We The People

LEGAL PRIMER

FIRST EDITION CONDENSED

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COMMENTS AND REQUESTS TO:

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c/o Prison Book Program
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DISCLAIMER

The author of the *We the People Legal Primer* has endeavored to make this primer as accurate and complete as possible. However, readers must not cite it or rely upon it as legal authority.

RECOMMENDED LEGAL ADVICE

Incarcerated pro se defendants should obtain legal advice from primary and secondary authorities (publications), lawyers, legal associations, law school students, and jailhouse lawyers.

INTRODUCTION

SUPREME POWER

Democracy means a form of government in which the sovereign power resides in the citizens either directly or indirectly through a system of representation. Thomas Jefferson, the primary author of the Constitution of the United States and the third President of the United States, referred to the American people as the permanent "repository" (security vault) of the supreme power in the United States.

SUPREME LAW

Law differs from power. The people, through their supreme power, create and empower law — meaning rules that all people must obey in order to protect the freedoms and rights of everyone. In Article VI of the Constitution of the United States of America, the authors, in representing the people, wrote:

> "This Constitution ... shall be the supreme law of the land..."

THE WE THE PEOPLE LEGAL PRIMER

The American people declare the Constitution of the United States of America as "the supreme law of the land;" with the powers of the federal and state legislatures, executives, and judiciaries depending from it. With this in mind, the *We the People Legal Primer* begins with the Constitution of the United States of America, and it borrows the Constitution's first three words for use in its title.

HOLISTIC VISION

This primer provides a holistic view of pro se legal research by addressing all aspects of the law — the physical, the mental, the emotional, and the spiritual.

OUR WORLD

Our world, after all, consists of people. All the laws, technologies, and good surely amount to nothing if they do not further the lives of the people.

The Constitution of the United States of America

We The People of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

Article One

Section 1. All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section 2. The House of Representatives shall be composed of members chosen every second year by the people of the several states, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature. —— No person shall be a Representative who shall not have attained to the age of twenty five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen. —— Representatives and direct taxes shall be apportioned among the several states which may be included within this union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other Persons. The actual Enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of Representatives shall not exceed one for every thirty thousand, but each state shall have at least one Representative; and until such enumeration shall be made, the state of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three. —— When vacancies happen in the Representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies. —— The House of Representatives shall choose their speaker and other officers; and shall have the sole power of impeachment.

Section 3. The Senate of the United States shall be composed of two Senators from each state, chosen by the legislature thereof , for six years; and each Senator shall have one vote. —— Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and the third class at the expiration of the sixth year, so that one third may be chosen every second year; and if vacancies happen by resignation, or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies. —— No person shall be a Senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States and who shall not, when elected, be an inhabitant of that state for which he shall be chosen. —— The Vice President of the United States shall be President of the Senate, but shall have no vote, unless they be equally divided. —— The Senate shall choose their other officers, and also a President pro tempore, in the absence of the Vice President, or when he shall exercise the office of President of the United States. —— The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no person shall be convicted without the concurrence of two thirds of the members present. —— Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States: but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

Section 4. The times, places and manner of holding elections for Senators and Representatives, shall be prescribed in each state by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators. —— The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

Section 5. Each House shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties as each House may provide. —— Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two thirds, expel a member. —— Each House shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either House on any question shall, at the desire of one fifth of those present, be entered on the journal. —— Neither House, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting.

Section 6. The Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the same; and for any speech or debate in either House, they shall not be questioned in any other place. —— No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time: and no person holding any office under the United States, shall be a member of either House during his continuance in office.

Section 7. All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other Bills. —— Every bill which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States; if he approve he shall sign it, but if not he shall return it, with his objections to that House in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration two thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a law. But in all such cases the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each House respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law. —— Every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

Section 8. The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States; —— To borrow money on the credit of the United States; —— To regulate commerce with foreign nations, and among the several states, and with the Indian tribes; —— To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States; —— To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures; —— To provide for the punishment of counterfeiting the securities and current coin of the United States; —— To establish post offices and post roads; —— To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries; —— To constitute tribunals inferior to the Supreme Court; —— To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations; —— To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water; —— To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years; —— To provide and maintain a navy; —— To make rules for the government and regulation of the land and naval forces; —— To provide for calling forth the militia to execute the laws of the union, suppress insurrections and repel invasions; —— To provide for organizing, arming, and disciplining, the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress; —— To exercise exclusive legislation in all cases whatsoever, over such District (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings;—And —— To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

Section 9. The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person. —— The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it. —— No bill of attainder or ex post facto Law shall be passed. —— No capitation, or other direct, tax shall be laid, unless in proportion to the census or enumeration herein before directed to be taken. —— No tax or duty shall be laid on articles exported from any state. —— No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another: nor shall vessels bound to, or from, one state, be obliged to enter, clear or pay duties in another. —— No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of receipts and expenditures of all public money shall be published from time to time. —— No title of nobility shall be granted by the United States: and no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.

Section 10. No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility. —— No state shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing it's inspection laws: and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the Congress. —— No state shall, without the consent of Congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

Article II

Section 1. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice President, chosen for the same term, be elected, as follows: —— Each state shall appoint, in such manner as the Legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector. —— The electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose by ballot one of them for President; and if no person have a majority, then from the five highest on the list the said House shall in like manner choose the President. But in choosing the President, the votes shall be taken by States, the representation from each state having one vote; A quorum for this purpose shall consist of a member or members from two thirds of the states, and a majority of all the states shall be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the electors shall be the Vice President. But if there should remain two or more who have equal votes, the Senate shall choose from them by ballot the Vice President. —— The Congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States. —— No person except a natural born citizen, or a citizen of the United States, at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty five years, and been fourteen Years a resident within the United States. —— In case of

the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice President, and the Congress may by law provide for the case of removal, death, resignation or inability, both of the President and Vice President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected. —— The President shall, at stated times, receive for his services, a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them. —— Before he enter on the execution of his office, he shall take the following oath or affirmation:—"I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will to the best of my ability, preserve, protect and defend the Constitution of the United States."

Section 2. The President shall be commander in chief of the Army and Navy of the United States, and of the militia of the several states, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment. —— He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law: but the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments. —— The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.

Section 3. He shall from time to time give to the Congress information of the state of the union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both Houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

Section 4. The President, Vice President and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

Article III

Section 1. The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behaviour, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

Section 2. The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;–to all cases affecting ambassadors, other public ministers and consuls;–to all cases of admiralty and maritime jurisdiction;–to controversies to which the United States shall be a party;–to controversies between two or more states;–between a state and citizens of another state;–between citizens of different states;–between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects. —— In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make. —— The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the Congress may by law have directed.

Section 3. Treason against the United States, shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court. —— The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture except during the life of the person attainted.

Article IV

Section 1. Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

Section 2. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states. —— A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime. —— No person held to service or labor in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

Section 3. New states may be admitted by the Congress into this union; but no new states shall be formed or erected within the jurisdiction of any other state; nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned as well as of the Congress. —— The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.

Section 4. The United States shall guarantee to every state in this union a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened) against domestic violence.

Article V

The Congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three fourths of the several states, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the Senate.

Article VI

All debts contracted and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation. —— This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding. —— The Senators and Representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

Article VII

The ratification of the conventions of nine states, shall be sufficient for the establishment of this Constitution between the states so ratifying the same.

AMENDMENTS TO THE CONSTITUTION

(The Bill of Rights consists of the first ten amendments. The dates refer to each amendment's ratification date.)

Amendment I [1791]

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Amendment II [1791]

A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed.

Amendment III [1791]

No soldier shall, in time of peace be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

Amendment IV [1791]

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment V [1791]

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VI [1791]

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Amendment VII [1791]

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any court of the United States, than according to the rules of the common law.

Amendment VIII [1791]

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment IX [1791]

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Amendment X [1791]

The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

Amendment XI [1798]

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.

Amendment XII [1804]

The electors shall meet in their respective states and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;—The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;—the person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President. The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of

the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

Amendment XIII [1865]

Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2. Congress shall have power to enforce this article by appropriate legislation.

Amendment XIV [1868]

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Amendment XV [1870]

Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

Amendment XVI [1913]

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration.

Amendment XVII [1913]

The Senate of the United States shall be composed of two Senators from each state, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislatures. —— When vacancies happen in the representation of any state in the Senate, the executive authority of such state shall issue writs of election to fill such vacancies: Provided, that the legislature of any state may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct. —— This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

Amendment XVIII [1919]

Section 1. After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

Section 2. The Congress and the several states shall have concurrent power to enforce this article by appropriate legislation.

Section 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several states, as provided in the Constitution, within seven years from the date of the submission hereof to the states by the Congress.

Amendment XIX [1920]

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of sex. —— Congress shall have power to enforce this article by appropriate legislation.

Amendment XX [1933]

Section 1. The terms of the President and Vice President shall end at noon on the 20th day of January, and the terms of Senators and Representatives at noon on the 3d day of January, of the years in which such terms would have ended if this article had not been ratified; and the terms of their successors shall then begin.

Section 2. The Congress shall assemble at least once in every year, and such meeting shall begin at noon on the 3d day of January, unless they shall by law appoint a different day.

Section 3. If, at the time fixed for the beginning of the term of the President, the President elect shall have died, the Vice President elect shall become President. If a President shall not have been chosen before the time fixed for the beginning of his term, or if the President elect shall have failed to qualify, then the Vice President elect shall act as President until a President shall have qualified; and the Congress may by law provide for the case wherein neither a President elect nor a Vice President elect shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice President shall have qualified.

Section 4. The Congress may by law provide for the case of the death of any of the persons from whom the House of Representatives may choose a President whenever the right of choice shall have devolved upon them, and for the case of the death of any of the persons from whom the Senate may choose a Vice President whenever the right of choice shall have devolved upon them.

Section 5. Sections 1 and 2 shall take effect on the 15th day of October following the ratification of this article.

Section 6. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several states within seven years from the date of its submission.

Amendment XXI [1933]

Section 1. The eighteenth article of amendment to the Constitution of the United States is hereby repealed.

Section 2. The transportation or importation into any state, territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

Section 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by conventions in the several states, as provided in the Constitution, within seven years from the date of the submission hereof to the states by the Congress.

Amendment XXII [1951]

Section 1. No person shall be elected to the office of the President more than twice, and no person who has held the office of President, or acted as President, for more than two years of a term to which some other person was elected President shall be elected to the office of the President more than once. But this article shall not apply to any person holding the office of President when this article was proposed by the Congress, and shall not prevent any person who may be holding the office of President, or acting as President, during the term within which this article becomes operative from holding the office of President or acting as President during the remainder of such term.

Section 2. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several states within seven years from the date of its submission to the states by the Congress.

Amendment XXIII [1961]

Section 1. The District constituting the seat of government of the United States shall appoint in such manner as the Congress may direct: —— A number of electors of President and Vice President equal to the whole number of Senators and Representatives in Congress to which the District would be entitled if it were a state, but in no event more than the least populous state; they shall be in addition to those appointed by the states, but they shall be considered, for the purposes of the election of President and Vice President, to be electors appointed by a state; and they shall meet in the District and perform such duties as provided by the twelfth article of amendment.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

Amendment XXIV [1964]

Section 1. The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any state by reason of failure to pay any poll tax or other tax.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

Amendment XXV [1967]

Section 1. In case of the removal of the President from office or of his death or resignation, the Vice President shall become President.

Section 2. Whenever there is a vacancy in the office of the Vice President, the President shall nominate a Vice President who shall take office upon confirmation by a majority vote of both Houses of Congress.

Section 3. Whenever the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that he is unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Vice President as Acting President.

Section 4. Whenever the Vice President and a majority of either the principal officers of the executive departments or of such other body as Congress may by law provide, transmit to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Vice President shall immediately assume the powers and duties of the office as Acting President. —— Thereafter, when the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that no inability exists, he shall resume the powers and duties of his office unless the Vice President and a majority of either the principal officers of the executive department or of such other body as Congress may by law provide, transmit within four days to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office. Thereupon Congress shall decide the issue, assembling within forty-eight hours for that purpose if not in session. If the Congress, within twenty-one days after receipt of the latter written declaration, or, if Congress is not in session, within twenty-one days after Congress is required to assemble, determines by two-thirds vote of both Houses that the President is unable to discharge the powers and duties of his office, the Vice President shall continue to discharge the same as Acting President; otherwise, the President shall resume the powers and duties of his office.

Amendment XXVI [1971]

Section 1. The right of citizens of the United States, who are 18 years of age or older, to vote, shall not be denied or abridged by the United States or any state on account of age.

Section 2. The Congress shall have the power to enforce this article by appropriate legislation.

Amendment XXVII [1992]

No law, varying the compensation for the services of the Senators and Representatives, shall take effect, until an election of Representatives shall have intervened.

THE BILL OF RIGHTS FOR CRIMINAL DEFENDANTS

Bill of Rights, 1791. The United States Bill of Rights provides some of a criminal defendant's protections against the federal government in a federal criminal case. Protections consist of two types: (1) rights that a defendant can exercise, and (2) prohibitions and requirements of the government toward the defendant. The Due Process clause of the Fourteenth Amendment of the US Constitution applies these protections to criminal defendants in cases brought by states.

Protections by amendment. The US Bill of Rights protects a defendant as outlined as follows.

First Amendment. Provision for: access to the courts.

Fourth Amendment. Prohibition against: unreasonable search and seizure of persons or things.

Fifth Amendment. Provision for: grand jury indictments for infamous crimes. Prohibitions against: double jeopardy, compulsory self-incrimination, and deprivation of life, liberty, or property without due process of law.

Sixth Amendment. Provision for: adequate notice of accusation, assistance of counsel, speedy trial, public trial by jury of peers, compulsory process for obtaining witnesses, and confronting adverse witnesses.

Eighth Amendment. Prohibition against: excessive bail, excessive fines, and cruel or unusual punishment.

State constitution and statute(s). In addition to these federal protections applying to state cases, the particular state's constitution or statute(s) may offer even broader protections.

AN OVERVIEW OF STATE CONSTITUTIONS

(Space limitations do not allow the reproduction or the analysis of the 50 state constitutions; thus, this section provides only an overview of them.)

Each of the 50 states has enacted its own constitution, and each state constitution contains a bill of rights to protect citizens from unnecessary governmental intrusion into individual liberties. State constitutions may go further than the US Constitution in the rights they explicitly extend to state residents. For example, the US Constitution does not explicitly give citizens the right to use obscene speech and print obscene literature, but Oregon's constitution specifically protects obscenity as free speech.

While a state can give its citizens broader rights than those in the US Constitution, it cannot narrow the rights set forth in the US Constitution. For example, the US Supreme Court would strike down a state constitutional provision that banned all firearms as violating the US Constitution's Second Amendment's guarantee of the right to bear arms.

State constitutions contain provisions that determine the way in which a state exercises its "police power"— meaning its right to pass laws that protect public morals, safety, and well-being. For example, a state exercises its police power when it regulates schools and hospitals and sets licensing requirements for professionals, health standards for restaurants and theatres, and vaccination requirements for school children.

And, like the US Constitution, state constitutions also contain provisions specifying the procedures for their own amending.

INTERPRETATIONS OF THE CONSTITUTION

Introduction. Five sources have guided the courts in their interpretation of the Constitution:

1. the text and structure of the Constitution,
2. the intentions of those who either drafted, voted to propose, or voted to ratify the provision in question,
3. prior precedents (usually judicial),
4. the social, political, and economic consequences of alternative interpretations, and
5. natural law.

Influence. Interpreters of the Constitution generally agree that the first three of these sources provide appropriate guidance for interpretation, but they certainly disagree as to the relative importance of each when they guide the courts in different directions. Many interpreters consider the consequences of alternative interpretations (#4 above) as irrelevant, even when the other sources of guidance (#1 through #3) neutralize each other. Interpreters only infrequently suggest natural law (#5: God's law, higher law) as an interpretive guide, even though many of the framers of the Constitution recognized its appropriateness.

The term "originalists" refers to persons who favor heavy reliance on originalist sources (#1 and #2). The term "non-originalists" refers to persons who favor giving more substantial weighting to precedent (#3), consequences (#4), or natural law (#5). In practice, disagreement between originalists and non-originalists often concerns whether to apply heightened judicial scrutiny to certain "fundamental rights" which the text of the Constitution does not explicitly protect.

Definitions.

"Textualist" refers to an originalist who gives primary weight to the text and structure of the constitution. Textualists often doubt the ability of judges to determine collective "intent."

"Intentionalist" refers to an originalist who gives primary weight to the intentions of the Constitution's framers, members of proposing bodies, and ratifiers.

"Pragmatist" refers to a "non-originalist" who gives substantial weight to judicial precedent or the consequences of alternative interpretations, so as to sometimes favor a decision considered "wrong" from the originalist view but "right" because it promotes stability or in some way promotes the public good.

"Natural law theorist" refers to a non-originalist who believes that higher moral law ought to triumph over inconsistent positive law.

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Justifications for Originalism.

- Originalism reduces the likelihood that unelected judges will seize the reigns of power from elected representatives.
- Originalism in the long run better preserves the authority of the Court.
- Non-originalism allows too much room for judges to impose their own subjective and elitist values. Judges need neutral, objective criteria to make legitimate decisions. The understanding of the framers and ratifiers of a constitutional clause provides those neutral criteria.
- *Lochner v. New York* (a decision widely considered as a bad non-originalist decision).
- Leaving it to the people to amend their Constitution when necessary promotes serious public debate about government and its limitations.
- Originalism better respects the notion of the Constitution as a binding contract.
- If a constitutional amendment passed today, we would expect a court five years from now to ask what we intended to adopt.
- Originalism more often forces legislatures to reconsider and possibly repeal or amend their own bad laws, rather than to leave it to the courts to get rid of them.

Originalist Justices.
Justice Hugo Black, Justice Antonin Scalia, Justice Clarence Thomas, and Judge Robert Bork.

Judge Bork on Originalism: "If the Constitution is law, then presumably its meaning, like that of all other law, is the meaning the lawmakers were understood to have intended. If the Constitution is law, then presumably, like all other law, the meaning the lawmakers intended is as binding upon all judges as it is upon legislatures and executives. There is no other sense in which the Constitution can be what article VI proclaims it to be: 'Law....' This means, of course, that a judge, no matter on what court he sits, may never create new constitutional rights or destroy old ones. Any time he does so, he violates not only the limits of his own authority but, and for that reason, also violates the rights of the legislature and the people....the philosophy of original understanding is thus a necessary inference from the structure of government apparent on the face of the Constitution."

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Justifications for Non-originalism.

- The framers at the Convention in Philadelphia indicated that they did not want their specific intentions to control interpretations.
- No written Constitution can anticipate all the means that government might in the future use to oppress people, so judges must sometimes fill in the gaps.
- The framers had various, and often transient, intentions, and often impossible to determine. Text often contains ambiguities, and judicial precedents often exist which support either side. In such cases, why not produce the result that will best promote the public good?
- Non-originalism allows judges to head off the crises that could result from the inflexible interpretation of a provision in the Constitution that no longer serves its original purpose. The nation cannot rely upon the very difficult amendment process to save us.
- Non-originalism allows the Constitution to evolve to match more enlightened understandings on matters such as the equal treatment of blacks, women, and other minorities.
- *Brown v. Board of Education* (a decision widely considered as a bad originalist decision)
- Originalists lose sight of the forest because they pay too much attention to trees. The nation ought to focus on the larger purpose—the animating spirit—of the Constitution ... the protection of liberty.
- Nazi Germany (originalist German judges did not exercise the power they might have otherwise had to prevent or slow down inhumane Nazi programs).

Non-originalist Justices. Justice Harry Blackmun, Justice William Brennan, Justice William O. Douglas, and Justice Richard Posner.

Judge Richard Posner on Non-originalist Gap-filling: "A Constitution that did not invalidate so offensive, oppressive, probably undemocratic, and sectarian law [as in the Connecticut law banning the use or distribution of contraceptives] would stand revealed as containing major gaps. Maybe that is the nature of our, or perhaps any, written Constitution; but yet, perhaps the courts are authorized to plug at least the most glaring gaps. Does anyone really believe, in his heart of hearts, that the Constitution should be interpreted so literally as to authorize every conceivable law that would not violate a specific constitutional clause? This would mean that a state could require everyone to marry, or to have intercourse at least once a month, or it could take away every couple's second child and place it in a foster home. ... We find it reassuring to think that the courts stand between us and legislative tyranny even if a particular form of tyranny was not foreseen and expressly forbidden by framers of the Constitution."

THE HISTORY OF LAW

Ur-Nammu's Code, 2050 BC. The Sumerian King Ur-Nammu founded and ruled the third dynasty of the ancient city of Ur. Ur-Nammu promulgated the oldest code of law yet known, consisting of a prologue and seven laws, although of such poor physical condition that scholars can decipher only five of its articles. Archaeological evidence shows that an advanced legal system supported it. This system included: specialized judges, the giving of testimony under oath, the proper form of judicial decisions, and the ability of the judges to order that a guilty party pay damages to a victim. The Code allowed for the dismissal of corrupt officials, protection for the poor, and a criminal system with the punishment proportionate to the crime. Although called "Ur-Nammu's Code," scholars generally agree that his son Shugli wrote it.

Hammurabi's Code, 1700 BC. The Babylonian king Hammurabi came to power in 1750 BC, and he established the greatness of Babylon, the world's first metropolis. His officers developed a code of laws and had them carved on a huge rock column meant for public display. Historians know his laws as the first example of a ruler to publicly proclaim an entire body of law to the people. The expression "an eye for an eye" has come to symbolize the principle behind Hammurabi's code –meaning that the bodily damage of the punishment could equal but not exceed the bodily damage caused by the crime. Although some people may think that this code invented brutal punishments, it actually limited the more extreme brutalities previously practiced under older laws. The code contains 282 clauses regulating a vast array of obligations, professions and rights including commerce, slavery, marriage, theft and debts. Modern societies view the punishments as barbaric. The law prescribed the death penalty for their more serious crimes, such as: perjury in a capital offense case, theft of an object from a temple, breaking and entering, or kidnapping. The law punished a thief with the cutting off a finger or a hand, punished a man who kissed a married woman with the cutting off his lower lip, and punished someone who defamed another with cutting out the person's tongue.

The Ten Commandments, 1300 BC. According to the Bible, Moses received a list of ten laws directly from God. Known as the Ten Commandments and written as part of the Book of Moses, they became part of the Bible. Many of the Ten Commandments survive in Judeo-Christian cultures as modern forms of "Do not kill," "Do not steal," and "Do not lie about others."

Draco's Law, 621 BC. Draco, a Greek citizen, wrote the first written laws of Athens (in ancient Greece). The code punished many offenses with death; and thus, the English word "draconian" (drah-KOH-nee-an) came from his name and means an unreasonably harsh law. These laws introduced the idea of the state's exclusive role in punishing persons accused of crime, instead of relying on private justice which citizens previously practiced.

Twelve Tables of Rome, 450 BC. ("Duodecim Tabularum" in Latin) Experts consider the Twelve Tables of Rome as the most important codification of law in history. Twenty-five hundred years ago during the early formation of Rome, the patricians (pah-TRISH-anz) (the nobles) controlled all the rights and privileges of the government in Rome. Patrician judges kept the law in their collective minds and, thus, away from the plebeians (the common people). The plebeians (plih-BEE-anz) (or plebes (PLEE-beez)), on the other hand, had the burdens of paying taxes and serving in the military.

In about 450 BC, the plebes called a strike to protest the unfair advantages of the patricians. The patricians capitulated and gave the plebes more control over the government and allowed them to elect officials to represent them. Roman citizens elected the Decemvirs (meaning "ten men") and gave them the unprecedented powers to draft the statutes of the early Roman Republic. Three Decemvirs traveled to Greece to learn about life and law there as well as in other Greek communities.

The Decemvirs then codified the customary Roman laws, including some Greek elements, and put them on public display. They invited all of Rome to read the statutes, to personally consider them, to discuss them with friends, and to bring any desired changes to public hearings. Thus, each citizen had a fair say in the laws, which allowed the strongest possible consent by every citizen. The Roman government then inscribed the finished laws onto twelve bronze (or wooden) tablets – the "Twelve Tables of Rome" – and put them on permanent public display in the Roman Forum (the

main public square). The Twelve Tables of Rome allowed the people to learn and understand the law, and generations of schoolchildren memorized them.

The Twelve Tables codified and promoted the method of public prosecution of crimes and instituted a system for injured parties to seek just compensation in civil disputes. The Twelve Tables protected the plebeians from the legal abuses of the ruling patricians. No longer would the memories and interpretations of judges (composed only of patricians) act as the sole foundation of justice. The desire and creation of the Twelve Tables established the important basic principle of a written legal code for Roman law. Perhaps most importantly, the Twelve Tables formed an important basis of all subsequent western civil and criminal law.

The Twelve Tables and their subject matter:
I – Preliminaries to a trial, rules for a trial; **II** – The trial;
III – Debt; **IV** – Rights of fathers over the family;
V – Inheritance and Guardianship;
VI – Acquisition, Ownership, and Possession;
VII – Rights concerning land and real estate;
VIII – Torts or Delicts; **IX** – Public law; **X** – Sacred law;
XI – Marriage laws; **XII** – Binding public powers.

The Gauls destroyed the Twelve Tables when they sacked Rome in 390 AD, about 800 years after their creation. Several documents have survived which refer to parts of the different Twelve Tables; thus, some information exists as to their contents.

Justinian's Code, or Corpus Juris Civilis, 529 AD. Modern legal scholars remember Justinian, a Roman, mostly for his codification of Roman Law in a series of books called Corpus Juris Civilis. His collection served as an important basis for law in contemporary society, and was inspired by logic-based Greek legal principles. Justinian's Code resulted in many legal maxims still in use today. His work inspired the modern concept and, indeed, the creation of the English word "justice" as a legal term. Important concepts in his Roman Code survive in the laws of Italy, Germany, Scotland, South Africa and Quebec. Roman law formed the base of civil law, one of the two main legal systems to govern the modern societies of the western civilization.

Magna Carta, 1215 AD. A basic document that states the liberties guaranteed to the English people. Some legal scholars call it the "blueprint of English common law." The Magna Carta proclaims rights that have become a part of English law and, now, as the foundation of the constitution of every English-speaking nation. The Magna Carta attempted to codify the relationships between the three great powers in the land at that time: the King and his state apparatus, the Church ultimately led by the Pope, and the Barons (the leading nobles) with their castles and great estates. Such power problems included: could the Church excommunicate nobles, and could the Crown prosecute the clergy. English barons and churchmen drew up the Magna Carta, which means "great charter" in Latin, and forced the tyrannical King John to set his seal to it (meaning: to sign it).

Because of King John's cruelty and greed, the powerful feudal nobles, and the churchmen, and (to some extent) the commoners united against him. John had begun to treat the nobility as he did commoners – by jailing them without showing reason. The barons found this treatment of them intolerable, and John's behavior toward them triggered the writing of the Magna Carta.

While King John waged a disastrous war in France, the barons met secretly and swore to compel him to respect the rights of all his subjects. When John returned to England, the barons presented him with a series of demands in the form of the Magna Carta. John tried to gather support, but almost all of his followers deserted him. On 15 June 1215, John met with the barons and the bishops along the south bank of the River Thames in a meadow called Runnymede and affixed his seal to the Magna Carta. After John signed the Magna Carta, he sent letters to all sheriffs ordering them to read the Magna Carta aloud in public.

The Magna Carta caused the first instance in history where a king allowed that even he must observe the law and that the barons could "distrain and distress him in every possible way" – just short of a right to rebellion.

In its effect on American law, the Magna Carta codified, and thereby preserved, the customary laws of "habeas corpus" and "due process"(shown here in the original Latin of the Magna Carta and translated into English):

39. Nullus liber homo capiatur, vel imprisonetur, aut disseisiaqtur, aut ulagetur, aut aliquo modo destruatur, nec super eum ibimus, nec eum mittemus, nisi per legale judicium parium suorum vel per legem terre. ...

39. No free man shall be seized, or imprisoned, or disseized (stripped of rights or possessions), or outlawed or exiled, or in any way ruined, nor will we (the barons) go or send against him, except by the lawful judgment of his peers or by the law of the land.

52. Si quis fuerit disseisitus vel elongatus per nos sine legali judicio parium suorum de terris, castellis, libertatibus, vel jure suo, statim ea ei restituemus; ...

52. If anyone whom has been disseized or deprived by us without lawful judgment of his peers of lands, castles, liberties, or his rights, we will restore them to him at once;

Actually, the Magna Carta failed in its original enactment of 1215. Intended as an instrument of peace, it instead provoked hostilities. Meant to confirm customary law, it instead promoted disagreement and contention. The parties held it legally valid for only the first three months, but did not execute it properly during that period. After ten weeks, the Pope annulled the Magna Carta. Yet the people forced its revival in re-issues in 1216, 1217, and 1225. The last version became law, confirmed and interpreted in Parliament and enforced in the courts of law. Twelve chapters from the original issue still stand as law, including clause 39, above, on Due Process. The healthy survival of the clauses on individual liberties reflects the superb quality of the intentions in the original act of 1215.

Lawyers caused much of the survival of the clauses on liberties as well as the veneration for the Magna Carta itself. In the 1600s, Sir Edward Coke led to re-instate it as a document of political importance. Sir William Blackstone wrote a commentary on it in 1759, and William Sharp McKechnie wrote his commentary on it in 1905. The American Bar Association provided the memorial that stands at Runnymede. British and American lawyers hold annual gatherings of the Magna Carta Society.

In 1996, almost 800 years after the creation of the Magna Carta, Britain's Lord Chief Justice, Lord Bingham wrote, "Historically, the constitutional significance of Magna Carta has depended much less on what the charter said, than on what it was thought to have said. What it was thought to have said was the subject of constant development, with the aid of some statutory reinforcement, over succeeding centuries. It was this process which led to the English Bill of Rights, the heavy reliance placed on Magna Carta by the American colonies in their battles against the crown, the constitution of the United States and, the constitution of the Republic of India."

Mayflower Compact, 1620. A quickly-drafted civil document meant to secure an agreement among the colonists aboard the *Mayflower* after realizing their original "patent" had no jurisdiction where they landed. The compact exemplifies self-rule by the people.

John Carver, a leader of the Separatist Puritans (an unpopular self-ruling religious order, later known as the "Pilgrims"), chartered the *Mayflower* to help them to colonize the new world. London businessmen, who helped finance the voyage, insisted that it include other, non-Separatist colonists. The Virginia Company of London issued a patent granting land in Virginia to the colonists. The Mayflower Compact would have never come into existence had the ship arrived in Virginia; however, the *Mayflower* reached Cape Cod instead. Rumors spread among the Pilgrims that some of the others intended to do as they pleased because the patent did not apply to that part of the new world.

The Pilgrims modeled the compact after their church covenant, which vested religious authority in the people. While anchored off the tip of Cape Cod, most (41) of the adult male passengers signed the compact, binding them to a "civil Body Politic" (a temporary government) in order to "enact … just and equal Laws … for the general Good of the Colony." They intended that the compact help their colony to survive by preserving order through a rule of law developed by the colonists themselves until a valid company patent or royal charter could confirm their right to self-government.

The colonists then elected John Carver as their first governor. A month later, after scouting for a suitable settlement area, the colonists landed and settled at a place they named Plymouth. The colonists successfully abided by their compact for more than 70 years until they joined the Massachusetts Bay Colony in 1691.

Petition of Right, 1628. A petition to King Charles I from Parliament championed by Sir Edward Coke, a member of Parliament and a well-known adversary to the crown. The petition demanded of Charles: that he desist from levying taxes on the people without Parliament's consent, that he cease housing soldiers and sailors in the homes of private citizens, that he desist from proclaiming martial law in time of peace, and that he desist from imprisoning any of his subjects without cause shown.

Parliament wrote the petition partly in reaction to Charles' attempt to finance several costly foreign wars by extracting the money directly from his subjects after Parliament had failed to provide funding. Charles had arbitrarily imprisoned those subjects who refused to pay. Charles signed the petition in exchange for parliamentary approval of funds needed to maintain his foreign policies.

Although the petition did little to change Charles' autocratic rule, it later became an integral part of the English Constitution. Some parts of the petition also found their way into the American Declaration of Independence and the Constitution of the United States.

The English Bill of Rights, 1689. The English Bill of Rights blazed the legal trail for the American Bill of Rights, and defined important limits on the monarchy's legal powers, such as the arbitrary suspension of Parliament's laws. More importantly, it allowed only Parliament (and not the monarchy) the power to raise money through taxation.

Blackstone's Commentaries on the Laws of England, 1765. The British jurist and legal scholar William Blackstone (1723-1780), focused on studying and teaching law. Legal historians also know him as the first British law professor to turn from teaching Roman law to teaching English law. He wrote down the entire English law in an orderly four-volume set, in clear English, thus making English law suddenly accessible to the public. His thoroughness also made his commentaries essential reference material for both lawyers and law students.

Blackstone's book exerted tremendous influence on the legal profession and on the teaching of law in England and in the United States, and many legal scholars believe that the law in the American colonies during the first century of American independence consisted mostly of Blackstone's Commentaries.

The American Declaration of Independence, 1776. On 4 July 1776, representatives for the people of the American colonies signed the Declaration of Independence, thus proclaiming that "all political connection between [the United Colonies] and the State (Nation) of Great Britain is and ought to be dissolved" and that the colonists had created a new nation, the United States of America.

The American declaration represents the first instance ever of a government (the United States) rebuking the medieval theory that certain people (the nobility) possessed, by right, the power to rule others. The Declaration makes the assertion that "All men are created equal," and that they have "unalienable rights that among these are life, liberty and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their powers from the consent of the governed." Regarding the supreme power of the people, the Declaration states, "...Governments are instituted among Men, deriving their just powers from the consent of the governed. That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or abolish it..."

Articles of Confederation, 1781. The compact between the thirteen original states of the Union in force from 1781 to 1789. It began the development of an American federal government. It and the Constitution contained many of the same or similar principles and provisions. The people eventually established the Constitution because it "formed a more perfect Union."

The Constitution of the United States of America, 1787. In 1787 in Philadelphia, Pennsylvania, representatives of the people of the original thirteen American colonies signed the American Constitution thus forming the basis of the first republican government in the world. The Constitution defined the institutions of government and the powers and duties of the legislative, executive and judicial branches. The Constitution also declared itself as the supreme law in the United States, and that it overrides all other laws inconsistent with it.

From the European viewpoint, the Constitution seemed to have serious weaknesses. The American Bill of Rights seemed to weaken it further.

Instead of setting up the strongest possible government, the American revolutionists set up the weakest possible central government with most of the power remaining with the people and the state constitutions acting as buffers. The writers of the Constitution believed that the ultimate power of a nation resided in its people, instead of its rulers.

Europeans saw the Constitution as a violation of age-old experience and wisdom. Some governments refused to recognize the government of the Unites States. However, some Europeans dissented with the general Old World view of the new republic. The English statesman William Pitt read the Constitution and proclaimed it an object of wonder and admiration for all future generations. Count Aranda, Prime Minister of Spain, said that the United States was born a pygmy, but that a day would come when it would be a giant, even a colossus.

The American Constitution continues to serve as a model for the constitutions of many nations upon attaining independence or becoming democracies.

