

Federal Judicial Center

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



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
Federal Judicial Center

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

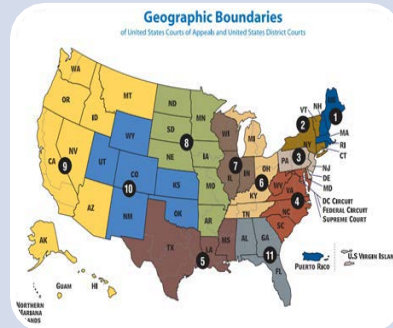


Judges and Cases

	FEDERAL	STATE
Judges	1,764	24,205
Criminal Cases <i>(first instance)</i>	81,217	12,949,982
Civil Cases <i>(first instance)</i>	369,257	13,090,998
Specialized <i>(mostly civil)</i>	777,073 <i>(bankruptcy and federal claims)</i>	42,260,108 <i>(juvenile, domestic relations, traffic, etc.)</i>
Appeals	38,521	118,585

Caseload Statistics: Federal: 2018; State: Based off of the sum of the most recent statistics available per state, 2015-2018

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)*

673 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

Vote
Attorney Lisa Doe
for
Superior Court
Seat 24

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)

 Re-Elect
Judge
John Smith
Law Enforcement's Choice

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”)

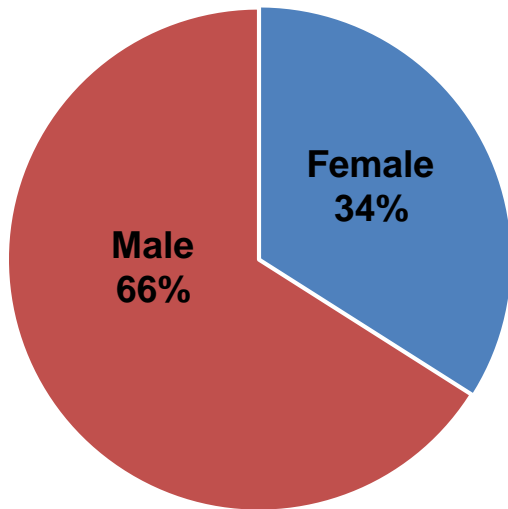
Article I Judges appointed to limited but renewable terms

