

CHAPTER 9

COURT RECORDS AS SOURCES OF INFORMATION

The records of Federal and State courts contain considerable information of value to the Federal investigator. To accurately check court records, it is essential to understand the terminology. On the following pages are selected terms from a glossary prepared by the Institute of Judicial Administration.¹

GLOSSARY

- action in personam* an action against the person, founded on a personal liability.
- action in rem* an action for a thing; an action for the recovery of a thing possessed by another.
- administrative office of the state courts* the business office of state courts, established in several states, which supplies information on judicial business and court personnel to the highest court, or its chief justice. The powers and duties of these offices are not uniform.
- administrative office of the United States courts* an agency within the judicial department of the United States which manages the business affairs of the courts and collects information and statistical data with respect to the courts.
- advisory opinion* an opinion rendered by a court to a lower court or, in some cases, to the legislative or executive branch of government which is not binding nor decisive of a controversy.
- amicus curiae* a friend of the court; one who interposes and volunteers information upon some matter of law.
- arraignment* in criminal practice, to bring a prisoner to the bar of the court to answer to a criminal charge.
- at issue* whenever the parties to a suit come to a point in the pleadings which is affirmed on one side and denied on the other, they are said to be "at issue."
- bail* a guaranty that a person arrested on a criminal charge will appear for trial or examination when required if he is temporarily released. The guaranty may take the form of a bond, a deposit of money or a deed to property, which is forfeited if the accused does not appear when required.
- calendar* a list of cases which are to be heard by a court during the court term.
- case* a suit in law or equity. In appellate procedure, the trial record made in the lower court, including the papers and testimony.
- cases and controversies* word appearing in Section 2, Article III of the United States Constitution, limiting the exercise of judicial power by the federal courts to actual cases between parties with adverse interests, as compared to hypothetical or friendly disputes.
- certification* the submission of questions of law arising in a particular case by a lower court to a higher court for binding instructions.
- certiorari* a writ issued by a higher court requiring the record of a case in the court below to be sent up to itself for redetermination.
- challenge to the array* questioning the qualifications of an entire jury panel, usually on the grounds of partiality or some fault in the process of summoning the panel.
- chancellor* chief advisor of the English king. By issuing writs the office eventually became the Court of Chancery in the fourteenth and fifteenth centuries. In some states, he is the chief judge of the equity courts.
- 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.
- chief judge or chief justice* the presiding judge of a court. In addition to his judicial functions, he may have administrative tasks.

¹ *Guide to Court Systems*, by Fannie J. Klein, 2nd ed., 1960. Institute of Judicial Administration, New York, N.Y.

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double jeopardy charging an accused with a crime for which he has already been tried.

en banc a judicial bench. The term is usually applied to a court of appeal when all of its judges sit together and jointly issue a decision or opinion.

equity courts of courts which administer remedial justice according to the system of equity, as distinguished from courts of common law. Equity courts are sometimes called courts of chancery.

ex post facto after the fact; an act or fact occurring after some previous act or fact, and relating thereto.

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

felony a more serious crime usually carrying with it a sentence in the state penitentiary.

general court a common term for a colonial legislature which acted as a court.

good behavior an office held during good behavior is one from which the incumbent may not be removed except, on proved charges of misconduct.

grand jury a body of men, the number of whom varies in different jurisdictions, sworn to inquire into crimes within the jurisdiction of the county or district.

great seal the seal used by the King of England to authenticate important acts and documents involving an important exercise of sovereign authority. It was in custody of the Lord Chancellor who used it to issue writs and thus acquire his important position in law and exclusive jurisdiction in equity.

habeas corpus "you have the body." The name given a variety of writs whose object is to bring a person before a court or judge. In 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 law.

impeachment trial the hearing of charges of misconduct against a public official conducted by a legislative body.

in camera in chambers; in private.

indictment a formal accusation made by a grand jury charging a person with having committed a crime.

inferior courts in the federal system, all courts created under Article III, Section 1 of the United States Constitution, except the Supreme Court. In the state systems, all courts of limited original jurisdiction.

in forma pauperis a proceeding whereby a court may absolve a poor person of certain legal costs upon appropriate application. These proceedings constitute a large number of the cases filed in the United States Supreme Court.

information a formal accusation made by an official prosecutor without presentment to a grand jury, charging a person with committing a crime.

inns of court societies of barristers in England.