The American Bill of Rights, 1791. Four years after the signing of the Constitution, American statesmen amended their supreme law by declaring the rights of free speech, freedom of the press and of religion, a right to trial by one's peers (jury), protection against "cruel and unusual punishment" or unreasonable searches or seizures, and other rights.

The first ten amendments have received the name "Bill of Rights;" however, the name misleads people and it tends to confuse those with careless thinking. The word "rights" reflects the old feudal concept used in England where the British government permits its subjects to have certain freedoms.

However, the opposite occurs in America. Our "Bill of Rights" lists prohibitions of the government, and it defines the uses of power that the people grant and don't grant to public officials. In America, people in public office receive permission instead of give permission. Public officials act as the servants, and not the masters, of the people. People refer to them as "public servants."

America can rightly claim authorship to this single most important innovation in political principles since the beginning of recorded history. The American Bill of Rights continues to influence many modern charters or bills of rights in countries around the world.

Marbury v. Madison, 1803. In *Marbury v. Madison*, the United States Supreme Court upheld the supremacy of the Constitution and stated unequivocally that the Supreme Court had the power of "judicial review" – to strike down actions taken by American federal or state legislative bodies which, in its opinion, offended the Constitution. The legal profession generally considers this case as the most important milestone in the history of American law since the Constitution.

SPEECHES AND OTHER WRITINGS

The Federalist Papers, 1787 – 1788. The first and most authoritative commentary on the US Constitution. After the Declaration of Independence and the US Constitution, it ranks as the third most important work in American political science. In 1787 and 1788, Alexander Hamilton, James Madison and John Jay published what came to be known as the Federalist Papers as letters under the pseudonym "Junius"in newspapers in New York City. They intended them to help explain the Constitution (as well as condemn the Articles of Confederation). in order to guarantee New York's ratification of it. By May 1788, they were also publishing the Federalist Papers as books, and their greatest use came as a kind of handbook for debaters in New York and Virginia. The Federalist Papers comment on the Constitution and not its Amendments and, thus, it has little use for researchers of constitutional rights given in the Amendments to the Constitution.

George Washington's Farewell Speech, 1797. "...The basis of our political systems is the right of the people to make and to alter their constitutions of government..."

Ancient Law, 1861. Sir Henry James Sumner Maine. Maine wrote this book to "indicate some of the earliest [legal] ideas of mankind and to point out the relation of those ideas to modern thought." He employed the method of understanding facts by tracing their origins and historical connections. Charles Darwin used this same method of historical understanding in his "On the Origin of the Species" (1859). The works of both authors belongs to a wider movement of that era involving the historical method. Although modern legal scholars agree that Ancient Law has a few inaccuracies, professors of law usually assign it as a classic must-read.

Emblem of Good Will, 1926. An extraordinary gift from the Polish people to the American people on the 150th anniversary of the Declaration of Independence, which exemplifies the greatness of America's government.

Some Americans take their freedoms for granted, but the Poles understood what Americans have. Five and a half million Poles, including the President, national and regional officials, religious authorities, members of social organizations, faculty and students at major universities, and million of schoolchildren signed the Emblem of Good Will which reads:

> We the People of Poland, send to you, citizens of the great American Union, fraternal greetings, together with the assurance of our deepest admiration and esteem for the institutions which have been created by you. In them Liberty, Equality, and Justice have found their highest expression and have become the guiding stars for all modern democracies.
>
> Noble Americans, you holiday is sacred not for you alone.
>
> It finds a warm reverberation over the whole world, and especially in our motherland, Poland, which is proud of the fact that, in that momentous hour of your history, when George Washington raised the banner of Liberty, there stood also beside him our champions of national Liberty – Thaddeus Kosciuszko and Casimir Pulaski.
>
> The blood then mutually shed has forever united us by bonds of common feelings for the same ideal of the free man and the free nation.
>
> These ties have been strengthened by your participation in the Great War of 1914 – 1918 which was crowned by a magnificent victory of truth and justice over oppression and injustice. Thanks to this victory Poland, after years of slavery, again took her place among the free nations of the world. The glorious part taken by the American aviators of the Kosciuszko Squadron in our war against the Bolshevik hosts in 1920 has contributed further to cementing the mutual bonds between us.
>
> With eternal gratitude in our hearts, not only for your sacrifices in blood, but also for the various kinds of aid given by you in the name of humanity during the war, and, above all, for saving our children from famine and disease — we, on the day of your national festival, desire to take part in your joy and to wish your country and your nation all possible prosperity, to the good and happiness of the entire human race.
>
> The many Poles who have been received by your rich and beautiful land, and who have become citizens of the United States, will today raise their voice with you in honor of their second country, to this tribute, paid by over three million Polish immigrants, is added that of thirty million Poles, inhabiting their free motherland, who cry with hearts throbbing with fraternal feeling:
>
> Long live the United States of America!
> Long live Liberty, Equality, and Justice!

THE AMERICAN REPUBLIC: DIVISION OF POWER

The people intended the Unites States of America as a republic and administered by representatives chosen directly or indirectly by the people to protect the interest of all the people. Ultimately, any government, regardless of its name, must consist of one person or a small group of persons in power of the majority of people.

The solution of the American republic involves limiting that power, cutting it to an irreducible minimum without incurring the dangers of anarchy.

A person sits as head of state and, obviously, that person thinks, decides, acts, and judges. In this new American republic, no top official could act as a whole person. The people decided to separate the main functions of government into three heads (almost literally).

The first part (called the Congress) thinks and decides. The second part (called the Executive) orders the action. The third part (called the Supreme Court) serves as judge or referee. No monarchy or dictatorship here – no single person to make laws, order actions, and judge others. No. The American people granted those powers to their new government; however, with those powers divided into three branches, and with each branch acting as a safeguard of the other two.

Over these three heads, the American people set their Constitution, a written document of political principles, intended as the strongest safeguard of all. This document defined a government run by principles and rules, and not a government run on notions or impulses. Thus, the American Constitution serves as an impersonal restraint upon the persons with human weaknesses, whom the people allow to wield their partial abilities as authority over this nation of free people.

BASIC JUDICIAL DOCTRINES

Supreme law. The writers and signers of the US Constitution included in it the definition of itself as "the supreme law of the land." In it, they defined that the powers of the legislatures, judiciaries and executives, for both the federal and the state governments, depend from the US Constitution. This declaration, of course, refers to law. The supreme power, as compared to the supreme law, always rests with the people, as described in the Declaration of Independence.

Empowers government. The US Constitution empowers the three branches, or departments, of government. It empowers the legislature with the initiative to create and modify statutes. It empowers the executive with the initiative to interpret and enforce those statutes. And it grants to the judiciary, the powers to determine controversies brought by contesting parties.

Separation of powers. The US Constitution grants powers separately to each department of the government: lawmaking to the legislature, the execution of the laws to the executive, and the adjudication of matters to the judiciary. No branch of government may exercise another branch's power. For example, despite what poorly chosen wording newscasters and newspapers may use, the president does not have the power to introduce a bill into Congress. The president must convince a congressman, either senator or representative, to introduce it. The president may also recommend legislation.

Exceptions. Well-known exceptions to separation of powers exist. Congress acts with judicial powers when it impeaches (tries) government officials for wrongdoings. Congress also acts with executive powers when it declares war upon other countries.

Reactive judiciary. Note that the US Constitution grants proactive powers to the legislatures and executives, meaning that those departments can and must use their powers upon their own initiatives. The Constitution, however, does not grant proactive powers to the judiciary. The Constitution does not empower the judiciary to initiate investigations and render decisions on its own. To do so would have the judiciary running helter-skelter and questioning the laws of Congress and the actions of the executive as they see fit. Instead, the Constitution grants only reactive powers to the judiciary – it can only react to issues brought to it. Thus, contesting parties must bring issues before the judiciary in order that it may exercise its powers.

Court doctrine. In a similar fashion, a trial court hears the arguments brought before it. In the documents, testimony, and arguments brought before it, the parties must present their complaints and arguments clearly and logically to the court. The court cannot exercise the power to conduct its own investigation into the legal basis for any parties' claims. A court, including an appellate court, may question a party's supporting argument and prompt further supporting argument from the party, in order to exercise a more thorough adjudication in a matter. However, courts do not normally advance any arguments themselves. Courts must remain neutral in all matters. The parties themselves must supply the legal basis for their claims. Compare this neutrality with sua sponte. Cf. sua sponte in the Latin Words & Phrases section.

THE STRUCTURE OF THE FEDERAL JUDICIARY

Triple layer. The federal court hierarchy consists of three layers: the trial court of general jurisdiction, known as the district courts; the 12 courts of appeal; and the Supreme Court. Several other courts exercise special jurisdiction of no consequence to criminal defendants (patents, tax, bankruptcy, international trade, and so on).

District courts. This lowest layer of the federal judiciary consists of 94 federal district courts organized within 12 regional circuits that cover the country, including both states and territories. About half the states have one district court each. In the other states, their great volume of cases has necessitated the creation of two or more districts within each state. For example, New York and California contain four districts each. Further increases in cases have prompted Congress to simply increase the number of judges in the districts rather than adding more districts. For example, the Southern District of New York, which contains New York City, has 27 judges, and the four districts in California have a total of 42.

A single judge, with a jury when rightly demanded, hear cases in the federal district courts. A district's entire judiciary may hear, "en banc," cases of special significance.

Federal magistrates. Federal district courts employ, as part of its judiciary, a system of "magistrates" – judicial officers appointed to full-time (8-year term) or a part-time (4-year term) positions by the district court judge. The magistrates exercise the narrow powers formerly exercised by the predecessors, the United States commissioners, and broader powers including the powers of trial where both parties so consent. 28 U.S.C. §§631-639.

Courts of appeal. This middle layer of the federal judiciary consists of 12 courts of appeal – one for each of the 11 numbered regional judicial districts and one for the District of Columbia:

- 1st Circuit - Maine, New Hampshire, Massachusetts, Rhode Island, and Puerto Rico,
- 2nd Circuit - Vermont, Connecticut, and New York,
- 3rd Circuit - Pennsylvania, New Jersey, Delaware, and the Virgin Islands,
- 4th Circuit - Maryland, Virginia, West Virginia, North Carolina, and South Carolina,
- 5th Circuit - Mississippi, Louisiana, and Texas,
- 6th Circuit - Kentucky, Tennessee, Ohio, and Michigan,
- 7th Circuit - Indiana, Illinois, and Wisconsin,
- 8th Circuit - Minnesota, North Dakota, South Dakota, Nebraska, Iowa, and Arkansas,
- 9th Circuit - Alaska, Washington, Montana, Oregon, Nevada, California, Arizona, Hawaii, Guam, and the Mariana Islands,
- 10th Circuit - Utah, Wyoming, Colorado, Kansas, and New Mexico,
- 11th Circuit - Georgia, Alabama, and Florida, and
- DC Circuit - Washington, DC.

A party can take an appeal from a district court to a court of appeal. These courts normally sit in panels of three judges, which, if the court does not have three judges available to sit, may add a district judge from within the circuit or a circuit or district judge from another circuit. In a case of special significance, all of a district's judges will sit "en banc" to hear the case.

United States Supreme Court. The United States Supreme Court consists of nine members. Its annual term normally begins in October and ends in June. The entire court hears each case, with a quorum of six, rather than a panel. The Supreme Court hears several types of cases.

THE JURISDICTION OF THE FEDERAL JUDICIARY

District courts. The limited scope of Article III of the US Constitution's, in turn, restricts its empowerment of Congress to establish the inferior federal court's subject matter jurisdiction. Thus, Congress grants the inferior court jurisdiction over: "federal questions" (cases arising under the Constitution or federal laws or treaties), "diversity of citizenship" (cases between citizens of different states), and cases involving the United States as a party (including those of sovereign immunity and consent of the United States to subject itself to a suit).

Criminal defendants can appeal decisions by their state's highest court, if applicable, to the applicable federal district court. The best avenue of appeal involves "federal questions."

Court of Appeals. The courts of appeal have jurisdiction over appeals from the district courts. Parties appeal as of right from "final" decisions, although parties may make "interlocutory" and "collateral" appeals, mostly notably on issues regarding preliminary injunctions.

These courts also exercise discretionary appellate review of any interlocutory order in a civil case if the trial judge certifies the question of law as debatable and that an appeal would materially advance the ultimate termination of the litigation.

Other appellate jurisdiction involves appeals from administrative agencies, usually where a specific provision in the statute which created the agency directs the appropriate court of appeals exercise exclusive appellate jurisdiction over its findings.

Supreme Court. As defined by the US Constitution, the Supreme Court exercises original jurisdiction in some cases, such as those with states as both parties or, more rarely, those with Ambassadors and Consuls, or public Ministers as parties. This court almost always relegates suits between a citizen and a state to a state court.

The Constitution empowered Congress to determine the Supreme Court's appellate jurisdiction. Congress saw fit to unburden the Court by allowing the bulk of its cases to fall under discretionary "certiorari" jurisdiction. In a nutshell, the Court's Rule 19 shows propensity of the court to grant a writ of certiorari in cases where a lower court: (1) has ruled contrary to decisions of the Supreme Court or other courts, (2) has decided an important question of federal law that should be settled by the Supreme Court, or (3) has departed too much from "the settled and usual course of judicial proceedings." A party should not read into a denial of certiorari about the merits of the issues presented. 338 U.S. 912, 917-918 (1950).

However, a great many of the decisions made after granting certiorari do favor the petitioner, and many dissents from the denial of the writ have discussed the merits of the issues. And a strong relationship does exist between a Justice's vote on whether to grant certiorari and later vote on the merits of the appeal.

Congress also empowered the Supreme Court to exercise appellate jurisdiction, as a matter of right, over various classes of cases mostly involving the constitutionality of federal and state laws. Congress did drastically reduce a party's ability to appeal to the Supreme Court directly from a district court in order to keep the Supreme Court from becoming overloaded.

Pro se and Certiorari. Of the several thousand appeals to the Supreme Court by pro se defendants for writ of certiorari, the Court decides to hear a few dozen. These odds amount to about 1 in every 200 cases. The incarcerated pro se appellant should understand these odds, but should also understand that all cases differ in their circumstances and issues. So pro se defendants should not feel discouraged.

THE STRUCTURE OF THE STATE JUDICIARIES

Triple layer. Each state has implemented a triple-layered hierarchy in their court system.

Lowest layer. The lowest, or petty, courts deal only with petty cases involving small monetary values or small criminal penalties. In rural area, justices of the peace, often part-time positions, preside over such courts. In urban areas, a magistrate or judge usually preside over such courts, which tends toward specialties, such as: police court, traffic court, and small claims court.

These courts operate on more informal procedures than the higher courts. Many of these courts maintain records of only the identification of the parties and lawyers, if any, and the disposition of the case. These courts usually neither make nor maintain a detailed record of the proceedings beyond that already described above. Thus, people don't consider these lowest of court as "courts of record."

Parties usually don't appeal decisions from these courts in the regular sense of an appeal. Without any record of the proceedings for proof of error, no record exists for assembly and transmittal it to the next higher court for appellate review. Instead, an "appeal" from these courts typically amounts to a completely new trial (a "de novo" trial) in the higher court.

Middle layer. The middle level of courts contains the "trial courts of general jurisdiction." These courts' authority allow them to hear and dispose of civil and criminal cases generally. They maintain records, and thus, the judiciary considers them as "courts of record." These middle level of courts use very formal procedures. Some such courts don't have jurisdiction over petty cases. Names for these courts include "district court" and "circuit court" though in some areas they use names such as ""superior court" or "court of common pleas." The New York State judiciary uses a confusing naming scheme and applies the name "supreme court" to these middle level courts.

In addition to these trial courts of general jurisdiction, other courts exist at this level which each exercise special jurisdictions of their own, and thus, hear and dispose of special cases such as: probate matters, divorce and other domestic issues, and juvenile court.

As stated above, the trial court of general jurisdiction also exercises some appellate jurisdiction by taking appeals from petty courts. However, the trial court usually handles these "appeals" as "de novo" trials. Also, these trial courts may have authorization to exercise true appellate jurisdiction in their review of decisions from administrative agencies (agencies of the executive branches of government).

Highest layer. This layer contains the appellate courts. Most states use only one appellate court – the highest court in the state, also called the "court of last resort" at least at the state level. This appellate court hears appeals from the judgments of the trial courts of general jurisdiction, and either affirms or reverses or, occasionally, modifies the judgments.

Some circumstances may benefit a party to not wait for the trial court to hear and dispose of a case before appealing to the appellate court. In such instances, a party may make an "interlocutory appeal" to the appellate court for an "extraordinary writ." Such writs direct the lower court to act (e.g., grant a change of venue, or justify its order to hold someone in allegedly illegal custody) or to refrain from an act (e.g., from continuing to exercise jurisdiction in the case).

About one third of the states have intermediate appellate courts, whose functions vary from state to state. A judicial system may require that appeals from trial courts first seek relief from its intermediate appellate court, and that a party would seek an appeal from the intermediate court in the highest court. Some states allow appeal on serious issues directly to the highest court, skipping the intermediate appellate court. Other states allow appeals from the trial court only to the intermediate court, and either don't allow an additional appeal to the highest court or allow it only for special reasons or upon the discretion of the highest court. States increasingly consider this limited-review provision as a means of coping with the overburdened dockets of their highest courts.

In order for the United States Supreme Court to hear an appeal from a state's supreme court, the case must come within the "judicial power of the United States" as outlined by the US Constitution. Congress, in exercising its constitutional power to determine the appellate jurisdiction of the Supreme Court, limited most of that court's appellate review powers under the discretion of that court – review by writ of certiorari. According to Congress, the Court can demand review of a state court decision as a matter of right only when the highest state court empowered to decide the case has held a federal law or treaty invalid, or upheld a state law against a claim that it violates the federal constitution, laws, or treaties.

Court delays. Despite the fact that three of four defendants plead guilty (no trial), criminal courts continue to suffer serious congestion. Indigent defendants especially suffer from court delays because they wait in jail unable to raise bail.

Suggestions to reduce criminal court congestion include: adding more minor criminal court judges; replacing criminal penalties for some offenses with alternatives such as civil monetary penalties; and processing addiction-related defendants through medical, psychiatric, or other treatment facilities.

At the appellate level, suggestions to reduce delays include: adding more appellate court judges (as California did), declaring some cases as not appealable, empowering the appellate court with discretionary review powers, and a preliminary screening procedure resulting in a summary disposition without benefit of, or greatly reduced amounts of, briefs or arguments.

However, problems with these remedies involve: the proliferation of utterances at authoritative appellate tribunals divesting intermediate courts of significant authority; possible unconstitutionality, regarding equal protection under the law, in the powers of discretionary review; and summary dispositions without sufficient discussion may seriously lower the quality of appellate justice.

FEDERAL APPELLATE PROCEDURE

Many pro se prisoners seek post-conviction relief by appealing to the federal district courts.

Appellate procedure. The Federal Rules of Appellate Procedure (FRAP) govern federal appellate courts. A state's own rules of appellate procedure govern its appellate courts.

Appellate procedure consists of the rules and practices by which appellate courts review trial court judgments. Appellate review performs several functions, including: the correction of errors committed by the trial court, development of the law, achieving a uniform approach across courts, as well as the overall pursuit of justice.

Appellate procedure focuses on several main themes: the types of judgments an appeals court will hear, how to bring appeals before the court, requirements for a reversal of the lower court (e.g., a showing of "abuse of discretion," "clear error," etc.), and what procedures parties must follow.

Appeals courts commonly limit appealable issues to "final judgments." However, notable exceptions to the "final judgment rule" include: instances of plain or fundamental error by the trial court, questions of subject-matter jurisdiction of the trial court, or constitutional questions.

Argument in appellate court centers on written briefs prepared by the parties. These state the questions on appeal and enumerate the legal authorities and arguments in support of each party's position.

Only a few jurisdictions allow for oral argument as a matter of course. Where allowed, parties must intend to use oral argument only to clarify legal issues presented in the briefs, and not to introduce new issues. Courts normally subject oral arguments to time limits and use discretion to extend those limits only upon successful persuasion by a party.

File notice. A trial court has entered a judgment against a defendant. The defendant can turn to an appellate court for appeal of the judgment. To this, the defendant must quickly file his Notice of Appeal in the trial court in order to preserve his right to appeal. Depending on several factors, the defendant may have from 10 to 60 days to file after the entry of judgment by the clerk of the trial court.

Party name. The courts refer to the party filing the Notice of Appeal as the "Appellant." The courts refer to the opposing party who may wish to defend the appeal as the "Appellee." The courts also refer to an appellee who files his own Notice of Cross-Appeal as the "Cross-Appellant."

Transcript and record. The appellant must order a transcript of the proceedings in the trial court from that court's reporter. In turn, that court's clerk will assemble the record, a package of documents for the appellate court, which will help it understand the events that transpired in the trial court. Except for indigent criminal defendants, the appellant must pay the court reporter for the work to create the transcript. Creating the transcript and assembling the record may take many several months and, in some busy courts, a year or more.

Appellate docket. When the appellate court receives the record of appeal, its clerk will docket the case and assign a case number to it. A Federal Court of Appeals may docket a case and assign it a case number before the transcript has been finished. In this event, the appellant must continue filing motions until the transcript arrives in order to extend the time for filing the Brief for Appellant.

Clock starts. When the clerk dockets the case, the clerk also notifies counsel and the clock begins to run for filing the Brief for Appellant. Rules of the court in most jurisdictions allow 40 days for this filing. Upon the filing of that brief, the rules usually then allows the appellee 30 days to file its response called the Brief of Appellee. Upon filing of the Brief of Appellee, the rules usually allow the appellant 15 days to file his Reply Brief. In virtually every case, the appellant needs more than 40 days to file the brief and usually files a motion for an enlargement of time. Courts typically grant one or two enlargements. Some courts require special circumstances in order to grant more than one enlargement.

Issues of appeal. Criminal defendants in prisons often misunderstand the powers of an appellant court and, thus, the issues of appeal that the court will consider. The judge, judges, or jury in the trial court already considered and determined the facts of the case. An appellate court does not have the power nor the desire to retry the facts of the case. It can only jurisdiction to consider issues alleging errors in the execution of the law in the trial court and not issues alleging errors in the evidence and testimony in the case. The appellate court has only the transcript and the record of appeal before it.

Appellant attorneys. The appellant's trial attorney may identify issues upon which the appellant can raise an appeal. However, appellant attorneys, who specialize in appeals, can usually find other issues as well. Although the appellant attorney didn't attend the trial and has only the transcript and record to work from, the appellate court works with the same materials. More importantly, the appellate attorney often finds

insufficient representation – errors made by the trial attorney – which the trial attorney may not care to admit, or which he does not recognize.

Appellate procedure. The appellate court considers and rules on issues of whether the trial court made mistakes of law which justify reversing or modifying the judgment in order to bring it in line with the law. Such issues include: whether the judge properly admitted evidence; whether the judge properly instructed the jury; whether the evidence viewed in favor of the winning party sufficiently supported the verdict; whether the court fairly selected jury members; whether pretrial publicity unfairly prejudiced the jury; whether the court improperly refused to allow appellant to admit exculpatory evidence or testimony; whether the court imposed a lawful sentence.

Appellate focus. Many criminal defendants believe that they must bombard the appellate court with every conceivable issue in order to ensure that they cover every possible angle to free them from their conviction. Of course they anxiously pursue their freedom. Skillful appellate attorneys realize, however, that appellate judges who spend the time and effort reading and considering weak arguments or peripheral issues must, by necessity, spend less time considering the stronger and more central issues. A bombardment of weak and peripheral arguments simply detracts from the credibility and character of the appellant's brief. (Consider a man who tells a woman every possible reason why she should go to bed with him.)

Appellate review. The appellate court exercises a full review of an issue if defense counsel in the trial court objected on the record to the item alleged as an error. The court performs a "harmless error analysis" of the alleged error to determine whether it was a "harmless error" or whether it significantly prejudice the appellant's defense in the trial court. If defense counsel failed to object in trial court, the appellate court only will review the issue only for "plain error" – meaning that the court will reverse the judgment only if no judge in his right mind would have committed the error which resulted in a gross miscarriage of justice. Appellate courts also analyze an alleged error for fundamental fairness to the proceeding itself. The appellate court will act on a "structural error" it has found by reversing the decision of the trial court.

Affirmation sought. Appellate courts seek to find any way that they can uphold the judgments of the trial court because of strong social interests in conformity and finality. Appeals win by showing fundamentally unfair or improper event(s) in the trial court, and the appellate court will most likely reverse the judgment in order to preserve the integrity of our system of law. A skillful and hard-working appellate attorney will persevere in persuading the appellate court that it best serves justice by reversing or, at least, modifying the judgment of the trial court.

Appellant brief. The appellant's attorney must file the Brief of Appellant which contains: the Statement of the Case (the procedural history of the case – what happened, when, and in which court), a Statement of Facts (a summary of evidence introduced at the trial court), an Argument (the legal basis for the appeal for each error claimed with appropriate cites to constitutional law, statutes, rules, and case law), and a Conclusion (stating the relief that the appellate court should grant).

Most appellate courts limit the Brief of Appellant to 50 pages of doubled-spaced 12-point typeface (or larger) with one-inch margins at top, bottom, and right and 1¼ or 1½ inches at the left. Some attorneys attempt to cheat these limitations by using word processors to expand the margins slightly and to place the lines slightly closer together, and by using many footnotes which don't fall under the double-spaced limitation and, in some appellate courts, the typeface limitation. The justice system developed these rules because their human appellate judges face heavy workloads. Appellate judges feel cheated and abused by such cheap tricks.

The most convincing briefs will obey these limitations and, in fact, go one better by limiting the amount of footnotes, which disturbs the reading and comprehension of the text. Appellate judges studying the brief will have a much more pleasant experience reading it, which contributes to its persuasiveness in the judges' eyes. (Basically, look upon judges as human, and don't anger the people who can grant you relief.)

Appellee brief. The appellee will file its Brief of Appellee in response to the Brief of Appellant. This brief represents the appellee's reaction to the Brief of Appellant that defined the appealable issues. The Brief of Appellee cannot bring further issues before the court, and the appellee can only try to persuade the court that it should not grant relief on the issues set by the Brief of Appellant.

Reply brief. The court allows the appellant to respond by filing a Reply Brief. The appellant should do this only if the Brief of Appellee raised or discussed an issue in a way which was not sufficiently addressed in the Brief of Appellant. If the Brief of Appellant set out the appellant's position fully and well, then little need exists to file a Reply Brief. For simplicity of the appellant's position, he should not file one.

Orals scheduled. At some point after the filing of the last brief, the clerk of the appellate court will schedule the case for oral argument before the appellate panel. Federal courts of appeals and state intermediate courts of appeal sit in panels of three judges. State supreme courts and the Supreme Court of the United States sit in panels of seven or more.

Orals presented. Counsels will appear in person before the panel on the appointed day and argue the case. This hearing allows the parties to answer questions from the judges and to focus the court's attention on important aspects of the issues. The court expects counsel to intimately know the case and to attempt to persuade the court on the merits of its position. Counsels participate in these proceedings in a polite and scholarly manner. The atmosphere does not lend itself to the theatrics and exhortations more common in the trial courts.

Predicting decisions? Defendants should not try to predict the decision based on the behavior of the judges during oral arguments. Judges may express sympathetic or hostile demeanors during questioning simply as their method of their comprehensive investigation of the facts. Judges will attempt to shoot down the appellant attorney's arguments from every angle. Judges will do this simply to focus the argument effectively. Likewise, seemingly sympathetic questions need not indicate a victory.

Appellate decision. Some time after the oral arguments, the court will issue its judgment and a written opinion explaining its decision. The court reporter publishes the written decision in hardbound books, which will become precedent to guide future cases. Too few judges hear too many cases, and some courts may, unfortunately, take years to produce and issue a decision.

Further appellate review. Higher courts exercise strict requirements in granting further appellate review after losing the appeal in the "first instance" (described above). The appellant must petition the higher court for such a review, arguing that a lower appellate court erred in its application and analysis of the law, or that the law must be modified or extended to achieve substantial justice.

Federal system. Federal Courts of Appeals rarely grant rehearing or rehearings en banc (a full bench of all active judges in the circuit). Appellant may file a petition of certiorari in the Supreme Court of the United States, which grants reviews of a hundred cases a year out of the many thousands that file for it. Of the thousands of pro se filings for certiorari every year, the US Supreme Court decides to hear only a few dozen – about one in every 200. Although these slim odds may disappoint a pro se litigant, every case differs from another and litigants should file.

THE WRIT OF HABEAS CORPUS

Introduction. Habeas Corpus (Latin, "you should have the body" – from the first words of the writ), a writ or order issued by a court commanding to have a person, detained by a government entity, to appear in that court to allow the court to determine the legality of that detention. The writ of habeas corpus originated under English law in order to liberate illegally detained persons; a purpose which continues to this day to protect against arbitrary imprisonment.

History. Early use of the writ as a constitutional remedy against the tyranny of the British Crown occurred in the latter part of the 16th century by persons imprisoned by the Privy Council. Judges, however, often found weaknesses in the effectiveness of the writ. In a case in 1627, the judges decided that a warrant of the Privy Council supplied sufficient proof to detain the prisoner. In 1641, Parliament tried to increase the writ's effectiveness by legislating the abolishment of the infamous Star Chamber. This legislation provided that courts should grant a writ of habeas corpus without delay to a person imprisoned by a court exercising jurisdiction similar to that of the Star Chamber, or by command of the sovereign or of the Privy Council; and that the court must determine the legality of the imprisonment within three days after the return of the writ. The subsequent refusal of judges to issue writs of habeas corpus during vacation periods resulted in the passage by Parliament of the Habeas Corpus Act of 1679 which imposed severe penalties on any judge who refused, without good cause, to issue the writ as well as on any officer or other person who failed to comply with it. That statute raised the authority of the court above the authority of any order of the sovereign, and it allowed the writ to become a powerful weapon for the protection of the liberty of the monarch's subjects. The Habeas Corpus Act of 1679 however, dealt only with imprisonment for criminal offenses and, not until 1816, did its benefits extend to persons detained for other reasons.

Modern Use. Governments of continental Europe do not provide for the protection by the right of habeas corpus against arbitrary imprisonment. In the democratic countries of Western Europe, however, the codes of criminal procedure require the government to inform an arrested person of the charges with reasonable promptness and to allow the person to seek legal counsel. In many other countries, governments sometimes subject persons to lengthy periods of imprisonment without being informed of the charges. Many Latin American countries have adopted the writ of habeas corpus, either by constitutional provision or by statutory enactment, but have frequently nullified its use during periods of political or social upheaval.

US law. The federal and state constitutions in the United States establish the use of habeas corpus. Article I, Section 9, of the US Constitution provides that no court shall suspend the privilege of the writ of habeas corpus except in cases of rebellion or invasion, where the public safety may require it. The constitutions of most states contain similar provisions, and some states forbid suspension of the writ in any case. Massachusetts suspended the privilege of the writ from November 1786 to July 1787, during Shays' Rebellion. The outstanding instance in the US of the suspension of the right of habeas corpus occurred in 1861 during the American Civil War, when Abraham Lincoln suspended it by proclamation. In 1863 Congress explicitly empowered Lincoln to suspend the privilege of the writ during the war. In later years, courts in several states suspended the privilege when state executives declared martial law during strikes.

Courts originally limited use of the writ to cases of illegal imprisonment, but subsequently extended its use to include controversies in divorce and adoption proceedings involving the custody of minors. For such applications of the writ, courts have declared that the state has the right, above any parental or other claims, to determine the children's best interests.

Both federal and state courts issue writs of habeas corpus. Federal courts, however, can issue such writs only under given conditions, as for a prisoner detained by order of the federal government or has been committed for trial before a federal court. Federal courts can also issue writs of habeas corpus when a charge against a prisoner concerns an act done in pursuance of a federal law or order of a federal court, or concerns an act in violation of the US Constitution or of a law or treaty of the United States. The jurisdiction of the federal courts in this regard extends to foreigners, if they have acted under the authority of their own governments, so that their guilt or liability must be determined by international law. The state courts may issue the writ in all cases that do not fall exclusively under federal jurisdiction.

DUE PROCESS OF LAW

Overview and History

For hundreds of years, the American legal system has used the right to "due process" to protect the legal rights of individuals, but has found difficulty defining it.

England. Magna Carta refers to due process as "law of the land" and "legal judgment of his peers." Some state constitutions in the US use these phrases.

The US Constitution's Fifth Amendment grants due process protection against the federal government and its agencies and courts. The Fourteenth Amendment extends due process protection toward all state governments, agencies, and courts.

In the United States, due process refers to the "hows" and the "whys" of enforcing laws. It applies to all persons, citizen or alien, and also to corporations.

The "how," referred to as "procedural due process," holds great importance. For example: How does a law read?–Vaguely? How does a law apply itself?–Fairly to all? How does a law handle guilt?–Does it presume guilt? In a more specific example, a court may declare a vagrancy law as too vague ("constitutionally vague") if it fails to clearly define vagrancy. A court may declare a law that prohibits wife beating but which permits husband beating as illegal because of unfair application. A clear and fair law having a presumption of innocence should withstand tests by the courts regarding its compliance to procedural due process.

The "why," referred to as "substantive due process," also holds great importance. Even if a legislature passes and signs an unreasonable law, a court, testing for substantive due process, can declare the law as unconstitutional. A court in the *Roe v. Wade* abortion decision declared a Texas law in violation of due process and ruled that in the first trimester, a state would unreasonably interfere with a woman's right to an abortion; during the second trimester, a state could reasonably regulate abortion in the interest of the health of mothers; and in the third, the state has a reasonable interest to act in protecting the fetus. In other examples, courts have struck down legislation requiring states to confine certain non-dangerous mentally ill persons against their will.

Remedies. Remedies generally granted by courts under due process scrutiny involve, but are not limited to:

- Courts must conduct trials fairly, publicly, and in a competent manner
- Courts must allow a defendant the opportunity to attend the trial
- Courts must allow a defendant the opportunity to have an impartial jury try the case

- Courts must allow a defendant the opportunity to state his own defense
- Legislatures must write laws so that a reasonable person can understand the description of the criminal behavior
- Governments may take taxes only for public purposes
- Governments may take private property only for public purposes
- Governments must provide fair compensation to owners of confiscated property

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Further Discussion on Due Process

General. Due process refers to the constitutional guarantees that the government cannot deny a person the basic rights of life, liberty, and property in arbitrary or unreasonable manners. For example, if the government intends to bulldoze a person's house in order to use the land for a new highway, the government must notify the owner and allow the owner the opportunity to state objections to the government's plans and to propose alternatives.

Provisions. The right to due process derives at two provisions in the US Constitution. The first provision, which is part of the Fifth Amendment, states that no person shall "be deprived of life, liberty, or property, without due process of law." The justice systems interpret this guarantee to apply only to the federal government. The second provision, part of the Fourteenth Amendment, provides that no state shall "deprive any person of life, liberty, or property, without due process of law." Because of these two provisions, all of the branches of federal, state, and local government must respect the due process guarantees.

Citizens. Due process of law does not apply to actions by ordinary, private citizens. For example, a landlord wants to relocate a tenant in a private housing complex in order to make room for a parking garage. The tenant cannot complain about due process of law against the landlord. The tenant, however, may have contractual rights to exercise to prevent this from happening.

Applicability. The guarantee of due process applies to American citizens, residents of possessions of the United States, aliens, members of the armed forces, prisoners, and corporations.

