

# **The USA Judicial System**



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Учебно-методическое пособие для студентов ОМО ИФ ТГУ  
по теме «Судебная система США», издание 2 исп-ое

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Учебно--методическое пособие «Судебная система США» предназначено для студентов старших курсов (VII семестре) исторического факультета, а также для тех, кто желает самостоятельно освоить продвинутый курс изучения английского языка. Языковой материал, представленный в пособии, сфокусирован на терминологии Судебная система США.

Основная цель данного пособия – ознакомить студентов с судебной системой США, ее традициями и особенностями.

Методические задачи пособия состоят в дальнейшем совершенствовании умений реферирования, комментирования, дискуссии, умений речевой иноязычной деятельностью.

Упражнения к текстам направлены на развитие следующих речевых умений: расширять, дополнять, аргументировать, уточнять, конкретизировать, оценивать, кратко излагать основную информацию текста и контекста, делать обзор, выражать главные мысли.

### **Содержание**

Пособие состоит из 3 частей (9 юнитов), которые включают в себя следующие тематические блоки:

- Система Федеральных судов
- Верховный США
- Система судов штатов

В конце пособия приведены 2 приложения.

В первом приведены данные о нынешних членах Верховного суда.

Во втором – глоссарий основных юридических терминов.

При составлении упражнений было учтено, что студенты старших курсов уже владеют наиболее употребляемым лексико-грамматическим материалом.

Основные материалы данного учебного пособия (части 1 – 4) были успешно использованы в обучении на отделении международных отношений Томского государственного университета.

## Part I

# INSIDE THE FEDERAL COURTS



## Unit 1

### Authority of the Federal courts

The Constitution provided for a Supreme Court of the United States as part of a court system that would balance the powers of the other two branches of government. Unlike the President and Congress, however, the Supreme Court played a minor role until Chief Justice John Marshall, who was appointed in 1801 and served until 1835, helped increase the power of the Court. Over the years, the Court's growing role in American government met serious challenges:

*Nothing in the Court's history is more striking than the fact that, while its significant and necessary place in the Federal form of Government has always been recognized by thoughtful and patriotic men, nevertheless, no branch of Government and no institution under the Constitution has sustained more continuous attack or reached its present position after more vigorous opposition.*

—CHARLES WARREN, *THE SUPREME COURT IN UNITES STATES HISTORY*, VOL. 1, 1924

Today the judicial branch of government is well established as an equal with the legislative and executive branches.

### Jurisdiction of the Courts

The judiciary of the United States has two different levels of courts. On one level are the federal courts whose powers derive from the Constitution and

federal laws. On the other are the courts of each of the 50 states whose powers derive from state constitutions and laws. Some have described the two court systems existing side by side as a dual court system.

### **Federal Court jurisdiction**

Every court, whether it is a federal court or a state court, has the authority *to* hear certain kinds of cases. This authority is called the jurisdiction of the court. In the dual court system, state courts have jurisdiction over cases involving state laws, while federal courts have jurisdiction over cases involving federal laws. Sometimes the jurisdiction of the state courts and the jurisdiction of the federal courts overlap.

Two factors determine the jurisdiction of federal courts—the subject matter of a case and the parties in a case. Federal courts try cases that involve United States laws, treaties with foreign nations, or interpretations of the Constitution. Cases involving admiralty or maritime law—the law of the sea, including ships, their crews, and disputes over actions and rights at sea—also come under federal court jurisdiction. Federal courts also try cases involving bankruptcy.

Federal courts hear cases if certain parties or persons are involved. These include:

- (1) ambassadors and other representatives of foreign governments;
- (2) two or more state governments;
- (3) the United States government or one of its offices and agencies;
- (4) citizens of different states;
- (5) a state and a citizen of a different state;
- (6) citizens of the same state claiming lands under grants of different states;  
and
- (7) a state or its citizens and a foreign country or its citizens.

**Concurrent Jurisdiction** In most cases, the difference between federal and state court jurisdiction is clear. In some instances, however, both federal and state courts have jurisdiction, a situation known as concurrent jurisdiction. Concurrent jurisdiction exists, for example, in a case involving citizens of different states in a dispute concerning at least \$ 10,000. In such a case, a person may sue in either a federal or a state court. If the person being sued insists, however, the case must be tried in a federal court.

**Original and Appellate jurisdiction.** The court in which a case is originally tried is known as a **trial court**. A trial court has original jurisdiction. In the federal court system, the district courts as well as several other lower courts have only original jurisdiction.

If a person who loses a case in a trial court wishes to appeal a decision, he or she may take the case to a court with appellate jurisdiction. The federal court system provides courts of appeals that have only appellate jurisdiction. Thus, a party may appeal a case from a district court to a court of appeals. If that party loses in the court of appeals, he or she may appeal the case to the Supreme Court, which has both original and appellate jurisdiction.

### Vocabulary

**Supreme Court** - 1) Верховный суд 2) суд первой инстанции (в штате Нью-Йорк)

**chief justice** - 1) главный судья; старший судья; председательствующий судья 2) (Chief Justice) председатель Верховного суда США

**to derive from** – выводить

**dual system** - сдвоенная система

**case** - судебное дело; случай, прецедент;

**to hear a case** - слушать дело, разбирать дело

**to overlap** - частично совпадать

**subject matter** - тема, предмет обсуждения

**to try a case** - рассматривать дело

**admiralty law** - морское право, военно-морское право Syn: maritime law

**concurrent jurisdiction** - совпадающая юрисдикция

**to sue** - преследовать судом; подавать в суд, возбуждать иск, предъявлять иск

**appellate jurisdiction** - право вышестоящего суда пересмотреть приговор/решение нижестоящего суда

**original jurisdiction** - 1) юрисдикция суда первой инстанции, первичная юрисдикция 2) рассмотрение дел по первой инстанции

**trial court** - суд первой инстанции

**district court** - окружной суд

**to lose case** — проиграть дело, проиграть процесс

### Exercises:

Ex 1 Answer the following questions

1. How many levels of courts are there in the judiciary of the United States? What are they?
2. What does federal court jurisdiction mean?
3. What factors determine the jurisdiction of federal courts?
4. What parties are involved in the legal proceedings in the federal courts?
5. What does concurrent jurisdiction mean?
6. What does original and appellate jurisdiction mean?
7. What courts have original and appellate jurisdiction?

Ex. 2 Give Russian equivalents for the following word combinations:  
 Supreme Court - to balance the powers of the other two branches of government - to play a very minor role - Chief Justice - to meet serious challenges- vigorous opposition-judiciary - federal courts - dual court system - jurisdiction of the court - to hear certain kinds of cases - to try cases that involve United States laws, treaties with foreign nations - concurrent jurisdiction - to try a case in a federal court - trial court

Ex. 3 Give English equivalents for the following word combinations:  
 Полномочия суда – выдержать продолжительные нападения – сильное сопротивление - законодательная ветвь власти – власть происходит – их юрисдикция частично совпадает – рассматривать дела, например, банкротство, - совпадающая юрисдикция - преследовать судом - суд первой инстанции - рассматривать дело - подавать апелляционную жалобу, обжаловать - окружной суд - первичная юрисдикция - право вышестоящего суда пересмотреть приговор/решение нижестоящего суда – передать дело в суд - апелляционный суд

Ex.4 Make up 6 sentences of your own with the words and phrases from exercises 2 and 3.

Ex.5 Match

1 jurisdiction	a. Existing and taking effect at the same time
2. concurrent	b. Judicial examination or inquiry in a court of law
3. appellate	c. Relating to the beginning
4. trial	d. The legal authority of a court to hear and decide a case. Concurrent jurisdiction exists when two courts have simultaneous responsibility for the same case.
5. original	e. About appeals; an appellate court has the power to review the judgement of another lower court or tribunal.

Ex. 6 Read and translate

В США существуют 2 судебные системы: федеральная система и судебная система штатов. Обе они возглавляются Верховными судами соответственно федерации и каждого штата. Судебная система США в соответствии с законом о судоустройстве 1789 г. состоит из 3 звеньев: Верховного суда США, апелляционных судов (их 12) и окружных судов (94). Военные суды составляют особое звено федеральной системы.

Дела по первой инстанции с применением Федеральных законов рассматривают окружные суды общей юрисдикции (по уголовным и гражданским делам). В округах существуют также специальные суды: налоговые, таможенные, претензионные по искам к правительству США и др. Апелляционные суды рассматривают жалобы на решения окружных судов, налоговых и претензионных судов. Для окружных таможенных судов существует специальный апелляционный суд. Процесс в апелляционных судах проходит, как и процесс по первой инстанции (с вызовом свидетелей, представлением документов).

Главную роль в судебной системе США играет Верховный суд США. С 1803 г. Верховный суд осуществляет конституционный контроль. Конституционный контроль в США оформился в результате судебного прецедента. Верховный суд толкует Конституцию США, проверяет законность конституционность законов США и штатов, проверяет законность нормативных актов исполнительной власти, устанавливает нормы общего права (судебные прецеденты). Закон (или его часть), признанный неконституционным, формально судом не отменяется (суд не имеет такого права), остается в сборниках законов, но не применяется судами, т.е. лишается юридической защиты.

Суды штатов могут рассматривать дела как по законам штатов, так и по федеральным законам. Судебные системы штатов весьма разнообразны.

В США традиционно значительна роль судебных приказов. В настоящее время осталось только три вида приказов федерального судьи:

–habeas corpus

– mandamus - судебный приказ, обязывающий должностное лицо совершить действие или издать акт, входящие в его компетенцию;

–injunction - судебный приказ, запрещающий должностному лицу совершать действие или издавать акт.

Нередко в судебной практике используется так называемое декларативное суждение: ответ судьи на обращение сторон, предпринятое с целью узнать мнение суда по существу спора, а затем подать иск или отказаться от этого



## Unit 2

### The Federal Court Jurisdiction

The federal courts deal with three types of law. These three types include civil law, criminal law, and constitutional law.

**Civil Law.** Most of the cases tried in the federal courts involve civil law. Civil law concerns disputes between two or more individuals or between individuals and the government. The **plaintiff** is the person who brings charges in a civil suit. The person against whom the suit is brought is the **defendant**. The plaintiff in a civil suit usually seeks damages—an award of money—from the defendant. If the court decides in favor of the plaintiff, the defendant must pay the damages to the plaintiff. Usually the defendant is also required to pay court costs. If the court decides in favor of the defendant, the plaintiff must pay the court costs.

In another type of civil case, the plaintiff sues to prevent a harmful action from taking place. Such a case is called **a case in equity law**. Equity law is a system of rules by which disputes are resolved on the grounds of fairness. In an equity case, a plaintiff may ask the court to issue an injunction, a court order that forbids a defendant to take or continue a certain action. For example, suppose a company plans to build a factory next to a residential area. Citizens believe that the factory would pollute the air. They take the factory owner to court and argue that residents would suffer serious health problems if the factory is constructed. If the citizens win this suit in equity, the judge issues an injunction ordering the company not to build its factory.

In another equity case, the plaintiff may ask the court to order a person or persons to *do* something. A court order requiring a specific action is called a **writ of mandamus** (man•DAY•muhs). Suppose someone has a new stereo receiver that stops working, but the manufacturer refuses to repair it. Because the stereo is guaranteed, he or she takes the company to court. If the court decides for the plaintiff, it issues a writ of mandamus ordering the company to repair the stereo.

**Criminal Law.** In a federal criminal law case, the United States government charges someone with breaking a federal law. In criminal cases, the government is always the prosecution, bringing charges against the defendant. A federal criminal case might involve such crimes as tax fraud, counterfeiting, selling narcotics, mail fraud, kidnapping, and driving a stolen car across state lines. If the court finds a person guilty, the judge may order the defendant to serve a term in prison, to pay a fine, or both.

By far, most crimes committed in the United States break state laws and are tried in state courts. The number of criminal law cases that come before

federal judges, however, has been increasing markedly in recent years as the crime rate has risen.

**Constitutional Law.** The third category of cases heard in federal courts involves constitutional law. Constitutional law relates to the meaning and application of the United States Constitution. For the most part, cases involving constitutional law decide the limits of the government's power and the rights of the individual. Cases may deal with either civil or criminal law. All federal courts try cases involving constitutional law—they decide whether a law or action conflicts with the Constitution. If a lower court decision is appealed, the Supreme Court makes the final ruling.

### Vocabulary

**civil law** - гражданское право

**criminal law** - уголовное право

**plaintiff** – истец

**civil suit** - гражданский иск

**to bring charges of smth. against smb.** — обвинить кого-л. в чем-л.

**seek damages of** - требовать возмещение убытков

**to pay the damages** - возместить убытки

**in favor of** - в чью-либо пользу

**to pay costs** - оплачивать издержки

**equity law** - право справедливости

**to resolve a dispute** — разрешать спор

**to issue an injunction** - издавать судебный запрет

**court order** - распоряжение суда

**a writ of mandamus** - судебный приказ

**the prosecution** - обвинение (сторона в судебном процессе)

**tax fraud** - налоговое мошенничество

**counterfeiting** - 1) контрафакция (незаконное использование фирменных обозначений; использование чужого произведения вопреки воле автора) 2) подделка (товаров)

**mail fraud** - почтовое мошенничество (рассылка по почте незаконных или вводящих в заблуждение почтовых сообщений (напр., почтовая реклама, неверно описывающая свойства товара))

**kidnapping** - киднэппинг, похищение людей Syn: kidnap

**judge** (сокр. - **J.**) – судья

**to serve a term in prison** - отбыть тюремное заключение

**to pay a fine** - заплатить штраф

**to conflict with the Constitution** – противоречить конституции

### Exercises:

Ex 1 Answer the following questions

1. How many types of law do the federal courts deal with?
2. Who is a plaintiff?
3. Who is defendant?
4. What does a plaintiff seek in a civil suit?
5. What case is called «a case in equity law»?
6. What does «a writ of mandamus» mean?
7. Who is always a prosecution in criminal cases?
8. What types of crime might a federal criminal case involve?
9. What law relates to the meaning and application of the United States Constitution.?

Ex. 2 Give Russian equivalents for the following words and word combinations:

civil law - criminal law - and constitutional law – plaintiff – to bring charges in a civil suit – defendant – to pay the damages to the plaintiff - to pay court costs - to prevent a harmful action from taking place – a writ of mandamus – to take a company to court – to break a federal law – prosecution – fraud – counterfeiting - selling narcotics - mail fraud - to serve a term in prison - to pay a fine

Ex. 3 Give English equivalents for the following words:

рассматривать дело в федеральном суде - уголовное право – гражданское право – ответчик - предъявить иск кому-л. – решить в пользу истца – выплачивать судебные издержки - право справедливости - издавать судебный запрет - требовать возмещение убытков - судебный приказ - нарушать закон – обвинение - обвинить кого-л. в подделывании денег – мошенничество - совершить преступление - уровень преступности - противоречит ли закон конституции

Ex.4 Make up 6 sentences of your own with the words and phrases from exercises 2 and 3.

Ex. 5 Supply the word or the word combination from the text, which is a periphrasis of the following

1. the person who brings charges in a civil suit.
2. the plaintiff sues to prevent a harmful action from taking place
3. a court order requiring a specific action
4. in criminal cases the government is always an accuser

5. the person against whom the suit is brought
6. it relates to the meaning and application of the United States Constitution

Ex. 6 Render the article into English

### **Юрисдикция федеральных судов**

Прежде чем федеральный суд сможет заслушать дело, или "осуществить свою юрисдикцию", необходимо выполнить определенные условия. Во-первых, по Конституции федеральные суды осуществляют только "судебные" полномочия. Это означает, что федеральные судьи могут толковать законы только путем разрешения фактических правовых споров, упомянутых в Статье III Конституции как "дела или споры". Суд не может пытаться исправить проблему по собственной инициативе или ответить на гипотетический правовой вопрос.

