Federal Judicial Center

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

FJC
Federal Judicial Center

The United States Judiciary

Federalism and Jurisdiction
The Courts
Legal Education
Judicial Selection
Federal Judges
Court Personnel
Judicial Administration
Conduct and Discipline
Judicial Procedure
Civil Proceedings
Criminal Proceedings
Jury Trials
Sentencing
Judicial Education

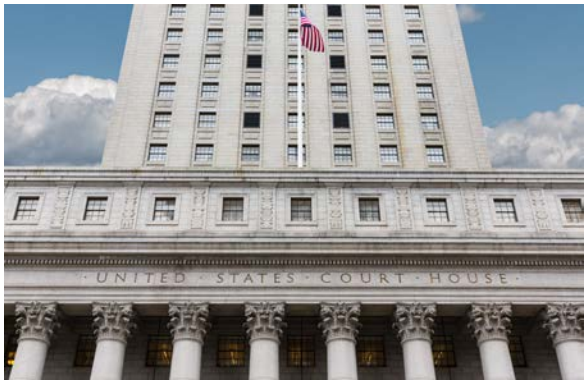
Judicial Independence

- Institutional independence
  - Separate branch of government
  - Free from administrative oversight
- Decisional independence
  - Decisions made impartially, in accordance with the law
  - Without external interference or inducement
- Accountability
  - Due process
  - Transparency
  - Professionalism and competence

Federalism

Federal

- U.S. Constitution
- Federal laws
- Executive
- Legislature (Congress)
- Judiciary



U.S. District Court, Southern District of New York

State

- 50 States, D.C., Puerto Rico
- State constitutions
- State laws
- Independent executive, legislature, courts

Superior Court of the District of Columbia

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

Constitutional claims: state and federal

Specialized courts
(family, traffic, juvenile, drug, tax)

Jurisdiction: Federal

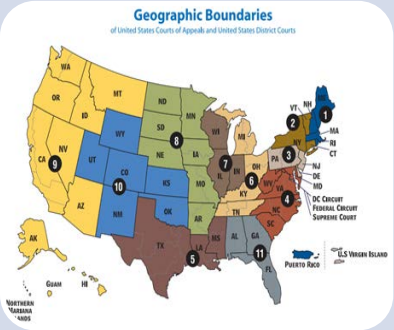
- Subject
  - U.S. Constitution
  - Federal law
  - Treaty
  - Bankruptcy, customs, patent, admiralty, international trade
- Party
  - Federal government or state
  - Ambassadors, public officials, foreign states
- Diversity
  - Citizens of different states, if amount >$75,000

Judges and Cases

	FEDERAL	STATE
Judges	1,722	30,377
Criminal Cases *(first instance)*	80,081	20,437,849
Civil Cases *(first instance)*	281,608	18,980,531
Specialized *(mostly civil)*	912,717 *(bankruptcy and federal claims)*	64,061,968 *(juvenile, domestic relations, traffic, etc.)*
Appeals	54,244	272,975

Caseload Statistics: Federal: 2015; State: 2012

Federal Courts



Supreme Court

9 Justices

Discretionary review

Questions of law

No advisory opinions

Petitions: usually > 7,000

Full Review: usually < 90

Courts of Appeal

179 Judges

13 Circuits

6-28 Judges in each circuit

3-judge panels decide questions of law

District Court

(first instance)

663 Judges

94 Districts

1-27 Judges in each district

Specialized

Federal Circuit

Bankruptcy

International Trade

Federal Claims

Armed Forces

Veterans, Tax

Administrative

(e.g., immigration, social security)

To the Supreme Court

***If** Writ of Certiorari Granted*

United States
Court of Appeals

State Supreme Court
***IF** case involves federal law*

Legal Education

After university/college

3 years

Core subjects

- Constitutional law, civil procedure, criminal law, torts, property, evidence, professional responsibility

Electives

Skills

- Writing, advocacy, negotiation, clinical education

Professors

- Academics and practitioners

204 accredited schools

The Legal Profession

- Bar exam
- Professional responsibility exam
- Admission to state bar
  - Graduate from accredited law school
  - Continuing legal education *(mandatory in 45 states)*
- Areas of practice
  - Private sector
  - Public sector

