

A Brief Reading on the Structure of Law in the United States

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Many students over the past years while I have been teaching in Mexico have been interested in the structure of the legal process in the United States. In this article, I will briefly attempt to address how the courts are structured, and describe the parties that run law through this structure.

THE COURTS

In the United States there are many courts at many levels. There are many courts because of the United States' history of *federalism*, which is a system that divides the ruling power between the federal and the state governments. Due to the shortness of this article, I cannot describe all the different types of courts, so I will describe the basic three-tiered system that exists in the federal and state systems.

Federal courts have jurisdiction over federal matters, and can overrule state court decisions that conflict with these federal laws. Federal matters are derived from the US Constitution. For example, a federal court can overrule a ruling by a state court on a civil rights matter if it conflicts with the US Constitution. Federal courts can sometimes decide a matter that is normally brought to state court, but only if the dispute is between parties from two different states, and if certain other requirements are met.

State courts usually control matters that are often considered more local. For example, state courts usually decide laws of contract or property if the parties are both residents of the same state. Family, traffic, and testamentary law are usually laws that are controlled by the states. Also, a decision by a court in one state, for example, Illinois, will usually have no effect on decisions made by courts of another state, for example, Wisconsin. Decisions by other state courts can be advisory, but are never binding on other states,

unless the matter rises to the federal level and is affirmed at that level, where it can then control the decisions of the other states.

THE LEVELS OF BOTH FEDERAL AND STATE COURTS

Trial court is the first court to hear a matter, in both the federal and state system. The trial court is where a lawsuit, or the complaint, is first filed, and the trial is held. Trial courts have one judge.

Intermediate appellate courts are the first level of appeal after the trial court. The number of judges serving on the intermediate appellate court is normally three. Any decision by the intermediate appellate court can be appealed to the final appellate court, but few are accepted.

Final appellate courts are usually called the Supreme Court. In the federal system, the trial courts are called United States District Courts. Each state has at least one U.S. District Court. Larger populated states have more. The intermediate appellate court in the federal system is called the United States Court of Appeals. There are 13 U.S. Courts of Appeals. The U.S. Supreme Court has nine judges and the states' Supreme Courts often have that same number. To give a general idea of the number of cases heard per year, on average at the federal level, District Courts might hear approximately 275,000 cases, intermediate appellate courts approximately 50,000, and the Supreme Court approximately 100 cases.

WHO'S WHO IN THE LEGAL PROCESS

Judges

A judge is a public officer authorized by law to hear and decide cases in courts of the state or federal government. A judge may have various other names such as justice of the

peace, magistrate, or justice. In court, a judge should always be referred to as “Your Honor,” to show the proper respect, even if it is not warranted.

Judges can review legislative acts (statutes), acts of the administrative branches of governments, or previous decisions by other judges. The latter is called “common law” and is particular to the Anglo-Saxon system used in the United States. Common law is often compared with Mexican “jurisprudencia” but differs significantly. Common law will be the subject of a later article on sources of law in the United States.

Judges have great power because they can change or strike down laws enacted by legislators who are elected by the people. They can also, through the use of common law decisions, actually make new law or take law into new areas. For example, judges are the main makers of law in the personal injury area in the United States. For example, personal injury cases formerly ended with the death of the plaintiff, but this was felt to be unfair to the families of the plaintiffs. The law was then expanded by judicial rulings to encompass what are called “wrongful death actions” where the family is allowed to sue in the place of a deceased plaintiff.