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***Суд не может пытаться исправить проблему по собственной инициативе или ответить на гипотетический правовой вопрос.***

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Во-вторых, при наличии фактического дела или спора истец, подающий федеральный иск, также должен обладать "правоспособностью", позволяющей просить суд вынести решение. Это означает, что истцу должен быть неким образом нанесен ответчиком ущерб или правовой вред.

В-третьих, дело должно представлять категорию споров, для рассмотрения которых предназначен соответствующий закон, и должно содержать жалобу, которую суд правомочен удовлетворить. Иными словами, суд должен быть по Конституции или федеральному законодательству правомочен заслушать дело и предоставить истцу надлежащие средства судебной защиты. Наконец, дело не может быть "спорным", то есть оно должно представлять собой сохраняющуюся проблему, которую должен решить суд. Таким образом, федеральные суды являются судами "ограниченной" юрисдикции, поскольку они могут решать только определенные типы дел в соответствии с предписаниями Конгресса или положениями Конституции.

Хотя детали сложной системы федеральной юрисдикции, предоставленной Конгрессом федеральным судам, выходят за рамки этого краткого издания, важно уяснить, что существуют два основных

источника дел, поступающих в федеральные суды: юрисдикция по вопросам, отнесенным к федеральной компетенции, и юрисдикция при несовпадении правовых норм.

В общем случае федеральные суды могут решать дела, связанные с правительством США, Конституцией США или федеральными законами, спорами между штатами или между США и иностранными правительствами. Дело, вызывающее такой "федеральный вопрос", может быть направлено в федеральный суд. Примерами таких дел могут служить претензия гражданина на право получать деньги по программе федерального правительства (такой, как программа социального обеспечения), исковое заявление правительства о том, что некто нарушил федеральное законодательство, или возражение на действия, предпринятые федеральным учреждением.

Дело может также быть подано в федеральный суд по принципу "несовпадающего гражданства" тяжущихся сторон - например, между гражданами разных штатов или между гражданами США и другой страны. Чтобы обеспечить тяжущейся стороне из другого штата или государства беспристрастность, Конституция предусматривает, что такие дела могут слушаться в федеральном суде. Важным ограничением юрисдикции по несовпадению правовых норм является то, что в федеральный суд можно направлять лишь дела, связанные с потенциальным ущербом свыше 75 000 дол. Претензии на меньшие суммы могут подаваться только в суд штата. Более того, любое дело по юрисдикции, обусловленной несовпадением правовых норм, независимо от денежной суммы, о которой идет речь, может быть подано не в федеральный суд, а в суд штата.

Федеральные суды также правомочны решать любые дела о банкротстве, которые Конгресс предписывает рассматривать в федеральных судах, а не в судах штатов. Прибегая к процедуре банкротства, лица или предприятия, которые больше не имеют возможности платить своим кредиторам, могут либо добиваться ликвидации своих активов под надзором суда, либо реорганизовать свои финансовые механизмы и выработать план погашения задолженности.

## Unit 3

### Legal System Principles

Four basic principles underlie the operation of both federal and state courts and the actions of the thousands of men and women who serve in the American legal system. These principles include equal justice under the law, due process of law, the adversary system of justice, and the presumption of innocence.

**Equal Justice Under the Law.** The phrase *equal justice under the law* refers to the goal of the American court system to treat all persons alike. It means that every person, regardless of wealth, social status, ethnic group, gender, or age is entitled to the full protection of the law. The equal justice principle grants all Americans rights, such as the right to a trial by a jury of one's peers. The Fifth through the Eighth Amendments to the Constitution spell out these specific guarantees.

**Due Process of Law.** Closely related to the principle of equal justice is the principle of *due process of law*. Due process is difficult to define precisely, but in general, it means that, a law must be applied in a fair manner. The Fifth and Fourteenth Amendments contain the due process principle.

If a court decides a law is unreasonable, it rules that the law violates substantive due process. Examples of laws that the Supreme Court has found to violate substantive due process include:

- (1) a law that limits dwellings to single families, thus preventing grandparents from living with their grandchildren;
- (2) a school board regulation that prevents a female teacher from returning to work sooner than three months after the birth of her child; and
- (3) a law that requires all children to attend public schools and does not permit them to attend private schools.

Cases about the way a law is administered involve procedural due process. Procedural due process requires the authorities to avoid violating an individual's basic freedoms when enforcing laws. For example, the police must warn an individual who is arrested that anything he or she says may be used as evidence.

**The Adversary System.** American courts operate according to the adversary system of justice. Under the adversary system, the courtroom is a kind of arena in which lawyers for the opposing sides try to present their strongest cases. The lawyer for each side feels compelled to do all that is

legally permissible to advance the cause of his or her client. The judge in the court has an impartial role and should be as fair to both sides as possible. Some observers of the judicial system have attacked the adversary system. They have claimed that it encourages lawyers to ignore evidence not favorable to their side and to be more concerned about victory than justice. Supporters of the adversary system, on the other hand, maintain that it is the best way to bring out the facts of a case.

**Presumption of innocence.** In the United States system of justice, the government's police power is balanced against the presumption that a person is innocent until proven guilty. The notion of presumed innocence is not mentioned in the Constitution, but it is deeply rooted in the English legal heritage. The burden of proving an accusation against a defendant falls on the prosecution. Unless the prosecution succeeds in proving the accusation, the court must declare the defendant not guilty.

### Vocabulary

**state court** - суд штата (в отличие от федерального суда)

**equal justice under the law** - равное правосудие в соответствии с законом

**due process of law** - надлежащая правовая процедура

**procedural due process** см. **due process of law**

**substantive due process of law** - процедура рассмотрения дела с надлежащим соблюдением норм материального права

**adversary system** - система состязательности в суде (правда выясняется в ходе соревнования позиций и доказательств сторон в судебном процессе)

**presumption of innocence** - презумпция невиновности

**to treat all persons alike** – обращаться со всеми одинаково

**to entitle to** - давать право

**trial by a jury** - рассмотрение дела судом присяжных;

**peer** - ровня, равный (по положению, статусу)

**to spell out** - разъяснять, растолковывать

**dwelling** - жилище, (жилой) дом, жилье Syn: house, residence

**school board** - отдел среднего образования (общественный орган, действующий на муниципальном уровне)

**to administer the law** - проводить в жизнь законы

**to enforce** - а) проводить в жизнь; придавать законную силу (какому-л. постановлению, указу и т. д.) б) осуществлять, приводить в исполнение

**evidence** - улика; свидетельское показание

**courtroom** - зал суда

**lawyer** - юрист; адвокат

**impartial judge** - беспристрастный судья

**heritage** - наследство; наследие

**accusation** - 1) обвинение, 2) обвинительное заключение, обвинительный акт

### Exercises:

Ex 1 Answer the following questions

1. What does the phrase «equal justice under the law» mean?
2. What rights does the equal justice principle grant all Americans?
3. Could you define «due process of law»?
4. Can you give any example of laws that the Supreme Court has found to violate substantive due process?
5. How does the adversary system of justice work?
6. Whose side should the judge take according to the adversary system of justice?
7. What are the pros and cons of the adversary system of justice?
8. What does “presumption of innocence” mean?

Ex. 2 Give Russian equivalents for the following words and word combinations:

basic principles – to underlie the operation of both courts - American legal system - to treat all persons alike – to apply a law in a fair manner – the Constitution spell out these specific guarantees - regardless of wealth, social status, ethnic group, gender, or age - the right to a trial by a jury of one's peers - substantive due process - the Fifth through the Eighth Amendments to the Constitution – to limit dwellings - procedural due process - to ignore evidence - presumption of innocence

Ex. 3 Give English equivalents for the following words:

свидетельское показание - равное правосудие в соответствии с законом - рассмотрение дела судом присяжных - надлежащая правовая процедура – Конституция растолковывает права- презумпция невиновности - процедура рассмотрения дела с надлежащим соблюдением норм материального права - беспристрастный судья - система состязательности в суде - проводить в жизнь законы - придавать законную силу (какому-л. постановлению, указу и т. д.) - зал суда становится ареной для адвокатов – наследие Английского права - обвинительный акт



Ex.4 Make up 6 sentences of your own with the words and phrases from exercises 2 and 3.

Ex. 5 Supply the word or the word combination from the text, which is a periphrasis of the following

1. in this system the courtroom is a kind of arena in which lawyers for the opposing sides try to present their strongest cases.
2. a law must be applied in a fair manner
3. the goal of the American court system to treat all persons alike
4. a person is innocent until proven guilty

Ex.6 Read and translate

### **Система федеральных судов**

Руководствуясь вышеупомянутым положением, Конгресс первого созыва разделил страну на округа и учредил федеральные суды для каждого округа. Из этого начинания сложилась нынешняя структура: Верховный суд, 13 апелляционных судов, 94 федеральных окружных суда и два суда особой юрисдикции. В настоящее время Конгресс сохраняет свои полномочия по созданию и ликвидации федеральных судов, а также определению числа судей в федеральной судебной системе. Однако у него нет права на ликвидацию Верховного суда.

Судебная власть распространяется на дела, возникающие на основе действующей Конституции, законов Конгресса и международных договоров Соединенных Штатов; дела, касающиеся послов, других официальных представителей и консулов зарубежных стран в Соединенных Штатах; споры, стороной которых является правительство США; споры между штатами (или их гражданами) и иностранными государствами (или их гражданами или подданными) и дела о банкротстве. Одиннадцатая поправка вывела из-под федеральной юрисдикции случаи, в которых граждане одного штата выступают в качества истцов, а правительство другого штата - в качестве ответчика. Это не помешало распространению федеральной юрисдикции на дела, в которых правительство штата выступает в качестве истца, а гражданин другого штата - в качестве ответчика.

Власть федеральных судов распространяется как на гражданские иски по возмещению убытков и иного ущерба, так и на уголовные дела, возникающие на основе федерального законодательства. Из Статьи III Конституции вытекает комплекс сложных взаимоотношений между

судами штатов и федеральными судами. Обычно в федеральных судах не слушаются дела, возникающие на основе законов отдельных штатов. Однако имеется ряд подпадающих под юрисдикцию федеральных судов дел, которые также могут рассматриваться судами штатов, с вынесением последними решения по ним. Таким образом, обе системы судов имеют исключительную юрисдикцию в одних областях и совпадающую юрисдикцию в других.

Конституция гарантирует независимость судебной власти имеющимся в ней положением о том, что федеральные судьи занимают свои должности до тех пор, «пока ведут себя безупречно». На практике это означает, что они остаются на своих должностях до самой смерти или ухода на пенсию или в отставку. Правда, если судья, находясь на своей должности, совершает правонарушение, то против него может быть начата процедура импичмента точно так же, как это делается в отношении президента или других должностных лиц федерального правительства. Судьи США назначаются президентом, а их назначение подтверждается Сенатом. Кроме того, Конгресс определяет размеры заработной платы судей.

## Unit 4

### Organization of the Federal Court System

Study Table № 1. What can you tell about the Federal Court System?

Read the text to extend your knowledge.

	<h4>Supreme Court</h4> <ul style="list-style-type: none"><li>- Highest court in the federal system</li><li>- Nine Justices, meeting in Washington, D.C.</li><li>- Appeals jurisdiction through <i>certiorari</i> process</li><li>- Limited original jurisdiction over some cases</li></ul>
	<h4>Courts of Appeal</h4> <ul style="list-style-type: none"><li>- Intermediate level in the federal system</li><li>- 12 regional "circuit" courts, including D.C. Circuit</li><li>- No original jurisdiction; strictly appellate</li></ul>
	<h4>District Courts</h4> <ul style="list-style-type: none"><li>- Lowest level in the federal system</li><li>- 94 judicial districts in 50 states &amp; territories</li><li>- No appellate jurisdiction</li><li>- Original jurisdiction over most cases</li></ul>

Table № 1

Article 3 of the United States Constitution created the federal court system. In 1789, Congress passed the Judiciary Act, which provided for 13 district courts. Later, other district courts were added.

Today, the federal court system has three main divisions—the district courts, the appellate, or appeals, courts (including the United States Supreme Court), and a number of special courts.

**The district courts.** The district courts are the federal trial courts. They are placed around the country in 91 districts. Each state has at least one district court, and the larger states have three or four. The District of Columbia has one, as does Puerto Rico. Each district court has one judge or more, depending upon the number of cases that are heard each year.

District courts are generally known as courts of original jurisdiction because most federal cases begin there. Such cases include criminal suits involving counterfeiting or kidnapping, or civil cases involving bankruptcy or copyright laws.

Decisions are made in the district courts by either a judge or a jury. A **jury** is a panel of citizens, usually 12, who come to a **verdict** (decision) of guilty or not guilty based on the evidence presented to them during a trial.

**The appeals courts.** The appeals courts are said to have appellate jurisdiction because they hear cases appealed from the district courts or other courts. There are no juries in appeals cases. It is common practice for three judges to review a case. The judges reach a decision by vote. In the process of review, the judges look only for errors of law that may have happened during the original trial. Errors of law occur when rules of trial procedure are not followed correctly. The refusal of a judge to allow any witnesses to testify in behalf of a defendant would be an example of an error of law. Another would be the failure of a court to allow a defendant to question his or her accuser.

The United States is divided into 11 judicial districts, or **circuits**. Several district courts are assigned to every circuit. For each circuit there is a court of appeals. There is also one appeals court for the District of Columbia. The final court of appeals in the United States is the Supreme Court. It is the highest court in our land.

These courts are called "special" because they hear only particular types of cases. The special courts include:

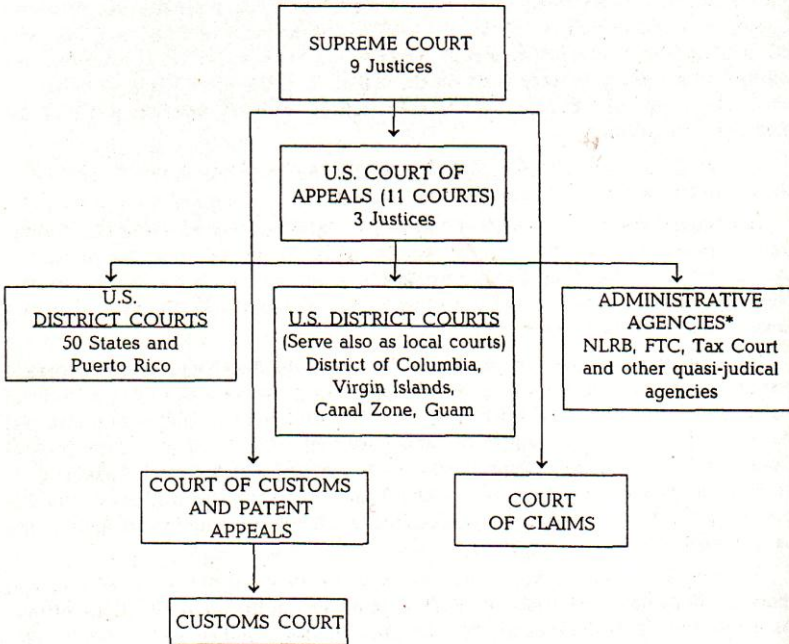
**U.S. Claims Court.** Persons wishing to sue the United States may do so in this court. Suits against the government arise for a variety of reasons. An example would be damage to a person's property by an Air Force plane or a truck of the Postal Service. When money must be paid for the damage, Congress has to approve of the amount. Usually, approval is given as a matter of course. There are 16 judges assigned to the claims court.

