THE FEDERAL COURT SYSTEM
IN THE UNITED STATES

An Introduction for Judges and Judicial Administrators in Other Countries

ADMINISTRATIVE OFFICE OF THE U.S. COURTS

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The Administrative Office of the U.S. Courts developed this publication to provide an introduction to the federal judicial system, its organization and administration, its relationship to the legislative and executive branches of the federal government, and its relationship to the state court systems. The Administrative Office of the U.S. Courts is the judicial branch's central support agency responsible for providing a broad range of management, legal, technical, communications, and other support services for the administration of the federal courts.


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Preface

This booklet is designed to introduce judges and judicial administrators in other countries to the U.S. federal judicial system, its organization and administration, and its relationship to the legislative and executive branches of the government. The Judicial Services Office of the Administrative Office of the U.S. Courts developed this booklet to support the work of the Judicial Conference Committee on International Judicial Relations.

The Chief Justice presides over the Judicial Conference of the United States, the national policymaking body of the federal courts. Congress passed legislation establishing the earliest form of the Judicial Conference in 1922. Today, 26 judges comprise the Conference—the chief judge of each of the 13 federal courts of appeals, 12 district (trial) judges elected from each of the geographic circuits, and the chief judge of the U.S. Court of International Trade.

The Chief Justice appoints judges and a small number of outside experts to serve on subject-matter committees that assist the Judicial Conference with its work. The Committee on International Judicial Relations—the committee responsible for this publication—is composed of several federal judges and a representative from the U.S. Department of State, who, among other things:

- coordinate the federal judiciary's relationship with foreign judiciaries and other organizations interested in international judicial relations and the establishment and expansion of the rule of law; and
- serve as a point of contact for foreign courts and international organizations communicating with the Chief Justice, the Judicial Conference, and the federal judiciary.

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THE UNITED STATES CONSTITUTION AND THE FEDERAL GOVERNMENT

The U.S. Constitution, adopted in 1789 and amended only rarely since then, is the supreme law of the United States. The Constitution established a republic under which the individual states retain considerable sovereignty and authority. Each state, for example, has its own elected executive (governor), legislature, and court system. The federal, or national, government is one of strong, but limited, powers. The federal government may exercise only the powers specified in the Constitution itself. The Constitution specifies that all other powers are reserved to the states and the people. This system of divided powers is known as "federalism."

The Bill of Rights guarantees that the government will not interfere with an individual's exercise of certain fundamental rights. Adopted as the first ten amendments to the Constitution in 1791, the Bill of Rights prohibits the government from infringing upon an individual's rights to free speech, freedom of assembly, freedom to seek redress of grievances, freedom from unreasonable searches and seizures, due process of law, protection against compelled self-incrimination, protection against seizure of property without just compensation, a speedy and public trial in criminal cases, trial by jury in both criminal and civil cases, and assistance of counsel in criminal prosecutions.

The Constitution also established three separate branches of the U.S. Government—the legislative (Article I), executive (Article II), and judicial (Article III) branches. The constitutional system divides

powers among these three branches of the federal government and establishes a system of "checks and balances." Each branch is formally separate from the other two, and each has certain constitutional authority to check the actions of the other branches.

THE LEGISLATIVE BRANCH

Congress, the national legislature of the United States, is composed of two houses or chambers—the Senate and the House of Representatives. Each state is represented by two senators who are elected for six-year terms. One-third of the Senate is elected every two years. Members of the House of Representatives are elected from local districts within states. Each state receives a number of representatives in proportion to its population. The entire House is elected every two years.

To become law, proposed legislation must be passed by both houses of Congress and signed by the president. If the president does not sign, or vetoes, a bill, it may still be enacted, but only by a two-thirds vote of each house of Congress.

The U.S. government is not a parliamentary or cabinet system of government, as in the United Kingdom and many other democracies around the world. Under the U.S. Constitution, the president is both the head of state and the head of the government. The president appoints a cabinet—consisting of the heads of major executive departments and agencies—but neither the president nor any member of the cabinet sits in Congress. The president's political party, moreover, does not need to hold a majority of the seats in Congress to stay in office. In fact, it is not unusual for one or both houses of Congress to be controlled by the opposition party. Under the Constitution's structure of separate but equal branches of government, there are no provisions to dissolve the government or call for early general elections.

The Senate and House of Representatives both establish their own rules of procedure and designate their members to serve on subject-matter committees. The committee assignments in Congress are based primarily upon seniority. Congress carries out the bulk of its work in committee, where legislators draft laws, appropriate funds for government operations, and hold hearings. Congressional hearings develop the record on matters under a committee's jurisdiction and may involve overseeing government agencies, evaluating programs, or investigating issues. Congress normally requests and occasionally compels government administrators and citizen experts to testify before its committees. The federal courts, for example, maintain regular communications with the Judiciary Committees and the Appropriations Committees of the Senate and the House of Representatives, and judges selected to represent the courts regularly present testimony to congressional committees on issues of concern to the judiciary.

Two central features of the government established under the U.S. Constitution are:

- federalism; and
- checks and balances among the three separate branches of the government.

THE EXECUTIVE BRANCH

The president is elected every four years and under the Constitution may serve no more than two terms in office. Once elected, the president selects a cabinet, each member of which must be confirmed by the Senate. Each cabinet member is the head of a department in the executive branch. The cabinet includes, for example, the Secretary of State, the Secretary of Defense, the Secretary of the Treasury, the Secretary of Homeland Security, and the Attorney General.

The president, the cabinet, and other members of a president's administration are responsible for operating the executive branch of the federal government and for executing and enforcing the laws. Although the Secretary of Homeland Security oversees some law enforcement agencies, such as Immigration and Customs Enforcement and the Secret Service, the Attorney General is the government's chief law enforcement officer. The Attorney General heads the U.S. Department of Justice and is responsible for the administration of the Bureau of Prisons; the Federal Bureau of Investigation; the Bureau of Alcohol, Tobacco, Firearms and Explosives; the U.S. Marshals Service; and other law enforcement organizations. The Attorney General also holds the authority to prosecute crimes and represent the government's legal interests in civil cases.

To serve as an adjunct to the Attorney General, the president appoints a U.S. attorney to serve as the chief prosecutor in each of the 94 federal judicial districts. The U.S. attorneys report to the Attorney General and may be removed from office by the president.

U.S. Constitution, Article III

The judicial Power of the United States, shall 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.

U.S. attorneys represent the government in all criminal cases in federal court and most civil suits against the government, making the United States the chief litigant in the federal courts. To prevent any undue influences or sway over the courts, the executive branch of government plays no role in administration or budgeting for the federal courts.

THE JUDICIAL BRANCH

The framers of the Constitution considered an independent federal judiciary essential to ensure fairness and equal justice to all citizens of the United States. As a result, the federal judiciary is a separate, self-governing branch of the government. The Congress enacts the laws, the president and the many executive branch departments and agencies act on and enforce the laws, and the courts interpret the law. The courts play no active

role in enforcing the laws—that is the role of the president and the executive branch departments and agencies.

The courts interpret the law by issuing judgments on actual legal disputes brought before them by adversarial parties. Federal judges also interpret and issue rulings on the constitutionality of laws when parties to a dispute challenge a law's constitutionality. The federal courts are often called the guardians of the Constitution, because court rulings protect the rights and liberties guaranteed by the Constitution.

The Constitution protects the independence and integrity of the judicial branch in two principal ways. First, federal judges appointed under Article III of the Constitution may serve for life and may only be removed from office through impeachment and conviction by Congress for "Treason, Bribery, or other high Crimes and Misdemeanors." Second, the Constitution provides that the compensation of Article III federal judges "shall not be diminished during their Continuance in Office," which means that neither the president nor Congress can reduce the salaries of most federal judges. These two protections help an independent judiciary to decide cases free from popular passion and political influence.

THE ROLE OF THE FEDERAL COURTS IN AMERICAN GOVERNMENT

THE FEDERAL COURTS AND CONGRESS

Congress has four basic responsibilities under the Constitution that determine how the federal courts will operate. First, the legislature authorizes the creation of all federal courts below the Supreme Court, defines the jurisdiction of the courts, and decides how many judges there should be for each court. Second, Congress approves the federal courts' budget and appropriates money each year to fund the judiciary. The judiciary's budget is a very small part—about two-tenths of one percent—of the entire federal budget. Third, through the confirmation process, the Senate determines which of the president's judicial nominees ultimately become federal judges. Fourth, judges appointed under Article III of the U.S. Constitution may only be involuntarily removed from office after being impeached by the House of Representatives and convicted of treason, bribery, or other high crimes and misdemeanors in a trial before the Senate.

THE FEDERAL COURTS AND THE EXECUTIVE BRANCH

Under the Constitution, the president nominates Article III constitutional judges to a lifetime appointment, subject to approval by the Senate. The president usually consults senators or other elected

officials concerning potential 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. Executive branch agencies also assist the judiciary with certain administrative operations. The U.S. Marshals Service, for example, provides security for federal courthouses and judges, and the General Services Administration builds and maintains federal courthouses.

Military courts, a number of specialized subject-matter tribunals, and some executive agencies adjudicate disputes in the first instance involving specific federal laws and benefits programs. These bodies are not part of the judiciary established under Article III of the Constitution, so their jurisdiction is limited. Administrative law judges and non-judiciary tribunals are limited to resolving disputes on questions arising from matters such as the tax laws; patent and copyright laws; labor laws; social security statutes and regulations; approval of radio and TV licenses; and the like. Appeals of final decisions in these cases typically may be taken to the Article III courts.

THE FEDERAL COURTS AND THE PUBLIC

With few exceptions, the federal judicial process is open to the public. Federal courthouses are designed to provide public access to court proceedings and inspire respect for the tradition and purpose of the American judicial process. In addition, many courthouses are historic buildings or landmark examples of contemporary architecture.

A citizen who wishes to observe a court session may go to a federal courthouse, check the court calendar, which is posted on a bulletin board or electronic kiosk, and watch almost any proceeding. Anyone may review a case file using an electronic access terminal at the clerk of court's office. Court schedules, dockets, judgments, opinions, and pleadings are also available to the public in electronic form through the internet.

Limited radio or television coverage of arguments before the appellate courts is available in some federal courts, but, unlike most state courts, the federal courts do not permit broadcast coverage of most trials.

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

Although there is a very strong presumption that all court records and proceedings are open to the public, in some situations public access may be limited. In a high-profile trial, for example, there may not be enough space in the courtroom to accommodate everyone who would like to observe. The court may also restrict access to the courtroom for security or privacy reasons, such as when a juvenile or a law enforcement informant

is testifying. Finally, certain documents may be placed under seal by the judge, meaning that they are not available to the public. Examples of sealed information may include confidential business records, law enforcement reports, criminal investigation documents, juvenile records, and cases involving national security issues.

THE STRUCTURE OF THE FEDERAL COURTS

The federal courts have jurisdiction to hear a broad variety of cases. The same federal judges handle civil and criminal cases; public law and private law disputes; cases involving individuals, corporations, and government entities; appeals from administrative agency decisions; and law and equity matters. All federal judges have the authority to decide issues regarding the constitutionality of laws and governmental actions that arise in their cases. The United States does not have a separate system of constitutional courts.

TRIAL COURTS

The U.S. district courts are the principal trial courts in the federal system. The district courts have jurisdiction to hear nearly all categories of federal cases. There are 94 federal judicial districts, including one or more in each state, the District of Columbia, and Puerto Rico. In the U.S. territories of Guam, the Commonwealth of the Northern Marianna Islands, and the U.S. Virgin Islands, similarly structured territorial district courts act as the federal trial courts.