Judicial Office: Eligibility

- No exam
- Few formal selection criteria
- Candidates selected from:
  - Experienced practitioners (public and private)
  - State courts
  - Lower federal courts
  - Academia
- Judicial education
  - Federal: not mandatory
  - State: mandatory in some states

Judicial Selection: State

Methods vary by state

Election (31 states)
Partisan (11); non-partisan (20)
Appointment by governor
Merit selection commissions
"Retention" elections
Appointment/election by legislature (4 states)

Renewable terms

Usually 2-14 years
Mandatory retirement in 30 states
Usually by age 70-75
(Vermont at age 90)

Judicial Selection: Federal

President nominates

Senate must confirm

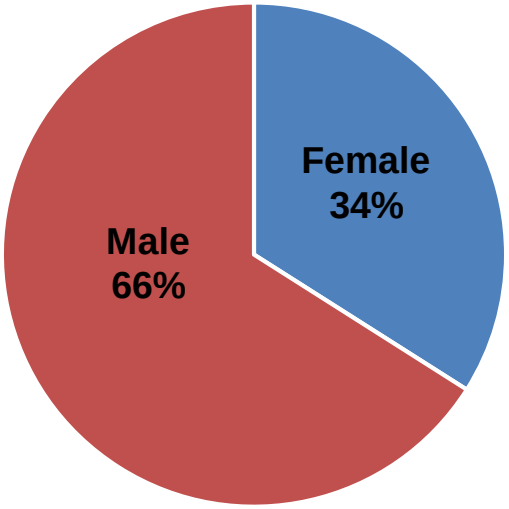
- Recommendation: legislators, others
  (usually from President's political party)
- Investigation: White house, DOJ, FBI
- Review: *American Bar Association*
  (not legally required, non-binding)
- Hearing: Senate Judiciary Committee
- Vote: Full Senate

Life tenure ("good behavior")

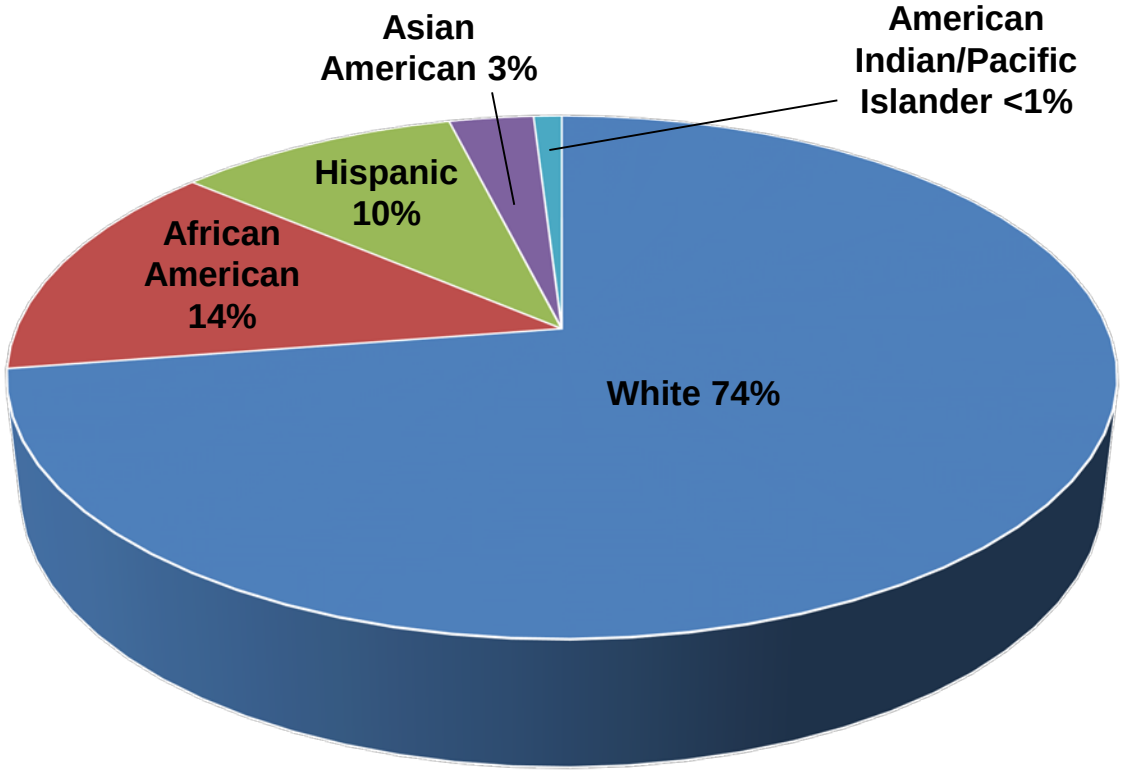
Article I Judges appointed to limited but renewable terms
- *Bankruptcy - appointed by Court of Appeals to 14-year term*
- *Magistrate - appointed by District Court to 8-year term*
- *Court of Claims - appointed by President to 15-year term*

