

OVERVIEW OF THE U.S. JUDICIAL SYSTEM

The Role of Judges and the Adversary System

1. In the U.S. and other common law countries, it is up to the litigants themselves, not a judge, to investigate their case, develop and exchange documents and other evidence among the parties, and then to present their dispute before a neutral judge. The theory is that the clash of adversaries before the court is most likely to allow the judge or a jury to resolve factual disputes and determine what happened.
2. In many other legal systems, judges conduct investigations to gather evidence and obtain testimony from witnesses. In the U.S., the work of collecting evidence and present it to the court is accomplished by the litigants and their attorneys, normally without assistance from the judge.
3. Lawyers are required to exchange documents, witness statements, and other evidence before trial through a process known as "discovery." Lawyers have an ethical and legal responsibility to cooperate with each other, and the court is usually involved in the discovery process only to set time limits, control costs, narrow issues, resolve disputes among the lawyers, and get a case ready for trial.
4. At a trial or other hearing, a judge normally does not elicit testimony. Judges normally only ask questions of witnesses to clarify a matter, make sure that the law has been followed, or prevent the jury from being misled.
5. An American judge's role is not to develop the facts, but to structure and regulate the legal process between the parties and to make sure that the law is followed.

Procedural Rules and Judicial Discretion

1. With some exceptions, court procedure is not set forth in American statutes. Rather, the judiciary has generally been empowered to write its own procedural rules, which have the same status as a statute enacted by the legislature.
 - a. In the federal system, the Judicial Conference drafts rules of procedure and evidence with the assistance of committees of judges, lawyers, and academics. The rules are then presented to the U.S. Supreme Court for approval. Congress then has a seven-month statutory period in which it can reject or delay any rule before it takes effect, but it rarely does so
 - b. In the state systems, the state supreme court is normally responsible for issuing court rules, typically relying on committees of judges, lawyers, and professors to assist them in drafting rules.
2. American procedural rules normally give judges wide discretion to fashion the proceedings before them.
 - a. Many procedural rules are written broadly, allowing a judge to "fill in the gaps" or tailor the procedure to the specific case before the court.
 - b. Federal Rule of Civil Procedure 1 states broadly that the rules must be "construed and administered to secure the just, speedy, and inexpensive determination of every action."

Case Management, Settlement, ADR, and Plea Bargaining

1. The great majority of cases in the U.S. are decided by agreement of the parties or by a legal decision of a judge, rather than by a trial.
2. In civil cases, most judges are deeply involved in managing their cases. Both the procedural rules and judicial training emphasize points such as the following:
 - a. The judge should take charge of every case from the outset and set the time schedules for the lawyers in the case.
 - b. The judge should monitor the attorneys in each case to prevent unnecessary cost, delay, or unfairness to the parties.
 - c. The judge should facilitate the early and open exchange of information and evidence among the parties.
 - d. The judge should encourage the parties to reach an agreement wherever feasible, rather than face the uncertainty, delay, and cost of a trial.
 - e. The judge should narrow the issues in a case before trial by disposing of unnecessary or non-meritorious claims and issues.
 - f. If facts are not really in dispute, the judge should decide the case on legal grounds without conducting a trial.
3. Alternative dispute resolution methods that involve the assistance of qualified professionals (e.g., mediation, arbitration) are widely available in both federal and state courts. In addition, most judges themselves conduct settlement conferences and negotiations with the parties.
4. In the federal courts, U.S. magistrate judges are heavily involved in settlement activities and case management for the district judges.
5. Fewer than 5% of civil cases are resolved by a complete trial on the merits. The other 95% are resolved by:
 - a. a judge's ruling dismissing the case;
 - b. failure by the plaintiff to proceed with the case or comply with the court's requirements; or
 - c. settlement of the parties, often with the judge's encouragement.
6. In criminal cases, more than 90% of defendants plead guilty as a result of negotiations between the prosecutor and the defendant's lawyer.
 - a. In the federal system, as well as in a number of states, the judge is not allowed to participate in criminal case negotiations. Rather, the prosecutor and defendant reach a plea bargain and present it to the court for approval.
 - b. The judge is free to accept or reject the plea bargain. But before doing so, the judge must conduct a hearing in open court on the record and address the defendant personally regarding the plea.
 - c. The judge must determine, for instance, that the defendant is competent, has been advised by a lawyer (or in rare cases has waived a lawyer), understands the nature of the charges, understands the maximum legal penalties, and understands that he or she is waiving his right to a trial.
 - d. The judge must also ascertain that there is a factual basis for the charges, that the defendant voluntarily admits to the charges, and that the defendant has not been forced or threatened to plead guilty.