**U.S. Tax Court.** This court- handles only civil cases involving disputes over how the tax laws are to be applied. For example, if the heir to a family fortune felt that the federal inheritance tax was figured incorrectly, the case could be taken to this court. There are 19 judges assigned to this tax court.

**U.S. Court of International Trade.** This court handles cases involving imports. For example, the decision of a customs agent to classify imported ceramic dishes as works of art rather than as ordinary plates might be challenged in this court. All cases involving "dumping" are also handled by the Court of International Trade. Dumping is a practice in which one country ships products to another country and offers them at a price below

the current market price. Dumping is unfair because it makes it difficult for local producers of the product to compete in the marketplace. The court has a chief judge and eight judges, not more than five of whom may belong to any one political party.

FEDERAL COURT SYSTEM



\* The federal administrative agencies are not officially part of the Federal Court System but are included in this chart because their ruling can be appealed to a federal court.

Table № 2

***U.S. Court of Military Appeals.*** This court reviews court-martial (military trial) convictions in the Army, Navy, or other armed services. Its jurisdiction is limited to criminal cases. The court consists of three civilian judges appointed by the President. Since it is usually the final appeal of cases under military law, the court is sometimes called "the soldier's Supreme Court."

***Territorial Courts.*** These are courts located in the United States territories of Guam, the Virgin Islands, and the Northern Mariana Islands. The work of these courts is similar to that of local courts in the 50 states.

Vocabulary

**Judiciary Act** - Закон о судеустройстве

**justice** – судья

**certiorari** - истребование дела вышестоящим судом из производства нижестоящего суда (в том случае, когда нижестоящий суд не может обеспечить объективного, непредвзятого рассмотрения дела)

**circuit court** - 1) выездная сессия окружного суда (в ряде штатов США)  
2) федеральный окружной суд (в США до 1912 г.)

**district court** - окружной суд

**criminal suit** - уголовный иск

**copyright law** - авторское право

**jury** – присяжные

**verdict** - вердикт; решение присяжных заседателей

**trial** - судебное разбирательство; судебный процесс, суд

**appeal(s) court** - апелляционный суд

**to review a case** - пересматривать судебное дело

**error of law** - ошибка в праве

**trial procedure** - процедура рассмотрения дела по существу

**to testify in behalf of** - давать показания (свидетельствовать) в пользу (в защиту, в интересах) кого-л.

**to assign to** – приписывать

**final court** - суд последней инстанции

**Claims Court** – претензионный суд, суд претензий

**matter of course** - нечто само собой разумеющееся; ясное дело

**Tax Court** - налоговый суд

**Court of International Trade** - Внешнеторговый суд

**to handle** – разбирать

**Court of Military Appeals** - военно-апелляционный суд

**Territorial Courts** суды административных единиц (города, штата и т.д.)

**to challenge** – оспаривать

**dumping** - демпинг (продажа товаров за границей по ценам ниже их предельно высокой себестоимости)

**court martial** - военный суд, трибунал

**conviction** - осуждение, признание виновным

### **Exercises:**

Ex 1 Answer the following questions

1. How many divisions are there in the federal court system? What are they?
2. How many districts are there in the federal court system?
3. Who makes a decision in the district courts?

4. What cases do the district courts hear?
5. Is there any jury in the appeal courts?
6. What cases do the appeal courts hear?
7. Who is there in the appeal court?
8. What “special courts” do you know?
9. What types of cases are heard in the U.S. Claims Court?
10. What cases will be tried in the U.S. Court of International Trade?
11. What can you tell about the U.S. Court of Military Appeals?
12. What is the difference between the U.S. Tax Court. and the Territorial Courts?

Ex. 2 Give Russian equivalents for the following words and word combinations:

Federal trial courts - courts of original jurisdiction - counterfeiting or kidnapping, - civil cases involving bankruptcy or copyright laws - a judge or a jury - come to a verdict – dumping – to present evidence to smb. during a trial - appellate jurisdiction

Ex. 3 Give English equivalents for the following words:

Закон о судостроительстве - истребование дела вышестоящим судом из производства нижестоящего суда - выездная сессия окружного суда - окружной суд - уголовный иск – присяжные - авторское право - апелляционный суд - решение присяжных заседателей - суд претензий - судебный процесс - Внешнеторговый суд - пересматривать судебное дело - - свидетельствовать в пользу кого-л. - признание виновным - апелляционный суд – оспаривать решение суда - ошибка в праве - военно-апелляционный суд - процедура рассмотрения дела по существу - суд последней инстанции - трибунал

Ex.4 Make up 6 sentences of your own with the words and phrases from exercises 2 and 3.

Ex. 5 Supply the word or the word combination from the text, which is a periphrasis of the following

1. This court handles cases involving imports.
2. These are courts located in the United States territories of Guam, the Virgin Islands, and the Northern Mariana Islands
3. These courts are said to have appellate jurisdiction because they hear cases appealed from the district courts or other courts.
4. This court reviews court-martial convictions in the different armed services and its jurisdiction is limited to criminal cases.

5. Persons wishing to sue the United States may do so in this court
6. These courts are generally known as courts of original jurisdiction because most federal cases begin there.
7. If the heir to a family fortune felt that the federal inheritance tax was figured incorrectly, the case could be taken to this court.

Ex6 Render the article into English

### **Апелляционные суды и федеральные окружные суды**

Второй уровень после Верховного суда занимают в судебной системе США апелляционные суды, созданные в 1891 г. с целью содействия разрешению дел и частичному освобождению Верховного суда от его огромной нагрузки. Конгресс учредил 12 региональных окружных апелляционных судов и Апелляционный суд США по федеральному округу. Число судей, заседающих в каждом из этих судов, подвержено большим колебаниям (от 6 до 28) в зависимости от конкретного суда. Однако в большинстве выездных судебных сессий число судей составляет от 10 до 15.

Апелляционные суды пересматривают решения федеральных окружных судов (федеральных судов второй инстанции) на территории своей юрисдикции. Они также наделены полномочиями пересматривать распоряжения независимых регулирующих органов в тех случаях, когда внутренние механизмы этих органов по пересмотру дел уже исчерпали себя и имеются существенные разногласия по правовым вопросам. Кроме того, Апелляционный суд США по федеральному округу обладает юрисдикцией по всей стране в плане рассмотрения апелляционных жалоб по узко специальным делам, связанным с патентным правом, а также делам, решения по которым принимаются судами специальной юрисдикции, Федеральным судом по вопросам международной торговли и Федеральным претензионным судом.

Следующей более низкой инстанцией являются федеральные окружные суды. Пятьдесят штатов и территории США разделяются на 94 судебных округа, с тем чтобы тяжущимся сторонам легко было добираться до места судебного разбирательства своего дела. В каждом окружном суде имеется не менее двух судей. Есть немало судебных округов с большой численностью населения, в которых число судей превышает 24. В зависимости от имеющейся нагрузки по рассмотрению дел судья из одного судебного округа может временно



работать в другом. Конгресс устанавливает границы подобных судебных округов в соответствии с численностью населения, территорией и объемом работы. Некоторые из маленьких штатов сами являются таким судебным округом, в то время как в каждом из больших штатов, включая Нью-Йорк, Калифорнию и Техас, имеются по четыре судебных округа.

Судьи должны проживать в том судебном округе, в котором они постоянно работают. Исключение составляет Федеральный округ Колумбия. Окружные суды периодически проводят сессии в различных городах округа.

Большинство дел и правовых споров, разрешаемых этими судами, касаются преступлений по федеральному уголовному праву и федеральных правонарушений, таких как ненадлежащее использование почтовых отправлений, кража федерального имущества, нарушение законов о чистоте пищевых продуктов, несоблюдение банковского законодательства, фальшивомонетчество и контрафакция. Это единственные федеральные суды, в которых большие жюри обвиняют по обвинительному акту тех, кто совершил преступления по общему праву, а присяжные выносят решение по делу.

В каждом судебном округе есть также суд по делам о несостоятельности, поскольку Конгресс принял решение о том, что дела о банкротстве должны решаться в федеральных судах, а не в судах штатов. Согласно процедуре банкротства отдельные лица или предприятия, оказавшиеся не в состоянии выплачивать долги кредиторам, могут добиваться ликвидации своих активов под надзором суда или упорядочить свои финансовые дела и разработать план погашения имеющихся у них долгов.

**Part II**  
**Unit 5**

**The Supreme Court**



West façade of the Supreme Court Building.

The Supreme Court stands at the top of the American legal system. Article III of the Constitution created the Supreme Court as part of a coequal branch of the national government, along with Congress and the President.

The Supreme Court is the court of last resort in all questions of federal law. It has final authority in any case involving the Constitution, acts of Congress, and treaties with other nations. Most of the cases the Supreme Court hears are appeals from lower courts. The decisions of the Supreme Court are binding on all lower courts.

Nomination to the Supreme Court today is a very high honor. It was not always, so several of George Washington's nominees turned down the job. Until 1891, justices earned much of their pay, while riding the circuit or traveling to hold court in their assigned regions of the country.

Today the Court hears all its cases in the Supreme Court building in Washington, D.C., in a large first-floor courtroom that is open to the public. Nearby is a conference room where the justices meet privately to decide

cases. The first floor also contains the offices of the justices, their law clerks, and secretaries.

### **Supreme Court Jurisdiction**

The Supreme Court has both original and appellate jurisdiction. Article III, Section 2, of the Constitution sets the Court's original jurisdiction. It covers two types of cases:

(1) cases involving representatives of foreign governments

(2) certain cases in which a state is a party.

Congress may not expand or curtail the Court's original jurisdiction.

Many cases have involved two states or a state and the federal government. When Maryland and Virginia argued over oyster fishing rights, and when a dispute broke out between California and Arizona over the control of water from the Colorado River, the Supreme Court had original jurisdiction.

The Supreme Court's original jurisdiction cases form a very small part of its yearly workload — an average of fewer than five such cases a year. Most of the cases the Court decides fall under the Court's appellate jurisdiction.

Under the Supreme Court's appellate jurisdiction, the Court hears cases that are appealed from lower courts of appeals, or it may hear cases from federal district courts in certain instances where an act of Congress was held unconstitutional.

The Supreme Court may also hear cases that are appealed from the highest court of a state, if claims under federal law or the Constitution are involved. In such cases, however, the Supreme Court has the authority to rule only on the federal issue involved, not on any issues of state law. A state court, for example, tries a person charged with violating a state law. During the trial, however, the accused claims that the police violated Fourteenth Amendment rights with an illegal search at the time of the arrest. The defendant may appeal to the Supreme Court on the constitutional issue only. The Supreme Court has no jurisdiction to rule on the state issue (whether the accused actually violated state law). The Court will decide only whether Fourteenth Amendment rights were violated.

### **How Cases Reach the Court**

Congress sets very complex rules for appealing a case to the Supreme Court. A few cases start at the Court because they fall under its original jurisdiction. The vast majority of cases reach the Court only as appeals from lower court decisions. These cases come to the Supreme Court in one of two ways—on appeal or by writ of certiorari.

**On Appeal.** Certain types of cases are said to go to the Court on appeal. Most are cases in which a lower federal court or the highest state court has ruled a law unconstitutional. Some are cases in which the highest court of a state upholds a state law against the claim that it violates federal law or the Constitution. The Court is required to at least consider all cases involving the constitutionality of a law.

Only about 10 percent of the Court's cases arrive on appeal, and most are dismissed because they do not raise an important constitutional issue. When a case is dismissed, the decision of the lower court becomes final. Dismissal also has other legal consequences. Lower court judges are supposed to note that the Court believes similar types of cases do not involve a basic conflict with federal laws or the Constitution.

**Writ of Certiorari.** The main route to the Supreme Court is by a *writ of certiorari* (suh•shee•uh•RAR•ee) — an order from the Court to a lower court to send up the records on a case for review. Either side in a case may petition the Court for certiorari, or "cert," as lawyers call it. Such petitions must argue that the lower court made a legal error in handling the case, or they must raise some serious constitutional issue.

Because these appeals do not involve the constitutionality of a law, the Court is free to choose which cases it will consider. More than 90 percent of the requests for certiorari are rejected. Denial of certiorari does not necessarily mean that the justices agree with a lower court's decision. They may see the case as not involving a significant public issue. It may involve a question the Court does not want to address, or it may not be the best case for ruling on a specific issue. Regardless of the reason, when the Court denies certiorari, the lower court's decision stands.

**Selecting Cases.** Justice William O. Douglas once railed the selection of cases "in many respects the most important and interesting of all our functions." When petitions for certiorari come to the Court, the justices' clerks identify cases worthy of serious consideration and the Chief Justice puts them on a "discuss list" for the justices to consider. All other cases are automatically denied a writ unless a justice asks that a specific case be added to the list.

Almost two-thirds of all petitions for certiorari never make the discuss list. At the Court conferences, the Chief Justice reviews the cases on the discuss list. Then the justices—armed with memos from their clerks, other information on the case, and various law books — give their views. In deciding to accept a case, the Court operates by the rule of four. If four of the nine justices approve, the Court will accept the case for decision.

When the justices accept a case, they also decide either to ask for more information and oral arguments from the opposing lawyers or to rule quickly based on written materials already available. Cases decided without further information are announced with a *per curiam* (puhr KYTJR●ee●ahm) *opinion* — a brief unsigned statement of the Court's decision. Slightly less than half the cases the Court accepts are handled this way. The remaining cases go on for full consideration by the Court.

### Vocabulary

**coequal**– равный

**court of last resort** - суд последней инстанции

**along with** - наряду с

**final authority** - окончательное судебное решение

**nomination** - а) назначение (на должность) б) право назначения, выставления кандидата (при выборах на должность)

**to turn down** - отвергать (предложение) ; отказывать (кому-л.)

**to break out** – вспыхивать

**workload** - объем работы, нагрузка

**to fall under** - подпадать под (какую-л. категорию и т. п.) , быть классифицированным

**illegal search** - незаконный обыск

**writ of certiorari** - приказ об истребовании дела (из нижестоящего суда в вышестоящий суд)

**the constitutionality of the law** - соответствие закона конституции

**to dismiss** - а) прекращать дело б) отклонять исковое заявление

**dismissal** – а) прекращение (дела) б) отклонение (иска)

**legal consequence** - правовое последствие, судебное заключение

**petition** – 1. (n) петиция; прошение, ходатайство 2. (verb) обращаться с петицией; подавать прошение, ходатайствовать

**handling** - а) обращение (с чем-л.); б) трактовка; подход (к решению вопросов и т. п.)

**to rail** - жаловаться, сетовать

**writ** - предписание, повестка; исковое заявление, судебный приказ

**to arm with** - вооружаться, запасать(ся); обладать

**memo = memorandum** - служебная записка, докладная записка

**oral argument** – выступление в суде

**per curiam opinion** - решение суда

### Exercises:

Ex 1 Answer the following questions

1. What jurisdiction does the Supreme Court have?

2. In what case does the Supreme Court have final authority?
3. How does a case come to the Supreme Court?
4. What does "a writ of certiorari" mean?
5. What do you know about the selection of cases?
6. What does "a per curiam opinion" mean?

