, magistrate, and Court of Federal Claims judges also may be "recalled" to active service. Without the efforts of senior and recalled judges, the judiciary would need many more judges to handle its cases. Senior judges, for example, typically handle about 15-20% of the appellate and district court workloads.





# The Appeals Process

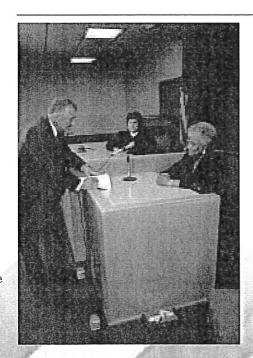
The losing party in a decision by a trial court in the federal system normally is entitled to appeal the decision to a federal court of appeals. Similarly, a litigant who is not satisfied with a decision made by a federal administrative agency usually may file a petition for review of the agency decision by a court of appeals. Judicial review in cases involving certain federal agencies or programs—for example, disputes over Social Security benefits—may be obtained first in a district court rather than directly to a court of appeals.

In a civil case either side may appeal the verdict. In a criminal case, the defendant may appeal a guilty verdict, but the government may not appeal if a defendant is found not guilty. Either side in a criminal case may appeal with respect to the sentence that is imposed after a guilty verdict.

In most bankruptcy courts, an appeal of a ruling by a bankruptcy judge may be taken to the district court. Several courts of appeals, however, have established a Bankruptcy Appellate Panel consisting of three bankruptcy judges to hear appeals directly from the bankruptcy courts. In either situation, the party that loses in the initial bankruptcy appeal may then appeal to the court of appeals.

A litigant who files an appeal, known as an "appellant," must show that the trial court or administrative agency made a legal error that affected the decision in the case. The court of appeals makes its decision based on the record of the case established by the trial court or agency. It does not receive additional evidence or hear witnesses. The court of appeals also may review the factual findings of the trial court or agency, but typically may only overturn a decision on factual grounds if the findings were "clearly erroneous."

Appeals are decided by panels of three judges working together. The appellant presents legal arguments to the panel, in writing, in a document called a "brief." In the brief, the appellant tries to persuade the judges that the trial court made an error, and that its decision should be reversed. On the other hand, the party defending against the appeal, known as the "appellee," tries in its brief to show why the trial court



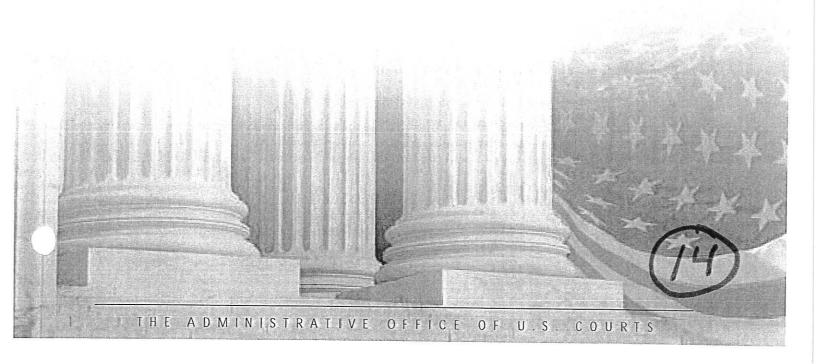


decision was correct, or why any error made by the trial court was not significant enough to affect the outcome of the case.

Although some cases are decided on the basis of written briefs alone, many cases are selected for an "oral argument" before the court. Oral argument in the court of appeals is a structured discussion between the appellate lawyers and the panel of judges focusing on the legal principles in dispute. Each side is given a short time—usually about 15 minutes—to present arguments to the court.

The court of appeals decision usually will be the final word in the case, unless it sends the case back to the trial court for additional proceedings, or the parties ask the U.S. Supreme Court to review the case. In some cases the decision may be reviewed en banc, that is, by a larger group of judges (usually all) of the court of appeals for the circuit.