Diversity in Federal Judiciary

Gender



Race/Ethnicity



** Active Article III Judges*

Status: Chief and Senior

Chief Justice *(Supreme Court)*

- Nominated by President, confirmed by Senate
- Presides over court sessions, Judicial Conference, AO, FJC, Smithsonian, National Gallery

Chief Judge *(Courts of Appeal, 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

Magistrate Judge

- Judicial officer of district court
- Appointed by majority vote of district judges
- Renewable 8 year term
- Responsibilities *(by statute and as delegated by district judge)*
  - Include:
    - Pretrial matters in civil and criminal cases
    - Settlement conferences and ADR
    - Civil trials, if consent of parties

Federal Court Personnel

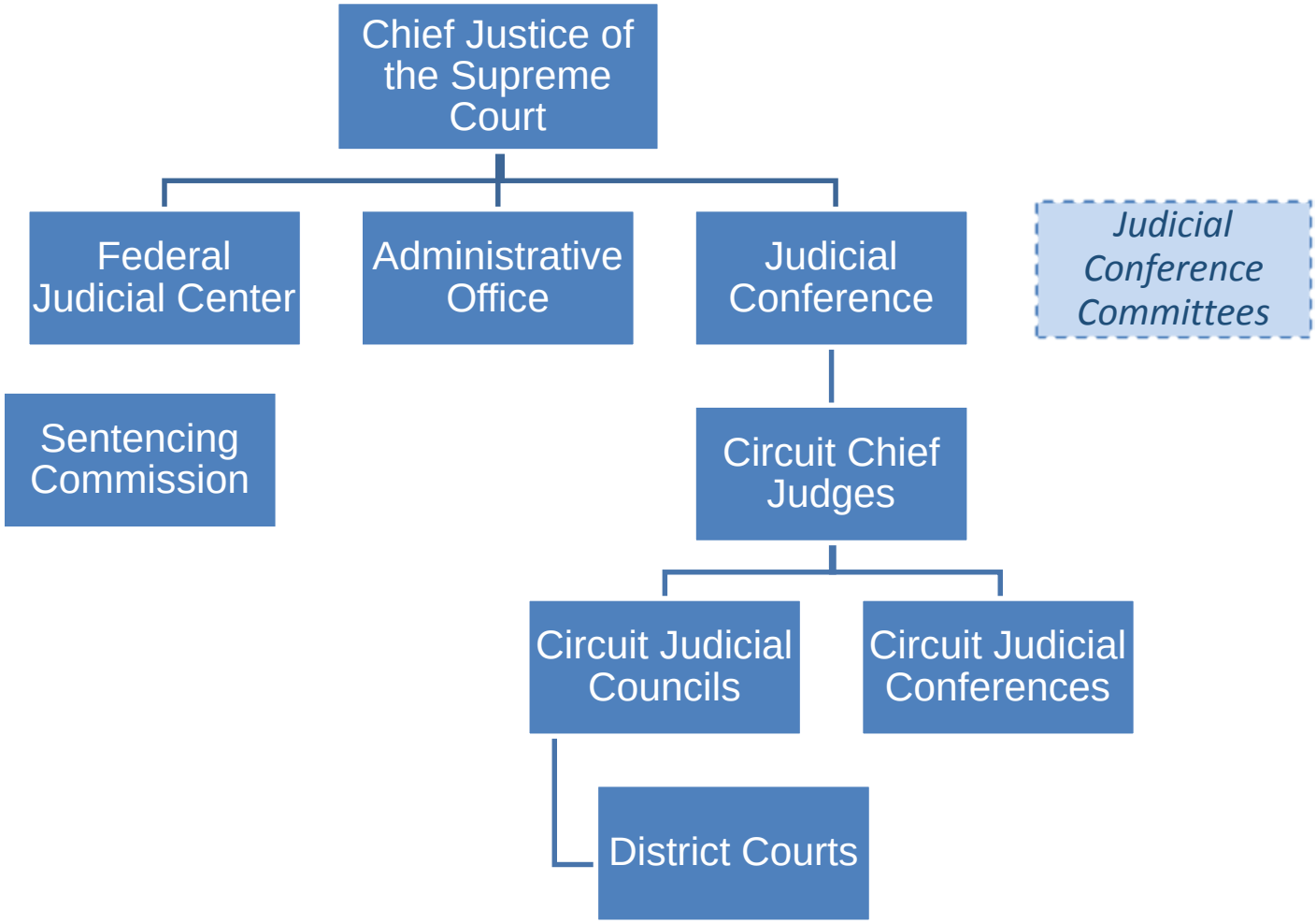
- District Court *(first instance)*
  - Clerk of Court
    - Other administrative staff (+/- 80 in medium size court)
  - Pro se Attorneys
  - Chambers Staff: 2 law clerks, secretary
- Court of Appeals
  - Circuit Executive
  - Clerk of Court
    - Other administrative staff (+/- 70 in medium size court)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

