

## **Chapter Two**

### **How the Legal System Works**

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## **Introduction**

ALTHOUGH NO ONE EXCEPT A CRIMINAL expects to be charged with a crime, and few of us ever contemplate the possibility of a lawsuit, it seems that the more we know about how our legal system works, the more likely we are to respect the rights of others while demanding that our own rights are respected. Hence this chapter on how the legal system works.

Subsequent chapters will explain your legal rights in a nation dedicated to the rule of law; this chapter will give you an overview of how our legal system can give those rights meaning.

### **Q. Why do we have an "adversarial" legal system?**

**A.** American courtroom procedures are based on historical precedent, modified by the needs and experience of lawyers and judges. When two parties cannot agree on their respective rights and obligations, or even on what gave rise to the dispute, the system provides each side with an equal opportunity to present its case (and to point out the weaknesses in its opponent's case) to a neutral judge or jury. Each side is championed by a lawyer following the same statutes, case law, and rules of procedure. The system is designed to permit the truth to emerge whether the case is criminal or civil in nature.

### **Q. How does a civil suit differ from a criminal prosecution?**

**A.** A criminal prosecution is brought by the government to punish an individual for committing a crime against society and to deter others from committing similar crimes. As appropriate, it may create an opportunity for state-supervised rehabilitation or separation of the offender from the aggrieved community. Although a criminal defendant may have directly injured only one victim, it is thought that any

violation of the criminal laws harms society as well. Accordingly, the victim is not permitted to prosecute the criminal case against the defendant who harmed him or her--that is the government's job in its role as the society's representative. The crime victim, of course, can be the principal witness against the criminal defendant, but it is the government alone that has the authority to file an "information" or seek a grand jury "indictment" charging someone with a crime.

On the other hand, a crime victim may file a civil lawsuit against a wrongdoer. If the victim sues, he or she is called the plaintiff; the perpetrator of the crime is called the defendant, just as in the criminal case. The civil case provides a legal forum for persons seeking compensation for their injuries or vindication of their rights. Courts may provide redress to plaintiffs who can demonstrate that a defendant has injured them while committing some legal wrong against them. Unlike a criminal case, the defendant in a civil case who is found liable for harming the plaintiff cannot be sentenced to prison but, instead, will be compelled to pay compensation or ordered to take or desist from some action.

**Q. Are there different standards for determining liability in a civil suit and guilt in a criminal case?**

**A.** Yes. Because the Bill of Rights treats a criminal conviction (and the possibility of a death sentence or a prison term) as a more serious consequence than a finding of civil liability, it is more difficult to convict someone of a crime than it is to obtain a civil judgment against him or her.

In most instances, the test for whether a trial court properly found that a plaintiff met his or her "burden of proof" in a civil suit is measured by whether a reasonable person could have concluded that it was "more likely than not" that the defendant was liable for, i.e., legally responsible for, the plaintiff's injury or loss. This "preponderance of the evidence" standard means that if the evidence favors the plaintiff by even the slightest bit, he or she is entitled to a verdict. In a criminal case, however, the standard is much

higher: the prosecution must demonstrate the defendant's guilt "beyond a reasonable doubt." Thus, even if it is more likely than not that a criminal defendant is guilty of the crime charged, the proper verdict is "not guilty" if there remains a reasonable doubt about his or her guilt.

As will be discussed in more detail in the [chapter on criminal justice](#), the United States Constitution guarantees criminal defendants many other rights, including the right to a jury trial when there is the possibility of a conviction resulting in a prison term of six months or more, and the right to have an attorney appointed if the defendant cannot afford to hire one.

## **Settling Your Dispute**

### **Q. Are formal, adversarial trials always necessary?**

**A.** No. The majority of criminal and civil cases (non-criminal cases involving disputes between individuals or organizations) are resolved without a trial. As will be explained in the chapter on criminal justice, a criminal case can be resolved without a trial in one of three ways. The defendant can enter a plea of guilty or a plea of nolo contendere (no contest) to the charges, thereby forgoing the need for a trial. Or he or she may be able to negotiate a plea bargain with the prosecution in which the two sides agree that the defendant will plead guilty to a lesser charge than the one he or she currently faces. In each of these three cases, a judge must make sure the decision is fair and voluntary.

Similarly, by some estimates upwards of 90 percent of all civil cases are "settled" before trial. The courts actively work to encourage settlements and will often require the parties to a suit to engage in pre-trial settlement conferences to see if some mutually satisfactory compromise might permit them to avoid the need for a full-blown trial.

**Q. How can I settle my case?**

**A.** Talk to the person with whom you have a dispute. Stay calm and reasonable. You may find that, if approached politely, your "opponent" will be willing to settle on a mutually acceptable basis. Make certain that person understands why you are unhappy and what you would consider a reasonable solution to the problem. Keep an open mind and listen to the other person's side of the story. Making an effort to settle a dispute without a lawsuit is never a waste of time. In addition, many states require that an aggrieved party first make a demand for payment or action before filing some types of lawsuits.

If you do reach a satisfactory compromise, ask your lawyer to get it in writing for both parties to sign--you'll both want to make certain what you are and are not agreeing to and what, if any, issues may still need to be resolved. Even if you and the other person involved are able to work out the main problem, such as who owes how much money to whom, it still may be necessary to appear before a judge to determine, for example, a payment schedule. Your court appearance will be made easier if the agreement is in writing and can be submitted to the judge.

**Q. What do I do if the other party won't agree to a reasonable settlement?**

**A.** The next step is to have your lawyer write a carefully thought-out letter to the person with whom you have a disagreement. This letter should include an accurate summary of the history of the problem and a date by which you would like a response or settlement. This type of "settle or else" letter has many advantages. It helps you organize the facts and your thoughts logically. Your lawyer may be able to express your thoughts in a way that the other person might not have "heard" when you were talking to each other directly. It may be just the push needed to get the other person to settle. If the letter sets reasonable time limits, it will often help to encourage settlement. Finally, if you end up in court, your letter will give the judge important background information and will go a long way toward satisfying any state-

law requirement that a demand for payment or other action be made prior to filing suit.

## **Alternative Dispute Resolution**

**Q. If the demand letter doesn't work, do I have any other alternatives before filing a lawsuit?**

**A.** Yes. In some circumstances you might prefer to try to resolve your dispute through arbitration or some other form of alternative dispute resolution outside the formal court system.

