Federal Judicial Center

"to further the development and adoption of improved judicial administration through education & research"

U.S. Judicial System

- Federal
  - U.S. Constitution (Articles I & III)
  - Congress (lower courts, jurisdiction)

U.S. District and Bankruptcy Courthouse in Laredo, TX

- State
  - 50 States (& D.C., Puerto Rico)
  - State constitutions & laws
  - Independent judicial systems

Tennessee Supreme Court in Nashville, TN

Most U.S. law = state law
Over 90% litigation is filed in state courts

Jurisdiction: State

- Contract disputes
- Domestic relations
- Personal injury
- State criminal offenses
- State constitutional claims
- Federal constitutional claims

Many states have specialized courts, including: domestic, juvenile, drug, tax, traffic

Jurisdiction: Federal

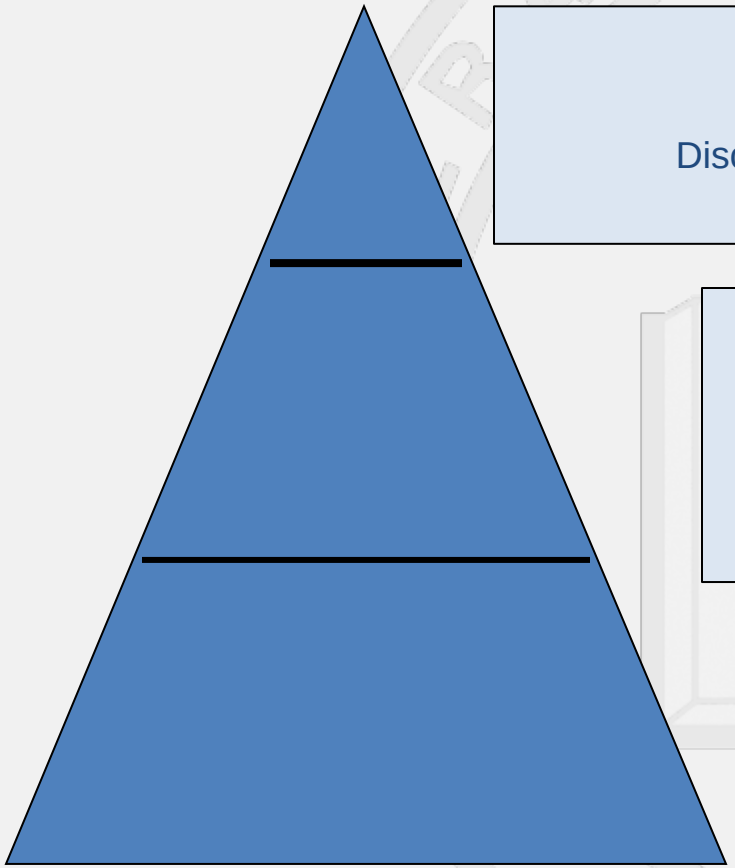
- Subject
  - U.S. Constitution & Laws
  - Treaty
  - Bankruptcy, customs, patent, admiralty, international trade
- Party
  - Federal government or state
  - Ambassadors or public official
  - Foreign states
- Diversity
  - Citizens of different states and amount >$75,000

Statistics: Federal - State

	FEDERAL	STATE
Judges	1,737	30,377
Criminal Cases *(first instance)*	91,964	20,437,849
Civil Cases *(first instance)*	271,950	18,980,531
Specialized	1,170,324 *(mostly bankruptcy and federal claims)*	64,061,968 *(juvenile, domestic relations, traffic, etc.)*
Appeals	56,453	272,975

Administrative Office of U.S. the Courts (2012)
National Center for State Courts (2009, 2012)

Federal Court Structure



Supreme Court

9 Justices

Discretionary review * Questions of law * No advisory opinions

Cases: Petitions: 7,509; Full Review: 77

Courts of Appeals

179 Judges in 13 Circuits

6 – 28 Judges in each circuit

3-judge panels hear questions of law

Cases Filed: 57,501

District Courts

678 Judges in 94 Districts

2 – 27 Judges in each district

Cases Filed: 363,914

Specialized Courts: Federal Circuit, Bankruptcy, International Trade, Federal Claims, Armed Forces, Veterans, Tax, Administrative Agency Tribunals *(e.g., immigration, social security)*

**Numbers refer to authorized judgeships*

The Legal Profession

- Legal Education
  - University: 4 years, general studies
  - Law School: 3 years
    - Core: civil procedure, constitutional law, criminal law, evidence, property, torts, legal writing, professional responsibility
    - Elective: commercial law, intellectual property, labor law, health law, international law, advocacy training, etc.
- Bar Accreditation
  - Exam
  - Admission to State Bar
    - Graduated from accredited law school
    - 203 accredited law schools operating in the U.S. (some states recognize non-accredited)
    - Continuing legal education for attorneys (45 states require)
- Areas of Practice
  - Private sector (law firm, corporation, NGO, foundation, etc.)
  - Public sector (government, judiciary, legislative branch)