- *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

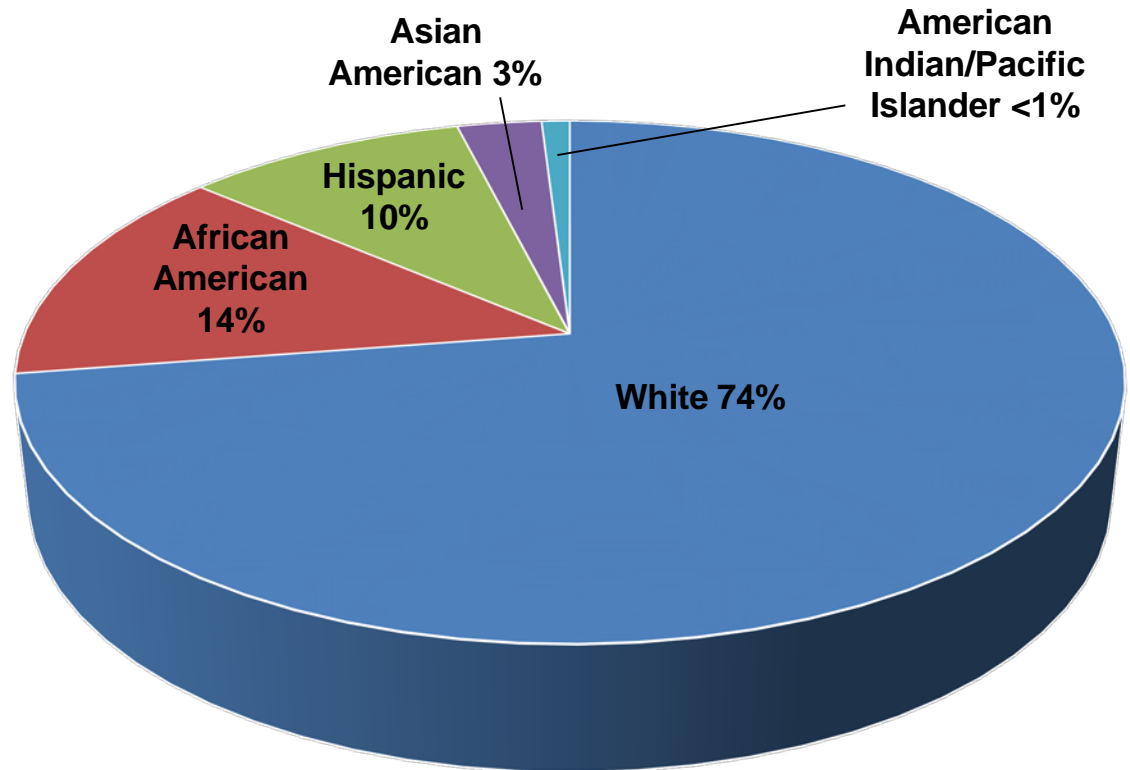


Diversity in Federal Judiciary

Gender



Race/Ethnicity



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

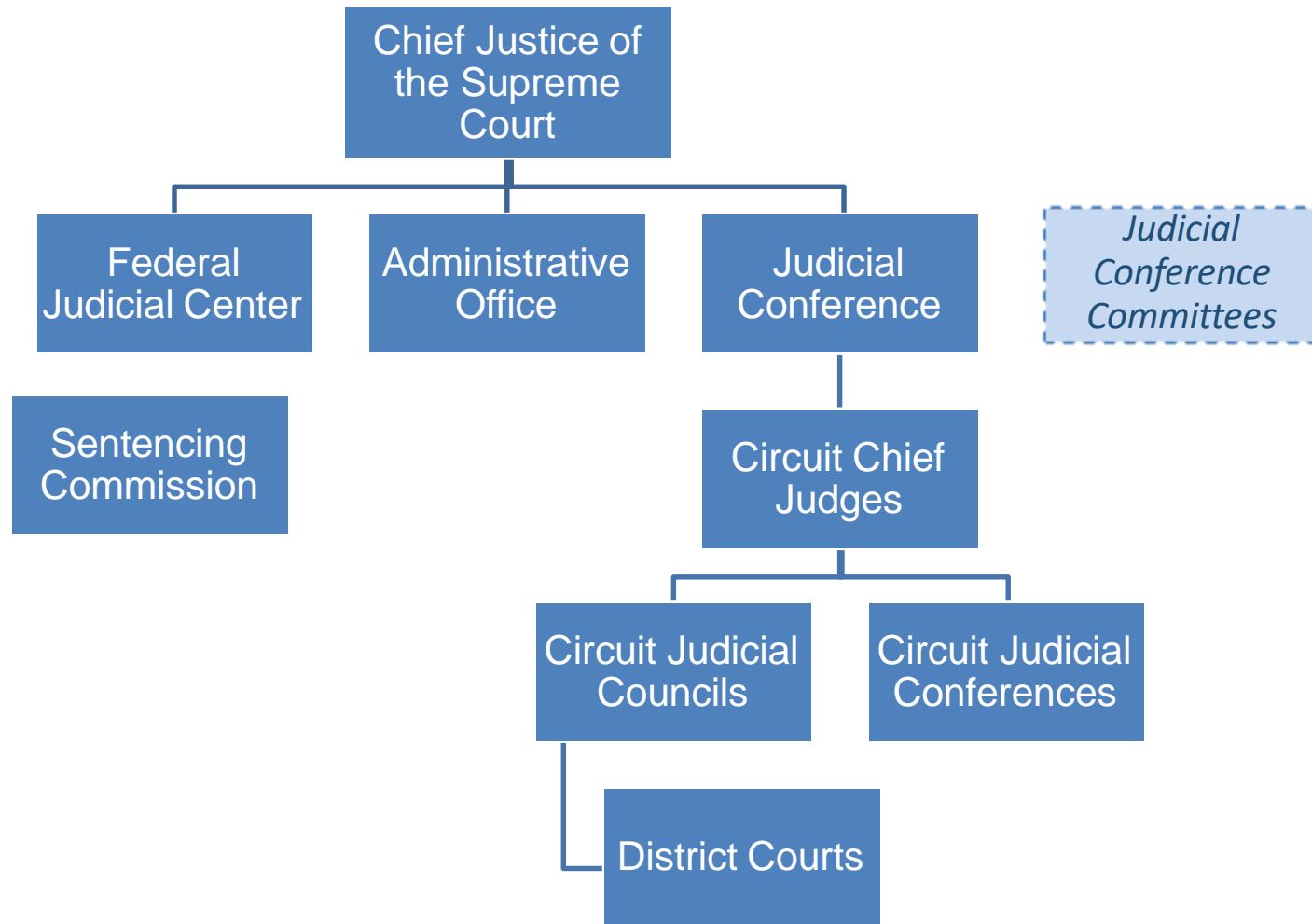
Write memoranda

Review draft opinions



Justice Horace Gray (1882)
"inspiration and criticism"