**Q. What is alternative dispute resolution?**

**A.** Nearly all states have established "dispute resolution centers." These centers, which, depending on the state, may be known as neighborhood justice centers or citizens' dispute settlement programs, specialize in helping people who have common problems. For example, there are centers that specialize in resolving disputes commonly encountered by consumers, employers and employees, landlords and tenants, neighbors, and family members.

**Q. What is the difference between mediation and arbitration as forms of dispute resolution?**

**A.** In mediation, a trained mediator will help you and your opponent resolve your disagreement by identifying, defining, and discussing the things about which you disagree. This is an informal, cooperative problem-solving process, and does not require you to know the law or to hire a lawyer. Arbitration, on the other hand, is a more formal proceeding in which you and your opponent will be asked to present evidence and witnesses to the presiding arbitrator, who usually will issue a written decision to resolve the dispute. In many cases, the decision of the arbitrator is binding on the parties and final. Most non-profit dispute resolution centers offer mediation or arbitration services for free or at only a modest cost.

**Q. When does it make sense to seek some form of alternative dispute resolution?**

**A.** These alternatives are generally faster, less expensive, and less stressful than a traditional lawsuit. On the other hand, some cases, either because of the high stakes involved or the complexity of the issues and facts, are simply better handled by courts operating with the full panoply of formal procedures and safeguards. Arbitration also may not be possible unless both parties agree in advance to accept the arbitrator's decision as final. If either you or your opponent do not want to forego the right to appeal an adverse decision, arbitration often will not be helpful.

**Small Claims Court**

**Q. If I decide to proceed with a formal lawsuit, how should I begin?**

**A.** It depends on the type of claim you wish to make. Here a lawyer can provide you with crucial advice on not only what claims you may have, but on when, where and how you must make them. Once your lawyer has helped you identify whether you have a valid legal claim and whether it is likely to be worth your time and money to pursue it (there are various court costs involved as well as attorney fees), you will need to determine which court has jurisdiction to hear your case. You may, for example, be able to bring your case to small claims court.

**Q. What is small claims court?**

**A.** All states have these special courts, although they may have different names, such as magistrate court,

justice of the peace court, or pro se court. As a general rule, small claims courts are available only to resolve disputes involving small claims for money. Every state limits how much money you may seek in a small claims court lawsuit. The limits may range from a few hundred dollars in some states to thousands of dollars in others.

**Q. May I represent myself?**

A. Yes, you generally do not need a lawyer to accompany you to small claims court. Sometimes a lawyer is not permitted to represent a party in small claims court.

**Q. What are the advantages of filing a lawsuit in a small claims court?**

A. First, since you will be acting as your own lawyer, you will save on attorney's fees. Second, small claims court procedures are simple and there is little paperwork involved. When your day in small claims court arrives, you and your witnesses can talk freely with the judge about what happened. In many states, the court will even arrange to have the trial or hearing after normal work hours. Third, there are fewer delays than in regular courts--it usually will take only two or three months to file, argue, and receive a decision in your case.

**Q. Can I have a jury trial in small claims court?**

A. No, there is no jury; a judge will decide your case.

**Q. Where can I get more information about small claims courts?**

A. There are many good "how-to" books that explain what steps to take to bring a case to small claims court. Look at a few of them if you think you might have such a case, but do not depend on books alone.

The laws and rules for small claims are different in each state. For more information, check with the small claims clerk or local consumer bureaus and legal aid groups in your area.

**Q. It sounds like it won't take much work to bring my case in small claims court. Is that true?**

**A.** Not necessarily. Use a small claims procedure only if you are willing to put some time into your case. You will be acting as your own lawyer, so you will be doing research, gathering documents, and investigating factual matters to prepare and present your case.

**Sidebar: No Small Considerations**

Before you decide whether you should take advantage of small claims court, answer some simple questions. Is your claim one that has only to do with money? If so, is the amount you are suing for within the limit in your state? Is the time and effort you will have to put in to learning your state's law and presenting your case worth what you are likely to collect?

Like other courts, small claims courts operate according to laws and rules. Even the most careful preparation and the best presentation in court will not help if you cannot prove legally that the other person owes you the money. You must be able to prove "legal liability" in your case--that you have suffered a compensable loss because of someone else's unlawful acts.

**State or Federal Court?**

**Q. If small claims court is not an option, how will my lawyer determine which court is the one for me?**

**A.** After identifying the nature of the claims you may have and the remedies you are seeking, your lawyer

will guide you to the court with the proper jurisdiction and venue.

**Q. What is jurisdiction?**

A. When we say a court has jurisdiction to hear a case, we mean it has the authority to decide the kinds of issues raised in the case. Not every court has jurisdiction to hear every kind of case. One of the first questions to answer before filing a lawsuit is whether to bring the suit in state or federal court.

**Sidebar:**

**Why Isn't There Just One Court System?**

The United States Constitution provides for a dual system of government, with both state and federal sovereigns. While Article III of the U.S. Constitution contemplates a federal judiciary operating as a co-equal branch of our national government, each state is expected to establish and operate its own court system as part of its own government. (The District of Columbia courts have a mixed state/federal quality in administering justice in our nation's capital.)

If there were no state or local courts, many cases could not be heard at all, for the Constitution limits the cases that can be brought in federal courts. A dual court system makes sense philosophically because it respects a state's right to establish and enforce the law with respect to its unique problems and concerns. It also makes sense practically because, as a general rule, a state's own courts are more familiar with state and local law.

**Q. What kinds of cases can federal courts decide?**

A. The jurisdiction of most federal courts is determined by Article III of the United States Constitution, which limits the kinds of cases federal courts can hear. These include, foremost, cases involving issues of

federal law. This so-called "federal question jurisdiction" authorizes federal district courts to decide both civil and criminal cases in which federal law must be interpreted or applied. The federal law at issue may have arisen out of a federal statute or regulation, treaty, or a provision of the Constitution itself.

Another category of cases that Article III has placed within the federal courts' jurisdiction can be thought of as cases in which the Constitution's framers feared that an out-of-state party might not trust the local courts to provide him or her with a neutral forum. Thus, Article III gives federal courts "diversity jurisdiction" over controversies:

- between citizens of different states;
- between two or more states; and
- between citizens of the same state claiming lands under grants of different states.

Similarly, federal district courts have jurisdiction over any suit to which the United States or one of its officers is a party.