A litigant who loses in a federal court of appeals, or in the highest court of a state, may file a petition for a "writ of certiorari," which is a document asking the Supreme Court to review the case. The Supreme Court, however, does not have to grant review. The Court typically will agree to hear a case only when it involves an unusually important legal principle, or when two or more federal appellate courts have interpreted a law differently. There are also a small number of special circumstances in which the Supreme Court is required by law to hear an appeal. When the Supreme Court hears a case, the parties are required to file written briefs and the Court may hear oral argument.



# **Common Legal Terms**

# acquittal

Judgment that a criminal defendant has not been proved guilty beyond a reasonable doubt. In other words, a verdict of "not guilty."

# A

# affidavit

A written statement of facts confirmed by the oath of the party making it, before a notary or officer having authority to administer oaths.

# affirmed

In the practice of the court of appeals, it means that the court of appeals has concluded that the lower court decision is correct and will stand as rendered by the lower court.

#### answer

The formal written statement by a defendant responding to a civil complaint and setting forth the grounds for his defense.

# appeal

A request made after a trial by a party that has lost on one or more issues that a higher court (appellate court) review the trial court's decision to determine if it was correct. To make such a request is "to appeal" or "to take an appeal." One who appeals is called the "appellant;" the other party is the "appellee."

# appellate

About appeals; an appellate court has the power to review the judgment of a lower court (trial court) or tribunal. For example, the U.S. circuit courts of appeals review the decisions of the U.S. district courts.

# arraignment

A proceeding in which an individual who is accused of committing a crime is brought into court, told of the charges, and asked to plead guilty or not guilty.





# bail

Security given for the release of a criminal defendant or witness from legal custody (usually in the form of money) to secure his appearance on the day and time set by the court.

# bankruptcy

A legal process by which persons or businesses that cannot pay their debts can seek the assistance of the court in getting a fresh start. Under the protection of the bankruptcy court, debtors may discharge their debts, usually by paying a portion of each debt. Bankruptcy judges preside over these proceedings.

# bench trial

Trial without a jury in which a judge decides which party prevails.

# brief

A written statement submitted by each party in a case that explains why the court should decide the case, or particular issues in a case, in that party's favor.



# chambers

A judge's office, typically including work space for the judge's law clerks and secretary.

# capital offense

A crime punishable by death.

# case law

The law as reflected in the written decisions of the courts.

# chief judge

The judge who has primary responsibility for the administration of a court; chief judges are determined by seniority.

# clerk of court

An officer appointed by the judges of the court to assist in managing the flow of cases through the court, maintain court records, handle financial matters, and provide other administrative support to the court.

## common law

The legal system that originated in England and is now in use in the United States that relies on the articulation of legal principles in a historical succession of judicial decisions. Common law principles can be changed by legislation.

# complaint

A written statement filed by the plaintiff that initiates a civil case, stating the wrongs allegedly committed by the defendant and requesting relief from the court.

## contract

An agreement between two or more persons that creates an obligation to do or not to do a particular thing.

# conviction

A judgment of guilt against a criminal defendant.

#### counsel

Legal advice; a term also used to refer to the lawyers in a case.

# court

Government entity authorized to resolve legal disputes. Judges sometimes use "court" to refer to themselves in the third person, as in "the court has read the briefs."

# court reporter

A person who makes a word-for-word record of what is said in court, generally by using a stenographic machine, shorthand or audio recording, and then produces a transcript of the proceedings upon request.

## damages

Money paid by defendants to successful plaintiffs in civil cases to compensate the plaintiffs for their injuries.



# default judgment

A judgment rendered in favor of the plaintiff because of the defendant's failure to answer or appear to contest the plaintiff's claim.



# defendant

In a civil case, the person or organization against whom the plaintiff brings suit; in a criminal case, the person accused of the crime.

# deposition

An oral statement made before an officer authorized by law to administer oaths. Such statements are often taken to examine potential witnesses, to obtain discovery, or to be used later in trial. See discovery.

# discovery

The process by which lawyers learn about their opponent's case in preparation for trial. Typical tools of discovery include depositions, interrogatories, requests for admissions, and requests for documents. All of these devices help the lawyer learn the relevant facts and collect and examine any relevant documents or other materials.