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

judgment determination by a court of competent jurisdiction of a controversy between two or more persons, which is brought before the court by proper procedure.

judicial administration the organization and procedures of the judicial branch of the government.

judicial council and judicial conference the judicial council is usually an official continuing body for research, the collection of statistical data, and sometimes for the drafting of court rules. There are many variations in their membership, organization, activities and effectiveness. The membership of judicial conferences consists usually of the judges of the courts in a particular jurisdiction. Both judicial councils and judicial conferences utilize the cooperation of the bar and the public and are dedicated to improving the administration of justice and relieving congestion and delay in the courts.

judicial power the power of a court to decide and pronounce a judgment and carry it into effect between parties who bring a case before it for decision. This power includes the issuing of necessary orders to protect the court's jurisdiction.

judicial statistics data which reveal the actual work of a court for a given period. This information includes the number and types of cases filed in court and

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disposed of by the courts, time intervals for obtaining a trial, operating expenses of the courts and workload of individual judges.

judiciary the branch of government which has judicial power. Also, the name for all the courts of a jurisdiction taken collectively.

jurisdiction the authority of a court to exercise its judicial power in a specific case.

justice of the peace a public official with minor civil and criminal jurisdiction. In more serious crimes he may be authorized to conduct preliminary hearings and hold the accused for trial by a higher court.

legislative court a court created by Congress pursuant to a constitutional power other than Article III of the United States Constitution. Judges of legislative courts, as contrasted to constitutional courts, are not automatically appointed for good behavior nor are their salaries automatically subject to non-reduction during their appointment. The legislative courts are the United States Court of Claims, the United States Court of Customs and Patent Appeals, the United States Emergency Court of Appeals, the United States Customs Court, the territorial courts, and the local courts for the District of Columbia.

local court a court whose jurisdiction is limited as to a specific place.

magistrate title of a judge of an inferior court with limited criminal and sometimes limited civil jurisdiction.

majority decision a decision by an appellate court by more than one-half of those judges hearing a case.

mayor's court an inferior court whose jurisdiction is limited to a city or a town.

misdemeanor a crime less than the grade of felony.

mistrial an erroneous or invalid trial; a trial which cannot stand in law because of lack of jurisdiction, wrong drawing of jurors, or disregard of some other fundamental requisite.

municipal courts in the judicial organization of some states, courts whose territorial authority is confined to the city or community.

nisi prius courts for the initial trial of issues of fact, as distinguished from appellate courts.

nolle prosequi a formal entry upon the record by the plaintiff in a civil suit, or the prosecuting officer in a criminal case, by which he declares that he "will no further prosecute" the case.

nolo contendere a pleading usually used by defendants in criminal cases, which literally means "I will not contest it."

notary public a public officer whose function it is to administer oaths; to attest and certify by his hand and official seal, certain classes of documents in order to give them credit and authenticity in foreign jurisdictions; to take acknowledgements of deeds and other conveyances, and certify the same; and to perform certain official acts chiefly in commercial matters, such as the protesting of notes and bills, the noting of foreign drafts, and marine protests in cases of loss or damage.

official report a report of a decided case, generally, in courts of appellate jurisdiction, containing statements of the facts, judgments and opinions published by a government body. Several states publish such reports officially for selected trial courts.

per curiam an opinion rendered by the court as a whole, rather than by one judge with whom others concur. These opinions are often very short.

petit jury a body usually of twelve men or less selected from a larger panel to hear and find the facts in a trial at law, so called to distinguish it from the grand jury.

plaintiff a person who brings a law suit in law or equity. Sometimes the party appealing from a lower court to a higher court, the appellant, whether he was the plaintiff or defendant in the court below, is called the "plaintiff in error."

pleadings successive statements by which litigants set forth the allegations upon which they base their own claims or challenge the claims of their opponents.

police court a court for the trial of minor criminal offenses, and which may hold for trial by a higher court persons accused of more serious crimes.

probate court a court which administers the estates of decedents, and which controls the adoption and guardianship of minors. It is sometimes referred to as an orphan's court or a surrogate's court.

prothonotary is the title given to an officer who officiates as the principal clerk of some courts.

recorder a county officer in charge of public records. In some small towns, the recorder is the name of a local court with limited civil jurisdiction.

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.