Cases involving ambassadors, consuls, and other public ministers (in other words, cases that might affect America's relations with other countries) are also entrusted to the federal courts, as are cases involving the laws relating to navigable waters (the oceans, Great Lakes, and most rivers) and commerce on those waters. In addition, Congress has created specialized courts such as bankruptcy courts and tax courts.

### **Other Federal Courts**

There are several specialized courts--Tax Court, the Court of Federal Claims, the Court of Veterans Appeals, Courts of Military Review, and the Court of International Trade. Each United States District Court also has a United States Bankruptcy Court unit as well as one or more magistrate.

In addition, Congress has created other courts under its Article I powers to serve the people in

the United States territories of Guam, the United States Virgin Islands, and the Northern Mariana Islands. These "legislative courts" operate much like the Article III courts, but the presiding officers of these courts do not have the constitutional protections accorded to Article III judges such as life tenure and the prohibition against reducing judicial salaries.

In every instance, a party to a federal lawsuit will have an opportunity to proceed through two levels of decision: the United States District Court or other specialized trial court and a court of appeals. In rare cases, a party may receive a third level of decision from the United States Supreme Court if, for example, the Court believes that the case presents an important question of constitutional law.

**Q. What sorts of cases are decided by state courts?**

A. Most states have two levels of trial courts—special jurisdiction courts with jurisdiction limited to specific types of cases, and general jurisdiction courts with jurisdiction over all other cases. Special jurisdiction courts are dominated by traffic cases but also hear relatively minor civil and criminal disputes. Special jurisdiction courts often have exclusive jurisdiction over juvenile cases. These courts are variously called district, justice, justice of the peace, magistrate, county, municipal, or police courts.

Courts of general jurisdiction hear most of the serious criminal and civil cases and are sometimes divided into subject areas such as domestic relations, probate, and state and local tax. These courts are variously called circuit courts, courts of common pleas, and, in New York State, the supreme court.

Unlike the federal courts, state courts are not limited to hearing only the kinds of cases listed in Article III of the United States Constitution.

**Q. Do I ever have a choice of whether to sue in state or federal court?**

A. Yes. Although some cases are exclusively within the jurisdiction of one or the other court systems

(juvenile cases, for example, are adjudicated in state juvenile courts, while all bankruptcies are filed in federal bankruptcy court), the state and federal courts have "concurrent jurisdiction" over many cases. A typical example would be a case involving a state law that is being litigated by a plaintiff from one state and a defendant from another state. The state courts would have jurisdiction because of the state law issues. But, if the case involves an "amount in controversy" of more than \$50,000, the federal courts would have jurisdiction as well because the parties are citizens of different states. This is known as diversity-of-citizenship jurisdiction or, more commonly, diversity jurisdiction. Article III of the Constitution gives federal courts concurrent jurisdiction over these cases.

**Q. How is the federal court system structured?**

**A.** Rather than prescribing any one rigid structure for the federal courts, Article III merely requires that the judicial power of the federal government "be vested in one Supreme Court, and in such inferior courts as Congress may from time to time ordain and establish." Pursuant to this authority, Congress has created ninety-four United States District Courts (the trial courts in the federal system) as well as other specialized trial courts. Sandwiched between these trial courts and the Supreme Court are the intermediate appellate courts—twelve regional United States Courts of Appeals plus the Court of Appeals for the Federal Circuit, and the Court of Military Appeals.

**Q. How are the state court systems structured?**

**A.** State courts are the product of the individual state's constitution and legislation. The resulting court systems vary in particulars. In addition to the two-tiered trial courts mentioned earlier, most states have an intermediate appellate court in addition to a state supreme court analogous to the United States Supreme Court.

**Q. How are judges selected?**

A. This is another important difference between the state and federal systems. All 649 federal district court judges are appointed for life by the president with the advice and consent of the United States Senate. The nine seats on the United States Supreme Court and the 179 seats on the thirteen United States Courts of Appeals are filled in the same way.

The states, on the other hand, have a variety of procedures for filling judgeships. While many state judges are appointed by the governor for a term of years, many others are required to run for election.

**Q. Which method is better?**

A. As the variety of different state procedures would indicate, there is no consensus answer to this question. Generally, supporters of the electoral method believe that elected judges are more likely to be responsive to the needs of the everyday citizen, while critics argue that the appointment method is better able to identify good judges rather than good politicians. In some states, judges are initially appointed, but then must win periodic retention elections in which voters simply vote "yes" or "no" to retain that particular judge.

**Sidebar:**

**No One Legal System**

Our American "legal system" is really composed of a number of different court systems and procedures. Although all American courts share certain attributes, how a given court will work in a particular case depends on the type of court it is and the type of dispute it is being asked to resolve.

The fifty state-court systems differ from one another and from the federal courts. Civil cases are adjudicated according to different rules than criminal cases. Appellate courts play a different role than the

trial courts and specialized courts, such as bankruptcy and tax courts, and, accordingly, have their own customized procedures. Native American tribal courts, which generally have jurisdiction to hear cases originating on reservations, determine disputes based on Indian law, customs and codes, as well as federal law.

On the other hand, all American courts bear some resemblance to the federal courts established by Article III of the United States Constitution. Therefore, this chapter will primarily focus on the workings of the federal courts in general and on civil cases in particular. The criminal justice system is discussed in a separate, later chapter.

### **Most Cases Decided in State Court**

The fifty state-court systems together handle the overwhelming majority of all legal disputes. According to annual reports of the Conference of State Court Administrators, the State Justice Institute, and the National Center for State Courts, about 100 million new cases are filed in state trial courts each year. Of this enormous volume of cases, about a third are civil and criminal cases, about two percent are juvenile cases, and the remainder—about two thirds, are traffic cases.

By contrast, the Administrative Office of the United States Courts reports that annually the United States District Courts receive well under half a million cases, 80 percent civil and 20 percent criminal. Among the types of civil suits entering the federal courts are civil rights actions, cases concerning personal injury and damage to property, and prisoner petitions. Of the federal criminal cases, 70 percent were felonies. They included: homicide, tax fraud, robbery, forgery and counterfeiting, and drug offenses, the largest and fastest growing category of cases.

### **The Judiciary as a Co-equal Branch of Government**

First, it is important to note that a federal court's power to declare what the law means and to strike down congressional enactments as unconstitutional is in itself a powerful check against any attempt to diminish the role of the federal judiciary. In addition, federal judges enjoy two specific constitutional protections designed to maintain their independence from the executive and legislative branches. First, although Congress does have the power to determine the structure of and funding for federal courts, judges, once confirmed by the United States Senate, have life tenure—they cannot be fired except by "Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors." Second, Congress cannot reduce the pay of federal judges.