Procedural Due Process. Lawsuits alleging the denial of due process rights have become more common. For example, if the government did not notify a homeowner of the bulldozing mentioned above, the owner could bring a lawsuit alleging denial of procedural due process – that the government had not taken the appropriate steps that existed to protect people's property. People often refer to procedural due process, which focuses on the rights of the individual citizen, as [the government] giving a person the opportunity to "have his day in court."

Substantive Due Process. In contrast, substantive due process focuses on the government and its authority to make and enforce certain kinds of legislation. For example, the government notifies a homeowner that it plans to bulldoze his house. However, the owner has strong reservations about the purpose of the bulldozing, and may bring a lawsuit alleging that the government violated his substantive due process rights. Substantive due process means that the government cannot enact arbitrary or unreasonable legislation.

Clear laws. Governments must create laws so that a person of ordinary intelligence need not guess at their meaning. Criminal laws receive great amounts of scrutiny regarding substantive due process. A law that states: "A person cannot be in a public way without a purposeful intention" cannot survive a proper analysis for substantive due process. The courts declare such statutes as "constitutionally vague" or "void for vagueness" because they give no clear or fair indication of what activity it prohibits.

Purposeful laws. If a law survives an analysis for substantive due process, it and the means provided for their enforcement must have a legitimate governmental purpose. For example, a state's law requiring new residents to subject themselves to an AIDS test would exceed the state's authority and invade individual privacy to such a degree that it would violate substantive due process rights.

Equal application. If a particular statute affects only a certain segment of the population, the law will meet the due process requirements as long as the government applies it equally to all persons in that segment. For example, a law requiring all drivers over age 75 to take a driving test every two years.

Compelling state interest. If a law discriminates between individuals in a certain segment of the population, courts apply one of two analyses in order to determine whether it violates due process rights. Courts apply the "compelling state interest" analysis for constitutionally "suspect" classifications, such as age, race, or sex or if the law affects a fundamental freedom such as freedom of religion. This analysis determines whether the classification furthers a compelling state need. In the older driver testing law in the example above, highway safety would suffice as a compelling state interest.

Rational basis. Courts apply a "rational basis" analysis to classifications not suspected. This analysis tests whether a law reasonably relates to legitimate government interests. For example, a state law requiring all drivers and passengers to wear seat belts while riding in an automobile applies to the classification of drivers and passengers. Unlike the driving test example above, it does not discriminate on the basis of age or any other "constitutionally suspect classification" (such as sex or race). Such a law serves the legitimate government interest of highway safety and, thus, passes the "rational basis" analysis.

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Due Process and the Fifth Amendment

The first session of Congress under the new US Constitution passed a resolution expressing a desire to prevent misconstruction or abuse of the US Constitution's powers by the federal government by adding further declaratory and restrictive clauses.

Thomas Jefferson, considered as the author of the Constitution, wrote to President Madison urging a need for a Bill of Rights saying, "the tyranny of the legislatures is the most formidable dread at present, and will be for many years. That of the executive will come in its turn." in 1790, Congress desired and adopted the Bill of Rights, which contains the first ten amendments to the US Constitution – a means to safeguard guaranties and immunities inherited from our English ancestors.

Over this fear of misconstruction or abuse of the Constitution by the federal government, part of the Fifth Amendment reads:

> "...nor [shall any person] be deprived of life, liberty, or property, without due process of law;..."

Due process of law basically means the same as "the law of the land," as used in the English Petition of Right in 1628 that linked both expressions. That Petition reads that no man should be "in any manner destroyed but by the lawful judgment of his peers or by the law of the land"; and that no man should be "put out of his land or tenements, nor taken nor imprisoned, nor disinherited, nor put to death, without being brought to answer by due process of law."

In *Murray's Lessee v. Hoboken, etc.* (1855), the United States Supreme Court answered the question, What is due process of law? A trial or other legal proceeding must, in order to give due process, conform to the guarantees contained in the US Constitution and conform to the guarantees that have come to the American through the adoption in this country of any part of the law of England. This clause preserves to the citizen against action by Congress, against action by the President, and against action by the courts, not only rights enumerated in the Constitution itself, but also those privileges and immunities to which he became entitled through the early adoption and application in America of English law.

"The Constitution contains," stated the Court in *Murray*, "no description of those processes which it was intended to allow or forbid. It does not even declare what principles are to be applied to ascertain whether it be due process. It is manifest that it was not left to the legislative power to enact any process which might be devised. The article is a restraint on the legislative as well as on the executive and judicial powers of the government, and cannot be so construed as to leave Congress free to make any process 'due process of law,' by its mere will. To what principles, then, are we to resort to ascertain whether this process, enacted by Congress, is due process? To this we must answer be twofold. We must examine the Constitution itself, to see whether this process be in conflict with any of its provisions. If not found to be so, we must look to those settled usages and modes of proceeding existing in the common and statute law of England, before the emigration of our ancestors, and which are shown not to have been unsuited to their civil and political condition by having been acted on by them after the settlement of this country."

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Due Process and the Fourteenth Amendment

In the first years in the life of our new country, our founding fathers feared the power of the federal government to deprive anyone of life, liberty, or property without due process of law. Experience later showed that the states can also act tyrannically in depriving a person of these rights. In *Ex Parte Young*, the US Supreme Court stated that "no change in ancient procedure can be made which disregards those fundamental principles ... which ... protect the citizen in his private right and guard him against the arbitrary action of the government."

UNITED STATES DISTRICT COURT
PRISONER'S PRO SE HANDBOOK

– An example of how to file your case in federal court –

ALWAYS CONSULT THE LOCAL RULES FOR YOUR FEDERAL DISTRICT COURT

Table of Contents

CHAPTER I – Introduction. This handbook specifically addresses the needs of you, the pro se prisoner. It provides you with practical and informative initial resources to assist you in the decision-making process and in the filing of a lawsuit when choosing not to retain the aid of a licensed attorney.

The next three chapters provide information that you should consider before filing your own lawsuit such as whether or not you have a case you can win, the importance of legal counsel and the alternatives, and the structure of the federal court system. If after considering this information, you feel you have a case to file in federal court and you wish to represent yourself, this handbook also contains additional information to assist you in filing your case and utilizing the appropriate rules of procedure for the United States District Court.

Do not consider this handbook as the final word, nor should you use this entire handbook be used as your only resource. Consider using this handbook only as the first step in filing your own lawsuit.

The Clerk of Court can assist pro se litigants with questions regarding the Local Rules of Civil Procedure and the Local Rules of Criminal Procedure as well as the Federal Rules of Civil Procedure and the Federal Criminal Rules of Procedure. However, by law, the clerk and other court staff cannot answer questions of a legal nature.

Mission. United States District Court provides an impartial and accessible forum for the just, timely, and economical resolution of legal proceedings within the jurisdiction of the courts, so as to preserve judicial independence, protect

individual rights and liberties, and promote public trust and confidence.

CHAPTER II – Five Required Elements of a Lawsuit. You must meet five critical elements before filing a case in federal court. The following summarizes what you should consider before filing a case in federal court; however, do not consider this as the final word. Also understand that even if you meet all five elements, you may not prevail in court.

THE FIVE REQUIRED ELEMENTS OF A LAWSUIT

A. Real Injury or Wrong.

B. Jurisdiction.

C. Statute of Limitations.

D. Immunity.

E. Facts and Evidence.

A. Real Injury or Wrong. Cases brought by pro se litigants typically fall into two categories: civil rights violations and tort claims.

A civil rights case involves a claim seeking redress for the violation of a person's constitutional rights. This type of claim is often brought under the federal statute, 42 U.S.C. §1983. Under this law, a person who acts under color of state law to violate another's constitutional rights has responsibilities for damages.

A tort refers to "a private or civil wrong or injury," separate from criminal law because of its injury against an individual and not the state (city, county, or state government). If a person ran a stoplight and hit your car, the state would ticket the driver for running the stoplight but the state could not sue the driver for the injuries received by you of your car. The law considers those injuries as a private wrong or injury, and you have a right, as the victim, to file a civil suit against the driver seeking damages for the injuries received.

Three types of torts exist: intentional, negligence, and strict liability. You cannot sue someone just based on your anger at them; The person must have caused an injury to you in some way. You can bring a tort action in federal court if a violation of a federal law has occurred.

B. Jurisdiction. Jurisdiction refers to the authority given to a court to hear and decide certain cases. For a court to render a valid judgment, it must have both jurisdiction over the subject matter of the controversy and jurisdiction over the persons or entities involved. Chapter IV of this handbook describes the court system more fully; however, to file a case in federal court, you must meet at least one of two important criteria:

1. Your case must involve a "federal question" of law; or
2. The parties to the case must reside in different states (known as diversity of citizenship) and the monetary amount in controversy must exceed $75,000.

Federal courts enforce "federal law," meaning the United States Constitution and federal statutes enacted by Congress. State courts enforce state laws. Sometimes they overlap, such as in diversity cases. Difficulties in determining such issues shows the importance of obtaining legal counsel.

C. Statute of limitations. A statute of limitations refers to the part of a statute that sets a particular period of time within which you can file a suit. It begins to run when a person has injured you or violated your right. For example:

- Car accident or other personal injury: 2 years
- Civil rights violation: 2 years
- Contract dispute: 6 years
- Medical malpractice: 2½ years

D. Immunity. Immunity prohibits you from suing a person for an act included in the performance of his/her duties as prescribed by law. When a judge decides a case, he does so immune from suit because he performs his duties as directed by law. However, if a judge operates his car illegally and caused you harm, you can sue him for damages because driving his car does not fall under his judicial duties.

Immunity from suit extends to most government employees for their work performed according to their assigned duties while unaware of a violation of the law.

Realize that government employees may use immunity as a defense against liability. A person can also assert other legal defenses to protect them from liability.

Standards of Conduct. Federal judges perform their duties according to the Code of Conduct for United States Judges. File complaints according to the rules of your Circuit's Judicial Council Governing Complaints of Judicial Misconduct or Disability about a judge who has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts, or a judge cannot discharge all the duties of the office by reason of mental or physical disability. Address complaints through the regular appellate process only about a judge's decisions on procedural matters or the merits of disputes.

The Clerk of Court and the Clerk's Office staff perform their duties according to the Code of Conduct for Judicial Employees. For example, part of the codes of conduct prohibit Clerk's Office employees from accepting any gift, without exception, from anyone seeking official action from or doing business with the court or from anyone who has interests substantially affected by the performance or nonperformance of official duties. This prohibition includes accepting any sort of holiday gift, whether intended for the Clerk's Office as a whole or for a specific individual. File complaints to the Clerk of Court about the performance or behavior of Clerk's Office staff. File complaints to one of the judges about the performance or behavior of the Clerk of Court.

E. Facts and Evidence. You cannot sue someone over a belief or a feeling that the person has violated your rights. You must have facts to support your lawsuit such as the time and place of the incident, witnesses who observed the behavior, and actual articles of evidence such as a gun or a police report or other documentary evidence. Your bear the burden of proof to prove the case; and without factual evidence, your case will not prevail.

You must have all five required elements before you can successfully consider filing a case against someone or some entity. After meeting all of these elements, you must still follow the procedures set out for the particular court in which you will file their case. Chapter V of this handbook discusses the rules and procedures for filing lawsuits in the United States District Court. To file a case in any other court, you should contact the clerk's office of that court for information regarding local rules and procedures for filing that particular case.

CHAPTER III – Representation by an Attorney. This chapter deals with information regarding representation by legal counsel. Please take time to read this information. Alternatives exist to filing a lawsuit on your own, and you should give these alternatives your utmost consideration.

This handbook addresses your needs if wish to file a lawsuit pro se (without the aid of an attorney). However, if indigent, you, should understand the alternatives to representing yourself. Also, other extremely complex matters that deserve appropriate representation by an attorney.

In a criminal case against you, the United States entitles you to legal counsel and the court can provide one if you can show indigence. However, no law exists which entitles you, as a plaintiff, to an attorney in a civil case. Organizations exist which can help you obtain counsel in civil matters for nominal fees or even on a volunteer basis. Most state bars have referral services that list attorneys willing to help indigent parties in several different ways. Legal Aid Services and the American Civil Liberties Union may also provide help. Some attorneys may represent you on a contingent fee basis where the attorney collects a fee only if the suit prevails and the court awards money to you.

A. Alternatives to Litigation in Federal Court. Under the Civil Justice Reform Act of 1990, the United States District Court adopted the concept of Alternative Dispute Resolution (ADR). ADR provides options of resolving disputes before and/or after the filing of a lawsuit. Several forms of ADR exist, and the following describe the four basic forms:

1. **Arbitration:** A dispute resolution process in which one or more arbitrators issue a non-binding judgment on the merits after an expedited, adversarial hearing. The arbitrator's non-binding decision addresses only the disputed legal issues and applies legal standards. Either party may reject the non-binding ruling and request a trial de novo in district court within 30 days of the arbitrator's decision. If they do not request trial de novo and do not attempt settlement, the arbitrator's decision becomes the final, non-appealable decision.
2. **Mediation:** A flexible, non-binding dispute resolution process in which the mediator (an impartial neutral third party) facilitates negotiations among the parties to help them reach settlement. Unlike arbitration, mediation can expand traditional settlement discussions and broaden resolution options, often by going beyond the legal issues in controversy. Courts automatically assign all civil cases to mediation except: prisoner petitions, Social Security, student loan recovery, Medicare, forfeiture, Bankruptcy appeals, federal tax suits, Federal Tort Claims Act cases in excess of $1 million, and cases involving Temporary Restraining Orders, Preliminary Injunctions or other extraordinary injunctive relief. Courts also make all Bankruptcy adversary proceedings and contested cases eligible for assignment to mediation. The court will allow a party to "opt out" of the mediation process only upon successfully demonstrating to the Court by motion that "compelling reasons" exist as to why this mediation should not occur or could not possibly produce meaningful results. General Order #130 governs mediation.
3. **Settlement Conferences:** At any time after an action or proceeding is at issue, any party may file a request for, or the assigned judge on his own initiative may order, a settlement conference. Such a conference requires the parties to explore the possibility of settlement prior to trial. An assigned judge then holds a conference and facilitates the parties to come to settlement. All information provided to the settlement judge is confidential.

Courts provide ADR as an incentive for the speedy, fair, and economical resolution of controversies by informal procedures while preserving the right to a conventional trial. Courts do not impose any penalty upon parties for not participating in these programs or for not accepting the decisions or awards. Parties retain the right for a trial de novo.

B. Necessity of Exhausting Available Remedies. You should understand that, in some instances, the court may require you to pursue all available remedies before pursuing your claim in court. This most often arises in two particular areas: (1) if you want to appeal an agency decision, or (2) if you seek a writ of habeas corpus in the federal court.

1. **Administrative Grievance Procedures.** You may want to appeal the decision of some governmental agency that affects you. Prisoners typically become involved with administrative procedures.

   If you want to appeal the denial of some benefit provided through an agency of the United States government or the state, you must pursue all of the agency's administrative procedures before you can bring a lawsuit. Only after you have pursued and exhausted the administrative procedures, will the court have jurisdiction to hear a claim.
2. **Petition for Writ of Habeas Corpus.** You, as a prisoner or a person otherwise in custody pursuant to court order, may wish to challenge the fact or duration of his confinement. You would bring such a challenge as a petition for writ of habeas corpus against the person or entity who holds you in custody, e.g., state or county. If you can successfully show that the person or entity violated a constitutional right, which would have otherwise prevented your incarceration ("fact of incarceration") or the duration of the incarceration, the court will grant a writ of habeas corpus.

   However, before a federal court will accept your filing of such a petition, the court will require you to pursue and exhaust all available state law remedies. This means that if you want to challenge a conviction or a sentence, you must pursue your right of appeal under state law. You may accomplish this in two ways: (1) direct right of appeal to the state Supreme Court, or (2) by filing a petition for post-conviction relief in the state district court followed by an appeal to the state Supreme Court. Only after you have fully pursued the available state law remedies will a federal court allow you to pursue a federal petition for writ of habeas corpus.

C. Attorney Fee Sanctions and How They Apply to Pro Se Litigants. Courts will subject you, as a pro se litigant, to the same sanctions as licensed attorneys. According to your local rules, the courts may subject you to the following sanctions:

- The court may sanction you for violation of any local rule governing the form of pleadings and other papers filed with the court only by the imposition of a fine.
- The Federal Rules of Civil Procedure provides other sanctions for non-technical violations including but not limited to: imposition of costs, allowance of attorney fees, dismissal or default in the action, and contempt proceedings.

The court may require, in many circumstances, that the non-prevailing party pay the prevailing party for costs, including clerk's fees and service fees; trial transcripts; deposition costs; witness fees; mileage and subsistence; exemplification and copies of papers; maps, charts, models, photographs, summaries, computations, and statistical summaries; interpreter fees; docket fees; and other items.

As a pro se litigant, you must remember that the court may require you as the non-prevailing party in your lawsuit to reimburse the other party(ies) for their costs and attorney fees, subject to the fact finding of the judge. The court may sanction you for improperly or frivolously filing pleadings, motions or other papers.

As a pro se litigant, you must sign your pleadings, motions, or other papers and include your address. Your signature constitutes your certification (1) that you have read the pleading, motion, or other paper; (2) that, to the best of your knowledge, information, and belief formed after reasonable inquiry, facts support its contents and existing law or a good faith argument warrants the extension, modification, or reversal of existing law, and (3) that you do not interpose it for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

If you do not sign a pleading, motion, or other paper, the court shall stricken it unless you sign it promptly after the omission is called to your attention. If you sign a pleading, motion, or other paper in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon you an appropriate sanction,

which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

CHAPTER IV – The Structure of the Courts: Should This Case be Filed in State or Federal Court? Two court systems exist in the United States: the state courts and the federal courts. The state courts typically hear matters relating to civil, criminal, domestic (divorce and child custody), probate, and property in accordance with the laws of each state. Matters typically heard by the federal courts involve violation of federal laws; admiralty and maritime matters; United States patent, trademark, and copyright matters; bankruptcy proceedings; proceedings against ambassadors, consuls, and ministers. These matters usually fall into two main categories: (1) federal question cases – cases which arise under the Constitution, laws, or treaties of the United States; and (2) diversity cases – civil matters arising between citizens or entities of different states and the amount in controversy exceeds $75,000.

Remember that Chapter II discussed the five required elements of a lawsuit. Before filing a case in a federal court, you must decide if the court has jurisdiction. Jurisdiction refers to the authority given a court to hear and decide certain cases.

The United States Supreme Court. Article III of the United States Constitution gives authority to the United States Supreme Court. This court normally reviews judgments rendered by the United States Courts of Appeals in each of the thirteen federal judicial circuits. The United States Supreme Court has original jurisdiction over matters involving treason and presidential impeachment. Rare instances may occur when the United States Supreme Court may review a judgment rendered by a state court, but only after the highest applicable court of the state has issued a final judgment or decree involving a substantial federal question.

The following summarizes all of the other federal courts established and given their authority by acts of Congress enacted under constitutional authority.

United States Courts of Appeals.

- The Courts of Appeals for the District of Columbia and for the First through the Eleventh Circuits hear appeals from the federal district courts, bankruptcy courts, and tax courts. They also review some decisions of various federal administrative agencies.
- The United States Court of Appeals for the Federal Circuit hears appeals from final decisions of federal district courts for civil actions arising under any Act of Congress relating to patents, plant variety protection, copyrights and trademarks, including claims of unfair competition when joined with substantial and related claims dealing with patents, copyrights, etc. as well as the final decisions of the district courts and the United States Claims Court involving the United States as a defendant, and appeals from decisions of the United States Court of International Trade, and United States Patent and Trademark Office, the United States International Trade Commission relating to unfair import practices, and decisions by the Secretary of Commerce relating to import tariffs, among others.
- United States Court of Military Appeals. This court hears appeals from court martial decisions. Parties cannot appeal its decisions to any other court.
- United States Claims Court. This court hears certain kinds of actions against the United States Government, except those involving tort claims under the Federal Tort Claims Act. Parties may appeal its decisions to the United States Court of Appeals for the Federal Circuit.
- Tax Court of the United States. This court hears cases concerning the federal tax laws. Parties can appeal its decisions to the United States Court of Appeals.
- United States Court of International Trade. This court hears cases concerning the federal tariff laws. Parties can appeal its decisions to the United States Court of Appeals for the Federal Circuit.
- United States Bankruptcy Courts. These courts hear all matters pertaining to bankruptcy and financial reorganization. Parties can appeal their decisions to the United States District Court and, in some cases, to the appropriate United States Court of Appeals.
- United States District Courts. These courts try both criminal and civil actions and sit as admiralty courts. They may also review decisions of federal administrative agencies. At least one United States District Court exercises jurisdiction within in each state. Parties can appeal their decisions to the appropriate United States Court of Appeals.

United States District Courts. These courts have both civil and criminal jurisdiction. They have original jurisdiction in the following types of actions:

- Civil actions arising under the Constitution, laws, or treaties of the United States ("federal question" cases).
- Actions where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs between citizens of different states; citizens of a state and foreign states or citizens or subjects thereof; or "diversity" cases, where additional parties involving citizens of different states concerning foreign states or citizens or subjects thereof.
- All criminal offenses against the laws of the United States.
- Admiralty, maritime, and prize cases.
- Bankruptcy matters and proceedings.
- Actions of interpleader involving money or property of value of $500 or more claimed by citizens of different states.
- Action to enforce, enjoin, set aside, annul, or suspend, in whole or in part, any order of the Interstate Commerce Commission.
- Actions or proceedings arising under any act of Congress regulating commerce or protecting trade and commerce against restraints and monopolies ("antitrust" cases).
- Any civil action arising under any act of Congress relating to the postal service.
- Actions arising under any act of Congress providing for internal revenue or revenue from imports or tonnage except matters within the jurisdiction of the United States Customs Court.
- Any civil action authorized by law to be commenced by any person dealing with civil rights, election disputes, and voting rights.
- All civil actions, suits, or proceedings commenced by the United States or by any agency or officer thereof.
- Actions for recovery of interest revenue tax or actions not exceeding $10,000, founded upon the United States Constitution, any action of Congress, or any regulation of any executive department (The United States Court of Claims has concurrent jurisdiction in these actions).
- Actions for the partition of lands where the United States is one of the tenants in common or is a joint tenant.
- Actions involving national banks and other federal corporations.
- Actions involving labor disputes which are authorized by specific statutes to be litigated in federal court.
- Aliens' actions for torts.
- Tort claim actions against the United States.
- Actions and proceedings against consuls or vice consuls of foreign states.
- Actions on bonds executed under any law of the United States (state courts have concurrent jurisdiction in these actions).
- Actions involving Indian allotments or land grants to the states.
- Actions involving injuries protected by specific federal laws (i.e., the Federal Employers Liability Act).
- All proceedings to condemn real estate for the use of the United States or its departments or agencies.
- Actions involving use or management of the public lands of the United States.
- Actions involving regulations by the United States of environmental quality.

CHAPTER V – Rules and Procedures for Filing a Case in District Court. Whether an attorney represents you as a party to a lawsuit or you represent yourself in a lawsuit, the court in which you filed your case will subject you to its rules of procedure. The federal courts enforce the Federal Rules of Civil Procedure (Fed. R. Civ. P.) and the Federal Rules of Criminal Procedure (Fed. R. Cr. P.) as well as other rules of procedure regarding other areas such as evidence, appeals, etc. No matter what the document or procedure, you must follow the particular rule or rules that govern the matter.

In the United States District Court enforce not only all of the federal rules of procedure listed above but also the Local Rules of Civil Procedure and the Local Rules of Criminal Procedure. The numbering system of the Local Rules coincides with the numbering system of the applicable federal rules for easy reference. Your prison law library should contain these federal rules. As a pro se litigant, you have the responsible for becoming familiar with, and following, the court's local rules and procedures.

A. TYPICAL LOCAL RULES. Warning – This list does not necessarily contain the local rules for your district. You must refer to your own district's local rules.

- General format of pleadings.
- Proof of service.
- Copies of orders and envelopes .
- Non-filing of discovery.
- Motion practice.
- Requests and orders to shorten or extend time or continue trial.
- Stipulations.
- Form of a motion to amend and its supporting documentation.
- Pre-trial procedures.
- Infants and incompetent persons.
- Disclosure of facts.
- Limitation on depositions.
- Limitation on interrogatories.
- Notation of "Jury Demand" in the pleading.

B. FILING PROCEDURES, RULES AND TIME LINES:

- CIVIL COVER SHEET

  Description: The document that must accompany the complaint and summons before filing can occur. (Form 1.)

  Applicable Rule(s): LR5.1(d)

  Time Line: Initial filing.

- COMPLAINT

  Description: Sets out the parties, the controversy and the governing law, allegations, statements of facts, and demand for relief.

  Applicable Rule(s): LR 3.1, LR5.1(b), FRCP 10

  Time Line: Initial filing.

- SUMMONS

  Description: Issued by the Clerk at the time of filing the complaint, the summons is served on the defendant with a copy of the complaint. A Waiver of Service of Summons can also be served on the defendant with a copy of the complaint. (Forms Index: C.4 and C.5) The summons informs the defendant that they must answer the allegations in the complaint or judgment will be entered in favor of the plaintiff. (Form 2.)

  Applicable Rule(s): FRCP 4, LR 5.2

  Time Line: Issued with the seal of the Clerk.

- MOTIONS AND PROPOSED ORDERS

  Description: To seek an order from the court on some particular matter during the pendency of a case. Either party may bring.

  Applicable Rule(s): LR 7.1, LR 5.4, FRCP 11 & 12

  Time Line: Motions are filed with the Clerk, and proposed Orders are sent to the respective Judge's office for review.

- RESPONSE TO MOTIONS

  Description: The other party is entitled to respond to a motion.

  Applicable Rule(s): FRCP 6, LR 7.1 (a)(2)

  Time Line: Within 14 days of when the motion was served.

- PROOF OF SERVICE REQUIREMENT

  Description: Whenever a document is filed with the court, there must be a proof of service certificate included, which certifies that a copy of the document was sent to the other party.

  Applicable Rule(s): LR 5.2

  Time Line: Attached to the document served and filed with the Clerk.

- COPIES OF PLEADINGS

  Description: When motions and stipulations are filed, you are required to include copies of the proposed order and stamped, addressed envelopes for each of the parties to be served.

  Applicable Rule(s): LR 5.4

  Time Line: Received by the Clerk and forwarded to the Judge for review.

- DISCOVERY

  Description: Initial disclosures, disclosure of expert testimony, notices of depositions, depositions, interrogatories, requests for documents, requests for admission, and answers and responses thereto shall be served upon other counsel and parties but shall NOT be filed with the court unless on order of the court or for use in the proceeding.

  Applicable Rule(s): LR 5.5, LR 26.2

  Time Line: Documents are exchanged between the parties prior to certain deadlines.

- PRETRIAL PROCEDURES

Description: All rules governing all Pretrial requirements and hearings are set out in this rule.

Applicable Rule(s): LR16.1

Time Line: ---

C. FORMS INDEX

Forms to be used by Pro Se Litigants:

- CIVIL COVER SHEET
- SUMMONS IN A CIVIL ACTION
- SUBPOENA IN A CIVIL ACTION
- SCHEDULING CONFERENCE FORM/LITIGATION PLAN INSTRUCTIONS

  (When case is assigned to Article III Judge.)

  a. Scheduling Conference Form/Litigation Plan Instructions
  b. Notice of Availability of the Magistrate Judge to Exercise Civil Jurisdiction and Appeal Option
  c. Waiver of Service
  d. Notice of Lawsuit and Request for Waiver of Service of Summons
  e. Waiver of Service of Summons
- NOTICE OF ASSIGNMENT TO MAGISTRATE JUDGE
  a. General Order No. 98
  b. Scheduling Conference Form/Litigation Plan Instructions
  c. Scheduling Conference Form/Litigation Plan
  d. Notice of Lawsuit and Request for Waiver of Service of Summons
  e. Waiver of Service of Summons
- INSTRUCTIONS FOR FILING A COMPLAINT UNDER THE CIVIL RIGHTS ACT, 2 U.S.C. SECTION 1983
- CERTIFICATE OF SERVICE BY MAIL

Forms to be used by Incarcerated Pro Se Litigants:

- APPLICATION TO PROCEED IN FORMA PAUPERIS, SUPPORTING DOCUMENTATION AND ORDER
- INSTRUCTIONS FOR FILING A COMPLAINT BY A PRISONER UNDER THE CIVIL RIGHTS ACT, 42 U.S.C. SECTION 1983
- PETITION UNDER 28 U.S.C. SECTION 2255 FOR WRIT OF HABEAS CORPUS BY A PERSON IN FEDERAL CUSTODY
- PETITION UNDER 28 U.S.C. SECTION 2254 FOR WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY

CHAPTER VI – Trial Preparation. The Local Rules cover all phases of trial preparation from the pretrial conference to the satisfaction of judgment. The following information is not meant to be all inclusive and you should always consult the Federal Rules of Civil Procedure and the Local Rules of the United States District Court to find out what the court requires of all parties when filing suit and participating in trial. Local Rule 16.1 sets out those pretrial requirements that all parties should be aware of. At the time of filing the initial complaint, parties must request a jury trial or court trial.

A. Pretrial Conference and Order. Prior to the actual trial, a pretrial conference is usually held between the trial judge and counsel to determine if all discovery has been completed, what exhibits and witnesses each side might use during the trial, the approximate length of time that will be necessary for the trial, and what ground rules the judge will require before, during, and after the trial. After the conference, a pretrial order is usually prepared which sets out the above.

B. The Trial -- The Role of the Judge and Jury. A trial is defined as "a judicial examination of issues between parties to an action." The parties each get the opportunity to present their side of the case, and the judge and jury (if the trial is a jury trial) are responsible for entering a verdict and judgment based on the evidence and arguments presented. It is the judge's duty to see that only proper evidence and arguments are presented. In a jury trial, he also instructs the jury which will be called on to make decisions regarding those matters at issue and then a judgment is entered based on the verdict reached by the jury. Local Rule 58.1.

If the parties have not requested a trial by jury, Local Rule 38.1, the judge becomes the trier of law (the judge) and the trier of fact (the jury). The judge then enters a Findings of Fact and Conclusions of Law, sometimes prepared by the prevailing party, based on the evidence and arguments presented and then a judgment is entered based on those findings of fact and conclusions of law.

C. Selection of the Jury. A jury trial begins with the judge choosing prospective jurors to be called for voir dire (examination). Local Rule 47.1. The jury box shall be filled before examination on voir dire and the Court will examine the jurors as to their qualifications. Not less than five (5) days before trial, the parties are to submit written requests for voir dire questions. Unless otherwise ordered, six (6) jurors plus a number of jurors equal to the total number of preemptory challenges which are allowed by law shall be called to complete the initial panel. Local Rule 48.1. After voir dire of all prospective jurors, a jury of six (6) is named and instructed by the judge regarding the issues they will be deciding. Local Rule 51.1.

Peremptory challenges: Each party has been given a number of peremptory challenges established by law, which enable the parties to reject prospective jurors without cause. This decision is based on subjective considerations of the parties when they feel a prospective juror would be detrimental to their side of this case.

Challenge for Cause: Either the plaintiff or defendant may challenge a prospective juror for cause when the prospective juror lacks a qualification required by law, is not impartial, is related to either of the parties, or will not accept the law as given to him by the court or other reasons approved by the court.

D. Opening Statements. After the jury is empanelled, each side may present an opening statement. Local Rule 39.1. The plaintiff has the burden of proving that plaintiff was wronged and suffered damages from such wrong and that the defendant caused such damages; the plaintiff is therefore allowed to present his statement first. This may be followed by a statement by the defendant.

E. Testimony of Witnesses. After opening statements are given, testimony of witnesses and documents are presented by each side, plaintiff side to begin. Local Rule 43.1. Cross-examination is conducted by the other side after the initial examination. If after a party has cross-examined a witness, the other side has the opportunity to redirect examination in order to requisition the witness on the points covered by the cross-examination.

If a witness testifies to one fact and a statement or document in the files shows that testimony to be contradicted, the document can then be used to question the witness on the accuracy of the witness's statements. If the evidence produced shows that the witness's testimony is false, the witness is considered impeached upon cross-examination.

F. Motions During the Course of the Trial. Before the closing arguments and up until the time the case is sent to the jury for deliberation, certain motions may be made during the course of the trial.

- Motion in Limine: This motion is made prior to the jury selection and it requests that the judge not allowed certain facts to be admitted into evidence--such as insurance policies, subsequent marriages, criminal records, and other matters which are either not relevant to the particular case involved or which might influence the jury unfairly.
- Motion for Instructed or Directed Verdict: This motion is usually made by the defendant at the close of evidence presented by the plaintiff's side and is based on the premise that the plaintiff has failed to prove his case. If it is granted, the court instructs the jury to render a verdict for the defendant and against the plaintiff, and the trial is concluded in the defendant's favor. If the court denies the motion, the trial continues with presentation of the defendant's side.
- Motion for Mistrial: Either party can move for a mistrial if, for example, during the course of the trial certain matters which are not admissible such as those mentioned in a motion for limine are presented by any witness either purposely or unintentionally in the presence of the jury. If the jury grants the motion for mistrial, the trial is immediately ended and the jury is dismissed.
- Objections: During the examination of a witness, one side may "object" to the questioning or testimony of a witness or presentation of evidence if the attorney feels the testimony or evidence about to be given should be excluded. If the objection is sustained by the judge, that particular testimony or evidence is excluded. If the objection is overruled by the judge, the testimony or evidence may be given. A ruling on an objection may be the basis for appeal; however, in order to preserve the right to appeal, a party must ask the court recorder that that portion of the trial–the question/evidence, the objection, and the ruling– be transcribed in order to preserve the record for later appeal.

G. Rebuttal Testimony. After each side has presented its evidence, the plaintiff may be allowed to present some rebuttal testimony.

H. Closing Arguments. Closing arguments to the jury set out the facts that each side has presented and the reasons why the jury should find in favor of the client. Time limits are sometimes set by the court for closing arguments, and each side must adhere to the specified time. The plaintiff presents closing argument first and may present rebuttal to defendant's closing argument. Local Rule 39.1.

I. Charge to the Jury. After each side presents testimony and evidence, the jury delivers his charge to the jury, usually in the form of written instructions. Each side may present proposed written instructions to the judge for consideration. After the judge has considered all proposed instructions, the jury is given each instruction which sets forth the jury's responsibility to decide the facts in light of the applicable rules of law. The jury then returns a verdict granting favor to the plaintiff or defendant and assesses damages to be awarded, if any.

J. Mistrial. If a jury is unable to reach a verdict, in which case the judge declares a mistrial, the case must be tried again before a new jury. A jury which cannot reach a verdict is usually referred to as a hung jury.

K. Preparation of Judgment. Following the entry of the jury's verdict, either side may give notice of its intention to appeal. The judgment is prepared by the prevailing side and presented to the court for entry. These post-trial motions usually set out why the jury's verdict should be disregarded or why the judgment submitted by the other side should be more in keeping with the jury's verdict. Local Rule 58.1.

L. Costs. If the jury or the judge awarded costs to the prevailing party, it is necessary to prepare a bill of costs incurred in the suit for the approval of the court. Costs are specified by Local Rule 54.1 as to what is allowable, and only those costs listed as allowable may be recovered by the prevailing party. Within fourteen (14) days after entry of judgment, under which the costs may be claimed, the prevailing party may serve and file a cost bill requesting taxation of costs itemized thereon.