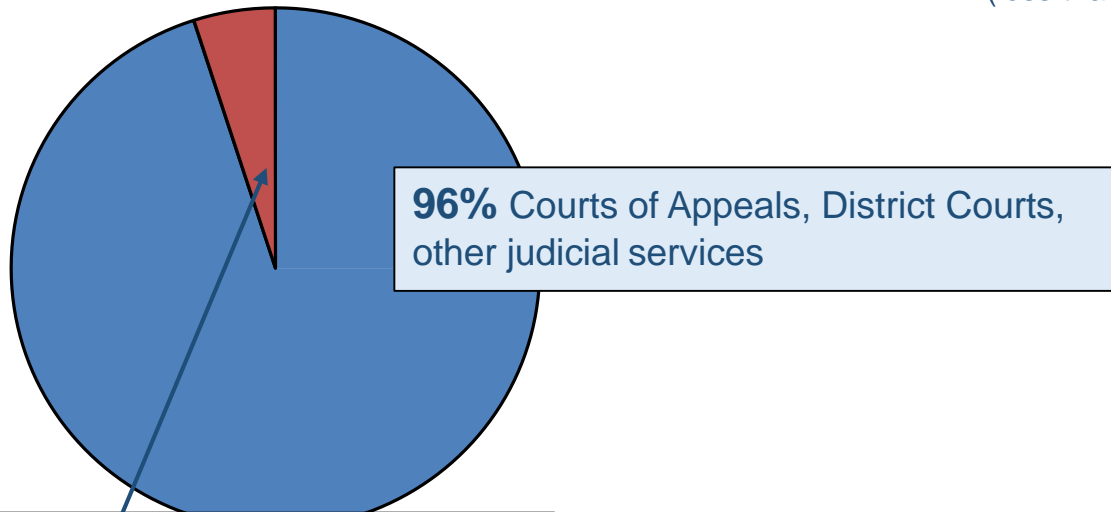
Judicial Administration



Funding the Courts

Budget for the Federal Judiciary: \$7.25 billion (FY 2019)

(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 (2018)

Supreme Court:	\$255,300 (CJ: \$267,000)
Court of Appeals:	\$220,600
District Court:	\$208,000
Bankruptcy/Magistrate Judge:	\$191,360

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
<i>Contemporary practice: convergence of two traditions in many countries</i>		

Judicial Practice: U.S.