Judicial Law Clerk

- Recent law school graduate
  - Term: 1-2 years
- Career clerk
- Responsibilities
  - Discretionary with judge
  - Case file review
  - Legal research
  - Coordinate with counsel
  - Write memoranda
  - Review draft opinions

Justice Horace Gray (1882)
"inspiration and criticism"

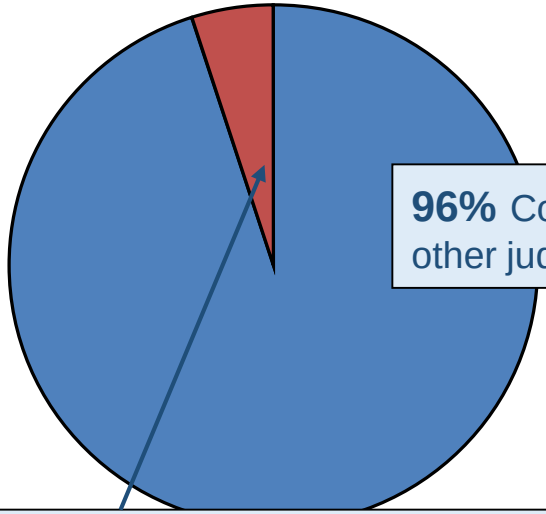
Judicial Administration



Funding the Courts

Budget for the Federal Judiciary: $6.78 billion (FY 2016)

(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 *(2016)*

Supreme Court:	$249,300 (CJ: $260,700)
Court of Appeals:	$215,400
District Court:	$203,100
Bankruptcy/Magistrate Judge:	$186,850

Judicial Performance Evaluation

Accountability

Improve performance

- Inform judicial education

Criteria: neutral and quantifiable

- Legal knowledge, integrity, impartiality, professionalism, temperament, communication skills (written/oral), management skills

Implementation

- 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

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

Anyone may file a complaint with the Clerk of the Circuit Court of Appeals about judicial misconduct *(bias, hostility, conflict of interest, or other ethical violation, but not disagreement with court's ruling)* or disability *(physical or mental impairment affecting performance)*.

Chief Circuit Judge reviews complaint and may dismiss if no basis for complaint, end process if corrective action taken, 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. Judicial Conference will review and may send to House of Representatives for investigation.

Final action on complaints must be posted on court's public website.

Impeachment, trial, and removal process in Congress.

As of 2016, there have been 15 impeachments and 8 convictions of U.S. judges.

Code of Conduct: Judiciary Employees

- Employees of the lower federal courts
- Provisions:
  - Uphold integrity and independence of the judiciary
  - Avoid impropriety (and appearance of)
  - Adhere to appropriate standards in performing official duties
    - Comply with law
    - Maintain professionalism, competence, respect, courtesy
    - Avoid public comments on pending matters
  - Avoid risk of conflict with official duties; comply with disclosure requirements
  - Refrain from inappropriate political activity
- Committee on Codes of Conduct, after consulting supervisor

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...”
- May make public statements “in the course of... official duties, to explain court procedures, or... (for) purposes of legal education.”