Claims for attorney fees will not be treated as routine items of costs. Attorney fees will only be allowed upon an order of a judge of the court after such fact-finding process as the judge shall order. Local Rule 54.3.

M. Satisfaction of Judgment. Whenever the amount directed to be paid by any judgment or order, together with interest (if interest accrues) and the clerk's statutory charges, shall be paid into court by payment to the clerk, the clerk shall enter satisfaction of said judgment or order. The court will enter satisfaction of any judgment upon receipt of an acknowledgment from the prevailing party that all awards have been satisfied. Local Rule 58.2.

CHAPTER VII – Legal Research – An Overview. It is not the purpose of this chapter to teach the pro se litigant legal research and writing nor is it our goal to sort out the complexities of applying the law, whether it be statutory or case law, to the facts of a particular case. The law prohibits personnel in the Clerk's office from providing information regarding the application of the law to the facts of any case. The intention here is to provide information that is basic to a law library to be used as a guideline.

Just as there are certain standards of procedure for filing documents with the Clerk's office, there are certain standards for citing authority when applying the law to the facts of a certain case. The most common source of citation standards is "A Uniform System of Citation," Fifteenth Edition, published and distributed by The Harvard Law Review Association, Cambridge, Massachusetts. It is more commonly referred to as "The Bluebook" and sometimes as the "The Harvard Citator." All of the information required for proper citation format can be found in this one text.

Authority is the information used to convince a court how to apply the law to the facts of a case. Legal authority is divided into two classes -- primary and secondary. There are two sources of primary authority: (1) constitutions, codes, statutes, and ordinances; and (2) court decisions, preferably from the same jurisdiction where the case is filed. Secondary authority, which is not cited except in certain circumstances, is found in legal encyclopedias, legal texts, treatises, law review articles, and court cases in other jurisdictions.

Primary authority. The most accepted form of authority cited and should be used before any other authority.

- Constitutions, codes, statutes, and ordinances are the written laws of either the United States, the individual states, counties, and municipalities. These laws are enacted by the United States Congress, state legislatures, commissioners, and city councils.
- When a particular case is decided, it becomes "precedent" which means that it becomes an example or authority for an identical or similar case or a similar question of law. Court decisions are the basis for the system of stare decisis. These decisions are published in what is called the National Reporter System which covers cases decided by the United States Supreme Court down to the individual state district courts. These reporters each have their own "digest" system that serves as an index by subject on points of law. There are many reporters in this system and they can be found in most law libraries.

Secondary authority. Used to obtain a broad view of the area of law and also as a finding tool for primary authority. Secondary authority is not cited to the court unless there is no other authority available.

- Legal encyclopedias contain topics that are arranged alphabetically and are substantiated by supporting authorities.
- Treatises are texts written about a certain topic of law by an expert in the field.
- Law review articles are published by most accredited law schools and are sometimes a broad diagnosis of a particular area.
- The Index to Legal Periodicals provides the only book reviews in the law and also provides case comments, which cases are listed in the "Table of Cases."
- American Law Reports Annotated (A.L.R.) is a collection of cases on single narrow issues. You must be aware that A.L.R. must be constantly updated.
- Restatements are publications compiled from statutes and decisions that tell what the law is in a particular field.
- Shepard's Citations is a large set of law books which provide a means by which any reported case (cited decision) may be checked to see when and how another court (the citing decision) has cited the first decision. All cases must be checked to make sure another court has not reversed or overruled your cited decision.

Some basic rules of legal research are as follows:

- Give priority to cases from your own jurisdiction.
- Search for the most recent ruling on a subject matter.
- Check the pocket part in the back of almost all law books. The pocket part is the most frequently used device for updating law books.
- Pay attention to dates on books, i.e., copyright date and date of pocket parts.
- Be aware of "2d" and "3d" in citations. They distinguish one series of reporter from another.
- All legal citations are written with the volume number first, an abbreviation of the title, and the page number, e.g., 152 P.2d 967 or 144 A.L.R. 422.
- Shepardizing your citations can save a lot of embarrassment and failure later on.

As state above, do not accept the above information as a complete or comprehensive guide. You must always consult your Local Rules for your federal district court.

POST-CONVICTION REMEDIES

As discussed in this article, convicted defendants can take a number of steps to challenge guilty verdicts and/or to correct violations of constitutional rights, including motions, appeals and writs. The following list illustrates these steps. A defendant who loses at one may go on to the next step, all the way down the list (up the legal chain) in a process that can take many years -- especially for serious felonies such as death penalty cases.

This list is merely an illustration of possible post-conviction proceedings -- some of which may only be used in certain cases. Also, defendants usually must first have unsuccessfully sought relief through the available state remedies before they will be allowed to seek relief in federal courts. For these reasons and because of the complexities of these proceedings and what is at stake (liberty or life), defendants should consult counsel to determine which remedies are available to them.

Motion for Acquittal. A request that the judge decide that there is not enough evidence to convict the defendant. Depending on whether the trial is before a judge or jury and depending on court rules, this motion may be made either after the prosecution presents its evidence or after all the evidence is presented.

Motion for a New Trial. Request that trial judge declare a mistrial and grant a new trial.

Appeal to State Appellate Court. Contends that trial judge made some legal error.

Petition for Rehearing to State Appeals Court. Requests that appeals court judges change their own decision.

State Supreme Court Appeal. Requests that highest court in the state review and overturn the decision of the mid-level appeals court.

U.S. Supreme Court Appeal. Requests that highest court in the nation intervene to correct an error on the part of the state courts that violated the U.S. Constitution.

State Court Habeas Corpus Petitions. Requests that the state appeals courts order the jail or prison holding the defendant to release the defendant upon a showing that the defendant is being held in violation of some state law or constitutional right.

Federal Habeas Corpus Petition to District Court. Requests the federal trial court to order the jail or prison holding the defendant to release the defendant because the defendant is being held in violation of the U.S. Constitution.

Appeal of Federal Habeas Corpus Petition to Circuit Court. Requests the mid-level federal court to review the federal trial court's decision denying the writ.

Appeal of Federal Habeas Corpus Petition to U.S. Supreme Court. Requests the highest court in the land to review the mid-level federal court's decision denying the writ.

CLEANING UP A CRIMINAL RECORD

Basic information about erasing a criminal conviction from your record.

When a court seals or expunges records of an arrest or conviction (and a notation made in the file that only law enforcement personnel may view the records), defendants can, for some purposes, treat the arrests or convictions as though they had never happened. For example, say that a court expunges a defendant's conviction for misdemeanor possession of an illegal drug. On applications for school, a job or a professional license, the defendant may state that the defendant has no arrests or convictions (if no others exist). However, the rules about eligibility for expungement, and the effect of expungement, vary from state to state, and people interested in expungement should seek the advice of an experienced attorney or the staff of a community-based rehabilitation project that includes expungement as part of its everyday services. These general guidelines apply to many expungement programs:

- People must apply (in writing) for expungement. Courts do not automatically expunge or seal arrest and conviction records after a certain number of years.
- Even though a court has expunged a conviction, in some circumstances, a court can use it to increase the severity of a sentence should a defendant receive another conviction. For example, an expunged conviction may subject a defendant to a "three strikes" sentencing law.
- Usually, a court will not expunge a conviction until about a year after it occurs, and then only if the defendant has served the sentence and does not face new charges.
- A court cannot expunge every kind of conviction. For example, many states will not expunge convictions involving felonies or sex offenses. Courts mostly expunge juvenile and misdemeanor convictions.
- A court can immediately seal the arrest and charge if it acquitted the defendant of the criminal charge.

THINKING AND LOGIC IN THE PRACTICE OF LAW

Introduction. The logic of the practice of law backs every critical facet of a case. Confusion about this logic leads to confusion about all facets in the case and, ultimately, failure and loss.

Attorneys gain critical knowledge by simply practicing law — often together in shared law offices. Yet, for the incarcerated pro se defendant, this standard method has serious problems. On the job training without the benefit of teamwork would quickly ruin a prisoner's pro se case. Pro se defendants would do well to understand the logic used by lawyers and judges and to understand how to communicate with them through that logic.

A traditional and formal view of law would involve an explanation of the specific legal decisions that the law requires using objective facts, intelligible statutes, and clear-and-cut logic. Yet personal experiences illustrate to us that this view often fails to show itself in real life. Law, as practiced, often rests on questionable facts, vague or ambiguous statutes, or incomplete logic. Furthermore, personalities, prejudices, and personal values often gain an important place in the logic of law. As a result, attorneys and judges often confront legal issues with conflicting interests. Subjective human illogic mixes with objective formal logic.

Cases versus Rules. The average citizen probably sees law as the system of statutes. However, law students normally spend more time studying cases. Studying, analyzing, and thinking about cases continues as an integral part of an attorney's career. Clearly, a pro se defendant would do well to understand cases, rules, and the importance of each.

Cases. Appellate courts hear appeals and write and publish their opinions, known as cases. Cases consist of three important parts: the very brief facts of the matter leading up to the charge, the legal events leading up to the trial court judgment, and the issues raised on appeal and the appellate court's reasonings leading up to that court's judgment.

Unfortunately, the court reporters who authors cases do not obtain any knowledge from the juries as to what facts the juries believed. Keep in mind that juries act as triers of facts. Herein perhaps lies a serious gap in the worth of case law.

Rules. Rules as viewed by appellate courts consist of general statements of what the government, as the representation of the people's desires, either permit or require of a certain class of people under a certain set of circumstances. Here, the word "rule" means statutes as well as court rules, rules of evidence, administrative rules, and so on. Generally, a rule pertains to a standard of what people ought to do or ought not to do.

A rule may state: "One who kills another without excuse or justification shall be punished..." The part "One who kills another" implies a description of facts which a jury should determine objectively. The part "without excuse or justification" describes facts that the jury almost always must determine subjectively. The part "shall be punished..." states the legal consequences. The entire rule implies an obligation for all persons not to kill another wrongfully; however, this rule says very little about what constitutes a wrongful killing — or a rightful killing.

Conclusion. Thus, a case amounts to a short story of an incident and the reaction to it by the state; a rule represents an abstract or general statement of what, in criminal justice, the legislature prohibits of a class of persons in a class of circumstances.

Legal studies. As legal students and attorneys study cases and rules, they look to see why the courts acted in the ways that they did, they analyze the implications of the cases for possible future disputes, and they combine their separate understandings into general comprehensions of individual topics of law.

Thus, legal professionals gain a capacity to predict what the courts will do, and they seek to persuade the courts to rule one way or the other in future cases. This really amounts to studying what judges ought to do or will probably do – a study of judicial reasoning and of the pursuit of justice. Although rules play a significant role in the study of law, the primary focus normally falls onto decided cases — the examples of the law in action — and their possible implications for future cases.

Expressing law. Expressions of the law involves both rules (generalizations) and cases (experiences). Rules appear deceptively simple in appearance. Cases involve complexities and richness in variety. Predictions based on rules often fail in a world so complex and varied.

Consider a simple rule, such as: "No person shall sleep in a city park." Imagine two cases. In one, the police find a well-dressed man sitting upright on a park bench at noon, his chin resting on his shoulder, his eyes closed, and him snoring loudly, obviously asleep. In the other case, the police found a disheveled man, who suffers from insomnia, lying on the same park bench at midnight, his head on a small bundle of clothes, and newspapers spread over his body like a blanket, obviously asleep. How would you predict the outcome of the cases? Does your answer follow only from the language of the rule? What logic and reasoning do you use to come to your conclusions?

Rules. Virtually every rule leaves more intellectual work because rule-making authorities, by necessity, create rules imperfectly and projected into an uncertain future. The rule's language alone does not determine that many or most cases fall within the class of cases intended by the rule-makers. Rule-makers cannot realistically anticipate unintended cases that the language of the rule may plausibly describe as falling within its class of cases. Likewise, rule-makers cannot realistically anticipate intended cases that the language of the rule does not plausibly describe.

Cases. Cases provide the substance, the living instance, of rules. But studying and using cases, for making predictions and as a basis for forming persuasions in other cases, involves a less familiar intellectual process than the process which studying rules seems to require. Learning through the study of cases often requires practice and effort; however, it continues as the only way to success.

To persuade a court of what it should do in the case at bar, an attorney must argue what courts have done in other, similar cases. Comparing and contrasting cases has its advantages because cases supply particularities grossly lacking in bare rules. Where the language of a rule gives no precise guidance, judges and attorneys must look elsewhere — to case law.

Justice. Legal experts have described "law" as the human striving toward the ideal of "justice." The studying and use of cases forces judges and attorneys to contemplate and strive toward justice in our society. American jurisprudence bases its perfection on the idea that justice will emerge through the arguments of adversaries before a judge. Attorneys, although engaged to protect a client's interests, also participate in striving toward justice. Lawyers persuade judges by appealing to the justice in the case.

Cases display the complexities with which the law must deal. Comparing and contrasting cases supplies the particularities that attorneys need to predict intelligently what a court will do or to persuade a court of what it should do in a particular case, and for judges to make reasoned decisions on cases. Comparing and contrasting cases requires hard, rigorous thinking about justice and the proper role of government in a free and democratic society.

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The Logic used in legal thinking.

Forms of logic. Two forms classical logic come into play in the legal process: deduction and analogy.

Deduction. Deduction describes the kind of logic that originates as a general idea and transfers to a conclusion as a specific idea. Legal reasoning that starts with a rule essentially employs deduction. The phrase "deductive logic" and the verb "to deduce" correspond to deduction and its use.

Induction or inductive logic, the logical counterpart to deductive logic, needs explaining here. Induction describes the kind of logic that originates as a specific idea and transfers to a formation as a general idea.

Analogy. Analogy describes the kind of logic based on the assumption that similarities in two things conclude that other similarities must — or should — also exist between them. Legal reasoning that starts with a case essentially employs analogy. In criminal law, if the facts in a present case sufficiently mirror that in a decided case, then the judgment in the present case should mirror that of the decided case.

Analogy seems to employ a partnership of induction and deduction. Basically, similar judgments should follow from similar cases. The comparison and contrasting of the present and the decided cases shows them similar enough to include them in a particular class of cases. Or, restated using inductive logic: Two (or more) specific cases seem so similar that they "induce" the general idea of one particular class of cases. Thus, treatment of them by the courts should, likewise, follow from one general class of judgments. Or, restated using deductive logic: A specific case falling within a general class of cases should receive treatment as a member of that class.

Differences. Several serious differences exist in law between the uses of deduction and analogy. First of all, deduction [from rules] requires the existence of rules; and the legislature makes those rules (criminal laws). Analogy [between cases] requires the existence of decided cases; and the judiciary decides those cases.

Legislative intent. Legislatures, upon creating a law, usually describe their reasons and their logic for their creation of that law. The state records and maintains these reasons and reasoning, commonly referred to as "legislative intent" — the intentions of the legislature in creating that law. Judges can consider this legislative intent in the forming of their opinions and judgments.

The legislators also may employ both deduction and analogy in their methods of lawmaking. For example, use of deduction when creating laws based on moral principles (statutes follow from more abstract morals), and use of analogy when creating laws based on laws created in other jurisdictions, states or countries or proposed by the Commissioners on Uniform State Laws (similar treatment of similar cases). Also, a legislature uses analogy when creating laws based on what it perceives as a class of cases to which the general society seems intolerant.

THE PROPER MENTALITY FOR LEGAL RESEARCH

Technical research. A proper mentality helps the legal researcher get the most from his efforts. The same mentality helps researchers in other technical fields. Legal research involves learning from the material while learning the legal language and the legal grammar.

Incarcerated, indigent, pro se defendants. Several difficulties accompany legal research by incarcerated pro se defendants. Incarcerated defendants have limited access to legal and other research materials. Indigent defendants have little means of personally acquiring legal materials. They typically have little experience with researching the law, and some lack a high school diploma or its equivalent. And they hold a personal and often strong emotional attachment to their research.

Overcoming difficulties. These researchers would do well to recognize these difficulties and consciously try to overcome them. They may obtain better access to legal materials at a different, although (for other reasons) perhaps less desirable prisons. They can gain experience by making legal work their number-one priority, and by helping others with their legal work for a small "fee" or for free. Several researchers can work together in groups on all their cases. Perhaps most important of all, pro se researchers must learn to detach themselves emotionally from their work. Nothing ruins legal work faster or more thoroughly than a researcher blinding himself to the true issues of his case and, instead, hotly pursuing his own personal, emotional agenda.

Legal publications. Most legal publications attempt to make a rational argument that supports a certain perspective of justice. Reading legal materials requires a high degree of patience and concentration. Legal readings involve special words and phrases as well as special (legal) meanings to common words and phrases. Keeping track of these technical meanings requires effort, and a researcher cannot avoid them. Legal publications pay considerable attention to reasons and arguments. They highly value precision and clarity. Members of a group of researchers should expect to defend their interpretations and positions in a rational and non-emotional manner.

Many legal arguments have complex and abstract components. Equally compelling reasons often support conflicting points of view.

Mature attitude. Develop a mature attitude. Give all ideas a fair initial hearing even if you can't imagine believing them yourself. Don't make impulsive, uninformed prejudgments.

Hold off. Hold off your early objections to new ideas. Understand the entire issue and its significance before raising your objections. Repeatedly wanting to object to "wrong" beliefs may come from an emotionally defensive attitude that will prevent you from understanding many of the things you should learn. Remember that learning new ideas also means letting go of present ideas.

Charity. Charity means beginning your analysis of a case or other material by interpreting any ambiguities and seeming inconsistencies to the advantage of the legal position by the author. This will prevent you from reading with a personal bias or prejudice against a position that challenges an important belief or that expresses a new idea. You should base your first careful reading of a legal passage on the assumption that the author intends to present good reasons for his position and has the capabilities to do so. This attitude gives you the best chance of understanding the argument, and it will minimize the chances that you will not distort the reasonings that you don't like.

Psychology. Psychologists who study the art of learning report that people have the most difficulty understanding and remembering ideas with which they disagree. Use this fact by becoming a better researcher and a better thinker by consciously resisting the impulse to look for weaknesses before you fully grasp a position.

Read. Read. Read. Nothing can substitute for carefully reading all legal materials. The more you read, the better you read – and the more you learn. Read a case, and re-read again – more than once. Read it when you can do so with the least interference.

Work at your peaks. Inspect your daily behavior and determine when your mental powers come to a peak. This may happen in the morning, afternoon, or evening. Attend to your legal work at that time. You may need to decide: play racquetball, watch you favorite TV shows, or do you legal work. Decide on your priorities.

Be prepared. Always go to the library with a pen or pencil and a piece of paper or notebook — even if you go intending only to read the newspaper. You never know how you will find important information (in a newspaper, a magazine, a non-legal book, or from another person). For that matter, keep paper and a pen or pencil with you at all times. Trying to keep important info in your head will often fail; it will frustrate you if you forget; and you may hate yourself over something that you forgot that may have had no consequence in your work.

Work space. As much as possible, while working in the library, sit in a well-lit area away from distracting voices and noises. Sit facing away from distracting people and activities. Don't sit facing a window or doorway where activities and noises will distract your attention. Bright light (the Sun or the electric lights) in front of you will frustrate your ability to read. Lighting should come from above.

Posture. Try to find a comfortable chair. Sit up straight and comfortably; don't slouch or lounge. Your posture should allow blood to flow freely to most parts of your body without parts "falling asleep." Don't feel ashamed to get reading glasses from the medical staff or to wear them in the library when you read.

Focus. Don't expect to ponder personal issues or to carry on personal conversations while dealing with your legal work. Again consider your priorities — do you want to laugh it up, talk the time away, or do your legal work? Decide on your number-one priority. Experts who study learning report that every time you change subjects in your head, you must re-configure your thinking. Interruptions waste you time, cause you to focus on them and then re-focus back onto your legal work. All this focusing expends your mental powers as well as wasting more of your time.

Mentality. If you intend to study law with the emotion that the government and the courts want to "screw" you, then you will have great difficulty with it. Basically, most people have respect for and satisfaction with the law. Any dissatisfaction, when proven through legal reasoning, will receive proper attention by the court system, which will then make changes as it deems necessary. Approach your legal work with the sincere belief that the legal system works.

Pro se criminal defendants and appellants have enough difficulty with learning about law while learning the law. We don't need to add anger and resentment to an already difficult situation. Once again, decide on your priorities: Do you want to use your mind as a weapon of anger and resentment, or do you want to use it as a finely-tuned legal instrument with which you will seek justice and, hopefully, your freedom?

Study. Take your time. Do not rush. As with studying for school, do not "cram" the night before a court hearing. Its negatives outweigh its positives. You learn very little after hours of intense studying. Cramming also ruins a good night's sleep that you need for your best performance in court the next day.

Afterwards. Relax. Do not jump into another hectic activity – especially another hectic mental activity. Take a nap, walk the track, sunbathe, take a shower. Relax. Let your mind soak up what you have read. Don't chase your new legal thoughts from your subconscious with other competing thoughts. Let them soak in. Let them mix, compare and interact with other legal thoughts.

Prepping for a court hearing. Be extra good to yourself in regards to nutrition and sleep. Get plenty of regular sleep the week before the hearing. Control your nutrition. Eat extra amounts of complex carbohydrates instead of eating simple, refined sugars. Try having more pancakes or French toast instead of more syrup on them and try using sugar in your coffee on the morning of the hearing.

JUSTICE: A VIEW BY ORGANIZATIONAL SCIENCE

We should take interest in what experts in any field investigate, believe, know, or report about "justice."

Organizational science involves the study of the interactions of persons in groups, especially businesses. Some experts and students of organizational science take an interest in the construct of justice. A "construct" refers to a concept constructed from simpler elements.

(Note that the use of the words "offender" and "victim" in this section refer to those persons who, respectively, perpetrate and receive injustice (whether real or perceived) in an organization, specifically a business organization. Justice refers to the sense of fair play among co-workers and between superiors and subordinates. Although these words refer to a specific sense, we can consider them in a general sense without much loss of accuracy. We can apply information here, with some accuracy, to our concern with criminal justice.)

Justice refers to the principle or ideal of moral rightness. "Moral" used here refers to the principles of right and wrong relating to human character and behavior, and does not refer to the religious "moral." People live in "societies" — groups of humans with mutual interests, with participation in characteristic relationships, with shared institutions, and with a common culture. Culture refers to the sum of behavior patterns, arts, beliefs, institutions, and all other products of human work and thought typical of a population or community at a given time.

Individuals and their loved ones gain various benefits from their societies and cultures, and thus, individuals in a society want their society to continue. Thus, they want others in their society to believe and behave in ways that maintain their society. Even prisoners, as we all know, have their "code of conduct" in order to reap its benefits, and to keep their "society" going so that they can continue to reap those benefits.

Experts in organizational science consider justice as consisting of at least four simpler concepts: distributive justice, procedural justice, interactional justice, and restorative justice.

Distributive justice refers to the fairness of results based on equity, equality, need, or other standards. Procedural justice refers to how persons perceive the fairness of the procedures that regulate decision processes. Interactional justice refers to behaviors associated with the fair or unfair treatment by persons in authority. Restorative justice refers to remedy for injury and suffering and for restoring relationships following injurious actions by offenders.

People react strongly and emotionally to justice. They concern themselves greatly with the concepts of restorative justice, which experts believe has at least four components (some of which may overlap): retribution or revenge, forgiveness, restitution, and compensation.

Revenge. The infliction of harm in return for perceived wrong. Primal human impulse seems the basis for revenge, which can seriously motivate social behavior. As a primary cause of aggressiveness, revenge typically follows a period of reflection on the harm done to the victim. It usually invokes intense anger, and probably evokes actions intended to restore justice and fairness. It can restore a victim's damaged status, even if only in the victim's mind. Most organizational science experts consider revenge to harm the victim, the offender, and their relationship. Revenge has a bad reputation because suppressed anger often accompanies it. Suppressed anger can cause psychological and emotional illnesses. Some experts criticize revenge because it rarely produces the desired results, and humiliates and degrades the offender,

even if it satisfies the victim. Revenge can also escalate, causing reciprocal acts of revenge.

Forgiveness. Forgiveness includes emotional, intellectual, and behavioral phenomena that diminish negative feelings and judgment toward the offender, not by denying one's "right" to such feelings and judgment, but by viewing the offender with compassion, benevolence, and love. It involves the surrendering of resentment and anger, and it can restore justice in the aftermath of personal injury. Organizational science has mostly ignored forgiveness probably because of its traditional connection with religion rather than science.

Yet, the ancient foundations of our civilized societies involve the essential element of forgiveness. Parents teach children forgiveness from a very early age. Adults encourage each other to forgive offenders. People on their deathbeds make final acts of forgiveness. To not exercise forgiveness leaves only angry and violent extremes: exile (banishing offenders forever), or capital punishment (chopping off hands of thefts, cutting out tongues of slanderers, an eye for an eye, a tooth for a tooth, and so on — even death).

Forgiveness, as with revenge, attempts to cope in response to perceived injustice. In stark contrast to revenge, forgiveness does not demand the offender to compensate the victim for the injustice inflicted. The injured party deliberately gives up opportunities for retribution, punishment, or even fair distribution of goods, as the victim struggles to release the offender from obligation.

Forgiveness and revenge seem to oppose each other. A victim focusing on one alternative strengthens the belief in that alternative, and causes less attention to other alternatives.

Restitution. Restitution involves the return of something taken – money, property, position – even a person's social status and reputation. Reaffirmation of a person's status and reputation may mean more to the victim than the restitution of material property.

Apology – a special form of restitution. Apology from the offender falls under restitution. Apology expresses regret, sorrow, distress, and mental anguish for the fault or offense committed. Ironically, it often includes a request that the victim pity (sympathize with or show mercy to) the offender as well as forgive the offender. Apology also reaffirms and restores the status and reputation of the victim. It often can reassure the victim that the offender did not mean to commit a wrong toward that specific person, but perhaps, rather toward a person in their circumstance. This assures the victim that he or she did not personally contribute to the wrong, about which many victims worry. An apology should assure the victim that the victim's future does not involve further victimization or thoughts of victimizing the victim by the offender. In all, an apology: acknowledges a wrong committed, expresses the wrongfulness of the act, assures the victim that the offender did not target the victim personally, expresses assurance that the victim can consider the future as free from wrongs by the offender, and can even beg forgiveness from the victim.

Compensation. Behavior which counteracts or balances a wrong. Compensation differs from restitution in that compensation cannot restore what existed in the past. Compensation makes amends through other means.

HOW TO SHEPARDIZE®

Introduction. Shepardizing involves citations and their research which will show you the "precedential value" of the cited legal authority. Most legal writings include one or more citation – a reference to a legal authority such as a statute, a regulation or an opinion on a case. A citation identifies a legal authority by showing you what publications published (or reported) the full text of that authority.

Shepardizing shows you the precedential value of a legal authority, and helps to expand your research by leading you to new legal sources. Shepardizing helps fulfill part of your responsibility in your legal work as a pro se defendant.

You must learn to Shepardize, and you must Shepardize. The legal profession knows Shepard's Citations for their capacity to determine the precedential value of case law, statutes, and constitutional provisions.

Our law has many sources of authorities, including written judicial opinions (or cases), statutes, regulations, and others. Judicial opinions form the basis of our common law (meaning "case law") legal system. The concept of "stare decisis" supports our common law system. It means "to abide by or to adhere to decided cases." According to stare decisis, judges should adhere to precedent, or principles of law from earlier cases, and so, those cases and their decisions become rules of guidance in future, similar cases.

But a court doesn't need to abide by decided cases. It can criticize or even overrule a decided case, thus damaging or even destroying its "precedential value." A court may also rule a statute or regulation as void or invalid, meaning that it violates another existing legal authority. Negative decisions such as these can weaken or destroy the precedential value of a case, statute, or regulation, making it "bad law." In order to determine the precedential value of a legal authority, you need to Shepardize its citation. You need to know the precedential value of any case, statute, or other legal authority before relying on it in an argument.

A pro se defendant who does not Shepardize as part of his legal research may end up basing his arguments on "bad law" – cases that later courts limited or reversed. Not Shepardizing amounts to practicing sloppy law and risking failure which, for you, means continued incarceration.

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HOW TO SHEPARDIZE A CASE

Shepard's Citations contain lists of citations showing every time a later court decision cites or affects a earlier published decision. Your research includes checking your research results to confirm their current authority. To check a citation, begin with the most recent Shepard's on the shelf (usually a red or gold paperback) and work backwards (i.e. red paperback, gold paperback, bound volume). Shepard's sometimes publishes thin gray paper booklets that contain more recent additions than the most recent red or gold paperback, and a researcher must check the gray booklets before the red or gold paperbacks. A researcher must check every publication in a series because Shepard's Citations do **NOT** repeat information previously printed in them. Thus, researchers must check each later volume of Shepard's Citations from the bound supplement volumes, through the interim paperbacks, to the most recent update.

Shepardizing case citations. Follow this process:

1. Start with the case citation. (Refer to the Citation section of this legal primer to interpret citations.)
2. Determine the proper set of Shepard's Citations.
3. Check with the law clerk about the most recent pamphlet in the set. Find it, and check the "What Your Library Should Contain" section on its cover.
4. Collect all the volumes that your library should contain, including supplements.
5. Start with the most recent supplement and find the proper division within each supplement that matches your citation.
6. Turn to the proper volume and page number. Shepard's shows volume numbers in bold type at the top corner of each page, and shows page numbers in bold between dashes within the columns. The list of cases citing the subject case appears following the cited case's page number.
7. Write down all the case citations or photocopy the pages. A small, raised (superscripted) number to the right of a reporter's abbreviated name indicates the particular headnote (description of a legal principle) of the cited case that the citing case discusses.
8. Repeat each step for each supplement and bound volume that your library should contain.
9. Read the relevant citing cases, including parallel cites, to determine their effect on the cited case. This means reading the **ENTIRE** cited case, not just the paragraphs that you think affect your case.

Shepard's order of case citations.

Parallel citations

- Shepard's will show parallel citations in parentheses the first time that it cites the case, and it will not cite it in subsequent volumes.
- If a Shepard's edition goes to press without a parallel citation available, then Shepard's will publish it in the next edition.
- If a parallel cite does not appear in any of the volumes, then no parallel source exists.
- Shepard's lists parallel cites to regional, state and topical reporters.

Case history

- Case histories indicating prior or subsequent proceedings in the same case appear immediately after the parallel cite.
- History citations will always have an identifying abbreviation letter preceding the references. See below for an definitions of the abbreviation symbols.

Treatment of cases

- Shepard's arranges this section by court. Decisions in the cited case's jurisdiction always appear first.
- Within the listing for each reporter, Shepard's lists citations in chronological order without ranking by importance or effect on the cited case.
- Citations to cases from other jurisdictions generally follow the cases of the home jurisdiction, although Shepard's sometimes limits this section to Federal cases.
- In general, Shepard's lists cases from other states only for regional reporters and not for state reporters.
- Treatment citations sometimes have an identifying abbreviation letter preceding the references. See below for definitions of the abbreviation symbols.

Secondary sources

- Shepard's Citators include citations from secondary sources and from annotations that cite your case.
- State Citators include references to:
  - American Bar Association Journal
  - major national law reviews
  - bar journals and law reviews published in the same state as the jurisdiction covered by a particular Shepard's.
- Shepard's Federal Citators do not include references to law reviews.
- Shepard's included annotations in American Law Reports (A.L.R.) among citing sources in state and federal.
- Some state Shepard's include references to Attorney General opinions.
- Shepard's Citators may include references to legal treatises published by Shepard's/McGraw-Hill.

Shepard's abbreviations for cases. Shepard's uses unique abbreviations in its citation lists. Refer to the Table of Abbreviations in the front of each Shepard's volume for explanations of these symbols. This legal primer also describes them. Some referenced cases have small cased letters to the left of the case citation. These notations refer to either the "history" or "treatment" of the cited case.

History. The definitions below of the history assignments explain how the "citing case" (or opinion) relates to the "cited case" (or opinion).

a **Affirmed.** The citing case affirms or adheres to the cited case either on appeal, reconsideration or rehearing.

cc **Connected case.** The citing case relates to the cited case, either arising out of the same subject matter or involving the same parties.

D **Dismissed.** The citing case dismisses the cited case.

De –or**– Cert den.**
Denied. The citing case denies further appeal of the cited case.

Gr **Granted.** The citing case grants further appeal in the cited case.

m **Modified.** The citing case modifies the cited case either on appeal, reconsideration or rehearing. This modification can involve affirmance in part and reversal in part.

r **Reversed.** The citing case reverses the cited case either on appeal, reconsideration or rehearing.

Reh den
Rehearing denied. The citing order denies rehearing (or reconsideration) in the cited case.

Reh gran
Rehearing granted. The citing order grants rehearing (or reconsideration) in the cited case.

s **Same case.** The citing case involves the same litigation as the cited case at a different stage in the proceedings.

S **Superceded.** The citing case supercedes, or substitutes for, the cited case either on appeal, reconsideration or rehearing.

US cert den
Certiorari denied. The citing order by the US Supreme Court denies certiorari in the cited case.

US cert dis
Certiorari dismissed. The citing order by the US Supreme Court dismisses certiorari in the cited case.

US cert gran
Certiorari granted. The citing order by the US Supreme Court grants certiorari in the cited case.

US reh den
Rehearing denied. The citing order by the US Supreme Court denies rehearing in the cited case.

US reh dis
Rehearing dismissed. The citing order by the US Supreme Court dismisses rehearing in the cited case.

v **Vacated.** The citing case vacates or withdraws the cited case.

W **Withdrawn.** The citing decision or order withdraws the cited decision or order.

Treatment. Treatment assignments show how a legal authority in an unrelated case evaluated the cited case. Remember that a judge may require you to know when courts have treated your target case both positively as well as negatively. The definitions below show how the "citing case" (or opinion) treats the "cited case" (or opinion).

c **Criticized.** The citing case criticizes the cited case and, thus, disagrees with its reasoning or result. Important: The citing court may not have the authority to materially affect the precedential value of the cited case.

ca **Conflicting authorities.** The citing case lists the cited case as one of several conflicting authorities.

d **Distinguished.** The citing case distinguishes itself from the cited case, because of slightly different facts or application of the law. Refer the Logic in Legal Reasoning section of this legal primer.

e **Explained.** The citing case significantly explains, interprets or clarifies the cited case.

f **Followed.** The citing case follows the cited case, and relies upon it as the controlling authority.

h **Harmonized.** The citing case harmonizes with the cited case by resolving differences or variations.

j **Dissenting opinion.** A dissenting opinion in the citing case cites the cited case.

~ **Concurring opinion.** A concurring opinion in the citing case cites the cited case.

L **Limited.** The citing case limits the authority of the cited case because the citing case contains only limited circumstances of the cited case.

o **Overruled.** The citing case clearly overrules or disapproves the cited case.

op **Overruled in part.** The citing case overrules the cited case either partially or on other grounds or with other qualifications.

q **Questioned.** The citing case questions the validity or precedential value of the cited case because of intervening circumstances, including judicial or legislative overruling.

su **Superceded.** Superceded by statute as stated in the cited case.

"Overruled" – a warning. Inexperienced pro se defendants may mistakenly believe that, if Shepard's does not show the cited case as "overruled," then it remains as good law. A court can effectively overrule a case, but Shepard's does not draw legal conclusions and it will not show a case as "overruled" unless the court says so **EXPLICITLY**, such as "*This court therefore overrules...*" And, even if Shepard's does report a case as overruled, that does not mean that the court overruled it on the grounds or for the reasons that you want to cite it. It may remain as "good law" for you despite the fact that the court overruled it. A competent researcher **MUST** read the case to confirm the matter regardless of the treatment shown.