At the state level, judges can be appointed or elected. At the federal level, judges are appointed by the President, and confirmed by the Senate. As of this writing, President Bush is filling a vacancy on the Supreme Court after the resignation of Sandra Day O’Connor, the first woman Supreme Court justice. Justice O’Connor was a political moderate, and gave balance to the nine-judge bench. Bush, however, is a right-wing conservative, and has nominated John Roberts, a white middle-aged upper class conservative federal judge who has worked for both former presidents Reagan and Bush, the current Bush’s father. As presidents, both these men held similar conservative right-wing views. The media in the United States is now preparing for the confirmation hearings in the Senate for Bush’s appointee. Since the ideal for the Supreme Court is to have balance, which Roberts does not represent, it is likely that the Democrat and Republican Senators will be having a battle over the confirmation. As in Mexico, politics always enters in since a president, who is supposed to represent the views of the majority

of the people, seems to always make appointments political. There have been nominees, however, who do not win confirmation by the Senate. Senate confirmation is a wise limitation that the Constitution puts on the power of presidents who often put their own interests, or the interests of their friends, over the interests of the nation.

Removal of judges is usually by impeachment by the legislature, either federal or state, or by the judiciary itself. Usually each state Supreme Court also acts as the policing body for both the judges and lawyers of that state. Common reasons for removal are purposely not doing your duties, corruption, or crimes involving common decency or morality. A judge cannot however, be removed for making bad decisions, no matter how bad the decision is, as long as it does not involve corruption.

If a judge has a personal interest in a case, or even the appearance of a personal interest, the judge should not hear the case. A superior court can, on motion by any party, make a judge of a lower court step down from hearing a case if it can be shown that there is a personal interest. A judge can also decide to not hear a case. This is called "recusal" and can happen frequently, especially in smaller towns.

If a judge will not "recuse" him or herself, an attorney can move for a change of "venue." This motion asks to change the judge and/or location of the trial. Often, if a person is brought into a court that is not near his or her home, the attorney may also move for a change of venue in order to facilitate the legal process for his or her client.

Judges also have the power to find, on their own, that the parties or their attorneys are in "contempt of court." This refers to any conduct that constitutes an offense against the authority and dignity of a judge. Contempt of court is usually categorized as being "civil contempt" or "criminal contempt." Criminal contempt is when someone does not respect the judge during the trial, or obey the judge's rules on how to behave in the courtroom. Civil contempt is usually when a party does not comply with the sentence given by the court. For example, when a father is ordered to pay child support or maintenance after a divorce, and fails to pay it, this would be civil contempt.

The Jury

A “jury” is a group of ordinary citizens selected at random to decide, under the guidance of a judge, the truth about the *facts* in either a civil or criminal trial. The minimum age to serve on a jury varies by state, but is usually 18 or 21 years of age.

A jury is normally composed of 12 jurors. This right is guaranteed by the U.S. Constitution, and in most state constitutions. The origin of the 12-person jury is unknown. State laws may modify this number in certain criminal or civil actions as long as it does not conflict with any constitutional provisions. Furthermore, state laws may provide for a jury of any number of persons, alter that number, or abolish juries altogether in cases where there is no constitutional right to a jury trial. A plaintiff, or the person bringing the action, may also waive his or her right to a jury. This is often done to speed up trials.

A jury trial is a proceeding in which the jurors are the judges of facts and the court is the judge of the law. To select a jury, first the court sends notices to citizens of that locality telling them to report to court on a certain date for “jury duty.” An accused in a criminal trial and a defendant in a civil trial have the right guaranteed in the Constitution to a jury of their “peers,” which means citizens of the same county. A citizen can avoid jury duty if he or she can show that it will adversely affect their business or employment. Lawyers are routinely excused from jury duty because it is too difficult for them to remain objective in their judgments.

Once at the court, the jury is “impaneled.” “Impaneling” a jury is the process of examining potential jurors. The object of impaneling is to obtain jurors who are fair and impartial. The attorneys and judge conduct a “voir dire” examination, which is French

for “to see” and “to say.” During the voir dire, the potential jurors are examined about their possible prejudices and personal interests that may affect their judgment and render them unable to be fair and impartial. If a juror shows personal interest, bias or favor to one of the parties, he or she can be excused. An attorney has a limited number of "peremptory" challenges, which can be arbitrary and without cause, which are used to eliminate a potential juror because of a perceived prejudice.