## docket

A log containing the complete history of each case in the form of brief chronological entries summarizing the court proceedings.



## en banc

"In the bench" or "as a full bench." Refers to court sessions with the entire membership of a court participating rather than the usual number. U.S. circuit courts of appeals usually sit in panels of three judges, but all the judges in the court may decide certain matters together. They are then said to be sitting "en banc" (occasionally spelled "in banc").

# equitable

Pertaining to civil suits in "equity" rather than in "law." In English legal history, the courts of "law" could order the payment of damages and could afford no other remedy. See damages. A separate court of "equity" could order someone to do something or to cease to do something. See, e.g., injunction. In American jurisprudence, the federal courts have both legal and equitable power, but the distinction is still an important one. For example, a trial by jury is normally available in "law" cases but not in "equity" cases.

# evidence

Information presented in testimony or in documents that is used to persuade the fact finder (judge or jury) to decide the case in favor of one side or the other.



# federal public defender

An attorney employed by the federal courts on a full-time basis to provide legal defense to defendants who are unable to afford counsel. The judiciary administers the federal defender program pursuant to the Criminal Justice Act.



# federal question jurisdiction

Jurisdiction given to federal courts in cases involving the interpretation and application of the U.S. Constitution, acts of Congress, and treaties.

# felony

A serious crime carrying a penalty of more than a year in prison. See also misdemeanor.

#### file

To place a paper in the official custody of the clerk of court to enter into the files or records of a case.

# grand jury

A body of 16-23 citizens who listen to evidence of criminal allegations, which is presented by the prosecutors, and determine whether there is probable cause to believe an individual committed an offense. See also indictment and U.S. attorney.



# habeas corpus

A writ (court order) that is usually used to bring a prisoner before the court to determine the legality of his imprisonment. Someone imprisoned in state court proceedings can file a petition in federal court for a "writ of habeas corpus," seeking to have the federal court review whether the state has violated his or her rights under the U.S. Constitution. Federal prisoners can file habeas petitions as well. A writ of habeas corpus may also be used to bring a person in custody before the court to give testimony or to be prosecuted.



# hearsay

Statements by a witness who did not see or hear the incident in question but heard about it from someone else. Hearsay is usually not admissible as evidence in court.





# impeachment

1. The process of calling a witness's testimony into doubt. For example, if the attorney can show that the witness may have fabricated portions of his testimony, the witness is said to be "impeached;" 2. The constitutional process whereby the House of Representatives may "impeach" (accuse of misconduct) high officers of the federal government, who are then tried by the Senate.

# indictment

The formal charge issued by a grand jury stating that there is enough evidence that the defendant committed the crime to justify having a trial; it is used primarily for felonies. See also information.

# in forma pauperis

"In the manner of a pauper." Permission given by the court to a person to file a case without payment of the required court fees because the person cannot pay them.

#### information

A formal accusation by a government attorney that the defendant committed a misdemeanor. See also indictment.

# injunction

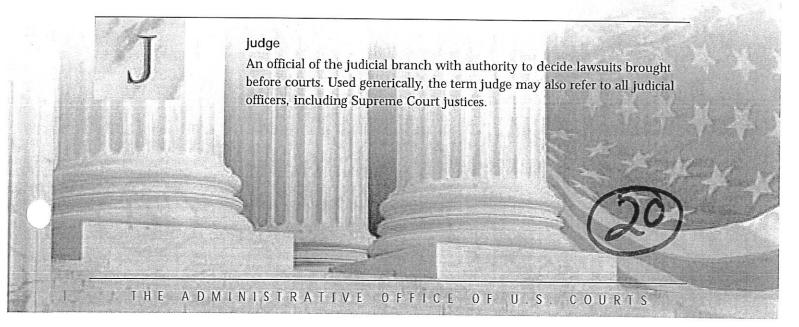
A court order prohibiting a defendant from performing a specific act, or compelling a defendant to perform a specific act.