Ex. 2 Give Russian equivalents for the following words and word combinations:

top of the American legal system - a coequal branch of the national government - to turn down the job - to hold court in the assigned regions - cases involving representatives of foreign governments - certain cases in which a state is a party - to break out a dispute - to fall under the Court's appellate jurisdiction - to try a person charged with violating a state law - an illegal search - to rule a law unconstitutional - the constitutionality of a law - a writ of certiorari - a per curiam opinion

Ex. 3 Give English equivalents for the following words:

окончательное судебное решение - суд последней инстанции - рассматривать апелляции из ниже стоящих судов - отказываться от работы - подпадать под первичную юрисдикцию - составлять лишь небольшую часть ежегодной нагрузки - проводить заседание суда в закрепленных районах - решение суда - незаконный обыск - соответствие закона конституции - подавать прошение - приказ об истребовании дела - исковое заявление - выступление в суде - судебное заключение

Ex.4 Make up 6 sentences of your own with the words and phrases from exercises 2 and 3.

Ex. 5 Supply the word or the word combination from the text, which is a periphrasis of the following

1. an order from the Court to a lower court to send up the records on a case for review
2. a brief unsigned statement of the Court's decision.
3. Most cases in which a lower federal court or the highest state court has ruled a law unconstitutional may be reviewed in the Supreme Court.
4. Justice William O. Douglas once railed this process "in many respects the most important and interesting of all our functions."
5. Most of the cases the Supreme Court decides fall under that Court's authority

### Steps in Deciding Major Cases

The Supreme Court follows a set procedure in hearing important cases. Much of this activity goes on behind the scenes, with only a small part-taking place in an open courtroom.

**1. Submitting Briefs.** After the Court accepts a case, the lawyers on each side submit a brief. A brief is a written statement setting forth the legal arguments, relevant facts, and precedents supporting their side of the case. Briefs are often hundreds of pages long.

Parties not directly involved in the case, but who have an interest in its outcome, may also submit written briefs. Called *amicus curiae*<sup>1</sup>—or "friend of the court"—briefs, they come from individuals, interest groups, or government agencies claiming to have information useful to the Court's consideration of the case. In a recent major civil rights case, 53 *amicus curiae* briefs were filed—37 for 1 side and 16 for the other.

*Amicus curiae* briefs are a gentle way of lobbying, or trying to influence, the Court. Sometimes the briefs present new ideas or information. More often, however, they are most useful for indicating which interest groups are on either side of an issue.

**2. Oral Arguments.** After briefs are filed, a lawyer for each side is asked to present an oral argument before the Court. Each side is allowed 30 minutes to summarize the key points of its case. Justices often interrupt the lawyer during his or her oral presentation, sometimes challenging a statement or asking for further information. The lawyer speaks from a lectern that has a red light and a white light. The white light flashes five minutes before the lawyer's time is up. When the red light comes on, the lawyer must stop instantly, even in the middle of a sentence.

**3. The Conference.** On Fridays the justices meet in conference to discuss the cases they have heard. The nine justices come into the conference room and, by tradition; each shakes hands with the other eight. Everyone else leaves. Then one of the most secret meetings in Washington, D.C., begins. For the next six to eight hours, the justices debate the cases. No meeting minutes are kept. The Chief Justice presides over the discussion of each case and usually begins by summarizing the facts of the case and offering

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<sup>1</sup> **amicus curiae** -букв. друг суда независимый эксперт в суде (представляет суду информацию и доводы, которые могут помочь при принятии решения; его положение не связано с позицией ни одной из тяжущихся сторон по делу)

recommendations for handling it. The Chief Justice then asks each associate justice to give his or her views and conclusions. Each justice's vote carries the same weight. Traditionally, the justices have voted in reverse order of seniority. In recent years, however, they often have not bothered to take a formal vote because they have already expressed their positions during the discussion. The Chief Justice's vote is no more important than that of any of the other Court members.

A majority of justices must be in agreement to decide a case, and at least six justices must be present for a decision. If a tie occurs, the lower court decision is left standing. The Court's vote at this stage however is not necessarily final.

**4. Writing the Opinion.** For major cases the Court issues at least one written opinion. The opinion states the facts of the case, announces the Court's ruling, and explains its reasoning in reaching the decision. These opinions are as important as the decision itself. Not only do they set a precedent for lower courts in future cases, they also are the Court's way to communicate with Congress, the President, interest groups, and the public. The Court issues four kinds of opinions. In a unanimous opinion, all justices vote the same way. About one-third of the Court's decisions are unanimous. A majority opinion expresses the views of the majority on a case. One or more justices who agree with the majority's conclusions about a case but do so for different reasons write a concurring opinion. A dissenting opinion is the opinion of justices on the losing side in a case. Because the Court does change its mind on issues, a dissenting opinion may even become the majority opinion on a similar issue many years later.

If the Chief Justice has voted with the majority on a case, he or she assigns someone in the majority to write the opinion. When the Chief Justice is in the minority, the most senior associate justice among the majority assigns one of the justices on that side of the case to write the majority opinion. Public policy established from a case may depend in large part on who writes the opinion. For this reason Chief Justices often assign opinions in very important cases to themselves or to a justice whose views on the case are similar to their own.



## Unit 6

### Supreme Court Justices



Members of the Supreme Court sit for a group portrait at the Supreme Court in Washington in this March 3, 2006

The Supreme Court is composed of nine justices: the Chief Justice of the United States and eight associate justices. Congress sets this number and has the power to change it. Over the years, it has varied from 5 to 10, but has been 9 since 1869. In 1937, President Franklin D. Roosevelt attempted to gain greater control of the Court by asking Congress to increase the number of justices. Congress refused, in part because the number 9 was well established.

Under the Constitution Congress may remove Supreme Court justices, like other federal officials, through impeachment for and conviction of "treason, bribery, or other high crimes and misdemeanors." No Supreme Court justice has ever been removed from office through impeachment, however. The House of Representatives impeached Justice Samuel Chase in 1804 because of his participation in partisan political activities, but the Senate found him not guilty.

**Duties of the Justices.** The Constitution does not describe the duties of the justices. Instead, the duties have developed from laws and through tradition. The main duty of the justices is to hear and rule on cases. This involves them in three decision-making tasks: deciding which cases to hear from among the thousands appealed to the Court each year; deciding the case itself; and determining an explanation for the decision, called the *Court opinion*.

The Chief Justice has several additional duties such as presiding over sessions and conferences at which the cases are discussed. The Chief Justice also exercises leadership in the Court's judicial work and helps administer the federal court system.

All the justices also have limited duties related to the 12 federal judicial circuits. One Supreme Court justice is assigned to each of these federal circuits. Two of the justices handle two circuits each. The justices are responsible for dealing with requests for special legal actions that come from their circuit. In 1980, for example, a lower federal court ruled against the federal government's program of draft registration. Lawyers for the federal government then requested the Supreme Court to temporarily set aside the lower court's decision. The Supreme Court justice who was responsible for the federal judicial circuit in which the issue arose heard this request.

Infrequently, justices take on additional duties. In 1945, Justice Robert Jackson served as chief prosecutor at the Nuremberg trials of Nazi war criminals. In 1963, Chief Justice Earl Warren headed a special commission that investigated the assassination of President Kennedy. Justices limit such external activities because of the Court's heavy workload.

To maintain their objectivity on the bench, justices are careful not to become involved in outside activities that might prevent them from dealing fairly with one side or the other on a case. If justices have any personal or business connection with either of the parties in a case, they usually disqualify themselves from participating in that case.

**Law Clerks.** In 1882, Justice Horace Gray hired the first law clerk—mainly to be his servant and barber. Today the Court's law clerks assist the justices with many tasks, enabling the justices to concentrate on their pressing duties. Law clerks read all the appeals filed with the Court and write memos summarizing the key issues in each case. When cases are decided, the clerks help prepare the Court's opinions by doing research and sometimes writing first drafts of the opinions.

The justices each hire a few law clerks from among the top graduates of the nation's best law schools. These young men and women usually work for a justice for one or two years. After leaving the Court, many clerks go on to distinguished careers as judges, law professors, and even Supreme Court justices themselves.

**Tenure.** The Constitution provides that Justices "shall hold their Offices during good Behavior" (unless appointed during a Senate recess). The term "good behavior" is interpreted to mean that the Justices may serve for the

remainder of their lives, although this is not compulsory as they may resign or retire voluntarily. A Justice may also be removed by impeachment and conviction by congressional vote, but only one Justice has ever been impeached by the House (Samuel Chase, in 1805) and he was acquitted by the Senate, making impeachment as a restraint on the court something of a paper tiger. Moves to impeach sitting justices have occurred more recently (for example, William O. Douglas was the subject of hearings twice, once in 1953 and once in 1970), but they have not even reached a vote in the House. Because Justices have indefinite tenure, it is impossible to predict when a vacancy will next occur. Sometimes vacancies arise in quick succession, as in the early 1970s when Lewis Powell and William H. Rehnquist were nominated to replace Hugo Black and John Marshall Harlan II, who retired within a week of each other because of health problems and died shortly thereafter. Sometimes a great length of time passes between nominations such as the eleven years between Stephen Breyer's nomination in 1994 and the departures of Chief Justice Rehnquist and Justice O'Connor (by death and retirement, respectively) in 2005.

Despite the variability, all but four Presidents so far have been able to appoint at least one Justice. The exceptions are William Henry Harrison, Zachary Taylor, Andrew Johnson, and Jimmy Carter. Harrison died a month after taking office, though his successor (John Tyler) made an appointment during that presidential term. Taylor likewise died early in his presidential term and an appointment was made before the term ended by Millard Fillmore. Johnson succeeded the assassinated Lincoln, and he was denied the opportunity to appoint a Justice by congressional action. Carter is the only president to serve a full term without the opportunity to appoint at least one Justice.

### **Current membership (appendix №1).**

**Retired justices.** Research suggests that justices sometimes strategically plan their decisions to leave the bench, with personal, institutional, and partisan factors playing a role. The fear of mental decline and death often motivates justices to step down. The desire to maximize the Court's strength and legitimacy through one retirement at a time, when the Court is in recess and during non-presidential election years suggests a concern for institutional health. Finally, if possible, justices seek to depart under favorable presidents and Senates to ensure that a like-minded successor will be appointed.

Currently, there is only one retired Justice of the Supreme Court, Sandra Day O'Connor, who announced her intent to retire in 2005 and was replaced

by Samuel Alito in 2006. As a retired Justice, Justice O'Connor may be, and has been, designated for temporary assignments to sit with several United States Courts of Appeals. Nominally, such assignments are made by the Chief Justice; they are analogous to the types of assignments that may be given to judges of lower courts who have elected senior status, except that a retired Supreme Court Justice never sits as a member of the Supreme Court itself.

### Vocabulary

**associate justice** - член суда

**to gain control** - получать, приобретать контроль

**impeachment** - обвинение и привлечение к суду (особ. за государственное преступление) ; импичмент

**reason** -1) измена, предательство Syn: treachery, faithlessness 2) государственная измена (тж. high treason)

**bribery** – взяточничество

**high crimes and misdemeanors** -серьезные преступления и правонарушения (Конституционная формула, охватывающая нарушения закона, дающие основание Палате представителей для импичмента президента, вице-президента и любого гражданского должностного лица США, а также для утверждения этого решения Сенатом).

**to remove from office** - смещать, увольнять, освобождать от обязанностей

**court opinion** - мотивированное судебное решение

**to preside over session** - председательствовать на судебном заседании

**judicial circuit** - судебный округ

**legal action** - 1) правовое действие 2) судебное дело, судебный процесс

**infrequently** - иногда, редко

**chief prosecutor** - главный обвинитель

**war criminal** - военный преступник

**to investigate an assassination** – расследовать убийство

**bench** - место, где сидят судьи, суд (любой, от присяжных до военно-полевого) ; судьи

**to file** - обращаться (с заявлением, прошением), подавать какой-л. Документ

**tenure** - срок пребывания (в должности)

**to hold office** - занимать пост/должность

**good behaviour** - правомерное поведение; хорошее, надлежащее поведение;

**recess** - перерыв, пауза в работе чего-л., кого-л. а) перерыв в работе или заседаниях (каких-л. организаций, суда и т. п.), парламентские каникулы

**remainder of one's live** – до конца жизни

**conviction** - осуждение, признание виновным

**paper tiger** - "бумажный тигр", неопасный противник (претворяющийся сильным)

**to impeach** – возбуждать дело об отстранении от должности (обык. высших должностных лиц)

**sitting justice** - судья при исполнении служебных обязанностей, судья, участвующий в рассмотрении дела

**succession** – последовательность

**to step down** - уступить свою позицию

**legitimacy** - законность, легальность

**like-minded** - одинаково мыслящий, придерживающийся такого же мнения, имеющий то же мнение, убеждение

**temporary assignment** - временное назначение

### Exercises:

Ex 1 Answer the following questions

1. How many justices are there in the Supreme Court?
2. Who sets this number and has the power to change it?
3. What body may remove Supreme Court justices under the Constitution? What procedure is used?
4. What duties do the justices have in the Supreme Court?
5. Who has additional duties? What are they?
6. What duties do law clerks have? What can you tell about their career?
7. How long can justices hold office?
8. How many presidents have been able to appoint at least one justice?
9. What often motivates justices to step down?
10. How many retired justice is there in the Supreme Court?

Ex. 2 Give Russian equivalents for the following words and word combinations:

the Chief Justice - associate justice - to increase the number of justices - to gain control – to be removed from office through impeachment – to hear and rule on cases - conviction of "treason, bribery, or other high crimes and misdemeanors" - partisan political activities – to find smb. not guilty - Court opinion - the 12 federal judicial circuits – to serve as chief prosecutor at the Nuremberg trials of Nazi war criminals – to disqualify oneself from

participating in the case - first drafts of the opinions - to investigate an assassination - the fear of mental decline and death

Ex. 3 Give English equivalents for the following words:

получать, приобретать контроль – смещать членов Верховного суда с должности - государственная измена и взяточничество - председательствовать на судебном заседании – сохранять объективность на посту - главный обвинитель - судебный процесс - срок пребывания в должности - подавать ходатайство - занимать должность до конца жизни - неопасный противник - судья, участвующий в рассмотрении дела - временное назначение

Ex.4 Make up 6 sentences of your own with the words and phrases from exercises 2 and 3.

Ex. 5 Supply the word or the word combination from the text, which is a periphrasis of the following

1. The process of calling something into question
2. The process of deciding the case itself; and determining an explanation for the decision.
3. This person has several additional duties such as presiding over sessions and conferences at which the cases are discussed.
4. The term is interpreted to mean that the Justices may serve for the remainder of their lives, although this is not compulsory as they may resign or retire voluntarily.
5. If justices have any personal or business connection with either of the parties in a case, they usually refuse from participating in that case.

Ex.6 Read and translate

### **The Court and Its Traditions**

For all of the changes in its history, the Supreme Court has retained so many traditions, that it is in many respects, the same institution that first met in 1790, prompting one legal historian to call it, “the first Court still sitting.”

Recent Justices have perpetuated the tradition of longevity of tenure. Justice Hugo Black served for 34 years and one month prior to his retirement in 1971. In October 1973, Justice William O. Douglas surpassed the previous longevity record of Justice Stephen J.