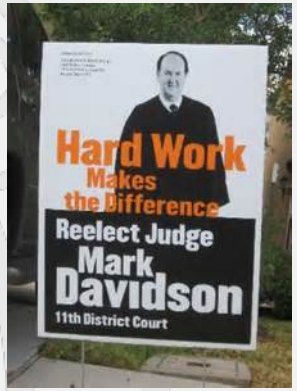
Harvard Law School

Judicial Office: Eligibility

- No exam
- Few formal selection criteria
- Training
  - Federal
    - No mandatory pre-judicial training
    - Voluntary continuing judicial education
  - State
    - Mandatory pre-judicial training: 28 states
    - Mandatory continuing judicial education: 43 states
- Candidates selected from
  - Experienced practitioners (public and private)
  - State courts
  - Lower federal courts
  - Academia

Judicial Selection: State

- Methods vary by state:
  - Election (33 states)
    - Popular election
      - Partisan (12) or non-partisan (21)
  - Appointment by governor
    - Merit selection commissions
    - "Retention" elections
  - Appointment by legislature (2 states)



- Renewable terms
  - Usually 2 – 14 years
  - Mandatory retirement in 33 states
    - Usually by age 70 - 75 *(Vermont at age 90)*

Judicial Selection: Federal Article III

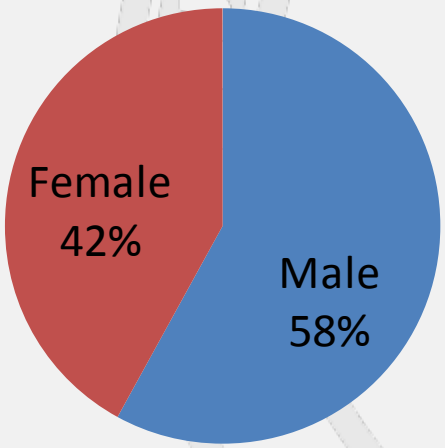
- Nominated by President and confirmed by Senate
  - Recommendation: legislators, others *(usually from President's political party)*
  - Investigation: White House, DOJ, FBI
  - Nomination: Submitted by President to Senate
  - Review: *American Bar Association* (*not legally required, non-binding)*
  - Hearing: Senate Judiciary Committee
  - Vote: Senate
- Life tenure *("during good behavior")*

Article I Judges appointed to limited but renewable terms

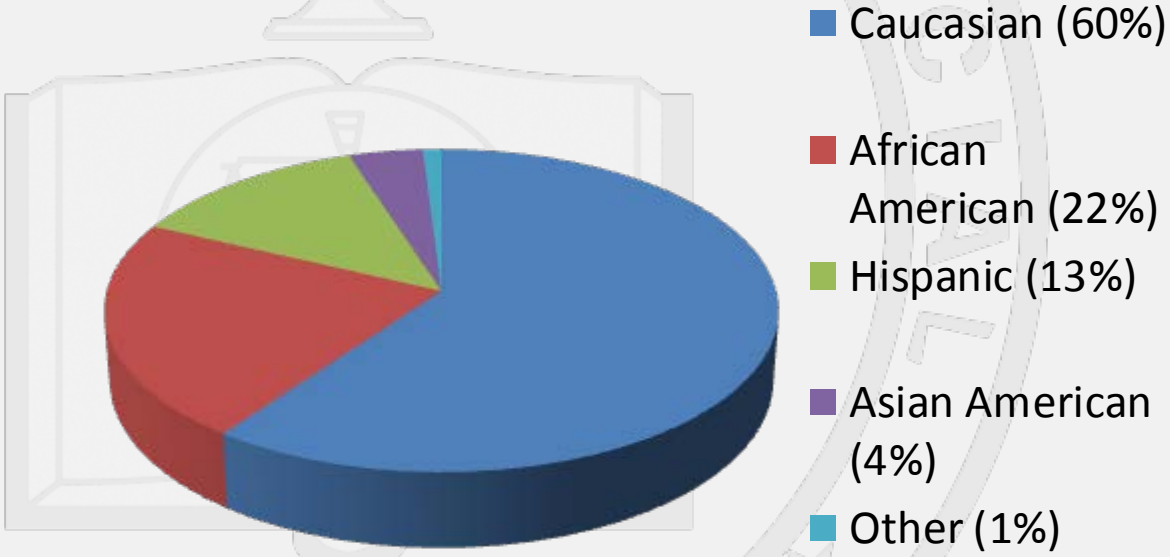
- *Bankruptcy Judges appointed by Court of Appeals to 14-year term*
- *Magistrate Judges appointed by District Court to 8-year term*
- *Court of Claims Judges appointed by President to 15-year term*