Headnotes. A small raised (superscripted) number to the immediate right of the reporter abbreviation is a headnote number referring to a headnote from your cited case. This feature allows you to go directly to references that discuss a particular issue in your case.

Other notations. Annotation references in Shepard's end with the letter "n" and supplemental annotation references with the letter "s".

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HOW TO SHEPARDIZE A STATUTE

Shepard's Statute volumes indicate later legislation and court decisions that cite your citation. These volumes allow you to Shepardize federal and state constitutions, court rules, session laws, treaties, charters and ordinances.

Use the method below to all state and federal statute citators. You can Shepardize your statute as a whole, and also its sections and subdivisions. Citations to the statute as a whole appear first followed by citations to sections and groups of sections. Citations to subdivisions appear under the related section.

Shepardizing statute citations. Follow the same procedure shown above for Shepardizing case citations. (Refer to the Citation section of this legal primer to interpret citations.)

Shepard's order of statute citations.

- Subsequent legislative enactments (amendments, repeals, etc.)
- Cases citing to the statute
- Attorney General Opinions
- Legal periodicals
- Annotations in American Law Reports and United States Supreme Court Reports, Lawyers' Edition

You should always Shepardize statutes on three levels:

- The statute as a whole (for example 147.19);
- The subparts of the statute (for example 147.19(d));
- The statute as part of a group (for example 147.19 et seq. or 147.19 to 147.32).
- Then Shepardize your statute in each of the books listed in "What Your Library Should Contain."

Use solid research methods, and check for supplements ("pocket parts" inserted into the pockets inside the back cover of many books).

States sometimes re-number their statutes. If you cannot find a particular statute, check to see if the state has re-numbered it.

Shepard's abbreviations for statutes.

- Shepard's uses unique abbreviations for statutes. To interpret these abbreviations turn to the "Abbreviations-Analysis" section in the front of each bound Shepard's volumes or on the inside front cover of the paper supplements.
- The letter appearing before a legislative citation indicates what happened to the statute. The citation following the abbreviation will tell you where in Purdon's Pennsylvania Statutes Annotated you can find the change.
- A letter appearing before a judicial citation will indicate whether the court ruled on the constitutionality or validity of the statute.

Statute citations. A statute citation is usually identified by its position in a "code" — a codification (permanent record) of laws. A statute citation usually contains three or more parts:

- The "title number," similar in idea to the volume number for a case. Remember, however, that more than one title may appear in a book.
- The "title abbreviation of code," similar in idea to the abbreviation of the reporter for a case.
- The "section number," similar in idea to a chapter of a book (or a section of a title). Take care not to flip open a book and look only for the section number because more than one title may appear in a book. Authorities may also refer to a section using its symbol "§" as in §1983.

Example

42 U.S.C. 1983

This citation refers to Title 42 of the United States Code, Section 1983.

Citators. A citator contains compiled listings of every instance in which a legal authority has been cited.

Shepard's publishes nearly 200 different citators. Each correlates to different cited and citing references. Shepard's organizes its citators by jurisdiction or specialization. Shepard's jurisdictional citators fall into three groups:

- **State citators** (cases, statutes, court rules, constitutions, jury instructions, and references to the U.S. Code, Constitution and court rules).
- **Regional citators** (see the Abbreviations used in Citations section of this legal primer to determine which regional citators report on which states).
- **Federal citators** (US District Courts, US Courts of Appeal, US Supreme Court, US Code, US Constitution, federal sentencing guidelines, federal court rules, and other federal statutory provisions).

Specialized citators. Specialized citators collect and organize data according to particular fields of law, or types of legal authority. Use a specialized citator to Shepardize all pertinent source materials for a particular area of specialization, such as labor, bankruptcy, or intellectual property. Specialized citators also give you specialized citing references. Jurisdictional citators may not contain many of these references.

Shepardizing instead of searching by general subject. Searching by general subject can find many cases of little value to your issue, which wastes your time and effort. Shepardizing, however, targets exactly those authorities – and only those authorities – that specifically cited your precedent.

(under construction)

WEST'S KEY NUMBER SYSTEM ®

West Publishing Company uses its Key Number System a comprehensive and widely used indexing system for case law materials. This system classifies digests of cases into about 500 law topics which West assigns paragraph numbers it calls "Key Numbers." Each section consists of numbered subsections pertaining to specific points of law within that section. Researching a key number helps you quickly find all references to that topic.

The Key Number System helps your legal research by allowing you to view a broad list of legal topics, and it makes your legal research more relevant by helping you to find the cases that pertain to your case.

The system consists of several sections contained in many volumes.

- The Descriptive-Word Index, arranged by descriptive words, provides immediate and convenient access to comprehensive case law.
- The Words and Phrases section, arranged by the judicially-defined words and phrases, sets out headnotes, titles, and citations of the cases in which definitions appear.
- The Table of Cases section, arranged by party names, provides the reporter name, volume number and initial page number for each case and the subsequent case history and the digest Topic and Key Number for each point of law.

Key Number. West assigns a permanent key number to every specific point of case law. It publishes them in all its current Digests and Reporters covering State and Federal Courts. It assigns a Topic and Key Number for each point of law involved in each case that it reports in its reporters. West's Topic and Key Number System also forms the outline for the Corpus Juris Secundum (CJS).

Once you select a Topic and Key Number to research, you can find the complete treatment of that topic in the CJS.

Digest. West compiles and publishes a digest as an index to case law in a particular law reporter, using its Key Number System. West publishes its Key Number Digests for all of the states (except Delaware, Nevada and Utah) and the District of Columbia, four of the regional reporters (Atlantic, Pacific, North Western, and South Eastern), the Federal Courts, and others. West publishes the American Digest as the master index to American case law, consisting of nine Decennial Digests and the General Digests, each a complete index to all reported cases during the period of time covered. The General Digest updates the Decennial Digests. Every five years the General Digest cumulates into another series of the Decennial Digest. The General Digest covers all current decisions of the American Courts as reported in the National Reporter System and other standard reporters. These include: Atlantic Reporter, Federal Claims Reporter, Federal Reporter, Federal Rules Decisions, Federal Supplement, Illinois Decisions, Military Justice Reporter, New York Supplement, North Eastern Reporter, North Western Reporter, Pacific Reporter, South Eastern Reporter, Southern Reporter, South Western Reporter, Supreme Court Reporter, and Veterans Appeals Reporter. Although unwieldy to use, the General Digest works best as a single source when you want to research the widest jurisdiction.

Finding a topic and key number. West allows two methods of finding a Key Number.

(1) At the start of your research, find an analysis of the topic under each topic of law in West Digest. The topic will consist of various aspects of the subject, and West assigns a key number to each point. Locate and identify the relevant key numbers by listing every probable key number and checking the digest. Once you have ascertained the relevant key numbers, your research can progress quickly and accurately.

(2) With a West citation to a case on point, the reporter will provide key numbers for each point of law in the decision.

(under construction)

CITATIONS — READING AND WRITING

Purposes. Most legal writings include one or more citation – a reference to a legal authority such as a statute, a regulation or an opinion on a case. A citation identifies a legal authority by showing what publication(s) published ("reported") the full text of that authority. A citation provides accurate information to allow the retrieval of the cited document. You must learn to

record and present the complete citation of a document – names, reporters, and numbers (volumes, pages, dates, etc). As you perform your legal research, you will become comfortable with the conventions of citations.

Case Citations. The information in most case citations appears in the following order: case name, reporter cite, date of decision, additional information, and parallel citations. Ten states have begun to order their information in citations as: case name, year, court, sequential number, and paragraph number. Refer to "The Bluebook: A Uniform System of Citation" for a comprehensive rules and references about citations. The following describes the most common method of case citation.

Case Name. The case name consists of party names, and it appears in the citation as the first named plaintiff or petitioner and the first named defendant or respondent, with "v." or "vs." (abbreviations for "versus") between them. These names appear only as surnames for individuals. Criminal case cites can have the name of the state, such as "New York," "Comm." Or "Commonwealth" (for a commonwealth, such as Massachusetts), "State," "People," and so on – all of which refer to the prosecution.

Reporter Cite. The volume number of the reporter appears first, followed by the standard abbreviation for the title of the reporter, and then the initial page number of the case in that volume. If a page number follows the initial page number (separated by a comma), it refers to the page number of that particular citation.

Date of Decision. The year or date that the trial court decided the case sometimes appears in parentheses following the reporter cite.

Additional Information. Other related information may follow the above information, such as an abbreviation for the court issuing the opinion or a brief history of subsequent review.

Parallel Citations. Cites often include parallel cites. These cites refer to the same case as reported in a different reporter. For example, the Massachusetts Reports and the Northeast Reporter may report on a Massachusetts case. Citations for United States Supreme Court decisions very often appear with parallel cites: U.S. (United States Reports), S. Ct. (Supreme Court Reporter), L.E. (Lawyer's Edition).

Example.

People v. Perez, 65 Cal.2d 615, 55 Cal. Rptr. 909, 422 P.2d 597 (1967), cert dimissed 390 U.S. 942, 88 S. Ct. 1055 (1968).

The name of the case appears as "People v. Perez" in volume 65 of the California Reports (Supreme Court), Second Series, starting on page 615 with parallel citations in volume 55 of the California Reporter starting on page 909 and in volume 422 of the Pacific Reporter, Second Series, starting on page 597. The trial court decided the case in 1867. The United States Supreme Court dismissed certiorari as reported in volume 390 of the United States Reports starting on page 942 with a parallel cite in volume 88 of the Supreme Court Reporter starting on page 1055. The Supreme Court dismissed certiorari in 1968.

Codes. Citations generally list the chapter or title number first, then the subchapters, sections or parts.

Statute citations. A statute citation is usually identified by its position in a "code" — a codification (permanent record) of laws. A statute citation usually contains three or more parts:

- The "title number," similar in idea to the volume number for a case. Remember, however, that more than one title may appear in a book.
- The "title abbreviation of code," similar in idea to the abbreviation of the reporter for a case.
- The "section number," similar in idea to a chapter of a book (or a section of a title). Take care not to flip open a book and look only for the section number because more than one title may appear in a book. Authorities may also refer to a section using its symbol "§" as in §1983.

Example:

42 U.S.C. 1983

This citation refers to title 42 of the United States Code Annotated, section 1983.

Codes usually consist of the following elements:

- **Division.** The name of the source reference, such as C.M.R. (or Code of Massachusetts Regulations). Within a division, Shepard's covers codes in chronological order. Learn the correct version if your code has had multiple versions.
- **Section Number.** Section numbers appear within a box on the page.
- **Subsections.** Shepard's may divide sections into subsections. To find a subsection, scan the columns of numbers until you see "Subd. a," for example. Shepard's will list the citing references to that specific subsection beneath it.

Rules of Citation. Several publications describe the rules for citations, most commonly "The Bluebook: A Uniform System of Citation" and "University of Chicago Manual of Legal Citation" (also called the Maroon Book).

Sources for Abbreviations. Various publications describe the standard abbreviations for legal materials: "The Bluebook: A Uniform System of Citation Price," "Effective Legal Research," and "Bieber's Dictionary of Legal Abbreviations."

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Writing Citations

Quotations – the simplified rules

Long quotations (50 words or more). Set off long quotes from regular text with a blank line before and after and indent the quote on both on right and left sides without quotation marks. Follow immediately in regular text (flush with the margins) with the citation to the quoted work.

Short quotations (less than 50 words). Enclose short quotations in quotation marks and convert any quotation marks within such a quote to single marks (apostrophes). Follow immediately with the citation to the quoted work. To apply special emphasis to short quotes, set them off and indent them as you would a longer quotation.

Quotes within quotations. Quoted text within a quotation should have its citation follow in parentheses.

Omitting quoted text. Indicate omitted text within a quotation using ellipses (three periods), such as: "This law, adopted by Alaska, Iowa, … and Wyoming, was..."

Modifying quoted text. Show modified text in brackets, such as "This breach of procedure caused [the defendant] grievous harm." compared to the original "This breach of procedure caused Johnson grievous harm."

Modifying sentences. At the start of a modified quote that amounts to a sentence, capitalize the initial letter of the first quoted word (because it will begin a sentence) and place it in brackets (because you modified it), such as "[P]rosecutors may not bring felony charges against minors ." compared to the original "This court has consistently ruled that prosecutors may not bring felony charges against minors."

Change of emphasis. Indicate changes in emphasis and omissions of citations or footnotes with parenthetic remarks, such as, "…'may not bring' (citation omitted)… ."

(under construction)

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Underlining or Italicizing in Citations. You may have already asked yourself why authorities show certain parts of citations in italics (slanted type that looks more like handwriting), but you underline them with your typewriter. Actually, you can also write your legal documents to show case names in italics. If you use a computer, you can italicize certain parts of citations by simply highlighting the name and pressing Ctrl+I for italics instead of Ctrl+U for underlining. Otherwise, you need to underline them to indicate them as citations.

You must underline or italicize the following parts of citations: case names, book titles, titles of journal articles, introductory signals used in citation sentences or clauses, prior or subsequent history explanatory phrases, words or phrases attributing one cited authority to another source, references to titles or case names in the text without full citation (even those which you would not underline in full citation), foreign words that lawyer jargon has not assimilated, quoted words italicized in the original, and the cross reference words: "*id.*," "*supra*," and "*infra.*"

However, you should not underline or italicize: constitutions, statutes, restatements, names of reporters and services, names of journals, rules, regulations, and other administrative materials.

Underline or italicize emphasized words, but do so sparingly. Do not use all capitals or exclamation points to show emphasis. Legal etiquette dictates calmness and maturity — always — especially in appellate proceedings.

The underlining of case names came into use as an alternative to using italics. Printing companies have italic type for use as case names. Typewriters, specifically those from years gone by, do not. In the printing trade, an editor underlines words and writes instructions in the margin to indicate to the printer that those words must receive special attention. Editors underlined case names and wrote "ital." in the margin to indicate that those words must appear in italics. The alternative use of underlining by litigants came from this notation in the print trade.

The upshot — use the preferred italics if you can use a computer; otherwise, underline. Judges understand this perfectly. If you use a typewriter that has interchangeable printwheels, do not switch back and forth in order to italicize case names. Typewriters and printwheels cannot tolerate this abuse, and a broken typewriter or printwheel can have catastrophic consequences for people in prison.

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Abbreviations Used in Citations

Comments on Spacing in Abbreviations

- Do not use a space between successive words abbreviated with a single capital letter. (N.E., D.R., U.C.L.A., N.Y.U.)
- Use a space between longer abbreviations and words or other abbreviations. (S. Ct., Geo. Wash. L. Rev.)
- Use a space between groups of successive single letters that refer to a single thing and other abbreviations. (B.U. L. Rev., N.Y.U. L.R.)
- Treat numbers (1, 2, 3, etc), including ordinals (2d, 3d, 4th, etc) as single letter abbreviations, and provide spaces for them accordingly. (A.2d., Cal. 3d)

United States Supreme Court Reporters:

U.S. United States Reports

S. Ct. Supreme Court Reporter

L. Ed. Lawyer's Edition

Federal Circuit Court of Appeals Reporters:

F. Federal Reporter

F. Cas. Federal Cases (ended in 1880)

United States District Courts Reporters:

F. Federal Reporter

F. Supp. Federal Supplement

F. Cas. Federal Cases (ended in 1880)

Regional Reporters of State Cases:

A. Atlantic Reporter (reports on cases from Connecticut, Delaware, D.C., Maine, Maryland, New Hampshire, New Jersey, Pennsylvania, Rhode Island, Vermont).

N.E. North Eastern Reporter (reports on cases from Illinois, Indiana, Massachusetts, New York, Ohio)

N.W. North Western Reporter (reports on cases from Iowa, Michigan, Minnesota, Nebraska, North Dakota, South Dakota, Wisconsin)

P. Pacific Reporter (reports on cases from Alaska, Arizona, California, Colorado, Hawaii, Idaho, Kansas, Montana, Nevada, New Mexico, Oklahoma, Oregon, Utah, Washington, Wyoming)

S.E. South Eastern Reporter (reports on cases from North Carolina, South Carolina, Virginia, West Virginia)

S.W. South Western Reporter (reports on cases from Arkansas, Kentucky, Missouri, Tennessee, Texas)

S. Southern Reporter (reports on cases from Alabama, Florida, Louisiana, Mississippi)

Abbreviations of State Names:

Ala. Alabama	**Alaska** Alaska	**Ariz.** Arizona
Ark. Arkansas	**Cal.** California	**Colo.** Colorado
Conn. Connecticut	**D.C.** District of Columbia	
Del. Delaware	**Fla.** Florida	**Ga.** Georgia
Haw. Hawai'i	**Idaho** Idaho	**Ill.** Illinois
Ind. Indiana	**Iowa** Iowa	**Kan.** Kansas
Ky. Kentucky	**La.** Louisiana	**Me.** Maine
Md. Maryland	**Mass.** Massachusetts	
Mich. Michigan	**Minn.** Minnesota	
Miss. Mississippi	**Mo.** Missouri	
Mont. Montana	**Neb.** Nebraska	**Nev.** Nevada
N.H. New Hampshire	**N.J.** New Jersey	
N.M. New Mexico	**N.Y.** New York	
N.C. North Carolina	**N.D.** North Dakota	
Ohio Ohio	**Okla.** Oklahoma	**Ore.** Oregon
Pa. Pennsylvania	**R.I.** Rhode Island	
S.C. South Carolina	**S.D.** South Dakota	
Tenn. Tennessee	**Tex.** Texas	
Utah Utah	**Vt.** Vermont	**Va.** Virginia
Wash. Washington	**W.Va.** West Virginia	
Wis. Wisconsin	**Wyo.** Wyoming	

Frequently Cited Journals and References:

B.U. L. Rev. Boston University Law Review.

Buff. L. Rev. Buffalo Law Review.

C.J.S. Corpus Juris Secundum.

Cal. L. Rev. California Law Review.

Case. W. Res. L. Rev. Case Western Reserve Law Review.

Colum. L. Rev. Columbia Law Review.

Cornell. L. Rev. Cornell Law Review.

Fordham L. Rev. Fordham Law Review.

Fordham L. Rev. Fordham Law Review.

Geo. L.J. Georgetown Law Journal.

Geo. Wash. L. Rev. George Washington Law Review.
Harv. L. Rev. Harvard Law Review.
How. L.J. Howard Law Journal.
Mich. L. Rev. Michigan Law Review.
Minn. L. Rev. Minnesota Law Review.
Nat. Resources J. National Resources Journal.
Ohio St. L.J. Ohio State Law Journal.
N.Y.U. L. Rev. New York University Law Review.
Rutgers L. Rev. Rutgers Law Review.
Seton Hall L. Rev. Seton Hall Law Review.
Stan. L. Rev. Stanford Law Review.
Sup. Ct. Rev. Supreme Court Review.
Temple L. Rev. Temple Law Review.
Tex. L. Rev. Texas Law Review.
U.C.L.A. L. Rev. U.C.L.A. Law Review.
U. Chi. L. Rev. University of Chicago Law Review.
U. Pa. L. Rev. University of Pennsylvania Law Review.
Vand. L. Rev. Vanderbilt Law Review.
Va. L. Rev. Virginia Law Review.
Yale L.J. Yale Law Journal.
Wash. U. L.Q. Washington University Law Quarterly.
Wis. L. Rev. Wisconsin Law Review.

Abbreviations for Series:

2d. The second series of a law publication.
3d. The third series of a law publication.
4th. The fourth series of a law publication.

Other Abbreviations:

***** (an asterisk or star) Denotes that cited page number refers to publication's original page numbering system (used like this: *167).
A.B.A. American Bar Association.
A.D. Appellate Division.
A.L.R. American Law Reports.
Am. American. Amendment.
Amend. Amendment.
App. Appellate.
Bl. Comm. Blackstone's Commentaries on the English Law.
B.N.A. Bureau of National Affairs.
C. Chapter. Code. Court.
C.J.S. Corpus Juris Secundum.
Cas. Cases.
Ch. Chapter.
Cir. Circuit.
Civ. Civil.
Cl. Clause.
Comm. Commentaries.
Const. Constitution.
Crim. Criminal.
Ct. Court.
Cyc. "Cyclopedia of Law and Procedure."
D.R. Disciplinary Rule.
Dec. Decisions.
Div. Division.
E. East. Eastern.
Evid. Evidence.
F. Federal.
Fed. Federal.
Jur. Jurisprudence.
L. Law. Legal.
N. North. Northern.
Pet. Peter's United States Supreme Court Reports.
Proc. Procedure.
R. Rules. Reporter. Reports. Regulations.
Rev. Review.
Rptr. Reporter.
S. South. Southern. Supplement. Supreme.
Sec. Section.
So. South. Southern.
Steph. Comm. Stephen's Commentaries on English Law
Supp. Supplement.
U.C.C. Uniform Commercial Code.
W. West. Western.
Wall. Wallace's United States Supreme Court Reports.
Wheat. Wheaton's United States Supreme Court Reports.

Examples:

F.R. Crim. Proc. Federal Rules of Criminal Procedure
F.R. App. Proc. Federal Rules of Appellate Procedure
A.2d. Atlantic Reporter, Second Series
F.3d. Federal Reporter, Third Series

COURTROOM ETIQUETTE

A few basic rules apply to how you, as a pro se litigant, should behave in a courtroom. Four general rules apply:

1. Always show great respect in every possible way. Don't think of it as "sucking up" to the judge, but more along the lines of not tempting his/her shortcomings.
2. Speak clearly and at a moderate volume and pace.
3. Expect a judge to wear a "poker face." You may feel defeated because the judge doubts your brief, seems to brow beat you, or questions you extensively. Or, you may feel confident because the judge pretty much accepts your brief, looks pleasantly at you, or asks very few questions. Ignore your feelings — you can't read the judge's mind.
4. You must perform a once-only "performance" on a "stage" called a courtroom, so practice, practice, practice. If you must, practice showing great amounts of respect to the nastiest screw on your tier, and your performance in court will go easy. Practice your speeches standing up in your cell, in front of a mirror, in the yard, in front of jailhouse lawyers or your friends, or anywhere you can.

More specifically, you should:

- If possible, wear a suit of clothes — a humble suit — **NOT** a $2,000 Armani suit. If you don't have or can't borrow a suit, wear the most respectful clothes possible. Nothing flashy or distracting. No jewelry except for a wedding ring. Wear jeans, T-shirts, sneakers, or a jumpsuit **ONLY** as a last resort.
- Appear as traditional as possible. Cover up as many tattoos as possible, even by wearing a long-sleeved shirt and tie on a hot summer day. Wear your hair at a respectable length — yes, cut it if necessary. Likewise, lose the moustache and beard. You want to show the judge a face that a "mother could love" and not a face from a police line-up or a biker's bar.
- Sit up straight, and face forward. If you have shackles or chains on, try to remain still enough to prevent them from making distracting noises.
- Stand up when the judge enters and leaves. A court officer will direct everyone to do this.
- Stand up if the judge begins talking to you. Because the judge has initiated this exchange between the two of you, you now have a right to speak but, obviously, wait for the judge to finish.
- Always do what the judge asks you to do, although you may ask the judge about this.
- Otherwise, address the court only when directed by the judge. "Ask" the judge to speak by standing quietly. The judge will direct you to speak in due time. If you change you mind about speaking, then sit down.
- When you do address the court, stand up, and speak clearly and respectfully. Keep your arms by your side, or make very small graceful gestures. Address the judge as "your honor." Speak and act without anger or disrespect. Use "please" and thank you" when appropriate. Wear a sincere face.
- When you express concern about making a point, try to voice your concern in terms of your burden instead of the court's burden. For example, you should ask, "I'm not sure I answered the court's question satisfactorily. May I explain myself?" instead of "Your honor doesn't understand. Let repeat what I said."
- The judge will expect you to know ALL the court rules and to follow its procedures accordingly. However, judges usually show a little leniency and assistance for incarcerated pro se litigants. If the judge does not offer it, you can politely request it. Watch the judge's attitude about this: use it if you must, but don't irritate the judge with requests.
- Don't approach the bench unless directed by the judge. Ask to do so while allowed to speak. The judge will probably not allow a prisoner to approach the bench.
- If you want to give the judge something, tell the judge so (when allowed to speak), hold it out, and a court officer should come to you, take it, and bring it to the judge.
- Write or search through your papers quietly.
- Refrain from talking to others or from making obvious gestures. Try to yawn, sneeze, or cough quietly and unnoticed. If you desperately need a glass of water, catch a court officer's eye, beckon him over, ask him or her, and you might get it.
- If you absolutely must talk to others, whisper or speak in a very low voice without gesturing, and make it brief — no lengthy conversations. However, talk as needed with your lawyer so you don't spoil your case.

Also, make sure you have everything in advance of your once-only performance:

- All pertinent documents and evidence within reason (what the prison or court will allow you to bring).
- Reading glasses. Don't let your fears of your image ruin your case. Besides, glasses can make you look older and smarter. Judges usually wear glasses.
- Several blank pages and more than one writing instrument in case one breaks or fails to write (you don't want to try to burn a pen or pencil from someone while your case goes on without you).
- Handkerchief, a paper towel, or facial tissue for sneezes, coughs, runny nose, watery eyes, cleaning glasses, etc.

Finally, once you have passed the point of no return on your way to court, if you have forgotten something of importance, resign yourself to that fact. Tell the judge so when appropriate, but don't hate yourself for it — don't dwell on it. Simply make do the best you can. Resist the temptation to beat yourself mentally. Keep a positive attitude. Strive to be happy.

DICTIONARY OF LEGAL WORDS AND PHRASES

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1983 lawsuits. Civil suits brought under Title 42, Section 1983 of the United States Code, against anyone denying others of their constitutional rights to life, liberty, or property without due process of law. 42 U.S.C. 1983, qv.

28 U.S.C. 1331. The statute that allows a federal prisoner to file a complaint against a federal officer and request compensation for loss or injury.

28 U.S.C. 2241. The statute that allows a prisoner under federal sentence to petition for a writ of Habeas Corpus to challenge: denial of bail, implementation of a sentence, computation of a sentence, revocation of sentencing credits, or revocation of probation or parole.

28 U.S.C. 2254. The statute that allows a prisoner under state sentence to petition for a writ of Habeas Corpus.

28 U.S.C. 2255. The statute that allows a prisoner to move to vacate, set aside or correct a sentence that violates the Constitution or laws of the United States, that exceeds the maximum legal sentence, that the court imposed without jurisdiction, and so on.

42 U.S.C. 1983. The statute allowing civil actions for the deprivation of rights under color of state law or authority.

A—A—A—A—A—A—A—A—A—A

abstract of title. A chronological summary of all official records and recorded documents affecting the title to a parcel of real property.

acceptance. The taking and receiving of anything in good faith with the intention of retaining it.

access to the courts. Regarding prisoners, the only unassailable constitutional right, from which all other rights of theirs depend.

accessory. A person who aids or contributes in a secondary way or assists in or contributes to a crime as a subordinate. 216 So. 2d 829, 831. Mere silence or approval of the commission of the crime does not amount to accessorial liability. 81 Mo. 483. Failure to report a felony may constitute a crime in itself. An accessory does act to facilitate another in the commission of a crime or in avoiding apprehension for a crime. accessory after the fact. A person who receives, comforts, or assists a felon knowing that he has committed a felony or whom the police seek in connection with the commission or attempted commission of a felony. 234 A.2d 284, 285. Thus, a person who obstructs justice by giving comfort or assistance to a criminal offender in an attempt to hinder or prevent his apprehension or punishment. 378 F.2d 540.

accessory before the fact. A person who procures, counsels, or commands the deed perpetrated, but who does attend, actively or constructive, at such perpetration. 282 A.2d 154. Cf. accomplice, aid and abet, complicity, conspiracy, misprision.

accomplice. A person who knowingly and voluntarily participates with another in the commission or attempted commission of a crime. 165 N.E.2d 814. A person liable for the identical offense charged against the defendant. 233 P.2d 347. A person who knowingly, voluntarily, or purposefully, and with common intent with the principal offender unites in the commission or attempted commission of a crime. Mere presence combined with knowledge that the crime will transpire, without active mental or physical contribution, does not make one an accomplice. Id. 348, 349. For example, presence and knowledge by undercover agents do not make them accomplices. 478 S.W.2d 450, 451; 473 S.W.2d 19, 20. Accomplice liability requires a shared, common mens rea and criminal purpose between them. Cf. accessory, aid and abet, complicity, conspiracy.

accretion. The increase or accumulation of land by natural causes, as out of a lake or river.

acknowledgment. A formal declaration before an authorized official by the person who executed an instrument as his free act and deed. The certificate of the official on such instrument attesting to such acknowledgement.

acquittal. A release, absolution, or discharge of an obligation or liability. In criminal law the finding of not guilty.

Action Case. Cause, suit, or controversy disputed or contested before a court of justice.

additur. An increase by a judge in the amount of damages awarded by a jury.

adjective law -or- procedural law. That body of law which governs the process of protecting the rights under substantive law.

adjective law. The law pertaining to and prescribing the practice and procedure of the legislative process for determining or making affective substantive laws. Cf. substantive law.

adjudication. Giving or pronouncing a judgment or decree. Also the judgment given.

administrative agencies. Agencies created by the legislative branch of government to administer laws pertaining to specific areas such as taxes, transportation, and labor.

administrator. 1. One who administers the estate of a person who dies without a will. 2. A court official.

admiralty law. Also, **maritime law.** That body of law relating to ships, shipping, marine commerce and navigation, transportation of persons or property by sea, etc.

admissible evidence. Evidence that can be legally and properly introduced in a civil or criminal trial.

admonish. To advise or caution. For example the court may caution or admonish counsel for wrong practices.

advance sheets. Paperback pamphlets published by law book publishers weekly or monthly which contain reporter cases, including correct volume number and page number. Publishers publish a bound volume of advanced sheets as sufficient numbers of them become available.

adversarial system. The two-sided structure under which American criminal trial courts operate and that pits the prosecution against the defense. In theory, accomplishment of justice occurs when the most effective adversary convinces their perspective on the case as the correct one to the judge or jury.

adversary proceeding. One having opposing parties such as a plaintiff and a defendant. Individual lawsuit(s) brought within a bankruptcy proceeding.

adverse party. the party on the opposite side of the litigation. The opposing party.

adverse possession. Method of acquiring real property under certain conditions by possession for a statutory period.

affiant. The person who makes and subscribes an affidavit.

affidavit. A voluntary, written, or printed declaration of facts, confirmed by oath of the party making it before a person with authority to administer the oath.

affirmation. A solemn and formal declaration of affidavit as true. A substitute for an oath in certain cases.

affirmative defense. A defense raised in a responsive pleading (answer) relating a new matter as a defense to the complaint; affirmative defenses might include contributory negligence or estopped in civil actions. In criminal cases, such defenses include insanity, duress, and self-defense.

affirmed. A word used by appellate courts meaning that it upheld the decision of the trial court.

aggravated assault. Unlawful intentional causing of serious bodily injury with or without a deadly weapon, or unlawful intentional attempting or threatening of serious bodily injury or death with a deadly or dangerous weapon. A particularly fierce or reprehensible assault. An assault exhibiting peculiar depravity or atrocity, including assaults committed with dangerous or deadly weapons. An assault committed intentionally concomitant with further crime. Mayhem, qv.

aggravating circumstances. Circumstances or actions relating to the commission of a crime that increases its offensiveness or guilt beyond that of the average assigning of guilt for the given type of offense.

agreement. Mutual consent.

aid and abet. To actively, knowingly, intentionally, purposefully facilitate or assist another in the commission or attempted commission of a crime. Those acts characterized by affirmative criminal but not by omissions or negative acquiescence. 24 A.2d 85, 87. Cf. accessory, accomplice, complicity, conspiracy.

alias. Any name used for an official purpose different from a person's legal name. 234 S.W.2d 535, 539. Also refer to "aka" and "fka" in Abbreviations & Symbols.

alien. A foreign-born person who has not qualified as a citizen of the country.

allegation. A statement of the issues in a written document (a pleading) which a person intends to prove in court.

alteration. Changing or making different.

alternative dispute resolution. Settling a dispute without a full, formal trial. Methods include mediation, conciliation, arbitration, and settlement, among others.

alter ego rule. A rule of law that, in some jurisdictions, holds that a person can only defend a third party under circumstances and only to the degree that the third party could act on their own behalf.

American Bar Association. A national association of lawyers primarily to improve their profession and the administration of justice.

American Law Reports. A publication which reports cases from all United States jurisdictions by subject matter.

ancillary. An auxiliary or subordinate proceeding to another. In probate, a proceeding in a state where a decedent owned property not his domicile.

annotated codes. Publications that combine state or federal statutes with summaries of cases that have interpreted the statutes. With a very few exceptions, annotated codes are only available in a law library.

annotations. Remarks, notes, case summaries, or commentaries following statutes which describe interpretations of the statute.

answer. A formal, written statement by the defendant in a lawsuit which answers each allegation contained in the complaint.

Answers to Interrogatories. A formal written statement by a party to a lawsuit which answers each question or interrogatory propounded by the other party. The answering party must acknowledge his answers before a notary public or other person authorized to take acknowledgments.

anticipatory offense. Inchoate crime, qv.

antitrust acts. Federal and state statutes to protect trade and commerce from unlawful restraints, price discriminations, price fixing, and monopolies.

appeal. A proceeding brought to a higher court to review a lower court decision.

Appeal Bond. A guaranty by the appealing party insuring the payment of court costs.

appearance. The act of coming into court as a party to a suit either in person or through an attorney.

appendix. Supplementary materials added to the end of a document.

appellate court. A court having jurisdiction to hear appeals and review a trial court's procedure.

appellee. The party against whom the opposing party takes an appeal. Respondent, qv.

arbitration. The hearing of a dispute by an impartial third person or persons (chosen by the parties), whose award the parties bind themselves to accept.

arbitrator. A private, disinterested person chosen by the parties in arbitration to hear evidence concerning the dispute and to make an award based on the evidence.

arraignment. I. Strictly, the hearing before a court having jurisdiction in a criminal case, in which the identity of the defendant is established, the defendant is informed of the charge(s) and of his or her rights, and the defendant is required to enter a plea. The hearing at which the court brings the accused before it to plead to the criminal charge in the indictment. He may plead "guilty," "not guilty," or where permitted "nolo contendere." II. In some usages, any appearance in court prior to trial in criminal proceedings. Preliminary hearing, qv.

arrest. "To deprive a person of his liberty by legal authority." 249 N.E.2d 553, 557. In the technical criminal law sense, seizure of an alleged or suspected offender to answer for a crime. 214 N.E.2d 114, 119. Arrest or any custodial interrogation, though not technically called an "arrest" must have basis in probable cause. 99 S. Ct. 2248. Intent by the arresting officer or agent to bring the suspect into custody. 266 F. Supp 718, 724. The arrestee must understand the seizure or detention as an arrest. 94 Ohio App. 313. Elements of an arrest consist of: 1. purpose or intention to effect the arrest under real or pretended authority, 2. the person having present power to control arrestee to actually or constructively seize the person, 3. the arresting officer communicating the intention or purpose then and there to make the arrest, and 4. the arrestee understanding that the arrestor intends to arrest him. 250 F. Supp 278, 280. Taking an adult or juvenile into physical custody by authority of law, for the purpose of charging the person with a criminal offense or a delinquent act or status offense, terminating with the recording of a specific offense. Cf. malicious arrest, resisting arrest, privilege from arrest.

arrest warrant. A document issued by a judicial officer which directs a law enforcement officer to arrest an identified person who has been accused of a specific offense.

arson. At common law, "the willful and malicious burning of a dwelling house of another." 152 A.2d 50, 70. In some states, the burning of a house by its owner or part-owner. 221 S.W.2d 285, 286. Several jurisdictions divide arson into degrees. Statutory arson refers to comparable offenses involving destruction of property other than dwellings by methods other than burning, eg, explosion. The intentional damaging or destruction or attempted damaging or destruction, by means of fire or explosion of the property of another without the consent of the owner, or of one's own property or that of another with intent to defraud. Perkins & Boyce, (3d ed. 982); Model Penal Code §220.1.

