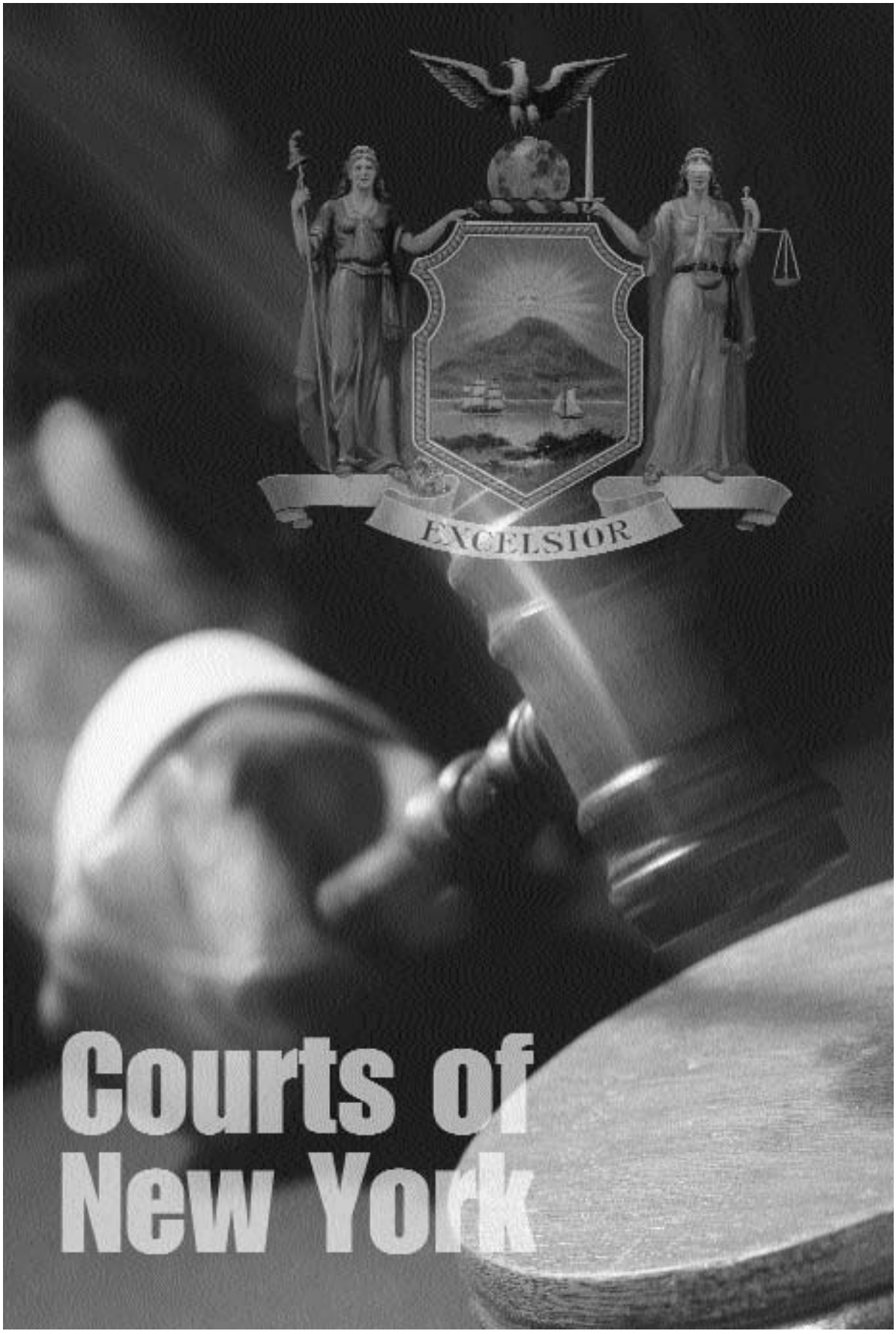
The Courts of New York

A guide to court procedures, with a glossary of legal terms.

New York State Bar Association

The **Courts of New York** is a guide to the state's court system, with a glossary of legal terms. Published as a public service by the Committee on Justice and the Community of the New York State Bar Association. Copies are available from the New York State Bar Association, One Elk Street, Albany, New York 12207.

Table of Contents


EXCELSIOR
Courts of
New York

COURTS OF NEW YORK STATE

The court system in New York State, organized about 200 years ago, is generally divided along territorial lines. The courts in the state are listed below, starting with the court of highest authority:

- Court of Appeals
- Appellate Division of Supreme Court
- Appellate Term of Supreme Court
- Supreme Court
- Court of Claims
- Family Court
- Surrogate's Court
- County courts
- Local courts
  - New York City courts
  - Other City courts
  - District courts
  - Justice courts

New York courts, with the exception of justice courts, are financed by the state and are administered by the Office of Court Administration under the authority of the Chief Judge of the State of New York. Each of these courts is discussed more fully below.

COURT OF APPEALS

The Court of Appeals is the highest court in the state and the court of last resort for most cases. It is generally the ultimate authority on questions of law in New York State. Although a few cases, involving questions of federal law or the United States Constitution, eventually may be taken to the United States Supreme Court, these are rare. The Court of Appeals hears both criminal and civil appeals. (The distinctions between criminal and civil cases are discussed in later sections.)

This court, which convenes in Albany, consists of six associate judges and one Chief Judge, who also serves as Chief Judge of the State and chief judicial officer of the unified court system. All judges of this court are appointed by the Governor, with the advice and consent of the senate, from a list prepared by a nonpartisan nominating commission.

Appeals in civil cases must first be heard in one of the appellate divisions of the state's Supreme Court before being taken to the Court of Appeals. However, cases involving only questions of a statute's constitutionality may go directly to the Court of Appeals from the trial court. In cases that come through the Appellate Division, the appellant generally must obtain permission to appeal to the Court of Appeals. The only instances in which a case will automatically be sent to the Court of Appeals are when two justices of the Appellate Division dissent or a state or federal constitutional question is presented.

Except when a death sentence is involved, criminal cases must

be appealed to the Appellate Division or Appellate Term first, and special permission must be obtained before the case may be taken to the Court of Appeals.

In addition to hearing appeals, the Court of Appeals is responsible for determining policy for the administration of the state's court system and for adopting rules governing the admission of attorneys to the bar.

APPELLATE DIVISION OF SUPREME COURT

The Appellate Division of the Supreme Court is the intermediate appellate court of the state. It hears civil and criminal appeals, reviewing the record established at trial in lower courts. The Appellate Division is divided geographically into four departments throughout the state; each department is responsible for hearing most appeals from the courts within its geographical area.

Justices of the Appellate Division are appointed by the Governor from among Supreme Court justices. The number of justices in each department will vary between four and five, depending on the caseload. Each department of the Appellate Division is responsible for admitting to practice and disciplining attorneys within its respective geographical region.

APPELLATE TERM OF SUPREME COURT

The four departments of the Appellate Division are divided further into 12 judicial districts (see chart on p. 12). The Appellate Term of the Supreme Court is unique to the First and Second Judicial Departments (New York City; Nassau, Suffolk, Rockland, Westchester, Putnam, Dutchess and Orange Counties). The Appellate Term, which is composed of justices of the Supreme Court chosen by the Chief Administrator of the Courts with approval of the presiding justice of the Appellate Division, hears appeals from local and county courts. At least two and no more than three justices will preside in any case.

SUPREME COURT

The Supreme Court is the statewide trial court with the broadest jurisdiction, both criminal and civil. It can hear virtually any type of case brought before it, with the exception of claims against the state, which must be brought in the Court of Claims.

The Supreme Court's practically unlimited jurisdiction makes its caseload correspondingly heavier than that of other courts. Consequently, attempts are generally made throughout the state to divide the work load among the Supreme Court and the lower courts of limited jurisdiction.

One area in which the Supreme Court must be involved, however, is in proceedings to end a marriage, since it is the only court that can grant a divorce, annulment or separation.

As noted above, the Supreme Court is divided into 12 judicial districts statewide, and justices are elected in each district for terms of 14 years.

COURT OF CLAIMS

Judges of the Court of Claims have the sole responsibility for hearing claims brought against the state of New York or certain state agencies.

Judges of the Court of Claims are appointed by the Governor, with the advice and consent of the state senate, for terms of nine years.

FAMILY COURT

The Family Court was established in 1962 to replace the Children's Court and New York City's Domestic Relations Court. The Family Court handles most cases involving youths between the ages of 8 and 16 who are charged with offenses that would be crimes if committed by adults.

It also hears cases involving family disputes and child custody, determines support payments for families, handles adoptions, and may even determine the parentage of a child through paternity proceedings.

Family Court deals with all types of family problems except termination of a marriage, which the Supreme Court handles (see above). Family Court judges serve for ten-year terms. Outside New York City, they are elected; within the city of New York, such judges are appointed by the Mayor.

SURROGATE'S COURT

The Surrogate's Court is responsible for all matters relating to the property of deceased persons and to guardianships. Whether or not a person leaves a valid will, all claims on the estate brought by heirs, legatees or creditors are handled by the Surrogate's Court.

Judges of this court are elected in each county for terms of 10 years (14 years in New York City). Matters commonly dealt with in the Surrogate's Court include the probate of wills; the appointment and control of executors, administrators and trustees; adoptions; and the final settlement of estates.

COUNTY COURT

A county court exists in each county of the state outside New York City (see "LOCAL COURTS" below for equivalent in New York City). Judges are elected for ten-year terms, with the number of judges varying according to population. County court judges preside over both criminal and civil cases.

Although the County Court's jurisdiction over criminal matters is almost unlimited (as is the Supreme Court's), its jurisdiction in civil cases is more restricted. Money claims in cases to be tried in this court may not exceed $25,000.

In sparsely populated counties, a single judge may be responsible for the Family Court, Surrogate's Court and county court. In other counties, two judges may share the responsibility for these three courts or may be elected to only one or two of the courts. In the more populous counties outside New York City, different judges usually are elected to preside solely in the county court, Family Court and Surrogate's Court.

LOCAL COURTS

New York City Courts

In New York City, two courts have responsibilities different from courts elsewhere in the state. The Civil Court of the City of New York can hear civil matters involving amounts that do not exceed $25,000, as well as cases up to that amount involving real property within New York City. The judges of this court have citywide jurisdiction and are elected for ten-year terms.

The Housing Part of this court hears landlord-tenant cases and promotes enforcement of housing codes. This part is staffed by judges appointed for five-year terms by the administrative judge of the Civil Court.

A Small Claims Part hears cases brought by private individuals for amounts up to $3,000. The rules of this part of court encourage informal and simplified procedures. A Small Claims Part is designed to make it easier for a person to sue for small amounts of money without having to be represented by an attorney. (Similar small claims parts are authorized for the other city, district and justice courts in the state.) The Commercial Claims Part of the New York City Civil Court is where certain business entities may bring small claims actions. (Similar commercial small claims parts are authorized for the other city and district courts in the state.)

The Criminal Court of New York City has jurisdiction only over criminal matters. It can try all criminal cases except felonies, and it may conduct preliminary hearings in felony cases. Criminal court judges also serve as magistrates and can issue warrants of arrest. They are appointed by the Mayor of New York City for ten-year terms.

Other City Courts

Each of the 61 cities outside New York City has its own city court, which has both criminal and civil jurisdiction.

In criminal matters, the city court can try cases involving misdemeanors or minor violations, and it can hear preliminary matters in felony cases. A city court also can hear civil cases involving not more than $15,000, as well as landlord-tenant disputes.

Judges of city courts must be attorneys who have been licensed to practice law in New York State for at least five years. They are elected by voters in their respective cities for terms of ten years, or six years in the case of part-time judges.

District Courts

District courts currently exist only in Nassau and Suffolk Counties, where they have limited jurisdiction over both civil and criminal cases. In criminal matters, the district court can try all offenses except felonies, and it can hear preliminary matters in felony cases. In civil matters, the court is limited to cases involving claims for $15,000 or less. It also may hear some matters concerning liens on property and landlord-tenant disputes.

Judges of this court, who must be lawyers, are elected by district voters for terms of six years.

Justice Courts

Justice courts consist of town and village courts. The judges of these courts, often formerly referred to as justices of the peace, need not be lawyers, although they must meet special training requirements. They are elected to four-year terms by the locality they serve.

Justice courts can hear both criminal and civil cases, but their jurisdiction in both instances is severely limited. In criminal matters, justice courts can try misdemeanors, traffic cases and minor violations and conduct preliminary proceedings in felony cases.

In civil matters, justice courts may hear cases where no more than $3,000 worth of property or money is in dispute. Also, landlord-tenant cases may be heard there, regardless of the amount of rent involved. A justice court may not decide a case involving title to real property.

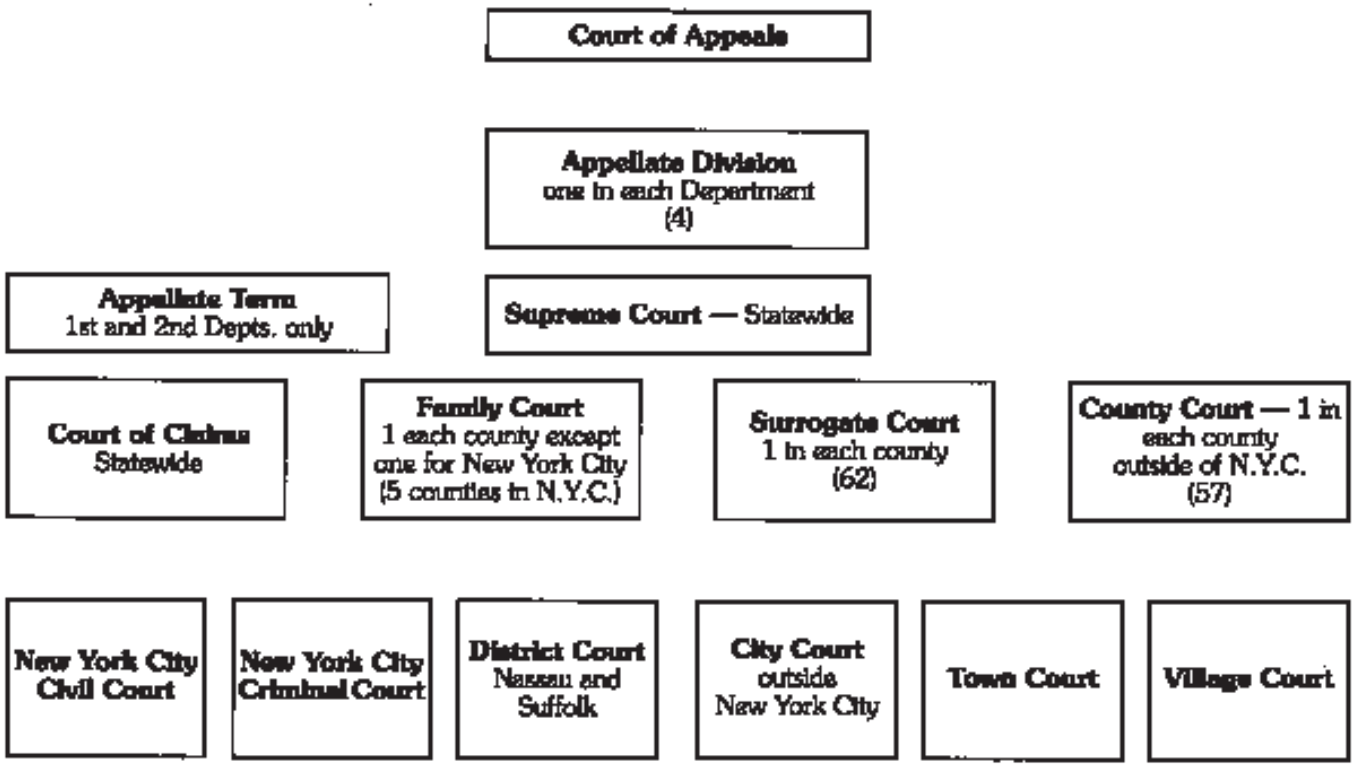
Judicial Conduct Commission

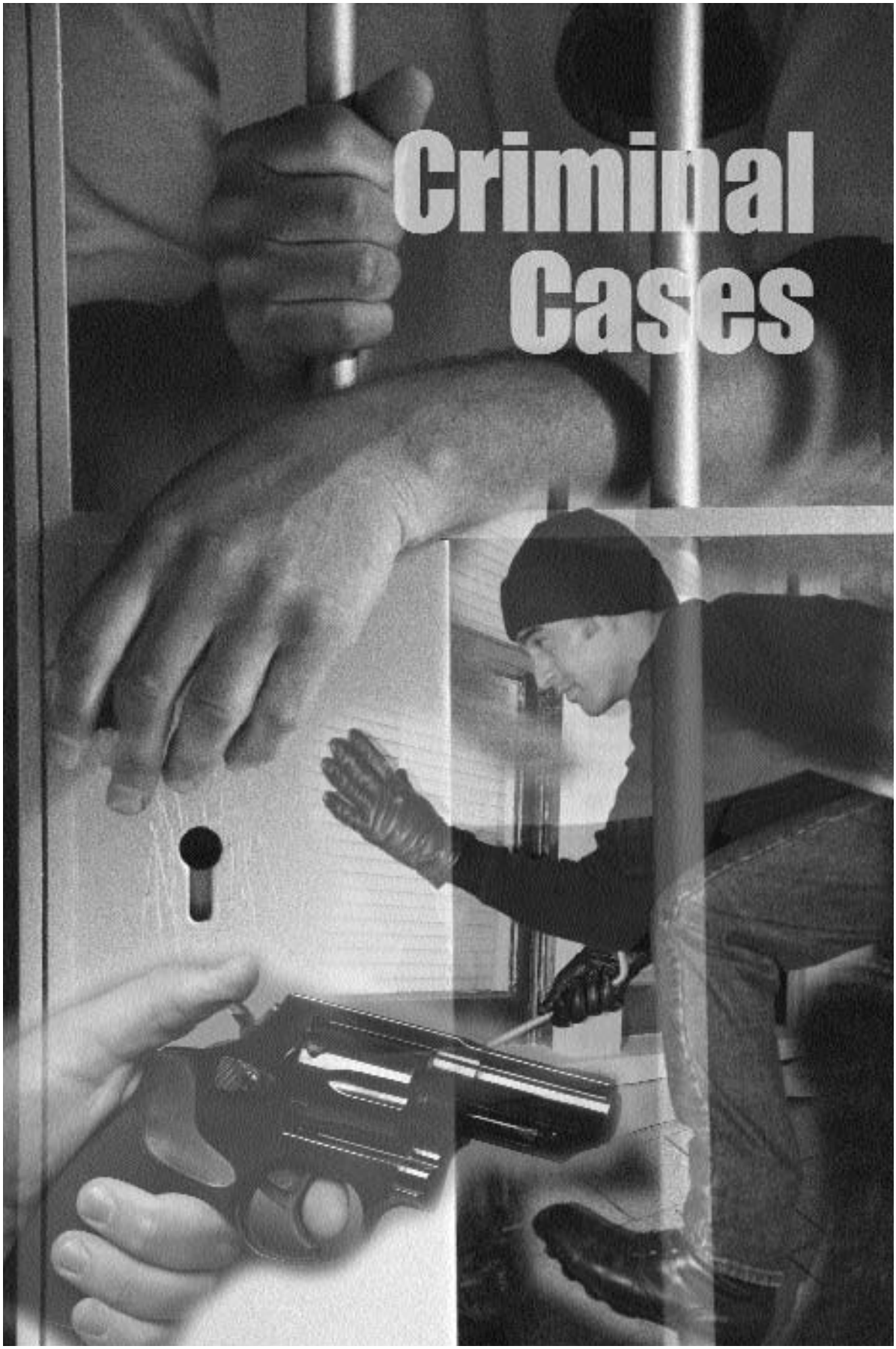
The state constitution provides for a Commission on Judicial Conduct, which has the authority to impose sanctions, from admonition to removal, on judges and justices of state and local courts and to retire them for disability, subject to review by the Court of Appeals.