Field, who had served for 34 years and six months from 1863 to 1897. When Justice Douglas retired on November 12, 1975, he had served a total of 36 years and six months.

As is customary in American courts, the nine Justices are seated by seniority on the Bench. The Chief Justice occupies the center chair; the senior Associate Justice sits to his right, the second senior to his left, and so on, alternating right and left by seniority.

Since at least 1800, it has been traditional for Justices to wear black robes while in Court. Chief Justice Jay, and apparently his colleagues, lent a colorful air to the earlier sessions by wearing robes with a red facing, somewhat like those worn by early colonial and English judges. The Jay robe of black and salmon is now in the possession of the Smithsonian Institution.

Initially, all attorneys wore formal “morning clothes” when appearing before the Court. Senator George Wharton Pepper of Pennsylvania often told friends of the incident he provoked when, as a young lawyer in the 1890’s; he arrived to argue a case in “street clothes.” Justice Horace Gray was overheard whispering to a colleague, “Who is that beast who dares to come in here with a grey coat?” The young attorney was refused admission until he borrowed a “morning coat.” Today, only Department of Justice and other government lawyers, who serve as advocates for the United States Government, follow the tradition of formal dress.

Quill pens have remained part of the Courtroom scene. White quills are placed on counsel tables each day that the Court sits, as was done at the earliest sessions of the Court. The “Conference handshake” has been a tradition since the days of Chief Justice Melville W. Fuller in the late 19th century. When the Justices assemble to go on the Bench each day and at the beginning of the private Conferences at which they discuss decisions, each Justice shakes hands with each of the other eight. Chief Justice Fuller instituted the practice as a reminder that differences of opinion on the Court did not preclude overall harmony of purpose.

The Supreme Court has a traditional seal, which is similar to the Great Seal of the United States, but which has a single star beneath the eagle’s claws—symbolizing the Constitution’s creation of “one Supreme Court.” The Seal of the Supreme Court of the United States is kept in the custody of the Clerk of the Court and is stamped on official papers, such as certificates given to attorneys newly admitted to practice before the Supreme Court. The seal now used is the fifth in the Court’s history.

[The foregoing was taken from a booklet prepared by the Supreme Court of the United States, and published with funding from the Supreme Court Historical Society.]

## Unit 7

### Appointing Justices

Justices reach the Court through appointment by the President with Senate approval. The Senate usually grants such approval, but it is not automatic. A respected President is less likely to have a candidate rejected, but the Senate did reject one of President Washington's nominees. During the nineteenth century, more than 25 percent of the nominees failed to win Senate approval. By contrast, during the early part of the twentieth century, the Senate was supportive of presidential choices. More recently, the Senate rejected two of President Nixon's nominees and Reagan's nomination of Robert Bork in 1987. The Senate closely scrutinized Justice Clarence Thomas's nomination in 1991 but accepted the nomination by a vote of 52 to 48.

As is the case with lower court judges, political considerations often affect a President's choice of a nominee to the Court. Usually Presidents will choose someone from their own party, sometimes as a reward for faithful service to the party.

Presidents prefer to nominate candidates they believe sympathize with their political beliefs. Several Presidents have discovered, however, that it is very difficult to predict how an individual will rule on sensitive issues once he or she becomes a member of the Court. After securing the nomination of Tom Clark, President Truman expressed his displeasure:

*Tom Clark was my biggest mistake. No question  
about it... I don't know what got into me.  
He was no ... good as Attorney General, and on  
the Supreme Court. .. he's been even worse.  
He hasn't made one right decision I can think of.*

—HARRY S TRUMAN

When President Eisenhower named Earl Warren as Chief Justice in 1953, he expected Warren to continue to support the rather conservative positions he had taken as governor of California. The Warren Court, however, turned out to be the most liberal, activist Court in the country's history.

In identifying and selecting candidates for nomination to the Court, the President receives help from the Attorney General and other Justice Department officials. The Attorney General usually consults with the legal community and proposes a list of possible candidates for the President to consider. In making the final selection, the President and the Attorney General may also check with leading members of Congress. In addition, they hear from several different groups that have a special interest in the selection of a justice.



**The Role of the American Bar Association.** The American Bar Association (ABA) at times has played an important role in the selection of justices. The ABA is a national organization of attorneys and the major voice of the legal profession in the United States. The ABA's Committee on the Federal Judiciary rates the qualifications of Supreme Court nominees from "exceptionally well-qualified" to "not qualified." While the President does not have to pay attention to the ABA's ratings, an ABA rejection of a nominee may lead the Senate to disapprove the nominee. When he first assumed office, President Nixon indicated that he would not appoint any judge who did not have the approval of the ABA. After the Senate turned down two Nixon candidates who had ABA approval, Nixon's confidence in the ABA eroded. At the same time, the ABA began to scrutinize candidates more closely. While the ABA still rates candidates, recent Presidents have not as faithfully consulted the ABA about appointments.

**The Role of Other interest Groups.** Interest groups that have a stake in Supreme Court decisions may attempt to influence the selection process. Generally, these groups make their positions on nominees known through their lobbyists and the media. Strong opposition to a nominee by one or more major interest groups may influence the senators who vote on the nominee.

The National Organization for Women (*NOW*) may oppose a nominee who is considered to be against women's rights. This was the case with President Ford's selection of John Paul Stevens in 1975. Despite *NOW*'s criticism, however, the Senate approved Stevens. More recently *NOW* expressed its opposition to the nominations of David Souter in 1990 and Clarence Thomas in 1991. In both instances *NOW* was concerned that both candidates might cast a deciding vote against *Roe v. Wade*.

Civil rights groups are also usually active during the selection process. Groups such as the National Association for the Advancement of Colored People (NAACP) carefully examine nominees' views on racial integration and minority rights.

**The Role of the justices.** Members of the Supreme Court have a big stake in the selection of new justices. As leaders of the Court, Chief Justices have often been very active in the selection process. Justices who must work with the newcomers often participate in the selection process. They may write letters of recommendation supporting candidates who have been nominated, or they may lobby the President for a certain candidate.

Chief Justice Howard Taft intervened frequently in the nominating process. He personally led a campaign for the nomination of Pierce Butler, who was

named to the Court in 1922. Chief Justice Warren Burger suggested the name of Harry Blackmun, who was also confirmed. Knowing a member of the Court personally helped Sandra Day O'Connor. She received a strong endorsement from former law school

**Recess appointments.** When the Senate is in recess, the President may make a temporary appointment without the Senate's advice and consent. Such a recess appointee to the Supreme Court holds office only until the end of the next Senate session (at most, less than two years). To continue to serve thereafter and be compensated for his or her service, the nominee must be confirmed by the Senate. Of the two Chief Justices and six Associate Justices who have received recess appointments, only Chief Justice John Rutledge was not subsequently confirmed for a full term. No president since Dwight Eisenhower has made a recess appointment to the Supreme Court and the practice has become highly controversial even when applied to lower federal courts.

**Political leanings.** While justices do not represent or receive official endorsements from political parties, as is accepted practice in the legislative and executive branches, it is common for justices to be informally categorized in legal and political circles as being judicial conservatives, moderates, or liberals.

Seven of the current justices of the court were appointed by Republican presidents, while two were nominated by a Democratic president. It is popularly accepted that Chief Justice Roberts and Justices Scalia, Thomas, and Alito compose the Court's conservative wing. Justices Stevens, Souter, Ginsburg and Breyer are generally thought of as the Court's liberal wing. Justice Kennedy, generally thought of as a conservative leaning moderate, is considered most likely to be the swing vote that determines the outcome of certain close cases.

**Criticism of nomination and appointment process.** The process of nomination of Supreme Court Justices remains controversial in and of itself, and opposition to the current system because of beliefs of bias in appointments has existed since the creation of the Court. Historian Howard Zinn has claimed in his book "A People's History of the United States" that the justices cannot be independent, as the president chooses the members and ratified by the Senate. Likewise, he says that they cannot be neutral between the rich and the poor, as they are usually from the upper class. He points specifically to their handling of the Sherman Act, which favored monopolies while opposing labor strikes, as well as their use of the

Fourteenth Amendment to protect corporations more so than African-Americans did, as proof of this.

In addition, Bertrand Russell criticized the Supreme Court for being, in his view, a judicial body established to guarantee the privileges of the American ruling-class. In his 1938 book "Power", on page 53, the eminent British philosopher writes:

"In the United States at the present day, the reverence which the Greeks gave to the oracles and the middle ages to the Pope is given to the Supreme Court. Those who have studied the working of the American Constitution know that the Supreme Court is part of the forces engaged in the protection of the plutocracy. But of the men who know this, some are on the side of the plutocracy, and therefore do nothing to weaken the traditional reverence for the Supreme Court, while others are discredited in the eyes of the ordinary quiet citizens by being said to be subversive and Bolshevik."

### Vocabulary

**to scrutinize** - 1) внимательно изучать, пристально рассматривать 2) тщательно исследовать

**sensitive issue** - больной вопрос

**Attorney General** - генеральный прокурор

**to turn out** - стать, сделаться; оказаться

**Justice Department = Department of Justice, U.S.** - министерство юстиции

**legal community** - правовое сообщество

**American Bar Association (ABA)** - Американская ассоциация юристов

**attorney** - адвокат; юрист; атторней, прокурор; поверенный

**legal profession** — профессия юриста

**to assume office** - вступать в должность

**to turn down** - отвергать (предложение) ; отказывать (кому-л.)

**interest group группа** - людей, объединенная общим интересом

**stake** - а) доля, участие, процент; б) ставка, заклад

**lobbyist** - 1) завсегдагай кулуаров, оказывающий давление на членов конгресса; лоббист 2) журналист, добывающий информацию в кулуарах парламента

**to cast a deciding vote** - подавать решающий голос

**civil rights group** - движение в защиту гражданских прав

**NAACP = National Association for the Advancement of Colored People** - Национальная ассоциация содействия прогрессу цветного населения

**to lobby** - пытаться воздействовать на кого-л., "обрабатывать"

**to intervene** – вмешиваться

**to name** - назначать (на должность)

**to receive smb.'s endorsement** — получать чью-л. поддержку, согласие

**recess appointment** - межсессионное назначение (назначение на государственную должность в период между сессиями Сената)

**recess** - перерыв, пауза в работе чего-л., кого-л. а) перерыв в работе или заседаниях (каких-л. организаций, суда и т. п.) парламентские каникулы (тж. *parliamentary recess*)

**temporary appointment** - временное назначение

**moderate** - умеренный; человек, придерживающийся умеренных взглядов (особ. в политике)

**conservative wing** — консервативное крыло

**liberal wing** — либеральное крыло

**to think of** - полагать, считать; предполагать

**leaning** - 1) склонность ( to, towards) 2) расположение, симпатия Syn: *sympathy* 3) наклон, склон, уклон

**to be a swing vote** – быть колеблющимся

**bias** - предубеждение ( *against* - против кого-л.) ; пристрастие ( *in favour of, towards* - в пользу кого-л.) ; необъективность, предвзятость

**Sherman Act = Sherman Antitrust Act of 1890** - закон Шермана, 1890 г. ( закон, который со ссылкой на нормы общего права объявил незаконными объединения, преследующие цель монополизировать межштатную и внешнюю торговлю США; первый федеральный закон США в области антитрестовского законодательства; был дополнен в 1914 г. столь же важными для этой области законом Клейтона и законом "О Федеральной торговой комиссии" )

**strike** - забастовка, стачка

**reverence** - а) почтение; почитательность б) глубокое уважение; почитание; благоговение

**oracle** - 1) (в Древней Греции и Древнем Риме) а) оракул, святое место или храм б) оракул, жрец, предсказатель в) пророчество, предсказание (данное оракулом)

**plutocracy** - плутократия (государственный строй, при котором власть формально и фактически принадлежит богатым)

**to discredit** - позорить, бесчестить, дискредитировать

**subversive** - подрывной, антиправительственный

### Exercises:

Ex 1 Answer the following questions

1. Who appoints Justices reach the Court?
2. What kind of candidates do Presidents prefer to nominate?
3. Who helps to Presidents in such process?
4. What is the role of the American Bar Association?

5. What groups influence the selection process?
6. What role does members of the Supreme Court play?
7. How can you explain the term -"recess appointments"?
8. Do justices have any political leanings?
9. Why the selection process draws criticism?
10. Do you agree/disagree with the idea, that they should change the selection process?

Ex. 2 Give Russian equivalents for the following words and word combinations:

to reject two of President nominees – political considerations - a reward for faithful service to the party - to predict how an individual will rule on sensitive issues - to support the rather conservative positions – to receive help from the Attorney General and other Justice Department officials – to rate the qualifications of Supreme Court nominees from "exceptionally well-qualified" to "not qualified" – to have a stake in Supreme Court decisions - to be against women's rights - racial integration and minority rights – political leaning - Sherman Act - to be a swing vote

Ex. 3 Give English equivalents for the following words:

либеральное крыло - больной вопрос - генеральный прокурор- вступать в должность - движение в защиту гражданских прав - временное назначение - Национальная ассоциация содействия прогрессу цветного населения - Американская ассоциация юристов - людей, объединенная общим интересом - межсессионное назначение - "обрабатывать"

Ex.4 Make up 6 sentences of your own with the words and phrases from exercises 2 and 3.

Ex. 5 Supply the word or the word combination from the text, which is a periphrasis of the following

1. a member of the Court who wishes to keep things as they are.
2. a national organization of attorneys
3. when the Senate is in recess, the President may make a temporary appointment without the Senate's advice and consent/
4. an organization fighting for the rights of women
5. a member of the Court who favours democratic reforms.
6. government by the rich

Ex.6 A) Render the article into English

## Судьи Соединенных Штатов

Работа федеральных судов затрагивает многие наиболее значимые вопросы, касающиеся американского народа, и федеральные судьи осуществляют широкие полномочия и свободу действий при рассмотрении дел под их председательством. Этот раздел рассказывает, как назначаются федеральные судьи, и содержит основную информацию о заработной плате судей, судебной этике и роли старших и вновь призванных судей.

### *Назначение и заработная плата*

Судьи Верховного Суда, апелляционных и окружных судов и Суда по вопросам внешней торговли назначаются по Статье III Конституции Президентом Соединенных Штатов с совета и согласия Сената. Судьи по Статье III назначаются пожизненно и могут быть отстранены только через процедуру импичмента. Хотя нет специальных квалификационных требований к судьям этих судов, выдвигаемые на эти должности кандидаты, как правило, являются очень опытными частными или государственными юристами, судьями в судах штатов, мировыми судьями, или судьями по делам о банкротстве, или преподавателями права. Судебная власть не играет никакой роли в процессе выдвижения или утверждения кандидатов.

Судьи по делам о банкротстве - это судебные должностные лица окружных судов, назначаемые апелляционными судами на срок 14 лет. Мировые судьи -- судебные должностные лица окружных судов, назначаемые судьями окружных судов на восьмилетний срок. Президент и Сенат не играют никакой роли в подборе судей по делам о банкротстве и мировых судей. Судьи Федерального претензионного суда назначаются на срок 15 лет Президентом с совета и согласия Сената.

Каждый суд в федеральной системе имеет председателя, который не только слушает дела, но и выполняет административные обязанности, связанные с деятельностью суда. Обычно председателем становится судья, дольше всех проработавший в данном суде. Назначаемые председатели окружных и апелляционных судов должны быть моложе 65 лет. Они могут работать в этой должности не более семи лет и не могут быть председателями в возрасте старше 70 лет.