Diversity in the Federal Courts

Gender



Race/Ethnicity



** Active Article III Judges; FJC History Office (2014)*

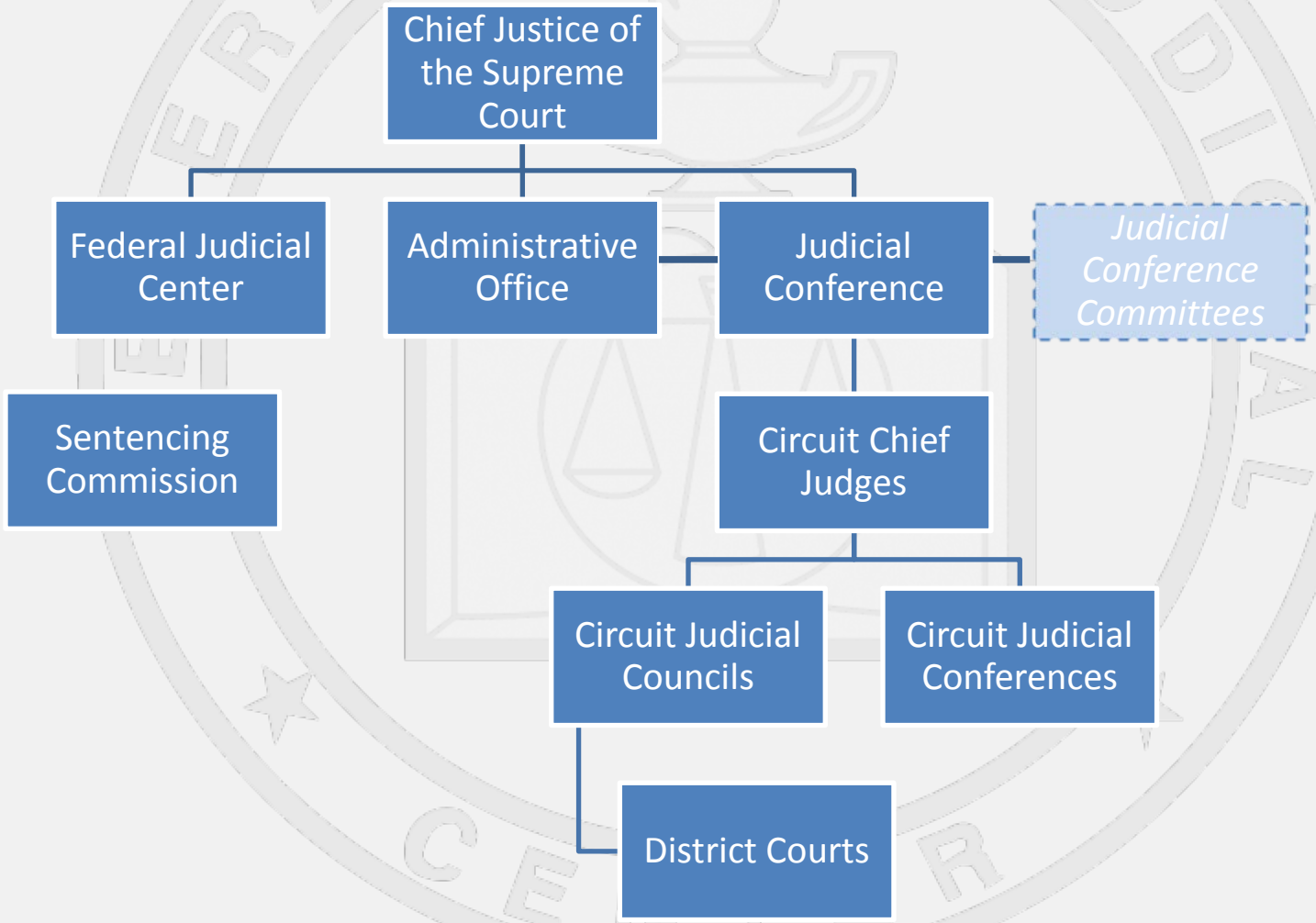
Federal Judges: Chief & Senior Status

- Chief Justice *(Supreme Court)*
  - Nominated by President, confirmed by Senate
    - Duties: Preside over court sessions, Judicial Conference, AO, FJC, Smithsonian, National Gallery of Art
- Chief Judge *(Courts of Appeals, District, Bankruptcy)*
  - Assigned by seniority (time on court)
  - 7-year term
  - Supervises court administration
    - Delegates to Clerk of Court
    - May have reduced caseload
- Senior Judge *(optional)*
  - Eligibility: 65 years of age
  - Rule: when age + years of service = 80
  - Reduced case load