Alternative Methods of Dispute Resolution

Alternative dispute resolution ("ADR") is an umbrella term used to describe a variety of processes and techniques to resolve disputes. The unified court system has developed a number of pilot ADR programs for different types of cases throughout the state. Experimentation has been encouraged in the courts at every level using mediation, arbitration, neutral evaluation and summary jury trials. Furthermore, given New York's extraordinary size and diverse regions, each of these initiatives is tailored to the particular community and court environment in which it operates. The Community Dispute Resolution Centers program, administered by the Office of Court Administration, and available in all 62 counties of the state, provides financial support to nonprofit organizations that offer dispute resolution services. Community dispute resolution centers offer mediation and some arbitration services as an alternative to criminal, civil and Family Court litigation. In addition to providing dispute resolution services, many of the centers offer a variety of educational, facilitative and preventive services in their communities that help people to manage and resolve conflicts before they reach the court system.

Outline of New York State Court System




Criminal
Cases

Criminal Cases

Crimes are divided into two categories: felonies (for which a prison sentence exceeding one year may be imposed) and misdemeanors (for which the maximum prison term is one year). Most felonies and misdemeanors are specified in New York's Penal Law, so that the elements of crimes such as murder, robbery and assault are clearly defined. Some crimes are defined in other laws - the definition of *driving while intoxicated*, for example, can be found in the Vehicle and Traffic Law.

Crimes may be subdivided into several degrees based on the seriousness of the conduct involved. For example, an assault charge may be first-, second- or third-degree, depending on the extent of the injury, whether a weapon was used, the defendant's intent and the specific conduct involved. Categorizing crimes in varying degrees is intended to ensure that "the punishment fits the crime."

Different procedures exist for bringing criminal charges against an individual, depending on whether the crime charged is a felony or misdemeanor. Misdemeanor charges are brought by filing a written accusation or complaint in a local criminal court (i.e., a town or village justice court, district court, New York City Criminal Court or a city court having criminal jurisdiction). All aspects of a misdemeanor prosecution, from the filing of the complaint through disposition, including motions, hearings, trial and sentencing (if there is a conviction) take place in the local criminal court.

Because felony charges are more serious, they must be prosecuted by indictment - a formal accusation voted on by a grand jury - unless the defendant waives indictment. Although certain preliminaries may take place in a local criminal court, such as the filing of a felony complaint or the holding of a preliminary hearing, jurisdiction of the felony charge after indictment rests with a superior court (i.e., county court or Supreme Court) for motions, hearings, trial and sentencing.

Whether the offense is a felony or misdemeanor, the written complaint must clearly set forth the nature of the charge and the time, date and place of the alleged criminal act. The complaint, or an accompanying bill of particulars (which provides more details about the crime charged), also must include facts sufficient to support the elements of the offenses charged, so that the defendant is made aware of the charge against him* and can prepare his defense, if warranted.

THE GRAND JURY

The grand jury is composed of 23 members and is summoned by the county clerk in counties within the New York City and by the superior courts (Supreme Court or a county court) in other counties to look into crimes committed

in the county. By law, the proceedings of the grand jury are private and secret, and all witnesses who testify before it do so with immunity from prosecution, unless the grand jury has requested them to waive their immunity and they have done so in writing.

The grand jury may hear and examine evidence relating to the commission of any criminal offense prosecutable in the county, and may also investigate a public servant's misconduct, failure to act or neglect in public office. Evidence concerning these matters is presented by the prosecutor. Although the court and the prosecutor are the legal advisers to the grand jury, the judge is not present in the grand jury room.

A grand jury's investigative powers are broad, and it may require the attendance of witnesses and the submission of records or other documents to accomplish its statutory purpose. Although grand juries usually are convened at regular intervals, special grand juries may be impaneled by the court to consider important cases.

The grand jury does not prosecute but determines whether there is sufficient evidence to indict for a criminal offense. Therefore, a potential defendant is not entitled to be present at these proceedings, other than to testify on his own behalf. A defendant also may request that the grand jury call as witnesses persons he designates. The granting of this request and the calling of such witnesses rest in the discretion of the grand jury. At one time, any person testifying before a grand jury had to do so alone, unaccompanied by counsel, although his attorney could wait outside the grand jury room for consultation during recesses in the proceedings. However, in 1978, the law was changed to permit a person who appears as a witness after signing a waiver of immunity to have an attorney present with him in the grand jury room. The lawyer may advise the witness outside the grand jury room but is not permitted to take part in the proceedings before the grand jury.

Traditionally, the grand jury's function has been to determine whether the evidence presented by the prosecutor is sufficient to warrant the return of an indictment charging a person with a particular crime. Besides indicting, the grand jury also possesses the power to direct the district attorney to file a written accusation with a local criminal court or, in certain cases, to direct him to file a request for removal of the matter to Family Court.

Where the evidence is insufficient to support any criminal charge, the grand jury may dismiss the charge and return no indictment. Under certain circumstances, it may also issue a report, usually in relation to an investigation into the conduct of a public servant.

Formerly, felony charges could be prosecuted only pursuant to an indictment. Under appropriate circumstances, including consent by the district attorney and approval by the court, a defendant may now waive indictment and be prosecuted by a superior court information. The superior

court information is a written accusation filed by the district attorney, which serves as the basis for further prosecution. In essence, it is a substitute for the indictment, setting forth the necessary elements of the criminal charge.

ARREST PROCEDURE AND ARRAIGNMENT

A criminal case normally begins with the defendant's arrest. In some counties, when an accusatory instrument has been filed by a prosecuting attorney or an indictment returned by a grand jury, the court will issue a warrant for the arrest of the person charged if he is not already in custody.

In either scenario, the accused is then promptly brought before the court for arraignment on the charge. In addition to being informed of the charge, the defendant is advised of his right to counsel.

If the defendant is financially unable to hire an attorney and requests counsel, the court will appoint a lawyer to represent him, at public expense, without cost to the defendant or his family. If the county maintains a public defender, he may be assigned to represent the accused.

The defendant also will be given the opportunity to request bail in order to secure his release from custody. This application is made on notice to the district attorney, who may oppose it if he feels such a course is warranted.

If bail is granted, the defendant may have to post a bond or cash to ensure he won't "skip town." If the judge believes the accused will appear for future proceedings without posting bond, he may release him on his own recognizance, which means the defendant is released on his own promise to appear in court. For misdemeanor offenses, bail is mandatory; but for felonies, release on bail depends on the discretion of the court. Bail is designed to ensure the return of the defendant; it's denial is not used to punish a defendant by keeping him in jail while the case is pending.

In New York State, law enforcement officials are required to bring an arrested person before the court for arraignment within 24 hours. In addition to arrest powers, police also have the authority to temporarily stop and question people in public places where a reasonable suspicion exists that the person has committed, is committing or is about to commit a felony or misdemeanor. The police may ask the person for his name, address and an explanation of his conduct.

PRELIMINARY HEARING

If a person is charged with a felony by means of a written accusation filed in a local criminal court, the accused is entitled to request a preliminary hearing. This hearing determines whether there is reasonable cause to believe that he in fact committed the felony. If the preliminary hearing substantiates such reasonable cause, the court can order the defendant held for the action of the grand jury.

If the hearing shows that the

accused committed no offense, the court must then dismiss the complaint. Where the evidence provides reasonable cause that the defendant committed an offense other than a felony, the court may reduce and handle the charge accordingly.

The defendant has the right to be present at the hearing and is entitled to be represented by counsel. He also has the option of presenting evidence on his own behalf or making no such submission.

The defendant may waive a preliminary hearing, and the prosecutor may choose to indict a defendant instead of providing a preliminary hearing. However, if the defendant is in custody and the prosecutor does not indict or provide a preliminary hearing within six days, the defendant must be released on his own recognizance. Where the prosecution has been initiated by indictment, a preliminary hearing is not held since the grand jury has already determined that reasonable cause exists to charge the defendant with the commission of a felony.

TRIAL PREPARATION AND TRIAL

During arraignment, a defendant can plead not guilty or, if the charge is a misdemeanor, he can plead guilty and be sentenced. A defendant can plead guilty to a felony only in Supreme Court or county court. If a guilty plea is entered, the court sets a sentencing date, allowing time to obtain necessary information concerning the defendant's background and any prior relevant record.

Whether the charge is a misdemeanor or a felony, if a not-guilty plea is entered, the case is then set down for later trial. In advance of the trial, the defendant may, through his attorney, make motions to challenge, for example, the sufficiency of the accusatory instrument or the validity of the seizure of evidence or confessions which the prosecution may seek to introduce against him. These motions may entail hearings by the court to determine whether the defense's contentions are correct. If so, the potential evidence may be suppressed (i.e., the prosecutor is forbidden to offer it at trial) or the charge dismissed.

In preparation for trial, the attorneys for both sides will interview prospective witnesses and, if necessary, secure expert evidence on matters such as chemical analysis or ballistics tests.

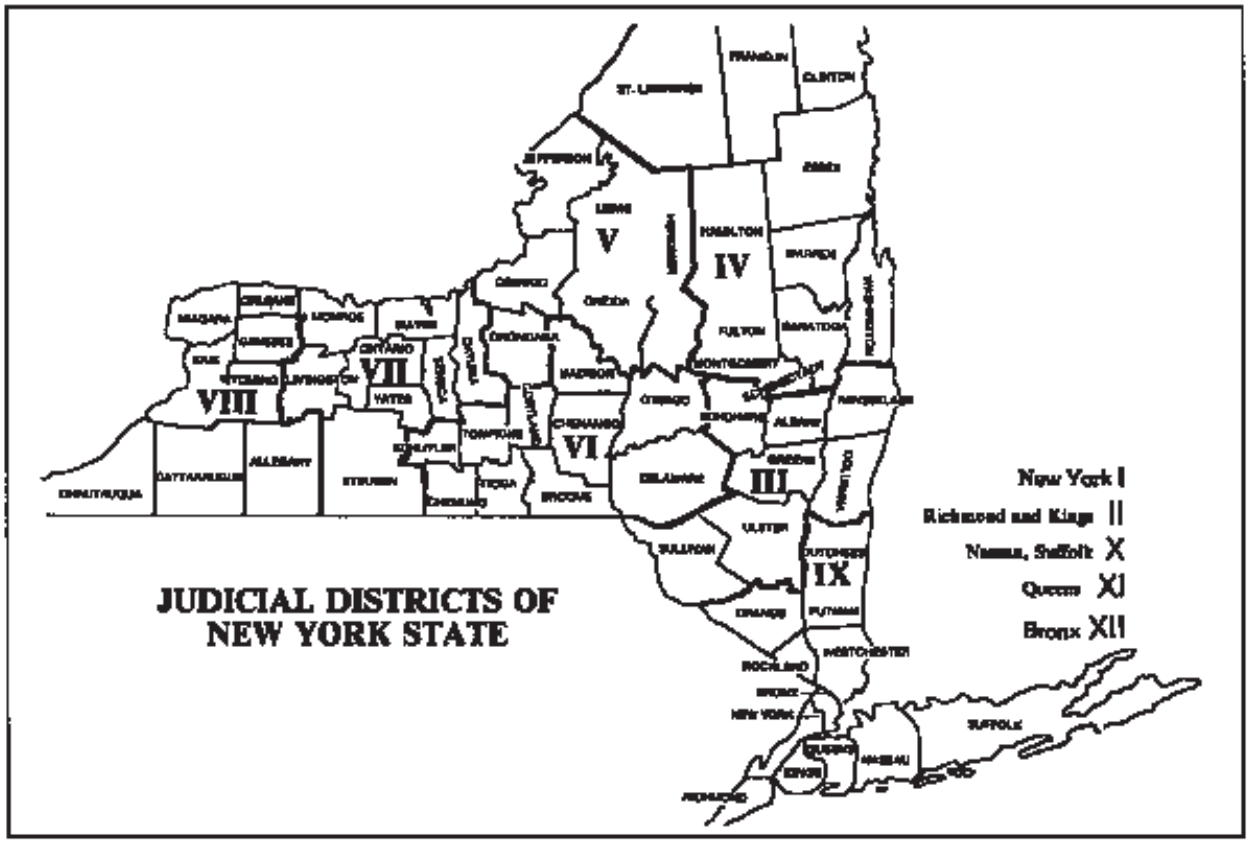
At the trial itself, the prosecutor must establish the defendant's guilt beyond a reasonable doubt, producing such witnesses and other evidence as may be relevant. The defendant need not offer any proof on his own behalf, but he may call witnesses or produce exhibits in his defense.

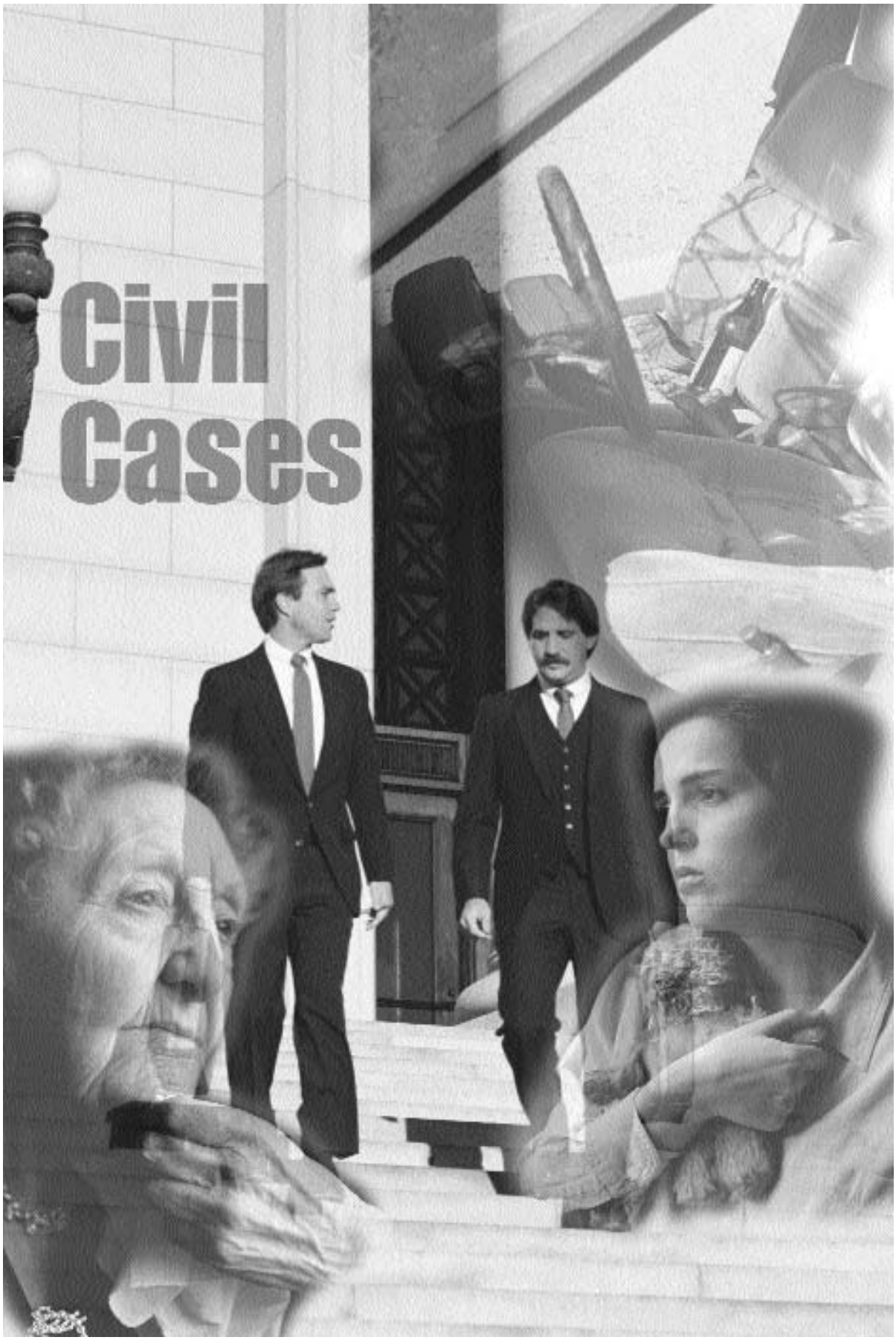
After all the testimony has been concluded and the judge has instructed the jury concerning the applicable law, the jury will decide the defendant's guilt or innocence unless the defendant has waived trial by jury and elected to be tried by the judge alone.

If found not guilty, the accused is set free; if guilty, the case is set down for sentencing. After sentencing, the defendant has the right to appeal to a higher court. If

that appeal is denied, the defendant can request that the Court of Appeals hear the case. The Court of Appeals grants such requests in only about 3 percent of all cases.

***Use of feminine or masculine pronouns, herein, should be construed to apply to both genders.**


JUDICIAL DISTRICTS OF
NEW YORK STATE
New York I
Richmond and Kings II
Nassau, Suffolk X
Queens XI
Bronx XII
V
IV
VII
VIII
VI
III
IX


Civil
Cases

Civil Cases

Civil cases are those in which individuals, corporations or government agencies seek to recover damages, enforce their rights or otherwise protect a legal interest from interference by another. Essentially, the civil law enables people to assert or defend their rights in an orderly, nonviolent manner and enables them to resolve legal disputes in a fashion which society finds acceptable.

As might be imagined, civil cases encompass a broad range of legal subjects, such as breach of contract, injury to person or property, divorce proceedings and a contest of the validity of a will. In contrast, criminal cases involve a prosecution for violations of statutes that define particular crimes, such as murder or robbery. Because criminal conduct is a breach of the public order and a violation of the public interest, the prosecution is brought on behalf of the people by the state or federal government.