Each U.S. judicial district includes a bankruptcy court operating as a unit of the district court. The bankruptcy court has jurisdiction over almost all matters involving insolvency cases, except criminal issues. Once a case is filed in a bankruptcy court, related matters pending in other federal and state courts may be removed to the bankruptcy court. The bankruptcy

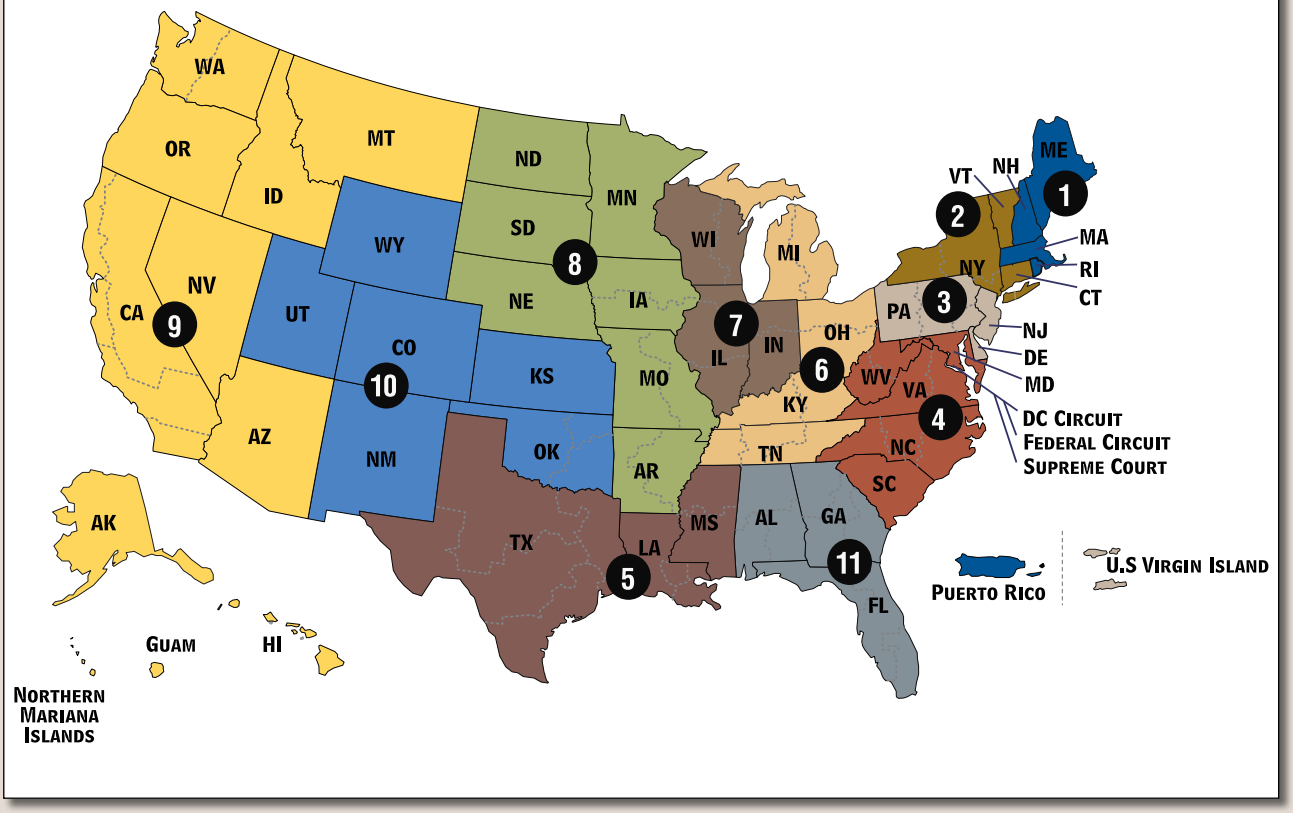
courts are administratively managed by bankruptcy judges.

Two special trial courts in the U.S. federal judiciary have nationwide jurisdiction. The U.S. Court of International Trade addresses cases involving international trade and customs issues. The U.S. Court of Federal Claims has jurisdiction over disputes involving federal contracts, the taking of private property by the federal government, and a variety of other monetary claims against the United States.

Trial court proceedings are normally conducted by a single judge, sitting alone or with a jury of citizens as finders of fact. The U.S. Constitution provides for a right to trial by a jury in many categories of cases, including: (1) all criminal prosecutions except petty offenses; (2) civil cases in which the right to a jury trial applied under English law at the time of American independence; and (3) cases in which the Congress has expressly provided for the right to trial by jury.

In the U.S. territories of Guam, the Northern Marianna Islands, and the U.S. Virgin Islands, territorial district courts hear trials on matters arising under federal law and resolve bankruptcy cases. These jurisdictions may limit the application of U.S. constitutional provisions in favor of conflicting local laws (such as laws limiting

Geographic Boundaries of the United States Courts of Appeals and the United States District Courts



the right to trial by jury). Territorial district judges also serve term appointments and can be removed from office for cause.

APPELLATE COURTS

The 94 judicial districts are organized into 12 regional circuits, each of which has a U.S. court of appeals. A court of appeals hears appeals from the district courts located within its circuit, as well as appeals from certain federal administrative agencies. In addition, the U.S. 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 U.S. Court of International Trade or the U.S. Court of Federal Claims.

Litigants have a right of appeal in every federal case in which a district court enters a final judgment. For a court of appeals to review a matter, one or more parties to a case must file a timely appeal challenging the lower court's decision. When an appeal is filed, a three-judge panel of the court of appeals typically reviews the decision. The court of appeals does not hear additional evidence and normally must accept the factual findings established by the trial court. If additional fact finding is necessary, the court of appeals may remand the case to the trial court or administrative agency for further development of the record. Remand is unnecessary in most cases, however, and the court of appeals either affirms or reverses the lower court or agency decision in a written order or opinion.

In cases of unusual importance, a court of appeals may vote to sit "en banc" to review the decisions of a three-judge panel.

The United States Federal Courts

Supreme Court

United States Supreme Court

Appellate courts

U.S. Courts of Appeals (12 regional courts of appeals and the national jurisdiction Court of Appeals for the Federal Circuit)

Trial courts

U.S. District Courts (94 judicial districts and the U.S. bankruptcy courts)

U.S. Court of International Trade

U.S. Court of Federal Claims

Other federal tribunals that are not within the judicial branch

Military Courts (trial and appellate)

U.S. Court of Appeals for Veterans Claims

United States Tax Court

Administrative agency offices and boards

During an en banc sitting, all the appellate judges in the circuit will normally come together to rehear a case. The full court will then either affirm or reverse the panel with an en banc decision. The largest courts of appeals may split themselves into two en banc panels that operate in the same manner.

THE UNITED STATES SUPREME COURT

The U.S. Supreme Court is the highest court in the United States. The Court consists of the Chief Justice of the United States and eight Associate Justices. The Court sits en banc, with all nine justices hearing and deciding cases together, unless one of the justices does not participate in the case for some reason, such as an ethics conflict.

The Supreme Court's caseload consists of matters assigned to the Court and a small number of carefully selected discretionary cases. The Constitution and federal law provide that the Supreme Court will act as the court of first instance or exercise mandatory appellate review in a few designated cases, such as boundary disputes between the states. The remainder of the Supreme Court docket is determined electively when at least four Supreme Court justices agree to hear a case. The Court typically selects cases that present an important constitutional question or issue of federal law that needs to be clarified, such as when the regional courts of appeals "split" on a question of law and issue contradictory rulings.

THE JURISDICTION OF THE FEDERAL COURTS

RELATIONSHIP BETWEEN THE STATE COURTS AND THE FEDERAL COURTS

Although federal courts are located in every state, they are not the only forum available to litigants. In fact, the great majority of legal disputes in American courts are addressed in the separate state or local court systems. Most of the state or local court systems, like the federal judiciary, have trial courts of general jurisdiction, intermediate appellate courts, and a supreme court. They may also have specialized lower level courts, county courts, municipal courts, small claims courts, or justices of the peace to handle minor matters.

The state courts have jurisdiction over a wider variety of disputes than the federal courts. State courts, for example, have jurisdiction over virtually all divorce and child custody matters, probate and inheritance issues, real estate questions, and juvenile matters. Most criminal cases, contract disputes, traffic violations, and personal injury cases are also resolved in the state courts.

Federal courts decide cases that involve the U.S. government or its officials, the U.S. Constitution or federal laws, or controversies between states or between the United States and foreign governments. A case also may be filed in federal court—even if no question arising under federal law is involved—if the litigants are citizens of different states or the dispute arises

between citizens of the United States and those of another country.

In the initial stages of any lawsuit the plaintiff must assert the legal basis for the court's jurisdiction over the case and the court must make an independent determination that it has jurisdiction to address the case. If a case is filed initially in a federal court, but the court determines that it lacks jurisdiction to adjudicate, the case must be dismissed. Under certain circumstances, a case that was improperly filed in federal court may be "remanded" to a state court that has jurisdiction to hear the case. Conversely, a case that was filed in a state court may, if certain conditions are met, be "removed" to a federal court.

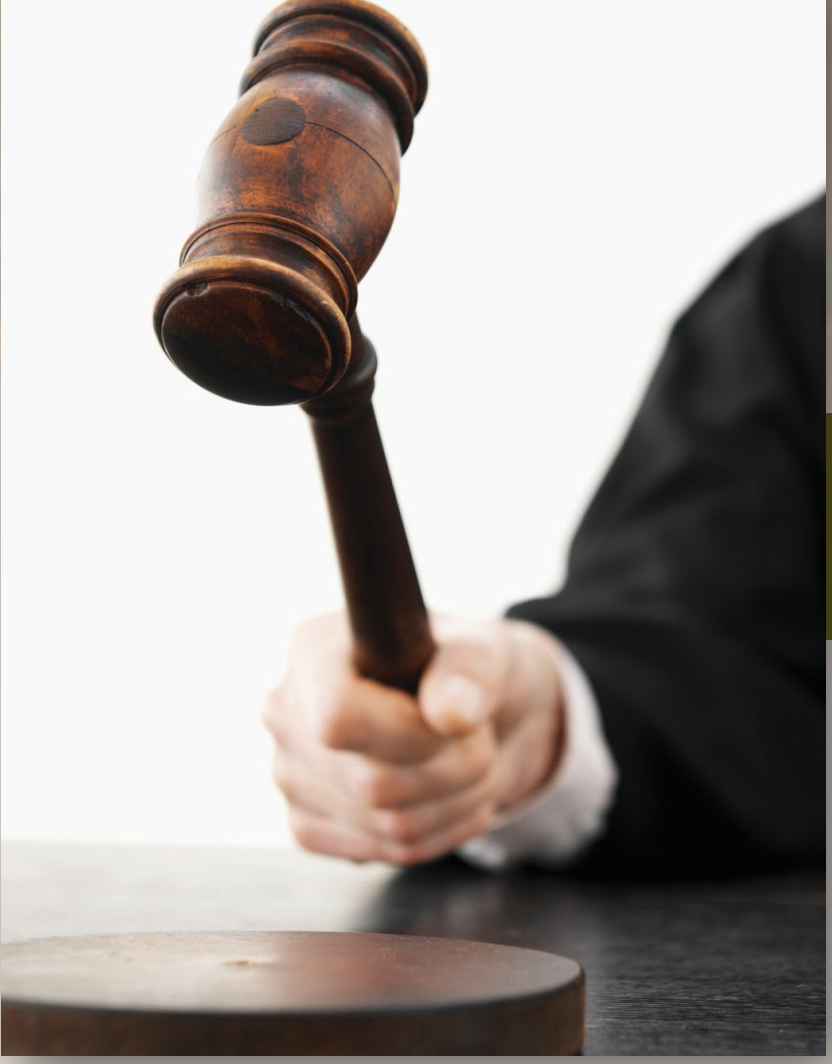
The federal and state courts are required to extend "full faith and credit" to each other's respective judgments. But under the Supremacy Clause of the Constitution, a federal law preempts any conflicting state law.

TYPES OF CASES THAT MAY BE FILED IN THE FEDERAL AND STATE COURTS

The table on page 14 gives some examples of the cases that may be addressed exclusively in the state courts or in the federal courts, as well as some examples of concurrent jurisdiction (cases that may be heard in either state or federal court).

Examples of Jurisdiction in the Federal and State Courts

STATE COURTS	FEDERAL COURTS	STATE OR FEDERAL COURTS
crimes under state legislation	crimes under statutes enacted by Congress	crimes punishable under both federal or state law
state constitutional issues and cases involving state laws or regulations	most cases involving federal laws or regulations (e.g., tax, Social Security, broadcasting, civil rights)	federal constitutional issues
family law issues	matters involving interstate and international commerce, including airline and railroad regulation	certain civil rights claims
real property issues	cases involving securities and commodities regulation, including takeovers of publicly held corporations	"class action" cases
landlord and tenant disputes	admiralty cases	environmental regulation
most private contract disputes (except those resolved under bankruptcy law)	international trade law matters	certain disputes involving federal law
most issues involving the regulation of trades and professions	patent, copyright, and other intellectual property issues	
most professional malpractice issues	cases involving rights under treaties, foreign states, and foreign nationals	
most issues involving the internal governance of business associations, such as partnerships and corporations	state law disputes when "diversity of citizenship" exists	
most personal injury lawsuits	bankruptcy matters	
most workers' injury claims	disputes between states	
probate and inheritance matters	habeas corpus actions	
most traffic violations	traffic violations and crimes occurring on certain federal property	



UNITED STATES FEDERAL JUDGES

APPOINTMENT OF JUDGES

Article III Judges

Justices of the Supreme Court, judges of the courts of appeals and the district courts, and judges of the U.S. Court of International Trade are appointed under Article III of the Constitution and essentially may serve for life. Article III judges are nominated and appointed by the president of the United States and must be confirmed by the Senate. The judiciary plays no role in the political process surrounding the nomination or confirmation of judges.

The primary criterion for appointment to a federal judgeship is a person's total career and academic achievements. No examinations are administered to judicial candidates. Rather, a person seeking a judgeship is required to complete a lengthy set of forms that set forth in detail his or her personal qualifications and career accomplishments, including such matters as academic background, job experiences, public writings, intellectual pursuits, legal cases handled, and outside activities. Candidates also are subject to extensive interviews, background investigations, and follow-up questioning prior to their nomination.