Federal Court Personnel

- District Court *(First Instance)*
  - Clerk of Court
    - Other administrative staff (+/- 80 in medium size court)
  - Pro se Attorneys
  - Chambers Staff: 2 law clerks, secretary
- Court of Appeals
  - Circuit Executive
  - Clerk of Court
    - Other administrative staff (+/- 70 in medium size court)
  - Staff Attorneys
  - Conference Attorneys
  - Chambers Staff: 4 law clerks, 2 secretaries

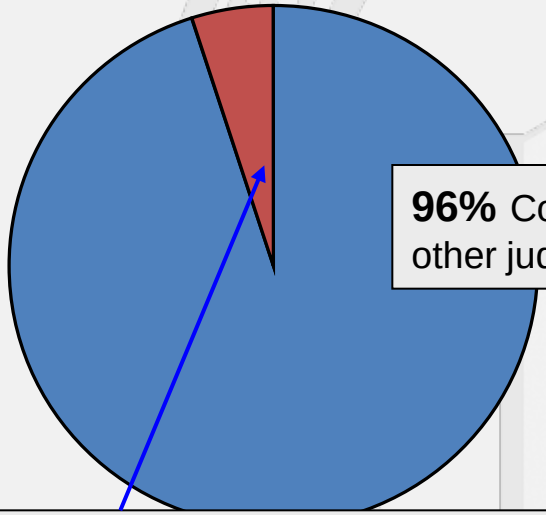
Federal Judicial Administration



Financing the Federal Courts

Budget for the Federal Judiciary: $6.5 billion (FY 2014)

(less than 1/5 of 1% of U.S. budget)



96% Courts of Appeals, District Courts, other judicial services

4% Supreme Court, Federal Circuit, Court of Int'l Trade, Administrative Office, FJC, Sentencing Commission

Judicial Salaries *(2014)*

Supreme Court:	$244,400 (CJ: $255,500)
Court of Appeals:	$211,200
District Court:	$199,100
Bankruptcy/Magistrate Judge:	$174,000

Administrative Office of U.S. the Courts (2014)

Judicial Performance Evaluation

- Accountability
- Improve performance
  - Inform judicial education
- Criteria: neutral and quantifiable
  - Legal knowledge, integrity, impartiality, communication skills (written, oral), professionalism, temperament, administrative skills
- Implementation methods vary
  - Mechanism: legislation, court rule, judicial council, bar association
  - Sources: attorneys, court staff, law enforcement, litigants, trained court observers, written decisions, dockets
  - Tools: questionnaires, interviews, observation
  - Voluntary or mandatory
  - Results only to judge or made public

Judicial Conduct and Discipline

CONSTITUTION of the UNITED STATES

Article III, Section I: Judges serve "during good behavior"

Article II, Section IV: Judges may be removed from office only for "high crimes and misdemeanors"

LEGISLATION

Judicial Conduct and Disability Act of 1980

Financial Disclosure (5 U.S.C §101-112)

Limits on Outside Income (5 U.S.C. §501-505)

Disqualification (28 U.S.C. §455)

CODE OF CONDUCT FOR UNITED STATES JUDGES

Adopted by Judicial Conference of the United States

Non-Binding Rules

Judicial Conference Committee: Advisory Opinions on Codes of Conduct

Judicial Conduct and Disability Act

Litigant, attorney, member of public, or the Chief Circuit Judge may file complaint with the Clerk of the Circuit Court of Appeals about judicial misconduct *(conflict of interest, bias, undue delay, or other ethical violation; not simply disagreement with court's ruling).*

Chief Circuit Judge reviews complaint and may dismiss or refer to Special Committee for investigation. Findings sent to Circuit Judicial Council.

If violation found, Council may institute "corrective measures" (*no new cases, informal counseling, censure, reprimand)* or refer to Judicial Conference. If referred, Judicial Conference will review and may send to House of Representatives for investigation.

House of Representatives investigates and may pursue impeachment. If judge is impeached, case referred for trial before Senate. If convicted by ⅔ of Senate after trial, judge removed from office.

As of 2014, there have been 15 impeachments and 8 convictions of U.S. judges.