Committees, programs: Bench/Bar/Media/Public

- Communication to foster accurate, responsible reporting and understanding

Legal Traditions

	COMMON LAW	CIVIL LAW
Sources of Law and Jurisprudence	Constitution Court decisions (precedent) Legislation Custom	Enacted law (constitution, code, executive decrees, administrative regulations) Custom Writings of legal scholars
Legal Analysis	Interpretation/application of precedent Reasoning by analogy Judicial review of legislation	Application of code Precedent (informative not binding) Judicial review in some countries
Role of Judge	Manage proceedings Decide matters of law Rule on admissibility of evidence If no jury, find facts	Investigate and gather evidence Question witnesses Find facts
Role of Attorney	Active: gather evidence Advise client Develop, prepare, and present case	Point out favorable evidence Advise client Prepare court documents
Proceedings	Adversarial Oral Appeal: law and procedure	Inquisitorial Documents, statement summaries Appeal: facts, law and procedure
Contemporary practice: convergence of two traditions in many countries		

Judicial Practice: U.S.

Common Law

- Precedent
- Statutes
- Rules of procedure, evidence

Court Proceedings

- Adversarial
- Role of judge and attorneys

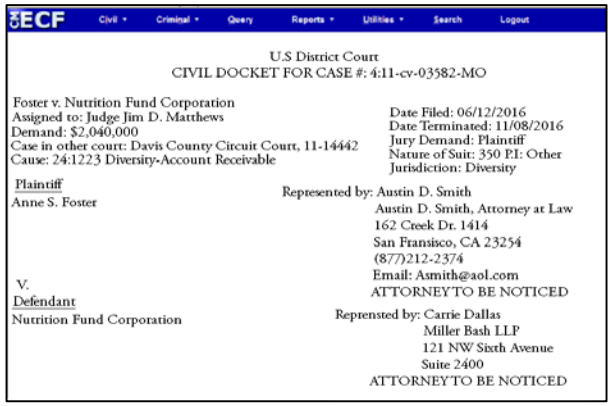
Trials

- Jury or judge
- Continuous trial
- Verbatim transcript

Path of a Civil Case

Pretrial Conference

- Case management tool
  - Facilitate efficient court proceedings
  - Review claims, defenses, witnesses, evidence, legal motions
  - Establish schedule
- Series of meetings
  - Counsel must attend and file reports
  - Discuss case progress, including settlement
  - Final conference held before trial



PACER ECF Civil Criminal Query Reports Utilities Search Logout

U.S District Court
CIVIL DOCKET FOR CASE #: 4:11-cv-03582-MO

Foster v. Nutrition Fund Corporation
Assigned to: Judge Jim D. Matthews
Demand: $2,040,000
Case in other court: Davis County Circuit Court, 11-14442
Cause: 24:1223 Diversity-Account Receivable

Date Filed: 06/12/2016
Date Terminated: 11/08/2016
Jury Demand: Plaintiff
Nature of Suit: 350 P.I: Other
Jurisdiction: Diversity

Plaintiff
Anne S. Foster

Represented by: Austin D. Smith
Austin D. Smith, Attorney at Law
162 Creek Dr. 1414
San Fransisco, CA 23254
(877)212-2374
Email: Asmith@aol.com
ATTORNEY TO BE NOTICED

V.

Defendant
Nutrition Fund Corporation

Represented by: Carrie Dallas
Miller Bash LLP
121 NW Sixth Avenue
Suite 2400
ATTORNEY TO BE NOTICED

Elements of Case Management

Judicial control of case

- Each case assigned to one judge
- Judge clarifies what is expected of attorneys and monitors case progress