The purpose of a civil case will vary depending on the nature of the matter involved. For example, if a person hurt in an automobile accident were to bring an action against the other driver, the object would be to recover damages for the physical injury suffered. Similarly, in a case involving breach of contract, the wronged party might seek to recover money damages caused by the breach or, if feasible, seek to have the other party fulfill the terms of the contract. Or, if a person is trespassing on the property of another, the owner might seek an injunction to prevent that conduct from happening again. Thus, many remedies are available, with the appropriate choice depending upon the circumstances involved.

A civil case develops in accordance with procedures that enable it to progress in a logical manner. Assume, for example, that a person believes he has been injured or damaged by another and consults an attorney. The lawyer will first obtain the necessary information from the client, including all facts and circumstances that may serve as the basis for a legal action. The attorney may then take statements of witnesses, secure pertinent documents (e.g., medical reports) and research the applicable law to determine if the client has a valid case.

TIMELINESS

As part of the initial review, the attorney may have to determine whether the action is timely, especially if the client has waited a number of years before seeking legal assistance. Because the memories of witnesses dim and evidence may be lost with the passage of time, a statute of limitations fixes the time period within which actions may be brought. The limitation varies with the type of case.

For example, most actions to recover damages for personal injury or injury to property must

be begun within three years from the date of injury; cases involving contractual obligations must be brought within six years or, with respect to some contracts, within four years from the date of breach; and an action based upon libel or slander must be commenced within one year.

Under certain circumstances, the time period to bring an action may be extended, as, for example, in cases involving the infancy (i.e., status as a minor) or insanity of the injured party. In some situations, the time may be extended if the potential defendant has left the state or is residing in the state under a false name unknown to the injured person.

JURISDICTION AND VENUE

If an attorney determines that the client has a case, a summons and complaint will be prepared and served on the other party. The lawyer's client is called the plaintiff in the action, and the person against whom the action is brought is called the defendant. Probably the most common means of effecting service is to deliver the summons personally to the defendant. Depending on the circumstances, other means may be permitted to accomplish service, such as publication in local newspapers.

In beginning the action, the plaintiff's attorney must select the proper court. Some courts have jurisdiction only over specific types of matters (see chapter 1). For example, Family Court is designated to handle questions relating to alimony, custody or child support, while Surrogate's Court deals with the settlement of estates and related matters. Even where a court has jurisdiction over a particular type of case, it may be limited by the monetary amount of the action. Thus, if an attorney wanted to institute an action for $50,000 on behalf of a client, such a case could not be commenced in a county court with a $25,000 jurisdictional limit. In this instance, the attorney would bring the action in Supreme Court - the court of general, original jurisdiction in New York State, which means its jurisdiction is broader than that of other courts. (see chapter 1).

The plaintiff's attorney also must select the proper venue for the action by bringing it in the appropriate county, which generally, is the plaintiff's county of residence. Certain actions, such as those involving municipalities or school districts, must be brought in the county where those entities are located.

Under certain circumstances, an action's venue may change. If, for example, the plaintiff has selected the wrong county for trial of the case, the defendant may request that the venue be changed. Or, if the plaintiff has designated the proper county but there is reason to believe an impartial trial cannot be obtained in that county, this would constitute grounds for a change of venue. A change of venue may also be secured for the convenience of material witnesses.

PLEADINGS

Pleadings are written documents that enable the parties to

present the significant facts concerning each side of the case to the court. The *complaint*, for example, indicates the nature of the plaintiff's case by setting forth the allegations concerning the claim against the defendant and the relief demanded.

After receiving the complaint, the defendant is required to submit a responsive pleading called an *answer*. In the answer, the defendant may admit or deny the various allegations made by the plaintiff and raise any defenses that might be appropriate. Any claim the defendant wishes to make against the plaintiff may be included with the answer and is known as a counterclaim. For example, if two individuals were involved in an automobile accident, the plaintiff might bring an action against the defendant for personal injuries and damage to the vehicle. It might be the defendant's position, however, that the plaintiff was responsible for the accident. In such a case, the defendant might wish to file an action for injuries against the plaintiff, which could be included with the answer as a counterclaim. This process enables related claims to be heard together, rather than requiring the parties to litigate the same incident twice in separate cases.

If several defendants are involved in an action, one defendant may claim against another defendant by what is known as a *cross-claim*. A defendant who desires to claim against a person not already a party to the action, who may be liable to the defendant for all or part of the plaintiff's claim, may file a *third-party complaint*, where, for example, the plaintiff purchases an item of equipment that proves to be defective and institutes an action against the merchant who sold the item, the merchant might assert that the equipment was improperly constructed, and thus would file a third-party complaint against the manufacturer.

If a counterclaim is filed against the plaintiff, a reply to the allegations is required. Where a third-party complaint has been made, the party served must file an answer. In this manner, the position of all parties is made known to the court.

If the defendant fails to appear after having been served with the summons and complaint or fails to file a responsive pleading, the plaintiff may then be able to secure a default judgment, since the defendant is acknowledging liability by not responding. If the plaintiff seeks a specified amount of money damages that can be readily computed (or money due on an unpaid promissory note), a judgment for that amount, plus interest and costs, may be obtained. If the claim is not for a certain sum or cannot be computed, then the court will take proof on the question of damages, which it will then determine.

After the pleadings have been filed, it may be necessary to modify, correct or supplement them. Defects also may be present in a party's case which entitle the other side to relief. Such matters are usually resolved by means of motions that are heard and decided by the court. For example, a

defendant's attorney, after reviewing the complaint, may want more specific information concerning the allegations. In that event, the attorney would request a bill of particulars from the plaintiff's lawyer, specifying the desired items. By means of various motions, the parties may be able to establish the issues or determine points of dispute which otherwise would have to be resolved by trial, or terminate a case that is legally insufficient. In a personal injury action, for example, the defendant is entitled to information about the date and approximate time of the occurrence, a statement of the injuries and a description of those claimed to be permanent.

Upon reviewing this information, the defendant's attorney may discover that the plaintiff cannot succeed in the action, as, for example, when the plaintiff's pleadings are defective or the time limit for filing the particular action has expired. In such an instance, the defendant would be entitled to move for dismissal, bringing the case to a conclusion without a trial.

DISCLOSURE

Disclosure is the process of obtaining facts or information to help attorneys prepare for trial. By such proceedings, attorneys may obtain copies of pertinent documents, view physical evidence or, where relevant, request that a party undergo a physical or mental examination.

A party also may take the depositions of other parties or witnesses, which typically involves questions that are both asked and answered orally under oath. The attorneys for both sides have an opportunity to question the individual whose deposition is being taken, and the questions and responses are recorded by a stenographer. In some instances, when a potential witness is located out-of-state, written questions (called *interrogatories*) are used.

In this way, the attorneys are informed of the testimony that various individuals may be expected to give at the trial, possibly enabling them to resolve some of the issues before trial. Also, under certain circumstances, the deposition may be introduced at trial if the witness is unavailable to testify or makes contrary statements at the trial.

PRETRIAL CONFERENCES

After the pleadings have been filed, motions decided and disclosure of evidence completed, the attorneys will meet with the court before the trial takes place. At this meeting, the attorneys may stipulate which items they agree upon and also clarify those areas where there is dispute.

The pretrial conference helps to ensure that only the relevant issues will be raised at the trial. The conference may also disclose grounds for a reasonable settlement between the parties without having to resort to trial. If settlement is not possible, the case will go to trial.

New York State Counties by Judicial Department and District

FIRST DEPARTMENT

First Judicial District
New York

Twelfth Judicial District
Bronx

SECOND DEPARTMENT

Second Judicial District
Kings
Richmond

Ninth Judicial District
Dutchess
Orange
Putnam
Rockland
Westchester

Tenth Judicial District
Nassau
Suffolk

Eleventh Judicial District
Queens

THIRD DEPARTMENT

Third Judicial District
Albany
Columbia
Greene
Rensselaer
Schoharie
Sullivan
Ulster

Fourth Judicial District
Clinton
Essex
Franklin
Fulton
Hamilton
Montgomery
Saratoga
Schenectady
St. Lawrence
Warren
Washington

Sixth Judicial District
Broome
Chemung
Chenango
Cortland
Delaware
Madison
Otsego
Schuyler
Tioga
Tompkins

FOURTH DEPARTMENT

Fifth Judicial District
Herkimer
Jefferson
Lewis
Oneida
Onondaga
Oswego

Seventh Judicial District
Cayuga
Livingston
Monroe
Ontario
Seneca
Steuben
Wayne
Yates

Eighth Judicial District
Allegany
Cattaraugus
Chautauqua
Erie
Genesee
Niagara
Orleans
Wyoming


Trials

Trials

A comparison of civil and criminal trials reveals many areas where procedures are similar, but also several where they differ. Regardless of procedural differences, criminal and civil trials share a common purpose—affording a fair and impartial hearing to both sides. This objective can be achieved only through organized and established procedures.

Essentially, a trial is a means of resolving a dispute between two parties in a civil case or of determining the guilt or innocence of an accused in a criminal case. Both situations involve a disagreement between the parties concerning the facts at issue or the legal principles governing the matter, or both.

A civil case may involve such questions as whether an injury was negligently caused, a contract breached or an item that was purchased is defective. In a criminal case, the dispute is whether the defendant committed the offense charged.

Not all cases are tried by a jury. In some kinds of cases, neither party has a right to a trial by jury; even when a right to a jury exists, it may be waived by the parties in a civil action or by the defendant in a criminal prosecution, other than one for first-degree murder.

In a trial before a jury, the jury is responsible for making the factual determination. To ensure that the jury reaches its decision fairly and according to established legal principles, a judge presides over the trial. The judge will rule on questions of law, objections, the admissibility of evidence and other procedural matters.

After both sides have completed their proof, the judge instructs the jury concerning the applicable law. If there is no jury, the judge alone will both determine the facts and rule on questions of law.

Court personnel assist the judge in the orderly conduct of the trial. The court clerk, at the beginning of the trial, draws the names of prospective jurors and administers an oath to them.

Court officers or attendants maintain order in the courtroom and perform other services assigned by the judge, which can include calling witnesses or taking charge of the jury when it is not in the courtroom. In this latter regard, court attendants perform an important function by ensuring that no one talks to the jurors or attempts to influence them in any way.

The court reporter, or stenographer, has the duty of recording all proceedings in the courtroom. This record includes the testimony of witnesses, all objections and motions made by the attorneys and rulings made by the judge. The stenographer also records the judge's instructions (or charge) to the jury concerning the law. In addition, the court reporter marks for identification any exhibits and notes their receipt into evidence, if the judge rules them admissible.

The attorneys are responsible

for representing their clients and presenting the evidence for their respective sides, so that the jury or judge may reach a just result. In this context, the role of the attorney may be misunderstood, especially in a criminal case. Lawyers have an obligation to represent their clients competently, safeguarding the client's rights and interests. In a criminal case, the accused has a constitutional right to representation by counsel and is cloaked with the presumption of innocence until proven guilty beyond a reasonable doubt. Our system of justice could not function properly unless attorneys were willing to represent clients or causes considered unpopular by the general public. Consequently, an attorney may ethically represent an accused person whom the community assumes is guilty, since that individual is entitled to every protection afforded by both the state and federal constitutions.

JURY SELECTION

Similar procedures are followed in both civil and criminal cases to select a jury. To qualify as a trial juror, a person must be a United States citizen, over the age of 18 and a resident of the county in which the trial is held. Prospective jurors also must be able to understand and communicate in English and must not have any felony convictions.

The names of prospective jurors are selected at random from lists of registered voters, state and local taxpayers, licensed drivers, people on public assistance and people receiving unemployment compensation. The trial jury in New York is known as the *petit jury*, and the prospective jurors for each term of court are drawn at random by the commissioner of jurors from the names obtained from the above sources.

In January 1996, occupational exemptions from jury service in the State of New York were repealed so that today everyone - including lawyers, doctors, public officials, judges and others previously exempted - may be required to serve as jurors. Occasionally, an attorney may object to an entire panel of prospective trial jurors. This is known as a challenge to the panel and is usually directed at its composition, alleging that members of a particular group have been systematically excluded from jury service.

In criminal cases, a jury of 12 persons is required for felonies, while 6 is the number fixed for misdemeanor trials. In both types of cases, provisions are made for alternate jurors to replace a regular juror who may become ill or disabled during trial. In a civil case, the trial jury is composed of 6 persons, with provision for the selection of alternate jurors.

The trial jury is selected from the group previously described. A panel is called, and they take their place in the jury box (criminal) or impaneling room (civil). A process known as *voir dire* then takes place in which the attorneys, and sometimes the judge, describe the nature of the case and ask questions to determine the suitability of the jurors. For example, a juror who is related to one of the parties or who has per-

sonal knowledge of the case may be unable to judge the evidence impartially.

In criminal cases, the judge presides over the *voir dire*, which is conducted in a courtroom. In civil cases, the voir dire may be supervised by a judge but usually is subject to general supervision by a judicial hearing officer (retired judge) in a courtroom or, more often, in an impaneling room.

During the course of questioning the jurors about their qualifications, it may become apparent that a particular juror possesses a bias, prejudice or opinion which will affect his ability to judge the evidence impartially. In a criminal case involving the sale of narcotics, for example, a prospective juror may assert his belief that such activities are proper and that the criminal law should not be enforced. Under such circumstances, the juror could be challenged for cause. The number of challenges that may be made for cause is unlimited in both civil and criminal cases.

In addition, each party has the right to exercise a certain number of peremptory challenges, which allows an attorney to excuse a juror without having to state a reason. The number of peremptory challenges is fixed by law and varies according to the type of case. In a criminal case, each party may have as many as 20 peremptory challenges, depending on the seriousness of the crime charged; in a civil case being tried in Supreme Court or a county court, each side has at least 3 such challenges.

The *voir dire* continues until the attorneys for both parties are satisfied with the composition of the jury or have exhausted all challenges permitted by law. Once the full jury and alternates have been selected, they will be administered an oath and the trial may then proceed.

CIVIL CASES

After the jury has been selected and before any evidence is offered, the attorney for each party is entitled to make an opening statement. Generally, the party having the burden of proof (usually the plaintiff) opens first. In these statements, attorneys normally will outline their respective cases and possibly indicate some of the witnesses who will be called to testify, so that the jurors may more easily follow the proof as it is introduced.

After the opening statements, the presentation of evidence begins. The plaintiff will call witnesses to testify and, in conjunction with such testimony, may offer into evidence pertinent exhibits such as reports or photographs.

Witnesses may testify about matters of fact—that is, anything perceived by means of their physical senses. Testimony usually concerns what the witnesses observed, such as what occurred at the scene of an automobile accident. As part of their testimony, witnesses may be asked to identify photographs, documents or other physical exhibits.

Witnesses, however, usually cannot state an opinion or give a conclusion, unless they are

experts or otherwise qualified to do so. Such opinion evidence generally is provided by persons with specialized training, such as doctors or engineers. A witness qualified as an expert in a particular field may give an opinion based on the facts in evidence and state the basis for the opinion. In some instances, a layperson may be able to testify concerning a matter of opinion if the subject lies in an area of common knowledge, such as whether a particular person was intoxicated.

An attorney usually may not ask leading questions (i.e., those suggesting the desired answer, such as "Isn't it true that . . .") of his own witness. This insures that the jury hears the facts as the witness recalls them.

The opposing counsel may object to a particular question on various grounds, such as calls for an opinion, is leading or is immaterial to the case. Objections are based upon rules of evidence, and the judge will decide them. If the objection is overruled, the witness may answer the question; if it is sustained, he need not. Frequently, the attorney will rephrase the question to overcome the objection.

When the plaintiff's attorney completes his direct examination of the witness, the defendant's attorney may then cross-examine concerning those matters covered on direct examination. On cross-examination, leading questions may be asked to establish any inaccuracies or inconsistencies in the facts as related by the witness. During cross-examination, the opposing counsel is permitted to object to any questions that may be improper, and the judge will rule on them in the same manner as on direct examination.

After cross-examination has been completed, the attorney who called the witness has the right to ask questions on redirect examination. Generally, the purpose of these questions is either to strengthen the testimony of a witness which was weakened by cross-examination or to elaborate on new facts that arose on cross-examination.

At times during a trial, disputes may arise concerning a question of law or legal procedure. On such occasions the attorneys may approach the bench and confer with the judge out of the hearing of the jury. Or, the judge may send the jurors from the courtroom while he listens to the legal argument and rules on the matter in question. The jury is excluded from these sessions to avoid being prejudiced or otherwise influenced by a discussion of matters not in evidence.

After completing his testimony, including direct and cross-examination, the witness will be excused and the next one will be called. This process is repeated until all the plaintiff's witnesses have been heard, at which time the attorney will advise the court that the plaintiff rests.

At this point, the judge, outside the presence of the jury, will entertain motions from the attorneys. The defendant's attorney, for example, may move for a dismissal if he believes that the plaintiff has failed to establish a case. The judge may then rule on

the motions or reserve decision—that is, wait until some later time to decide the motion. If he sustains a motion to dismiss, the case will be concluded. If the judge denies a dismissal motion, the trial will continue, and the defendant then has the opportunity to present evidence on his behalf.

The defendant, in presenting proof, follows the same procedures and rules for the examination of witnesses and introduction of exhibits as were applied to the plaintiff. The sequence of direct and cross-examination of witnesses is the same as for the plaintiff's case.

After the defendant's case has been concluded, the court will then hear and rule on any motions the parties wish to make. As before, the motions are argued and decided outside the presence of the jury. If a dismissal motion is granted at this point, the case will be concluded. If denied, the case is then almost ready for submission to the jury.

The attorneys are entitled to make closing statements to the jury, commenting upon the exhibits and testimony which the jurors have seen and heard. These closing arguments are made in inverse order of the opening statements. Thus, the attorney for the plaintiff, who has the burden of proof, usually opens first and is the last to give a closing statement. Should an attorney comment improperly on the evidence, the lawyer for the other party may object; if the objection is sustained, the judge will instruct the jury to disregard the improper remarks.

When the attorneys have finished their statements, the judge charges the jury concerning the applicable law. In giving these instructions, the judge outlines the issues the jury should consider and defines any legal terms, as appropriate. The jurors are told of the possible verdicts that can be returned, depending on the factual findings made. They are advised that they are the sole judges of the facts and the credibility of the witnesses, and that their verdict must be based upon a preponderance of the credible evidence.

After the judge has completed his charge, the jury is then taken to the jury room to deliberate. Court officers or attendants will wait outside the jury room to ensure that no one attempts to tamper with the jury. During the course of its deliberations, the jury may request that portions of the testimony or the judge's charge be reread to refresh its collective memory. In such instances, the jury will be returned to the courtroom, with counsel for the parties present.