# interrogatories

Written questions sent by one party in a lawsuit to an opposing party as part of pretrial discovery in civil cases. The party receiving the interrogatories is required to answer them in writing under oath.

#### issue

1. The disputed point between parties in a lawsuit; 2. To send out officially, as in a court issuing an order.



# judgment

The official decision of a court finally resolving the dispute between the parties to the lawsuit.

# jurisdiction

1. The legal authority of a court to hear and decide a case; 2. The geographic area over which the court has authority to decide cases.

# jury

The group of persons selected to hear the evidence in a trial and render a verdict on matters of fact. See also grand jury.

# jury instructions

A judge's directions to the jury before it begins deliberations regarding the factual questions it must answer and the legal rules that it must apply.

# jurisprudence

The study of law and the structure of the legal system.

# **lawsuit**

A legal action started by a plaintiff against a defendant based on a complaint that the defendant failed to perform a legal duty which resulted in harm to the plaintiff.



# litigation

A case, controversy, or lawsuit. Participants (plaintiffs and defendants) in lawsuits are called litigants.

# magistrate judge

A judicial officer of a district court who conducts initial proceedings in criminal cases, decides criminal misdemeanor cases, conducts many pretrial civil and criminal matters on behalf of district judges, and decides civil cases with the consent of the parties.



# misdemeanor

An offense punishable by one year of imprisonment or less. See also felony.



#### mistrial

An invalid trial, caused by fundamental error. When a mistrial is declared, the trial must start again with the selection of a new jury.

#### motion

A request by a litigant to a judge for a decision on an issue relating to the case.



#### nolo contendere

No contest. A plea of nolo contendere has the same effect as a plea of guilty, as far as the criminal sentence is concerned, but may not be considered as an admission of guilt for any other purpose.

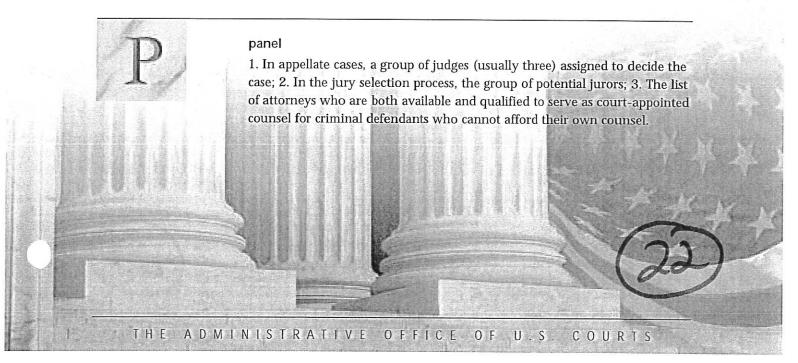


# opinion

A judge's written explanation of the decision of the court. Because a case may be heard by three or more judges in the court of appeals, the opinion in appellate decisions can take several forms. If all the judges completely agree on the result, one judge will write the opinion for all. If all the judges do not agree, the formal decision will be based upon the view of the majority, and one member of the majority will write the opinion. The judges who did not agree with the majority may write separately in dissenting or concurring opinions to present their views. A dissenting opinion disagrees with the majority opinion because of the reasoning and/or the principles of law the majority used to decide the case. A concurring opinion agrees with the decision of the majority opinion, but offers further comment or clarification or even an entirely different reason for reaching the same result. Only the majority opinion can serve as binding precedent in future cases. See also precedent.

# oral argument

An opportunity for lawyers to summarize their position before the court and also to answer the judges' questions.



# party

One of the litigants. At the trial level, the parties are typically referred to as the plaintiff and defendant. On appeal, they are known as the appellant and appellee, or, in some cases involving administrative agencies, as the petitioner and respondent.

# petit jury (or trial jury)

A group of citizens who hear the evidence presented by both sides at trial and determine the facts in dispute. Federal criminal juries consist of 12 persons. Federal civil juries consist of at least six persons. See also jury and grand jury.

# petty offense

A federal misdemeanor punishable by six months or less in prison.

# plaintiff

The person who files the complaint in a civil lawsuit.