Common Law

Precedent

Statutes

Rules of procedure, evidence



Court Proceedings

Adversarial

Role of judge and attorneys



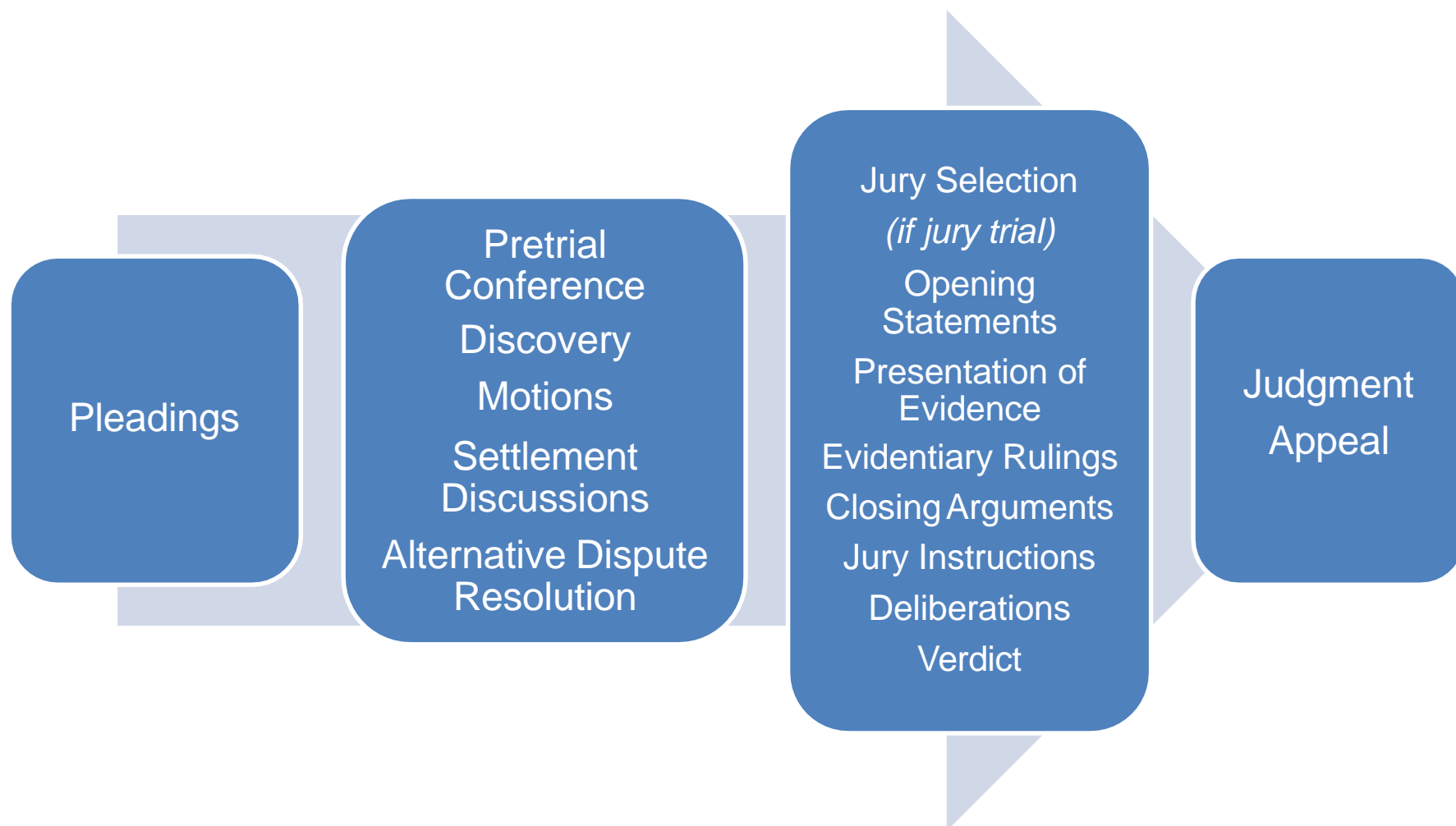
Trials

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

JECF		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					Date Filed: 06/12/2016			
Demand: \$2,040,000					Date Terminated: 11/08/2016			
Case in other court: Davis County Circuit Court, 11-14442					Jury Demand: Plaintiff			
Cause: 24:1223 Diversity-Account Receivable					Nature of Suit: 350 Pl: Other			
					Jurisdiction: Diversity			
<u>Plaintiff</u>								
Anne S. Foster					Represented by: Austin D. Smith			
					Austin D. Smith, Attorney at Law			
					162 Creek Dr. 1414			
					San Francisco, CA 23254			
					(877)212-2374			
					Email: Asmith@aol.com			
					ATTORNEY TO BE NOTICED			
V.								
<u>Defendant</u>								
Nutrition Fund Corporation					Reprented 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

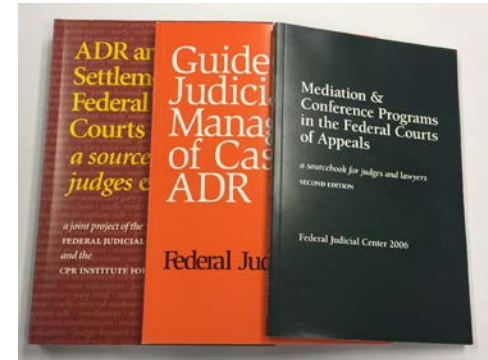
Consent of parties

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)