The jury's verdict need not be unanimous in civil cases, since agreement by five of the six jurors is all that is required. If five of the jurors cannot agree after deliberating for as long as the judge deems reasonable, he will then discharge the jury and direct that a new trial be held before another jury.

CRIMINAL CASES

The trial of a criminal case follows the same general pattern as a civil case, with certain exceptions.

As noted earlier, in felony cases, a defendant is entitled to trial before a jury of 12 persons; a jury of 6 is prescribed for misdemeanor cases. A defendant may waive trial by jury and be tried before a judge only, except on a charge of first-degree murder.

If the defendant elects a jury trial, the prospective jurors are questioned on *voir dire* similar to the procedure employed in civil cases. Potential jurors may be challenged for cause, if warranted, and each side may exercise peremptory challenges without giving any reason. The number of peremptory challenges granted to each side is fixed by statute and varies according to the seriousness of the crime charged.

When the jury, including alternates, has been selected, the jurors are sworn and the judge then gives them preliminary instructions concerning their basic functions, duties and conduct. These include admonitions not to read or listen to news accounts of the trial, to visit the scene of the alleged offense or to discuss the case with outsiders or fellow jurors.

After the jurors receive their preliminary instructions, the prosecution must deliver an opening address to the jury. In the opening, the prosecutor generally will outline the charges and the evidence that will be produced to sustain the case. The defendant's attorney is then entitled to make an opening statement. However, since the defendant is cloaked with the presumption of innocence until proven guilty, he need not make any statements or even present evidence in his defense.

Upon conclusion of the opening statements, the prosecution presents its proof through the testimony of witnesses and the introduction of exhibits. The process of examination and cross-examination, with the right of opposing counsel to object to improper questions, is the same as that for civil trials.

After the prosecutor has completed his case, the court will entertain motions outside the presence of the jury. The defense attorney usually will make a motion to dismiss at this point. If the prosecution has not established a case and the motion is granted, then the trial will be over and the charge dismissed. If the dismissal motion is denied, the accused will then be allowed to present evidence in his own defense.

The defendant does not need to take the stand or offer any evidence in his own defense. As previously mentioned, he is cloaked with the presumption of innocence; the burden rests with the state to prove him guilty. The defendant also is constitutionally protected against self-incrimination and cannot be required to testify against himself.

When the testimony for both sides has been concluded, the defense may renew its dismissal motion or make any other motions that may be appropriate. If a dismissal motion is sustained at this point, the trial will be over; if not, then the case will be submitted to the jury.

As in a civil trial, both sides may deliver a summation to the

jury. The defense attorney makes his argument first, and the prosecutor, who has the burden of proof, then gives his closing statement. As in a civil case, the attorneys will summarize the evidence, comment upon the testimony and draw whatever inferences may be proper from the proof presented. These closings are not evidence but only the arguments of the lawyers for their respective parties, and the jury is instructed accordingly by the judge.

After the summations, the judge charges the jury concerning applicable legal principles, including the defendant's presumption of innocence and the burden of proof. The judge explains the application of the law to the facts of the case, and specifies the offenses and possible verdicts the jury is to consider.

The jury then retires to deliberate. Guilt must be established beyond a reasonable doubt, and the verdict of all the jurors must be unanimous. If necessary, the jury may return to the courtroom to have portions of the testimony or charge reread.

If the jury fails to reach a verdict after deliberating for an extensive period of time, the judge will discharge the jury, and the defendant may be retried on the charge before a different jury.

If a not-guilty verdict is returned, the defendant is set free. If he is found guilty, then the judge will set a date for sentencing. The range of possible sentences is fixed by statute and depends upon the seriousness of the crime.

APPEALS

The parties to a civil case may appeal based on errors committed at trial. In a criminal case, a defendant may appeal the conviction, but the prosecution may not appeal a not-guilty verdict because the principle of constitutional double jeopardy bars a defendant from being tried for the same offense after an acquittal. Generally, the basis for an appeal rests on possible errors of law or procedure during trial, including prejudicial statements made by opposing counsel.

The appellate process is governed by statute and rules established by the appellate courts, including the fixing of time limits for the filing of papers. The party appealing is called the appellant, and the other party is designated the respondent.

So that the appellate court will have full knowledge of the case and the claimed errors, the parties must submit a record on appeal to the court. This record consists of a transcript of the testimony, plus other pertinent papers which were part of the proceedings in the lower court, such as an indictment in a criminal case or the pleadings in a civil case.

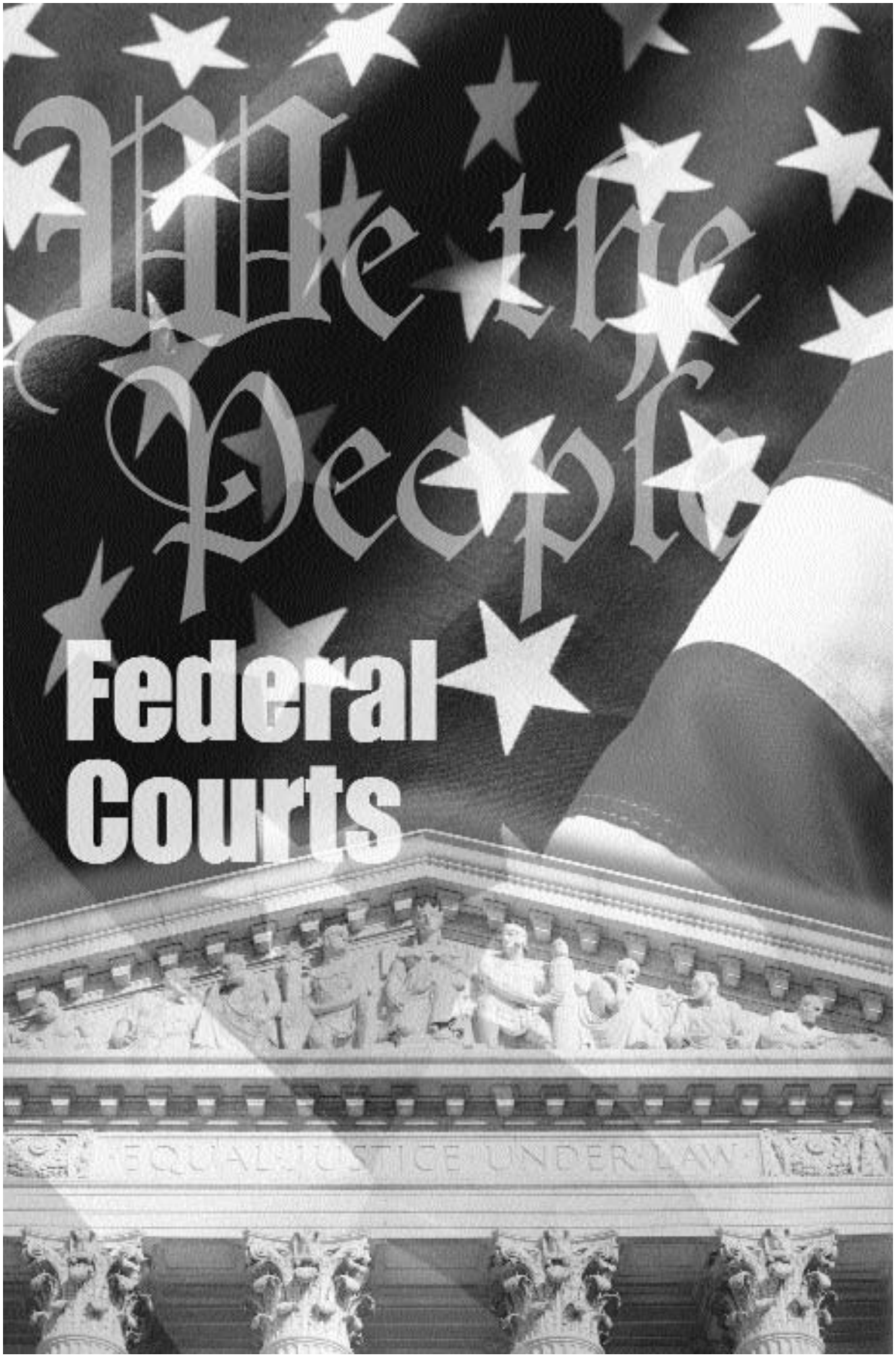
The attorneys for the appellant and respondent then prepare and submit briefs in support of their respective positions. The appellant's brief will describe the errors upon which he is seeking reversal of the lower court's determination, citing relevant statutes or prior similar cases, known as precedents, in support of his argument. The respondent will submit a brief similar in form,

outlining the legal authorities favorable to his position.

In some instances, the parties will submit the case to the appellate court for a decision based upon the record and briefs that have been filed. On other occasions, they will also argue the case orally before the appellate court, especially if the issues are novel or complex.

The appellate court will then consider the case in light of the applicable law. If no errors are found or if the errors claimed are insubstantial or harmless, the appellate court will affirm the decision of the lower court. If prejudicial error is found, the appellate court will reverse the lower court decision and correct the error or remand the case to the lower court for appropriate action consistent with the opinion of the appellate court, including retrial of the case where warranted.

Appeals are not limited to challenging the outcome of a trial. Errors of law committed in other situations may also be appealed. For example, a defendant in a criminal case may appeal an illegal or excessive sentence imposed after a guilty plea, which eliminated the need for a trial.


We the People
Federal Courts
EQUAL JUSTICE UNDER LAW

Federal Courts

JUDICIAL BRANCH

The United States Constitution assures the independence of the judicial branch and its equality with the legislative and executive branches. The independence of the United States courts is provided for in three ways:

First, federal courts can be called on to exercise only judicial powers and to perform only judicial work. Judicial power and judicial work essentially involve the application and interpretation of the law in decisions of real controversies.

Second, federal judges "hold their [o]ffices during good [b]ehaviour" —that is, as long as they desire to be judges and perform their work. Thus, they can be removed from office only by impeachment.

Third, the compensation of federal judges "shall not be diminished during their [c]ontinuance in [o]ffice." Neither the President nor Congress can reduce the salary of a federal judge.

For further discussion on the importance of an independent judiciary, see the section entitled, "Independence of the Judiciary."

STATE AND FEDERAL COURT SYSTEMS

The United States has two judicial systems: (1) state and local courts established in each state under state law, and (2) federal courts established by the United States Constitution and the United States Congress.

The state courts have general jurisdiction to decide almost every type of case, subject to the limitations of state law and excluding certain matters such as patent and copyright laws where the federal courts have exclusive jurisdiction.

The United States courts, on the other hand, have jurisdiction to decide only those cases in which the Constitution gives them authority. They handle approximately 10 per cent of the nation's judicial business and are located principally in the larger cities.

FEDERAL COURT JURISDICTION

Federal courts are authorized to decide cases in which the United States government or one of its officers either is suing or is being sued by another party, as well as cases where state courts might be suspected of partiality or where state court jurisdiction is inappropriate. Thus, cases relating to controversies between the governments and/or citizens of two or more states or between " Citizens of the same State claiming Lands under Grants of different States" may be brought in federal court. The United States courts also have jurisdiction over cases involving this country's relations with other nations and cases involving their representatives or their citizens. The United States courts also handle a variety of civil and criminal cases under laws enacted by Congress.

The Constitution declares which cases may be decided in the United States courts. Congress can and has determined that some of these cases also may be tried in state courts and that others may be tried only in the federal courts. Thus, Congress has provided that, with some exceptions, cases arising under the Constitution or laws of the United States or between citizens of different states may be tried in the United States courts only if the amount in controversy exceeds $75,000 and, even then, may be tried in *either* state or federal court.

HIERARCHY UNITED STATES COURT SYSTEM

The United States court system may be likened to a pyramid. At the top of the pyramid stands the Supreme Court of the United States, the highest court in the land. On the next level stand the United States Courts of Appeals, of which there are 13. On the next level the 94 United States District Courts including those for the District of Columbia and Puerto Rico and the district courts in Guam, the Northern Mariana Islands and the Virgin Islands.

The United States Court of Federal Claims, the United States Court of International Trade, the United States Tax Court, the United States Court of Veterans Appeals and other specialized courts, as well as certain administrative agencies that may be included here because their decisions may be directly reviewed in the United States Courts of Appeals, are also part of the federal system for resolution of controversies and disputes. There are now over 1,600 federal judgeships.

A person involved in a suit in a United States court may thus proceed through three levels of decision. The case will be heard and decided initially by one of the courts or agencies on the lower level. If either party is dissatisfied with the decision, it may request that a Court of Appeals review the decision. Then, if either party is still dissatisfied, that party can seek review by the Supreme Court of the United States. The Supreme Court, however, usually only hears cases that involve matters of great national importance or disagreements between the Courts of Appeals; therefore, a party is not guaranteed that the Supreme Court will fully review the matter.

The Supreme Court

The Supreme Court of the United States consists of nine justices, appointed for life by the President with the advice and consent of the United States Senate. One justice is designated the Chief Justice.

The court meets on the first Monday of October each year. It continues in session, usually until June, and receives and disposes of more than 6,500 cases each year.

Most of these cases are disposed of by the brief decision that the subject matter is either not proper or not of sufficient importance to warrant full court review. Each year, however, about 100 cases of real significance and interest are argued before the Supreme Court. The Supreme

Court then issues about 80 full, published decisions.

Courts Of Appeals

The intermediate appellate courts in the United States judicial system are the 12 circuit regional courts of appeals. Each circuit includes three or more states, except the District of Columbia Circuit. A thirteenth court of appeals (the United States Court of Appeals for the Federal Circuit) has nationwide jurisdiction which, in addition to encompassing certain specifically-described appeals, (e.g., appeals in international trade cases) includes the authority to decide appeals in patent cases, appeals from the United States Court of Federal Claims and certain appeals from the United States Court of Veterans Appeals.

Each court consists of between 6 and 28 judges, depending on the amount of work in the circuit. Panels of judges of the court sit to hear arguments of appeals.

The 12 regional United States Courts of Appeals currently receive about 52,000 cases every year, and the Court of Appeals for the Federal Circuit receives about 1,500. A disappointed litigant in a district court usually has an appeal as of right to a court of appeals. In addition to those appeals, the regional courts of appeals also review determinations by the United States Tax Court and various federal administrative agencies.

The following chart shows the geographic composition, number of authorized judges, and location of the clerk's office in each circuit.

Courts of Appeals	Number of Authorized Judgeships	Location and Postal Address
District of Columbia		
Circuit (District of Columbia)	12	Washington, DC 20001
1st Circuit (Maine, Massachusetts, New Hampshire, Rhode Island, and Puerto Rico)	6	Boston, MA 02109
2nd Circuit (Connecticut, New York and Vermont)	13	New York, NY 10007
3rd Circuit (Delaware, New Jersey, Pennsylvania and the Virgin Islands)	14	Philadelphia, PA 19107
4th Circuit (Maryland, North Carolina, South Carolina, Virginia and West Virginia)	15	Richmond, VA 23219
5th Circuit (Louisiana, Mississippi, Texas and the Canal Zone)	17	New Orleans, LA 70130
6th Circuit (Kentucky, Michigan, Ohio and Tennessee)	16	Cincinnati, OH 45202
7th Circuit (Illinois, Indiana and Wisconsin)	11	Chicago, IL 60604
8th Circuit (Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota and South Dakota)	11	St. Louis, MO 63101
9th Circuit (Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Washington and Guam)	28	San Francisco, CA 94101
10th Circuit (Colorado, Kansas, New Mexico, Oklahoma, Utah and Wyoming)	12	Denver, CO 80202
11th Circuit (Alabama, Florida and Georgia)	12	Atlanta, GA 3030
Federal Circuit (all Federal districts)	12	Washington, DC 20439

District Courts

Federal cases are initially tried and decided in the district courts, of which there are 94 throughout the United States. Each state has at least one court, but many states have two or three districts. New York, California and Texas have four districts each. A district itself may be further divided and may have several places where the court hears cases.

The four federal judicial districts in New York are known as the Northern, Southern, Eastern and Western Districts of New York.

The Northern District comprises the counties of Albany, Broome, Cayuga, Chenango, Clinton, Columbia, Cortland, Delaware, Essex, Franklin, Fulton, Greene, Hamilton, Herkimer, Jefferson, Lewis, Madison, Montgomery, Oneida, Onondaga, Oswego, Otsego, Rensselaer, Saint Lawrence, Saratoga, Schenectady, Schoharie, Tioga, Tompkins, Ulster, Warren and Washington. Cases in this district are held at the Albany, Auburn, Binghamton, Malone, Syracuse, Utica and Watertown courthouses.

The Southern District comprises the counties of Bronx, Dutchess, New York, Orange, Putnam, Rockland, Sullivan and Westchester and, concurrently with the Eastern District, the waters within the Eastern District. Cases in this district are heard at the New York and White Plains courthouses.

The Eastern District comprises the counties of Kings, Nassau, Queens, Richmond and Suffolk and, concurrently with the Southern District, the waters within Bronx and New York counties. Cases in this district are heard at the Brooklyn, Hauppauge and Hempstead (including the village of Uniondale) courthouses.

The Western District comprises the counties of Allegany, Cattaraugus, Chautauqua, Chemung, Erie, Genessee, Livingston, Monroe, Niagara, Ontario, Orleans, Schuyler, Seneca, Steuben, Wayne, Wyoming and Yates. Cases in this District are heard at the Buffalo, Canandaigua, Elmira, Jamestown and Rochester courthouses.

Each district has from 1 to 28 judges, depending on the volume of cases. There is a United States Attorney's Office in each district. Further, each district court has a plan under which lawyers are provided for poor defendants in criminal cases. To assure adequate service, full-time public defenders are appointed in those courts where criminal cases are numerous.

There are 649 district judgeships authorized by law. In districts having two or more judges, the judge senior in service, who has not reached 65 years of age, is the Chief Judge. The district courts currently receive about 230,500 civil cases and 48,000 criminal cases every year.

Twelve-person juries are used in criminal cases, and a minimum of six jurors is required for a jury in civil cases where juries are utilized. In both criminal and civil cases, the jury verdict must be unanimous. Jury selection in district courts is generally conducted

by the judge rather than by the attorneys, contrary to the practice in state courts.

Some district courts—namely, those in Guam, the Northern Mariana Islands and the Virgin Islands—have jurisdiction over local cases as well as those arising under federal law. These courts thus differ in several respects from the other 92 United States District Courts. In these places, the federal government does not share its judicial power as it does with the state governments in the several states, with the local government of the District of Columbia and with the Commonwealth Government in Puerto Rico. Therefore, these courts are not limited to the types of cases defined in the U.S. Constitution as part of the federal judicial power but , rather, decide all types of cases, as do the state courts.

In addition, the judges in Guam, the Northern Mariana Islands and the Virgin Islands are not appointed for life but for terms of ten years, and they are not protected against salary reductions during their terms of office. These courts also may be given duties that are not strictly judicial in nature.