**Q. How much time do I have to decide whether to file a civil law suit?**

**A.** It varies depending on the kind of suit it is. An important element of all federal and state lawsuits is the "statute of limitations" that governs the amount of time you have in which to sue after the incident takes place. The concern is that it is unfair to summon a defendant into court long after the incident occurred, when memories may no longer be fresh and evidence no longer available. Thus, after the time limit has run out on the applicable statute of limitations, the plaintiff is forever barred from bringing suit--no matter how meritorious the case might be.

**Q. What begins a lawsuit?**

**A.** A lawsuit begins when the plaintiff files a document with the court called a "complaint." The complaint recounts what happened to the plaintiff, what the plaintiff wants the court to do about it, and the legal reasons why the court ought to do what the plaintiff asks. The various wrongs the plaintiff claims to have suffered are listed in separate "counts" of the complaint. The complaint also sets forth the remedy the plaintiff is seeking from the court. The remedy requested is called a "prayer for relief."

**Q. How does a defendant find out that he or she is being sued?**

**A.** The clerk of the court in which the complaint is filed will issue a "summons" to the defendant. The summons tells the defendant that a suit has been filed against him or her, who filed it, and the time and place to appear in court. This summons, along with the complaint, must then be "served" into the defendant's hands. A sheriff or marshal may deliver it, or a private process server may be hired. In some instances, it may be sufficient to mail the summons and complaint by certified or registered mail.

**Pre-Trial Procedures**

**Q. What are the defendant's options after being served?**

**A.** At this point, most defendants will hire an attorney to prepare their defense to the suit. The attorney will need to hear the defendant's version of events and scrutinize the complaint and summons. If the complaint appears deficient, legally or factually, the defendant may be advised to file one of several motions attacking it.

**Q. What is a "motion"?**

**A.** A motion is a formal written or oral request that the court take some specific action. Typical pre-trial motions might include a defense motion to strike some allegation from the complaint or to dismiss all or part of the complaint because, for example, the issue raised has already been decided in another case or because the plaintiff has no legal right to bring this particular suit. If the service of the summons and complaint was improper (because, for example, the server delivered the documents to the wrong address or to a person 12 years old or younger), the defendant may file a motion to "quash service." In any of

these cases, the parties then would be required to attend a preliminary hearing to resolve these issues.

Then the defendant will have a statutorily fixed amount of time in which to file an answer to the allegations in the complaint.

**Q. How much information should the defendant include in the answer?**

**A.** Essentially, the defendant's answer must alert the plaintiff and the court to which allegations and counts in the complaint he or she is contesting, admitting, or is unable to contest or admit because of insufficient information. The defendant must respond to each and every alleged fact and count in the complaint; failure to respond can be interpreted as an admission. In addition, the answer may raise any "affirmative defenses" he or she may have beyond simple denial. If a defendant raises an "affirmative defense," he or she will be required to prove it if the case goes to trial.

In addition, although an objection that the court lacks jurisdiction to hear a case can be raised at any time, if the defendant has reason to believe that the court lacks legal authority to hear the case, he or she should raise that issue before filing an answer. Finally, if the defendant believes that the court does not have jurisdiction over him or her, that issue should be raised in a special appearance and determined by the court before any answer is filed.

**Q. How does a court determine whether it has jurisdiction to hear the case?**

**A.** In federal court, the plaintiff bears the burden of proving, through citation of relevant statutes and case law, that the court has jurisdiction to hear his or her case under Article III of the U.S. Constitution. In most state courts, by contrast, it is up to the defendant to prove that the court does not have jurisdiction under applicable state jurisdictional laws.

**Q. What is a motion for change of venue?**

**A.** In addition to ascertaining whether it has jurisdiction to hear the case, a trial court also may be asked to determine whether the case should be heard where it was filed or in a court in some other city, county or state. If the court determines that it would be more appropriate and convenient for the parties if the trial were held somewhere else, the court will permit a "change of venue" to that location. Congress (or, in the case of state courts, the state legislature) determines the rules regarding venue, all of which are designed to ensure that neither party is forced to travel to an unnecessarily inconvenient location to try or defend a lawsuit. In high-profile criminal cases, it is not uncommon for a defendant to seek a change of venue in an effort to find a jury that has not already formed an opinion on the case as the result of heavy local media coverage.

**Q. What if the defendant concludes that it is actually the plaintiff who is liable?**

**A.** At this point, the defendant in a civil case, in addition to answering the plaintiff's claim, may file suit against the plaintiff. This action is known as a "counterclaim." If a counterclaim is filed, the plaintiff becomes a defendant and will be called on to file an answer to the allegations and counts contained in the counterclaim.

**Q. What if there are other claims or parties that should be involved in the litigation?**

**A.** If the defendant believes that others not named as defendants in the plaintiff's suit are responsible, in whole or in part, for the plaintiff's injury or loss, he or she may seek to "implead" those persons, i.e., bring them into the case as additional defendants. If a person who was not named in the original suit believes he or she should be involved in order to defend his or her interests, that person may seek to "intervene," i.e., join, the suit as either plaintiff or defendant. Finally, in multiparty suits, "cross claims" may be filed. For

example, one defendant could file a claim against another defendant. All of these pre-trial procedures are designed to encourage plaintiffs and defendants to resolve as many of their disputes as possible in a single suit rather than in piecemeal litigation.

## **Discovery**

**Q. Can a party force his or her opponent to disclose information and witnesses even before the trial begins?**

**A.** Yes. This process, called "discovery," is a vital step in any litigation and a reminder that the goal of our legal system is to do justice rather than to reward the clever attorney or secretive litigant. "Surprise witnesses" and "secret evidence" are the province of TV and Hollywood, not the real courtroom. Among the discovery tools available to litigants are:

- Depositions. The attorneys for each side in a lawsuit may compel potential witnesses to answer written or oral questions under oath.
- Interrogatories. Each party can submit a list of written questions to the other party, which again must be answered under oath.
- Motion to produce documents. Each party can compel the other to produce relevant documents in the other party's possession, custody, or control for the purpose of inspecting, copying or photographing them.
- Request to admit. Each party can ask the other to acknowledge that an allegation is true and thus spare both parties the trouble, expense and delay of having to prove it at trial.