Courts and the Media

- Transparency
  - Open proceedings, court records, published decisions
- U.S. Constitution
  - Speech (1st Amendment)
  - Fair trial (6th Amendment)

- Ethical obligations
  - Judges must "avoid public comment on the merits of a pending or impending action ..." *Code of Judicial Conduct 3A(6)*
  - May make public statements "in the course of ... official duties, to explain court procedures, or ... (for) purposes of legal education."
- Bench – Bar – Press/Public committees & programs
  - Communication to foster accurate, responsible reporting and understanding

U.S. Judicial Practice

- Common Law
  - Precedent
  - Statutes
  - Rules of procedure & evidence

- Court Proceedings
  - Adversarial
    - Role of judge & attorneys
  - Trials
    - Jury or judge
    - Continuous trial (consecutive days with limited adjournments)
  - Verbatim transcript

Path of a Civil Case

Pleadings

Pretrial Conference

Discovery

Motions

Settlement Discussions

Alternative Dispute Resolution

Jury Selection

(if jury trial)

Opening Statements

Presentation of Evidence

Evidentiary Rulings

Closing Arguments

Jury Instructions

Deliberations

Verdict

Judgment

Appeal

Pretrial Conference *(civil cases)*

- Case management tool
  - Facilitates efficient court proceedings
  - Review: claims, defenses, witnesses, evidence, legal motions
  - May discuss settlement
  - Establish schedule

- Series of meetings
  - Counsel must attend and file reports
  - Scheduling order and deadlines
  - Final conference before trial

Elements of Case Management

- Judicial control of case
  - Each case assigned to one judge
    - Clarifies what is expected of attorneys
    - Monitors case progress
- Firm credible deadlines
  - Set early
  - Based on type of case *(differential case management)*
- Continuous *(uninterrupted)* trial
- Delegation of non-judicial duties
- Strong central court administration
  - Centralized information management system

Transparency and Case Management

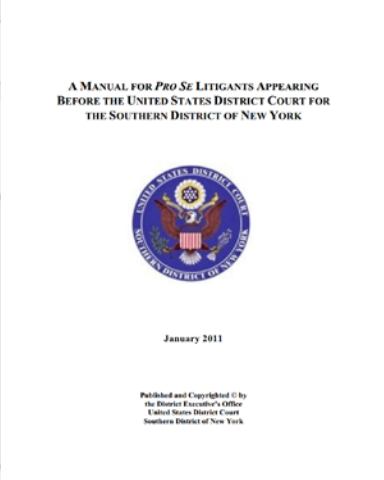
- Random weighted case assignment
- Statistical data
  - Judicial Business of the United States Courts
  - Federal Court Management Statistics
- Civil Justice Reform Act of 1990
  - Semi-annual report prepared by Administrative Office using automated case management software
    - All motions pending longer than 6 months
    - All non-jury trials undecided longer than 6 months
    - All civil cases pending longer than 3 years
    - Added by judiciary: bankruptcy and social security appeals pending longer than 6 months
  - Statistics broken down by court, judge, case
  - Goal: reduce costs and delays, assist with resource allocation
- Courts circulate internal reports: caseloads, disposition rates
- Scrutiny by the media

Alternative Dispute Resolution

- Federal courts must offer ADR
  - District courts have discretion as to type of program
- Types of ADR in U.S. courts
  - Mediation is the most common
  - Some districts also offer early neutral evaluation, arbitration, settlement week, or summary trials
- Consent of parties
  - Some courts require consent of parties
  - In many courts, judges have authority to order parties to ADR for all or certain types of cases
- Costs
  - Parties usually, but not always, required to pay mediation fees
- ADR providers
  - Panel of mediators, outside neutral, court staff mediator, judges

Self-Represented Litigants in Civil Proceedings *(Pro Se)*

- No right to court-appointed counsel
- Right to appear without an attorney
  - Federal court: statutory right *(28 U.S.C. § 1654)*
    - Some exceptions *(e.g., corporations, class actions)*
    - FY 2013: 77,311 pro se cases filed *(2/3 prisoner cases - conditions of confinement)*
  - State courts: access to justice
    - Reporting regimes differ by state
    - Many states have at least one pro se litigant in over half of certain types of cases *(e.g. family law cases in California and New Hampshire and civil hearings in Florida)*
- Court resources
  - Courts provide some procedural assistance, but not legal advice
  - Courts may also make available forms, instructions and manuals


A MANUAL FOR *PRO SE* LITIGANTS APPEARING BEFORE THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

January 2011

Published and Copyrighted © by the District Executive's Office United States District Court Southern District of New York

Path of a Criminal Case

Indictment or Information

Arraignment
Investigation
Plea Bargain
Pretrial Conference

Jury Selection
(if jury trial)
Opening Statements
Presentation of Evidence
Evidentiary Rulings
Closing Arguments
Jury Instructions
Deliberations
Verdicts

Judgment
Sentencing
Appeal

Plea Bargaining

Step 1

Negotiations between prosecutor and defendant's attorney: defendant agrees to admit guilt in exchange for a reduced sentence

Step 2

Proposed agreement presented to judge for approval; Judge may reject proposed plea