Firm, credible trial dates

- Set early
- Based upon type of case *(differential case management)*

Continuous trial

Delegation of non-judicial duties

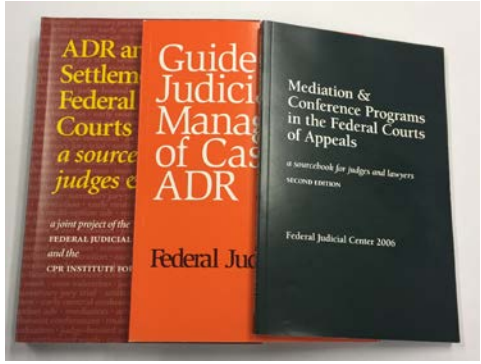
Strong central court administration

- Centralized information management system

Transparency

- Random weighted case assignment
- Statistical data available to public
  - Judicial Business of the United States Courts
  - Federal Court Management Statistics
- Civil Justice Reform Act of 1990
  - Semi-annual report prepared by Administrative Office
    - All motions pending > 6 months
    - All non-jury trials undecided > 6 months
    - All civil cases pending > 3 years
  - Statistics by court, judge, case
  - To reduce costs and delay, assist with resource allocation
- Internal reports: caseloads, disposition rates

Alternative Dispute Resolution



Federal courts must offer ADR

- Discretion as to type of program

Types of ADR

- Mediation is the most common
- Early neutral evaluation, arbitration, settlement week, summary trials

Consent of parties

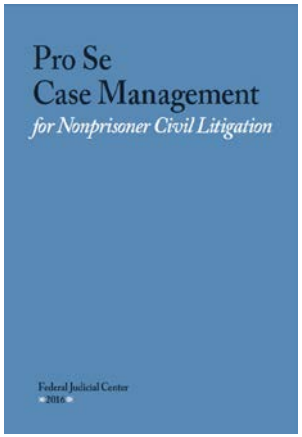
- Required by some courts
- Other courts permit judges to order parties to ADR

Costs: Parties may be required to pay mediation fees

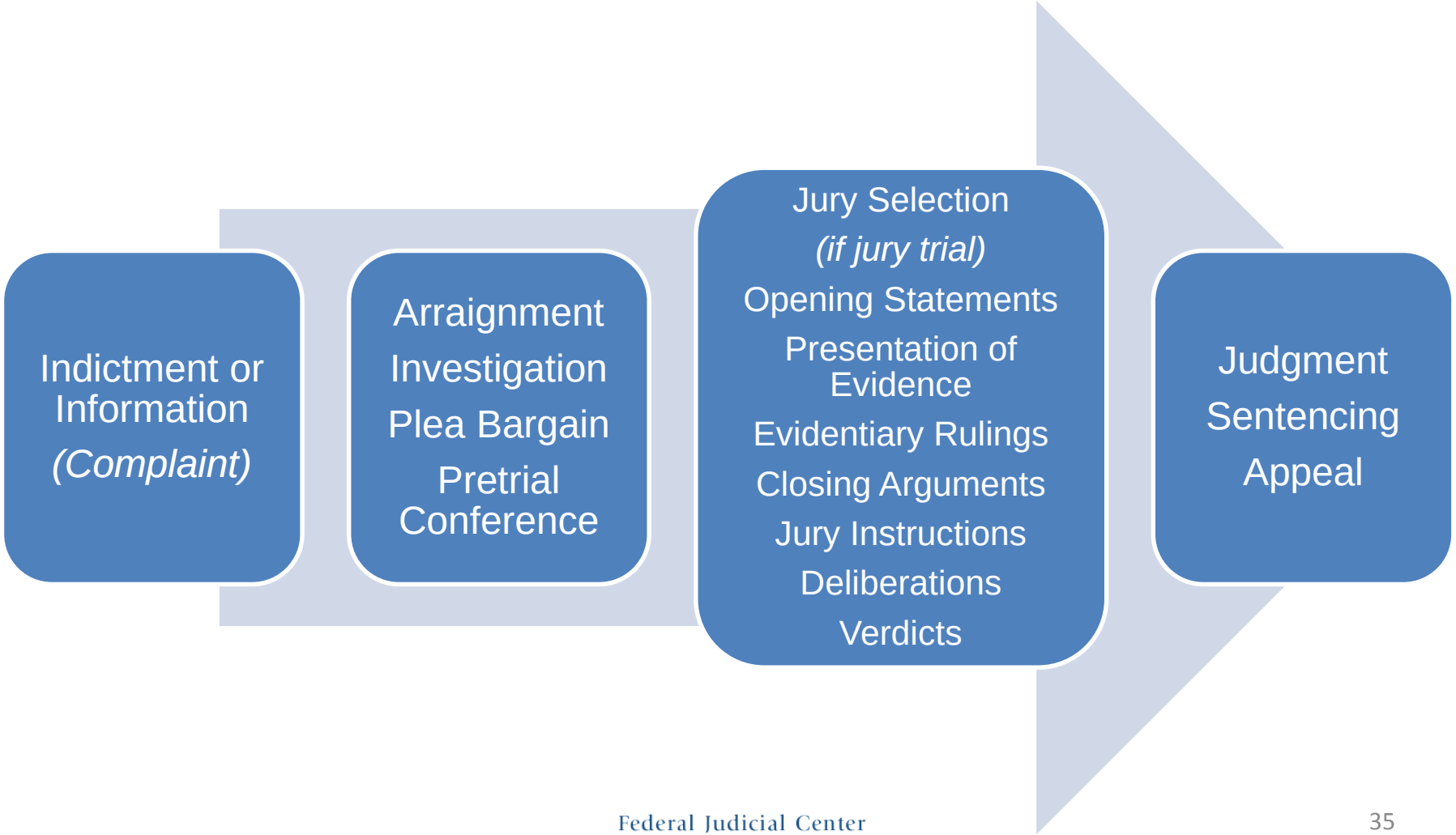
Providers: Panel of mediators, outside neutral, court staff mediator, judges