**Q. What is summary judgment?**

**A.** Even after discovery has begun, a full-blown trial still may be forestalled by a successful motion for "summary judgment." Summary judgment may be appropriate if the facts in the case are clear and the only question is how the law should be applied to those facts. In such cases, there is no need for a jury or judge to hear witnesses or view evidence regarding what happened. All that is left for the court to do is to apply the law to the known facts, and this it can do without a trial.

In considering whether to grant a party's motion for summary judgment, the trial court will review the parties' affidavits (written statements made under oath) and discovery materials to determine whether, viewed in the light most favorable to the opponent to the motion, there is no genuine dispute regarding an important fact.

If the court is uncertain whether the case contains a genuine issue of material fact, it will deny the summary judgment motion and the case will proceed to trial. If, on the other hand, the court is convinced that there is no such factual dispute, it will consider the parties' written arguments on the legal issues and then grant the motion for summary judgment, disposing of the case.

**Q. What if my opponent and I agree on some but not all of the facts in my case?**

**A.** Parties can "stipulate" to the existence of certain facts and thereby forego the need to introduce evidence at trial to prove those facts.

**Juries**

**Q. But doesn't the United States Constitution guarantee me a right to a jury trial in every case?**

**A.** No. In criminal cases, the right only extends to defendants facing a possibility of being sentenced to a prison term of six months or more. In civil cases, the Seventh Amendment guarantees the right to a jury

trial in "suits at common law." As a general rule, suits at common law encompass only those civil suits seeking money as compensation for an asserted injury or loss—for example, breach of contract or personal injury actions. Thus, the Seventh Amendment's right to a jury trial does not apply if the plaintiff is seeking an "equitable" remedy for his or her injury or loss—for example, an order to the defendant to cease certain conduct.

**Q. What is the difference between a legal and equitable claim?**

**A.** Whether a claim is legal or equitable can generally be determined by the remedy the plaintiff is seeking. As noted above, a request for money damages is, historically, a "legal" claim, while a request that the court order a party to take or cease some action is an "equitable" claim. The question can be more complicated in cases where there are a number of different claims, some legal, some equitable, and some with both legal and equitable characteristics.

**Q. Will I automatically get a jury trial if I'm constitutionally entitled to one?**

**A.** No. Trials in federal court will not be held before a jury unless a party makes a written demand for a jury trial. For tactical reasons, some parties may prefer to have their case decided by a judge alone. On the other hand, Congress can (and has) provided for the jury trial option in some instances where the Constitution does not require one.

**Q. How does a bench trial differ from a jury trial?**

**A.** In a bench trial, the judge must determine the facts (what really happened, as distinguished from what the plaintiff alleged happened) and then apply the law to the facts. In a jury trial, the fact-finding function belongs to the jury. For example, in a negligence action for damages tried before a jury, the judge would

decide whether state law imposes a legal duty on a host to warn guests of hidden dangers on his or her property. It would be for the jury to decide whether a loose step on the host's back porch was such a danger, whether the guest had in fact been warned not to go onto the back porch, whether that warning was sufficient under the law, whether the guest's alleged injuries were real, and whether they were actually caused by a fall off the step.

**Q. How are potential jurors identified?**

A. The clerk of the court maintains a list of potential jurors using, for example, lists of registered voters or licensed drivers, or a combination of the two. When a case is set for trial by jury, the clerk uses this list to provide the court with a "venire" of potential jurors representing a fair cross-section of the community. The jurors who will actually hear the case are then chosen by the attorneys for each side in a process known as "voir dire."

**Q. How do the attorneys select the jury for my case?**

A. Each attorney and/or the judge asks the potential juror questions designed to discover any potential bias or prejudice for or against the parties or issues in the case. If the juror concedes such a bias or if evidence suggests he or she may have one, the attorney may ask the court to strike the juror "for cause" and remove him or her from the pool of potential jurors in that case. If the judge refuses to remove the potential juror "for cause," the attorney will consider whether to use one of his or her "peremptory strikes" to remove the juror. In federal civil trials, each party can make up to three peremptory strikes to remove a juror without providing a reason.

**Q. May an attorney use peremptory strikes to remove jurors on the basis of their race?**

**A.** No. In the landmark case of Batson v. Kentucky, the Supreme Court in 1986 prohibited prosecutors from exercising peremptory strikes for racially discriminatory reasons in criminal trials. This principle has since been extended in other cases so that it is now generally agreed that neither side in either criminal or civil trials may exercise any peremptory strikes for racially discriminatory reasons. (In 1994, the U.S. Supreme Court decided in J.E.B. v. Alabama ex. rel. T.B. that this principle should be applied to bar gender-based peremptory strikes as well).

**Q. Must every jury have twelve jurors?**

**A.** No. Although most jurisdictions require either twelve or six, it is not clear what the constitutional limits might be on a jury's size.

**Q. What if I am called for jury duty?**

**A.** Inform your employer and appear at the time and place indicated on your jury-duty summons.

Although you may be excused from jury service on the basis of hardship, the law requires your employer to permit you to take time off from work to perform your jury duty.

An obligation of citizenship, jury service is becoming less burdensome than ever before. Although jurors are paid a small stipend for each day's service, many employers will pay regular salaries to their employees for at least a portion of their jury duty. To further ease the burden on jurors, some jurisdictions have adopted a one-day, one-trial rule whereby jurors are only "on call" for one day. If they are picked for a jury on that day they will serve on that jury, but if they are not picked on that day they will not be called again for at least a year or two.

**Q. What if I am selected as an alternate juror?**

**A.** Alternate jurors are selected to guard against the possibility that one of the jurors will take ill or otherwise be unable to serve. As an alternate, you would attend the trial along with the regular jurors, but would not be called to participate in reaching a verdict unless one of the regular jurors was unable to continue.

## **Trials**

### **Q. My case will be tried before a jury. What does this entail?**

**A.** Jury trials begin with "opening statements" presented to the jury by the lawyer for each party. The opening statement serves to introduce the jurors to each side's theory of the case and outlines what each side plans to establish during the trial. For example, in a personal injury case, the plaintiff will argue that the defendant owed the plaintiff a legal duty of some sort, that he or she breached that duty, and that, as a result, the plaintiff suffered a financial loss or other injury. The defense, meanwhile, will explain why there is reason to doubt one or more of those elements of the plaintiff's case.