Все федеральные судьи получают заработную плату и льготы, установленные Конгрессом. Зарплата судей примерно равна зарплате членов Конгресса.

### ***Судебная этика***

Федеральные судьи должны соблюдать Кодекс поведения судей Соединенных Штатов - набор этических принципов и норм, принятый Судебной конференцией США. Кодекс поведения дает судьям указания по вопросам неподкупности и независимости суда, судебной заботливости и беспристрастности, допустимой внесудебной деятельности и недопущения неэтичного поведения или даже его внешних проявлений.

Судьи не вправе слушать дела, по которым они либо лично знают об оспариваемых фактах, лично пристрастны по отношению к одной из сторон дела, ранее занимались этим делом в качестве адвоката, либо имеют финансовые интересы, связанные с любой стороной или предметом дела.

Многие федеральные судьи уделяют время государственной службе и преподавательской деятельности. Они обладают выдающимся опытом служения юридической профессии в форме научных работ, публичных выступлений и лекций. Это важная роль признается в Кодексе поведения, который призывает судей заниматься деятельностью по совершенствованию законодательства, правовой системы и отправлению правосудия.

### ***Старшие и вновь призванные судьи***

Судьи апелляционных судов, окружных судов и Суда по вопросам внешней торговли занимают свои должности пожизненно и могут уходить на пенсию, если им не менее 65 лет, и они соответствуют требованиям по стажу работы. Большинство судей по статье III, имеющих право на пенсию, решают продолжать слушать дела на основе полной или частичной занятости в качестве "старших судей". Кроме того, вышедшие на пенсию судьи по делам о банкротстве, мировые судьи и судьи Федерального претензионного суда могут "вновь призываться" на действительную службу. Без усилий старших и вновь призванных судей судебной системе понадобилось бы гораздо больше судей, чтобы справиться с рассматриваемыми делами. Старшие судьи, например, обычно берут на себя примерно 15-20% производственной нагрузки в апелляционных и окружных судах.

B) Translate in writing form

**КОДЕКС ПОВЕДЕНИЯ СУДЕЙ США**

Судье надлежит поддерживать неподкупность<sup>2</sup> и независимость судебной власти.

Судье надлежит не допускать неподобающего поведения и его внешних проявлений во всех видах деятельности.

Судье надлежит выполнять свои должностные обязанности беспристрастно<sup>3</sup> и усердно.

Судья может заниматься внесудебной деятельностью по совершенствованию законодательства, правовой системы и **отправления правосудия**<sup>4</sup>.

Судья должен регулировать свою внесудебную деятельность для сведения к минимуму риска конфликта с судебными обязанностями.

Судье надлежит регулярно представлять сведения о вознаграждениях, полученных за связанную с законом и внесудебную деятельность.

Судье надлежит воздерживаться от политической деятельности.

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<sup>2</sup> Incorruptibility or integrity

<sup>3</sup> impartially

<sup>4</sup> jurisdiction



## Part III

### Unit 8

#### The Work of the State Courts

Each state has its own system of courts. The purpose of each of these court systems is defined in a state's constitution. From state to state, the names of the courts that make up the system are different, but the basic pattern of justice is the same in all states.

State courts hear almost all the same kinds of cases that federal courts hear. However, certain cases cannot be heard in state courts. A dispute between two citizens of two states, for example, must be heard in the federal courts.

**Criminal and Civil Cases.** State courts hear criminal and civil cases. In a criminal case, a person is tried for committing a crime. Criminal cases involve two kinds of crimes—misdemeanors and felonies. A misdemeanor is a minor criminal offense, such as speeding, petty theft, or disorderly conduct. The punishment for a misdemeanor may be a fine or a short jail sentence. Serious crimes are called felonies. Some examples are kidnapping, robbery, murder, and arson (deliberately setting fire to a building). The punishment for a felony may be a long prison sentence or even death.

State courts also hear civil cases. Civil cases are disputes between two or more persons or between citizens and governments. A civil case might involve a store owner suing for payment of a bill, a person seeking a divorce, or the victim of an accident suing for payment of medical bills. Most civil cases result in the payment of money to one of the parties involved.

**Courts influence public policy.** Deciding legal issues between two parties is only one part of the work of the judges in state courts. The rulings of these judges also often have a strong influence on public policy. Consider the use of local property taxes to pay for the public schools. In some states, schools are supported almost entirely by these taxes.

In 1971, the California State Supreme Court ruled that it was unconstitutional to depend only on local property taxes to pay for education. Because the people living in some school districts paid high property taxes, the schools there would be better than schools where property taxes were lower. The education of students in different districts would be unequal. This went against the equal rights guarantee in the Constitution. Other state courts have made similar decisions.

In 1973, the United States Supreme Court ruled differently in *San Antonio (Texas) School District v. Rodriguez*. This ruling said that the use of local property taxes to pay for public schools does not go against the Fourteenth

Amendment. The Court said that the local property tax could be used as the chief way of paying for public schools.

State court decisions can also affect public policy on the use of nuclear power. In recent years, groups of citizens have sometimes stopped the building of nuclear power plants by means of court decisions. Arguments against the building of such plants have been based on possible dangers to people who live nearby or to the environment.

**Judicial review.** The higher state courts have the power of judicial review. In using this power, the courts review a state law to see whether it conflicts with the state constitution. Laws, which conflict with the constitution, are declared - *null and void* (not binding).

**Workload.** State courts are extremely busy places. California has about 256 state courts and about 1,200 judges, more than the total number of judges in the entire federal court system.

It is very difficult for state courts to keep up with their heavy workloads. In one large city, the average waiting period for a civil case to come to trial is two years. The delay for criminal trials still may be four to six months. Studies of criminal cases show that some persons have waited for more than a year before their cases came to trial.

The long delays have many causes. Some trials take several weeks. The increasing crime rate adds to the number of criminal cases in the courts. Individuals also go to court to protect their rights. A conservation group sues to stop construction of a nuclear power plant or a dam. Workers sue employers over hiring practices, promotion policies, or working conditions. Automobile accidents, too, result in a large number of lawsuits at the state level.

**Relief for the courts.** Some states are trying different methods for relieving the courts of the great number of auto accident disputes. One method is to turn such cases over to an *arbitrator* (a person who settles a dispute). The arbitrator is not a judge, but he or she is trained in the law that applies to auto accidents. The hearing takes place in an office. Both sides are present. After arguments are heard, the arbitrator makes a decision that is final.

Some people feel that the only way to reduce the number of cases in state courts is to change our criminal laws. They argue that there are too many laws trying to control personal behavior, such as laws against gambling or public drunkenness. These offenses are sometimes called "victimless crimes" because, it is said, they do not harm other persons.

## Vocabulary

**misdemeanor** - 1) судебнаонаказуемый проступок, преступление Syn: crime 2) проступок

**felony** - уголовное преступление

**petty thief** - воришка; вор, жулик, мошенник Syn: pilferer, lurcher

**disorderly conduct** - нарушение общественного порядка

**jail sentence** - приговор к краткосрочному тюремному заключению

**arson** – поджог

**civil case** - гражданское дело

**property tax** - налог на доход с недвижимого имущества

**to conflict with** – противоречить

**null and void** - потерявший законную силу

**binding** - принудительный, обязательный; ограничивающий

**to keep up** - поддерживать

**lawsuit** - судебный процесс; иск; тяжба ( against; over)

**relief = help**

**arbitrator** - третейский судья, арбитр

**gambling** - азартная игра; игра на деньги

**drunkenness** - пребывание в общественном месте в состоянии явного опьянения

**victimless crime** - преступление без (установленного) потерпевшего

## Exercises:

Ex 1 Answer the following questions

1. Does each state have its own system of courts? Why?
2. What kinds of crimes involve criminal cases?
3. What is the difference between misdemeanors and felonies?
4. Do courts influence public policy? In what way?
5. What does judicial review mean?
6. How can you describe “the workload of the state courts”?
7. What methods are used for relieving the courts of the great number of auto accident disputes?

Ex. 2 Give Russian equivalents for the following words and word combinations:

a state's constitution – to make up the system of the courts – to commit a crime - a minor criminal offense, such as speeding, petty theft, or disorderly conduct. – Kidnapping - robbery – murder and arson – to hear civil cases - local property taxes - null and void - an increasing crime rate - a person who settles a dispute – to go to court to protect their rights - to stop construction of a nuclear power plant or a dam

Ex. 3 Give English equivalents for the following words:

потерявший законную силу – суды, составляющие систему – проступок – совершить уголовное преступление – противоречить Конституции – приговор к краткосрочному тюремному заключению – преступление без (установленного) потерпевшего – мошенничество – нарушение общественного порядка – остановить строительство АЭС через суд – большой тюремный срок – оплатить медицинские счета – тяжба – игра на деньги

Ex.4 Make up 6 sentences of your own with the words and phrases from exercises 2 and 3.

Ex. 5 Supply the word or the word combination from the text, which is a periphrasis of the following

1. a minor criminal offense, such as speeding, petty theft, or disorderly conduct.
2. a person who settles a dispute
3. Laws which conflict with the constitution are declared not binding
4. Serious crimes
5. deliberately setting fire to a building

Ex.6 Render the article into English

### **ДЕЯТЕЛЬНОСТЬ СУДОВ ШТАТА**

Деятельность судов штатов в прошлом и в настоящем в основном сходна с деятельностью английских судов общего права<sup>5</sup> и английских так называемых канцлерских судов<sup>6</sup> (судов права справедливости). Английское законодательство и право справедливости<sup>7</sup> были перенесены на североамериканскую почву. Они укоренились на новой почве, хотя не во всем эта юриспруденция сохранилась в первоначальном виде. С течением времени, по мере эволюции прецедентного права<sup>8</sup>, а порою и принятия законодательных актов, закон и право справедливости приобрели специфические американские черты. Однако в целом система юриспруденции, применяемая во всех судах 50 штатов США, восходит к английской системе.

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<sup>5</sup> common law court

<sup>6</sup> Court of Chancery

<sup>7</sup> law of equity, or equity law

<sup>8</sup> case law

Частные права, которые являются предметом английского права в основном входят в компетенцию судов штата. Новые области частного права (право, связанное со спорами между гражданами в противоположность спорам между гражданами и правительством) в течение десятилетий развивались путем принятия законодательных актов и судебных решений. Это тоже входит в компетенцию судебной системы штатов. Как правило, гражданин или фирма, участвующие в юридическом споре, обращаются за решением в суды штатов.

Основная масса дел, решаемых судами штатов, включает в себя иски по гражданским правонарушениям, например, оскорбление действием<sup>9</sup>, халатность<sup>10</sup>, клевета<sup>11</sup>, а также иски о праве собственности, нарушении контракта, и дела о разводе, алиментах<sup>12</sup> и опеке<sup>13</sup> над детьми. Значительный объем работы судебной системы штатов приходится на споры, связанные с доверенностями<sup>14</sup>, имуществом умерших, коммерческими сделками и деятельностью частных корпораций. Иными словами, основная масса дел, рассматриваемых судами штата, связана с деятельностью индивидов и хозяйственных единиц. Кроме того, суды штатов рассматривают споры, возникающие в связи с применением административных распоряжений штата. Средства защиты, обеспечиваемые судами в гражданских делах, могут включать решение о денежной компенсации ущерба, нанесенного стороне, решение о восстановлении или подтверждении права собственности, либо предписание или запрет в отношении одной из сторон.

Другая важная часть деятельности судов штата — уголовные дела. В американской государственной системе поддержание правопорядка в штате является ответственностью штата, а не федеральных властей. Поэтому основные и наиболее распространенные виды преступлений подсудны судам штата. Сюда входят убийства, изнасилования, ограбления, хищения, растраты, оскорбления действием. Эти и другие преступления против законов штата преследуются судами первой инстанции общей юрисдикции. Проступки и многочисленные мелкие

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<sup>9</sup> assault and battery

<sup>10</sup> negligence

<sup>11</sup> slander

<sup>12</sup> alimony

<sup>13</sup> tutelage

<sup>14</sup> letter/power of attorney

правонарушения, такие как нарушения правил дорожного движения, обычно рассматриваются в судах ограниченной юрисдикции<sup>15</sup>.

## Unit 9

### The Organization of the State Courts

From state to state, the courts are organized in a similar way. Courts are often described as being lower or higher. You might compare the organization of state courts to a ladder. The Supreme Court is a state's highest court, and the highest rung on the ladder. Lower courts are the lowest rung on the state court ladder. They have limited jurisdiction.

#### Lower Courts

**Justice Courts.** These courts are presided over by a justice of the peace. Most justice courts are located in rural areas. The only cases that come to justice courts are minor civil cases and cases involving misdemeanors. Only civil cases involving \$100 or less are heard by a justice of the peace. Misdemeanors include traffic violations and charges of public drunkenness. In addition to hearing such cases, a justice of the peace can perform marriage ceremonies and serve as a witness to the signing of public papers. Not all states have justice courts, and even in states that do, their numbers have been decreasing in recent years. One reason for this is that some justices of the peace have not studied law.

**Police Courts.** The similarity of these courts to justice courts lies in the kind of cases they handle. They are usually located in small cities and towns. Police courts are known as magistrate courts in some areas.

**Municipal Courts.** These courts are located in the larger cities of the American states. Both civil cases and misdemeanors come within their jurisdiction. One type of civil case is heard in the family court, which deals with divorce suits and child-custody cases. Another type of municipal court is the small claims court, which hears disputes over amounts of money less than a given amount. The amount varies, from \$300 in Georgia to \$5,000 in Virginia and Tennessee. Misdemeanors are handled in several different kinds of municipal courts. The most common ones are the traffic court, which deals with violations of the traffic laws, and the juvenile court, which hears cases involving young offenders.

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<sup>15</sup> special jurisdiction

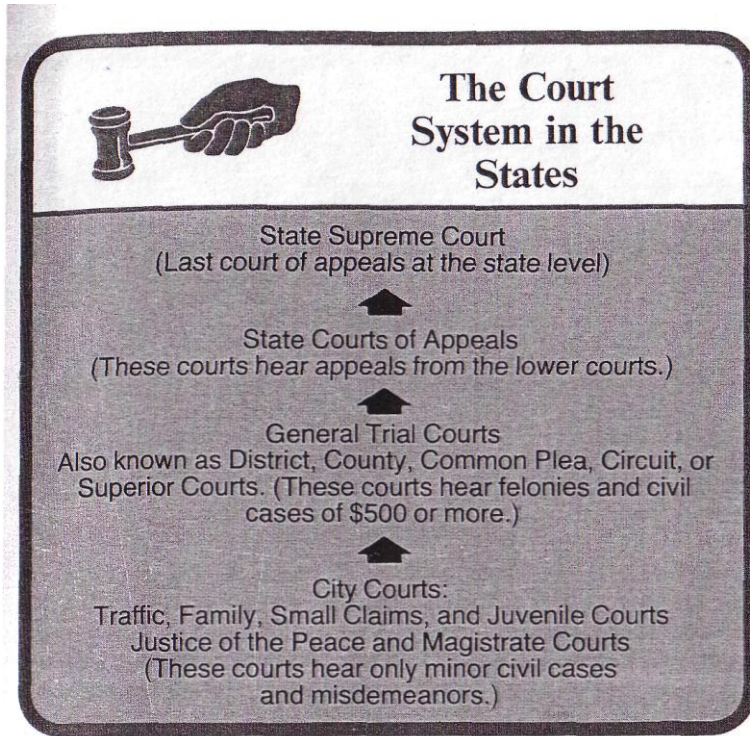


Table № 4

**Higher Courts**

Some higher state courts are a rung above the lower courts.