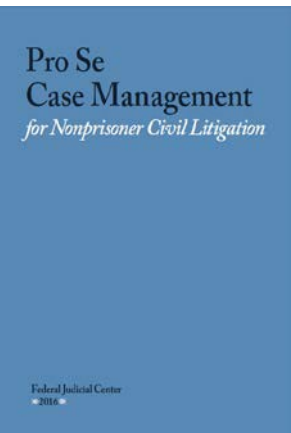
State courts

Many states have at least one pro se litigant in over half of certain types of cases

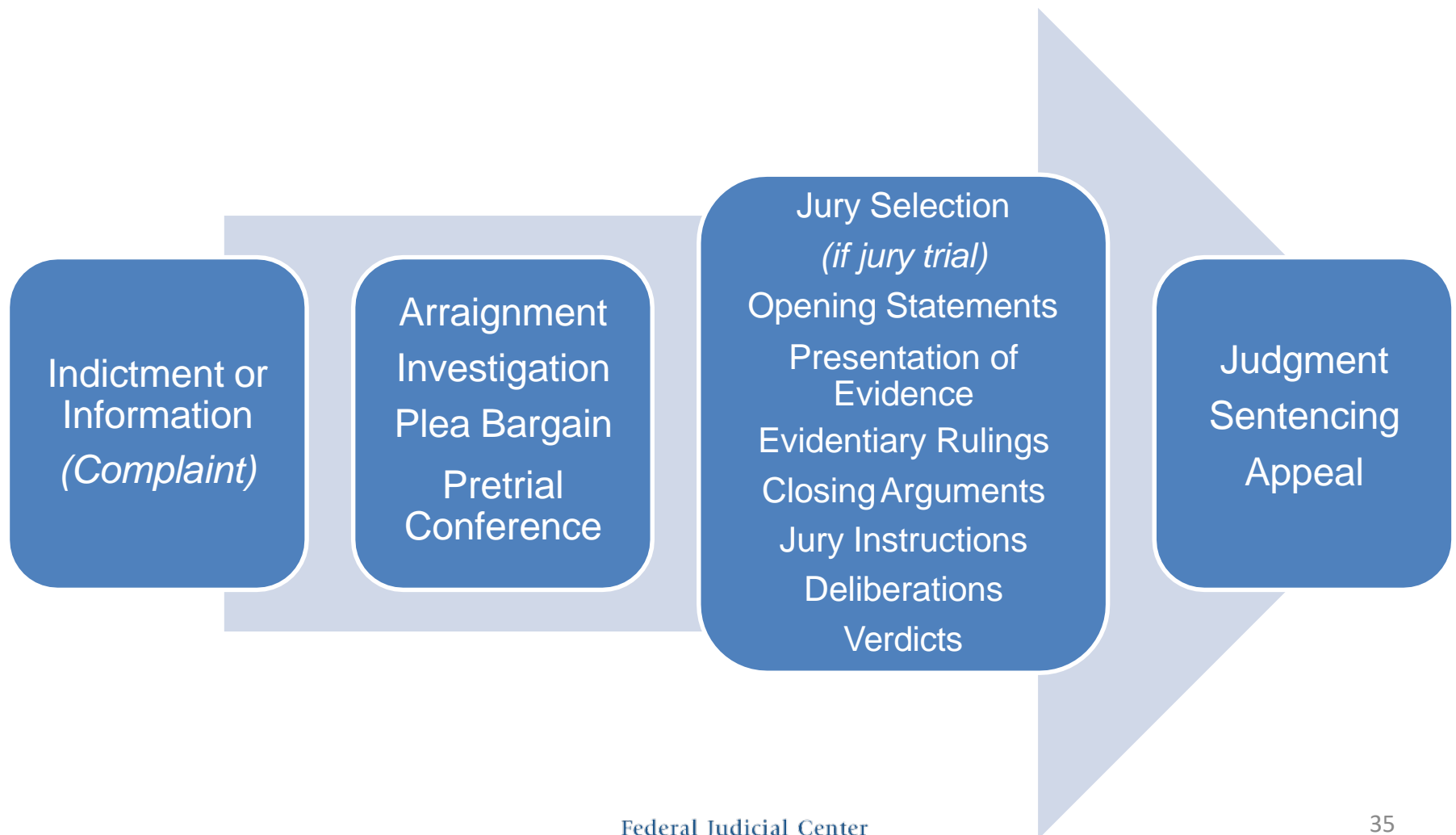
Court resources

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

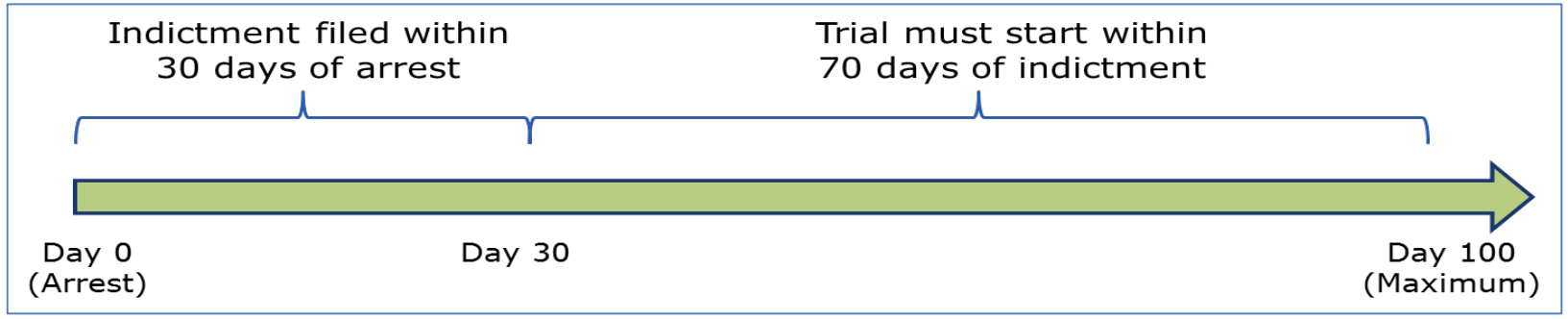
If plea bargain moves forward, judge conducts a hearing and questions the defendant to ensure that defendant is competent, understands the proceeding, and was not forced into pleading guilty

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) Federal	Civil (most state damages) State
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* <small>*Oregon and Louisiana do not require unanimity</small>	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

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: 118 (2019)

Budget: \$29,819,000 (2019)



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

Program Topics

Identified in consultation with Advisory Committees