Politics may be an important factor in the appointment of Article III judges. Nominees are normally selected by the president from a list of candidates provided by senators or other office holders within the state in which the appointment is to

be made. Article III judges are nominated by the president, usually from among the ranks of prominent practicing lawyers, lower federal court judges, state court judges, or law professors who reside within the district or circuit where the court sits. The president's nominee must appear in person at a hearing before the Senate Judiciary Committee, and the Senate votes to confirm each judge.

Each federal judge is appointed to fill a specified, authorized judgeship in a particular district or circuit. Judges have no authority to hear cases in another federal jurisdiction unless they are formally designated and assigned to the other court as a visiting judge. Courts seek assistance from visiting judges to manage temporary increases in caseloads, cases that present a conflict of interest for local judges, or backlogs that result from unfilled judicial vacancies.

Once appointed, the Constitution gives Article III judges two key protections—lifetime appointment and the guarantee that their pay will not be decreased while they are in office. The Constitution's protections limit the political pressures on the judicial branch and give judges some protection when they issue unpopular decisions. To complement these protections, Article III judges can only be removed from office for "high crimes and misdemeanors" by Congress through the impeachment process. However, judges can be prosecuted for criminal conduct while in office.

Other Federal Judges

In addition to the judgeships established under Article III of the U.S. Constitution, the judicial branch includes U.S. Court of Federal Claims judges, bankruptcy judges, and magistrate judges who exercise specific authorities delegated to them by Congress or assigned to them by the district courts.

U.S. Court of Federal Claims judges are appointed for terms of 15 years by the president, subject to confirmation by the Senate, and they can be removed from office for cause by a majority vote of the judges of the U.S. Court of Appeals for the Federal Circuit.

Bankruptcy judges and magistrate judges are judicial officers of the district courts, appointed by the courts of appeals and the district courts, respectively. The courts select bankruptcy and magistrate judges after evaluating applicants with the assistance of merit selection panels composed of local lawyers and other citizens.

Bankruptcy judges serve 14-year terms, while magistrate judges are appointed for 8-year terms. Before reappointing a bankruptcy or magistrate judge, the court must publish a public notice seeking comments on the incumbent's performance. The appointing court then convenes a panel to consider public comments and make a merit-based recommendation on whether the incumbent should be reappointed. During their term of service, bankruptcy and magistrate judges may also be removed for cause by a majority of the judges of the appointing court.

State Judges

State judges handle most cases in the United States, but they are not part of the federal court system. Rather, state court judges are a part of state court systems

established by state governments. Like federal judges, state judges are required to support the U.S. Constitution and may invalidate state laws that they find inconsistent with the Constitution. State judges are selected in several ways, according to state constitutions and statutes. In most states, judges are either selected by popular vote in a general election or initially appointed by the state governor and later subject to a vote on retention in the general election.

FEDERAL JUDICIAL ETHICS

By statute, federal judges may not hear cases in which they have personal knowledge of the disputed facts, a personal bias concerning a party to the case, any earlier involvement in the case as a lawyer, or a financial interest in any party or subject matter of the case. Federal judges also are subject to the Code of Conduct for U.S. Judges, a set of ethical principles and guidelines adopted by the Judicial Conference of the United States. The Code of Conduct—and the opinions interpreting it—provide guidance for judges on issues of judicial integrity and independence, judicial diligence and impartiality, permissible extrajudicial activities, and the avoidance of impropriety or the appearance of impropriety.

The Code of Conduct encourages judges to engage in activities to improve the law, the legal system, and the administration of justice. Indeed, federal judges have a distinguished history of service to the legal profession through their writing, speaking, and teaching. Income from teaching and similar outside activities is limited to approximately 15 percent of the judge's salary. Furthermore, judges may not engage in political activity, the practice of law, or business activity (except investments).

Judges may request specific guidance on ethical issues from the Judicial Conference's Committee on Codes of Conduct. The Committee's judges are authorized to draft the codes of conduct and render written advisory opinions to judges and court employees interpreting the code. The Committee also publishes selected advisory opinions based on the facts presented in common inquiries. The published opinions summarize a case and do not identify any particular judge. The advisory opinions are made available within the judiciary and are posted on the courts' public website.

The 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 fairly, impartially, and diligently.

A judge may engage in extrajudicial activities that are consistent with the obligations of judicial office.

A judge should refrain from political activity.

In addition to peer regulation under the judiciary's ethics rules, federal laws enable broad public scrutiny of any potential conflicts of interest presented by judges' financial holdings. A federal statute requires all judges—as well as other high-level government officials—to file annual financial disclosure statements that list their assets, liabilities, positions, gifts, and reimbursements (and those of their spouses and minor children). The disclosure statements for federal judges and certain judicial branch officials are maintained by the Administrative Office and are available to the public on request. Public interest groups, journalists, and publishing companies often request copies of the reports and post them on the internet so that the public, particularly litigants, can search for potential conflicts presented by judges' finances.

JUDGES' COMPENSATION

Federal judges receive salaries and benefits set by Congress. Judicial salaries and employment benefits are comparable to those received by Members of Congress and other senior government officials. The Constitution provides that the compensation of an Article III federal judge may not be reduced during the judge's service.

SENIOR AND RETIRED JUDGES

Court of appeals, district court, and U.S. Court of International Trade judges have life tenure under Article III of the Constitution. They are, therefore, not required to retire at any age. Life tenured judges may voluntarily elect to retire from active service on full salary if they are at least 65 years old and meet certain years of service requirements. Most Article III judges who retire continue to hear cases on a full or part-time basis as "senior judges." Retired bankruptcy judges, magistrate judges, and U.S. Court of Federal Claims judges also may be "recalled" to active service. Without the service donated by senior and retired judges, the judiciary would need many more judges to handle its cases.

JUDICIAL EDUCATION

Federal judges are not required to attend judicial training before they are appointed. Judges may elect to attend orientation programs on substantive legal topics, the art of judging, and case management shortly after they are appointed and throughout their judicial careers. The new judges' orientation and other legal education programs are sponsored by the Federal Judicial Center (FJC), the judicial branch's principal research and training resource. The FJC also develops a number of special focus programs on new legislation, developments in case law, and specific judicial skills, often in conjunction with law schools. The programs address specific areas of the law in depth, such as intellectual property and the use of scientific evidence. In addition to live seminars and workshops, the FJC produces videos, audio programs, manuals, and other materials to assist judges.

The Administrative Office conducts administrative training programs for judges on the use of technology and management issues such as pay and benefits, hiring staff, judicial branch organization and governance, judicial ethics, and personal security. The Administrative Office also offers special orientation programs on management and operations for new chief judges.

The FJC, the Administrative Office, and the U.S. Sentencing Commission jointly operate a television network that streams daily education and information programs for judges and court staff. In addition, several individual courts conduct in-house orientation and mentoring programs for new judges, as well as roundtable discussions or other substantive programs for all judges.

JUDGES' STAFF

In addition to court staff appointed by the court as a whole, each judge is allowed to hire a small personal staff known as "chambers" staff. Judges may hire a secretary or judicial assistant to help them with administrative matters and law clerks to help them review records, research legal issues, and draft papers. Chambers staff is subject to the ethical restrictions contained in the Code of Conduct for Judicial Employees.

The duties of chambers staff vary depending on the particular work and management preferences of each judge or court. Judges carefully supervise and review the work of their chambers staff. By using their staff to conduct legal research and other tasks that do not involve exercising the discretionary powers of a judge, each judge is better able to perform the tasks of judging.

DISTINCTIVE FEATURES OF THE AMERICAN JUDICIAL SYSTEM

THE ADVERSARY SYSTEM

The litigation process in U.S. courts is referred to as an "adversary" system because it relies on the litigants to present their dispute before a neutral fact finder. According to American legal tradition, inherited from English common law, the clash of adversaries allows the jury or judge to determine the truth and resolve the dispute. In some other legal systems, judges or magistrates conduct investigations to find relevant evidence or obtain testimony from witnesses. In the United States, however, litigants and their attorneys collect evidence and prepare it for trial, without assistance from the court. The essential role of the judge is to structure and regulate the development of issues by adversaries and to ensure that the law is followed and fairness is achieved.

THE COMMON-LAW SYSTEM

The American judicial process is based largely on the English common law system. In a common law system, legal interpretations and distinctions recognized in court rulings establish precedents that become binding on lower courts in the jurisdiction. Rather than remaining a fixed body of legal rules, as in the codes of civil law systems, precedent allows the law to develop over time, yet remain predictable.

In the past century, Congress has passed elaborately detailed statutes in most areas of federal law. The

comprehensive statutes, sometimes referred to as "codes," establish legal principles and specific provisions governing most aspects of a particular field of law. These bodies of statutory law include, for example, the Bankruptcy Code, the Internal Revenue Code, the Social Security Act, the Securities Act, and the Securities Exchange Act. The states have also adopted various comprehensive codes, such as the Uniform Commercial Code. These statutes are often further developed and interpreted by implementing regulations promulgated by federal and state administrative agencies.

Despite the adoption of comprehensive codes and the general growth of statutory law over the last century, the American courts continue to interpret statutes and regulations as common law, or according to "precedent." Thus, for example, a bankruptcy court applying the Bankruptcy Code will consult relevant case law to determine whether there are Supreme Court or court of appeals rulings governing how a particular code section should be applied in certain situations. Lawyers who appear before the court may then argue that the facts in their case are similar to those in a case that resulted in a favorable ruling, or they could argue that an unfavorable precedent does not apply because the factual and legal situation in their case is critically distinct from the precedent.

All judges in the United States, regardless of the level of the court in which they sit, exercise the power of judicial review. While judges normally presume the laws or actions that they are reviewing are valid, they will invalidate statutes, regulations, or executive actions that they find to be clearly inconsistent with the U.S. Constitution. All judges are required to place the Constitution above all other laws. Judges will, therefore, not only abide by precedent in interpreting statutes, regulations, and actions by members of the executive branch, but will seek to interpret them consistently with the Constitution.

FEES AND COSTS OF LITIGATION

Another characteristic of the American judicial system is that litigants typically pay their own costs of litigation whether they win or lose. The federal courts charge litigants moderate fees when they initiate a case, submit subpoenas, and in relation to certain other filings with the court. Most fees are set by Congress. Civil plaintiffs who cannot afford to pay court fees may seek permission from the court to proceed without paying those fees. Other costs of litigation, such as attorneys' and experts' fees, are more substantial. In some categories of civil cases, including cases alleging certain civil rights violations, a winning plaintiff may recover attorney costs from the defendant. In criminal cases, the government pays the costs of investigation and prosecution. The court also provides a government-funded attorney, necessary experts, and investigators to any criminal defendant who is unable to afford an attorney.

EXECUTION OF JUDGMENTS

Execution and enforcement of judgments is the responsibility of the parties to the litigation, not the courts.

In criminal cases, the U.S. Marshals Service (an organization within the executive branch's Department of Justice) is responsible for prisoners sentenced to incarceration until they are delivered to the Bureau of Prisons (also within the Department of Justice). Defendants may also be ordered to pay a fine. Any fines are paid to the clerk of court who records the transaction and processes the money as specified in the court order. Should the defendant fail to pay a required fine, the Department of Justice will enforce the court order by pursuing actions to collect the money.

In civil cases, the parties themselves are responsible for executing court orders. Money judgments are frequently covered by insurance, and in those cases insurance companies are usually quick to resolve the details of enforcing the judgment.

Individuals attempting to enforce a judgment against an uncooperative party have several options. In general, a civil judgment becomes a lien attached to any real property of the losing party, and the judgment earns interest at a specified rate of return until it is collected. In federal court, the winning party may obtain the assistance of the court to examine the debtor and protect property in the debtor's possession. A winning party may also apply to a state court for assistance in enforcing a federal court judgment through state law remedies such as garnishing the wages or attaching the assets of the losing party.

PROCEDURAL RULES FOR CONDUCTING LITIGATION

The Rules Enabling Act of 1934 gives the federal judiciary the responsibility to issue rules of procedure and evidence that govern all federal court proceedings. Under the Act's authority, the judiciary has established federal rules of evidence, and rules of civil, criminal, bankruptcy, and appellate procedure. The rules are designed to eliminate unjustifiable expense and delay and to promote simplicity, fairness, and the just determination of litigation. Committees of judges, lawyers, and academics appointed by the Chief Justice draft the rules. The Administrative Office publishes the draft rules for public comment, the Judicial Conference of the United States then approves the rules, and the Supreme Court formally promulgates the rules. Congress has a limited period of time to review the rules and vote to reject or modify them before they enter into force.

REPORTING OF JUDICIAL PROCEEDINGS

All trial and pretrial proceedings conducted in open court are recorded by a court reporter or sound equipment. The court reporter is a person specially trained to record all testimony and produce a word-for-word account of court action called a transcript. A certified written transcript may be prepared from the court reporter's record or a sound recording if necessary for the appeal of a court's decision, or upon request by one of the litigants or another person. The party

requesting a transcript must pay a fee to cover the costs of preparing the transcript.