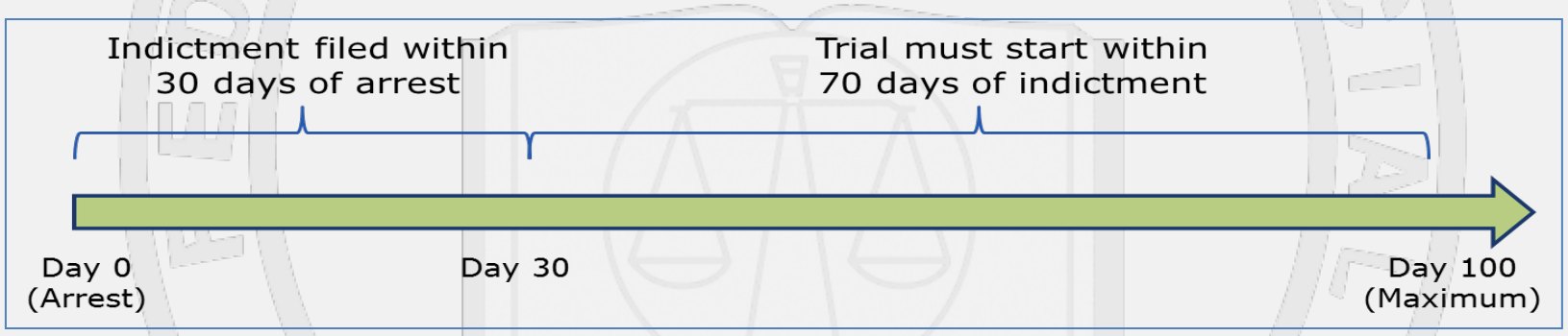
Step 3

If plea bargain moves forward, judge conducts a hearing and questions the defendant to ensure that defendant is competent, understands the proceeding, and was not forced into pleading guilty

The vast majority of criminal cases in the United States courts conclude with a plea bargain.

Speedy Trial

- Sixth Amendment to U.S. Constitution: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial...."
- Speedy Trial Act (1974): time limits for completing stages of prosecution



- A defendant may, and often does, consent to stopping the "speedy trial clock"
- The clock also stops during pretrial motions, unavailability of the defendant or key witness, interlocutory appeal
- Otherwise, failure of prosecution to adhere to time limits may result in dismissal of case

Source: Speedy Trial Act (1974), as amended; Criminal Resource Manual, U.S. Dept. of Justice, 2011

The Jury Trial: background

History

- England (1166): formalized process of 12 men to help royal judges make important legal determinations
- Pre-revolutionary U.S.: distrust of executive authority

United States Constitution (1787)

- Article III: "The trial of all crimes, except in cases of impeachment; shall be by jury; and such trial shall be held in the State where the said crimes have been committed...."
- 7th Amendment: jury trial in civil cases involving money damages

Jury in criminal and civil cases

	Criminal (> 6 months in prison)	**Civil** (money damages)
Grand jury / Preliminary hearing	Prosecutor presents evidence to determine whether there is "probable cause" that individual committed a crime 16-23 persons; 12 must agree	None
Trial jury	12 persons (some states allow smaller criminal juries)	6-12 persons
Verdict	Unanimous* *Oregon and Louisiana do not require unanimity.	Unanimous unless parties agree to majority verdict
Sentence / Damages	Judge Jury in capital (death penalty) cases	Jury, but judge may modify

Source: The Jury System in Federal Courts, The Administrative Office of U.S. Courts, 2009

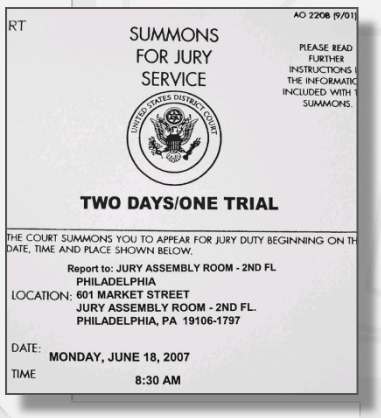
Jury summons and selection

Summons

Cross-section of the public

–Random selection from registered voters and drivers

Exempt from jury service: active military, firemen, policemen, public officers


AO 220B (9/01)

RT

SUMMONS FOR JURY SERVICE

PLEASE READ FURTHER INSTRUCTIONS THE INFORMATIO INCLUDED WITH SUMMONS.

UNITED STATES DISTRICT COURT

TWO DAYS/ONE TRIAL

THE COURT SUMMONS YOU TO APPEAR FOR JURY DUTY BEGINNING ON TH DATE, TIME AND PLACE SHOWN BELOW.