Ashurst-Sumners Act. A 1935 federal legislation which effectively ended the industrial prison era by restricting interstate commerce in prison-made goods.

assault. Threat to inflict injury with an apparent ability to do so. Also, any intentional display of force that would give the victim reason to fear or expect immediate bodily harm. An attempt or threat, with unlawful force, to inflict bodily injury upon another, accompanies by the apparent present ability to give effect to the attempt if not prevented. 125 P.2d 681, 690. Threat, accompanied by present ability, may constitute assault. 447 F.2d 264, 273; 276 So. 2d 45, 46. As a tort, an assault may exist even where no actual intent to make one exists (as where the actor intends a "joke") if the actor places the victim in reasonable fear. Because an assault need not result in touching so as to constitute a battery, the trier of fact need not determine a physical injury occurred in order to establish an assault. Assault constitutes both a personal tort and a criminal wrong, and thus, persons claiming assault can seek remedy in both civil action and/or criminal prosecution.

> Some jurisdictions have, by statute, defined criminal "assault" to include battery at common law (the actual physical injury). Those jurisdictions also use the term "menacing" to refer to "assault" at common law. N.Y. Penal Law Art. 120; Model Penal Code §211.1.

assault on a law enforcement officer. A simple or aggravated assault, where the victim is a law enforcement officer engaged in the performance of his or her duties.

assignment. The transfer to another person of any property, real or personal.

assumption of risk. A doctrine under which a person may not recover for an injury received when he has voluntarily exposed himself to a known danger.

at issue. The time in a lawsuit when the complaining party has stated their claim and the other side has responded with a denial and the matter can advance to trial.

attachment. Taking a person's property to satisfy a court-ordered debt.

attempt. An overt act, beyond mere preparation, moving directly toward the actual commission of a substantive offense. 264 A.2d 266, 271. An offense separate and distinction from the object crime. 438 S.W. 441, 446. "The overt act, sufficient to establish an 'attempt,' must extend far enough toward accomplishment of the object crime to amount to the commencement of the consummation." 500 P.2d 1276, 1282. Various legal tests used to determine if the perpetrator has accomplished enough to cross the line between innocent preparation (mere planning of the crime) and a criminal attempt include "dangerous proximity," "indispensable element," "last act," "probable desistance," and "substantial step." Acts of solicitation alone generally do not establish the elements of an attempt. Model Penal Code §15.01; 252 A.2d 321, 324. Cf. dangerous proximity, indispensable element, last act, probable desistance, substantial step.

attendant circumstances. The facts surrounding an event. The definitions of crime often require the presence or absence of attendant circumstances. For example, statutory rape

requires that the girl not attain the age of consent. Model Penal Code §2133.

atrocious. Outrageously wicked and vile. 399 So. 2d 973, 977. An atrocious act demonstrates depraved and insensitive brutality by the perpetrator. Conduct that exhibits a senselessly immoderate application of extreme violence for a criminal purpose.

attorney. A person trained in the law, admitted to practice before the bar of a given jurisdiction, and authorized to advise, represent, and act for other persons in legal proceedings.

attorney-at-law. An advocate, counsel, or official agent employed in preparing, managing, and trying cases in the courts.

Attorney General. The chief law officer and legal counsel of a state government, usually appointed by its governor.

attorney-in-fact. A private person (not necessarily a lawyer) authorized by another to act in his or her place, either for some particular purpose, as to do a specific act, or for the transaction of business in general, not of legal character. An written instrument, called a "letter of attorney" or more commonly "power of attorney," that confers this authority.

attorney of record. The principal attorney in a lawsuit, who signs all formal documents relating to the suit.

attorney pro se. A person who does not retain a lawyer and, thus, represents and appears for him/herself in court.

Auburn style. A form of imprisonment developed in New York state around 1820, using mass prisons that held prisoners in congregate fashion. Prisons had centrally-located cells opening onto corridors with the outer walls opposite with windows. This style allowed greater physical freedom (thus, no great need for windows in cells) as well as rehabilitation through work. It competed with the Pennsylvania style and lasted until about 1890.

autopsy. The dissection of a body to determine the cause of death. It may involve inspection and exposure of important organs of the body to determine the nature of a disease or abnormality. The medical examiner of a county often conducts autopsies. The coroner will call a coroner's inquest as required. Different from a post mortem. Inquest, qv. Cf. post mortem, in Latin Words & Phrases.

> Defendants and courts should not consider an autopsy as a complete examination of a body regarding the "circumstances" of its death. For example, most autopsies generally lack a complete chemical analysis of the decedent. Many autopsies test only for depressants, which can kill, but will not usually test for stimulants, which can induce bizarre or extreme behavior or which can intensify a criminal action of the decedent justifying the use of more force than such activity or criminal action would normally justify. Defense wound, qv.

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bail. Money or other security (such as a bail bond) provided to the court to temporarily allow a person's release from jail and assure their appearance in court. "Bail" and "Bond" are often used interchangeably. (Applies mainly to state courts.)

bail bond. An obligation signed by the accused to secure his or her presence at the trial. This obligation means that the accused may lose money by not properly appearing for the trial. Often referred to simply as "bond." Bond, qv.

bailiff. An officer of the court responsible for keeping order and maintaining appropriate courtroom decorum and has custody of the jury.

bankruptcy. Refers to statutes and judicial proceedings involving persons or businesses that cannot pay their debts and seek the assistance of the court in getting a fresh start. Under the protection of the bankruptcy court, the courts may release or "discharge" debtors from their debts, perhaps by paying a portion of each debt. Bankruptcy judges preside over these proceedings. The debtor owes the debts to creditors – both people or companies. Cf. Chapter 7, Chapter 11, Chapter 13.

> Bankruptcy, as first developed by the British, almost amounted to a criminal proceeding initiated only by a creditor against an insolvent debtor, considered an offender. The US Constitution gave Congress the power to legislate on the subject of bankruptcy and, originally, only creditors could seek relief through such proceedings. Since then, changes also allow a debtor to seek adjudication as well as reorganization and protection.

Bankruptcy Judge. The judge who determines a debtor's entitlement to a discharge in bankruptcy.

bankruptcy law. The area of federal law dealing with the handling of bankrupt persons or businesses.

bar. 1. Historically, the partition separating the general public from the space occupied by the judges, lawyers, and other participants in a trial. 2. More commonly, the term means the whole body of lawyers.

bar examination. A state examination taken by prospective lawyers allowing admission to the bar and a license to practice law.

Battered Woman's Syndrome -or- **BWS** -or- **Battered Person's Syndrome.** A condition characterized by a history of repetitive spousal abuse and learned helplessness - or the subjective inability to leave an abusive situation. BWS has been defined by California courts as "a series of common characteristics that appear in women who are abused physically and psychologically over an extended period of time by the dominant male figure in their lives; a pattern of psychological symptoms that develop after somebody has lived in a battering relationship; or a pattern of responses and perceptions presumed to be characteristic of women who have been subjected to continuous physical abuse by their mates[s]."

battery. 1. unlawful physical violence inflicted upon another without his or her consent; 2. an intentional and offensive touching or wrongful physical contact with another without consent, that results in some injury or offends or causes discomfort.

battery. "The unlawful application of force to the person of another." Perkins & Boyce, Criminal Law 152 (3d ed, 1982). The least touching of another's person willfully, or in anger. 3 Bl. Comm. *120. The actual touching involved in an assault and battery. In tort law, the legal protection from battery extends to any part of one's body or to "anything so closely attached thereto that it is customarily regarded as a part thereof." Restatement (Second) Torts §18. "Thus, contact with the plaintiff's clothing, or with a cane, ... the car which he is riding [sic] or driving." suffices to create civil tort liability. Prosser, Torts 34 (4th ed. 1971). If the contact is offensive, even though harmless, it entitles the plaintiff to an award of nominal damages. Criminal jurisprudence considers every punishable application of force to the person of another as a criminal battery (a misdemeanor at common law). Perkins and Boyce, *supra* at 156-158. A beating, or wrongful physical violence. "Assault" refers to the actual threat to use force; "battery" refers to the use of it, which usually includes an assault.

bench. The seat occupied by the judge. More broadly, the court itself.

bench trial. (Also known as court trial.) Trial without a jury in which a judge decides the facts.

bench warrant. An order issued by a judge for the arrest of a person.

beneficiary. Someone named to receive property or benefits in a will. In a trust, a person who will receive benefits from the trust.

bequeath. To give a gift to someone through a will.

bequests. Gifts made in a will.

best evidence. Generally, primary evidence; the best evidence available; "secondary" refers to evidence less than best, such as a photocopy of an original letter. A rule of evidence that proof the content of a writing, recording, or photograph requires the production of the original in court. Fed. R. Ev. 1002. "Where the terms are material, the original writing must be produced unless it is shown to be unavailable for some reason other than the serious fault of the proponent." McCormick, Evidence §229 (2d ed. 1972).

bestiality. Sexual relations with animals.

beyond a reasonable doubt. The standard in a criminal case requiring that the jury satisfy itself to a moral certainty that the prosecution proved every element of a crime. This standard of proof does not require that the state establish absolute certainty by eliminating all doubt, but it does require that the evidence be so conclusive that an ordinary person removes all reasonable doubts from his mind.

bigamy. The crime of marrying one person while still legally married to another person.

bill of particulars. A statement of the details of the charge made against the defendant.

Bill of Rights. The first ten amendments of the United States Constitution. That part of any constitution which articulates fundamental rights of citizenship. A declaration of rights substantially immune from government interference, and thus, a reservation of limited individual sovereignty. Courts will of necessity balance and limit them when they clash with one another. Thus, courts find that the First Amendment guarantee of free speech and publication has, in some cases, conflicted with the Sixth Amendment guarantee of a fair trial, with the result of a judicial balancing of the two. Courts may also balance the rights of individuals with other social values considered of equal importance. Thus, Oliver Wendell Holmes Jr., US Supreme Court justice, stated that freedom of speech does not extend to yelling "Fire!" in a crowded theatre. Courts will constrain the freedom of religion when its practices seriously endangers the lives of others, or violates other basic social values (for example, values against bigamy).

bind over. To hold a person for trial on bond (bail) or in jail. If the judicial official conducting a hearing finds probable cause to believe the accused committed a crime, the official will bind over the accused, normally by setting bail for the accused's appearance at trial. (Refers to a state court procedure.)

black letter law -or- **hornbook law.** Certain principles of law commonly known and without doubt or ambiguity.

blackmail. A form of extortion in which a threat is made to disclose a crime or other social disgrace.

Blackstone. 1. Sir William Blackstone, a English legal theorist and educator, born 1723, died 1780. 2. His treatise on English law, referred to as "Blackstone's Commentaries on the English Law" or just "Commentaries on the English Law" written 1765-1769. Although it concerns the laws of another country and written more than 200 years ago, "Blackstone's Commentaries," as it is commonly called, remains an important historical source of knowledge regarding the jurisprudence and the content of law in America.

bodily injury. In general usage the term refers to physical harm to a human being. In cases of assault and battery, however, the term refers to the unlawful application of physical force upon the person of the victim – even when no actual physical harm results.

bond. A written agreement by which a person insures he will pay a certain sum of money if he does not perform certain duties property. Bail bond, qv.

bound supplement. A supplement to a book or books to update the service bound in permanent form.

booking. The process of photographing, fingerprinting, and recording identifying data of a suspect. This process follows the arrest.

Brandeis brief. A type of legal brief in which wisdom and intellect, instead of legal factors, supports its issues. Named after Louis Brandeis, the then lawyer, who, for example, [successfully] argued economic necessity for the installation of minimum wage laws.

brain death. Death determined by a "flat" reading on an electroencephalograph (EKG), usually after a 24-hour period, or by other medical criteria.

breach. The breaking or violating of a law, right, or duty, either by commission or omission. The failure of one part to carry out any condition of a contract.

breach of contract. An unjustified failure to perform the performance agreed upon by contract.

breach of peace. Any unlawful activity that unreasonably disturbs the peace and tranquility of the community. Also, "an act calculated to disturb the public peace"

bribery. The offense of giving or receiving a gift or reward intended to influence a person in the exercise of a judicial or public duty.

brief. A written argument by counsel arguing a case, which contains a summary of the facts of the case, pertinent laws, and an argument of how the law applies to the fact situation. Also called a memorandum of law.

buggery. A term usually meaning anal intercourse.

burden of proof. In the law of evidence, the necessity or duty of affirmatively proving a fact or facts in dispute on an issue raised between the parties in a lawsuit. The responsibility of proving a point (the burden of proof). It deals with which side must establish a point or points. Proof, qv.

burglary. The breaking and entering of a building, locked automobile, boat, etc. with the intent to commit a felony or theft. Also, the entering of a structure for the purposes of committing a felony or theft offense.

burglary. The act of illegal entry with the intent to steal.

business bankruptcy. A proceeding under the Bankruptcy Code filed by a business entity.

but-for rule. A method for determining causality which holds that "without this, that would not be," or "but for the conduct of the accused, the harm in question would not have occurred."

bylaws. Rules or laws adopted by an association or corporation to govern its actions.

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capital crime. A crime punishable by death.

calendar. A list of cases scheduled for hearing in court.

canons of ethics. Standards of ethical conduct for attorneys.

capacity. Having legal authority or mental ability. Being of sound mind.

caption. Heading or introductory party of a pleading.

career offender. Under federal sentencing guidelines, a person who (1) is at least 18 years old at the time of the most recent offense; (2) is convicted of a felony that is either a crime

of violence or a controlled substance offense; (3) has at least two prior felony convictions of either a crime of violence or a controlled substance offense.

case law. Law established by previous decisions of appellate courts, particularly the United States Supreme Court.

case law. The system of laws, originally developed in England and adopted in the United States, based on court decisions, specifically appellate courts, on the doctrines implicit in those decisions, and on customs and usages rather than on a codified body of written law or statutes. Cf. constitution, legislation, civil law 1. Cf. stare decisis, in Latin Words & Phrases.

cases. General term for an action, cause, suit, or controversy, at law or in equity; questions contested before a court of justice.

castle exception. An exception to the retreat rule that recognizes a persons' fundamental right to be in his or her home, and also recognizes the home as a final and inviolable place of retreat. Under the castle exception to the retreat rule it is not necessary to retreat from one's home in the face of an immediate threat, even where retreat is possible, before resorting to deadly force in protection of the home.

causation in fact. An actual link between an actor's conduct and a result.

cause. A lawsuit, litigation, or action. Any question, civil or criminal, litigated or contested before a court of justice.

cause of action. The fact or facts which give a person a right to relief in court.

caveat. A warning; a note of caution.

censure. An official reprimand or condemnation of an attorney. Cf. disbarment, suspension.

Certificate of Title. Document issued by Registrar of Titles for real estate registered under the Torrens System considered conclusive evidence of the present ownership and state of the title to the property described therein.

certification. 1. Written attestation. 2. Authorized declaration verifying an instrument as a true and correct copy of the original.

certiorari. A writ of review issued by a higher court to a lower court. A means of getting an appellate court to review a lower court's decision. If an appellate court grants a writ of certiorari, it agrees to take the appeal. Sometimes referred to as "granting cert."

challenge. An objection, such as when an attorney objects at a hearing to the seating of a particular person on a civil or criminal jury.

challenge for cause. A request from a party to a judge that the court not allow a certain prospective juror as a member of a jury because of specified causes or reasons. Cf. peremptory challenge.

chambers. A judge's private office. A hearing in chambers takes place in the judge's office outside of the presence of the jury and the public.

change of venue. Moving a lawsuit or criminal trial to another place for trial. Cf. venue.

Chapter 7 Liquidation. The declaration of the insolvency or bankrupt financial condition of a debtor, the liquidation of certain assets of the debtor, the fair distribution of such assets, and the retention by the debtor of properties deemed exempt from his liabilities. Cf. bankruptcy.

Chapter 11 Reorganization. Petitions for relief under chapter 11, if allowed, permit the debtor to undertake a restructure finances in order to allow the debtor to continue to operate and, thus, pay his debts. This policy allows for a break from debt collection to allow the debtor to work out a repayment plan with creditors as to how much the debtor will pay them, in what form, and other details. Cf. bankruptcy.

Chapter 13 Protection -or- Wage Earner's Plan. Relief, under chapter 13 of the Bankruptcy Code, in the form of a petition substantiated by promises (for payment of a percentage of his debts from future earnings) offered by a debtor in return for government protection from creditors. Termed "wage earner's plan" for individual petitioners and "chapter 13 protection" for companies. Under chapter 13, the debtor retains nominal possession and use of his property, but under supervision of a court-appointed trustee and according to a court-approved schedule to pay creditors within a period of time. Bankruptcy trustees also take legal title to the debtor's property and hold it "in trust" for equitable distribution among creditors, if needed. Cf. bankruptcy.

charge to the jury. The judge's instructions to the jury concerning the law that applies to the facts of the case on trial.

chief judge. Presiding or administrative judge in a court.

chance medley. A sudden quarrel resulting in an unpremeditated homicide.

chattel. An article of personal property.

child. Offspring of parentage; progeny.

chronological. Arranged in the order in which events happened. According to date.

circumstantial evidence. All evidence except eyewitness testimony. For example, physical evidence, such as fingerprints, from which an inference can be drawn.

citation. A writ or order issued by a court commanding the person named therein to appear at the time and place named; also the written reference to legal authorities, precedents, reported cases, etc., in briefs or other legal documents.

citators. A set of books which provides the subsequent history of reported decisions through a form of abbreviations or words. Shepard's Citations has the widest use.

civil. Relating to private rights and remedies sought by civil actions as contrasted with criminal proceedings.

civil action. An action brought to enforce or protect private rights.

Civil Aeronautics Board (CAB). A commission which promotes and regulates the civil air transport industry in the U.S. and between the U.S. and foreign countries.

civil law. 1. Law originally embodied in the Justinian Code (Codex Justinianeus) and today prevalent in most western European countries, and also used as the foundation of law in Louisiana (due to its French, not English, origins) – cf. common law. 2. Laws dealing with the rights of private citizens – cf. criminal law. 3. Laws prescribed by the supreme authority of the state – cf. natural law. 244 P. 323, 325. Also refer to Justinian Code in the "History of Law" section in this legal primer.

civil procedure. The rules and process by which a justice system tries and handles appeals in a civil case, including the preparations for trial, the rules of evidence and trial conduct, and the procedure for pursuing appeals.

Civil Service Commission. A federal agency which regulates the hiring of government employees.

claim. A debt owing by a debtor to another person or business. In probate parlance, the term used for debts of the decedent and a procedure to follow by a creditor to obtain payment from his estate.

claim of right. A defense against a charge of larceny, consisting of an honest belief in ownership, or right to possession.

class action. A lawsuit brought by one or more persons on behalf of a larger group.

Clayton Act. The federal law that amended the Sherman Act dealing with antitrust regulations and unfair trade practices.

clean air acts. Federal and state environmental statutes enacted to regulate and control air pollution.

clear and convincing evidence. Standard of proof commonly used in civil lawsuits and in regulatory agency cases. It is a standard less than that of proof "beyond a reasonable doubt," but greater than that required by a "preponderance of the evidence" standard. It governs the amount of proof that must be offered in order for the plaintiff to win the case. Proof, qv.

clemency -or- **executive clemency.** Act of grace or mercy by the president or governor to ease the consequences of a criminal act, accusation, or conviction. (Sometimes known as commutation or pardon.)

Clerk of Court. The administrator or chief clerical officer of the court who exercises serious power in the court. Note: **NEVER** consider this clerk as a "file clerk."

closing argument. The closing statement, by a counsel, to the trier of facts after all parties have concluded their presentation of evidence.

code. A comprehensive and systematic compilation of laws. The criminal code refers to the penal laws of the jurisdiction. Today most jurisdictions have codified a substantial part of their laws. All jurisdictions record each new law in a volume of session laws or Statutes at Large. For example, Public Law 91-112 refers to the 112th law passed by the 91st Congress of the United States. If the jurisdiction does not codify a law, it will appear only in these session law publications.

code jurisdictions. Those states that have enacted legislation recognizing as criminal only that conduct specifically prohibited by statute.

Code of Federal Regulations -or- **CFR.** An annual publication which contains the cumulative executive agency regulations.

Code of Professional Responsibility. The rules of conduct that govern the legal profession.

codicil. An amendment to a will.

codify. To arrange in a code. Cf. code.

collate. To arrange in order; verify arrangement of pages before binding or fastening; put together.

collective mark. Trademark or service mark used by members of a cooperative, an association, or other collective group or organization.

commit. To send a person to prison, asylum, or reformatory by a court order.

common law. Also case law. Law established by subject matter heard in earlier cases.

common law. The system of jurisprudence originally developed in England, later applied in the United States, based on judicial precedent rather than statutory laws. Based on the unwritten laws of England, common laws derive from principles rather than rules. It does not consist of absolute, fixed, and inflexible rules, but rather of broad and comprehensive principles based on justice, reason, and common sense. It originates and promulgates from judicial decisions. The social needs of society (and the changes in those needs) determine common law principles and the changes in those principles. Changes in common law principles reflect new conditions, interests, relations, and usages as the progress of society may require. Cf. civil law 1.

community service. A sentencing alternative that requires offenders to spend at least part of their time working for a community agency.

commutation. The reduction of a sentence, as from death to life imprisonment.

comparative fault. A rule in admiralty law where the court requires each vessel involved in a collision to pay a share of the total damages in proportion to its percentage of fault.

comparative negligence. The rule under which a court measures negligence by percentage, and lessens damages in proportion to the amount of negligence attributable to the person seeking recovery.

competent to stand trial. A finding by a court, when a defendant's mental competency to stand trial is at issue, that the defendant has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding, and that he has a rational as well as factual understanding of the proceedings against him.

complainant. The party who complains or sues; one who applies to the court for legal redress. Cf. plaintiff.

complaint. 1. The legal document that usually begins a civil lawsuit. It states the facts and identifies the action it requests the court to take. 2. Formal written charge that a person has committed a criminal offense.

complicity. Involvement in crime either as principal or accomplice. The term also refers to the activities of conspirators, and may therefore be taken to mean the conduct on the part of a person that is intended to encourage or aid another person in the commission of a crime, assist in an escape, or avoid prosecution.

compounding a crime -or- **compounding a felony.** Consists of the receipt of property or other valuable consideration in exchange for an agreement to conceal or not prosecute one who has committed a crime.

computer crime. Crime which employs computer technology as central to its commission, and which could not be committed without such technology. Cf. cybercrime.

computer fraud. A statutory provision, found in many states, which makes it unlawful for any person to use a computer or computer network without authority and with the intent to (a) obtain property or services by false pretenses; (b) embezzle or commit larceny; or (c) convert the property of another.

computer tampering. The illegal insertion or attempt to insert a "program" into a computer, while knowing or believing that the "program" contains information or commands that will or may damage or destroy that computer (or its data), or any other computer (or its data) accessing or being accessed by that computer, or that will or may cause loss to the users of that computer or the users of a computer which accesses or which is accessed by such "program."

computer trespass. The offense of using a computer or computer network without authority and with the intent to (a) remove computer data, computer programs or computer software from a computer or computer network; (b) cause a computer to malfunction; (c) alter or erase any computer data, computer programs or computer software; (d) effect the creation or alteration of a financial instrument or of an electronic transfer of funds; (e) cause physical injury to the property of another; or (f) make or cause to be made an unauthorized copy of data stored on a computer, or of computer programs or computer software.

concealed weapon. One that is carried on or near one's person and is not discernible by ordinary observation.

conciliation. A form of alternative dispute resolution in which the parties bring their dispute to a neutral third party, who helps lower tensions, improve communications, and explore possible solutions. Similar to mediation but perhaps less formal.

concurrence. The simultaneous coexistence of an act in violation of the law, and a culpable mental state.

concurrent sentences. Sentences for more than one crime for the convicted person to serve at the same time, rather than one after the other. Cf. cumulative sentences, consecutive sentences.

condemnation. The legal process by which the government takes private land for public use, paying the owners a fair price. Cf. eminent domain.

conduct. Behavior and its accompanying mental state.

conformed copy. An exact copy of a document containing written things that, for some reason, could not copy. For example, a notation, which states the parties signed a document, replaces the written signature.

consecutive sentences. Successive sentences, one beginning at the expiration of another, imposed against a person convicted of two or more violations. Cf. concurrent sentences, cumulative sentences.

consent. A justification offered as a defense to a criminal charge which claims that the person suffering an injury either agreed to sustain the injury, or that the possibility of injury in some activity was agreed to before that activity was undertaken.

conservatorship. Legal right given to a person to manage the property and financial affairs of a person deemed incapable of doing that for him or herself. Cf. guardianship.

consideration. The price bargained for and paid for a promise, goods, or real estate.

conspiracy. "A combination or two or more person to commit an unlawful act, or to commit a lawful by criminal or unlawful means; or a combination of two or more person by concerted action to accomplish an unlawful purpose, or some purpose not in itself unlawful by unlawful means. It is essential that there be two or more conspirators; one cannot conspire with himself." 314 P.2d 625, 631. Some jurisdictions, however, permit prosecution of one person for conspiracy when, for example, the government cannot find or otherwise prosecute the other party(ies). Cf. accessory, aid and abet, accomplice, complicity.

constitution. The fundamental law of a nation or state which establishes the character and basic principles of the government.

constitution. The supreme laws, from the people acting in their sovereign capacity (or by representatives of the people), which create a government and empower that government to, in turn, govern the people, providing permanence and stability. In the United States, the word "Constitution" emphasizes the unique American concept of restricting the powers of government. Schwartz, Constitutional Law, Ch 1, pg 1 (1979). A constitution, whether state or federal does, in part, preserve and protect the rights of minorities against the arbitrary actions of those in power. 208 U.S. 412, 420. All other laws must conform to the constitution, the supreme law of the land, which no statute can abolish or nullify even in part. 140 F. Supp. 925. Cf. legislation, case law.

constitutional law. Law set forth in the Constitution of the United States and the state constitutions.

constructive entry. In the crime of burglary, one that occurs when the defendant causes another person to enter a structure to commit the crime or achieve a felonious purpose.

constructive possession. The ability to exercise control over property and objects, even though not in one's physical custody.

constructive touching. A touching inferred or implied from prevailing circumstances. Also, a touching for purposes of the law.

consumer bankruptcy. A proceeding under the Bankruptcy Code filed by an individual (or husband and wife) who do not conduct a business.

contempt of court. Willful disobedience of a judge's command or of an official court order.

continuance. Postponement of a legal proceeding to a later date.

contract. An agreement between two or more persons which creates an obligation to do or not to do a particular thing. A legally enforceable agreement between two or more competent parties made either orally or in writing.

contributory negligence. The rule of law under which the court considers an act or omission of plaintiff as a cause of injury and a bar to recovery.

controlled substance. A specifically defined bioactive or psychoactive chemical substance which comes under the purview of the criminal law.

conversion. Unauthorized assumption of the right of ownership. Conversion is a central feature of the crime of embezzlement, as in the unlawful conversion of the personal property of another, by a person to whom it has been entrusted.

conveyance. Instrument transferring title of land for one person or group of persons to another.

conviction. A judgment of guilt against a criminal defendant.

coroner. A public official who investigates the causes and circumstances of deaths that occur within his jurisdiction and makes a finding in a coroner's inquest. Autopsy, inquest, qv. Post mortem, qv, in Latin Words & Phrases.

corroborating evidence. Supplementary evidence that tends to strengthen or confirm the initial evidence.

counsel. A legal adviser; a term used to refer to lawyers in a case.

counterclaim. A claim made by the defendant in a civil lawsuit against the plaintiff. In essence, a counter lawsuit within a lawsuit.

court. A government body to which the government delegates the administration of justice.

court-appointed attorney. Attorney appointed by the court to represent a defendant, usually with respect to criminal charges and without the defendant having to pay for the representation.

court costs. The expenses of prosecuting or defending a lawsuit, other than the attorney fees. An amount of money that the court may award to the successful party (and may be recoverable from the losing party) as reimbursement for court costs.

court of last resort. The highest court in the land. Typically, the supreme court of a state or the US.

court of original jurisdiction. A court where a party initiates a matter and the court hears it in the first instance; a trial court.

court of record.

court reporter. A person who transcribes by shorthand or stenographically takes down testimony during court proceedings, a deposition, or other trial-related proceeding.

court rules. Regulations governing practice and procedure in the various courts.

creditor. A person to whom a debtor owes a debt.

crime. Any act or omission prohibited by public law, committed without defense or justification, and made punishable by the state in a judicial proceeding in its own name.

crime against nature. A general term which can include homosexual or heterosexual acts of anal intercourse, oral intercourse, and bestiality, and which may even apply to heterosexual intercourse in "positions" other than the generally accepted "missionary" position.

criminal conspiracy. An agreement between two or more persons to commit or to effect the commission of an unlawful act, or to use unlawful means to accomplish an act that is not unlawful.

criminal contempt. Deliberate conduct calculated to obstruct or embarrass a court of law. Also, conduct intended to degrade the role of a judicial officer in administering justice.

criminal homicide. The purposeful, knowing, reckless, or negligent causing of the death of one human being by another. Also, that form of homicide for which criminal liability may be incurred. Criminal homicide may be classified as murder, manslaughter, or negligent homicide

criminal justice system. The network of courts and tribunals which deal with criminal law and its enforcement.

criminal law. That body of rules and regulations that defines and specifies punishments for offenses of a public nature, or for wrongs committed against the state or society; also called penal law.

criminal law. A law enacted to preserve public order by defining an offense against the public and imposing a penalty for its violation. Cf. civil law 2. 191 N.Y.S.2d 54, 57. Some statutes grant private [civil] actions against such a wrongdoer in a remedial, not penal, capacity. 218 S.W.2d 75, 78; 59 S.W. 952, 953.

criminal liability. The degree of blameworthiness assigned to a defendant by a criminal court, and the concomitant extent to which the defendant is subject to penalties prescribed by the criminal law.

criminal mischief. The intentional or knowing damage or destruction of the tangible property of another.

criminal negligence. 1.) behavior in which a person fails to reasonably perceive substantial and unjustifiable risks of dangerous consequences; 2.) negligence of such a nature and to such a degree that it is punishable as a crime; 3.) flagrant and reckless disregard for the safety of others, or willful indifference to the safety and welfare of others.

criminal sexual conduct. A gender-neutral term which is applied today to a wide variety of sex offenses, including rape, sodomy, criminal sexual conduct with children, and deviate sexual behavior.

criminal simulation. The making of a false document or object that does not have any apparent legal significance.

criminal solicitation. The encouraging, requesting, or commanding of another person to commit a crime.

criminal syndicalism. Advocating the use of unlawful acts as a means of accomplishing a change in industrial ownership, or to control political change.

criminal trespass. The entering or remaining on the property or in the building of another when entry was forbidden or; having received notice to depart, failing to do so.

criminalize. To make criminal. To declare an act or omission to be criminal or in violation of a law making it so.

criminally negligent homicide. Homicide which results from criminal negligence.

culpable ignorance. The failure to exercise ordinary care to acquire knowledge of the law or of facts which may result in criminal liability.

cross-claim. A pleading which asserts a claim arising out of the same subject action as the original complaint against a co-party, i.e., one co-defendant cross claims against another co-defendant for contribution for any damages assessed against him.

cross-examination. The questioning of a witness produced by the other side.

cumulative sentences. Sentences for two or more crimes to run consecutively, rather than concurrently. Cf. concurrent sentences, consecutive sentences.

custody. Detaining of a person by lawful process or authority to assure his or her appearance to any hearing; the jailing or imprisonment of a person convicted of a crime.

cybercrime. Crime which employs computer technology as central to its commission, and which could not be committed without such technology. Another word for computer crime. Cf. computer crime.

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damages. Money awarded by a court to a person injured by the unlawful actor negligence of another person.

dangerous proximity test. A test for assessing attempts, under which a person is guilty of an attempt when his or her conduct comes dangerously close to success.

deadly force. Force likely to cause death or great bodily harm.

debtor. One who owes a debt to another; a person filing for relief under the Bankruptcy Code.

decedent. A deceased person.

decision. The opinion of the court in concluding a case at law.

declaratory judgment. A statutory remedy for judicial determination of a controversy where the plaintiff has doubts about his legal rights.

decree. An order of the court. A final decree fully and finally disposes of the litigation. Cf. interlocutory.

defamation. That which tends to injure a person's reputation. Cf. libel, slander.

default. Failure of the defendant to appear and answer the summons and complaint.

default judgment. A judgment entered against a party who fails to appear in court or respond to the charges.

defendant. The person defending or denying a suit.

defense. Evidence and arguments offered by a defendant and his or her attorney(s) to show why that person should not be held liable for a criminal charge.

defense of property. Affirmative defense in criminal law or tort law where defendant used force to protect his property.

defense wound. Refers to a wound of a victim related to the victim's defense of a physical attack. Juries or other triers of fact determine the truth as to the existence of a defense wound. Some medical examiners and coroners wrongfully attempt to describe a wound as a "defense wound." Such terminology contains serious prejudice by a government official.

deficient. Incomplete; defective; not sufficient in quantity or force.

defunct. A corporation no longer operative; having ceased to exist.

degree. The level of seriousness of an offense.

degree of proof. The measure of probability necessary in order for a court or other fact-finder to render a decision or verdict with regard to the evidence presented to it. Proof, qv.

democracy. Government exercised either directly by the people or through elected representatives and officers. Thus,

the populace acts as the supreme source of political power. The principles of social equality and respect for the individual within a community.