Self-Represented Litigant

- No right to court-appointed counsel in civil cases
- Right to appear without an attorney
  - Federal court: by statute
    - Some exceptions (e.g., corporations, class actions)
  - State courts
    - Many states have at least one pro se litigant in over half of certain types of cases
- Court resources
  - Some procedural assistance, but not legal advice
  - Forms, instructions, manuals



Path of a Criminal Case



Criminal Trial: Roles

Prosecutor

- Represents government
- Brings criminal charges
- Bears burden of proof
- Must prove guilt beyond a reasonable doubt
- Must disclose evidence favorable to accused

Defender

- Constitutional right to counsel
  - *private*
  - *court-appointed*
  - *public defender*
- Represents accused
- Tests government's case
- Protects defendant's right to fair trial

Judge

- Does not investigate
- Issues warrants
- Decides
  - *legal, evidentiary issues*
- If no jury, finds facts
- Manages trial
  - *fair, timely*
- Guards against prosecutorial misconduct
- Imposes sentence

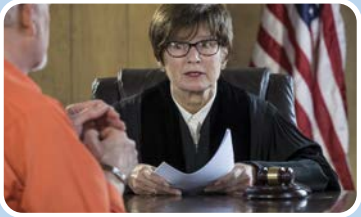
Plea Bargaining

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

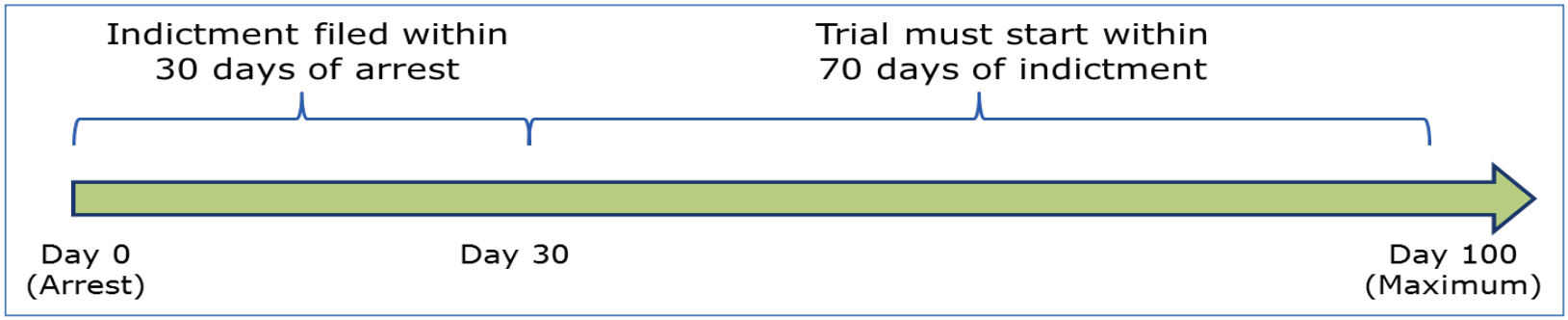
If plea bargain moves forward, judge conducts a hearing and questions the defendant to ensure that defendant is competent, understands the proceeding, and was not forced into pleading guilty