PUBLICATION OF COURT OPINIONS

Common-law courts rely on judicial precedent to interpret and apply the law, so it is vital for judicial opinions on current legal issues to be readily available to courts and lawyers facing similar issues. As a result, nearly all opinions and orders are open public records. Access to these records is constantly improving as a result of technology. Judges now enter most orders and opinions electronically so that attorneys receive notice of court action via system-generated email messages. Electronically docketed materials are also available to the public one day after they are entered.

The federal courts' electronic docketing system allows the public to access court records in multiple ways. The judiciary's internet-based system, Public Access to Court Electronic Records (PACER, www.pacer.gov), is an online service that allows users to obtain free access to orders and opinions from federal appellate, district, and bankruptcy courts, and to search a national index of case and party names. Additional case and docket information on PACER can be accessed for a nominal fee. Courts also make their opinions available to the public at no cost by directly posting them to their public websites or providing them to a free document repository maintained by the Government Printing Office. Most documents are also still available for review and printing at any courthouse.

In addition to court-initiated distribution, private legal publishing companies and research services, such as Westlaw and Lexis/Nexis, make court opinions, statutes, and other legal materials available to the public on a commercial basis. Law schools and other organizations also collect court opinions, mainly from the courts of appeals, and make them available on the internet. Examples of collections of Supreme Court and courts of appeals opinions include:

FindLaw's Cases and Codes section:
http://www.findlaw.com/casecode/

Cornell University Law School's Legal Information Institute:
http://www.law.cornell.edu

The justia.com U.S. Law page:
http://law.justia.com/

THE FEDERAL JUDICIAL PROCESS IN BRIEF

CIVIL CASES

A federal civil case involves a legal dispute between two or more parties. To begin a civil lawsuit in a federal court, the plaintiff files a document called a "complaint" with the court and "serves" a copy of the complaint on the defendant. The complaint is a short statement that describes the plaintiff's injury or other legal claim and explains how the defendant caused the injury or damage. The complaint states a basis for the court's jurisdiction and asks the court to order relief. A plaintiff may seek monetary compensation for damages or ask the court to order the defendant to stop the conduct that is causing the harm. The court may also order other types of relief, such as a declaration of the legal rights of the plaintiff in a particular situation.

To prepare a case for trial, the litigants may conduct "discovery." In discovery, the litigants must provide information to each other about the subject matter of the case, such as the identity of witnesses, the expected testimony of the witnesses, and copies of any documents related to the case. The purpose of discovery is to prepare for trial and to prevent surprises at trial by requiring the litigants to assemble their evidence and prepare to call witnesses before the trial begins. The scope of discovery is broad, and the parties themselves conduct discovery under the procedural rules of the courts. Judges are

involved only to the extent necessary to oversee the process and to resolve disputes brought to their attention by the parties.

The discovery process often includes taking "depositions." In a deposition, lawyers question a witness about the case and the witness is required to answer under oath and on the record, in the presence of a court reporter. Another discovery tool is the "interrogatory," a written question one party submits to another. Interrogatories must also be answered under oath, and in writing. A third common method of discovery allows a party to demand that another party produce documents and other materials within its custody or control or permit entry onto their property for inspection or other purposes relating to the litigation.

Each side may file requests, or "motions," with the court seeking rulings on various legal issues. Some motions ask for a ruling that determines whether the case may proceed as a matter of law. A "motion to dismiss," for example, may argue that the plaintiff has not stated a claim under which relief may be granted under the law, or that the court does not have jurisdiction over the parties or the claim at issue, and therefore lacks the power to adjudicate. A "motion for summary judgment" argues that there are no disputed factual issues for a jury to resolve, and urges the judge to decide the case based solely on the legal issues. Other motions focus on the discovery process, addressing disputes over what information is subject to the discovery rules, protecting the private or privileged nature of certain information, or urging the court to preserve evidence for use at trial. Motions may also address procedural issues such as the proper venue for the case, the schedule for discovery or trial, or the procedures to be followed at trial.

As a result of ongoing civil justice reforms, each district court must have a formal plan to encourage civil litigants to consider an alternative dispute resolution (ADR) process at an appropriate time during the litigation of their case. To avoid the expense and delay of having a trial, most judges conduct settlement conferences with the parties. Under a court's ADR plan, the judge may refer a case to a trained mediator or arbitrator to facilitate an agreement. Magistrate judges may act as the mediator or arbitrator in many courts. As a result, litigants often decide to resolve a civil lawsuit with a "settlement," a contractual agreement between the parties that resolves their dispute. Most civil cases are terminated by settlement or dismissal without a trial.

If a case is not settled, the court will proceed to a trial. In a wide variety of civil cases, either side is entitled under the U.S. Constitution to request a jury trial. If the parties waive their right to a jury trial, the case will be decided by a judge without a jury.

During trial, witnesses testify by answering attorneys' questions under oath. The judge supervises the questioning and ensures that it complies with the formal rules of evidence that are designed to assure fairness, reliability, and the accuracy of testimony and documents. At the conclusion of the evidence, each side gives a closing argument. If a case is tried before a jury, the judge will instruct the jury on the law and tell the jury what facts and issues it must resolve. If the case is tried by a judge without a jury, the judge will decide both the facts and the law in the case. In a civil case, the burden of proof

lies with the plaintiff, who must convince the jury (or the judge if there is no jury) by a "preponderance of the evidence" (i.e., that it is more likely than not) that the defendant is legally responsible for any harm that the plaintiff has suffered.

CRIMINAL CASES

The U.S. courts play no active role in criminal investigations. The judiciary's role in the criminal justice process is to apply the law, make legal and factual decisions, and issue necessary orders. The Department of Justice and other law enforcement agencies in the executive branch of government investigate and prosecute crimes.

The adversarial process in a criminal case is governed by the Federal Rules of Criminal Procedure. The parties in a criminal case are the United States (through the U.S. attorney—the Department of Justice prosecutor representing the government) and the defendant or defendants. The public and individual crime victims also have some recognized rights in a criminal case. In all criminal cases, the defendant is presumed innocent and the government bears the burden of proving the guilt of the accused.

After a person is arrested, a pretrial services officer or probation officer immediately interviews the defendant and conducts an investigation of the defendant's background. The pretrial services and probation officers are employees of the court, and judges may use the information they collect to rule on motions to detain a defendant before trial. The court may detain the defendant, release the defendant, set bail, or release the defendant subject to conditions.

At an initial appearance, a judge (normally a magistrate judge) advises the defendant of the charges that he or she faces, considers whether the defendant should be held in custody until trial, and determines whether there is "probable cause" to believe that an offense has been committed and the defendant has committed it.

Defendants who are unable to hire their own attorney are advised of their right to a court-appointed attorney. Each district court, by statute, is required to have a plan in place for providing competent attorneys to represent defendants who cannot afford their own. The court may appoint a federal public defender (a full-time federal official appointed by the court of appeals), a community public defender (a member of a community-based legal aid organization funded by a grant from the judiciary), or a private attorney who has agreed to accept such appointments from the court. In all these types of appointments, the attorney who represents the defendant is paid by the court from funds appropriated to the judiciary by Congress.

A defendant must be released while awaiting trial unless the government shows that he or she poses a flight risk, is a danger to any other person or the community, or may engage in criminal activity during the period of release. Courts may impose restrictions or conditions on defendants released into the community before trial. Conditions may include home confinement, drug testing, electronic monitoring, or periodic reports to a pretrial services officer.

Under the U.S. Constitution, a felony criminal case may only proceed beyond the initial stages if the defendant is indicted by a grand jury. The grand jury reviews evidence presented to it by the U.S. attorney and decides whether there is sufficient evidence to require a defendant to stand trial. The grand jury may act on a matter before or after a suspect is arrested.

The defendant enters a plea to the charges brought by the U.S. attorney at a hearing known as an arraignment. Most defendants—more than 90 percent—plead guilty rather than go to trial. If a defendant pleads guilty in return for the government agreeing to drop certain charges or to recommend a less severe sentence, the agreement is called a "plea bargain." The court reviews and usually approves most plea bargains, and the Federal Rules of Criminal Procedure require the presiding judge to question the defendant in open court to ensure that the plea is voluntary, the defendant understands the consequences of the plea, and the government has a factual basis for the charges. If the defendant then pleads guilty, the judge will normally accept the plea and schedule the sentencing following the completion of a presentence investigation. A defendant is normally detained pending the sentencing determination, unless the judge finds by clear and convincing evidence that the defendant is not likely to flee or pose a danger to others. If the defendant pleads not guilty, the judge will schedule a trial.

Criminal trials involve pretrial discovery similar to civil case discovery, but with restrictions to protect the identity of government informants and prevent intimidation of witnesses. The attorneys may also file pretrial motions challenging evidence or seeking to limit testimony before the trial. For example, defense attorneys often file a motion to suppress evidence that the defendant believes was obtained by the government in violation of the defendant's constitutional rights.

In all criminal cases, except petty offenses, the defendant has the right to a jury trial. The government's prosecutor bears the burden of proof and must provide evidence to convince the jury of the defendant's guilt. The standard of proof in a criminal trial is much higher than in a civil case. The proof must be "beyond a reasonable doubt," which means the prosecutor's evidence must be so strong that there is no reasonable doubt that the defendant committed the crime. The defendant has no obligation to present evidence. Throughout the trial, the judge decides procedural issues and rules on various matters raised by the parties. After the government and the defense conclude their arguments, the judge instructs the jury on the law and the decisions that it must make.

The Fifth Amendment of the U.S. Constitution prohibits "double jeopardy," or being tried twice for the same offense. If a defendant is found not guilty, or "acquitted," the defendant is released and the government may not appeal. Nor may the defendant be charged again with the same crime.

Should the defendant be found guilty, the judge will determine the defendant's sentence by considering several sentencing factors provided by statute, including the nature and circumstances of the offense, the history and characteristics of the defendant, the kinds of sentences available, the U.S. Sentencing Guidelines, pertinent policy statements, the need to

avoid unwarranted sentencing disparities, and the need to provide restitution. The law requires that the judge impose a sentence that is sufficient, but not greater than necessary to achieve the following sentencing purposes:

- to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
- to afford adequate deterrence to criminal conduct;
- to protect the public from further crimes of the defendant; and
- to provide the defendant with needed education or vocational training, medical care, or other correctional treatment in the most effective manner.

Over the past several years, there have been significant changes in federal sentencing law. The sentencing guidelines were initially designed to be mandatory, but in 2005 the U.S. Supreme Court ruled that the mandatory guideline scheme was unconstitutional. Thus, the courts were instructed to treat the guidelines as advisory. The sentencing court must give respectful consideration to the guidelines, but the court may tailor the sentence in light of other statutory concerns as well. Accordingly, although the guidelines provide a starting point and the initial benchmark, courts may impose sentences within statutory limits based on appropriate consideration of all of the factors listed in the sentencing statute. *See* 18 U.S.C. § 3553(a).

Because the sentencing guidelines provide the initial benchmark for sentencing courts, it is important to understand how they operate. The U.S. Sentencing Commission, an organization within the judicial branch, issues the guidelines.

The guidelines operate by reference to a sentencing table that provides sentencing ranges determined by "offense level" and the offender's "criminal history category." The top of each sentencing range exceeds the bottom by six months or 25 percent (whichever is greater).

To calculate a guideline sentence, the court will assign most federal crimes to one of 43 "offense levels." The *Federal Sentencing Guidelines Manual* lists different categories of point values that are combined to set the defendant's offense level. Points are assigned for the base offense, different kinds of offense conduct, and other factors, such as the offender's role in the offense, or crimes targeting individuals because of their vulnerability, race, color, religion, national origin, ethnicity, gender, gender identity, disability, or sexual orientation.

Once the offense level is set, each offender is assigned to one of six "criminal history categories" based upon the extent and recency of the individual's past misconduct.

As a simplified example, the base offense level for robbery is 20 points; brandishing a gun during a robbery increases the offense level by 5 points; if a victim was physically restrained to facilitate escape, an additional 2 points are added to the offense level. If the robber targeted a vulnerable child in a wheelchair, the offense level would then be elevated by 2 points, resulting in a total of 29 points. However, if the person accepts responsibility for his actions by entering a guilty plea, the

offense level would be reduced by 3 points, resulting in a total of 26 points. With an offense level of 26, an offender with a minimal criminal history (Category I) may have a guideline sentence of 63-78 months of imprisonment; an offender with the most serious category of criminal history (Category VI) might have a guideline sentence of 120-150 months. Although this simplified example illustrates how the Federal Sentencing Guidelines are used to calculate guideline sentences, most cases will involve additional sentencing factors outlined systematically in the Federal Sentencing Guidelines Manual.

As previously explained, a judge is not required to follow the guideline recommendation for sentencing, but the guideline sentence must be correctly calculated and considered when determining the appropriate sentence for a defendant. The judge is also directed to consider other statutorily designated factors at sentencing. The judge has the option of a within-guideline sentence, a below-guideline sentence, or an above-guideline sentence based upon the analysis of the other statutory factors previously listed. Each crime has a statutorily set maximum which may not be exceeded. Some crimes have a statutory mandatory minimum sentence. In all cases, judges must state the reasons for a sentence. Sentences are subject to review by the courts of appeals for "unreasonableness," and may be reviewed for incorrect application of the relevant guidelines or law.