The word "democracy" derives from the Greek "demokratia," from the phrase "demos kratia," meaning "people's power."

demurrer. A pleading filed by the defendant claiming that the filed complaint as insufficient to require an answer.

dependent. One who derives existence and support from another.

deposition. Testimony of a witness or a party taken under oath outside the courtroom, the transcript of which becomes a part of the court's file.

depraved heart murder. 1. unjustifiable conduct which is extremely negligent, and which results in the death of a human being. 2. the killing of a human being with extreme atrocity.

designer drugs. Chemical substances which have a potential for abuse similar to or greater than that for controlled substances, but which are designed to produce a desired pharmacological effect and to evade the controlling statutory provisions.

determinate sentencing -or- **presumptive sentencing** -or- **fixed sentencing**. A model for criminal punishment which sets one particular punishment, or length of sentence, for each specific type of crime. Under the model, for example, all offenders convicted of the same degree of burglary would be sentenced to the same prison sentence.

deterrence. A goal of criminal sentencing which seeks to prevent others from committing crimes similar to the one for which an offender is being sentenced.

deviate sexual intercourse. Any contact between any part of the genitals of one person and the mouth or anus of another.

digest. An index or compilation of abstracts of reported cases into one, set forth under proper law topic headings or titles and usually in alphabetical arrangement.

diminished capacity -or- **diminished responsibility.** A defense based upon claims of a mental condition which may be insufficient to exonerate a defendant of guilt, but that may be relevant to specific mental elements of certain crimes or degrees of crime.

direct evidence. Proof of facts by witnesses who saw acts done or heard words spoken.

direct examination. The initial questioning of witnesses by the party who called the witness meant to present testimony containing the factual argument the party intends to make. It should not employ leading questions except as necessary to develop his testimony.

directed verdict. In a case in which the plaintiff has failed to present on the facts of his case proper evidence for jury consideration, the trial judge may order the entry of a verdict without allowing the jury to consider it.

disbarment. Form of discipline of a lawyer resulting in the loss (often permanently) of that lawyer's right to practice law. Cf. censure, suspension.

discharge. The name given to the bankruptcy court's formal discharge of a debtor's debts. In probate, the release of the estate's representative from fiduciary responsibility.

disclaim. To refuse a gift made in a will.

discovery. The name given pretrial devices for obtaining facts and information about the case.

dismissal. The termination of a lawsuit. Cf. with prejudice, without prejudice.

disorderly conduct. Specific, purposeful, and unlawful behavior that tends to cause public inconvenience, annoyance, or alarm.

Dissent To Disagree. An appellate court opinion setting forth the minority view and outlining the disagreement of one or more judges with the decision of the majority.

dissolution. The termination; process of dissolving or winding up something.

disturbance of public assembly. A crime that occurs when any person(s) acts(s) unlawfully at a public gathering collected for a lawful purpose in such a way as to purposefully disturb the gathering.

diversity of citizenship. The condition when the party on one party of a lawsuit claims citizenship in one state and the other party claims citizen in another state; such cases fall under the jurisdiction of federal courts. "Party" in this definition refers to persons, corporations, municipalities, and counties.

diversion. The process of removing some minor criminal, traffic, or juvenile cases from the full judicial process, on the condition that the accused undergo some sort of rehabilitation or make restitution for damages.

docket. An abstract or listing of all pleadings filed in a case; the book containing such entries; trial docket is a list of or calendar of cases to be tried in a certain term.

docket control. A system for keeping track of deadlines and court dates for both litigation and non-litigation matters.

domicile. The place where a person has his permanent home to which he intends to return.

double jeopardy. Putting a person on trial more than once for the same crime. The Fifth Amendment to the United States Constitution prohibits double jeopardy.

driving under the influence -or- **DUI.** Unlawfully operating a motor vehicle while under the influence of alcohol or drugs. Cf. driving while intoxicated.

driving while intoxicated -or- **DWI .** Unlawfully operating a motor vehicle while under the influence of alcohol. Cf. driving under the influence.

drug. A generic term applicable to a wide variety of substances having any physical or psychotropic effect upon the human body.

DSM-IV. The fourth edition of the Diagnostic and Statistical Manual of Mental Disorders, published by the American Psychiatric Association. The DSM-IV lists 12 major categories of mental disorder.

due process of law. The right of all persons to receive the guarantees and safeguards of the law and the judicial process. It includes such constitutional requirements as adequate notice, assistance of counsel, and the rights to remain silent, to a speedy and public trial, to an impartial jury, and to confront and secure witnesses. Refer to the Due Process section in this legal primer.

duress -or- **compulsion**. A condition under which one is forced to act against one's will.

Durham Rule -or- **product rule.** A rule which holds that an accused is not criminally responsible if his or her unlawful act was the product of mental disease or mental defect.

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effective consent. Also termed legal consent, is consent that has been obtained in a legal manner.

elements of a crime. Specific factors that define a crime which the prosecution must prove beyond a reasonable doubt in order to obtain a conviction: (1) that a crime has actually occurred, (2) that the accused intended the crime to happen, and (3) a timely relationship between the first two factors.

embezzlement. The misappropriation of property already in possession of the defendant. Also, the unlawful conversion of the personal property of another, by a person to whom it has been entrusted by (or for) its rightful owner.

Eminent Domain. The power of the government to take private property for public use through condemnation.

en banc. All the judges of a court sitting together. Appellate courts can consist of a dozen or more judges, but normally they hear cases in panels of three judges. "En banc" refer to a hearing or a rehearing by the full court.

encyclopedia. A book or series of books arranged alphabetically by topics containing information on areas of law, including citations to support the information.

enjoining. An order by the court telling a person to stop performing a specific act.

entity. A person or legally recognized organization.

entrapment. An improper or illegal inducement to crime by agents of enforcement. The act of inducing a person to commit a crime so that a criminal charge will be brought against him. Also, a defense that may be raised when such inducements occur.

entry. A statement of conclusion reached by the court and placed in the court record.

environment. The conditions, influences, or forces which affect the desirability and value of property, as well as the effect on people's lives.

Environmental Protection Agency (EPA). A federal agency created to permit coordinated and effective governmental action to preserve the quality of the environment through the abatement and control of pollution on a systematic basis.

equal protection of the law. The guarantee in the Fourteenth Amendment to the U.S. Constitution that the law treat all persons equally.

equity. Justice administered according to fairness; the spirit or habit of fairness in dealing with other persons. A sentencing principle, based upon concerns with social equality, which holds that similar crimes should be punished with the same degree of severity, regardless of the social or personal characteristics of offenders.

escheat. The process by which a deceased person's property goes to the state if it finds no heir.

escrow. By agreement between two parties, money or a written instrument such as a deed held by a neutral third party (held in escrow) until parties meet all conditions of the agreement.

esquire. In the United States the title commonly appended after the name of an attorney. In English law a title of dignity next above gentleman and below knight. Title also given to barristers at law and others. Abbreviated: Esq.

espionage. The unlawful act of spying for a foreign government.

estate. A person's property.

estate tax. Generally, a tax on the privilege of transferring property to others after a person's death. In addition to federal estate taxes, many states have their own estate taxes.

estop. To impede or prevent.

estoppel. An impediment that prevents a person from asserting or doing something contrary to his own previous assertion or act.

ethics. Of or relating to moral action and conduct; professionally right; conforming to professional standards.

evidence. Information presented in testimony or in documents that is used to persuade the fact finder (judge or jury) to decide the case for one side or the other.

exceptions. Declarations by either side in a civil or criminal case reserving the right to appeal a judge's ruling upon a motion. Also, in regulatory cases, objections by either side to points made by the other side or to rulings by the agency or one of its hearing officers.

Exclusionary Rule. A constitutional rule of law based upon court interpretation of the constitutional prohibition against unreasonable searches and seizures, which provides that the prosecution may not use otherwise admissible evidence in a criminal trial if the police obtained it through illegal conduct. The rules does not apply in civil proceedings, although some statutes specifically provide for exclusion of such evidence. Fruit of the poisonous tree, qv.

exculpatory. Refers to evidence, statements, or testimony that tends to exonerate, clear, or excuse a defendant of guilt or wrongdoing. Cf. inculpatory.

excusable homicide. Killing in a manner which the criminal law does not prohibit. Also, homicide that may involve some fault, but which is not criminal homicide.

excuses. A category of legal defenses in which the defendant claims that some personal condition or circumstance at the time of the act was such that he or she should not be held accountable under the criminal law.

execute. To complete; to sign; to carry out according to its terms.

execution of public duty defense. A defense to a criminal charge (such as assault) which is often codified, and which precludes the possibility of police officers and other public employees from being prosecuted when lawfully exercising their authority.

executor. A personal representative, named in a will, who administers an estate.

exempt property. All the property of a debtor not attachable under the Bankruptcy Code or the state statute.

exhibit. A document or other item introduced as evidence during a trial or hearing.

exonerate. Removal of a charge, responsibility, or duty.

ex parte. On behalf of only one party, without notice to any other party. For example, a request for a search warrant, since neither the party nor the court notifies the person subject to the search of the proceeding, nor does that person attend the hearing.

ex parte proceeding. A judicial proceeding brought for the benefit of one party only, without notice to or challenge by an adverse party.

explicit. Expressed without vagueness or ambiguity. Clearly formulated or defined. For example, a concealed weapon statute with the wording "...revolvers, derringers, and similar firearms..." explicitly refers to revolvers. Cf. implicit.

express consent. Verbally expressed willingness to engage in a specified activity.

expungement. The process by which the court destroys or seals the record of criminal conviction.

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

extortion. The taking of personal property by threat of future harm.

extradition. The surrender of an accused criminal by one state to the jurisdiction of another.

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fair market value. The value for which a reasonable seller would sell an item of property and for which a reasonable buyer would buy it.

false imprisonment -or- **false arrest.** The unlawful restraint of another person's liberty. Also, the unlawful detention of a person without his or her consent.

false pretenses. Knowingly and unlawfully obtaining title to, and possession of, the lawful property of another by means of deception, and with intent to defraud. Also known as obtaining property by false pretenses.

family law. Those areas of the law pertaining to families, i.e., marriage, divorce, child custody, juvenile, paternity, etc.

Federal Aviation Agency -or- **FAA.** A federal agency which regulates air commerce to promote aviation Administration safety.

Federal Bureau of Investigation -or- **FBI.** A federal agency which investigates all violations of federal laws.

Federal Communications Commission -or- **FCC.** A federal agency which regulates interstate and foreign communications by wire and radio.

Federal Deposit Insurance Corporation -or- **FDIC.** An agency which insures deposits in banking institutions in the event of financial failure.

Federal Insurance Contribution Act -or- **FICA.** The federal act which imposes a tax on employers and employees used to fund the Social Security system. IRC §3101 et seq.

federal interest computer. A computer exclusively for the use of a financial institution or the United States Government, or one which is used by or for a financial institution or the United States Government, or which is one of two or more computers used in committing the offense, not all of which are located in the same state.

Federal Mediation and Conciliation Service. An agency which provides mediators to assist in labor-management disputes.

Federal Register. A daily publication which contains federal administrative rules and regulations.

Federal Supplement. Books which contain decisions of the Federal District Courts throughout the country.

Federal Unemployment Tax. A tax levied on employers based on employee wages paid. (FUTA tax)

fellatio. Oral stimulation of the penis.

felony. A serious criminal offense. Under federal law any offense punishable by death or imprisonment for a term exceeding one year.

felony murder rule. A rule that establishes murder liability for a defendant if he or she kills another person during the commission of certain felonies.

fiduciary. A person or institution who manages money or property for another and who must exercise a standard care imposed by law, i.e., personal representative or executor of an estate, a trustee, etc.

fighting words. Words spoken under circumstances and, in some jurisdictions, with intent to provoke, inherently likely to provoke a breach of the peace from the person so addressed. Fighting words do not fall under the privilege of the First Amendment to the U.S. Constitution. *Chaplinsky v. United States* 315 U.S. 568, 62 S.Ct. 766, 86 L.E. 1031.

file. To place a paper in the official custody of the clerk of court/court administrator to enter into the files or records of a case.

Filing Fee. The fee required for filing various documents.

finding. Formal conclusion by a judge or regulatory agency on issues of fact. Also, a conclusion by a jury regarding a fact.

first impression. -or- **first consideration.** The first time a court considers, for determination, a particular question of law. A first impression case presents a question of law never before considered by any court, and thus, not influenced by stare decisis. Cf. question of law, stare decisis.

fleeing felon rule. A now defunct law enforcement practice that permitted officers to shoot a suspected felon who attempted to flee from a lawful arrest.

Food and Drug Administration (FDA). A federal agency which sets safety and quality standards for food, drugs, cosmetics, and household substances.

forcible rape. Rape that is accomplished against a person's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury to the victim.

foreclosure. A court proceeding upon default in a mortgage to vest title in the mortgagee.

forfeiture. 1. An enforcement strategy supported by federal statutes and some state laws which authorizes judges to seize "all monies, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance...(and) all proceeds traceable to such an exchange." 2. A cancellation. A legal action whereby a contract purchaser following default loses all his interest in the property.

forgery. The making of a false written instrument or the material alteration of an existing genuine written instrument.

fornication. Voluntary sexual intercourse between two persons, one of whom is unmarried.

fraud. A false representation of a matter of fact which is intended to deceive another.

fruit of the poisonous tree doctrine. Under the due process clause of the Fourteenth Amendment, a rule of evidence prohibiting the admission against the defendant evidence of the direct result or immediate product of illegal conduct by an official. 371 U.S. 471. Courts recognize an exception in that prosecution may use such evidence to impeach the testimony of a defendant who takes the stand in his own defense. 401 U.S. 222. This rule does not apply to evidence resulting from illegal conduct by private persons except such conduct involving complicity on the part of the state. 256 U.S. 465. However, several states courts do exclude evidence obtained through unreasonable private-party searches. 485 P.2d 47. Also, if the police employ a method of acquiring evidence sufficiently distinct from the original illegal activity, the prosecution may use the evidence if it shows the dissipation of the tainted (poisonous) act. For example, a bona fide confession where the police illegally arrested but then released the defendant, who then sometime thereafter returns and confesses. 371 U.S. 971.

> This doctrine draws its name from the idea that, once the police "poison the tree" (act illegally to obtain or to attempt to obtain the primary evidence), then any "fruit of the tree" (any primary, secondary or other evidence) resulting from that illegal search also contains that "poison."

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gambling. The wagering of money, or of some other thing of value, on the outcome or occurrence of an event.

garnishment. A legal proceeding in which a garnishee (a possessor of debtor's money), applies that money to the debts of the debtor, such as when an employer garnishes a debtor's wages.

general deterrence. A goal of criminal sentencing that seeks to prevent others from committing crimes similar to the one for which a particular offender is being sentenced by making an example of the person sentenced.

general intent. That form of intent that can be assumed from the defendant's behavior. General intent refers to an actor's physical conduct.

general jurisdiction. Refers to courts that have no limit on the types of criminal and civil cases they may hear.

Golden Age of the Victim. An historical epoch during which victims had well-recognized rights, including a personal say in imposing punishments upon apprehended offenders.

good time. A reduction in sentenced time in prison as a reward for good behavior, normally one third to one half of the maximum sentence.

Government Printing Office. The federal agency in charge of printing, binding, and selling of all government communications.

Grand Jury. A jury of inquiry empanelled to receive complaints and accusations in criminal matters and if appropriate issue a formal indictment.

grantor -or- **settlor.** The person who sets up a trust.

grievance. In labor law, a complaint filed by an employee regarding working conditions seeking resolution by procedural machinery provided in the union contract. An injury, injustice, or wrong that gives ground for complaint.

gross negligence. Conscious disregard of one's duties, resulting in injury or damage to another.

guardian. A person appointed by will or by law to assume responsibility for incompetent adults or minor children. If a parent dies, the court usually names the other parent as the guardian. If both die, the court will probably name a close relative.

guardianship. Legal right given to a person as responsible for the food, housing, health care, and other necessities of a person deemed incapable of providing these necessities for him or herself.

guilty but mentally ill -or- **GBMI.** Equivalent to a finding of "guilty," a GBMI verdict establishes that "the defendant, although mentally ill, was sufficiently in possession of his faculties to be morally blameworthy for his acts."

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habeas corpus. The name of a writ having for its object to bring a person before a court. See the Habeas Corpus section.

habitual offender. A person sentenced under the provisions of a statute declaring that persons convicted of a given offense, and shown to have previously been convicted of another specified offense(s), shall receive a more severe penalty than that for the current offense alone.

harm -or- **resulting harm.** Loss, disadvantage, or injury or anything so regarded by the person affected, including loss, disadvantage, or injury to any other person in whose welfare he is interested.

harmless error. An error committed during a trial that either the court corrected or not serious enough to affect the outcome of a trial and therefore not sufficiently harmful (prejudicial) to prompt reversal on appeal.

headnote. A brief summary of a legal rule or significant facts in a case, which along with other headnotes, precedes the printed opinion in reports.

hearing. A formal proceeding (generally less formal than a trial) with the purpose to hear definite issues of law or of fact. Legislative and administrative agencies extensively use hearings.

hearsay. Statements by a witness who did not see or hear the incident in question but heard about it from someone else – "hear" someone "say." Courts admit hearsay as evidence depending on several tenuous principles.

hidden costs of crime. The intangible impact of crime on victims, including such difficult to measure aspects of the victimization experience such as pain, suffering, and decreased quality of life.

home confinement -or- **house arrest.** Individuals ordered confined in their homes are sometimes monitored electronically to be sure they do not leave during the hours of confinement (absence from the home during working hours is often permitted).

hostile witness. A witness whose testimony does not favor the party who calls him or her as a witness. The direct examination can include leading questions to a hostile witness and the party who calls such a witness to the stand may cross-examine him or her.

hung jury. A jury whose members cannot agree upon a verdict.

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ignorance of fact. Lack of knowledge of some fact relating to the subject matter at hand.

ignorance of the law. A lack of knowledge of the law or of the existence of a law relevant to a situation at hand.

immigrants. Persons who come into a foreign country or region to live.

immigration. The entry of foreign persons into a country to live permanently.

Immigration and Naturalization Service (INS). A federal agency which regulates immigration and naturalization of aliens.

immunity. Grant by the court, which assures someone will not face prosecution in return for providing criminal evidence.

impeachment. A criminal proceeding against a public official.

impeachment of a witness. An attack on the credibility (believability) of a witness, through evidence introduced for that purpose.

implied contract. A contract not created or evidenced by the explicit agreement of the parties but one inferred by law; as the use of electric power in your home implies a contract with the light company.

implicit. Implied or understood although not directly expressed. For example, a concealed weapon statute with the wording "...revolvers, derringers, and similar firearms..." implicitly refers to semi-automatic pistols. The implicit meaning of an expression comes from the material in question through logic, implications, or understandings. Parties and courts seek to scrutinize possible implicit renderings of an expression. Scrutiny can focus on nouns, verbs, adjectives, and all other parts of speech. Cf. explicit.

impossibility. A defense to a charge of attempted criminal activity that claims either that the defendant could not have factually or legally committed the envisioned offense even if he or she had been able to carry through the attempt to do so. It is, for example, factually impossible to kill someone who is already dead.

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

incapacitation. The use of imprisonment or other means to reduce the likelihood that an offender will be capable of committing future offenses.

incapacity. Lack of legal ability to act; disability, incompetence; lack of adequate power.

incarceration. Imprisonment in a jail or penitentiary.

incest. Unlawful sexual intercourse with a relative through blood or marriage.

inchoate crime -or- **anticipatory offense.** An unfinished crime that generally leads to another crime. Also, crimes that consist of actions that are steps toward another offense.

inciting a riot. The use of words or other means intended and calculated to provoke a riot.

incompetent. One who lacks ability, legal qualification, or fitness to manage his own affairs.

incompetent to stand trial. A finding by a court that, as a result of a mental illness, defect or disability, a defendant is unable to understand the nature and object of the proceeding against him or to assist in the preparation of his own defense.

inculpatory. Refers to evidence, statements, or testimony which tends to incriminate a defendant of guilt or wrongdoing. Cf. exculpatory.

indecent exposure. Public indecency. Specifically, the willful exposure of the private parts of one person to the sight of another person in a public place with the intent to arouse or gratify sexual desires. Also, the commission, in a place accessible to the public, of (1) an act of sexual intercourse; (2) a lewd exposure of the sexual organs; (3) a lewd appearance in a state of partial or complete nudity; or (4) a lewd caress or indecent fondling of the body of another person.

independent executor. A special kind of executor, permitted by the laws of certain states, who performs the duties of an executor without intervention by the court.

indeterminate sentence. A model of criminal punishment that builds upon the use of general and relatively unspecific sentences (such as a term of imprisonment of "from one to ten years"). A sentence of imprisonment to a specified minimum and maximum period of time, specifically authorized by statute, subject to termination by a parole board or other authorized agency after the prisoner has served the minimum term.

indictment. A written accusation by a grand jury charging a person with a crime. Cf. information.

indigent. Needy or impoverished. To a defendant who can demonstrate his or her indigence to the court, the court may appoint an attorney at public expense.

indispensable evidence. Evidence necessary to prove a particular fact.

infancy -or- **immaturity.** A defense that makes the claim that certain individuals should not be held criminally responsible for their activities by virtue of youth.

initial appearance. The defendant comes before a judge within hours of the arrest to determine the presence of probable cause for his or her arrest.

inference. A deduction from the facts given, usually less than certain, but which a trier of fact may decide as sufficient to support a finding of fact. "...a process of reasoning by which a fact or proposition sought to be established ... is deducted as a logical consequence from other facts, or a state of facts, already proved or admitted. ...It has also been defined as 'a deduction of an ultimate fact from other proved facts., by virtue of the common experience of man, will support but not compel such deductions.' " 186 A.2d 632, 633. Cf. presumption. Proof, qv.

information. Accusatory document, filed by the prosecutor, detailing the charges against the defendant. An alternative to an indictment, it serves to bring a defendant to trial.

information. A written accusation of a crime signed by the prosecution charging a person with the commission of a crime. An alternative to an indictment as a means of starting a criminal prosecution. An information serves to inform the defendant of the charges against him, and to inform the court of the factual basis of the charge(s). Only states may use an information.

infraction -or- **summary offense.** A violation of a state statute or local ordinance punishable by a fine or other penalty, but not by incarceration. Governments generally consider minor traffic offenses as infractions.

inherently dangerous. An act or course of behavior (usually a felony) which, by its very nature is likely to result in death or serious bodily harm to either the person involved in the behavior, or to someone else.

inheritance tax. A state tax on property that an heir or beneficiary under a will receives from a deceased person's estate. The heir or beneficiary pays this tax.

injunction. A prohibitive order or remedy issued by the court at the suit of the complaining party, which forbids the defendant to do some act which he threatens or attempts to do. Conversely, it may require him to perform an obligatory act that he refuses to do.

inquest. A judiciary inquiry. An inquiry made by a coroner to determine the cause of death in a sudden death, a death under suspicious circumstances, a death in prison, or a killing. Generally, "a trial of an issue of fact where the plaintiff alone introduces testimony [and which] does not necessitate a jury." 6 How. Prac. 118, 119.

insanity. An affirmative defense to a criminal charge; a social and legal term (rather than a medical one) that refers to "a condition which renders the affected person unfit to enjoy liberty of action because of the unreliability of his behavior with concomitant danger to himself and others." Also, a finding by a court of law.

Insanity Defense Reform Act -or- **IRDA.** Part of the 1984 Crime Control and Prevention Act, the IRDA mandated a comprehensive overhaul of the insanity defense as it operated in the federal courts, making insanity an affirmative defense to be proved by the defendant by clear and convincing evidence, and creating a special verdict of "not guilty by reason of insanity."

insolvent. When the total debt of an entity is exceeds the value of all of its property.

instruction to the jury -or- **charge to the jury.** Judge's explanation to the jury before it begins deliberations of the questions it must answer and the applicable law governing the case.

intangible assets. Nonphysical items such as stock certificates, bonds, bank accounts, and pension benefits that have value and must be taken into account in estate planning.

intangible property. Property that has no intrinsic value, but which represents something of value. Intangible personal property may include documents, deeds, records of ownership, promissory notes, stock certificates, software and intellectual property.

intensive supervision. A form of probation supervision involving frequent face-to-face contacts between the probationary client and probation officers.

intentional action. Action undertaken volitionally to achieve some goal.

intentional tort. A wrong perpetrated by one who intends to break the law.

interlocutory. Temporary; provisional; interim; not final.

intermediate sanctions -or- **alternative sanctions.** The use of split sentencing, shock probation and parole, home confinement, shock incarceration, and community service in lieu of other, more traditional, sanctions such as imprisonment and fines. Intermediate sanctions are becoming increasingly popular as prison crowding grows.

Internal Revenue Service (IRS). The federal agency which administers the tax laws of the United States.

interrogatories. A set or series of written questions propounded to a party, witness, or other person having information or interest in a case; a discovery device.

Interstate Commerce Commission (ICC). A federal agency which regulates all transportation in interstate commerce.

intervention. An action by which a court permits a third person, who may be affected by a lawsuit, to become a party to the suit.

invasion of privacy. The wrongful intrusion into a person's private activities by another or by the government. Tort law protects one's private affairs with which the public has no concern against the unwarranted exploitation or publicity that would cause mental suffering or humiliation to the average person. The right to privacy may exist to a lesser degree regarding the life of a politician or another in whom the public has a rightful interest. Celebrities essentially give up some or much of such rights of theirs by making themselves public personalities. The US Constitution's due process clause protects some personal decisions from unwarranted government interference, such as: decisions related to marriage, procreation, family relationships, child rearing, and education. 431 U.S. 678. Cf. slander, libel.

involuntary bankruptcy. A proceeding initiated by creditors requesting the bankruptcy court to place a debtor in liquidation.

involuntary intoxication. Unwillful intoxication.

involuntary manslaughter. An unintentional killing for which criminal liability is imposed, but which does not constitute murder. Also, the unintentional killing of a person during the commission of a lesser unlawful act, or the killing of someone during the commission of a lawful act, which nevertheless results in an unlawful death.

Irresistible Impulse Test. A test for insanity that evaluates defense claims that, at the time the crime was committed, a mental disease or disorder prevented the defendant from controlling his or her behavior in keeping with the requirements of the law.

issue. 1. The disputed point in a disagreement between parties in a lawsuit. 2. To send out officially, as in to issue an order.

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jailhouse lawyer. A prisoner who, through self-study of law, assists fellow inmates in the preparation of their appeals, but does not possess formal training and cannot practice law. Indigent prisoners must often rely on jailhouse lawyers as their only assurance of proper and sufficient access to the courts. Thus, the US Supreme Court has declared the constitutional protection of such assistance. 393 U.S. 483.

> Despite its seemingly uncultured and non-legalese appearance, courts look upon and use "jailhouse lawyer" as a legitimate legal term.

joint and several liability. A legal doctrine that makes each of the parties responsible for an injury as liable for all the damages awarded in a lawsuit if the other parties responsible cannot pay.

joint tenancy -or- **survivorship.** A form of legal co-ownership of property. At the death of one co-owner, the surviving co-owner becomes sole owner of the property. Tenancy by the entirety refers to a special form of joint tenancy between a husband and wife.

judge. A presiding officer of the court.

judgment. The official and authentic decision of a court of justice upon the rights and claims of parties to an action or suit submitted to the court for determination. Cf. summary judgment.

judgment debtor. One who owes money as a result of a judgment in favor of a creditor.

judgment proof.

judicial lien. A lien obtained by judgment or other judicial process against a debtor.

judicial review. The authority of a court to review the official actions of other branches of government. Also, the authority to declare unconstitutional the actions of other branches.

judiciary. The branch of government invested with judicial power to interpret and apply the law; the court system; the body of judges; then bench.

jural postulates. Rules that, according to former Harvard Law School dean Roscoe Pound, reflect shared needs common to the members of society, and form the basis of all law in advanced societies.

jurat. Certificate of person and officer before whom a signor swears to a writing.

jurisdiction. The power or authority of a court to hear and try a case; the geographic area in which a court has power or the types of cases it has power to hear.

jurisdiction. The power to hear and determine a case, with reference to particular subjects and to parties of particular categories. Valid exercise of jurisdiction requires fair notice to, and an opportunity for, the affected parties to present their issues to the court. Courts exercise "subject matter jurisdiction" and "personal jurisdiction." Cf. subject matter jurisdiction, personal jurisdiction.

jurisprudence. 1. The study of the structure of legal systems – different from the study of its content. 2. The overall course of judicial decisions (case law) – different from legislation. 3. sometimes used by a writer to simply mean "law."

jurist. 1. One well-versed in law, especially an eminent judge, attorney, or scholar. 2. A term used simply to refer to a judge.

jury. A certain number of men and women selected according to law and sworn to try a question of fact or indict a person for a public offense.

Jury Administrator. The court officer responsible for choosing the panel of persons to serve as potential jurors for a particular court term.

jury nullification. The power of a jury to try the law as well as the facts before it. Thus, a jury may nullify (void) the applicability of the law to the facts where the jury believes that the law should not apply, and so, produce a finding of "not guilty."

> Courts have ruled that the government does empower juries to nullify the law (255 Ga. 616, 340 S.E.2d 891, 914; 391 U.S. 510, 519 and n. 15 (1968)). However courts also consistently rule not to inform juries of this power, claiming that it would confuse jurors (519 A.2d 1361, 1371) or burden their psyche (473 F.2d 1113, 1136 (D.C. Cir. 1972)). Such rulings contradict the fact that once a court empanels citizens as a jury, they become part of government, and act on behalf of the people. Thus, courts (judges)seemed to have ruled not to inform a wholly legitimate arm of the government of its full powers and responsibilities (362 A.2d 706 (D.C. 1976) (en banc)).

just desserts. A model of criminal sentencing which holds that criminal offenders deserve the punishment they receive at the hands of the state, and which suggests that punishments should be appropriate to the type and severity of crime committed.

justiciable. Issues and claims capable of proper examination in court.

justifiable homicide. 1.Homicide that is permitted under the law. 2. A killing justified for the good of society. 3. The killing of another in self-defense when danger of death or serious bodily harm exists. 4. The killing of a person according to one's duties or out of necessity, but without blame.

justifications. A category of legal defenses in which the defendant admits committing the act in question, but claims it was necessary in order to avoid some greater evil.

juvenile offender. A child who violates the criminal law, or who commits a status offense. Also, a person subject to juvenile court proceedings because a statutorily defined event caused by the person was alleged to have occurred while his or her age was below the statutorily specified age limit of original jurisdiction of a juvenile court.

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keeping a place of prostitution. Knowingly granting or permits the use of place for the purpose of prostitution.

key number system. A research aid developed by West Publishing Company that classifies digests of cases into various law topics and subtopics given paragraph numbers, called "Key Numbers." Each key number for a given topic helps the researcher quickly find all references to the legal matter being researched. Refer to the "Key Number System" section in this legal primer.

kidnapping. The unlawful and forcible removal of a person from his or her residence or place of business. Also, an aggravated form of false imprisonment that is accompanied by either a moving or secreting of the victim.

knowing behavior. Action undertaken with awareness.

knowing possession. Possession with awareness (of what one possesses).

knowingly. Regarding criminal behavior, a person acts knowingly when he has a reasonable certainty that his behavior involves, or will cause, an element of a crime.

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lapsed gift. A gift made in a will to a person who has died prior to the will-makers death.

larceny. The trespassory taking and carrying away (asportation) of the personal property of another with intent to steal. Also, the wrongful taking of the personal property of another, with intent to steal. Obtaining property by fraud or deceit.

lascivious. Obscene or lewd, or that which tends to cause lust

last act test. In the crime of attempt, a test which asks whether the accused had taken the last step or act towards commission of the offense, and had performed all that he intended to do and was able to do in an attempt to commit the crime, but for some reason the crime was not completed.

law. The collection of rules and principles of conduct promulgated by the legislature, the courts, or by local custom, which should guide one's actions in society. Our laws derive from a combination of moral laws, laws of nature, and human experience, all of which have evolved by human intellect throughout human history. Laws, by its definition, must change – and criminal laws change as criminality changes or as the people's view of criminality changes. 123 N.W. 504,508. Cf. adjective law, case law, common law, session law, statute, substantive law, uniform law.

Law Blank. A printed legal form available for preparing documents.

Law Clerk. In the United States, usually a law school student employed by a law firm to do research and other tasks. In the courts, a lawyer (or law school student) employed to do legal research.

lawsuit. An action or proceeding in a civil court; term used for a suit or action between two private parties in a court of law.

leading question. A question that suggests the answer desired of the witness. A party generally may not ask one's own witness leading questions. A party may ask leading questions only of hostile witnesses and on cross-examination.

legal aid. Professional legal services available usually to persons or organizations unable to afford such services.

legal cause. A legally-recognizable cause. The type of cause that is required to be demonstrated in court in order to hold an individual criminally liable for causing harm.

legal consent. Cf. effective consent.

legal process. A formal, legally valid paper. Something the court issues, usually a command such as a writ or mandate.

legal texts. Books that cover specific areas of the law, usually dealing with a single topic.

legislation. The act of giving or enacting laws. The power to make laws via legislation in contrast to court-made laws.

legislation. Laws regarding rules of conduct created and promulgated by the elected legislative agents of the people and subject to the limitation of the constitution. Cf. constitution, case law.

legislature. Agents elected by the people and representing the people in their creation and promulgation of laws.

legislative intent. The reasons why a legislature creates a statute, often documented, and, thus, available to the courts for review in order to understand the "spirit" behind the words of the law.

legitimate. Legal, lawful, or recognized by law or according to law.

leniency. Recommendation for a sentence less than the maximum allowed.

Letters of Administration. Legal document issued by a court that shows an administrator's legal right to take control of assets in the deceased person's name.

Letters Testamentary. Legal document issued by a court that shows an executor's legal right to take control of assets in the deceased person's name.

liable. Legally responsible.

libel. Published defamation which tends to injure a person's reputation. Cf. slander, invasion of privacy.

licensing boards. State agencies created to regulate the issuance of licenses, where they issue to contractors, barbers, cosmetologists, realtors, etc.

lien. An encumbrance or legal burden upon property.

limine. Cf. in limine in Latin Words & Phrases.

limited jurisdiction. Refers to courts that are limited in the types of criminal and civil cases they may hear. For example, a limited jurisdiction court generally hears traffic violations.

limited jurisdiction -or- **special jurisdiction.** Certain courts limited by statutes to have subject matter jurisdiction only over certain or special types of cases. Examples: small claims court, probate court.

litigant. A party to a lawsuit.

litigation. A lawsuit; a legal action, including all proceedings therein.

living trust. A trust set up and in effect during the lifetime of the grantor. (Also called inter vivos trust.)

loitering. The act of delaying, lingering, or to be idle about without lawful business for being present.

loose-leaf services. Loose-leaf replacement pages provided by a publisher in areas of the law where changes occur at a rapid rate.

looting. Burglary committed within an affected geographical area during an officially declared state of emergency, or during a local emergency resulting from an earthquake, fire, flood, riot, or other natural or manmade disaster.

lynching. The taking, by means of riot, any person from the lawful custody of any peace officer.

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magistrate. Judicial officer exercising some of the functions of a judge. It also refers in a general way to a judge. Cf. United States Magistrate Judge.

malfeasance. The commission of an unlawful act. Cf. misfeasance.

malice. A legal term that refers to the intentional doing of a wrongful act without just cause or legal excuse. In cases of homicide the term means "an intention to kill."

malice aforethought. An unjustifiable, inexcusable and unmitigated person-endangering state-of-mind.

malicious prosecution. An action instituted with intention of injuring the defendant and without probable cause, and which terminates in favor of the person prosecuted.

malpractice. Any professional misconduct.

manslaughter. The unlawful killing of another without malice aforethought (prior intent to kill); either voluntary (upon a sudden impulse); or involuntary (during the commission of an unlawful act not ordinarily expected to result in great bodily harm). Cf. murder.

marshal. The executive federal or municipal officer who carries out the orders of such federal or municipal court, respectively.