Report to: JURY ASSEMBLY ROOM - 2ND FL PHILADELPHIA

LOCATION: 601 MARKET STREET JURY ASSEMBLY ROOM - 2ND FL. PHILADELPHIA, PA 19106-1797

DATE: MONDAY, JUNE 18, 2007

TIME 8:30 AM

Hardship postponement

Selection

Voir dire: judge, attorneys, or both question potential jurors to determine their suitability

Purpose of *voir dire* is to exclude persons with bias

Jury and alternates (2-3) selected

95% of all jury cases finish in five days or fewer

Source: National Center for State Courts, Administrative Office of the U.S. Courts, 2009

U.S. Sentencing Guidelines

- United States Sentencing Commission
  - Independent federal agency in judicial branch
    - President appoints 7 voting members, including 3 – 4 judges
  - Establishes national sentencing guidelines to assist federal judges
  - Collects and analyzes information about crime and sentencing
    - Provides findings and recommendations to Congress and the public

- Sentencing Guidelines
  - Consulted by judges regarding form and severity of punishment
    - Advisory, not mandatory
  - Intended to promote fairness through proportionality
  - Developed to prevent unwarranted sentencing disparities for similarly situated offenders
  - Permit judicial flexibility
    - Relevant aggravating and mitigating factors
  - Reflect purposes of sentencing and current knowledge of human behavior

Re-entry Courts

- Problem-solving principles to reduce recidivism
  - Intensive supervision
  - Drug treatment, job counseling, cognitive behavior therapy
- Court involvement
  - Authority, structure, accountability, consequences *(sanctions and incentives)*
  - Judge involved early; regularly scheduled, frequent court sessions
  - Participants may attend as a group
- Features
  - Eligibility: high risk of recidivism
    - Screening and assessment
  - Evidence-based practices
  - Team *(judge, parole/probation, treatment professional, prosecutor, defense attorney)*
- Program evaluations
  - Positive impact in preventing re-incarceration, improving community safety, saving money

Federal Judicial Center

- Established by statute, 1967
- Judicial branch agency
- Mandate: education & research
- Board
  - Chief Justice, 7 judges, AO Director
- Director
  - Appointed by Board
- Staff: 120 *(2014)*
- Budget: $26,200,000 (2014)

Adult Education: the foundation

- Competencies
  - Knowledge, skills, values
  - Evidence-based learning objectives related to professional responsibilities
- Task oriented
  - Relevant, practical goals
- Engaged, active, self-directed learner
  - Program “ownership”
  - Experiential learning
  - Facilitation not instruction

Topics in Judicial Education

Identified in consultation with Advisory Committees

- Judicial Ethics
- Substantive Law
- Evidence
- Criminal Sentencing
- Opinion Writing
- Case Management
- Court Administration
- Courtroom Skills
- Using Information Technology
- Science & Technology

Evolving Educational Needs

Criminal Sentencing Reforms

Intellectual Property Law

Emerging Issues in Neuroscience

eDiscovery

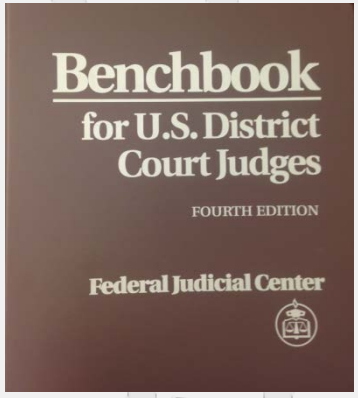
Workshops & Seminars

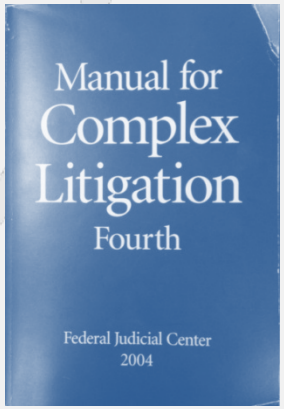
- Orientation
  - 2 one-week sessions
  - Initial program is for small group *(usually 10 – 14 judges)*
- Continuing Education
  - General
    - 2 - 3 days, in different U.S. cities
  - Specialized
    - Often in partnership with universities
    - Environmental law, employment law, intellectual property, mediation skills, science and technology, national security issues, etc.