In most cases, a judge waits for the results of a presentence investigation report prepared by the court's probation office before imposing a sentence. The presentence investigation report includes a detailed account of the circumstances of the offense, and the defendant's background and criminal history. The government and the defendant are both given an opportunity to object to or correct material presented in the presentence investigation report before it is finalized.

The presentence investigation report concludes by applying information about the defendant and details of the offense to the sentencing guidelines. During sentencing, the judge may consider not only the evidence produced at trial, but relevant information that may be provided by the pretrial services officer, the U.S. attorney, and the defense attorney. In some cases, the parties may have agreed to stipulate some offense characteristics as a provision of their plea agreement (such as the quantity of drugs involved in an illegal narcotics sale). The judge may depart from the sentencing range under the sentencing guidelines, but for many offenses, statutes set mandatory minimum sentences that limit the range of a judge's sentencing discretion.

A sentence may include time in prison, a fine to be paid to the government, community service, and restitution to be paid to crime victims. If the convicted defendant is released, the court's probation officers assist the court in enforcing any conditions that are imposed as part of a criminal sentence. The supervision of offenders also may involve services such as substance abuse testing and treatment programs, job counseling, and alternative detention options, such as home confinement or electronic monitoring.

JURY SERVICE

One of the most important ways individual citizens become involved with the federal judicial process is by serving as jurors. There are two types of juries serving distinct functions in the federal trial courts: trial juries (also known as petit juries), and grand juries.

The functioning of a trial jury varies slightly depending upon whether the trial is for a civil or criminal case. A civil trial jury typically consists of 6 to 12 persons, while a criminal trial jury is made up of 12 jurors. In a civil case, the role of the jury is to listen to the evidence presented, to decide whether the defendant injured the plaintiff or otherwise failed to fulfill a legal duty to the plaintiff, and to determine what the remedy, compensation, or penalty should be. Criminal juries decide whether the defendant committed the crime as charged and a judge usually determines the defendant's sentence. Verdicts in both civil and criminal cases must be unanimous, unless the parties in a civil case agree to a non-unanimous verdict. A jury's deliberations are conducted in private, out of sight and hearing of the judge, litigants, witnesses, and others in the courtroom.

A grand jury, which consists of 16 to 23 members, has a specialized function to perform before a felony criminal case is filed in the district court. The U.S. attorney, the prosecutor in federal criminal cases, presents evidence to the grand jury for the members to determine whether there is "probable cause" to believe that an individual has committed a crime and should be put on trial. If the grand jury decides there is enough evidence, it will issue an indictment against the defendant. Grand jury proceedings are not open for public observation.

Potential jurors are selected from any source that will yield a representative sample of the judicial district's population. Most often, jurors are chosen from a pool generated by random selection of citizens' names from lists of registered voters, or combined lists of voters and people with drivers' licenses. The potential jurors complete questionnaires to help determine whether they are qualified to serve on a jury. After reviewing the questionnaires, the court randomly selects individuals to be summoned to appear for jury duty. These selection methods help ensure that jurors represent a cross section of the community, without regard to race, gender, national origin, age, or political affiliation. Jurors receive modest compensation and expenses from the court for their service.

Being summoned for jury service does not guarantee that an individual will actually serve on a jury. When a jury is needed for a trial, a group of qualified jurors sit in the courtroom where the trial will take place. The judge and the attorneys then ask the potential jurors questions to determine their suitability to serve on the jury, a process called voir dire. The purpose of voir dire is to exclude from the jury people who may not be able to decide the case fairly. The judge typically will excuse potential jurors who know any person involved in the case, who have information about the case, or who may have strong prejudices about the people or issues involved in the case. The attorneys may also exclude a limited number of jurors without giving a reason.

Juror Qualifications and Exemptions

Qualifications to be a Juror:

- United States citizen
- at least 18 years of age
- reside in the judicial district for one year
- adequate proficiency in English
- no disqualifying mental or physical condition
- not currently subject to felony charges
- never convicted of a felony (unless civil rights have been legally restored)

Exemptions from Service:

- active duty members of the armed forces
- members of police and fire departments
- certain public officials
- others based on individual court rules (such as members of voluntary emergency service organizations and people who recently have served on a jury)

Excuse from Service:

- may be granted at the court's discretion on the grounds of "undue hardship or extreme inconvenience"

Terms of Jury Service

Length of Service:

- trial jury service varies by court
- some courts require service for one day or for the duration of one trial; others require service for a fixed term
- grand jury service may be up to 24 months

Payment:

- $40 per day; in some instances jurors may also receive meal and travel allowances

Employment Protections:

- By law, employers must allow employees time off (paid or unpaid) for jury service. The law also forbids any employer from firing, intimidating, or coercing any permanent employee because of his or her federal jury service.

BANKRUPTCY CASES

Federal courts have exclusive jurisdiction over bankruptcy cases. This means that a bankruptcy case may not be filed in a state court. Under the Bankruptcy Code enacted by Congress (Title 11 of the U.S. Code), bankruptcy judges operate the bankruptcy courts within the district courts.

The primary purposes of the Bankruptcy Code are:

1. to give an honest debtor a "fresh start" in life by relieving the debtor of most debts;
2. to repay creditors in a fair and orderly manner to the extent that the debtor has property available for payment;
3. to reorganize a failing business by restructuring debt or the business entity itself, or, alternatively, to provide a framework for the orderly liquidation of the failed enterprise; and
4. to deter and remedy dishonest actions by debtors or creditors that would have the effect of undermining the purposes of bankruptcy law.

Bankruptcy law creates predictability and harmony in the marketplace by providing the risk parameters for creditors in extending credit to debtors. Further, the bankruptcy courts provide commercial dispute resolution options between debtors and creditors once problems arise in their relationship, providing stability to the marketplace. Lastly, bankruptcy promotes entrepreneurialism since it allows a fresh start for those who start new businesses, but fail for some reason.

In the United States, unlike many other countries, filing for bankruptcy is usually voluntary. In other words, it is initiated by a debtor for protection against creditors, rather than by creditors to facilitate the collection of their claims from a common debtor. A voluntary bankruptcy case normally begins when the debtor files a petition with the bankruptcy court. A petition may be filed by an individual, by spouses together, or by a corporation, partnership, or other business entity.

All individuals filing under any chapter of the Bankruptcy Code must have received credit counseling from an approved credit counseling agency either in an individual or group briefing within 180 days before filing for bankruptcy. There are exceptions in emergency situations or where the U.S. trustee or bankruptcy administrator determines that there are insufficient approved agencies to provide the required counseling. In most states, the U.S. trustee or bankruptcy administrator is responsible for approving the providers that offer this special pre-bankruptcy briefing.

Creditors also may file involuntary bankruptcy petitions against debtors who are not paying their debts. Involuntary petitions are rare in the United States, where debtors voluntarily commence more than 99 percent of all bankruptcy cases. A debtor who contests a creditor's petition may not be placed into bankruptcy involuntarily unless the creditor can show that certain statutory requirements are met. Requirements include legal standing by the creditor to file the petition, and a showing that the debtor is not paying debts as they become due.

A debtor, whether in a voluntary or involuntary process, is required to file statements listing assets, income, liabilities,

and the names and addresses of all creditors and how much each is owed. The filing of a bankruptcy petition automatically prevents, or "stays," virtually all collection actions against the debtor and the debtor's property (with some notable exceptions specified by the Bankruptcy Code such as criminal actions against the debtor). As long as the stay remains in effect, creditors cannot initiate or continue lawsuits, garnish wages, seize property subject to mortgages or other security interests, or even make demands for payment, without first obtaining permission from the bankruptcy court. Creditors receive notice from the clerk of court that the debtor has filed a bankruptcy petition, and they are required to file proofs of claim in order to receive any share of a distribution from the debtor's property.

More than 70 percent of bankruptcy cases are filed under Chapter 7 of the Bankruptcy Code, which involves liquidation of the debtor's property. In these cases, the U.S. trustee or bankruptcy administrator, a government officer appointed to supervise the administration of the bankruptcy process, appoints a trustee in bankruptcy to take control of the debtor's property (excluding some property that is exempt from seizure). The case trustee, a private individual such as a lawyer or accountant, then liquidates the property and distributes it to creditors according to a schedule of priorities established by the Code. The trustee is also responsible for challenging unjustified claims by creditors, investigating possible misconduct by the debtor before and during the bankruptcy, and recovering claims that the bankruptcy estate may have against third parties. Such claims can be brought against parties that may have received fraudulent transfers or preferential payments from the debtor during the period immediately before bankruptcy. At the end of the liquidation process, individual debtors receive a "discharge" of pre-bankruptcy claims against them, except for certain categories of claims that may not be discharged, such as "child support" or unpaid taxes.

Any party in interest, including creditors and the trustee, may object to the discharge of a particular claim or to the debtor's general discharge, on grounds such as fraud by the debtor. If a timely objection is made, the bankruptcy judge

Types of Bankruptcy Proceedings

The Bankruptcy Code provides three basic types of bankruptcy proceedings:

- Liquidation of the debtor's property (except for certain exempt property) and distribution of the proceeds, if any, to creditors. (Chapter 7)
- Debt adjustment by an individual debtor or husband and wife that allows them to repay their creditors, in whole or in part, over a period of up to five years in accordance with a detailed plan approved by the court. (Chapter 13)
- Reorganization of the financial affairs of a debtor, usually a business, through a plan that is submitted for approval by both creditors and the court. (Chapter 11)

will hold a hearing and rule on whether discharge of a challenged claim or a general discharge of debts is allowable under the law. Litigation may also occur in a bankruptcy case over such matters as to who owns certain property, how it should be used, what the property is worth, or how much is owed on a debt. Litigation in the bankruptcy court is conducted in much the same way that civil cases are handled in the district court, but generally there are no rights to a jury trial in bankruptcy cases. (Defendants in a small number of bankruptcy related actions, such as fraudulent conveyance actions, may be entitled to a jury.) In a bankruptcy case, there may be discovery, pretrial proceedings, settlement efforts, and a trial.

In most liquidation cases involving debtors who are consumers, there is little or no property in the bankruptcy estate to pay creditors. In these cases, the debtor will routinely receive a discharge, with little or no litigation.

Bankruptcy cases may also be filed to allow debtors to reorganize their debts and other financial obligations and establish a plan to repay creditors. Under Chapter 11 of the Bankruptcy Code, financially troubled businesses may obtain court approval of a plan to repay their creditors without immediately liquidating their assets. Unlike "compositions" or other types of non-liquidation creditor arrangements in other countries, Chapter 11 is part of U.S. bankruptcy law and occurs under the supervision of a bankruptcy judge. A trustee is not normally appointed in Chapter 11 proceedings. Instead, the debtor continues to operate its business, subject to court supervision.

The ultimate purpose of Chapter 11 is to confirm a plan of debt reorganization for the debtor. At least one committee of creditors is appointed to monitor the debtor and to negotiate a plan of reorganization. All plans must be submitted to the bankruptcy court, along with proposed disclosure statements explaining to parties in interest what their rights will be under each plan. If the court confirms the plan, the reorganized entity emerges from Chapter 11, with the obligations established by the plan replacing its pre-bankruptcy obligations. If no plan is confirmed, or if a party in interest persuades the court that a reorganization would not be practicable, the court may dismiss the reorganization case or convert it to a liquidation under Chapter 7.

Chapter 13 of the Bankruptcy Code creates a simpler kind of debt reorganization for individuals with regular continuing incomes, subject to certain maximum limits on the amount of debt. Under Chapter 13, the debtor proposes a plan for repaying debt from future earnings rather than through liquidation of the debtor's property. Plans of this kind typically provide that all of the debtor's disposable income for a period of three to five years will be devoted to repaying creditors. If the court finds that the plan is proposed in good faith, it may confirm the plan, even over the objections of creditors. A trustee is appointed to supervise the execution of the plan. The debtor will pay everything required under the plan to the trustee, who in turn will pay creditors in the amounts required by the plan. If the debtor satisfactorily completes the plan's requirements, he or she will then receive a discharge from all obligations other than those specifically excepted from discharge by the Code. The advantages of a successful Chapter 13 plan are that the

debtors get to keep their home and other property, while creditors recover part or all of the debts owed to them.

Chapter 15 of the Bankruptcy Code authorizes the commencement of a case ancillary to a foreign insolvency proceeding. In cases where a debtor is the subject of an insolvency proceeding in another country and has property in the United States, a representative of the foreign tribunal may commence a case in a U.S. bankruptcy court under Chapter 15. The bankruptcy court has authority to fashion appropriate relief under the chapter's provisions, including staying the commencement or continuation of actions against the foreign debtor or its property. The court also has authority, where appropriate, to order the turnover of the U.S. property of the foreign debtor to the foreign representative.

THE APPEALS PROCESS

The losing party in a decision by a trial court in the federal system 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 in the executive branch 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 a court of appeals.