Bankruptcy matters, which are within the jurisdiction of the district courts, are handled by bankruptcy judges, who do not themselves constitute a separate court established by Congress. Bankruptcy judges are appointed by the court of appeals for the circuit in which they are located for 14-year terms. Bankruptcy judges' rulings are appealable to the district court and to the court of appeals. The statute allows the court of appeals to establish a bankruptcy appellate panel of three bankruptcy judges to hear initial appeals of bankruptcy cases. There are about 325 bankruptcy judges in the United States. As of publication, the Second Circuit, which encompasses New York State, has not established such a panel.

United States Court of Federal Claims

The trial court for claims against the United States is the United States Court of Federal Claims. It entertains suits by which parties make demands against the federal government arising out of such concerns as government employment or contracts or awards of government contracts.

The 16 judges on the court are appointed by the President with the advice and consent of the Senate for 15-year terms and sit individually to preside over cases tried in the court.

United States Court of International Trade

The United States Court of International Trade has national jurisdiction over all civil actions involving imports and over any statute, constitutional provision or treaty that "substantially" involves international trade. It determines controversies concerning the classification and valuation of imported merchandise.

The nine authorized judges on the court are appointed by the President with the advice and

consent of the Senate for lifetime terms. The court sits in New York City and from time to time in other major port cities.

United States Tax Court

Although the United States Tax Court, a special court established by Congress, is a court in every sense of the term. It is not, strictly speaking, a part of the federal judicial system.

The Tax Court decides controversies between taxpayers and the Internal Revenue Service involving the underpayment of federal income, gift and estate taxes. Its decisions are appealable to the regional United States Court of Appeals and also are subject to further review by the U.S. Supreme Court.

The court is composed of 19 judges who are appointed for terms of 15 years. The Chief Judge, who is responsible for the overall administration of the court, is elected by the judges from their membership to serve a term of two years. Other judicial officers of the court are retired judges who may be recalled by the Chief Judge. The court is organized into divisions, each of which is headed by a judge.

United States Court of Veterans Appeals

The United States Court of Veterans Appeals is another special court established by Congress. This court has exclusive jurisdiction to review decisions of the Board of Veterans Appeals. There are seven judges on the court, who are appointed for terms of 15 years.

Other Specialized Courts

Congress has also authorized the creation of a number of other specialized courts. These courts include the United States Court of Appeals for the Armed Forces, the Surveillance Court, the Special Division, and the Alien Terrorist Removal Court.

The Court of Appeals for the Armed Forces is a nonconstitutional court which hears appeals from the four lower military criminal courts. This court's decisions are subject to further review by the United States Supreme Court.

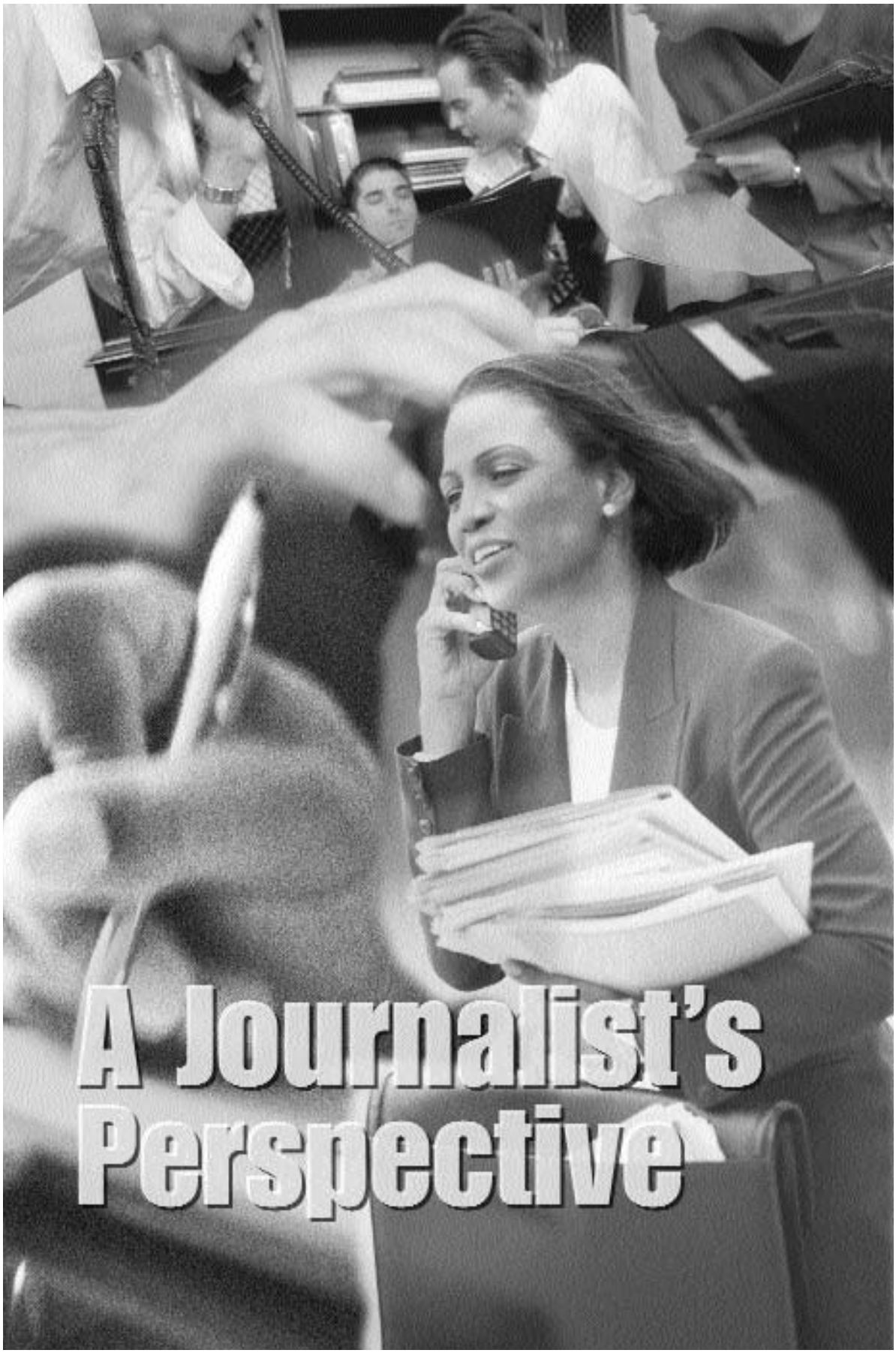
The Surveillance Court is a part-time court staffed by district or circuit court judges. Seven of the judges sit on a court that has the authority to grant orders approving electronic surveillance anywhere in the United States. Three of the judges sit on a panel that reviews the decisions of the other seven.

The Special Division is a branch of the Court of Appeals for the District of Columbia and is composed of three judges from the Court of Appeals or justices of the Supreme Court. The Special Division considers and acts upon applications by the Attorney General for appointment of an independent counsel to investigate and prosecute high-ranking government officials for violation of federal criminal statutes.

The Alien Terrorist Removal Court sits in Washington, D.C., and is designed to expedite the deportation of aliens involved in terrorist activities. The Attorney General may appeal the court's denial of an application for deportation to the Court of Appeals for

the District of Columbia.

- Statistical information received from the Federal Judicial Center and the Administrative Office of the United States Courts.


A Journalist's
Perspective

News Coverage of the Courts: A Journalist's Perspective

"The basis of our government being the opinion of the people, the very first object should be to keep that right; and were it left to me to decide whether we should have a government without newspapers, or newspapers without a government, I should not hesitate a moment to prefer the latter."
-Thomas Jefferson

"The man who never looks into a newspaper is better informed than he who reads them, inasmuch as he who knows nothing is nearer the truth than he whose mind is filled with falsehoods and errors."
-Thomas Jefferson

Thomas Jefferson's seemingly conflicting evaluations of the news media of his day accurately reflect the friction that has always existed between a free news media and the institutions of a free society. With those institutions and the press often operating at what appear to be cross-purposes, they nonetheless keep one another honest, and the public generally benefits. The Founding Fathers understood the essential value of this friction and built it into the United States Constitution:

"Congress shall make no law . . . abridging the freedom of speech, or of the press."
-First Amendment

"No person shall be . . . deprived of life, liberty, or property, without due process of law."
-Fifth Amendment

They intentionally created a situation that encourages a free-wheeling news media and a cautious court structure, one outside government and one inside, each to be the check and balance of the other.

Fundamentally, the focus and object of the media and the courts are different. Simply stated, the news media's purpose is to obtain and relay information. Courts exist to resolve conflicts and secure justice. Thus, their handling of a given event will be distinct.

For example, the media and law enforcement will work as hard and as quickly as each can to learn what there is to know about a given criminal case. A court will move through the information gathered methodically, trying to ensure nothing is overlooked before saying anything in the form of a verdict or ruling. Although this process can sometimes be arduous and is definitely

time-consuming, the trier of fact, whether judge or jury, has had the advantage of viewing the entire episode as a whole.

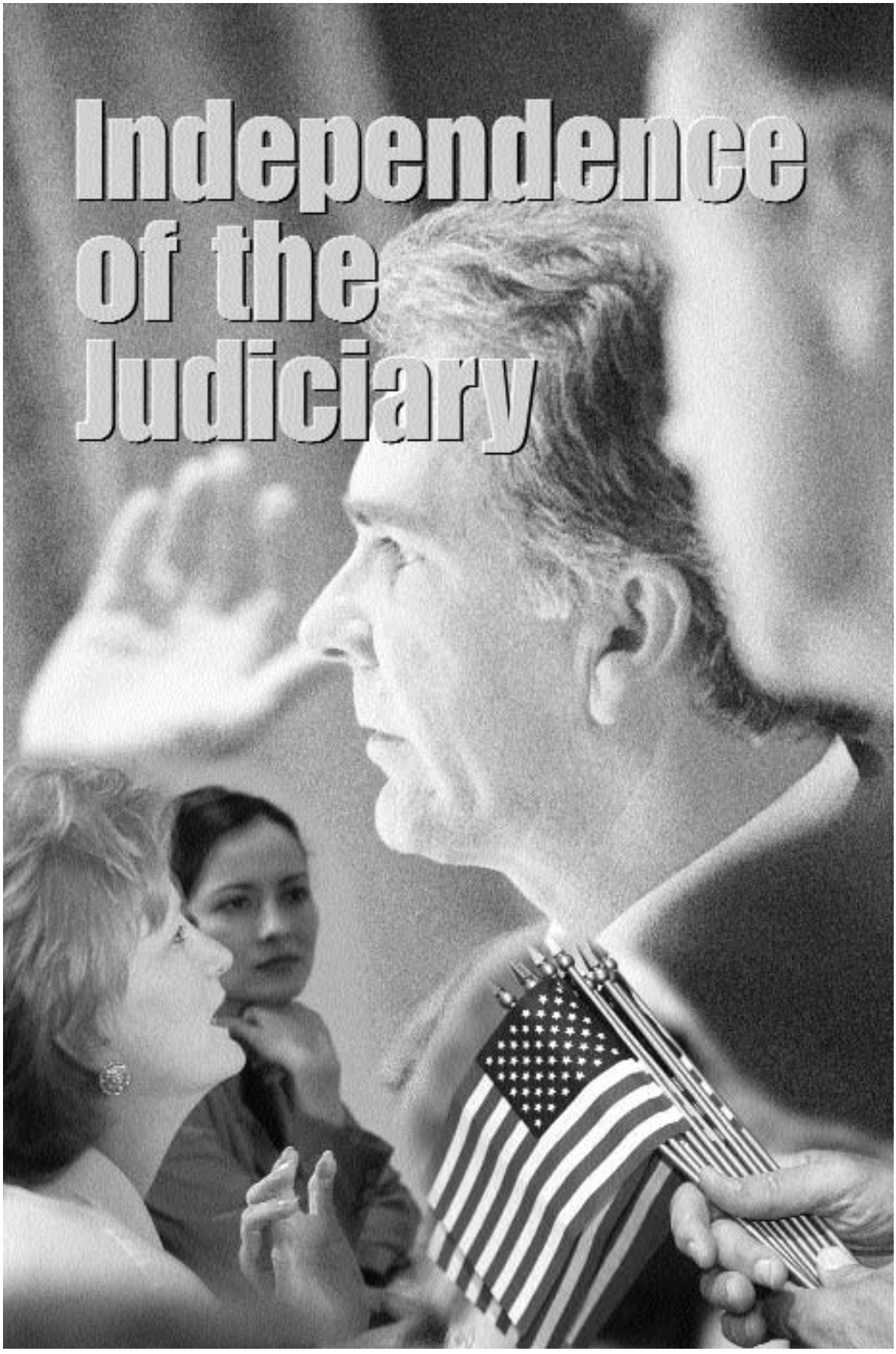
By contrast, the media will publish or broadcast what it learns as soon as possible. The advantage is that the public is kept up-to-date on a case as it develops. The disadvantage is that the public learns about it piecemeal, making it difficult to keep context in mind.

A free-wheeling media is by nature diverse. Newspapers, magazines, radio stations and television outlets are constructed differently and have different strengths, yet they all compete with one another for consumer attention. Some focus primarily on the sensational; some cover a wide range of legal matters. Some wait longer to publish or broadcast their stories in an effort to be more complete; some deal only in surface issues. Some specialize in speed and others in detail. Newspapers and magazines often have larger staffs and can expend more time and effort to gather information. By its nature, television tends to cover stories for which it can present pictures. Likewise, radio favors sound. Radio and television can and do broadcast stories often during the day, allowing them to frequently add or change material as new information becomes available. Newspapers and magazines are tied to the deadline necessitated by the printing and distribution process.

Consumers are presented with a wide choice of information sources from which they can select according to their preferences. Most people, in fact, draw their information from multiple sources, aware they are unlikely to get everything they want from just one. Many will rely on a radio or television broadcast for the basics of a story, and on a newspaper or magazine for greater detail and analysis.

Because the media publish and broadcast information as soon as they learn it, and given the smorgasbord of media from which to choose, and consumer use of more than one media outlet with perhaps differing perspectives, together with whatever biases consumers might have to begin with, people can sometimes draw conclusions about a particular case that are different from those drawn by a court.

Still, the advantage of this arrangement—the friction between the courts and media—is an essential element ensuring our freedom. This dual process, one official and the other unofficial, creates a great deal of pressure on both the media and the judicial system to minimize mistakes and maximize attention to our collective and individual rights.


Independence
of the
Judiciary

Independence of the Judiciary

The importance of an independent judiciary has been recognized since the earliest days of the republic. In 1788, in the *Federalist No. 78*, Alexander Hamilton, writing to the citizens of New York, said, "The complete independence of the courts of justice is peculiarly essential in a limited constitution." This section briefly examines the role of the judicial branch as envisioned by our nation's founders and the mechanisms they inserted in the United States Constitution that protect as well as limit the independence of that branch. It also looks at the provisions affecting judicial independence found in the New York State Constitution.

In the *Federalist*, Hamilton described the courts as "the bulwarks of a limited constitution against legislative encroachment," serving as an intermediate body between the people and the legislature, whose function is to keep the legislature within the limits of its authority under the Constitution. As such, in carrying out their judicial function, the courts have the power and the duty to judge whether laws passed by the legislature are irreconcilable with the fundamental law of the Constitution and, if so, to declare the acts of the legislature void. The courts also have the duty to exercise judicial discretion in reconciling between seemingly contradictory statutes or, where doing so is impracticable, to give effect to one to the exclusion of the other.

Hamilton also saw the courts as guardians and protectors of the Constitution and constitutional processes. While conceding the fundamental right of the people in a republican form of government to alter or abolish the established Constitution, Hamilton was concerned that the legislature, the representatives of the people, reacting to a "momentary inclination" of the majority that is incompatible with the Constitution, would feel justified in enacting a law that violates the Constitution rather than undertake the arduous amendment process prescribed therein. He noted that it would require an "uncommon portion of fortitude" in judges to do their duty as guardians of the Constitution where the "legislative invasions of it had been instigated by the major voice of the people."

Finally, Hamilton believed the courts would be important as protectors of individuals and the private rights of particular classes of citizens from unjust or partial laws that resulted from the "occasional ill humors in society." Firm judges would be of "vast importance" in mitigating the negative effects of such laws, which in Hamilton's view, would serve as a

check on the legislature insofar as the Legislature might more carefully consider whether to expend its efforts on passing laws whose effects likely would be limited by the judiciary.

The Founding Fathers of our nation viewed the judiciary as the weakest of the three branches of government and the one least dangerous to the political rights of the Constitution. The executive branch has appointment power and holds the power of the government's enforcement mechanisms, while the legislative branch has both the power of the purse and the power to make laws governing the duties and rights of every citizen. The judicial branch, however, lacks inherent enforcement power or influence over the purse. It has only the power of its judgments. In fact, ultimately, it must depend on the executive branch to enforce those judgements. The founders believed that the judicial branch had to be protected from the powers of the executive and legislative branches in order to remain truly distinct for, as Hamilton wrote, "there is no liberty, if the power of judging not be separated from the legislative and executive powers."

Hamilton believed that the role envisioned for the judiciary required the qualities of judicial independence, integrity and moderation and wrote that "[c]onsiderate men of every description ought to prize whatever will tend to beget or fortify" these qualities in the courts. To afford a measure of protection for the judiciary and to guarantee the indispensable judicial qualities of independence, integrity and moderation, the founders provided in Article III of the Constitution that justices of the Supreme Court and judges of the inferior federal courts "shall hold their offices during good behavior," and their compensation "shall not be diminished during their continuance in office." Under the federal constitution, judges appointed pursuant to Article III may be removed from office only upon impeachment by the House of Representatives and conviction by a two-thirds vote of the Senate for "treason, bribery or other high crimes and misdemeanors." Life tenure and protection from diminution in pay are the bastions of judicial independence for the judges of the Supreme Court and the inferior courts of the United States.

Hamilton argued that life tenure—the standard of good behavior for continuance of judges in office—was one of the most valuable improvements in the practice of government. In his words, "it is the best expedient which can be devised in any government, to secure a steady, upright and impartial administration of the laws." Because of its inherent weakness, relative to the other branches, the judiciary is in constant danger of being overpowered, influenced or intimidated by the other branches. Permanency in office is an indispensable element to protect the independence of the judiciary. Judges dependent on the executive or legislative branch for periodic reappointment to their office

could be subjected to strong pressure to conform their judgments and opinions to the will of those branches and, without life or very lengthy tenure, might succumb to public pressure or dissatisfaction with unpopular decisions. For individual judges, life tenure means that the judge can take the "long view"—he can be free from political and other pressures and resist the temptation to make popular or politically correct decisions so that cases may be decided in a wholly impartial manner. As Hamilton wrote, "[n]othing can contribute so much to [judicial] firmness and independence, as permanency in office."