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



Defendant may consent to stopping “speedy trial clock”

Clock 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

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: Criminal and Civil

	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

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

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

Sentencing Guidelines

- United States Sentencing Commission
  - Independent judicial branch agency
    - President appoints 7 voting members, including 3-4 judges
  - Establishes national guidelines
  - Collects and analyzes information about crime and sentencing
- Sentencing Guidelines
  - Advisory, not mandatory
  - Intended to:
    - Promote fairness through proportionality
    - Prevent disparities
  - Flexibility: aggravating and mitigating factors
  - Reflect current understanding of human behavior

Re-entry Courts

- Problem-solving principles to reduce recidivism
- Programs active in 50 federal district courts
- Vary in scope, but most include:
  - Supervision, drug and job counseling, cognitive behavior therapy
- Court involvement
  - Authority, structure, accountability, sanctions/incentives
  - Scheduled sessions with individuals or group
- Team *(judge, parole/probation, treatment professional, prosecutor, defender)*
- Features
  - Voluntary
  - Eligibility screening
  - Evidence-based practices
- Research studies underway to assess impact

Visitors to the FJC: 2017

In 2017, the Center hosted over 400 visitors from 52 different countries and jurisdictions:

Afghanistan, Argentina, Armenia, Bangladesh, Belarus, Botswana, Brazil, Chile, China, Czech Republic, Democratic Republic of the Congo, Egypt, Estonia, France, Georgia, Haiti, Italy, Japan, Kazakhstan, Kenya, Kosovo, Kyrgyz Republic, Luxembourg, Malawi, Mauritius, Mongolia, Morocco, Myanmar, Namibia, Nepal, Nigeria, Pakistan, Peru, Philippines, Romania, Russian Federation, Saudi Arabia, Senegal, Serbia, Sierra Leone, South Korea, Sri Lanka, Taiwan, Tanzania, Tunisia, Uganda, Ukraine, Uzbekistan, Vietnam, West Bank and Gaza, Zimbabwe

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FJC
Federal Judicial Center

References by Slide

Slide 7

Federal caseload statistics: http://www.uscourts.gov/statistics-reports/federal-judicial-caseload-statistics-2015

Authorized federal judges: http://www.uscourts.gov/judges-judgeships/authorized-judgeships

State court judges and caseload statistics: *www.courtstatistics.org*

Slide 8

For caseload statistics for the U.S. judiciary: *http://www.uscourts.gov/statistics-reports/judicial-business-2016-tables*

Slide 10

Law school accreditation statistics: http://www.americanbar.org/groups/legal_education/resources/aba_approved_law_schools.html

Slide 11

Continuing legal education information: http://www.americanbar.org/publications_cle/mandatory_cle/mcle_states.html

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Slide 13

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Judicial retirement ages: https://ballotpedia.org/Mandatory_retirement

Slide 15

Federal judge demographic statistics: http://cwn.fjc.dcn/history/home.nsf/fs1

Slide 21

Judicial salary infbudget informationormation: http://www.fjc.gov/history/home.nsf/page/judges_salaries.html

Federal judiciary : http://www.uscourts.gov/news/2015/12/21/fy-2016-funding-meets-judiciary-needs

Slide 24

Judicial impeachments and convictions: http://www.fjc.gov/history/home.nsf/page/judges_impeachments.html

References cont'd

Slide 34

Pro se case statistics and information:

http://www.uscourts.gov/news/2015/08/20/pro-se-centers-help-even-odds-litigants-without-lawyers

http://www.nybooks.com/articles/2016/11/24/why-you-wont-get-your-day-in-court/

Slide 40

Types of juries: http://www.uscourts.gov/services-forms/jury-service/types-juries

Slide 41

Jury service: http://www.uscourts.gov/services-forms/jury-service/learn-about-jury-service

Jury selection and exemptions: http://www.uscourts.gov/services-forms/jury-service/juror-qualifications

Slide 45

FJC staff and budget information:

http://www.fjc.gov/public/pdf.nsf/lookup/FJC-Annual-Report-2016.pdf/$file/FJC-Annual-Report-2016.pdf