In a civil case, either side may appeal the verdict or remedy. 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 the sentence that a judge imposes after a guilty verdict.

In most bankruptcy courts, an appeal of a ruling by a bankruptcy judge may be taken to the district court. In several circuits, a Bankruptcy Appellate Panel consisting of three bankruptcy judges has been established to hear appeals directly from the bankruptcy courts. In either situation, the party that loses the initial bankruptcy appeal may then appeal further to the court of appeals. In certain instances involving important questions of law, the bankruptcy court decision may be appealed directly to the court of appeals.

Decisions of magistrate judges are normally brought before a district judge. However, when the parties to a civil case consent to a trial of their case before a magistrate judge, the court of appeals directly hears any challenges to the outcome of the case.

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." While the appellate court may not hear new evidence, it may "remand" the case to the trial court for that purpose.

Most appeals are decided by a panel of three judges. The appellant presents legal arguments to the panel in a written document called a "brief." In the brief, the appellant argues that the trial court

made an error, and that its decision should be reversed. In response, the party defending against the appeal, known as the "appellee," briefs the appellate court 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.

The court of appeals panel may decide a case based solely on the arguments in the litigants' written briefs, but many cases are selected for additional "oral argument." Oral argument is a structured discussion between the appellate lawyers and the panel of judges focusing on the issues in dispute. Parties are typically given fifteen minutes to argue their case, but judges will often interrupt a prepared argument to ask questions that focus the parties on specific issues.

Once the court reaches a decision, it will usually explain the decision in a written opinion. A judge on the panel who disagrees with the majority opinion may write a separate dissenting opinion. The dissenting opinion may help develop a legal issue and can serve as a reference for legislators, academics, and other courts that may review the same issue at a later date.

Despite many possible outcomes, the court of appeals decision is usually the final word in the case. The decision of the three-judge panel of the court may be reviewed in a few cases by a larger group of circuit court judges (usually all) in an en banc proceeding. If the court does not review the decision en banc, the parties may ask the U.S. Supreme Court to review the case. Should the Supreme Court decline to hear the case, the appellate court may send the case back to the trial court for additional proceedings. Otherwise, the case is settled.

Litigants who do not prevail in a federal court of appeals or in the highest court of a state may petition the U.S. Supreme Court to review the case. The Supreme Court, however, does not have to grant review, except in a very small number of cases governed by special statutes. In a given year, the Court will typically receive about 8,000 petitions for certiorari (applications for review), and it will agree to hear fewer than 100 cases on the merits.

The Supreme 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. The Supreme Court is required by law to hear a case or accept an appeal directly from a federal trial court in a small number of special circumstances. When the Supreme Court hears a case, the parties are required to file written briefs and the Court may hear oral argument. Additionally, other parties with significant interests in the legal issues raised by a case may ask permission to file briefs as friends of the court (amicus curiae). The executive branch, acting through the U.S. Solicitor General, will often file such briefs, which may help to define the issues and otherwise affect the outcome of a case.

The Supreme Court, like the lower courts, usually explains the reasons for its decision in a written opinion. Supreme Court opinions are precedent for all other courts in the United States. As with the courts of appeals, justices who disagree with the majority opinion may write dissenting opinions. In some cases, justices who agree with the result in a case but not with the majority's reasoning will file concurring opinions.

FEDERAL JUDICIAL ADMINISTRATION

INDIVIDUAL COURTS

Day-to-day responsibility for judicial administration rests largely with each individual court. Each court is given responsibility by statute and administrative practice to appoint its own support staff and manage its own affairs. Under the federal judiciary's budget decentralization program, moreover, substantial budget and financial responsibilities have been delegated to each court.

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 and meets a set of statutory requirements. District court, court of appeals, and U.S. Court of International Trade judges must be under age 65 to become chief judge. They may serve as chief judge for a maximum of seven years, and they may not serve as chief judge beyond the age of 70.

The chief judge of each court plays a key leadership role in overseeing the operations of the court, promoting its efficiency, and ensuring accountability to the public. The court operates as a collegial body, and important policy decisions are made by all judges of the court working together under the leadership of the chief judge.

COURT STAFF

The judicial branch staff is not part of the executive branch's federal civil service employment system. Instead, the Judicial Conference and the Director of the Administrative Office have established a separate personnel system for court officers and judicial employees that includes a flexible pay structure, standard qualifications for certain positions, and an employee dispute resolution procedure. Individual courts have wide discretion to hire and set pay for their own employees under the provisions of the national personnel system. Court staff is supervised by, and responsible to, the judges of their court, not the Administrative Office.

CLERK OF THE COURT

In addition to their chambers staff of law clerks and secretaries or judicial assistants, judges rely on central court support staff to assist with the work of the court.

The primary administrative officer of each court is the clerk of the court. The clerk manages the court's non-judicial functions in accordance with policies set by the court and reports directly to the court through its chief judge. Among the clerk's many functions are:

- maintaining the records and dockets of the court
- operating the court's information technology systems
- tracking the court's budget and expenditures
- maintaining property and personnel records
- paying all fees, fines, costs, and other monies collected into the U.S. treasury
- administering the court's jury system
- providing interpreters and court reporters
- sending official court notices and summonses

Characteristics of Federal Judicial Administration

Three of the essential characteristics of federal judicial administration are:

- The federal judiciary is a separate, independent branch of the government that has been given statutory authority to manage its own affairs, hire and pay its own staff, and maintain its own separate budget.
- The management of the federal judiciary is largely decentralized. The Judicial Conference of the United States establishes national policies and approves the budget for the judiciary, but each court has substantial local autonomy.
- Judges are in charge of the judiciary at all levels and establish the policies for management of the courts. Court administrators are hired by the judges and report to them as well.

- providing courtroom support services
- responding to inquiries from the bar and the public

OTHER CENTRAL COURT STAFF

Pretrial services officers and probation officers interview defendants before trial; investigate defendants' backgrounds; file detailed reports to assist judges in deciding on conditions of release or detention of defendants before trial and on sentencing of convicted defendants; and supervise released defendants.

Staff attorneys and pro se law clerks assist the court with research and drafting opinions.

Court reporters make a word-for-word record of court proceedings and prepare a transcript.

Court librarians maintain court libraries and assist in meeting the information needs of the judges and lawyers.

THE CIRCUIT JUDICIAL COUNCILS

A judicial council in each geographic circuit oversees the administration of the courts in the circuit. Each chief circuit judge presides as the chair of the circuit's judicial council and an equal number of other circuit (court of appeals) judges and district (trial court) judges serve as members of the council. Each judicial council appoints a circuit executive, who works closely with the chief circuit judge to coordinate a wide range of administrative matters in the circuit.

The judicial council holds broad authority to ensure accountability to the public and effectively and expeditiously administer justice in the circuit. The council is authorized by statute to issue orders to individual judges and court personnel to ensure that courts are operating effectively. The council may also investigate and resolve issues related to judge misconduct and disability and it may take disciplinary action against a judge. The judicial council also reviews local court policies and actions on such matters as employment disputes, jury selection, legal defense for indigent defendants, court backlogs, and local

Court Support Staff

In addition to their personal chambers staff of law clerks and secretaries or judicial assistants, judges rely on central court support staff to assist in the work of the court. These staff positions include:

Clerk

Circuit Executive

Court Reporter

Court Librarian

Staff Attorneys and Pro Se Law Clerks

Pretrial Services Officers and Probation Officers

procedural rules for litigation. In addition, the council has authority to approve courts' requests for exceptions to national guidelines on staffing, resources, and expenses. The judicial council ultimately may be called upon to resolve issues that a district chief judge or local court cannot resolve.

THE JUDICIAL CONFERENCE OF THE UNITED STATES

The Judicial Conference of the United States, established by statute in 1922, is the federal courts' national policy-making body, and it speaks for the judicial branch as a whole. The Chief Justice of the United States presides over the Conference, which consists of 26 other judges, including the chief judge of each court of appeals, one district court judge from each regional circuit, and the chief judge of the U.S. Court of International Trade.

The Judicial Conference works through subject-matter committees that evaluate and recommend national policies and legislation on all aspects of federal judicial administration. The Chief Justice appoints judges and a small number of attorneys representing legal practitioners and academia to serve on the committees. Committees are assigned to develop Judicial Conference policy on such matters as budget, rules of practice and procedure, court administration and case management, criminal law, bankruptcy, judicial resources (judgeships and personnel matters), automation and technology, and codes of

Current Judicial Conference Committees

- Executive (senior arm of the Judicial Conference)
- Audits and Administrative Office Accountability
- Administration of the Bankruptcy System
- Budget
- Codes of Conduct
- Court Administration and Case Management
- Criminal Law
- Defender Services
- Federal-State Jurisdiction
- Financial Disclosure
- Information Technology
- Intercircuit Assignments (temporarily assigning Article III judges to serve as visiting judges on different courts)
- International Judicial Relations
- Judicial Branch (judges' pay and benefits)
- Judicial Conduct and Disability
- Judicial Resources (Article III judgeship and court staffing requests, personnel matters)
- Judicial Security
- Administration of the Magistrate Judges System
- Rules of Practice and Procedure
- Space and Facilities

conduct. The main responsibilities of the Judicial Conference are:

- approving the judiciary's annual budget request (which is prepared by the Administrative Office and the Judicial Conference's Budget Committee)
- drafting and amending the general rules of practice and procedure for litigation in the federal courts, subject to the formal approval of the Supreme Court and Congress
- proposing, reviewing, and commenting on legislation that may affect the workload and procedures of the courts
- implementing legislation by promulgating national regulations, guidelines, and policies
- supervising and directing the Administrative Office on policy matters, such as human resources, accounting and finance, automation and technology, statistics, and administrative support services
- promoting uniformity of court procedures and the expeditious conduct of court business
- exercising authority over codes of conduct, ethics, and judicial discipline
- making recommendations to Congress for additional judgeships
- assisting courts with conducting audits and maintaining accountability for government funds and property

THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

The Administrative Office provides a broad range of legislative, legal, financial, automation, management, administrative, and program support services to the federal courts. The Administrative Office, an agency within the judicial branch established by statute in 1939, is supervised and directed by the Judicial Conference and is responsible for carrying out Conference policies. The Chief Justice appoints the Director of the Administrative Office in consultation with the Judicial Conference. The Director serves as the chief administrative officer of the federal courts. Congress vested many of the judiciary's administrative responsibilities in the Director by statute. Among its functions, the Administrative Office:

- provides staff support and advice to the Judicial Conference and its committees
- provides management advice and assistance to the courts
- develops and administers the judiciary's budget
- allocates funds to each court
- audits court financial records
- manages the judiciary's payroll and human resources programs
- provides legal services to the judiciary

- collects and analyzes statistics to report on the business of the courts
- manages the judiciary's automation and information technology programs
- conducts studies and reviews of programs and operations
- develops new business methods for the courts
- issues manuals, guides, and other publications
- coordinates communications with the legislative and executive branches
- provides public information on the work of the judicial branch

Recognizing that the courts can often make better business decisions based on local needs, the Director delegates responsibility for many administrative matters from the Administrative Office to the individual courts. This concept, known as "decentralization," allows each court to operate with considerable autonomy, adhering to sound management principles, in accordance with policies and guidelines set at the national and regional levels. Decentralization of administrative authority has been shown to benefit both the courts and the taxpayers because it encourages innovation and economy. In conjunction with the delegation of administrative responsibilities, the Administrative Office offers the courts considerable guidance, training, technical assistance and advice, audits, and management review options.

THE FEDERAL JUDICIAL CENTER

The Federal Judicial Center, established in 1967, is the primary research and education agency of the federal judicial system. The Chief Justice of the United States chairs the Center's Board, which also includes the Director of the Administrative Office and seven judges elected by the Judicial Conference. The Board appoints the Center's Director, usually a federal judge, and Deputy Director.

Among its functions, the Center:

- conducts and promotes education and training for federal judges
- develops education and training programs for court personnel, such as those in clerks' offices and probation and pretrial services offices
- conducts and promotes research on federal judicial processes, court management, and other issues affecting the judiciary
- produces publications, manuals, videos, and audio programs for the federal judiciary on a broad range of topics
- maintains a library of materials on judicial administration
- develops programs relating to the history of the judicial branch and assists courts with their own judicial history programs
- facilitates exchanges with court systems of other countries

THE UNITED STATES SENTENCING COMMISSION

The U.S. Sentencing Commission was created as a part of the Comprehensive Crime Control Act of 1984. The Commission establishes sentencing guidelines for the federal criminal justice system. The Commission also monitors the performance of probation officers with regard to sentencing recommendations, and has established a research program that includes an information center on federal sentencing practices. The Sentencing Commission consists of a chair and six other voting commissioners who are appointed for six-year terms by the president, subject to approval by the Senate.