- Faculty: judges and experts
- Program evaluations
- Programs not mandatory

FJC Publications

- Benchbook for District Court Judges
- Judicial Writing Manual
- Recurring Problems in Criminal Trials
- Case Management & ADR
- Deskbook for Chief Judges
- Reference Manual on Scientific Evidence
- Manual for Complex Litigation
- Monographs on legal issues
- Guides on case management and procedural issues

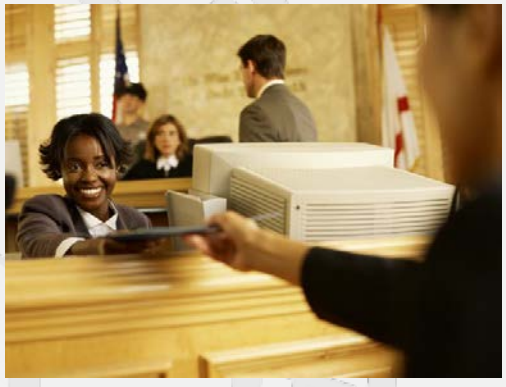




Some publications are developed with guidance from an advisory committee; all are reviewed by judges before publication

Programs for Court Staff

- Court Administrators
  - Court administration
  - Leadership and supervision
  - Communication skills
  - Implementing judiciary policy
  - Change management
  - Code of Conduct
  - Jury trial administration



- Probation & Pretrial Services

- Workshops, conferences, in-court programs

Distance Education

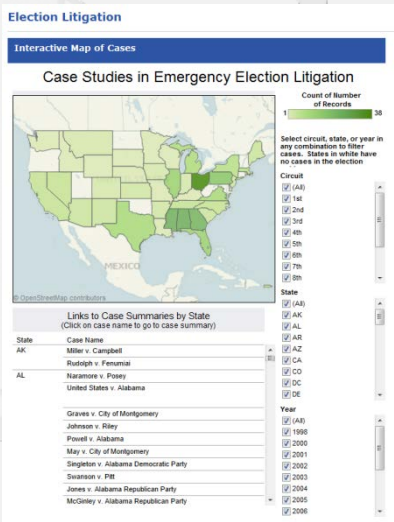
- FJC Online
- Streaming Video & Audio
- Web & Video Conferencing
- FJC Production Studio
- Web Based Tutorials

Research at the FJC

Mandate: to develop and undertake analytical, empirical research in the fields of court operations and judicial administration, often at the request of judicial branch policymakers or Congress

Projects Include:

- Case management
- Alternative Dispute Resolution
- Case weights
- Courtroom technology
- Impact of rules reform
- Courtroom usage
- Offender re-entry programs



Research Division staff: professionals with advanced degrees in the law and social sciences

Federal Judicial History Office

Mandate: to conduct, coordinate, and encourage programs relating to the history of the judicial branch of the United States government

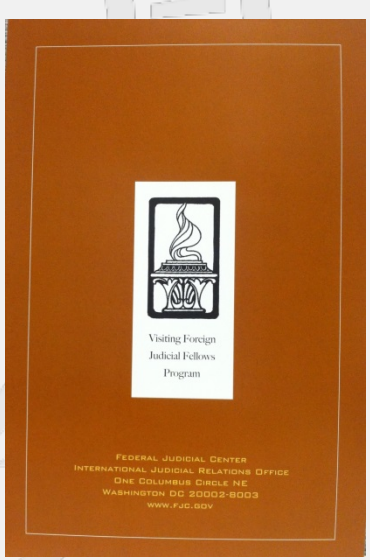
- Studies history of the federal judiciary
- Produces publications
- Provides guidance about preservation of court documents and judges' papers
- Compiles statistical and biographical information about judges
- Provides educators with extensive background on famous federal trials and related public debates through the Teaching Judicial History Project

Carroll County Courthouse, 1838

International Judicial Relations

Mandate: to exchange information about judicial-branch education, court operations, and strategies for improving the administration of justice with judges and court personnel from other countries

- Informational briefings
- Educational programs
- Visiting Foreign Judicial Fellows Program
- International conferences
- Technical assistance
- Materials
- International Judicial Relations Committee



Visitors to the FJC: 2013

In 2013, the Center hosted 640 visitors from 71 different countries and jurisdictions:

Afghanistan, Albania, Angola, Argentina, Benin, Bosnia and Herzegovina, Brazil, Bulgaria, Burkina Faso, Cambodia, Cape Verde, China, Colombia, Cote d'Ivoire, Croatia, Djibouti, Ecuador, Egypt, Estonia, Ethiopia, France, Gabon, Greece, Guinea, Hungary, Indonesia, Iraq, Jordan, Kazakhstan, Kosovo, Kyrgyzstan, Lesotho, Malaysia, Maldives, Mauritania, Mauritius, Mongolia, Nepal, Netherlands, New Zealand, Niger, Nigeria, Pakistan, Palestinian Territories, Peru, South Sudan, Russia, Saudi Arabia, Senegal, Serbia, Singapore, Slovakia, Slovenia, Somalia, South Africa, Sri Lanka, Sudan, Suriname, Swaziland, Tajikistan, Togo, Turkey, Turkmenistan, United Arab Emirates, Uganda, Ukraine, United Kingdom, Uzbekistan, Yemen, Zambia, and Zimbabwe.

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