**General Trial Courts.** These courts are known as district, county, common plea, circuit, and superior courts in different states. Most states are divided into political districts. In each district, there is at least one general trial court. These courts hear felony cases and civil disputes involving amounts of money over the amount allowed in a small claims case. In many states, general trial courts judges are elected to terms of from four to ten years. Juries are used in both civil and criminal cases.

**Appellate Courts.** These courts hear cases on appeal. A person who disagrees with the verdict of a general trial court or a lower court may ask an appellate court to review the case. The appeals court checks to see whether the original trial was conducted according to law. If the original trial judge makes an error, the appeals court can reverse the verdict. Three to nine

judges serve on appellate courts. A majority vote of the judges decides the outcome of the case. Juries are not used.

### **State Supreme Courts**

On the highest rung of the state courts ladder are the state supreme courts. These courts review cases appealed from the appellate courts. Three to nine justices make up a state supreme court. Decisions of a state's highest court may be appealed to the United States Supreme Court. It should be remembered, however, that there is no guarantee that the Supreme Court will hear an appeal. The United States Supreme Court grants an appeal only if a federal question is involved. The subject matter of the case must be related to some part of the United States Constitution or to a law passed by Congress. If the appeal is refused, the decision of the state supreme court is final.

### **Selection of Judges**

Judges for the state courts are chosen in three ways:

- (1) election by the people,
- (2) appointment by the governor,
- (3) appointment by the legislature.

In several states, judges can be chosen only by the vote of the people. In other states, a majority of the judges are chosen by the voters, and the others are appointed. Judges are usually elected on a non-partisan (no party-label) basis. In Pennsylvania, however, state judges run as Republicans or "Democrats."

In almost all states, the governor can fill vacancies by appointment. When a judge dies or retires between elections, the governor appoints a replacement. Once a judge has been appointed, it is easy for her or him to keep the job. Voters usually reelect a judge who is already in the position.

What is the best method for selecting judges? Lawyers in the American Bar Association (ABA) are against appointment of judges by the legislature or election by the voters. These lawyers say that judges should be free from outside pressures. The ABA opposes appointment by the legislature because it gives lawmakers too much power over the court system. As for the election of judges, ABA argues that the ability to win votes has little to do with a person's qualifications as a judge. Whether a judge is elected or appointed, he or she is likely to owe a debt to those who helped.

Many lawyers approve of the method of selecting judges, which is used in Missouri, California, and some other states. In this method, a committee of regular citizens, lawyers, and judges submits names to the governor when a vacancy occurs. From this list of names, the governor selects a judge to fill



the vacancy. Then, after about one year of service, the judge's name appears on a statewide ballot. If the voters approve of the judge by a majority vote, he or she stays on the job.

### Vocabulary

**limited jurisdiction** - ограниченная юрисдикция (право рассматривать лишь определенные типы дел)

**lower court** - суд низшей инстанции

**higher court** - суд вышестоящей инстанции

**general trial court** - суд первой инстанции

**justice of the peace** - мировой судья

**magistrate('s) court** - суд магистрата, магистратский суд, мировой суд

**police court** - полицейский суд

**municipal court** - муниципальный суд (суд первой инстанции в ряде штатов США)

**family court** - суд по семейным делам

**small claims court** - суд мелких тяжб

**traffic court** - дорожный суд (суд, рассматривающий дела о нарушении правил дорожного движения)

**traffic laws** - законодательство о дорожном движении, дорожное право

**juvenile court** - суд по делам несовершеннолетних

**young offender** - молодой преступник, преступник молодого возраста

**district court** - окружной суд

**common plea court** - суд по гражданским делам

**circuit court** - 1) выездная сессия окружного суда (в ряде штатов США)

2) федеральный окружной суд

**superior court** - главный суд первой инстанции

**political district** - административный район, округ

**felony** - уголовное преступление

**small claim case** - дело с небольшой суммой иска

**case on appeal** - изложение дела стороной по апелляции

**original trial** - первоначальное рассмотрение дела

**to make an error** - допустить ошибку

**to reverse** - аннулировать, отменять, уничтожить (особенно о решениях, юридических документах)

**majority vote** - решение большинством голосов

**to pass a law** - принимать закон

**voter** - избиратель; лицо, имеющее право голоса

**non-partisan** - стоящий вне партии; беспартийный

**lawmaker** - законодатель Syn: legislator, lawgiver

**to submit** - представлять на рассмотрение

**ballot** - избирательный бюллетень

**to stay on** - продолжать оставаться; задерживаться

### Exercises:

Ex 1 Answer the following questions

1. With what might we compare the organization of state courts?
2. What Lower courts do you know? Describe their activity.
3. What Higher courts do you know? Describe their activity
4. How do they select the judges for the state courts?
5. What is the best method for selecting judges?

Ex. 2 Give Russian equivalents for the following words and word combinations:

the highest rung on the ladder – minor civil cases – ABA - traffic violations and charges of public drunkenness – to perform marriage ceremonies - a committee of regular citizens, lawyers, and judges - a statewide ballot - magistrate courts - to pass a law - the vote of the people - the small claims court – to reverse the verdict - divorce suits - violations of the traffic laws - the state supreme courts – an original trial – a lower court

Ex. 3 Give English equivalents for the following words:

дорожный суд - представлять закон на рассмотрение комитета - главный суд первой инстанции - полицейский суд - изложение дела стороной по апелляции – нарушать дорожное право - федеральный окружной суд - суд первой инстанции в ряде штатов США – принимать решение большинством голосов - мировой суд - право рассматривать лишь определенные типы дел - допустить ошибку во время первоначального рассмотрения дела

Ex.4 Make up 6 sentences of your own with the words and phrases from exercises 2 and 3.

Ex. 5 Supply the word or the word combination from the text, which is a periphrasis of the following

1. When an appellate court sets aside the decision of a lower court because of an error.
2. Usually a petty offense, a less serious crime than a felony, punishable by less than a year of confinement.
3. These courts are located in the larger cities of the American states.
4. These courts hear felony cases and civil disputes involving amounts of money over the amount allowed in a small claims case.

5. These courts are known as district, county, common plea, circuit, and superior courts in different states.

#### Ex.6 Render the article into English

В США функционируют параллельно единая федеральная система судов и самостоятельные судебные системы каждого из 50 штатов, округа Колумбия и четырех федеральных территорий. При определенных ситуациях у органов обвинения и у истцов по гражданским делам создаются возможности выбора между обращением в суд одного из штатов либо в федеральный суд, а в некоторых, весьма редких, случаях допускается обращение в федеральный суд с жалобой по делу, рассматривавшемуся в суде штата, но только если речь идет о толковании или применении норм федерального права, если налицо "федеральный вопрос". Подавляющая часть уголовных и гражданских дел рассматривается судами штатов, и лишь относительно небольшая их часть (510%) оказывается предметом разбирательства федеральных судов.

Судебные системы штатов. В американских штатах действуют весьма различающиеся между собой системы судов. По большей части их особенности объясняются историческими условиями формирования судебной системы в данном штате. Порою вновь образовывавшиеся штаты заимствовали схему судебной организации у соседних штатов. Чаще всего в штатах используются двух- и трехступенчатая системы общих судов, а также различные суды ограниченной или специальной юрисдикции. Двухступенчатая система общих судов, включающая в себя лишь суды первой инстанции и высший судебный орган, обычно свойственна небольшим по размерам и населению штатам, а трехступенчатая, с судами промежуточной, апелляционной юрисдикции, более крупным штатам, в судах которых рассматривается большое количество гражданских и уголовных дел.

Суд, возглавляющий судебную систему в штате, чаще всего носит название верховного суда, однако в ряде штатов он называется апелляционным судом. Они состоят из пяти девяти судей, один из которых назначается председателем суда. Верховные и соответствующие им суды штатов занимаются, главным образом, рассмотрением апелляционных жалоб на решения нижестоящих судов. В большинстве штатов они рассматривают жалобы лишь на судебные решения, которые касаются вопросов права, в остальных также и по

вопросам факта. В большинстве штатов верховные суды сами решают, принимать ли к рассмотрению апелляционные жалобы и иные обращения к ним, кроме приговоров к смертной казни, жалобы на которые подлежат обязательному разбирательству в верховном суде штата. В отдельных штатах действует правило, согласно которому верховный суд обязан рассматривать все без исключения поступающие к нему жалобы.

В качестве суда первой инстанции эти суды чаще всего издают лишь судебные приказы в случае непосредственного обращения к ним, например, с жалобой на незаконное содержание под стражей (приказ "хабеас корпус"), а в некоторых случаях принимают связанные с изданием приказов дела к своему производству, если они отличаются особой сложностью. Особенно велика роль верховных судов штатов в толковании конституций и оценке законодательства штатов в связи с рассматриваемыми ими судебными делами или жалобами на решения административных органов. Значение этой функции существенно возросло за последние десятилетия, когда в отдельных штатах верховные суды стали проводить линию на более решительную, чем в решениях Верховного суда США, защиту прав граждан.

Суды промежуточной юрисдикции (термин "промежуточный" иногда входит в их официальное название) созданы в ряде штатов для рассмотрения жалоб на приговоры и решения судов первой инстанции и других судебных учреждений. Они носят различные названия, но чаще всего их именуют апелляционными судами. Иногда в штатах создается отдельный уголовный апелляционный суд, в ряде случаев суды промежуточной юрисдикции функционируют на правах апелляционных отделений верховного суда штата. В их состав входят от 10 до 50 судей. Слушание дел обычно проводят коллегии из трех судей. В некоторых штатах апелляционные суды рассматривают по первой инстанции, в том числе и с участием присяжных заседателей, определенные категории гражданских и уголовных дел. В этом случае процесс ведет единоличный судья.

Основное звено судебной системы штатов суды общей юрисдикции, которые выступают под самыми разными названиями, например, в штате Нью-Йорк — это верховные суды, в штате Калифорния высшие суды, но чаще всего они именуются окружными судами. В их организации и количественном составе наблюдаются весьма существенные различия. Как правило, они рассматривают по первой

инстанции уголовные дела обо всех преступлениях, предусмотренных законодательством соответствующего штата, кроме малозначительных уголовных проступков, и гражданские дела с любой суммой иска, кроме тех категорий дел, для разбирательства которых созданы в данном штате специализированные суды. В некоторых штатах окружные суды вправе рассматривать лишь уголовные дела о преступлениях, за которые может быть назначено лишение свободы на срок до пяти лет или даже только до одного года, что значительно расширяет прерогативы апелляционного суда данного штата в качестве суда первой инстанции. Вместе с тем окружные суды выступают в качестве вышестоящей инстанции по отношению к судам ограниченной юрисдикции, поскольку они вправе в ряде случаев рассматривать жалобы на их решения.

# TEST

## Fulfil the test

1. Two factors determine the jurisdiction of federal courts—
  - a) the judge and the arbitrator
  - b) the subject matter of a case and the parties in a case.
  - c) the English law and the Constitution
  - d) the federal laws and government
  
2. The plaintiff in a civil suit usually seeks
  - a) justice
  - b) prevention of a harmful action from taking place
  - c) damages
  - d) a writ of mandamus
  
3. District courts are generally known as courts of \_\_\_\_\_ because most federal cases begin there.
  - a) Appellate
  - b) Concurrent
  - c) Original jurisdiction
  - d) All above mentioned
  
4. All cases involving "dumping" are also handled by
  - a) the Court of International Trade
  - b) the Territorial Courts
  - c) the U.S. Tax Court
  - d) the U.S. Claims Court
  
5. Article III, Section 2, of the Constitution sets the Supreme Court's original jurisdiction, which covers the cases:
  - a) involving representatives of foreign governments.
  - b) in which a state is a party.
  - c) citizens of different states.
  - d) a state and a citizen of a different state.
  
6. The petitions for certiorari must argue that
  - a) the law violates substantive due process.
  - b) the lower court made a legal error in handling the case.
  - c) it must raise some serious constitutional issue.
  - d) a person is innocent until proven guilty

7. The House of Representatives impeached Justice Samuel Chase in 1804 because of
- a) he committed a treason
  - b) his participation in partisan political activities
  - c) he didn't follow the rule - "good behavior"
  - d) he wove a plot in the Court
8. State court decisions can also affect public policy on
- a) the use of nuclear power.
  - b) the local property taxes to pay for the private schools.
  - c) taking part in the presidential elections.
  - d) the use of the public transport
9. These courts are known as district, county, common plea, circuit, and superior courts in different states.
- a) the Appellate Courts
  - b) the General Trial Courts
  - c) the Justice Courts
  - d) the Municipal Courts
10. Judges for the state courts are chosen in the following ways
- a) appointment by the Supreme court
  - b) only by the vote of the people
  - c) appointment by the governor or by the legislature or election by the people.
  - d) appointment by Congress
11. A trial court has \_\_\_\_\_ jurisdiction
- a) Original
  - b) Concurrent
  - c) Appellate
  - d) All above mentioned
12. Equity law is a system of rules by which disputes are resolved
- a) on an award of money
  - b) on the grounds of fairness
  - c) based on jury verdict
  - d) according to the English law
- 13 here are \_\_\_\_\_ in appeals cases
- b) 12 juries

- c) four judges to review a case
- d) judges or arbitrators
- e) no juries

14 Persons wishing to sue the United States may do so in...

- f) the U.S. Court of International Trade
- g) the Territorial Courts
- h) the U.S. Tax Court
- i) the U.S. Claims Court

15 Certain types of cases are said to go to the Supreme Court on appeal. Most are cases in which

- A) a lower federal court or the highest state court has ruled a law unconstitutional.
- B) the highest court of a state upholds a state law against the claim that it violates federal law.
- C) the highest court of a state upholds a state law against the claim that it violates the Constitution.
- D) All above mentioned

16 The Supreme Court follows a set procedure in hearing important cases. They are:

- a) Oral Arguments and Writing the Opinion
- b) The Jury verdict and Judges decision
- c) The Conference and Submitting Briefs
- d) The Adversary System and Selecting the Case

17 After leaving the Court, many clerks go on to distinguished careers as

- a) presidents
- b) law professors
- c) Supreme Court justices
- d) Ambassadors

18. In a state court A civil case might involve

- a) a store owner suing for payment of a bill.
- b) a person seeking a writ of mandamus ordering the company to repair the stereo.
- c) the victim of an accident suing for payment of medical bills.
- d) a person seeking a deliberately setting fire to a building

19 These courts are presided over by a justice of the peace



- a) the Municipal Courts
- b) the Territorial Courts
- c) the General Trial Courts
- d) the Justice Courts

20 he ABA opposes appointment by the legislature because

- a) The winner is likely to owe a debt to those who helped.
- b) the ability to get the support of the legislature has little to do with a person's qualifications as a judge.
- c) it gives lawmakers too much power over the court system.
- d) the governor selects a judge among his friends to fill the vacancy

# Appendix

## I. Current membership

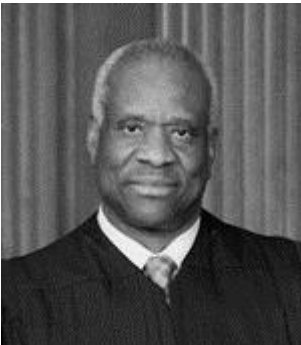
### Biographies of Current Justices of the Supreme Court



**John G. Roberts, Jr., Chief Justice of the United States** was born in Buffalo, New York, January 27, 1955. He married Jane Marie Sullivan in 1996 and they have two children - Josephine and Jack. He received an A.B. from Harvard College in 1976 and a J.D. from Harvard Law School in 1979. He served as a law clerk for Judge Henry J. Friendly of the United States Court of Appeals for the Second Circuit from 1979–1980 and as a law clerk for then-Associate Justice William H. Rehnquist of the Supreme Court of the United States during the 1980 Term. He was Special Assistant to the Attorney General, U.S. Department of Justice from 1981–1982, Associate Counsel to President Ronald Reagan, White House Counsel’s Office from 1982–1986, and Principal Deputy Solicitor General, U.S. Department of Justice from 1989–1993. From 1986–1989 and 1993–2003, he practiced law in Washington, D.C. He was appointed to the United States Court of Appeals for the District of Columbia Circuit in 2003. President George W. Bush nominated him as Chief Justice of the United States, and he took his seat September 29, 2005.