THE JUDICIARY BUDGET

In recognition of the constitutional separation of powers among the three branches of the federal government, Congress has given the federal judiciary authority to prepare and execute its own budget. The Administrative Office, in consultation with the courts and with various Judicial Conference committees, prepares a proposed budget for the judiciary each fiscal year. The proposed budget is based in large part on workload staffing and resources formulas developed by the Administrative Office in consultation with the courts. Using these formulas and other information, a budget proposal is developed that incorporates specific allocations for support staff and administrative services for each court. The proposed budget also includes the requests of various Judicial Conference committees for funding new or expanded programs.

The budget proposal is first reviewed by the Judicial Conference's Budget Committee, then approved by the Judicial Conference and prepared for submission with a detailed set of justifications. The president transmits the judiciary's proposed budget to Congress as a part of the unified federal budget, and by law, the president must submit the judiciary budget without change.

The appropriations committees of Congress conduct hearings on the judiciary's proposed budget at which judges and the Director of the Administrative Office justify the judiciary's projected expenditures. After Congress appropriates funds for the judiciary, the Judicial Conference Executive Committee approves plans to spend the money, and the Administrative Office distributes funds directly to each court, operating unit, and program in the federal judiciary.

The Director of the Administrative Office has delegated significant statutory administrative authorities to the individual courts. For this reason, individual courts have the flexibility to conduct their work, establish budget priorities, make sound business decisions, hire staff, and make purchases, consistent with national policies

In recognition of the constitutional separation of powers among the three branches of the federal government, Congress has given the judiciary authority to prepare and execute its own budget.

and spending limits. The federal judiciary's budget includes salaries for judges and court personnel, which typically account for the majority of the total budget. The next two major components of the budget are rent paid to the executive branch for court facilities and fees to provide counsel for defendants who cannot afford to retain their own legal representation. The remaining portion of the budget is spent on computers, travel, supplies, security for judges, fees for jurors, and other expenses.

COURTHOUSE SPACE, FACILITIES, AND SECURITY

The federal courts are located in more than 750 government-owned or leased facilities across the United States. As with most other federal entities, the judiciary has no direct authority to acquire facilities for its own use. By law, that responsibility lies exclusively with the General Services Administration (GSA), an executive branch agency. As the landlord for the federal court system (and almost all other government-owned buildings), GSA is charged with providing space in either public buildings or leased facilities. GSA also provides utilities and certain services in these accommodations. The Administrative Office works with the GSA to provide these accommodations and meet the needs of the courts.

In 1984, the Judicial Conference approved the first *U.S. Courts Design Guide* to provide guidelines and standards for GSA and architects constructing or furnishing federal courthouses. GSA adopted these standards and guidelines for the design, construction, and furnishing of federal courthouses and works closely with the Administrative Office to manage facilities and projects.

The U.S. Marshals Service, a bureau of the Department of Justice, is responsible for providing security for judges wherever they are located. In the event of a threat to a judge or judge's family, the marshals will make arrangements to provide protection until the threat can be neutralized. The Marshals Service is also responsible for ensuring the safety of courthouses and courtrooms. It accomplishes this task in two ways. First, the U.S. Marshal and deputy marshals in each judicial district work closely with the court and staff, as well as with the Federal Bureau of Investigation (FBI) and local law enforcement, to ensure the security of judges and court facilities. Second, the U.S. Marshals Service, using funds provided to it by the judiciary, hires private security firms to provide court security officers to assist with routine security functions.

INFORMATION TECHNOLOGY IN THE JUDICIAL BRANCH

Since 1975, when the first computer was used in the federal courts, the use of information technology (IT) has increased rapidly. The judicial business of opinion and order writing is currently performed almost exclusively on computers. The courts supplement their legal research with online legal research services. The dockets and case files of all courts have been automated. Presentence investigation reports in criminal cases are prepared using specially designed computer programs. Nationwide software

applications facilitate the collection of judicial statistics. Automated systems help the courts manage their resources—such as personnel, funds, or lawbooks—effectively and efficiently. The courts are inter-connected by the nationwide installation of the federal judiciary's own limited access computer network, the Data Communications Network. The Administrative Office and the Federal Judicial Center provide information to the public electronically via the internet. The Administrative Office has also established an internal or "intranet" website for disseminating policy guidance, publications, guides, memoranda, bulletins, and other documents to judges and judicial branch staff.

The IT program for the federal courts is guided by the Long Range Plan for Information Technology in the Federal Judiciary. The plan is updated annually with input from the courts and is approved by the Judicial Conference on the recommendation of its Committee on Information Technology. Funding for IT is approved and expended in accordance with the plan. Additionally, IT requirements in general and for specific IT projects are developed by court users to ensure that the judiciary's IT program continues to meet the essential needs of the federal courts over time.

STRATEGIC PLANNING AND MANAGEMENT EFFICIENCY IN THE FEDERAL COURTS

In recent years, strategic planning and management efficiency have become increasingly important in preserving judicial branch autonomy and judicial independence. Although the federal judiciary has little control over its workload and depends on Congress to provide its funding, the courts have used careful planning to meet the challenges of increasing workloads and tight budgets.

The Judicial Conference approved the first comprehensive Long Range Plan for the Federal Courts in 1995. Since that time, the judiciary has continuously worked to identify ways to accommodate more work, contain costs, and improve services. Ongoing responsibility for strategic planning rests with the Judicial Conference committees responsible for specific subject areas, with coordination by the Executive Committee.

The current Strategic Plan for the federal judiciary focuses on actions needed to preserve the judiciary's successes and, where appropriate, bring about positive change. The plan identifies seven fundamental issues that the judiciary must now address, and a set of responses for each issue. The scope of these issues includes the delivery of justice; the effective and efficient management of resources; the workforce of the future; technology's potential; access to the judicial process; relations with the other branches of government; and the public's level of understanding, trust, and confidence in federal courts.

At both the strategic and operational levels, careful planning, efficient management, and the judicial branch's strong ethic of public service result in good performance that leaves most litigants and members of the public satisfied by their interactions with the courts. On occasion, the conduct or performance of a judge or a member of the courts' staff may lead

to a complaint or dispute. Most issues of this type are resolved informally by the chief judge of the court or collegially by all the judges of the court. However, in cases where informal resolution procedures prove inadequate, formal mechanisms are in place to assure accountability of judges and court staff.

ACCOUNTABILITY

DISCIPLINARY MECHANISMS

Any person who believes that a judge has engaged in inappropriate conduct that is prejudicial to the effective and expeditious administration of the business of the courts, or that a judge cannot discharge all the duties of the office because of physical or mental disability, may file a complaint with the clerk of the court of appeals for the circuit where the judge sits.

The chief judge of the court of appeals is authorized to dismiss the complaint if it does not allege conduct that meets the statutory definition of misconduct or disability, if the complaint relates to the merits of a judicial decision, or if the complaint is frivolous. The chief judge may also dismiss the complaint if corrective action has been taken or if intervening events have made further action unnecessary. The great majority of complaints are, in fact, dismissed.

If the chief judge does not dismiss the complaint, he or she is required to appoint a special investigatory committee of judges to examine the allegations and prepare a written report and recommendation to the judicial council of the circuit. After consideration of the special committee's report, the council is empowered to investigate the allegations further or to take appropriate actions, including:

- requesting that a judge retire voluntarily;

- certifying the disability of the judge (thereby creating a vacancy on the court);
- ordering that no further cases be assigned to the judge for a temporary period;
- issuing a public or private reprimand of the judge; or
- taking any other action as appropriate.

If the judicial council determines that an Article III judge may have engaged in criminal conduct or that the complaint is not amenable to resolution by the council, it must forward the matter to the Judicial Conference of the United States. The Judicial Conference may vote to refer the matter to Congress for possible impeachment and removal proceedings. In practice, impeachment and removal from office are rare events, and generally are reserved for situations in which a judge has already been convicted of a serious criminal offense.

Although judiciary employees are not part of the government-wide civil service system and may be disciplined or removed without following the government-wide civil service rules, the federal judiciary is committed to ensuring equal employment opportunities to all staff. Each court has in place an employee dispute resolution plan to protect employees against arbitrary action and to provide them with due process and reasonable redress for their grievances. The chief judge of each court is normally the final arbiter on personnel matters, but employees generally may appeal the final decision of a local court under provisions established by the regional circuit judicial council.

In any case where it appears that a potential criminal violation may have been committed either by a judge or court staff, the matter is referred promptly to the Department of Justice for possible criminal prosecution.

OTHER FORMAL MECHANISMS

The Judicial Conference of the United States approves the budget for the judiciary and establishes guidelines as to what courts may spend on property and programs. Each court has been given local budget authority, but the court must stay within the guidelines approved by the Judicial Conference and follow pertinent statutes and rules governing the handling of money and the purchase and maintenance of public property.

In management matters, the chief judge of each court—acting on behalf of all the judges—is responsible for overseeing court operations, supervising central court staff, and making sure that court funds are spent legally, wisely, and efficiently. The chief judge generally resolves most administrative problems, but may involve other judges when necessary.

The Director of the Administrative Office, acting under the supervision of the Judicial Conference, may withdraw a delegation of budget or administrative authority to a court if the national spending guidelines or policies established by the Conference have been exceeded or if statutory or regulatory procedures have been violated.

The Director may also refer matters of concern to the chief judge of a court or to the judicial council of the circuit for appropriate action. The judicial council has statutory power to exercise general oversight over administrative matters within the circuit. It may order a court, or any judge or employee, to take appropriate administrative or management actions.

The Administrative Office conducts regular financial audits of all courts and court programs. It also provides management advice and conducts on-site management reviews of court operations on request. In addition, the U.S. Government Accountability Office, an audit arm of Congress, may conduct general reviews of court operations. Congress may also conduct hearings or request background information on judicial operations as part of its responsibility to determine the federal judiciary's need for appropriations and changes in substantive law.

INFORMAL MECHANISMS

Federal judges and court staff take personal and collective pride in the federal judiciary as a whole and in their own court. The federal courts enjoy a national reputation for excellence and efficiency, and judges and their staff are vigilant in upholding that reputation. Peer pressure is very important. It is, for example, a powerful incentive for judges to stay current in their caseloads. By statute, the judges of each court are authorized collectively to divide up the caseload of the court, to determine where judges sit, and to determine local operating procedures. Judges' caseload statistics are usually shared with their colleagues on a regular basis, and the Administrative Office is required by law to publish important information on individual judges' backlogs.

In addition, virtually all judicial decisions are subject to appeal, and federal judges' decisions are widely distributed to the bar and the public through the media, lawbook publishers, and the internet. The legal and academic communities review, analyze, and publish commentary on judicial decisions and the disposition of cases.

Finally, the role of the media in a democracy cannot be understated. Particularly in the current era of "investigative" journalism, every action of a court or an individual judge or court employee is subject to potential media scrutiny and criticism.

COMMONLY ASKED QUESTIONS ABOUT THE FEDERAL JUDICIAL PROCESS

How is a civil case filed? Is there a charge?

A civil action is begun by filing a complaint at the court clerk's office. Parties beginning a civil action in a district court are required to pay a filing fee set by statute. A plaintiff who is unable to pay the fee may file a request to proceed in forma pauperis (meaning "in the form or manner of a pauper"). If the court grants the request, the fees are waived. Filing fees and other service fees constitute only a small percentage of the federal judiciary's budget. Most fees charged by the courts are deposited into the general treasury of the United States. Congress, however, has authorized the courts to retain certain fees, such as those charged for providing electronic access to court records.

How is a criminal case filed?

Individuals may not file criminal charges in federal courts. A criminal proceeding may only be initiated by the government, usually through the U.S. Attorney's Office in coordination with a law enforcement agency. A magistrate judge or other judge may order the arrest of an accused person upon the filing of a complaint and accompanying affidavits sworn by law enforcement agents that set forth sufficient facts to establish "probable cause" that a federal offense has been committed and that the accused has committed it. A felony case, however, may not proceed beyond the initial stages unless a federal grand jury indicts the defendant.

How does one file for bankruptcy protection? Is there a charge?

A bankruptcy case is begun by filing a petition with a bankruptcy court. There is a range of filing fees for bankruptcy cases, depending on the chapter of the Bankruptcy Code under which the case is filed. Chapter 7, the most common type filed by individuals, involves an almost complete liquidation of the assets of the debtor, as well as a discharge of most debts. All individuals filing under any chapter of the Bankruptcy Code must have received credit counseling from an approved credit counseling agency either in an individual or group briefing within 180 days before filing for bankruptcy.

How does one find a lawyer?

Local bar associations usually offer lawyer referral services, often without charge. The clerk's office in each district court is usually able to help find a referral service. But personnel in the clerk's office and other federal court employees are prohibited from providing legal advice to individual litigants.

Defendants in criminal proceedings have a constitutional right to a lawyer, and they are entitled to have counsel appointed by the court at government expense if they are financially unable to obtain adequate representation by private counsel.

Although parties normally have the right to be represented by a lawyer of their choice in civil cases, there is no general right to free legal assistance in civil proceedings. Some litigants obtain free or low-cost representation through local bar association referrals, lawyers acting in recognition of their professional responsibility to provide some uncompensated representation pro bono publico, or through legal services organizations. Attorneys may represent a litigant in a civil case on a contingent fee basis, an arrangement where counsel will be paid out of the funds recovered if their client prevails, and if the client does not win the case, the attorney will not be paid. Litigants in civil cases may also proceed pro se and represent themselves without the assistance of a lawyer.