Judicial Ethics

Substantive Law

Procedure and Evidence

Criminal Sentencing

Opinion Writing

Case Management

Court Administration and Leadership

Courtroom Skills

Using Information Technology

Science & Technology

Evolving Needs



Sentencing reform



Neuroscience



eDiscovery

Workshops & Seminars

Orientation

2 one-week sessions

Continuing Education

General and specialized

2-3 days, in different cities

Often in partnership with universities

Environmental law, employment law, intellectual property, mediation skills, science and technology, national security issues, etc.

Faculty: judges and experts

Not mandatory



FJC Publications

Some developed with an Advisory Committee

All reviewed by judges before publication

Benchbook for District Court Judges

Judicial Writing Manual

Recurring Problems in Criminal Trials

Case Management & ADR

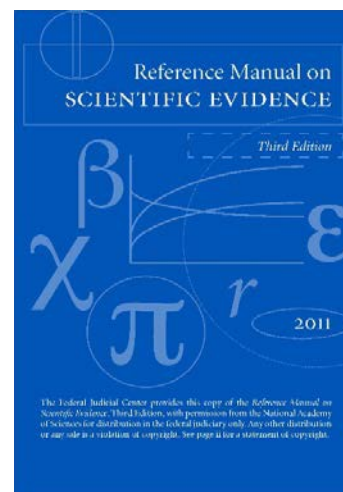
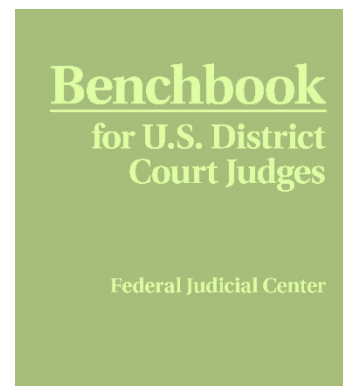
Deskbook for Chief Judges