* *stare decisis* the 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.

supersedeas a writ containing a command to stay proceedings at law, such as the enforcement of a judgment pending an appeal.

surrogate is the name given in some states to the judge or judicial officer who has administration of probate matters. In other states he is called judge of probate, register, etc. He is ordinarily a county officer, with a local jurisdiction limited to his county.

trial de novo a new trial or retrial had in an appellate court in which the whole case is gone into as if no trial had been had in a lower court.

unofficial report similar for the most part to official report, but published by a private company.

voir dire to speak the truth. The phrase denotes the preliminary examination which the court may make of one presented as a witness or juror, as to his qualifications.

writ an order issued by a court or judge directing a public officer or private person to do a specific act.

The Federal Courts

The Federal court system is basically a three step process. The first step is the U.S. District Court; the second, the U.S. Court of Appeals; and the third, the U.S. Supreme Court.

A. U.S. District Courts

There are U.S. District Courts in every State and the larger States have several. There are also U.S. District Courts in the District of Columbia, Guam, Puerto Rico, the Canal Zone and the Virgin Islands. The question of when a case may be instituted in a U.S. District Court has been debated for years. Here are some general guidelines:

The U.S. District Court has exclusive jurisdiction in bankruptcy, maritime and admiralty, patents, copyright penalties, fines under Federal law and proceedings against consuls and vice consuls of foreign states. In addition it has jurisdiction if the United States or a national bank is a party, and in some other cases in which the law specifically states that the U.S. District Court has original jurisdiction.

The U.S. District Courts have concurrent jurisdiction with State courts in "federal questions" in which the dispute arises under the Constitution, laws, or treaties of the United States; disputes between citizens of different states; one U.S. citizen and one citizen of a foreign state; a citizen and a foreign state.

The U.S. District Court has broad criminal jurisdiction over all offenses against the laws of the United States. When both Federal and State laws are violated by one committing a crime, the offender is subject to prosecution in both the Federal and State courts for the separate crimes.

The Administrative Office of the U.S. Courts has its office in Washington, D.C., and performs the administrative duties for the Federal court system. It exer-

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Federal courts in suits by a foreign ambassador or minister; disputes between the United States and a State; and disputes between a State and citizens of another State. In addition the Supreme Court has appellate jurisdiction in constitutional questions or validity of a State statute, Federal treaty or law. The second method of review is by writ of certiorari, which is not a matter of right, but which the Supreme Court can grant in its discretion if it feels that there is an important Federal question involved in the case.

D. Other U.S. Courts

To handle particular types of cases, Congress has established special courts. They are described in *Guide to Court Systems* as follows:

Court of Claims: The U.S. Government permits certain claims to be brought against itself in the U.S. Court of Claims.¹

U.S. Customs Court: When certain merchandise is imported into the United States, customs duties have to be paid to the U.S. Government. Customs collectors at various ports in the United States classify merchandise and appraise it. When an importer complains of the rate he has paid, or that his merchandise was improperly excluded, the U.S. Customs Court is the court in which he must bring his case. Appeals from the U.S. Customs Court are taken to the Court of Customs and Patent Appeals. This court also reviews certain decisions of the Patent Office and the U.S. Tariff Commission.

U.S. Court of Military Appeals: Court martial decisions arising in the armed services are referred to a Board of Review by the Judge Advocate General of the branch or service. Appeals from the Boards of Review are heard by the Court of Military Appeals.

Territorial Courts of the U.S.: The territories of the United States have been given local governing powers in varying degrees. A district court established by Congress will have broad civil and criminal jurisdiction; inferior courts may be created by the local legislative bodies to hear minor civil and criminal matters.

The State Courts

The State courts and their jurisdictions have never been made uniform. The two most modern systems are those of the newest States, Alaska and Hawaii.

In all States there is a court of last resort or court of ultimate review. In most States it is called the Supreme Court; in Kentucky, Maryland and New York it is called the Court of Appeals; in Maine and Massachusetts, the Supreme Judicial Court, and in Connecticut, the Court of Errors. In most States the court of last resort will maintain the records of attorneys admitted to practice in the State, although in New York the Appellate Division of the Supreme Court maintains these records. These courts of ultimate review hear appeals from designated State courts usually without regard to the amount of money involved. They also have ultimate jurisdiction over controversies involving the interpretation of the State constitution and State statutes. They may issue injunctions, writs of review, mandamus, certiorari, prohibition, habeas corpus and all other writs necessary or proper to the complete exercise of their appellate and other jurisdiction.

¹ However, tort and pension claims must be brought in the U.S. District Court.