### **Q. How will the sides present their cases?**

**A.** Through the testimony of witnesses and the introduction of relevant documentary or physical evidence. The plaintiff will present the testimony of his or her witnesses first. After each witness for the plaintiff is questioned on "direct examination" by the plaintiff's lawyer, the defendant's lawyer usually "cross examines" the witness. Cross examination may be followed by "redirect" examination by the plaintiff's counsel and "re-cross" examination by the defendant's counsel. When all of the plaintiff's witnesses have testified, the plaintiff rests. If the defendant has raised any affirmative defenses, he or she will call witnesses for direct examination in an attempt to establish these defenses. Again, each witness is usually

subject to cross-examination and may be subject to redirect and re-cross examination.

Unless the jury is instructed otherwise, all of the witnesses' testimony will be evidence in the case, as will any documents or other physical evidence that the attorneys were successful in admitting.

**Q. How does a direct examination differ from a cross-examination?**

A. Direct examination is conducted by the party calling the witness while cross-examination is conducted by the opposing party. Direct examination is intended to establish the plaintiff's case or the defendant's defense; cross-examination is intended to undermine or discredit the testimony given under direct examination.

**Q. What does it mean for a judge to "sustain" an objection?**

A. One of your attorney's duties is to raise an appropriate "objection" to any violation of the rules governing the kinds of evidence the jury can and cannot weigh in deciding a case. When a court "sustains" your attorney's objection, it is telling your opponent's attorney that he or she is proceeding in violation of applicable procedural law and must correct his or her error. In addition, if an objection is sustained, the answer given is not in evidence and the jury will be instructed by the judge to disregard the answer.

Objections to questions may be "overruled," in which case the answer is in evidence and may be considered by the jury. However, even if the court overrules your attorney's objection, the objection will now be "preserved" in the written record of your trial and, thus, can be reviewed by an appellate court if you should lose at trial. In many instances, a failure to object at trial can be deemed to "waive" your right to complain about the matter later.

**Q. What are the rules of evidence?**

**A.** Taken together, these voluminous and complex rules require fact-finding judges or juries to base their decisions solely on relevant evidence that has some minimum likelihood of being reliable. As explained in the criminal justice chapter's discussion of the exclusionary rule, some evidentiary rules are fashioned to further other important policies, such as protecting civil liberties.

**Q. What is the rule against hearsay?**

**A.** Although it is one of the most familiar evidentiary rules, the rule that hearsay is generally inadmissible at trial is also one of the most complex because it has so many nuances and exceptions. The Federal Rules of Evidence define hearsay as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Two major problems often arise when an attorney raises this rule at trial and asks that the jury not be allowed to hear or consider some statement that the other side wants to introduce.

First, the judge must determine why the party is seeking to introduce the out-of-court statement. For example, assume that the plaintiff's attorney objects when a defense witness named John testifies that he heard a friend named Bill yell, "Look out! Mark has a gun!" Is John seeking to relate Bill's statement in order to help persuade the jury that Mark did have a gun? If so, the statement may well be inadmissible hearsay. If the defense wants the jury to consider Bill's statement, it will have to put Bill on the stand so that he can be cross-examined about it.

On the other hand, the defense could argue that John is not introducing Bill's statement in order to prove that Mark really did have a gun, but only to show why the defendant reasonably thought that Mark was armed. In that case, the statement might not be hearsay because it is not being offered to prove the truth of the matter in the statement, but only to show that the statement was made or to indicate the defendant's state of mind.

**Q. Even if the statement is hearsay, could it be admitted anyway?**

**A.** Actually, it could. For example, one of the many exceptions to the rule against hearsay provides that "excited utterances" may be admissible despite their hearsay nature. The rationale is that a statement is more likely to be truthful if it was made before the speaker would have had any time to think up a falsehood in the immediate aftermath of some exciting event.

## **Verdicts**

**Q. Is there anything to prevent the case from reaching the jury after each side has finished presenting its case?**

**A.** Yes. Before turning the case over to the jury, the judge will consider either side's motion to "direct a verdict" in its favor. A directed verdict removes the need for the jury to determine whether the defendant is liable, but such a ruling is only appropriate when the court is persuaded that no reasonable juror could reach any verdict other than the one it is being directed to reach. The court may grant, deny, or, more likely, "reserve" (postpone) ruling on such a motion until after the jury has rendered a verdict. If the jury rules against the party who requested the directed verdict, the judge can still overrule the jury's decision by granting a motion for "judgment notwithstanding the verdict." That way, if the losing party appeals, there seldom would be any need to order a new trial because the appellate court would have the option of upholding the judge's ruling or reinstating the jury's original verdict.

**Q. What happens if the court declines to direct a verdict?**

**A.** Each side will be given the opportunity to address the jury directly and to summarize what he or she

believes was established during the trial. At the conclusion of these talks, called "closing statements," the judge will consider each side's suggestions on how to instruct the jury regarding the proper way it should go about reaching a verdict. The judge's instructions will specify the issues the jury must decide and the law it must apply to the facts that were developed in the case. In the usual case the jury will be asked to render a "general" verdict and conclude which side won on an all-or-nothing basis. Less commonly, the judge may ask for a "special" verdict, which requires the jury to enter separate written findings on each of several issues.

**Q. What else must the verdict contain?**

**A.** If the jury concludes that one of the parties is liable to the other, it must go on to decide what remedy is owed the party who was wronged. In the ordinary personal injury suit, this remedy will take the form of money "damages" which the jury will direct the defendant to pay the prevailing plaintiff. The judge may decide to separate this portion of the trial from the liability portion. In appropriate cases, such a "bifurcated" trial can simplify the issues by saving the jury from having to listen to instructions and arguments about the proper damages until after it has determined whether the plaintiff is entitled to any damages at all.

The various formulae juries may use in calculating damages seek to give effect to the overriding goal of putting prevailing plaintiffs back in the financial position they would have been in if they hadn't been wronged in the first place. It is, of course, more difficult to calculate the proper award when the defendant's wrongful act caused more than out-of-pocket expenses: How much money does it take to compensate one for pain, suffering, or loss of life's enjoyment?

In unusual circumstances, where the defendant's behavior is thought to be especially outrageous, the plaintiff may also ask the jury to direct the defendant to pay "punitive damages" in addition to

compensatory damages. Punitive damages are designed to punish the defendant and to deter others from engaging in like conduct.

## **Post-Trial Procedures**

### **Q. Is there anything left for a victorious plaintiff to do?**

**A.** Winning a civil verdict is only the first crucial step in a plaintiff's efforts to secure compensation for his or her injury or loss. After the judge enters judgment in favor of the plaintiff, he or she still must acquire a judicial order commanding the defendant to pay the compensation awarded.