Although federal judges appointed pursuant to Article III of the Constitution may be removed from office only upon impeachment for high crimes and misdemeanors, federal law does provide for retirement or the replacement of judges who are unable to discharge efficiently all the duties of their office because of permanent mental or physical disability. Depending on the number of years they have served, judges may retire on full or half salary based on a permanent disability certified to the President. In the case of disability, if the judicial council of the affected circuit or, in the case of the Chief Judge of the Court of International Trade, the Chief Justice of the United States certifies to the President and the President finds that the judge is unable to efficiently discharge the duties of office by reason of permanent mental or physical disability, the President may appoint an additional judge if he finds that such appointment is necessary for the efficient dispatch of judicial business.

The same law provides a mechanism for hearing complaints against federal judges regarding conduct prejudicial to the effective and expeditious administration of the courts, disciplining them if appropriate and, if warranted, referring their case to the House of Representatives for impeachment. Complaints not dismissed by the Chief Judge of the circuit under the statute are referred to a committee of judges for investigation, which files a report with the judicial council for the circuit specifying the committee's findings and recommendations for necessary and appropriate action by the judicial council. The judicial council's actions can include dismissal of the complaint, private or public reprimand or censure, and ordering that no further cases be assigned to the judge. The council may not order removal from office of an Article III judge. If the judicial council finds that the judge's conduct amounts to an impeachable offense, it refers the matter to the Judicial Conference of the United States, which can take such action as it deems appropriate, including referral to the House of Representatives. In cases of judges convicted of felonies who have exhausted their direct reviews, the judicial council may refer the matter directly to the House of Representatives. The statute affords the accused judge numerous provisions for due process and appeal.

Some commentators have criticized the statutory provisions, particularly the provision ordering that no cases be assigned to a judge. They have argued that such a measure effectively removes the judge's docket, which essentially constitutes constructive removal from office. These commentators see such provisions as a danger to judicial independence, an abdication of congressional responsibility for impeachment and a violation of separation of powers. The statute has survived judicial scrutiny, however, its defenders assert that the statute creates a procedure for the judiciary to exercise its responsibilities for the orderly administration of the judicial branch.

Although the New York State Constitution does not grant life tenure for the judges and justices of the courts of the unified court system, it generally provides for terms in office that exceed the terms of the state's elected executive officers and members of the legislature. Judges of the Court of Appeals, who are appointed by the governor, and justices of the Supreme Court, who are elected, serve 14-year terms. Justices of the Supreme Court who are appointed to the Appellate Division sit for 5-year terms in the Appellate Division or, if their remaining term as justice is less then 5 years, for the remainder of their term. All other judges are appointed or elected for terms ranging from 4 to 14 years, depending on the court and the court's location. In addition, judges and justices of the unified court system must retire at age 70. However, judges of the Court of Appeals and justices of the Supreme Court who have reached the age of 70 may be certified for additional service as justices of the Supreme Court for 2-year terms up to age 76.

In New York, the legislature may remove judges of the Court of Appeals and justices of the Supreme Court only for cause pursuant to a concurrent resolution approved by a vote of two-thirds of the members of each house of the legislature. Judges of the other courts may be removed by the legislature only for cause on recommendation by the Governor and a vote of two-thirds of the elected members of the state senate.

Article 6, section 22 of the New York Constitution establishes a Commission on Judicial Conduct, which has the power to receive, initiate and investigate complaints with respect to the conduct, qualifications and fitness to perform official duties of any judge or justice of the unified court system. The commission, whose 11 members are appointed by the Governor, the officers of the legislature and the Chief Judge of the Court of Appeals, may determine that a judge or justice be admonished, censured or removed from office for cause, which includes, but is not limited to misconduct in office, persistent failure to perform his duties, habitual intemperance and conduct on or off the bench that is prejudicial to the administration of justice. The commission may also determine that a judge or jus-

tice should be retired for a mental or physical disability that impedes him from properly performing his judicial duties. The judge or justice may accept the commission's findings or seek review by the Court of Appeals, which may deal with the matter as it sees fit.

Interestingly, in *Federalist 79*, Hamilton addressed the removal of judges on account of inability or age. In his view, a provision to remove judges for mental incapacity would be subject to abuse for political purposes. Hamilton noted that New York, to avoid "vague and dangerous investigations," established a particular age (i.e., 60) "as the criterion of inability" and required judges reaching that age to retire. Noting that few disapproved of this provision, Hamilton thought that such requirements were inappropriate for judges. He opined that the "deliberating and comparative faculties" generally remained strong in the few people who lived beyond age 60, and he was unconcerned with what he called the "imaginary danger of a superannuated bench." Hamilton thought it unfair, in a republic where most were not affluent and pensions were not common, to dismiss from their stations on which they depended for subsistence those who had served the country long and usefully at a time in their lives when it was too late to resort to any other occupation for a livelihood.

As noted above, Article III of the federal Constitution provides that judges of the United States "shall at stated times receive for their services a compensation, which shall not be diminished during their continuance in office." Likewise, Article 6 of the New York State Constitution provides that the compensation of the judges and justices of the state courts "shall not be diminished" during the term of office for which the judge or justice was appointed or elected. Obviously, a judiciary whose salaries could be reduced at the whim of the legislative branch would become dependent on that branch. In explaining this constitutional provision, Hamilton stated, "In the general course of human nature, *a power over a man's subsistence amounts to a power over his will*." While preventing reduction of the salary paid to a judge, the article allows for, but does not require, increases in salary.

Notwithstanding that judicial independence is at the core of judicial authority and a worthy ideal, judges and the judicial branch nevertheless are not completely independent. In addition to the constraint of judicial conventions such as stare decisis, rules of judicial construction and appellate review, individual judges and the judicial branch are subject to some measure of influence from the political branches. On the federal level, judges are appointed by the President, a political officer, and confirmed by the Senate, a political body. In most instances, particularly when the President's party controls the Senate, judicial appointments are likely to be of individuals whose concepts of justice closely approximate those of the President.

Political influence is even more evident at the district court level where judges are usually considered for nomination by the President based largely on the recommendation of a senator or other statewide official of the President's party. Although more than one president has been unhappily surprised by the decisions and philosophy of a judicial appointee, the appointment power nonetheless serves as a political check on the judicial branch.

The influence of the political branches on the judiciary is stronger at the state level, where judges do not have life tenure and the justices of the statewide trial courts and intermediate appellate courts are elected. Judges who must regularly stand for election more likely will be subject to, or perceived to be subject to, pressure by or owe allegiance to partisan political leaders. The costs of financing a campaign for election to judicial office can create real or perceived obligations to those who offer the candidates critical financial support. The fact that judges in New York can be subjected to investigation and removal by the Commission on Judicial Conduct for reasons beyond the federal constitutional standard of high crimes and misdemeanors could also inhibit judicial independence.

While judges under the Federal and New York Constitutions are protected from having their salaries reduced during their term in office, this protection is qualified, since nothing requires the legislature or the executive branch to support increases in judicial salaries. Thus, judicial salaries, protected from reduction in an absolute sense, are subject to inflationary pressure that, over time, can reduce their value in terms of the judges' purchasing power. By refusing to raise salaries, the political branches may be able to exert some influence over the judiciary. The political branches' control over the courts' budgets also affords those branches some measure of influence over the judiciary.

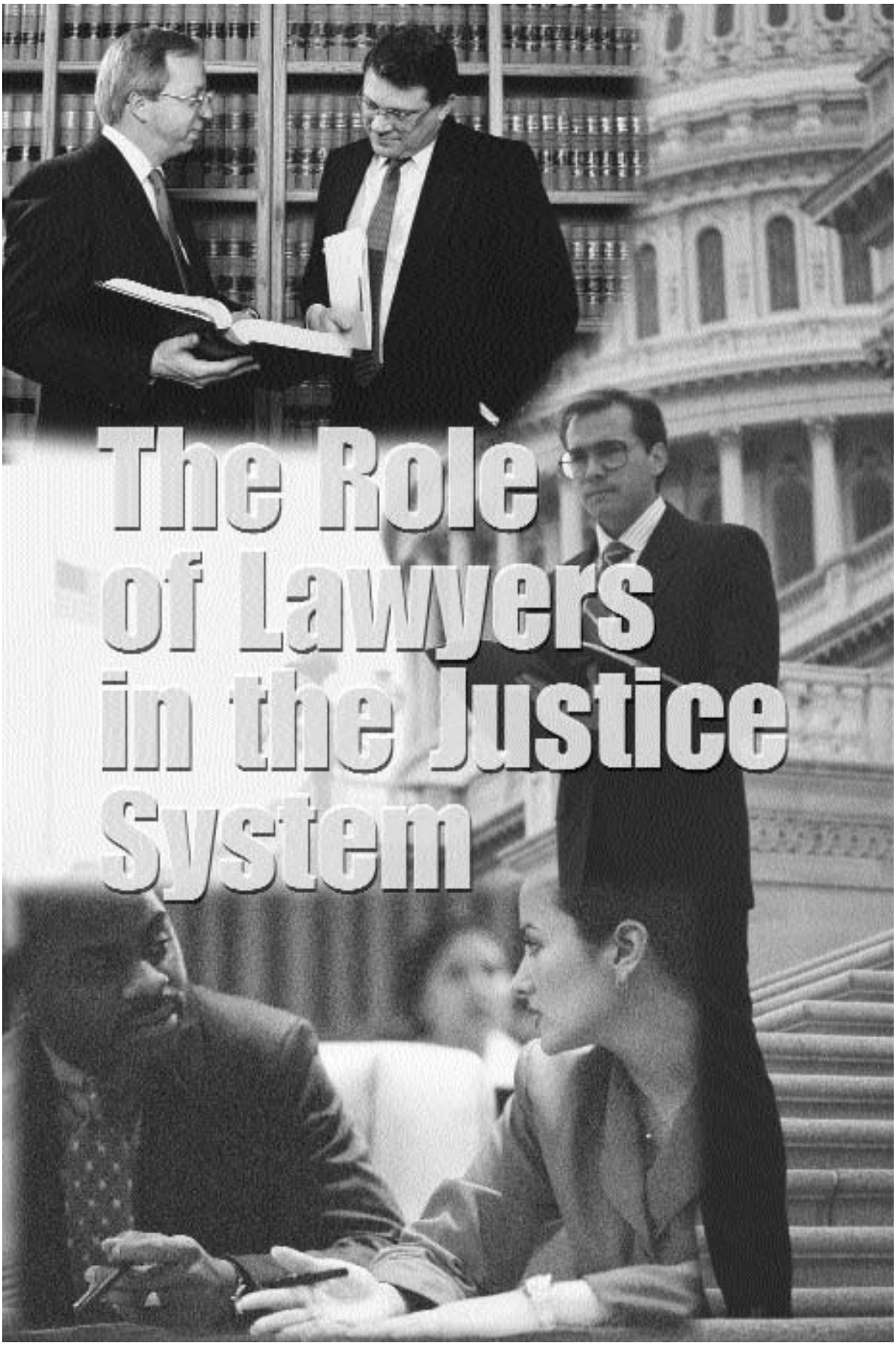
The political branches have other ways of expressing and even enforcing their views on the judiciary. If the political branches are dissatisfied with a particular decision, they may seek to overturn it legislatively, provided the decision is not constitutional in nature. On the federal level, the political branches may also seek to deprive the courts of jurisdiction if they are dissatisfied with particular decisions or precedents. The courts also must rely on the executive branch to enforce their decisions, and there have been instances where the executive branch has refused to adhere to decisions with which it disagrees in districts or circuits outside the jurisdiction of the court rendering the decision.

Threats to the judiciary's independence can emanate from within the constitutional system and from external sources. In recent years, there has been growing concern over the long-term effects of the latter. Potent external threats to judicial independence and the integrity of the courts have come from many sources:

prominent critics who dislike a particular decision or a judge's philosophy or special-interest groups interested in a variety of issues affected by court decisions. Some media outlets routinely feature attacks on the judiciary or institute their own accusations of malfeasance.

Criticism, in itself, is not a threat to judicial independence. Our system of government encourages and protects criticism of governmental action and actors based on the notion that conducting the business of the public can always be improved. However, when manifests as intimidation and fosters lack of respect for the institution, it saps the strength of the judicial system on which we rely for our freedoms. With this danger in mind, other branches of government, the press and all citizens would do well to uphold the authority of the courts and their judges rather than impair them for momentary personal or ideological gain.

Notwithstanding the paeans of Hamilton and others to the independence of the judiciary, the structure of our government, the system of checks and balances, imposes limits on that independence. These limits are appropriate in a democratic form of government. As noted by Professor Owen Fiss, Sterling Professor of Law at Yale University, writing on the limits of judicial independence in the University of Miami Inter-American Law Review (Fall 1993), a completely independent judiciary with the power to reverse the actions of the popularly elected political branches would be in a position to significantly interfere with the normal democratic processes and frustrate the will of the people.


The Role
of Lawyers
in the Justice
System

The Role Of Lawyers In The Justice System

An attorney performs varied roles in the justice system. A lawyer must independently counsel as well as zealously advocate on behalf of her client. However, a lawyer not only has a relationship with her client, but she must interact with the court, opposing counsel and other parties. These relationships are all regulated by law, as well as by the Code of Professional Responsibility ("CPR"), a code of ethical obligations and specific rules of conduct that govern attorney behavior in New York.

THE RIGHT TO COUNSEL

The United States Constitution and the New York State Constitution guarantee an individual's right to counsel in criminal proceedings and at various stages before the formal commencement of a criminal action by the government. If an individual is indigent, a court may appoint (1) an attorney to represent her from a panel of attorneys who have agreed to work at a special rate, (2) a public defender, or (3) a legal aid society.

The New York State Constitution guarantees the right to counsel in certain civil actions. For instance, in various proceedings in Family Court involving juveniles, custody, visitation, family offenses and other related matters, a court may appoint counsel to represent indigent individuals. As with criminal proceedings, certain organizations can provide counsel in civil proceedings if a party meets income requirements.

Many attorneys participate in pro bono legal programs established by local bar associations and legal services corporations, which have been encouraged by the New York State Bar Association and the American Bar Association. In all cases where an individual is not indigent, that person can privately retain counsel.

RETAINING COUNSEL

Attorneys advertise their services in the media as well as in directories. However, an attorney may not pay someone to solicit or aid in the procurement of legal services. Often a client retains a lawyer based on the recommendation of aperson who is familiar with the quality of the attorney's services.

Only a person admitted to practice law in the state of New York may appear in a New York court of record. Certain exceptions to the rule provide for the special practice of law by law students and recent graduates of law schools before admission to the bar. Lawyers not admitted in New York may appear by permission of a court in specific cases. However, generally it is a crime to

practice law in the state without being admitted.

The preferred practice when hiring a lawyer is to enter into a written retainer agreement with an attorney that sets forth, among other things, an agreed-upon legal fee or method for determining a fee, as well as the services to be provided. Because the client is paying the bill for the legal services, she is entitled to a reasonable expectation of what the cost might be to pursue a case.

In cases brought under the state Domestic Relations Law, including divorces and other actions in Family Court, a written retainer agreement is required. Some personal injury actions also mandate that a written retainer agreement be entered into and filed with the court.

Attorneys' fees are to be freely negotiated between the client and the lawyer. Non-refundable fees are improper. A client should pay only for legal services actually performed. Once retained in a matter pending before a court, a lawyer cannot be relieved from representing an individual without permission of the court or upon consent of the client.

Attorneys cannot set fee schedules binding between themselves, although lawyers who participate in prepaid legal service plans may agree to provide certain services at set fees. Fees can be based on an hourly rate for labor performed, or in the case of some personal injury and medical malpractice actions, on a contingency-fee basis. Other fee arrangements include flat fees and fees based on the various stages of litigation (e.g., grand jury, arraignment, plea, trial, appeal, etc.). Factors influencing what a client pays lawyers are the lawyer's experience, the type of work to be performed and the general market rate for comparable legal services in a particular area.

A contingency-fee agreement provides that the attorney's fee is paid as a percentage of money collected—the fee is contingent on a recovery. In medical, dental and podiatric malpractice actions, the percentage of the contingency fee is dictates by statute. While an attorney may advance the expenses of a lawsuit such as the cost of depositions, court filing fees, expert fees and related expenses, the attorney must seek reimbursement for those exposes from the client even if no recovery is obtained at trial or in a settlement.

If a client is indigent, an attorney may pay litigation expenses. If the client is not indigent, however, an attorney may not, under any circumstances, pay the costs and expenses of litigation.

In some circumstances, a prevailing litigant may recover attorneys' fees if the statute being relied upon so provides or the cause of action is based on a contract or legal instrument that permits the recovery of attorneys' fees. The successful litigant may also recover certain costs (e.g., filing fees, service-of-process fees) from the losing party as a matter of law.

CLIENT RIGHTS AND ATTORNEY RESPONSIBILITIES

The CPR defines the rights of clients and the obligations of

attorneys. By court rule, a *Statement of Client's Rights* (see page 73) must be posted in every law office. In any action brought for divorce, separation, custody, visitation, child support or maintenance, a client must be provided with a written statement of the client's rights and responsibilities upon retaining counsel.

The final decision regarding whether to settle a case, as well as the objectives to be pursued in a case, belong to the client. A client has the right to be present in court and to be kept informed of the status of the case on a regular basis by receiving copies of correspondence and documents. The attorney should also regularly apprise the client of the progress of the case, even if there is no correspondence, and be available to answer the client's inquiries. The lawyer should also try to explain to the client the legal theories being utilized and the implications of court proceedings.

At all times, the client is entitled to have the attorney's best efforts exerted on her behalf, although an attorney should not guarantee particular results. The outcome of a case depends upon a variety of factors, including how facts are presented at trial, a judge or jury's view of evidence and many other technical aspects of the legal system. A client should understand that litigating a case is not an exact science but involves skill and artistry on the part of practitioners.

An attorney must represent his client zealously within the bounds of the law and his obligations under the CPR. To do this properly, a lawyer is obligated to preserve the confidences and secrets of the client. A confidence refers to anything protected by the attorney-client privilege established under law. An attorney may not reveal a confidential communication received from a client.

An attorney also must not reveal a client's secrets. A secret refers to any other information that is gained in the professional relationship. For example, if an attorney learns information from a client while representing that client, and the client has asked that the information be kept secret or if disclosing the information would embarrass or likely be detrimental to the client, that information may not be revealed. For example, a client's bill balance with an attorney is a secret. An attorney may not freely reveal this information to anybody. Some attorneys consider the rules governing disclosure of secrets and confidences the most important rules an attorney is obligated to obey. They ensure the adequacy of representation which could not be achieved without the client being free to fully disclose all relevant information to his attorney.