Are litigants who do not speak English entitled to a court-appointed interpreter?

A certified interpreter is appointed and paid for by the government for any criminal defendant who needs one, and for any defendant in a civil case in which the government is the plaintiff.

How are judges assigned to specific cases?

Judge assignment methods vary, but Judicial Conference policy directs all courts to adopt some random case assignment procedure and to manage caseloads so that each judge in a court receives roughly an equal caseload.

How is a chief judge selected?

In federal district courts, the courts of appeals, and the U.S. Court of International Trade, the chief judge is selected by seniority and serves a seven-year term. The judge must be less that sixty-five years old; the judge must have served on the court

for one year or more; and the judge must have not previously served as chief judge. On the Supreme Court, the Chief Justice is appointed by the president with the advice and consent of the Senate. The chief judge of the U.S. Court of Federal Claims is designated by the president.

What is a U.S. Magistrate Judge?

Magistrate judges are judicial officers appointed by the district court to serve for eight-year terms. Their duties fall into four general categories:

1. conducting most initial proceedings in criminal cases (including issuing search and arrest warrants, conducting detention and probable cause hearings, and appointing attorneys to represent indigent defendants);
2. conducting a wide variety of other proceedings in civil and criminal cases referred to them by district judges (including deciding motions, reviewing petitions filed by prisoners and pro se litigants, and conducting pretrial and settlement conferences);
3. trial of most criminal misdemeanor cases; and
4. trial of civil cases, if the parties consent.

How does one check on the status of a case?

The clerk's office responds without charge to most inquiries on the status of a case. A fee may be charged, however, to conduct certain searches, to retrieve some types of information, and to make copies of court documents. Federal courts also have automated systems that allow for the search and retrieval of case-related information at the public counters in the courthouse and electronically from other locations. In some bankruptcy and appellate courts, telephone information systems enable callers to obtain case information by touch-tone phone. Opinions are also available on court websites. The federal judiciary's internet homepage, www.uscourts.gov, includes links to individual court websites, as well as a directory of court electronic public access services.

How quickly does a court reach a decision in a particular case?

All cases are handled as expeditiously as possible. The Speedy Trial Act of 1974 establishes special time requirements for the prosecution and disposition of criminal cases in district courts. As a result, courts must give the scheduling of criminal cases a higher priority than civil cases. The Act normally allows 70 days from a defendant's arrest to the beginning of the trial.

There is no similar law governing civil trial scheduling, but on average the courts are able to resolve most civil cases in less than a year. Statistically, the national median time from filing to disposition of civil cases in the federal courts is about eight to nine months. Depending on its complexity, a particular case may require more or less time to address. There are numerous reasons why the progress of a particular case may be delayed, many of which are outside the court's control.

Cases may be delayed because settlement negotiations are in progress or because there are shortages of judges or available courtrooms.

How is staff hired in the federal courts?

The Judicial Conference, with the assistance of the Administrative Office, establishes general qualifications and pay ranges for court employees. The federal court system's personnel decisions are decentralized. Each court conducts its own advertising and hiring for job positions. Judges select and hire their own chambers staff. The clerk of court and certain other central court staff are hired by the court as a whole. Other court staff are hired by the clerk of court, who acts under the supervision of the court. Some employment opportunities are listed on the federal judiciary's internet homepage, www.uscourts.gov, but often the clerk's office or the website of a particular court is the best source for a complete listing.

COMMON LEGAL TERMS

a

acquittal: Judgment that a criminal defendant has not been proven guilty beyond a reasonable doubt. In other words, a verdict of "not guilty." Under the double jeopardy clause of the U.S. Constitution, the defendant may never be tried again criminally for the same offense.

administrative law judge: An officer in a regulatory or social service agency, such as the Securities and Exchange Commission or the Social Security Administration, who decides disputes under the law and regulations administered by his agency, subject to appeals to the Article III courts.

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.

alternative dispute resolution (ADR): Methods of resolving a legal dispute without conducting a trial, including mediation and arbitration.

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

appeal: A request challenging the decision of a trial court by a party that has lost on one or more issues and seeks a higher court (appellate court) review of the 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."

arbitration: A form of alternative dispute resolution (ADR) in which an arbitrator (a neutral decision maker) issues a judgment on the legal issues involved in a case after listening to presentations by each party. Arbitration can be binding or nonbinding, depending on the agreement among the parties before the proceeding.

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, not guilty, or nolo contendere (no contest).

Article III judge: A judge who exercises the judicial powers of the United States under the authority of Article III of the U.S. Constitution. Article III judges are appointed by the president, with the advice and consent of the Senate. Article III of the Constitution protects the independence of Article III judges by guaranteeing them a lifetime appointment and no reduction in pay. An Article III judge can only be forcibly removed from office through the impeachment process. Article III judges sit on the U.S. Court of International Trade, the federal district and courts of appeals, and the U.S. Supreme Court.

b

bankruptcy: A legal process—over which the federal courts have exclusive jurisdiction—by which persons or businesses unable to pay their debts can seek the assistance of the court in liquidating and reorganizing their assets and liabilities. Under the protection of the bankruptcy court, debtors may discharge their debts. Bankruptcy judges preside over these proceedings.

bankruptcy administrator: An officer of the judiciary serving in the judicial districts of Alabama and North Carolina who, like the U.S. trustee, is responsible for supervising the administration of bankruptcy cases, estates, and trustees; monitoring plans and disclosure statements; monitoring creditors' committees; monitoring fee applications; and performing other statutory duties. *Compare with* "U.S. trustee."

bankruptcy judge: A federal judge, appointed by the court of appeals for a fourteen-year term, who has authority to hear matters that arise under the Bankruptcy Code.

bench trial: Trial by a judge without a jury in which a judge decides which party prevails.

brief: A written statement submitted by a party in a case that asserts the legal and factual reasons why the party believes the court should decide the case, or particular issues in a case, in that party's favor.

C

chambers: A judge's office, typically including a conference room and work space for the judge's law clerks and secretary.

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

case ancillary to a foreign proceeding: A case commenced under Chapter 15 of the Bankruptcy Code by the representative of a foreign tribunal to protect the U.S. property of a debtor subject to an insolvency proceeding in another country.

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

circuit executive: A federal court employee appointed by a circuit judicial council to assist the chief judge of the circuit and provide administrative support to the courts of the circuit.

clerk of court: An administrative officer appointed by the judges of the court to manage 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 still 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, but legislation is subject to interpretation by common-law methodology. Many areas of the law, such as bankruptcy, are now codified in detailed statutes, but these statutes are applied according to their interpretations by successive precedents established by the courts.

complaint: A written statement filed by a plaintiff initiating a civil case, stating the jurisdiction of the court to resolve the legal dispute, the wrongs allegedly committed by the defendant, and the requested relief.

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.

court: Government entity presided over by judges and authorized by statute 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 or audio recording, and then produces a transcript of the proceedings upon request.

Court of International Trade: A court established by Congress under Article III of the Constitution to hear cases involving international trade law, including questions concerning tariffs, dumping, countervailing duties, and international property issues.

d

debtor: A person who is the subject of a bankruptcy case.

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.

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 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 all court proceedings. All federal court dockets are maintained in electronic form and are generally available to the public by computer.

e

en banc: "In the bench" or "as a full bench." Refers to court sessions with the entire membership of a court participating. U.S. circuit courts of appeals usually decide matters sitting in panels of three judges, but all the judges in the court may decide certain matters together or review panel decisions sitting "en banc" (occasionally spelled "in banc"). The largest courts of appeals may split their full membership into two en banc panels.

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 in certain respects. For example, a trial by jury is normally available in cases at "law" but not in "equity."

evidence: Physical material or 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. The federal courts must follow the *Federal Rules of Evidence*.

f

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 one year in prison. Compare with "misdemeanor."

file: (1) The act of transmitting or placing a document in the official custody of the clerk of court and entering it into the record of a case; or (2) the official record of a case.

g

grand jury: A body of 16-23 citizens who listen to evidence of criminal allegations presented by prosecutors and determine whether there is enough evidence to issue an indictment and conduct a trial. *See also* "indictment" and "United States Attorney."

h

habeas corpus: A writ (court order) that is usually used to bring a prisoner before the court to determine the legality of his or her imprisonment. Someone in state prison may file a petition in federal court for a "writ of habeas corpus" seeking to have the federal court review whether the state violated his or her rights under the U.S. Constitution. Federal prisoners may 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 secondhand from someone else. Hearsay is usually not admissible as direct evidence in court because it does not allow a defendant to confront his or her accusers and is not as reliable as firsthand testimony, but there are many exceptions to the hearsay rule.

i

impeachment: (1) The process of calling a witness' 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"; or (2) the constitutional process whereby the House of Representatives may "impeach" (accuse of misconduct) high officers of the federal government, who are then removed from office if found guilty in a trial before the Senate.

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

information: A formal accusation by a government attorney that the defendant committed a misdemeanor. Defendants may agree to waive their right to indictment by a grand jury and be charged with a felony in an information. *See also* "indictment."

in forma pauperis: "In the manner of a pauper." The court may grant a litigant's motion to proceed "in forma pauperis" and allow him or her to file a case without payment of the required court fees if the person does not have the financial means to pay a fee.

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) A disputed point between parties in a lawsuit; or (2) to send out officially, as in a court issuing an order.

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j

judge: An official with statutory authority to decide legal disputes according to the law. Used generically, the term "judge" may refer to all judicial officers, including Supreme Court justices, state and federal judges, military judges, and executive branch appointees who preside over tribunals and other bodies that decide legal disputes. *See also* "Article III judge," "magistrate judge," and "bankruptcy judge."

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

jurisdiction: (1) The legal authority or competence of a court to hear and decide a case; or (2) The geographic area over which the court has authority to decide cases.

jury: The group of local citizens selected by the court 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.

l

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.

m

magistrate judge: A federal judge, appointed by a concurrence of a majority of the court's district judges, 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.

mediation: The alternative dispute resolution (ADR) method most commonly used in the district courts. Mediation is an informal process in which a mediator facilitates negotiations between the parties to help them resolve their dispute.

misdemeanor: An offense punishable by one year of imprisonment or less. *Compare with* "felony."

o

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 verbally summarize their positions before the court and answer the judges' questions.

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p

panel: (1) In appellate cases, a group of judges (usually three) assigned to decide the case; (2) In the jury selection process, the group of potential jurors; or (3) The list of attorneys who are both available and qualified to serve as court-appointed counsel for criminal defendants who cannot afford their own counsel.

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 initiates a civil lawsuit.

plea: In a criminal case, the defendant's statement pleading guilty, not guilty, or nolo contendere (no contest) in answer to the charges.

pleadings: Written statements filed with the court that 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—following the common-law tradition—will generally "follow precedent." 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. Lower courts must follow precedents set by the decisions of higher courts.

pro bono publico ("pro bono"): A Latin term meaning "for the good of the public." Some lawyers take on certain kinds of cases pro bono, without expectation of payment; these cases are called "pro bono cases."

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

r

recalled judge: Retired magistrate judges, bankruptcy judges, and judges of the U.S. Court of Federal Claims may return to duty for limited terms as a "recalled" judge.

s

senior judge: An Article III judge who has retired from active duty but continues to perform some judicial duties, usually maintaining a reduced caseload. Commonly referred to as "senior status." A judge who has not taken senior status may be referred to as an "active judge," although the distinction may be misleading as many senior judges maintain full caseloads.

t

trustee: A trustee is a private individual appointed and directly supervised by the U.S. Trustee or Bankruptcy Administrator to administer bankruptcy estates. Trustees perform statutorily designated duties. These duties differ among cases filed under different sections of the U.S. Bankruptcy Code, but may include: collecting and liquidating non-exempt assets, monitoring debtors' activities, investigating the viability of small business debtors, making recommendations to the U.S. bankruptcy court regarding a debtor's repayment plan, and disbursing funds to creditors.

u

United States trustee: The U.S. Trustee Program is a component of the U.S. Department of Justice responsible for overseeing the administration of bankruptcy cases and private trustees. *See* 28 U.S.C. §586. U.S. trustees are government employees appointed by the Attorney General of the United States. U.S. trustees appoint and supervise private trustees, take legal action to enforce the requirements of the U.S. Bankruptcy Code, refer matters for investigation and criminal prosecution, and ensure that bankruptcy estates are administered efficiently and that professional fees are reasonable.

SOURCES OF ADDITIONAL INFORMATION

Publications:

The Federal Courts and What They Do
(Federal Judicial Center, 2000)

Strategic Plan for the Federal Judiciary
(Judicial Conference of the United States, September 2015)

Judiciary website addresses:

United States Supreme Court:
www.supremecourtus.gov

Administrative Office of the United States Courts:
www.uscourts.gov

Federal Judicial Center:
www.fjc.gov

For additional copies, please contact:

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