If a defendant against whom you have won a judgment does not pay it, collection proceedings can be initiated. If the defendant owns property, for example, you may be able to foreclose on it. Another option would be to garnish the defendant's wages. Your lawyer--or any lawyer you contact--would be able to help you in this regard.

### **Q. What options does the losing party have?**

**A.** In addition to seeking a judgment notwithstanding the verdict as discussed above, the losing party may also ask the court to throw out the verdict and order a new trial on grounds that the verdict was against the weight of the evidence; that serious errors or other misconduct were committed by the judge; that there was serious misconduct on the part of a juror, lawyer, witness or party; that the verdict was too large; or that vitally important evidence that could not have been discovered before the end of the trial has only now been discovered. If these "new trial" motions do not succeed, the party may choose to appeal the verdict to an appellate court.

**Q. How can a party appeal an adverse judgment?**

A. The losing party (or a prevailing party contending that it was awarded insufficient damages) may seek review of the trial court's judgment in a higher court. In the federal system, the party will appeal to the court of appeals in the appropriate circuit.

In those states that have an intermediate appellate court, parties challenging trial court decisions generally must bring their appeal to the intermediate court first. For virtually all criminal appeals, the intermediate appellate court must accept the case because the court's jurisdiction is mandatory. However, because intermediate appellate courts often have some limited discretion to determine which civil cases they will hear, not all civil appeals will necessarily be accepted, in which case the lower court's verdict will stand.

The most common exception to this pattern of review occurs in death penalty cases. In all instances, death-penalty appeals bypass the state's intermediate appellate court and go directly to the state's court of last resort. In the twelve states without intermediate appellate courts, civil and criminal litigants bring their appeals directly to the court of last resort.

**Q. How do appellate courts work?**

A. An appellate court typically concerns itself solely with issues of law. An appeal is not the time to retry the case or to reargue the facts. Instead, in an appeal, the "appellant" must persuade the court to "reverse" the trial court's judgment because of some significant legal errors that occurred during the trial which could have skewed the result, such as evidence improperly admitted or excluded, or the judge instructing the jury to apply an incorrect interpretation of the law. The "appellee," on the other hand, will seek to persuade the court that no such errors were made in the lower court or that, if there was an error, it was "harmless" because it did not affect the outcome. A transcript of the district court proceedings, together

with all of the original papers and exhibits, will be forwarded to the court for consideration in deciding the appeal.

**Q. What is oral argument?**

**A.** Prior to oral argument, the judges who will hear the case read the briefs. The judges also examine the record compiled in the trial court. At oral argument the judges will listen to the arguments of the attorneys for the parties and may question the attorneys about the case and how the law should be applied to the case. Typically each side is allotted one half hour in which to orally present its case. However, an appellate court is free to grant more or less time, based on the significance or complexity of the case. After oral argument, each judge votes on whether to affirm or reverse the trial court's judgment, in whole or in part. The court then issues a written opinion explaining its decision. As a general rule, the parties will not know the outcome of the case until the written opinion is released.

An appellate court is not required to hear oral argument in any case. Thus, the court may issue a decision or summary order based solely on its review of the record and the written briefs that present the arguments of the parties in detail. As a general rule, however, appeals cases are scheduled for oral argument. If the case is before an intermediate appellate court, the argument will be heard by a panel of three judges. However, in certain important cases before an intermediate court, the oral argument will be heard "en banc," that is, heard by all of the judges of the court. (Oral arguments before the United States Supreme Court and state supreme courts are en banc.)

**Q. Must an appellate court reach a unanimous decision?**

**A.** No. The judge or judges who disagree with the majority's result may write a dissent to explain their disagreement. If a judge agrees with the result reached by the majority but disagrees with its explanation

of why the law compelled that result, he or she may write a separate opinion "concurring" in the judgment.

**Q. What recourse is there for the party who loses at the intermediate appellate level?**

A. He or she now can seek review in the highest court in the system. In the federal system, of course, that court is the Supreme Court of the United States. In addition to the decisions of the United States Courts of Appeal, the United States Supreme Court has the jurisdiction, but not the obligation, to review the final decisions of state supreme courts (or even of lower state courts if the party was unable to secure additional review within the state courts) so long as the case is the sort of case described in Article III of the U.S. Constitution and was not decided on "adequate and independent state grounds." When the U.S. Supreme Court declines to hear a case, which it does in the vast majority of cases that are presented to it, the decision of the lower federal or state court remains the last word on the matter.

**Q. How does the U.S. Supreme Court decide whether to hear a case?**

A. In the usual course, a party seeking review in the U.S. Supreme Court will file a petition asking the Court to issue a "writ of certiorari." This petition will include a copy of the lower court's opinion in the case and a brief stating why the Court should agree to review it. The "respondent," who typically does not wish the Court to hear the case because he or she is satisfied with the opinion by the court of appeals, may file a brief in opposition to the petition. The Court will then either deny the petition (its action in most cases) or grant it, and command the federal or state court to transmit the record of the case to the U.S. Supreme Court for its review. In his book The Supreme Court: How It Was, How It Is (Morrow and Co., NY 1987), Chief Justice Rehnquist describes the process of selecting which petitions to grant as being influenced by the justices' views on three major factors: whether the lower court's opinion is in conflict with the opinions of other courts; the general importance of the case; and whether the lower

court's decision may be wrong in light of the U.S. Supreme Court's previous opinions.

**Q. What is the effect of granting certiorari?**

A. If a writ of certiorari is granted, the case will be set for briefing and oral argument in much the same way it was in the intermediate court of appeals. If the Court reaches the "merits" of the case (that is, the ultimate issues), its decision will be binding, final and the law of the land. Frequently, however, the Court will "remand" the case back to the lower court with instructions that the court reconsider its earlier opinion in light of the Supreme Court's clarification of how the relevant constitutional or statutory provisions should be applied and interpreted.

**Q. What is the effect of denying certiorari?**

A. In a civil case, the opinion of the trial court or, if there was an intermediate appeal, the opinion of the appellate court stands as the final judgment and the case will be over. If certiorari was sought from a decision in a criminal case, however, the unsuccessful petitioner may have one more avenue to pursue.