Reference Manual on Scientific Evidence

Manual for Complex Litigation

Monographs on Legal Issues

Guides on Case Management and Procedural Issues



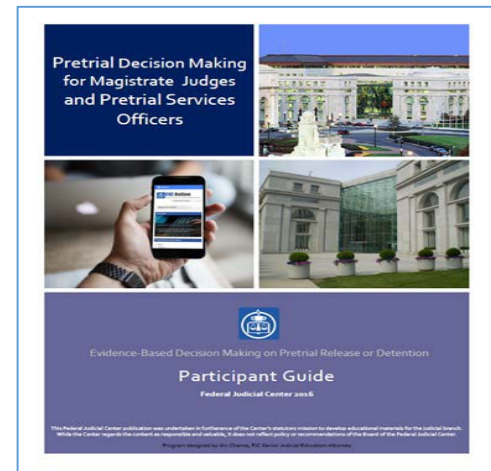
Programs for Court Staff

Court Administrators

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

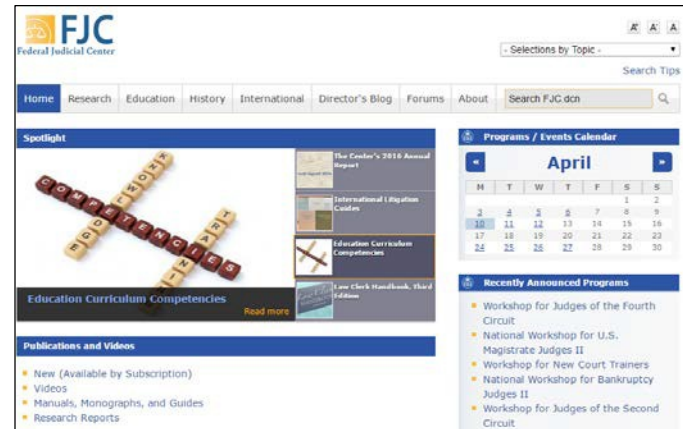
Probation & Pretrial Services

Workshops, conferences, in-court programs, eLearning



Distance Education

FJC intranet site
Streaming video & audio
Web & video conferencing
eLearning
FJC production studio



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

The screenshot displays the Federal Judicial Center's website interface. At the top, there is a navigation bar with links for 'Reports and Studies', 'Research Projects', 'Research Supporting the Federal Rules', 'Federal Court Cases: FJC Integrated Database (IDB) 1970 to Present', and 'Research: Special Topics'. The main content area features a diagram titled 'Technology Assisted Review for Discovery Requests'. The diagram shows a flow from 'ESI Collection' to 'Document', then to 'Computer Comparison', which results in a 'Seed Set' (divided into 'Responsive' and 'Not Responsive') and a 'Document Responsiveness Score' (represented by a percentage sign). Below the diagram, there are sections for 'Reports and Studies' and 'Current Research Projects'. The 'Reports and Studies' section lists several reports, including 'Report on Federal-State Court Cooperation: A Survey of Federal Chief District Judges', 'Patent Pilot Program: Five-Year Report', 'Video Recording Courtroom Proceedings in United States District Courts: Report on a Pilot Project', 'Review of Scientific Literature on the Reliability of Present Sense Impressions and Excited Utterances', and 'Survey of Harm to Cooperators: Final Report'. The 'Current Research Projects' section lists projects such as 'Alternative Dispute Resolution in the Federal District Courts', 'Alternative Dispute Resolution Programs Cost and Effectiveness', 'Bankruptcy Court Practices Regarding Applications for Administrative Costs', 'Best Practices for Trade Secret Seizures Under The Defend Trade Secrets Act of 2016', and 'Case Management of Chapter 9 Municipal Bankruptcy Litigation'.

Federal Judicial History

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

Teaching Judicial History Project:
background on famous federal trials and related public debates



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: 2019

In 2019, the Center hosted over 430 visitors from 67 different countries and jurisdictions:

Afghanistan, Albania, Argentina, Armenia, Benin, Bosnia and Herzegovina, Brazil, Brunei, Bulgaria, Burkina Faso, Chad, China, Costa Rica, Cote d'Ivoire, Egypt, Estonia, Ethiopia, France, Gabon, Georgia, Ghana, Guatemala, Guinea-Bissau, Haiti, Hungary, Indonesia, Iraq, Japan, Kazakhstan, Kenya, Kosovo, Liberia, Lithuania, Malawi, Malaysia, Mali, Mongolia, Niger, Nigeria, North Macedonia, Pakistan, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Romania, Rwanda, Serbia, Seychelles, Singapore, Slovakia, South Africa, South Korea, Spain, Taiwan, Tanzania, Thailand, Tunisia, Turkey, Uganda, Ukraine, Uzbekistan, Vietnam, Zambia, and Zimbabwe



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