An attorney may not accept employment if she does not feel capable of performing that work. She also may not accept employment if certain conflicts of interest would put her interests at variance with those of her client. These may include the likelihood that she would testify at trial or the possibility that she has a business interest with a party who is adverse, may become or may

appear to be adverse to the client's interests. For example, if an attorney is engaged in business with a party a potential client wants to sue, the attorney must advise the client of the relationship with that party and, perhaps, decline to represent the client in that matter. The general rule is that an attorney must avoid even the appearance of impropriety.

THE LAWYER AND THE COURT

A lawyer may not intentionally fail to seek the lawful objectives of her clients through reasonable, available, legal means. However, in representing clients zealously, an attorney owes obligations to both the court and opposing counsel.

An attorney cannot participate in unlawful conduct or assist a client in participating in unlawful conduct. Moreover, an attorney may not knowingly use perjured testimony or false evidence or otherwise counsel or assist a client in conduct that the lawyer knows is illegal or fraudulent. Difficulties arise when an attorney, in the course of representation, learns that her client has perpetrated a fraud upon a person or a court and the client refuses to acknowledge or is unable to acknowledge doing so. Such circumstances could warrant the attorney's withdrawal from the case.

An attorney may not advance a legal position to a court that is not supported by law or a reasonable reading of current precedent. The attorney may argue for a change of precedent, for that is how law develops, but if there is legal precedent contrary to the position held by a party, that precedent must be cited to the court. To do otherwise could work as a fraud upon the system. Although the client has the final say in determining the objectives of litigation, a lawyer may exercise her professional judgment about whether to assert a client's position depending on its legal and factual basis. Attorneys sign almost all pleadings and other related court documents. By so doing, they are attesting to the accuracy and the legitimacy of what they are submitting.

An attorney must be courteous to the court as well as to all parties during the course of litigation. Contrary to the popular image of an attorney pounding tables and yelling at judges and other attorneys, an attorney must maintain decorum in the courtroom. Failure to do so could subject the attorney to the sanctions of the court.

GOVERNMENT ATTORNEYS

Public prosecutors and other government lawyers have special obligations to the public and to the courts. A public prosecutor or other government lawyer may not institute or commence a criminal action if she knows or it is obvious that criminal charges against a defendant cannot be supported by probable cause. In addition, a public prosecutor or government lawyer must make timely disclosure of any evidence that might tend to negate the guilt of the accused or mitigate the charges against the defendant.

THE LAWYER AND OTHER LAWYERS AND PARTIES

Attorneys are obligated to be courteous and not to engage in personal attacks on other lawyers in the course of representing a client. This obligation includes the reasonable granting of adjournments to opposing counsel and the extensions of other courtesies, so long as the attorney's client is not prejudiced in the attorney's opinion.

A lawyer may not communicate with another party on the subject of the attorney's representation if the attorney knows that party is represented by another lawyer without obtaining the prior consent of the party's lawyer. A lawyer cannot represent more than a single party in litigation unless there are no actual or potential conflicts and the parties have agreed to the joint representation. For example, if two people are accused of robbing a bank, they may well have differing interests at trial (e.g., one defendant could blame the other) so that not only might an attorney have an ethical obligation to represent only one client, but the individuals may have a constitutional right to separate counsel. The theory and reality is that an attorney cannot be a zealous advocate for a client if her judgment is affected by how that representation will affect another client.

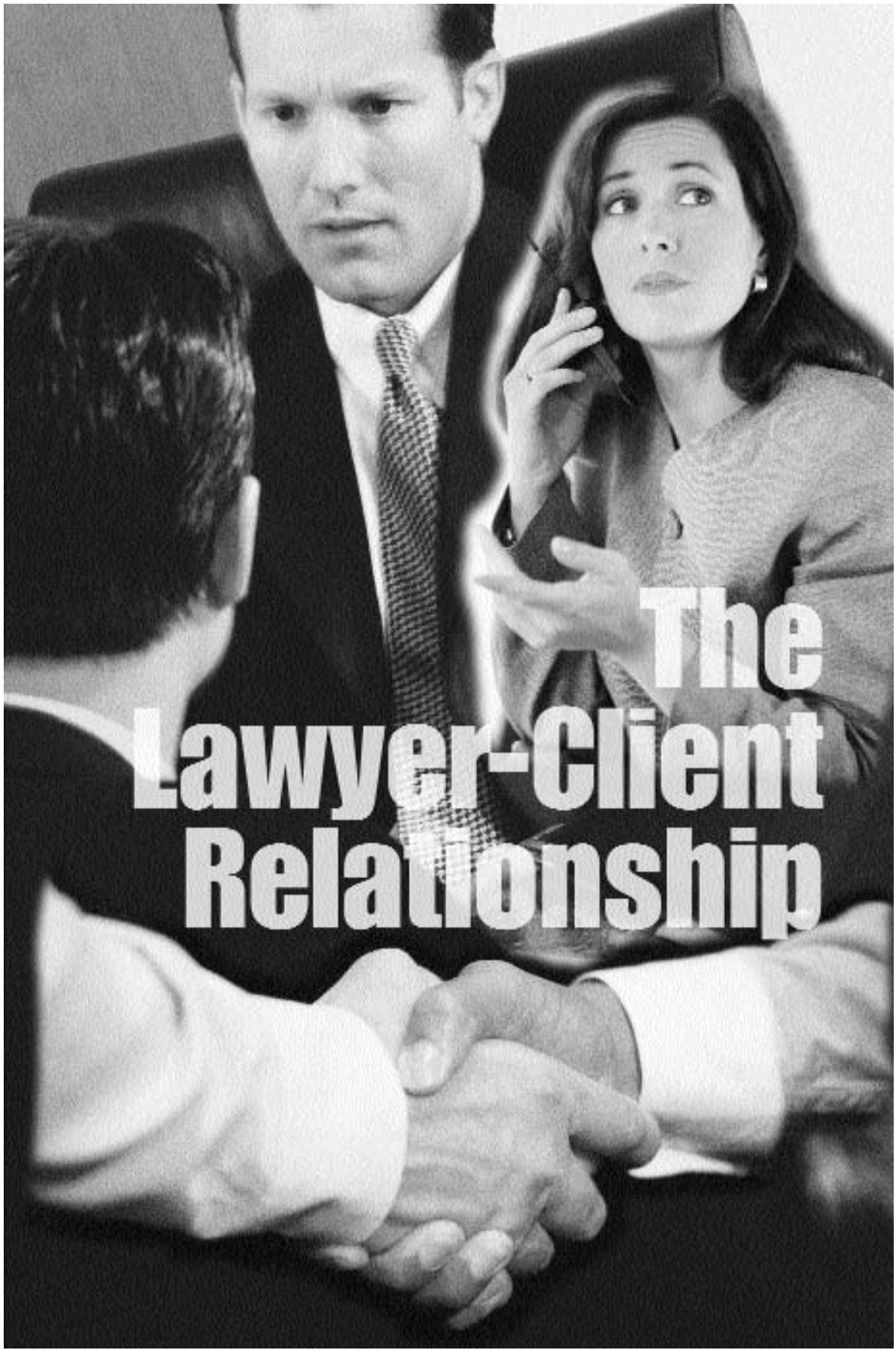
A lawyer may not threaten criminal prosecution to obtain an advantage in any civil matter. No individual, including attorneys and clients, may destroy or tamper with evidence. An attorney may not advise a client or a witness to leave the jurisdiction of the court in order to shield that person from being subpoenaed or appearing in the tribunal.

REGULATION OF THE LEGAL PROFESSION

Attorneys are subject to discipline by the various Appellate Divisions of the New York Supreme Court. Complaints regarding attorney misconduct can be investigated by the grievance committees associated with the Appellate Division or, in some circumstances, by a local bar association grievance committee. Attorneys who have violated disciplinary rules and ethical strictures (e.g., revealed confidences, taken client funds or ignored matters) are subject to reprimand, suspension and disbarment. In addition, a client may sue her attorney in court for malpractice and for otherwise breaching the terms of the attorney-client relationship.

CONCLUSION

An attorney must be a zealous advocate on behalf of her client. Once retained, she owes her ultimate loyalty to that client and that client alone. However, lawyers do not practice in a vacuum and without strictures on their behavior. In the course of acting as an advocate and counsel, an attorney is bound by rules that preserve the integrity of their profession and the entire justice system.


The
Lawyer-Client
Relationship

Statement of Client's Rights

(As adopted by the Administrative Board of the Courts)

1. You are entitled to be treated with courtesy and consideration at all times by your lawyer and the other lawyers and personnel in your lawyer's office.
2. You are entitled to an attorney capable of handling your legal matter competently and diligently, in accordance with the highest standards of the profession. If you are not satisfied with how your matter is being handled, you have the right to withdraw from the attorney-client relationship at any time (court approval may be required in some matters and your attorney may have a claim against you for the value of services rendered to you up to the point of discharge).
3. You are entitled to your lawyer's independent professional judgment and undivided loyalty uncompromised by conflicts of interest.
4. You are entitled to be charged a reasonable fee and to have your lawyer explain at the outset how the fee will be computed and the manner and frequency of billing. You are entitled to request and receive a written itemized bill from your attorney at reasonable intervals. You may refuse to enter into any fee arrangement that you find unsatisfactory.
5. You are entitled to have your questions and concerns addressed in a prompt manner and to have your telephone calls returned promptly.
6. You are entitled to be kept informed as to the status of your matter and to request and receive copies of papers. You are entitled to sufficient information to allow you to participate meaningfully in the development of your matter.
7. You are entitled to have your legitimate objectives respected by your attorney, including whether or not to settle your matter (court approval of a settlement is required in some matters).
8. You have the right to privacy in your dealings with your lawyer and to have your secrets and confidences preserved to the extent permitted by law.
9. You are entitled to have your attorney conduct himself or herself ethically in accordance with the Code of Professional Responsibility.
10. You may not be refused representation on the basis of race, creed, color, age, religion, sex, sexual orientation, national origin or disability.

Statement of Client's Responsibilities

(As adopted by the Administrative Board of the Courts)

Reciprocal trust, courtesy and respect are the hallmarks of the attorney-client relationship. Within that relationship, the client looks to the attorney for expertise, education, sound judgment, protection, advocacy and representation. These expectations can be achieved only if the client fulfills the following responsibilities:

1. The client is expected to treat the lawyer and the lawyer's staff with courtesy and consideration.
2. The client's relationship with the lawyer must be one of complete candor and the lawyer must be apprised of all facts or circumstances of the matter being handled by the lawyer even if the client believes that those facts may be detrimental to the client's cause or unflattering to the client.
3. The client must honor the fee arrangement as agreed to with the lawyer, in accordance with law.
4. All bills for services rendered which are tendered to the client pursuant to the agreed upon fee arrangement should be paid promptly.
5. The client may withdraw from the attorney-client relationship, subject to financial commitments under the agreed to fee arrangement, and, in certain circumstances, subject to court approval.
6. Although the client should expect that his or her correspondence, telephone calls and other communications will be answered within a reasonable time frame, the client should recognize that the lawyer has other clients equally demanding of the lawyer's time and attention.
7. The client should maintain contact with the lawyer, promptly notify the lawyer of any change in telephone number or address and respond promptly to a request by the lawyer for information and cooperation.
8. The client must realize that the lawyer need respect only legitimate objectives of the client and that the lawyer will not advocate or propose positions which are unprofessional or contrary to law or the Lawyer's Code of Professional responsibility.
9. The lawyer may be unable to accept a case if the lawyer has previous professional commitments which will result in inadequate time being available for the proper representation of a new client.
10. A lawyer is under no obligation to accept a client if the lawyer determines that the cause of the client is without merit, a conflict of interest would exist or that a suitable working relationship with the client is not likely.

Glossary

A

action - Lawsuit; the legal demand for one's right asserted in a court.

adjudication - Giving a judgment or decree; also the judgment given.

admissible evidence – Evidence which may be legally used in a court. Information that can be received into court to assist the judge or jury in deciding a case.

adversary system - The system of trial practice in the U.S. and some other countries in which each of the opposing, or adversary, parties has full opportunity to present and establish its opposing contentions before the court.

affidavit – a voluntary written statement of facts or charges made under oath. A written declaration or statement sworn to and affirmed by an officer of the court, such as a notary public or some other person authorized to take the statement, who has authority to administer an oath.

allegation - The assertion, declaration, or statement of a party to an action, made in a pleading, setting out what he expects to prove.

amicus curiae (a-mi'kúis' ku ri -i) - A friend of the court; one who interposes and volunteers information upon some matter of law.

answer - A pleading by which the defendant tries to dispute the plaintiff's right to recover by controverting the facts alleged by the plaintiff or the principle of law relied on by him, or both; or by asserting some defense which relieves the defendant of liability.

appeal – To ask a more senior court or person to review a decision of a subordinate court or person. The request that a court with appellate jurisdiction review the judgment, decision, or order of a lower court and set it aside, reverse it or modify it.

appearance - The formal proceeding by which a defendant submits himself to the jurisdiction of the court.

appellate court - A court which hears appeals and reviews lower court decisions, generally on the lower court record only.

arbitration – A alternative dispute resolution method by which an independent, neutral third person (arbitrator) is appointed to hear and consider the merits of the dispute and renders a final and binding decision called an award.

arraignment - In criminal practice, to bring the prisoner to court in person to answer a charge.

assigned counsel - An attorney, appointed by the court, at no charge, to defend a person accused of a crime.

attorney-client privilege – In the law of evidence, the client's privilege to refuse to disclose and to prevent any other person from disclosing confidential communications between him- or herself and his/her attorney. The privi-

lege belongs to the client and not the attorney and thus the client can waive the privilege and the attorney is required to reveal the nature of such communication.

attorney of record - Attorney whose name appears in the permanent records or files of a case.

B

bail - Cash or other security placed on deposit with the court to obtain the release of an arrested or imprisoned person and to guarantee his reappearance before the court on a specified day.

bail bond - A financial obligation signed by the accused and those who serve as sureties to guarantee his future appearance in court.

bailiff - A court attendant who keeps order and is responsible for the custody of the jury.

bench warrant - An order issued by the court, ("from the bench") for the attachment or arrest of a person.

bill of particulars - A detailed statement of an event or item referred to in another legal paper.

bind over - To hold on bail for trial.

brief - A written or printed document prepared by counsel to file in court, usually setting forth both facts and law in support of his case.

burden of proof - In the law of evidence, the necessity or duty of proving a fact or facts in dispute.

C

cause - A suit, litigation or action - civil or criminal.

certiorari (ser'shi-o-ra'ri) - An order commanding judges or officers of a lower court to certify the record of a case for judicial review by an appellate court.

challenge for cause - An objection to the qualifications of a juror for which a reason is given; usually on grounds of personal acquaintance with one of the parties or the existence of a bias which may affect the verdict.

chambers - Private office or room of a judge.

change of venue - The removal of a suit begun in one county or district to another, for trial, or from one court to another in the same county or district.

charge to the jury – The judge's instructions to the jury at the end of the closing arguments. The final address by the judge to the jury before the verdict, in which he sums up the case, and instructs the jury as to the rules of law which apply to its various issues, and which they must observe.

circumstantial evidence - All evidence of indirect nature; the process of decision by which a court or jury may reason from circumstances known or proved to establish by inference the principal fact.

commit - To send a person to prison, an asylum, workhouse, or reformatory by lawful authority.

common law - Law which derives its authority solely from usages and customs of immemorial

antiquity or from the judgment and decrees of courts.

commutation - The change of a punishment from a greater degree to a lesser degree, as from death to life imprisonment.

comparative negligence - The doctrine by which acts of the opposing parties are compared to determine the proportion of liability which each shares for the injury which is the basis of the action.

competency - In the law of evidence the presence of those characteristics which render a witness legally fit and qualified to give testimony.

complaint - The first or initiatory pleading on the part of the complainant, or plaintiff, in a civil action which sets out his grievance.

concurrent sentence - Sentences for more than one crime in which the time of each is to be served concurrently, rather than successively.

contempt of court - Any act calculated to embarrass, hinder or obstruct a court in the administration of justice, or calculated to lessen its authority or dignity. Contempts are of two kinds: direct or indirect. Direct contempts are those committed in the immediate presence of the court; indirect is the term chiefly used with reference to the failure or refusal to obey a lawful order.

contract - An exchange of oral or written promises between two or more parties to do or not do a particular thing, enforceable by law.

contributory negligence - A doctrine which prohibits recovery of damages by a plaintiff whose own behavior contributed even slightly to the event which caused the plaintiff's injuries - as distinguished from comparative negligence.

corpus delicti (kor'pus de-lik'ti) - The object or thing upon which a crime has been committed, i.e., the body of a murdered person, the charred shell of a burned house.

corroborating evidence - Additional evidence which tends to strengthen or confirm evidence already given.

counterclaim - A claim presented by a defendant in opposition to the claim of a plaintiff.

courts of record - Those whose proceedings are permanently recorded, and which have the power to fine or imprison for contempt. Courts not of record are those of lesser authority whose proceedings are not permanently recorded.

cross-examination - The questioning of a witness in a trial, or in the taking of a deposition, by the party opposed to the one who produced the witness.

D

damages - Compensation recoverable in court by one who has suffered loss, detriment or injury to his person, property or rights due to the unlawful acts or negligence of others.

de novo (de no'vo) - Anew, afresh. A "trial de novo" is retrial.

declaratory judgment - One which declares the rights of the parties or expresses the opinion of the court on a question of law, without necessarily ordering anything to be done.

decree - A decision or order of the court. A final decree is one which fully and finally disposes of the litigation; an interlocutory decree is a provisional or preliminary decree which is not final.

default - A "default" in an action of law occurs when a defendant omits to plead within the time allowed or fails to appear at the trial.

defendant – The individual charged with a crime. The person who is being prosecuted. The person, company or organization against whom a criminal proceeding is pending.

deliberation – The action of a jury to determine the guilt or innocence, or the sentence, of a defendant. In the context of the functioning of a jury it means that a properly formed jury comprised of the number of qualified persons required by law while in the secrecy of the jury room analyze, discuss, and weigh the evidence which was presented in the case in order to reach a verdict based upon the applicable law.

demur (de mer') - To file a pleading (called "a demurrer") admitting the truth of the facts in the complaint, or answer, but contending they are legally insufficient.

deposition - The testimony of a witness not taken in open court in pursuance of authority given by statute or rule of court to take testimony elsewhere.

direct evidence - Proof of facts by witnesses who saw acts done or heard words spoken, as distinguished from circumstantial evidence, which is called indirect.

direct examination - The first interrogation of a witness by the party on whose behalf he is called.

directed verdict - An instruction by the judge to the jury to return a specific verdict.

discovery - A proceeding whereby one party to an action may be informed as to facts known by other parties or witnesses.

dismissal without prejudice - Permits the complainant to sue again on the same cause of action, while dismissal "with prejudice" bars the right to bring or maintain an action on the same claim or cause.

dissent - A term commonly used to denote the disagreement of one or more judges of a court with the decision of the majority.

double jeopardy - Common law and constitutional prohibition against more than one prosecution for the same crime, transaction or omission.

due process - Law in its regular course of administration through the courts of justice. The guarantee of due process requires that every man have the protection of a fair trial.