Federal courts have the power to issue writs of habeas corpus to permit prisoners to challenge their convictions as having been wrongfully obtained in violation of the U.S. Constitution. Thus, if a state criminal defendant has "exhausted" his state remedies by seeking review in both the state intermediate court of appeals and state supreme court (and perhaps even through the state version of habeas corpus), the U.S. Supreme Court's denial of certiorari does not foreclose the prisoner from obtaining another round of review in the federal court system through the writ of habeas corpus. This is so because the U.S. Supreme Court's denial of certiorari is in no way a ruling on the merits of the case, but merely a "decision not to decide" the case.

## Where to Get More Information

### Judicial Process

The American Bar Association's Division for Public Education publishes three inexpensive booklets for the public about courts and their work.

*Law and the Courts: Volume I --The Role of Courts* provides an introduction to the basic purposes of courts and explains the role of the court system in the structure of the American government. The booklet also discusses state court systems and how they are structured, defines the role of judges, and examines judicial independence. Product Code Number 235-002798ed.

*Law and the Courts: Volume II – Court Procedures* gives readers a quick look at a legal case from beginning to end. It covers how cases begin, and moves through pretrial motions, hearings, and settlement conferences, to jury selection, the steps in a trial, and the final stages—verdicts and the appeals process. A glossary of frequently used terms is included as a ready reference. Product code 235-0041.

*Law and the Courts: Volume III--Juries* (forthcoming May 2001) looks at the citizen's role in the process, both through grand juries and trial juries. Product code 235-0202. All are available from American Bar Association Order Fulfillment, telephone 800/285-2221; fax 312/988-5568; or online at <http://www.abanet.org/publiced/catalog.html>.

Other publications on courts available from the ABA include *Guide to Educating the Public About the Courts* (American Bar Association, 1994, product code number 235-0025), *Judicial Outreach on a Shoestring*, (American Bar Association, 1999, pc#523-0048), and *Explaining the Courts: Materials and Sources* (American Bar Association, 1983, product code number 410-0001). All are available from Order Fulfillment, ABA, 800-285-2221.

### The ABA Standards

The American Bar Association (ABA) has set up standards and guidelines in many areas of court procedure. They guide the work of state and federal courts. However, not every area has adopted them.

Many different ABA standards deal directly with the courts. See *Standards for Traffic Justice*, *Standards of Judicial Administration*, and *Standards Relating to Court Delay Reduction*. Also see *Standards Relating to Court Organization*, *Standards Relating to Juror Use and Management*, and *Standards Relating to Trial Courts*. All are available from Order Fulfillment, American Bar Association, telephone, 800-285-2221 or find information online at <http://www.abanet.org/jd/home.html> .

### **The Federal Court System**

For details about the U.S. Supreme Court, write to the Public Information Officer, the Supreme Court of the United States, Washington, DC 20543, telephone 202-479-3211 or visit the Court online at [www . supremecourtus.gov](http://www.supremecourtus.gov)

For facts about other federal courts, contact the Public Information Officer, Administrative Office of United States Courts, One Columbus Circle, NE, Washington, DC 20544 or visit <http://www.uscourts.gov>. On its website you'll find such publications at *History of Federal Judgeships*, *Bankruptcy Basics*, and *Understanding the Federal Courts*, which discusses the Constitution and the Courts, the role of the third branch of government, the structure of the federal courts, and the judicial process.

The Information Service of the Federal Judicial Center is also a very useful source of data about federal courts. Write to the Center at the Thurgood Marshall Federal Judiciary Building, One Columbus Circle, NE, Washington, DC 20002-8003, telephone 202-273-4153, or visit its website – <http://www.fjc.gov>—for downloadable publications, including a history of the federal judiciary.

*Preview of United States Supreme Court Cases* is a unique resource. It supplies journalists, lawyers, and other interested parties with up-to-date information on cases the Supreme Court is considering but has not yet decided. This resource analyzes each case's issues, facts, background, and significance. It helps readers understand decisions when the Court makes them. Yearly subscriptions are available from the American Bar Association's Public Education Division online at <http://www.abanet.org/publiced/preview/home.html>, by phone at 800-285-2221 (ask for product code 235-0100), or fax a request for information to Jane Moisant at 312-988-5494.

Another interesting publication is *Equal Justice Under Law: The Supreme Court in American Life* (Washington: Supreme Court Historical Society, 1982), by Mary Ann Harrell and Burnett Anderson. This lively history of the Court is available from The Supreme Court Historical Society, Opperman House, 224 E. Capitol St., N.E., Washington, D.C. 20003, telephone 202-543-0400. Check out the society online at <http://www.supremecourthistory.org>, where you'll also find a number of other publications on the Court for sale.

### **State and Local Courts**

The public information office of the National Center for State Courts provides data on state courts. You can contact it by writing to 300 Newport Avenue, Williamsburg, Virginia 23185, telephone 757-253-2000, fax 757-220-0449, or visit online at <http://www.ncsc.dni.us> for much downloadable information.

Courts in your locality are a natural, useful source of information. Many courts have handbooks that explain their procedures to the general public. They also often publish materials for jurors, witnesses, and other interested persons. To find out more about your local courts, contact your state court administrator or the state supreme court. Both have offices in the state capital.

Your local or state bar association also can be a good source of information. Bar associations often provide guides to the courts and handbooks for jurors and witnesses. In addition, they offer materials that explain the court system to the general public. Find out the address, phone number, and URL of a bar near you by accessing

<http://www.abanet.org/barserv/stlobar.html>

Many bar associations also sponsor bar-bench-media conferences. These meetings improve communication between the press and the courts. Some local and state bar associations offer informative materials that are specially designed for reporters covering the courts in their area.

Finally, many public libraries have books of state laws and other useful references.

### **Other Aspects of Law and the Courts**

Booklets from many state and local courts explain the role of jurors. For general publications and materials about juries, access the site of the Center for Jury Studies,

[http://www.ncsc.dni.us/WASH\\_DC/JURY.HTM](http://www.ncsc.dni.us/WASH_DC/JURY.HTM)

The National Criminal Justice Reference Service, PO Box 6000, Rockville, MD 20849-6000, offers information on various matters about criminal procedures. For details, see its huge and very valuable website, <http://www.ncjrs.org/homepage.htm>, or call (800) 851-3420; (Maryland residents call (301) 251-5500).

Many publications explore alternative dispute resolution. The ABA's Section on Dispute Resolution has produced many helpful materials. Many are downloadable from the Section's website at [www.abanet.org/dispute/home.html](http://www.abanet.org/dispute/home.html), and you can learn about others on the site, as well benefit from links to many organizations.

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