# plea

In a criminal case, the defendant's statement pleading "guilty" or "not guilty" in answer to the charges. See also nolo contendere.

# pleadings

Written statements filed with the court which describe a party's legal or factual assertions about the case.

# precedent

A court decision in an earlier case with facts and legal issues similar to a dispute currently before a court. Judges will generally "follow precedent"-meaning that they use the principles established in earlier cases to decide new cases that have similar facts and raise similar legal issues. A judge will disregard precedent if a party can show that the earlier case was wrongly decided, or that it differed in some significant way from the current case.

# procedure

The rules for conducting a lawsuit; there are rules of civil procedure, criminal procedure, evidence, bankruptcy, and appellate procedure.

# presentence report

A report prepared by a court's probation officer, after a person has been convicted of an offense, summarizing for the court the background information needed to determine the appropriate sentence.



# pretrial conference

A meeting of the judge and lawyers to plan the trial, to discuss which matters should be presented to the jury, to review proposed evidence and witnesses, and to set a trial schedule. Typically, the judge and the parties also discuss the possibility of settlement of the case.

# pretrial services

A department of the district court that conducts an investigation of a criminal defendant's background in order to help a judge decide whether to release the defendant into the community before trial.

# probation

1. A sentencing alternative to imprisonment in which the court releases convicted defendants under supervision of a probation officer, who makes certain that the defendant follows certain rules (e.g., gets a job, gets drug counseling, etc.); 2. A department of the court that prepares a presentence report.

# probation officer

Officers of the probation office of a court. Probation officer duties include conducting presentence investigations, preparing presentence reports on convicted defendants, and supervising released defendants.

# pro per

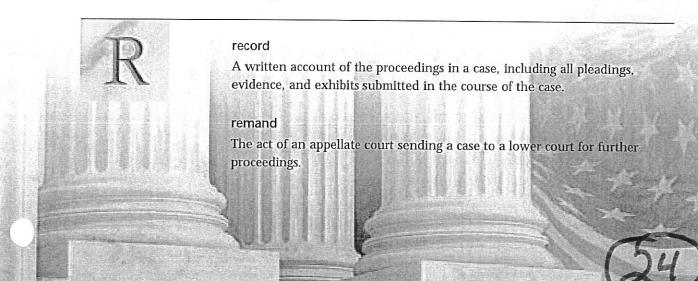
A slang expression sometimes used to refer to a pro se litigant. It is a corruption of the Latin phrase "in propria persona."

# pro se

A Latin term meaning "on one's own behalf"; in courts, it refers to persons who present their own cases without lawyers.

# prosecute

To charge someone with a crime. A prosecutor tries a criminal case on behalf of the government.



#### reverse

The act of an appellate court setting aside the decision of a trial court. A reversal is often accompanied by a remand to the lower court for further proceedings.

#### sentence

The punishment ordered by a court for a defendant convicted of a crime.

# sentencing guidelines

A set of rules and principles established by the United States Sentencing Commission that trial judges use to determine the sentence for a convicted defendant.

# service of process

The delivery of writs or summonses to the appropriate party.

## settlement

Parties to a lawsuit resolve their dispute without having a trial. Settlements often involve the payment of compensation by one party in at least partial satisfaction of the other party's claims, but usually do not include the admission of fault.

# sequester

To separate. Sometimes juries are sequestered from outside influences during their deliberations.

# statute

A law passed by a legislature.

# statute of limitations

A law that sets the deadline by which parties must file suit to enforce their rights. For example, if a state has a five year statute of limitations for breaches of contract, and John breached a contract with Susan on January 1, 1995, Susan must file her lawsuit by January 1, 2000. If the deadline passes, the "statute of limitations has run" and the party may be prohibited from bringing a lawsuit; i.e. the claim is "time-barred." Sometimes a party's attempt to assert his or her rights will "toll" the statute of limitations, giving the party additional time to file suit.

# subpoena

A command, issued under authority of a court or other authorized government entity, to a witness to appear and give testimony.





# subpoena duces tecum

A command to a witness to appear and produce documents.