After the jury has been selected they must be sworn in; they then are prepared to listen to and observe the testimony and other evidence presented during the trial. At the conclusion of trial the judge instructs ("charges") the jury as to the law and their duty, after which they deliberate and render a verdict.

In criminal cases, the judge instructs the jury that the standard necessary for conviction is “beyond a reasonable doubt.” This standard holds that the jury must believe that a “reasonable” man, given the facts of the case, would have no doubt in convicting the accused. The basis for this is that the framers of the Constitution wanted to make the standard higher in cases where a person may lose his life or liberty. This comes from the Sixth Amendment of the Bill of Rights of the U.S. Constitution.

In civil cases, the standard is lower, or, “by a preponderance of the evidence.” This means that the jury, by considering all the evidence, can feel justified that the majority of the evidence points to a verdict for or against the defendant. This instruction is again given to the jury by the judge. This lower standard was implemented because it involves the exchange of money or property, and is basically to prevent inequity. This civil protection comes from the Seventh Amendment of the Bill of Rights.

The most famous situation in the United States where criminal and civil trials based on the same incident were decided differently is the case of the murders of the wife of O.J. Simpson, a football star, and Ronald Goldman, a male acquaintance of O.J. Simpson’s wife. In this instance, in the criminal trial, O.J. was acquitted, meaning he was found innocent, but in the civil trial, he was found liable for the death of Ronald Goldman, and a judgment of 8.5 million dollars was entered against him.

Attorneys at Law

The term "attorney at law" refers to persons who are licensed officers of the courts. They can appear in courts to prosecute and defend clients. They prepare pleadings (documents in the case) and other papers for legal actions and, in general, advise clients and take action for them in matters connected with the law.

The attorney / client relationship is considered strictly confidential, similar to the relationship between a priest and a parishioner in the sacrament of confession in the Catholic faith. Attorneys must also comply with the code of ethics of the profession.

Normally the Supreme Court of the states, or federal judges on the federal level, supervise attorneys, and are responsible for admitting attorneys to practice ("admission to the bar") before the courts, disciplining them, and, when necessary, removing ("disbarring") them for malpractice. Malpractice means that the attorney has committed a crime, or has done something that is ethically wrong.

Each state has a bar, as well as the federal courts. Most states require that a person who has successfully finished his three year "juris doctor" or J.D. degree, take a bar examination. This is usually a two-day exam. One day is dedicated to writing essays about different aspects of the law of that state, and the second day is often a multiple-choice exam. If the person passes, he or she will then be admitted in that state as an attorney. If not, the person cannot practice law even if he or she has a law degree.

If you are not admitted to the bar in a particular state, you cannot represent clients in the courts of that state. You can, however, practice federal or corporate law in that state, as long as it does not involve litigation with regard to that state's laws.

Once a lawyer has been admitted, and has practiced for a number of years, often five years, he or she can then apply for "reciprocity" to practice in another state. This grant of

reciprocity will allow you to practice without taking the bar exam. Some states do not allow reciprocity because they want to limit the number of lawyers in that state.

Notary

In the United States, you must be very careful when you use the word “notary.” A notary is NOT an attorney. It is nothing more than a person who has no criminal record. The only duty of a notary is to verify signatures. There is no translation in English for the Spanish “notario.” If one were to try and translate the word, it would be better to use the British definitions of “solicitor” and “barrister.” A solicitor in the English system is the main lawyer for a client, and is the one who prepares all the documents. A barrister is usually chosen by a solicitor for the client to act on the client’s behalf in the courtroom. A barrister usually has no contact with the client, and his or her practice is usually limited to the courtroom.

Although not exact, using the word “solicitor” for “notario” would better convey the elevated status “notario” holds in the Latin system, and although U.S. attorneys do not use this word, they will understand its meaning and will not confuse you with a notary, who is often just an office secretary.

Although brief, this should help you to understand the basic structure of the legal system in the United States. There are many similarities to the Mexican system, but as you can see, also many differences.