E

enjoin - To require a person, by writ of injunction from a court of

equity, to perform, or to abstain or desist from, some act.

entrapment - The act of officers or agents of a government in inducing a person to commit a crime not contemplated by him, for the purpose of instituting a criminal prosecution against him.

escrow (es'kro~) - A writing, deed, fund or object delivered by one person to another to be held until specified acts are performed or certain conditions are met, and then to be disposed of as directed under the terms of the escrow.

estoppel (es-top'el) - A person's own act, or acceptance of facts, which preclude his later making claims to the contrary.

et al. - An abbreviation of et alii, meaning "and others."

ex parte (ex par'te) - By or for one party; done for, in behalf of, or on the application of, one party only, without notice to the other.

ex post facto (ex post fak'to) - After the fact; an act or fact, occurring after some previous act or fact, and relating thereto.

exception - A formal objection to an action of the court, during the trial of a case, in refusing a request or overruling an objection; implying that the party excepting does not acquiesce in the decision of the court, but will seek to procure its reversal.

exclusionary rule – A court created rule of evidence which makes illegally acquired evidence inadmissible. An interpretation of constitutional guarantees holding that evidence obtained through illegal means by police cannot be used at trial. Under this rule evidence through unreasonable searches and seizures is excluded from use at trial under the protections of the 4th Amendment of the U.S. Constitution.

exhibit - A paper, document or other article produced and exhibited to a court during a trial or hearing.

expert evidence - Testimony given in relation to some scientific, technical, or professional matter by experts, i.e., persons qualified to speak authoritatively by reason of their special training, skill, or familiarity with the subject.

extenuating circumstances - Circumstances which render a crime less aggravated, heinous, or reprehensible than it would otherwise be.

F

false arrest - Any unlawful physical restraint of another person, in prison or elsewhere.

false pretenses - Misrepresentation in order to obtain another's money or goods.

felony - A crime of a graver nature than a misdemeanor. Generally, an offense punishable by death or imprisonment in excess of one year.

fiduciary - A trustee; one who has the duty to act primarily for the benefit of another with respect to the subject matter of the trust.

fraud - An intentional perversion of truth; deceitful practice or device resorted to with intent to deprive another of property or other right, or in some manner to do him injury.

fruit of the poisonous tree – The doctrine that evidence seized illegally or through the use of other illegally obtained sources is considered "tainted" and is therefore inadmissible at trial against a suspect. However, knowledge of facts gained independently of the original tainted search is admissible. The effect of this doctrine is that an unlawful search taints not only evidence seized directly at the search, but also facts discovered through some further process initiated as a result of the illegal search.

G

grand jury - (see jury, grand)

guardian ad litem (ad li'tem) - A person appointed by a court to look after the interests of an infant or incompetent whose property is involved in litigation.

H

habeas corpus (had be-as kor'-pus) - "You have the body." The name given a variety of writs whose object is to bring a person before a court or judge. In the most common usage, it is directed to the official or person detaining another, commanding him to produce the body of the prisoner or person detained so the court may determine if such person has been denied his liberty without due process of the law.

harmless error - In appellate practice, an error committed by a lower court during a trial, but not prejudicial to the rights of the party and for which the court will not reverse the judgment.

hearsay - Evidence not proceeding from the personal knowledge of the witness.

hostile witness - A witness who is subject to cross-examination by the party who called him to testify, because of his evident antagonism toward that party as exhibited in his direct examination.

hypothetical question - A combination of facts and circumstances, assumed or proved, stated in such a form as to constitute a coherent state of facts upon which the opinion of an expert can be asked by way of evidence in a trial.

I

impeachment of witness - An attack on the credibility of a witness, as by the testimony of other witnesses or evidence of prior bad conduct or criminal convictions.

implied contract - A contract in which the promise made by the obligor is not express, but inferred by his conduct or implied in law.

imputed negligence - Negligence which is not directly attributable to the person himself, but which is the negligence of a person who is in privity (has a particular legal relationship) with him, and with whose fault he is chargeable.

inadmissible - That which, under the established rules of evidence, cannot be admitted or received.

in camera (in kam'e-ra) - In chambers; in private.

indeterminate sentence - An indefinite sentence of "not less than" and "not more than" so many years, the exact term to be served being afterwards determined by parole authorities with-

in the minimum and maximum limits set by the court or by statute.

indictment - An accusation in writing found and presented by a grand jury, charging that a person therein named has done some act, or been guilty of some omission, which, by law, is a crime.

information - An accusation of some criminal offense, in the nature of an indictment, but which is presented by a competent public officer instead of a grand jury.

injunction - A mandatory or prohibitive writ issued by a court.

instruction - A direction given by the judge to the jury concerning the law of the case.

interlocutory - Provisional; temporary; not final. Refers to orders and decrees of a court.

interrogatories - Written questions propounded by one party and served on an adversary, who must provide written answers under oath.

intestate - One who dies without leaving a will.

irrelevant - Evidence not relating or applicable to the matter in issue; not supporting the issue.

J

jurisdiction – A range of authority or control especially to interpret and apply the law. The power of a court to hear and determine a particular criminal case. The court's authority to judge over a situation is usually acquired in one of three ways: over acts committed in a defined territory (e.g. the jurisdiction of the Court of Appeals of New York State is limited to acts committed or originating in New York State), over certain types of cases (the jurisdiction of a bankruptcy court is limited to bankruptcy cases), or over certain persons (a military court has jurisdiction limited to actions of military personnel).

jury - A certain number of persons, selected according to law, and sworn to inquire into certain matters of fact, and declare the truth upon evidence laid before them.

jury, grand - A jury of inquiry whose duty is to receive complaints and accusations in criminal cases, hear the evidence and find bills of indictment in cases where they are satisfied that there is probable cause that a crime was committed and that a trial ought to be held.

jury, petit - The ordinary jury of 12 (or fewer) persons for the trial of a civil or criminal case. So called to distinguish it from the grand jury.

L

leading question - One which instructs a witness how to answer or puts into his mouth words to be echoed back; one which suggests to the witness the answer desired. Prohibited on direct examination.

limitation - A certain time allowed by statute in which litigation must be brought.

locus delicti (lob kus de-lik'ti) - The place of the offense.

M

malfeasance (mal-fe'zans) - Evil doing; ill conduct; the commission of some act which is positively prohibited by law.

mandamus (man-da~'mus) - The name of a writ which issues from a court of superior jurisdiction, directed to an inferior court or to a public officer, commanding the performance of a particular act.

mandate - A judicial command or precept proceeding from a court or judicial officer, directing the proper officer to enforce a judgment, sentence, or decree.

manslaughter - The unlawful killing of another without malice; may be either voluntary upon a sudden impulse, or involuntary in the commission of some unlawful act.

Miranda warning - The statement recited to individuals taken into police custody. It warns of their right to remain silent and to have an attorney.

misdemeanor - Offenses less than felonies; generally those punishable by fine or imprisonment for a term of one year or less.

misfeasance - A misdeed or trespass; the improper performance of some act which a person may lawfully do.

mistrial - An erroneous or invalid trial; a trial which cannot stand because of lack of jurisdiction, improper drawing of jurors, or some substantial error during the trial which could not have been remedied by an instruction by the judge.

mitigating circumstance - One which does not constitute a justification or excuse for an offense, but which may be considered as reducing the degree of moral culpability.

moot - Unsettled; undecided; not necessary to be decided. A moot point is one not settled by judicial decisions.

moral turpitude - Conduct contrary to honesty, modesty, or good morals.

murder - The unlawful killing of a human being by another with malice aforethought, either express or implied.

N

negligence - The failure to do something which a reasonable man, guided by ordinary considerations, would do; or the doing of something which a reasonable and prudent man would not do.

no bill - This phrase, endorsed by a grand jury on the indictment, is equivalent to "not found" or "not a true bill." It means that, in the opinion of the jury, evidence was insufficient to warrant the return of a formal charge.

nolo contendere (no'lo konten'dere) - A pleading, usually used by defendants in criminal cases, which literally means "I will not contest it."

non compos mentis (non kom'pos) - Not sound of mind; insane.

O

objection - The act of taking exception to some statement or procedure used in trial. Used to

call the court's attention to improper evidence or procedure.

opinion evidence - Evidence of what the witness thinks, believes or infers in regard to facts in dispute, as distinguished from his personal knowledge of the facts; not admissible except (under certain limitations) in the case of experts.

out of court - One who has no legal status in court is said to be "out of court," i.e., he is not before the court. For example, when a plaintiff, by some act of omission or commission, shows that he is unable to maintain his action, he is frequently said to have put himself "out of court."

overrule - The court's denial of any motion or point raised to the court, such as "overruling a motion for a new trial" or "objection overruled."

P

panel - A list of jurors to serve in a particular court, or for the trial of a particular action; denotes either the whole body of persons summoned as jurors for a particular term of court or those selected by the clerk by lot.

parole - The conditional release from prison of a convict before the expiration of his sentence. If he observes the conditions, the parolee need not serve the remainder of his sentence.

parties - The persons who are actively concerned in the prosecution or defense of a legal proceeding.

penal law – State or federal statute or statutes that define criminal offenses and specify corresponding fines and punishments. A statute or set of statutes imposing a penalty, fine, or other punishments for certain offenses of a public nature or wrongs committed against the state.

peremptory challenge - The right of parties in criminal and civil cases to dismiss a prospective juror without giving any reason. The number of such challenges is limited by statute.

perjury – The act of testifying falsely under oath. An intentional lie as to a matter of fact, belief, opinion, or knowledge, given while under oath or in a sworn affidavit. The legal offense of deliberately testifying falsely under oath about a material fact.

plaintiff - A person who brings a civil action; the party who complains or sues.

plea bargaining – To agree to plead guilty to a less serious charge in order to avoid being tried on a more serious charge. The process of negotiation between the prosecutor and the defendant for a reduction of the penalty. The normal rule of law is that judges are not bound by plea bargains although, as past lawyers themselves, they are generally aware of plea bargains and a reasonable recommendation of a prosecutor on sentencing is always heavily considered.

pleading - The process by which the parties in a suit or action alternately present written statements of their contentions, each responsive to that which precedes, and each serving to narrow the field of controversy, until there evolves

one or more points, affirmed on one side and denied on the other, called the "issue" upon which they then go to trial.

polling the jury - Asking jurors individually whether they assented and still assent to the verdict announced by the foreman.

power of attorney - Authorization for one person to act as another's agent or attorney.

precedent – A case which establishes legal principles to a certain set of facts, coming to a certain conclusion, and which is to be followed from that point on when similar or identical facts are before a court. A prior judicial decision that serves as an example or rule to authorize or justify other decisions in similar cases that follow.

prejudicial error - Synonymous with "reversible error;" an error which warrants the appellate court to reverse the judgment before it.

preliminary hearing - Synonymous with "preliminary examination"; the hearing given a person charged with a crime by a magistrate or judge to determine whether he should be held for trial. Since the Constitution states that a person cannot be accused in secret, a preliminary hearing is open to the public unless the defendant requests that it be closed. The accused person must be present at this hearing and must be accompanied by his attorney.

preponderance of evidence - The greater weight (in terms of quality, not quantity) of evidence, or that evidence which is more believable and convincing.

presumption of fact - An inference as to the truth or falsity of any proposition of fact, drawn by a process of reasoning in the absence of actual certainty of its truth or falsity, or until such certainty can be ascertained.

presumption of law - A rule of law that courts and judges shall draw a particular inference from a particular fact, or from particular evidence.

prima facie – (Lat.) At first view or on its face. Requiring no additional support to establish validity or credibility. Presumed to be true unless disproved by evidence to the contrary. Refers to evidence that, at first appearance, seems to establish a particular fact, but that may be later contradicted by other evidence.

pro bono - Legal services rendered without charge, in the public interest.

pro se - Appearing in an action on one's behalf without benefit of an attorney.

probate - The act or process of proving a will.

probation - In criminal law, to allow one convicted of a crime to go free while his prison sentence is suspended during good behavior, generally under the supervision of a probation officer.

prosecutor - A public officer whose duty is the prosecution of criminal proceedings on behalf of the people.

R

reasonable doubt - An accused person is entitled to acquittal if, in the minds of the jury, his guilt has not been proved beyond a "reasonable doubt"; that state of the minds of jurors in which they cannot say they feel an abiding conviction as to the truth of the charge.

rebuttal - The introduction of answering evidence; proof by one party disputing proof provided by its adversary; also, the state of a trial when such evidence is introduced.

recuse – the action by a judge in disqualifying him-or herself from hearing a case because of bias, prejudice or self interest. The judge's practice of removing him- or herself from a case in which s/he is related to one or more of the parties or in which s/he has some special personal interest.

redirect examination - Follows cross-examination and is exercised by the party who first examined the witness.

referee - A person to whom a cause pending in a court is referred by the court to take testimony, hear the parties, and report thereon to the court. He is an officer exercising judicial powers and is an arm of the court for a specific purpose.

reply - When a case is tried or argued in court, the argument of the plaintiff in answer to that of the defendant. A pleading in response to an answer.

rest - A party is said to "rest" or "rest his case" when he has presented all the evidence he intends to offer.

retainer - Act of the client in employing his attorney or counsel, and also denotes the fee which the client pays when he retains the attorney to act for him.

rule of court - An order made by a court having competent jurisdiction. Rules of court are either general or special: the former are the regulations by which the practice of the court is governed; the latter are special orders made in particular cases.

S

Sandoval hearing - A hearing to determine use by the prosecution of prior convictions or proof of prior criminal activity or vicious or immoral acts to impeach a defendant's credibility when he testifies.

search and seizure, unreasonable - In general, an unlawful search of one's premises or person; a search which is unreasonably oppressive in its invasion of privacy.

search warrant - A written order from a justice or magistrate directing an officer to search a specific place for a specific object, issued upon a showing of probable cause.

securing order – An order of the court committing the defendant to the custody of the sheriff, or fixing bail, or releasing the defendant on his/her own recognizance; the court's decision in a bail hearing.

self-defense - The protection of one's person or property against some injury attempted by anoth-

er. The law of "self defense" justifies an act done in the reasonable belief of immediate danger. When acting in justifiable self defense, a person may not be punished criminally nor held responsible for civil damages.

sheriff - An officer of a county whose principal duties are to aid the criminal and civil courts and act as chief preserver of the peace in many places. He serves processes, may summon juries, executes judgments and holds judicial sales.

stare decisis (sta're de-si'sis) - A doctrine that, when a court has once laid down a principle of law as applicable to a certain set of facts, it will adhere to that principle and apply it to future cases where the facts are substantially the same.

state's evidence - Testimony given by an accomplice or participant in a crime, tending to convict others.

statute - A formal law enacted by some legislative body, as in Congress or a state legislature.

stay - A stopping or arresting of a judicial proceeding by order of the court.

stipulation - An agreement by attorneys on opposite-sides of a case as to any matter pertaining to the proceedings or trial. It is not binding unless assented to by the parties, and most stipulations must be in writing.

subpoena (su-pe'na) - A process to cause a witness to appear and give testimony before a court or magistrate.

substantive law - The law dealing with rights, duties and liabilities as distinguished from adjective law, which is the law regulating procedure.

summons - A legal paper served on a named person notifying him that an action is being commenced against him and that he is required to appear or to answer the complaint in the action within the time stated in the summons.

suppression of evidence – The ruling by the trial judge that evidence sought to be admitted should be excluded because it was illegally acquired. The exclusion of certain information or evidence from being presented in a criminal proceeding as though the evidence didn't exist.

T

testator or testatrix - The maker of a written will. A person who dies without leaving a will dies "intestate."

testimony - Evidence given by a competent witness, under oath; as distinguished from evidence derived from writings and other sources.

tort - An injury or wrong committed, either with or without force, to the person or property of another.

transcript - The official record of proceedings in a trial or hearing.

true bill - In criminal practice, the endorsement made by a grand jury upon a bill of indictment when it finds sufficient evidence to warrant a criminal charge.

U

unlawful detainer - A retention or withholding of real estate without the consent of the owner or other person entitled to its possession.

V

venue (ven'u) - The particular county, or geographical area in which a court with jurisdiction may hear and determine case.

verdict - In practice, the formal decision or finding made by a jury, reported to the court and accepted by it.

violation – An offense less serious than a misdemeanor. An offense, other than a "traffic infraction" for which a sentence to a term of imprisonment in excess of fifteen days cannot be imposed. An offense against the penal law but one which does not constitute a criminal offense.

voir dire (vwor der) - To speak the truth. The phrase denotes the preliminary examination which the court or the attorneys may make of one presented as a witness or juror, as to his qualifications.

W

Wade hearing - A hearing to determine whether identification by an eyewitness will be admissible at trial.

waiver of immunity - A means authorized by statutes by which a witness, in advance of giving testimony or producing evidence, may renounce the fundamental right guaranteed by the Constitution that no person shall be compelled to be a witness against him- or herself, frequently demanded of a public official.

warrant of arrest - A writ issued by a magistrate, justice or other competent authority, to a sheriff, or other officer, requiring him to arrest a person therein named and bring him before the magistrate or court to answer to a specified charge.

without prejudice - A dismissal "without prejudice" allows a new suit to be brought on the same cause of action.

witness - One who testifies to what he has seen, heard, or otherwise observed.

writ - An order issuing from a court of justice and requiring the performance of a specified act, or giving authority and commission to have it done.

Glossary References

Committee on Courts and the Community, *The Courts of New York*, 2nd ed., Albany: New York State Bar Association, 1993

Peter Stachecki, *Criminal Law & Criminal Justice*, New York:, 1998

Steven H. Gifis, *Law Dictionary*, Woodbury, NY: Barron's Educational Series, Inc., 1975

Acknowledgements

The Committee on Justice and the Community would like to acknowledge: chapter authors Seth H. Agata, Richard W. Babinecz, Judge Gregory W. Carman, Norman Goodman, Elizabeth Hubbard, Barry Kamins, Michael F. McEneney, Douglas G. O'Brien, Patricia Parker, Judge Richard Lee Price, James J. Roth, Judge Robert J. Ward, and Judge Penny M. Wolfgang; Committee chair, Gregory X. Hesterberg; The Type & Design Center of Latham, NY, artwork and cover design; Frank J. Ciervo, editor; Terri Porter, copy editor; Leslie Dunn, production coordinator; and The New York Bar Foundation for its financial support of this project.