# summary judgment

A decision made on the basis of statements and evidence presented for the record without a trial. It is used when it is not necessary to resolve any factual disputes in the case. Summary judgment is granted when—on the undisputed facts in the record—one party is entitled to judgment as a matter of law.



# temporary restraining order

Prohibits a person from taking an action that is likely to cause irreparable harm. This differs from an injunction in that it may be granted immediately, without notice to the opposing party, and without a hearing. It is intended to last only until a hearing can be held. Sometimes referred to as a "T.R.O."

# testimony

Evidence presented orally by witnesses during trials or before grand juries.

#### toll

See statute of limitations.

## tort

A civil wrong or breach of a duty to another person. The "victim" of a tort may be entitled to sue for the harm suffered. Victims of crimes may also sue in tort for the wrongs done to them. Most tort cases are handled in state court, except when the tort occurs on federal property (e.g., a military base), when the government is the defendant, or when there is diversity of citizenship between the parties.

# transcript

A written, word-for-word record of what was said, either in a proceeding such as a trial, or during some other formal conversation, such as a hearing or oral deposition.

# trustee

In a bankruptcy case, a person appointed to represent the interests of the bankruptcy estate and the unsecured creditors. The trustee's responsibilities may include liquidating the property of the estate, making distributions to creditors, and bringing actions against creditors or the debtor to recover property of the bankruptcy estate.



# uphold

The appellate court agrees with the lower court decision and allows it to stand. See affirmed.



# U.S. Attorney

A lawyer appointed by the President in each judicial district to prosecute and defend cases for the federal government. The U.S. Attorney employs a staff of Assistant U.S. Attorneys who appear as the government's attorneys in individual cases.



The geographical location in which a case is tried.



## verdict

The decision of a trial jury or a judge that determines the guilt or innocence of a criminal defendant, or that determines the final outcome of a civil case.

# voir dire

The process by which judges and lawyers select a trial jury from among those eligible to serve, by questioning them to make certain that they would fairly decide the case. "Voir dire" is a phrase meaning "to speak the truth."

# warrant

A written order authorizing official action by law enforcement officials, usually directing them to arrest the individual named in the warrant. A search warrant orders that a specific location be searched for items, which if found, can be used in court as evidence.



# witness

A person called upon by either side in a lawsuit to give testimony before the court or jury.

# writ

A formal written command or order, issued by the court, requiring the performance of a specific act.

# writ of certiorari

An order issued by the U.S. Supreme Court directing the lower court to transmit records for a case which it will hear on appeal.



# **United States Courts of Appeals**

Court of Appeals	Districts Included in Circuit	Number of Authorized Judgeships	Location
Federal Circuit	United States	12	Washington, DC 20439
District of Columbia Circuit	District of Columbia	12	Washington, DC 20001
First Circuit	Maine Massachusetts New Hampshire Rhode Island Puerto Rico	6	Boston, MA 02109
Second Circuit	Connecticut New York	12	NVI- NV 10007
Third Circuit	Vermont  Delaware  New Jersey Pennsylvania  Virgin Islands	13	New York, NY 10007  Philadelphia, PA 19106
Fourth Circuit	Maryland North Carolina South Carolina Virginia West Virginia	15	Richmond, VA 23219
Fifth Circuit	Louisiana Mississippi Texas	17	New Orleans, LA 70130
Sixth Circuit	Kentucky Michigan Ohio Tennessee	16	Cincinnati, OH 45202
Seventh Circuit	Illinois Indiana Wisconsin	11	Chicago, IL 60604
Eighth Circuit	Arkansas lowa Minnesota Missouri Nebraska North Dakota South Dakota	11	St. Louis, MO 63101
Ninth Circuit	Alaska Arizona California Hawaii Idaho Montana Nevada Oregon Washington Guam N. Mariana Islands	28	San Francisco, CA 94101
Tenth Circuit	Colorado Kansas New Mexico Oklahoma Utah Wyoming	12	Denver, CO 80294
Eleventh Circuit	Alabama Florida Georgia	12	Atlanta, GA 30303