**Anthony M. Kennedy, Associate Justice** was born in Sacramento, California, July 23, 1936. He married Mary Davis and has three children. He received his B.A. from Stanford University and the London School of Economics, and his LL.B. from Harvard Law School. He was in private practice in San Francisco, California from 1961–1963, as well as in Sacramento, California from 1963–1975. From 1965 to 1988, he was a Professor of Constitutional Law at the McGeorge School of Law, University of the Pacific. He has served in numerous positions during his career, including a member of the California Army National Guard in 1961, the board of the Federal Judicial Center from 1987–1988, and two committees of the Judicial Conference of the United States: the Advisory Panel on Financial Disclosure Reports and Judicial Activities, subsequently renamed the Advisory Committee on Codes of Conduct, from 1979–1987, and the Committee on Pacific Territories from 1979–1990, which he chaired from 1982–1990. He was appointed to the United States Court of Appeals for the Ninth Circuit in 1975. President Reagan nominated him as an Associate Justice of the Supreme Court, and he took his seat February 18, 1988.



**Clarence Thomas, Associate Justice** was born in the Pinpoint community near Savannah, Georgia on June 23, 1948. He attended Conception Seminary from 1967-1968 and received an A.B., cum laude, from Holy Cross College in 1971 and a J.D. from Yale Law School in 1974. He was admitted to law practice in Missouri in 1974, and served as an Assistant Attorney General of Missouri, 1974-1977; an attorney with the Monsanto Company, 1977-1979; and Legislative Assistant to Senator John Danforth, 1979-1981. From 1981-1982 he served as Assistant Secretary for Civil Rights, U.S. Department of Education, and as Chairman of the U.S. Equal Employment Opportunity Commission, 1982-1990. From 1990-1991, he served as a Judge on the United States Court of Appeals for the District of Columbia Circuit. President Bush nominated him as an Associate Justice of the Supreme Court and he took his seat October 23, 1991. He married Virginia Lamp on May 30, 1987 and has one child, Jamal Adeen by a previous marriage.



**Ruth Bader Ginsburg, Associate Justice** was born in Brooklyn, New York, March 15, 1933. She married Martin D. Ginsburg in 1954, and has a daughter, Jane, and a son, James. She received her B.A. from Cornell University, attended Harvard Law School, and received her LL.B. from Columbia Law School. She served as a law clerk to the Honorable Edmund L. Palmieri, Judge of the United States District Court for the Southern District of New York, from 1959–1961. From 1961–1963, she was a research associate and then associate director of the Columbia Law School Project on International Procedure. She was a Professor of Law at Rutgers University School of Law from 1963–1972, and Columbia Law School from 1972–1980, and a fellow at the Center for Advanced Study in the Behavioral Sciences in Stanford, California from 1977–1978. In 1971, she was instrumental in launching the Women’s Rights Project of the American Civil Liberties Union, and served as the ACLU’s General Counsel from

1973–1980, and on the National Board of Directors from 1974–1980. She was appointed a Judge of the United States Court of Appeals for the District of Columbia Circuit in 1980. President Clinton nominated her as an Associate Justice of the Supreme Court, and she took her seat August 10, 1993.



**Stephen G. Breyer, Associate Justice** was born in San Francisco, California, August 15, 1938. He married Joanna Hare in 1967, and has three children - Chloe, Nell, and Michael. He received an A.B. from Stanford University, a B.A. from Magdalen College, Oxford, and an LL.B. from Harvard Law School. He served as a law clerk to Justice Arthur Goldberg of the Supreme Court of the United States during the 1964 Term, as a Special Assistant to the Assistant U.S. Attorney General for Antitrust, 1965–1967, as an Assistant Special Prosecutor of the Watergate Special Prosecution Force, 1973, as Special Counsel of the U.S. Senate Judiciary Committee, 1974–1975, and as Chief Counsel of the committee, 1979–1980. He was an Assistant Professor, Professor of Law, and Lecturer at Harvard Law School, 1967–1994, a Professor at the Harvard University Kennedy School of Government, 1977–1980, and a Visiting Professor at the College of Law, Sydney, Australia and at the University of Rome. From 1980–1990, he served as a Judge of the United States Court of Appeals for the First Circuit, and as its Chief Judge, 1990–1994. He also served as a member of the Judicial Conference of the United States, 1990–1994, and of the United States Sentencing Commission, 1985–1989. President Clinton nominated him as an Associate Justice of the Supreme Court, and he took his seat August 3, 1994.



**Samuel Anthony Alito, Jr., Associate Justice** was born in Trenton, New Jersey, April 1, 1950. He married Martha-Ann Bomgardner in 1985, and has two children - Philip and Laura. He served as a law clerk for Leonard I. Garth of the United States Court of Appeals for the Third Circuit from 1976–1977. He was Assistant U.S. Attorney, District of New Jersey, 1977–1981, Assistant to the Solicitor General, U.S. Department of Justice, 1981–1985, Deputy Assistant Attorney General, U.S. Department of Justice, 1985–1987, and U.S. Attorney, District of New Jersey, 1987–1990. He was appointed to the United States Court of Appeals for the Third Circuit in 1990. President George W. Bush nominated him as an Associate Justice of the Supreme Court, and he took his seat January 31, 2006.



**Sonia Sotomayor, Associate Justice** was born in Bronx, New York, on June 25, 1954. She earned a B.A. in 1976 from Princeton University, graduating summa cum laude and receiving the university's highest academic honor. In 1979, she earned a J.D. from Yale Law School where she served as an editor of the Yale Law Journal. She served as Assistant District Attorney in the New York County District Attorney's Office from 1979–1984. She then litigated international commercial matters in New

York City at Pavia & Harcourt, where she served as an associate and then partner from 1984–1992. In 1991, President George H.W. Bush nominated her to the U.S. District Court, Southern District of New York, and she served in that role from 1992–1998. She served as a judge on the United States Court of Appeals for the Second Circuit from 1998–2009. President Barack Obama nominated her as an Associate Justice of the Supreme Court on May 26, 2009, and she assumed this role August 8, 2009.

(from <https://www.supremecourt.gov/about/biographies.aspx> )

## II. Glossary of Terms

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

**appeal:** A request made after a trial, asking another court (usually the court of appeals) to decide whether the trial was conducted properly. To make such a request is "to appeal" or "to take an appeal." One who appeals is called the appellant.

**appellate:** About appeals; an appellate court has the power to review the judgement of another lower court or tribunal.

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

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

**bankruptcy:** Refers to statutes and judicial proceedings involving persons or businesses that cannot pay their debts and seek the assistance of the court in getting a fresh start. Under the protection of the bankruptcy court, debtors may discharge their debts, perhaps by paying a portion of each debt. Bankruptcy judges preside over these proceedings.

**bench trial:** Trial without a jury in which a judge decides the facts.

**brief:** A written statement submitted by the lawyer for each side in a case that explains to the judges why they should decide the case or a particular part of a case in favor of that lawyer's client.

**chambers:** A judge's office.

**capital offense:** A crime punishable by death.

**case law:** The law as laid down in cases that have been decided in the decisions of the courts.

**charge to the jury:** The judge's instructions to the jury concerning the law that applies to the facts of the case on trial.

**chief judge:** The judge who has primary responsibility for the administration of a court but also decides cases; chief judges are determined by seniority.

**circumstantial evidence:** All evidence except eyewitness testimony.

**clerk of court:** An officer appointed by the court to work with the chief judge in overseeing the court's administration, especially to assist in managing the flow of cases through the court and to maintain court records.

**common law:** The legal system that originated in England and is now in use in the United States. It is based on judicial decisions rather than legislative action.



**complaint:** A written statement by the plaintiff stating the wrongs allegedly committed by the defendant.

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

**conviction:** A judgement of guilt against a criminal defendant.

**counsel:** Legal advice; a term used to refer to lawyers in a case.

**counterclaim:** A claim that a defendant makes against a plaintiff.

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

**court reporter:** A person who makes a word-for-word record of what is said in court and produces a transcript of the proceedings upon request.

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

**default judgement:** A judgement rendered because of the defendant's failure to answer or appear.

**defendant:** In a civil suit, the person complained against; 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:** Lawyers' examination, before trial, of facts and documents in possession of the opponents to help the lawyers prepare for trial.

**en banc:** "In the bench" or "full bench." Refers to court sessions with the entire membership of a court participating rather than the usual quorum. U.S. courts of appeals usually sit in panels of three judges, but may expand to a larger number in certain cases. They are then said to be sitting en banc.

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

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

**felony:** A crime carrying a penalty of more than a year in prison.

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

**grand jury:** A body of citizens who listen to evidence of criminal allegations, which are presented by the government, and determines whether there is probable cause to believe the offense was committed. As it is used in federal criminal cases, "the government" refers to the lawyers of the U.S. attorney's office who are prosecuting the case.

**habeas corpus:** A writ that is usually used to bring a prisoner before the court to determine the legality of his imprisonment. It may also be used to bring a person in custody before the court to give testimony, or to be prosecuted.

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

**impeachment:** (1) The process of calling something into question, as in "impeaching the testimony of a witness." (2) The constitutional process whereby the House of Representatives may "impeach" (accuse of misconduct) high officers of the federal government for trial in the Senate.

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

**in forma pauperis:** In the manner of a pauper. Permission given to a person to sue without payment of court fees on claim of indigence or poverty.

**information:** A formal accusation by a government attorney that the defendant committed a misdemeanor.

**injunction:** An order of the court prohibiting (or compelling) the performance of a specific act to prevent irreparable damage or injury.

**instructions:** Judge's explanation to the jury before it begins deliberations of the questions it must answer and the law governing the case.

**interrogatories:** Written questions asked by one party of an opposing party, who must answer them in writing under oath; a discovery device in a lawsuit.

**issue:** (1) The disputed point in a disagreement between parties in a lawsuit. (2) To send out officially, as in to issue an order.

**judge:** Government official with authority to decide lawsuits brought before courts. Other judicial officers in the U.S. courts system are Supreme Court justices.

**judgement:** The official decision of a court finally determining the respective rights and claims of the parties to a suit.

**jurisdiction:** (1) The legal authority of a court to hear and decide a case. Concurrent jurisdiction exists when two courts have simultaneous responsibility for the same case. (2) The geographic area over which the court has authority to decide cases.

**jury:** Persons selected according to law and sworn to inquire into and declare a verdict on matters of fact.

**jurisprudence:** The study of law and the structure of the legal system.

**lawsuit:** A legal action started by a plaintiff against a defendant based on a complaint that the defendant failed to perform a legal duty, resulting in harm to the plaintiff.

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

**magistrate judges:** Judicial officers who assist U.S. district judges in getting cases ready for trial, who may decide some criminal and civil trials when both parties agree to have the case heard by a magistrate judge instead of a judge.

**misdemeanor:** Usually a petty offense, a less serious crime than a felony, punishable by less than a year of confinement.

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

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

**opinion:** A judge's written explanation of a decision of the court or of a majority of judges. A dissenting opinion disagrees with the majority opinion because of the reasoning and/or the principles of law on which the decision is based. A concurring opinion agrees with the decision of the court but offers further comment.

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

**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.

**parties:** Plaintiffs and defendants (petitioners and respondents) to lawsuits, also known as appellants and appellees in appeals, and their lawyers.

**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 six persons.

**plaintiff:** The person who files the complaint in a civil lawsuit.

**plea:** In a criminal case, the defendant's statement pleading "guilty" or "not guilty" in answer to the charges, a declaration made in open court.

**pleadings:** Written statements of the parties in a civil case of their positions. In the federal courts, the principal pleadings are the complaint and the answer.

**precedent:** A court decision in an earlier case with facts and law similar to a dispute currently before a court. Precedent will ordinarily govern the

decision of a later similar case, unless a party can show that it was wrongly decided or that it differed in some significant way.

**procedure:** The rules for the conduct of a lawsuit; there are rules of civil, criminal, evidence, bankruptcy, and appellate procedure.

**pretrial conference:** A meeting of the judge and lawyers to discuss which matters should be presented to the jury, to review evidence and witnesses, to set a timetable, and to discuss the settlement of the case.

**probation:** A sentencing alternative to imprisonment in which the court releases convicted defendants under supervision as long as certain conditions are observed.

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

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

**record:** A written account of all the acts and proceedings in a lawsuit.

**remand:** When an appellate court sends a case back to a lower court for further proceedings.

**reverse:** When an appellate court sets aside the decision of a lower court because of an error. A reversal is often followed by a remand.

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

**service of process:** The service of writs or summonses to the appropriate party.

**settlement:** Parties to a lawsuit resolve their difference without having a trial. Settlements often involve the payment of compensation by one party in satisfaction of the other party's claims.

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

**sidebar:** A conference between the judge and lawyers held out of earshot of the jury and spectators.

**statute:** A law passed by a legislature.

**statute of limitations:** A law that sets the time within which parties must take action to enforce their rights.

**subpoena:** A command to a witness to appear and give testimony.

**subpoena duces tecum:** A command to a witness to produce documents.

**summary judgement:** A decision made on the basis of statements and evidence presented for the record without a trial. It is used when there is no dispute as to the facts of the case, and one party is entitled to judgement as a matter of law.

**temporary restraining order:** Prohibits a person from an action that is likely to cause irreparable harm. This differs from an injunction in that it

may be granted immediately, without notice to the opposing party, and without a hearing. It is intended to last only until a hearing can be held.

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

**tort:** A civil wrong or breach of a duty to another person, as outlined by law. A very common tort is negligent operation of a motor vehicle that results in property damage and personal injury in an automobile accident.

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

**uphold:** The decision of an appellate court not to reverse a lower court decision.

**U.S. attorney:** A lawyer appointed by the President in each judicial district to prosecute and defend cases for the federal government.

**venue:** The geographical location in which a case is tried.

**verdict:** The decision of a petit jury or a judge.

**voir dire:** The process by which judges and lawyers select a petit jury from among those eligible to serve, by questioning them to determine knowledge of the facts of the case and a willingness to decide the case only on the evidence presented in court. "Voir dire" is a phrase meaning "to speak the truth."

**warrant:** A written order directing the arrest of a party. A search warrant orders that a specific location be searched for items, which if found, can be used in court as evidence.

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

**writ:** A formal written command, issued from the court, requiring the performance of a specific act.

**writ of certiorari:** An order issued by the Supreme Court directing the lower court to transmit records for a case for which it will hear on appeal.