Martindale-Hubbell Law Directory. A publication of several volumes which contains names, addresses, specialties, and rating of United States lawyers; also includes digests of state and foreign statutory law.

mayhem. Intentional infliction of injury on another that causes the removal of, seriously disfigures, or impairs the function of a member or organ of the body.

mediation. A form of alternative dispute resolution in which the parties bring their dispute to a neutral third party, who helps them agree on a settlement.

memorandum. An informal note or instrument embodying something the parties desire to have in written evidence.

memorialized. In writing.

menacing. Assault, qv.

mere possession. Possession in which one may or may not be aware of what he or she possesses.

mere preparation. An act or omission that may be part of a series of acts or omissions constituting a course of conduct planned to culminate in the commission of a crime, but which fails to meet the requirements for a substantial step. Also, preparatory actions or steps taken toward the completion of a crime that are remote from the actual commission of the crime.

merger. The absorption of one thing or right into another.

minor. A person under the age of legal competence.

minority. More than the common meaning regarding number, race, ethnicity, religion, handicap, or gender. In regards the constitutional guarantee of equal protection, it refers to an identifiable and specifically disadvantaged group, and includes criminal defendants both prior to and following conviction. 343 F. Supp 704, 730.

minute book. A book maintained by the courtroom deputy (bailiff), which contains minute entries of all hearings and trial conducted by the judge.

minutes. Memorandum of a transaction or proceeding.

Miranda warning -or- **Miranda Rule.** Requirement that police tell a suspect in their custody of his or her constitutional rights before they question him or her. So named as a result of the Miranda v. Arizona ruling by the United States Supreme Court. 384 U.S. 436, 444, 478 479, 86 S.Ct. 1602, 1630, 16 L.E.2d 694.

misadventure. An accident. Mischance.

misconduct in office. Acts which a public office holder: 1. has no right to perform, 2. performs improperly, or 3. fails to perform in the face of an affirmative duty to act.

misdemeanor. A minor crime; an offense punishable by incarceration, usually in a local confinement facility, for a period of which the upper limit is prescribed by statute in a given jurisdiction, typically limited to a year or less.

misfeasance. Improper performance of an act which a person might lawfully do. Cf. malfeasance.

misprision of felony. The failure to report a known crime; concealment of a crime.

misprision of treason. The concealment or nondisclosure of the known treason of another.

mistake of fact. Misinterpretation, misunderstanding, or forgetfulness of a fact relating to the subject matter at hand; belief in the existence of a thing or condition that does not exist.

mistake of law. A misunderstanding or misinterpretation of the law relevant to a situation at hand.

mistrial. An invalid trial, caused by fundamental error. When a court declares a mistrial, the trial must start again from the selection of the jury.

mitigating circumstances. Circumstances that do not constitute a justification or excuse for an offense but which a court may consider as reasons for reducing the degree of blame.

mitigating factors. Circumstances surrounding the commission of a crime which do not in law justify or excuse the act, but which in fairness may be considered as reducing the blameworthiness of the defendant. Also, those elements of an offense or of an offender's background that could result in a lesser sentence under the determinate sentencing model than would otherwise be called for by sentencing guidelines.

mittimus. The name of an order in writing, issuing from a court and directing the sheriff or other officer to convey a person to a prison, asylum, or reformatory, and directing the jailer or other appropriate official to receive and safely keep the person until his or her fate shall be determined by due course of law.

mitigation. A reduction, abatement, or diminution of a penalty or punishment imposed by law.

mixed sentence. One which requires that a convicted offender serve weekends (or other specified periods of time) in a confinement facility (usually a jail), while undergoing probation supervision in the community.

Model Penal Code. A model code of criminal laws intended to standardize general provisions of criminal liability, sentencing, defenses, and the definitions of specific crimes

between and among the states. The Model Penal Code was developed by the American Law Institute.

moral certainty. At least "reasonable certainty" or "certainty beyond a reasonable doubt" but less than an absolute certainty. "A reasonable certitude or conviction based on convincing reasons and excluding all reasonable doubts that a contrary or opposite conclusion can exist based on any reasons." 104 N.W.2d 379, 382. A juror settles into a morally certain mentality regarding a truth of a fact a party seeks to prove when the juror would act in reliance upon its truth in matters of the greatest importance to himself. This term sometimes finds use as the criminal law standard of proof, but also may indicate an even higher standard. Proof, qv.

morals. Ethical principles, or principles meant to guide human conduct and behavior; principles or standards of right and wrong.

morals offenses. A category of unlawful behavior originally created to protect the family and related social institutions. Included are crimes such as lewdness, indecency, sodomy, and other sex-related offenses such as seduction, fornication, adultery, bigamy, pornography, obscenity, cohabitation, and prostitution.

moot. Regarding a moot case or a moot point: one not subject to a judicial determination because it involves an abstract question or a pretended controversy that has not yet actually arisen or has already passed. Mootness usually refers to a court's refusal to consider a case because the issue involved has been resolved prior to the court's decision, leaving nothing that would be affected by the court's decision.

mores. Unwritten but generally known rules that govern serious violations of the social code.

motion. An application made to a court or judge which requests a ruling or order in favor of the applicant.

motion in limine. A motion made by counsel requesting that the court disallow the hearing in a case of possibly prejudicial information.

motive. A person's reason for committing a crime.

murder. The unlawful killing of a human being with deliberate intent to kill: (1) premeditation characterizes murder in the first degree; (2) a sudden and instantaneous intent to kill or to cause injury without caring whether the injury kills or not characterizes murder in the second degree. According to the common law, the killing of one human being by another with malice aforethought. Cf. criminal homicide.

mutual assent. A meeting of the minds; agreement.

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National Crime Victimization Survey -or- **NCVS.** A survey that is conducted annually by the Bureau of Justice Statistics (BJS), and which provides data on surveyed households that report they were affected by crime.

National Labor Relations Board. (NLRB). A federal agency which prevents and remedies unfair labor practices by employers and labor organizations

natural law. Rules of conduct inherent in human nature and in the natural order, which are thought to be knowable through intuition, inspiration, and the exercise of reason, without the need for reference to man-made laws. Law that so positively agrees with the nature and state of man that, without observing its maxims, the peace and happiness of society can never prevail. Society and jurisprudence come to recognize these laws merely by light of reason, from the facts of these laws' essential agreeableness with human nature. Natural laws remain valid regardless of their enactment as positive law, although in certain instances, courts cannot enforce a natural law. 11 Ark. 519, 527. Positive law, qv.

naturalization. Process by which a person acquires nationality after birth and becomes entitled to privileges of citizenship.

negligence. Failure to use care which a reasonable and prudent person would use under similar circumstances.

negotiation. The process of submission and consideration of offers until one party makes an acceptable offer and the other accepts it.

necessity. A defense to a criminal charge that claims that it was necessary to commit some unlawful act in order to prevent or to avoid a greater harm.

negligent homicide. The killing of a human being by criminal negligence, or by the failure to exercise reasonable, prudent care. Also, a criminal offense committed by one whose negligence is the direct and proximate cause of another's death.

next friend. One acting without formal appointment as guardian for the benefit of an infant, a person of unsound mind not judicially declared incompetent, or other person under some disability.

No Bill. This phrase, endorsed by a grand jury on the written indictment submitted to it for its approval, means that the grand jury found the evidence as insufficient to indict.

No-contest Clause. Language in a will that provides that the testator automatically disinherits any person who makes a legal challenge to the will's validity.

No-fault Proceedings. A civil case in which parties may resolve their dispute without a formal finding of error or fault.

Noise Control Act. A act which gives government agencies the right to promulgate standards and regulations relating to abatement of noise emissions, i.e., requirement that autos and like vehicles must have mufflers.

nonfeasance. Nonperformance of an act which a person or another should perform. Omission to perform a required duty or total neglect of duty.

nonjury trial. Trial before the court but without a jury.

norms. Unwritten rules that underlie and are inherent in the fabric of society.

Notary Public. A public officer with duties to administer oaths, to attest and certify documents, and to take acknowledgments.

not guilty by reason of insanity -or- **NGRI.** One of a number of possible verdicts in a criminal trial where the defense of insanity is raised. Other possible verdicts include "guilty" and "not guilty."

notice. Formal notification to the party that sued in a civil case of the fact that the lawsuit has been filed. Also, any form of notification of a legal proceeding.

notice to creditors. A notice given by the bankruptcy court to all creditors of a meeting of creditors.

NOVA. National Organization for Victims' Assistance.

nuncupative will. An oral (unwritten) will.

NVC. National Victims' Center.

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oath. A solemn pledge made under a sense of responsibility in attestation of the truth of a statement or in verification of a statement made.

objection. The process by which one party takes exception to some statement or procedure. A judge either sustains (allows) or overrules (denies) an objection.

obscenity. That which appeals to the prurient interest and lacks serious literary, artistic, political or scientific value.

Occupational Safety and Health Act (OSHA). A federal law designed to develop and promote occupational safety and health standards.

Occupational Safety and Health Review Commission. The agency established by OSHA to adjudicate enforcement actions under the Act.

offer of proof. To offer evidence for acceptance at trial. The appropriate jurisdiction's rules of evidence governs such an offer of evidence. For example, if a party offers evidence through the testimony of a witness, opposing party make object to certain of the questions asked by counsel. Should the court inquire as to the propriety of the questioning, counsel would then ordinarily offer to the court, or "proffer," the relevance of the question. In such an instance, the questioning party would not ordinarily offer of proof within earshot of the jury, if present. If the court sustains (allows) the objection, the appellate court will assume that the party could have established proffer for the purposes of reviewing the trial court's ruling. McCormick, Evidence §72 (2d ed. 1972). Proof, qv.

official reports. The publication of cumulated court decisions of state or federal courts in advance sheets and bound volumes as provided by statutory authority.

omission to act. An intentional or unintentional failure to act which may impose criminal liability if a duty to act under the circumstances is specified by law.

on a person's own recognizance. Release of a person from custody without the payment of any bail or posting of bond, upon the promise to return to court.

opening statement. The initial statement made by attorneys for each side, outlining the facts each intends to establish during the trial.

opinion. A judge's written explanation of a decision of the court or of a majority of judges. A dissenting opinion disagrees with the majority opinion because of the reasoning and/or the principles of law on which the court (the majority) based its decision. A concurring opinion agrees with the decision of the court but offers further comment. (A *per curiam* opinion is an unsigned opinion "of the court.")

oral argument. Presentation of a case before a court by spoken argument; usually with respect to a presentation of a case to an appellate court which might set a time limit for oral argument.

order. A mandate, command, or direction authoritatively given. Direction of a court or judge made in writing.

ordinance. A rule established by authority; possibly a municipal statute of a city council, regulating such matters as zoning, building, safety, matters of municipality, etc.

ordinary negligence. The want of ordinary care, or negligence that could have been avoided if one had exercised ordinary, reasonable, or proper care.

outrageous government conduct. A kind of entrapment defense based upon an objective criterion involving "the belief that the methods employed on behalf of the Government to bring about conviction cannot be countenanced."

OVC. Office for Victims of Crime, established under the 1984 Victims of Crime Act (VOCA).

overrule. A judge's decision not to allow an objection. Also, a decision by a higher court finding that a lower court decision was in error.

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pandering. Soliciting a person to perform an act of prostitution.

paperbound supplement. A temporary supplement to a book or books.

paralegal. Also, legal assistant. A person with legal skills who works under the supervision of a lawyer able to perform most functions of an attorney except represent a client in court.

pardon. An act of grace from governing power that mitigates punishment and restores rights and privileges forfeited on account of the offense.

parol evidence. Oral or verbal evidence; evidence given by word of mouth in court.

parole. Supervised release of a prisoner from imprisonment on certain prescribed conditions that entitle him to termination of his sentence.

Part I Offenses. That group of offenses, also called major offenses or index offenses, for which the Uniform Crime Reports (UCR) publishes counts of reported instances, and which consists of murder, rape, robbery, aggravated assault, burglary, larceny, auto theft, and arson.

Part II Offenses. A group of 19 "lesser crimes" including forgery, fraud, embezzlement, vandalism, prostitution, drug abuse violations, etc., which are reported in the FBI's Uniform Crime Reports (UCR). Part II Offenses are counted only in terms of arrests (rather than as reported crimes).

parties to crime. All persons who take part in the commission of a crime, including those who aid and abet, and who are therefore criminally liable for the offense.

party. A person, business, or government agency actively involved in the prosecution or defense of a legal proceeding.

patent. A grant to an inventor of the right to exclude others for a limited time from make, using, or selling his invention in the United States.

Patent and Trademark Office. The federal agency which examines and issues patents and registers trademarks.

penal code. The body of laws pertaining to crimes and offenses and the penalties for their commission.

Pennsylvania style. A form of imprisonment developed by the Quakers in Pennsylvania about 1795 and used until about 1820. Prisons had cells lining the outer walls and containing windows. The religious Quakers devised this style to involve great amounts of solitary confinement (thus the windows in the cells) for religious study. They expected prisoners to show penitence (repentance) – thus the word "penitentiary." It competed with the Auburn style.

peremptory challenge. Request by a party that a judge not allow a certain prospective juror as a member of the jury, qv. No reason or cause need be stated. Cf. challenge for cause.

perfect self-defense. A claim of self-defense that meets all of the generally accepted legal conditions for such a claim to be valid. Where deadly force is used, perfect self-defense requires that, in light of the circumstances, the defendant reasonably believed it to be necessary to kill the decedent to avert imminent death or great bodily harm, and the defendant was not the initial aggressor nor was responsible for provoking the fatal confrontation.

periodical. A publication which appears regularly but less often than daily.

perjury. The willful giving of false testimony under oath in a judicial proceeding. Also, false testimony given under any lawfully administered oath.

permanent injunction. A court order requiring that some action be taken, or that some party refrain from taking action. It differs from forms of temporary relief, such as a temporary restraining order or preliminary injunction.

per se doctrine. Under this doctrine, courts can declare an activity such as price fixing as a violation of the antitrust laws

without necessity of a court inquiring into the reasonableness of the activity.

person in need of supervision. Juvenile found to have committed a "status offense" rather than a crime that would provide a basis for a finding of delinquency. Cf. status offense.

personal crime. Also called violent crime, is a crime committed against a person, including (according to the FBI's UCR program) murder, rape, aggravated assault, and robbery.

personal property. Anything of value that a person owns other than real estate or fixtures.

personal jurisdiction -or- **in personam jurisdiction.** The court's power over the parties involved in a particular matter. The court can exercise personal jurisdiction over the defendant as a result of the defendant's physical presence within the state or where a defendant's activity meets the "minimum contacts" test: "In order to subject a defendant to a judgment in personam, if he is not present within the territory of the forum, he [must] have certain minimum contacts with it such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice'." 326 U.S. 310, 316.

personal recognizance. In criminal proceedings, the pretrial release of a defendant without bail upon his or her promise to return to court. Cf. recognizance.

personal representative. The person who administers an estate. If named in a will, the title "executor" refers to that person. Without a valid will, the title "administrator" refers to that person.

personal trespass by computer. An offense in which a person uses a computer or computer network without authority and with the intent to cause physical injury to an individual.

petitioner. The person filing an action in a court of original jurisdiction. Also, the person who appeals the judgment of a lower court. Cf. respondent.

physical proximity test. A test traditionally used under common law to determine whether a person was guilty of attempted criminal activity. The physical proximity test requires that the accused has it within his or her power to complete the crime almost immediately.

pimping. Aiding, abetting, counseling, or commanding another in the commission of prostitution, or the act of procuring a prostitute for another.

plaintiff. A person who brings an action; the party who complains or sues in a civil action. Cf. complainant.

plea. The first pleading by a criminal defendant, the defendant's declaration in open court of guilty or not guilty. The defendant's answer to the charges made in the indictment or information.

plea agreement -or- **plea negotiation** -or- **plea negotiating** (verb) -or- **negotiating a plea** (verb) –BUT NEVER– "plea bargaining." Process where the accused and the prosecutor in a criminal case agree to a disposition of the case. The accused usually agrees to plead guilty to a lesser offense or to some counts of a multi-count indictment in return for concessions as to the type and length of the sentence. A judge then either accepts or rejects the plea and the terms of the agreement. A judge who accepts the guilty plea must then adhere to the terms of the agreement. 404 U.S. 257, 260-261. ABA Minimum Standards for Criminal Justice —Standards Relating to Pleas of Guilty (1968).

Criminal defendants should **NOT** refer to this as a "plea bargain." The word "bargain" implies that:

1. the defendant did not pay the full and intended penalty for his actions,
2. the defendant used some trickery (criminal trickery, of course) to obtain the "bargain,"
3. the inability of the prosecution to otherwise prosecute the defendant to the proper and fullest extent, or
4. all of the above.

In any event, the phrase "plea bargain" suggests more actual guilt than the legal guilt (the plea and the conviction) would indicate.

pleadings. The written statements of fact and law filed by the parties to a lawsuit.

plurality requirement. The logical and legal requirement that a conspiracy involve two or more parties.

pocket parts. Supplements to law books in pamphlet form inserted into a pocket inside the back cover of the books in order to keep the book current.

polling the jury. The act, after a jury verdict has been announced, of asking jurors individually whether they agree with the verdict.

pornography. The depiction of sexual behavior in such a way as to excite the viewer sexually.

post-crime victimization -or- **secondary victimization.** Problems that follow from initial victimization, such as the loss of employment, medical bills, the insensitivity of family members, and others, etc.

post-trial. Refers to items happening after the trial, such as post-trial motions or post-trial discovery.

pour-over will. A will that leaves some or all estate assets to a trust established before the will-maker's death.

power. Authority to do. One has the power to do something if he has attained legal age. Also, used as "powers," the term refers to authority granted by one person to another, such as powers given an executor in a will or an agent in a power of attorney.

power of attorney. A formal instrument authorizing another to act as one's agent or attorney.

precedent. A previously decided case which courts recognize as authority in disposing of future cases. At common law, courts regarded precedents as the major source of law. A precedent may involve a novel question of common law or it may involve an interpretation of a statute. In either situation, to the extent that future cases rely upon it or distinguish it from themselves without disapproving it, the cases will serve as a precedent for future cases under the doctrine of stare decisis. Laws established by previous cases which courts must follow in cases involving identical circumstances. Cf. stare decisis in Latin Words & Phrases.

precedential value. The value of a case regarding its use as an authority under the doctrine of stare decisis. Precedent, stare decisis, qv.

precursor chemicals. Chemicals that may be used in the manufacture of a controlled substance.

pre-injunction. Court order requiring action or forbidding action until it decides whether to issue a permanent injunction. It differs from a temporary restraining order.

preliminary hearing. Also, preliminary examination. A hearing by a judge to determine whether the government should hold for trial a person charged with a crime. Cf. arraignment.

premeditated murder. Murder that was planned in advance (however briefly) and willfully carried out.

premeditation. The act of deliberating or meditating upon, or planning, a course of action (i.e., a crime). For purposes of the criminal law, premeditation requires the opportunity for reflection between the time the intent to act is formed and the act is committed.

preponderance of the evidence. The general standard of evidence in civil cases – the greater weight of the evidence (more 50 percent). More probable than not. "Evidence preponderates where it is more convincing to the trier [of fact] than the opposing evidence." McCormick, Evidence 793 (2d ed. 1972). Proof, qv.

present ability. As used in assault statutes, a term meaning that the person attempting assault is physically capable of immediately carrying it out.

pre-sentence report. A report to the sentencing judge containing background information about the crime and the defendant to assist the judge in making his or her sentencing decision.

presentment. Declaration or document issued by a grand jury that either makes a neutral report or notes misdeeds by officials charged with specified public duties. It ordinarily does not include a formal charge of crime. A presentment differs from an indictment.

presumption. A rule of law which requires the assumption of a fact from another fact or set of facts. The term "presumption" indicates that the law accords certain weight to a given evidentiary fact, requiring the production of further evidence to overcome the assumption thereby established. It thus constitutes a rule of evidence that has the effect of shifting either the burden of proof or the burden of producing evidence. Proof, qv.

pretermitted child. A child born after the execution of a will which, thus, contains no provisions for that child. Most states have laws that authorize that a share of estate property to go to such a child.

pretrial conference. Conference among the opposing attorneys and the judge called at the discretion of the court to narrow the issues for trial and to make a final effort to settle the case without a trial.

prima facie case. A case sufficient on its face supported by the minimum amount of evidence necessary to allow it to continue in the judicial process, and free from palpable defects. 105 N.E.2d 454, 458. A case that appears capable of prevailing in the absence of contradictory evidence. 185 N.E.2d 115, 124. Sufficient to prevail over a directed verdict or a motion to dismiss. Cf. prima facie in the Latin Words & Phrases.

primary authority. Constitutions, codes, statutes, ordinances, and case law sources.

principal in the first degree. A person whose acts directly result in the criminal misconduct in question.

principal in the second degree. Any person who was present at the crime scene and who aided, abetted, counseled, or encouraged the principal.

principle of legality. An axiom which holds that behavior cannot be criminal if no law exists which defines it as such.

private law. That law, such as a contract between two persons or a real estate transaction, which applies only to the persons who subject themselves to it.

privilege. A particular or peculiar benefit enjoyed by a person, company, or class beyond the common advantages of other citizens; an exceptional or extraordinary exemption; an immunity held beyond the course of the law. 55 S.E. 820, 823. Types of privileges: Privileged communications (husband-wife, lawyer-client, doctor-patient, journalist-source, priest-penitent); Executive privilege (presidential communications); and Journalist's privilege (known information).

prize fighting. Unlawful public fighting undertaken for the purpose of winning an award or a prize.

probable cause. A reasonable belief that a person has committed or presently commits a crime; the basis for all lawful searches, seizures, and arrests.

probate. Proceedings in states courts by which a court proves a will is valid or invalid. Term used to mean all proceedings pertaining to the administration of estates such as the process to gather assets; to apply assets to pay debts, taxes, and expenses of administration; and to distribute assets to those designated as beneficiaries in the will.

probate court. The state court with authority to supervise estate administration.

probate estate. Estate property that a person may dispose of by using a will. Cf. estate.

probation. A sentence of imprisonment that is suspended. Also, the conditional freedom granted by a judicial officer to an adjudicated or adjudged adult or juvenile offender, as long as the person meets certain conditions of behavior. An alternative to imprisonment allowing a person found guilty of an offense to stay in the community, usually under conditions and under the supervision of a probation officer. A violation of probation can lead to its revocation and to imprisonment.

probative value. The worth of any evidence to prove or disprove the facts at issue.

product liability. Legal responsibility of manufacturers and sellers to buyers, users, and bystanders for damages or injuries suffered because of defects in goods.

promisee. An individual to whom a promisor makes a promise.

promisor. An individual who makes a promise.

promissory estoppel. A promise which estops the promisee from asserting or taking certain action.

promoting prostitution. The statutory offense of: 1. owning, controlling, managing, supervising, or otherwise keeping a house of prostitution; 2. procuring a person for a house of prostitution; 3. encouraging, inducing, or otherwise purposely causing another to become or remain a prostitute; 4. soliciting a person to patronize a prostitute; 5. procuring a prostitute for another; or 6. transporting a person with the purpose of promoting that person's involvement in prostitution.

proof. The evidence that tends to establish the existence or validity of a fact in issue. The persuasion of a trier of fact by the production of evidence of the truth of the fact alleged. Cf. burden of proof, clear and convincing, degree of proof, inference, moral certainty, offer of proof, preponderance of evidence, presumption, reasonable doubt, standard of proof.

property crime. Crime committed against property, including (according to the FBI's UCR program) burglary, larceny, auto theft, and arson.

property tax. A tax levied on land and buildings (real estate) and on personal property.

proportionality. A sentencing principle which holds that the severity of sanctions should bear a direct relationship to the seriousness of the crime committed.

proprietor. Owner. Person who has legal right or title to anything.

prosecutor. A trial lawyer representing the government in a criminal case and the interests of the state in civil matters. In criminal cases, the prosecutor has the responsibility of deciding who, when, and how to prosecute.

prosecutorial duty to disclose -or- **Brady Rule.** Due process in the for of the prosecutor's duty to treat the defendant fairly by disclosing exculpatory information. 373 U.S. 83, 83 S.Ct. 1194 (1963)

prostitution. The offering or receiving of the body for sexual intercourse for hire [as well as] the offering or receiving of the body for indiscriminate sexual intercourse without hire. Some

states limit the crime of prostitution to sexual intercourse for hire.

proximate cause. 1. The primary or moving cause that plays a substantial part in bringing about injury or damage. It may be a first cause that sets in motion a string of events whose ultimate outcome is reasonably foreseeable. 2. The last negligent act that contributes to an injury. A court generally judges a person as liable only if it determines his or her action, or by his or her failure to act when he or she had a duty to act, as the last negligent act which contributed to an injury.

proxy. The instrument authorizing one person to represent, act, and vote for another at a shareholders' meeting of a corporation.

prurient interest. A morbid interest in sex; an obsession with lascivious and immoral matters.

psycholegal error. The mistaken belief that if we identify a cause for conduct, including mental or physical disorders, then the conduct is necessarily excused.

public law. That law such as traffic ordinances or zoning ordinances which applies to the public, as compared to corporate law, probate law, and so on.

public defender. Government lawyer who provides free legal defense services to a poor person accused of a crime.

public drunkenness. The offense of being in a state of intoxication in a place accessible to the public.

public order offense. An act that is willfully and unlawfully committed and which disturbs public peace or tranquility. Included are offenses such as fighting, breach of peace, disorderly conduct, vagrancy, loitering, unlawful assembly, public intoxication, obstructing public passage, and (illegally) carrying weapons.

Public Service Commission -or- **Public Utilities Commission.** A state agency which regulates utilities.

punitive damages. Monetary award given to punish the defendant or wrongdoer.

purchase agreement -or- **purchase offer** -or- **sales agreement** -or- **earnest money contract.** Agreement between buyer and seller of property which sets forth in general the price and terms of a proposed sale.

putative. Alleged; supposed; reputed.

Q — Q — Q — Q — Q — Q — Q — Q — Q

quash. To vacate or void a summons, subpoena, etc.

quasi-contract. An obligation created by the law in the absence of an agreement or contract, not based upon the intentions or expressions of the parties.

quasi-criminal action. A classification of actions such as violation of a city ordinance not a violation of a criminal statute, yet considered wrongs against the public punishable through fines – not usually indictable offenses.

quiet title action. A court proceeding to remove a cloud on the title to real property.

quitclaim deed. A deed without warranty of title that passes whatever title the grantor has to another.

positive law. Existing law created by legally valid procedures. Similar to legislation. Cf. natural law.

question of fact. Disputed factual contentions traditionally left for the jury to decide. For example, in a battery case, the question of whether A touched B. Juries decide questions of fact; although the judge(s) act as the trier of facts in a trial without a jury. The judge(s), as the trier of questions of law, then decide the legal significance, if any, of the touching. Courts often experience difficulties in separating facts and law. The manner in which a party characterizes an issue can trigger many different legal consequences. Courts employ different standards of review for findings of fact and findings of law. More at question of law. Cf. question of law.

question of law. Disputed legal contentions, usually as regards the legal significance of an occurrence, traditionally left for the judge to decide. An appellate court pays less deference to the resolution of a question of law than to a determination of a question of fact. Keep in mind that courts often experience difficulty in trying to objectively determine the fine lines between fact and law. In such instances, the court may issue a compound conclusion of both fact and law. More at question of fact. Cf. question of fact.

quorum. The number of members of any body who must act in order for that body to transact business. 179 P.2d 870, 873. While a quorum usually requires a majority, the body can alter this general principle to require or permit more or less than a majority.

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rape. Unlawful sexual intercourse with a female person without her consent. 18 U.S.C. §2031. The prosecution must prove penetration, however slight; otherwise, the prosecution can only attempt to establish attempted rape. Perkins & Boyce, Criminal Law 201 (3rd ed. 1982). Many states formerly required corroboration other than the victim's testimony of material elements such as force, penetration, and identity. However, modern trends in jurisprudence tend to abandon all such requirements. Most states have also abandoned the doctrine of establishing "utmost resistance" by the woman, especially where the prosecution proves that the rapist puts the woman in fear of personal violence who then submits to avoid serious bodily injury.

> At common law, a man, unless separated, courts would not rule that a man had "raped" his wife, even if he did so by force and against her will. However, many states have tended toward abandoning a husband's absolute right to sexual intercourse. The recommended final draft of Model Penal Code §213.11 had incorporated the "male only perpetrator" and the "marital-exemption;" however, many states have adopted "sexual assault" statutes which contain gender-neutral provisions and which don't allow marital exemptions. Cf. sodomy, statutory rape.

rape shield laws. Statutes intended to protect victims of rape by limiting a defendant's in-court use of a victim's sexual history.

real property. Land, buildings, fixtures, and whatever attached or affixed to the land. Generally synonymous with the words "real estate."

reasonable doubt. A jury is required to acquit an accused person if, in the minds of the jury, the prosecution has not proven his or her guilt beyond a "reasonable doubt." That state of minds of jurors in which they cannot say they feel an "abiding conviction" as to the truth of the charge. The term does not signify a mere skeptical condition of the mind. Nor does it require proof so clear as to eliminate any possibility of error since under such a rule no criminal prosecution would prevail. Judges use this phrase in their instructions to the jury in a criminal case to indicate that the jury must presume innocence unless the prosecution has so proved guilt that the jury can see no "reasonable doubt" remains as to the guilt of the person charged. An actual and substantial doubt arising from the evidence, from the facts or circumstances shown by the evidence, or from the lack of evidence. Also, that state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of the jurors in such a condition that they cannot say they feel an abiding conviction of the truth of the charge.
25 F. 556, 558; 367 F. Supp 91, 101. Proof, qv.

reasonable doubt standard. That standard of proof necessary for conviction in criminal trials.
Cf. reasonable doubt.

reasonable force. A degree of force that is appropriate in a given situation and is not excessive. The minimum degree of force necessary to protect oneself, ones' property, a third party, or the property of another in the face of a substantial threat.

reasonable person -or- **reasonable and prudent person.** A phrase used to denote a hypothetical person who exercises qualities of attention, knowledge; intelligence, and judgment that society requires of its members for the protection of their own interest and the interests of others. Restatement of Torts 2d, §283(b). Thus, the court finds negligence based either on a failure to do something that a reasonable person, guided by considerations that ordinarily regulate conduct, would do, or on the doing of something that a reasonable and prudent (wise) person would not do. 43 S.W. 508, 509. This does not refer to the person's ability to reason, but rather to the prudence with which he acts under the circumstances. A person who acts with common sense and who has the mental capacity of an average, normal, sensible human being. The reasonable person criterion requires that the assumptions and ideas upon which a defendant acted must have been reasonable, in that the circumstances as they appeared to the defendant would have created the same beliefs in the mind of an ordinary person.

reasonable provocation. Cf. adequate provocation, adequate cause.

rebellion. Deliberate, organized resistance, by force and arms, to the laws or operations of the government, committed by a subject.

rebut. Evidence disproving other evidence previously given or reestablishing the credibility of challenged evidence. Cf. rejoinder.

receiving stolen property. 1. knowingly taking possession of or control over property that has been unlawfully stolen from another; or 2. the receiving of stolen property, knowing that it has been stolen.

reckless behavior. Activity which increases the risk of harm.

recognizance. An obligation entered into before a court whereby the recognizor acknowledges that he will do a specific act required by law.

record. All the documents and evidence plus transcripts of oral proceedings in a case.

recuse. The process by which the court disqualifies a judge from hearing a case either on his or her own motion (sua sponte) or upon the objection of a party.

re-direct examination. Opportunity to present rebuttal evidence after cross-examination of one's evidence.

redress. To set right. To remedy. To compensate. To remove the causes of a grievance.

referee. A person to whom the court refers a pending case to take testimony, hear the parties, and report back to the court. Such an officer serves with judicial powers as an arm of the court.

rehearing. Another hearing of a civil or criminal case by the same court in which the case was originally heard.

registered mark. Trademark with the words "Registered in the U.S. Patent and Trademark Office" or the letter "R" enclosed within a circle thusly ®.

rehabilitation. The attempt to reform a criminal offender. Also, the state in which a reformed offender is said to be.

rejoinder. Opportunity for the side that opened the case to offer limited response to evidence presented during the rebuttal by the opposing side. Cf. rebut.

remand. To send a dispute back to the court which originally heard it. Usually an appellate court that remands a case for proceedings in the trial court consistent with the appellate court's ruling.

remedy. Legal or judicial means by which a court either enforces a right or privilege or prevents, redresses, compensates the violation of a right or privilege.

remittitur. The reduction by a judge of the damages awarded by a jury.

removal. The transfer of a state case to federal court for trial. In civil cases, with parties from different states. In criminal and some civil cases, because of a significant possibility that a state court could not conduct a fair trial.

renunciation. The voluntary and complete abandonment of the intent and purpose to commit a criminal offense. Renunciation is a defense to a charge of attempted criminal activity.

replacement volumes. Volumes which replace books combined with their pocket parts when the pocket parts cause the books to become too bulky.

replevin. An action for the recovery of a possession that one has wrongfully taken.

reply. The response by a party to charges raised in a pleading by the other party.

reporters. Books which contain court decisions.

republic. A political order in which the people exercise the supreme power of the land. They elect officers and representatives responsible to them. They usually elect a president as the head of state.

> The word "republic" derives from the Latin "respublica" which derives from the phrase "res publica," meaning "the affairs of the people". The word "respublica" summarizes the Roman idea, because they regarded government as something that concerns all the people. Though the Roman state never truly became a democracy as the Greek city-states did, the Romans strongly believed that everyone held a duty to serve the common good. After the Roman republic survived almost 500 years, imperial rule (with an emperor as the single supreme authority) replaced it. However, the republican idea survived and came to help influence modern European and American people in the shaping of their governments.

request for admission -or- **request for admit.** Written statements of facts concerning a case that a party submits to an adverse party and which that party must admit or deny; a discovery device.

request for production of documents. A direction or command served upon another party for production of specified documents for review with respect to a suit; a discovery device.

request to admit. Request for Admission, qv.

rescission. The unmaking or undoing of a contract. A repeal.

rescuing a prisoner. A crime which is committed when any person or persons rescues or attempts to rescue any person held in lawful custody.

research. A careful hunting for facts or truth about a subject; inquiry; investigation.

resolution. The formal adoption of a motion.

respondent. The person against whom an appeal is taken. Petitioner, qv.

rest -or- **rest its case.** A party is said to "rest" or "rest its case" when it has presented all the evidence it intends to offer.

restatement. A publication which provides the law in a particular field, such as compiled from statutes and decisions.

restitution. Act of restoring anything to its rightful owner. The act of restoring someone to an economic position he enjoyed before he suffered a loss. A court requirement that an alleged or convicted offender pay money or provide services to the victim of the crime or provide services to the community.

restoration. A sentencing goal which seeks to make victims and the community "whole again."

restorative justice. A sentencing model that builds upon restitution and community participation in an attempt to make the victim "whole again."

retainer. Act of the client in employing the attorney or counsel, and also denotes the fee that the client pays when he or she retains the attorney to act for them.

retreat rule. A rule operative in many jurisdictions which requires that a person being attacked retreat in order to avoid the necessity of using force against the attacker if retreat can be accomplished with "complete safety."

retribution. The act of taking revenge upon a criminal perpetrator. Also, the most punishment-oriented of all sentencing goals, and one which claims that we are justified in punishing because offenders deserve it.

return. A report to a judge by police on the implementation of an arrest or search warrant. Also, a report to a judge in reply to a subpoena, civil or criminal.

reverse. An action of a higher court in setting aside or revoking a lower court decision.

reversible error. A procedural error during a trial or hearing sufficiently harmful to justify reversing the judgment of a lower court.

revocable trust. A trust that the grantor may change or revoke.

revoke. To cancel or nullify a legal document.

RICO -or- **Racketeer Influenced Corrupt Organizations.** A section of the federal Organized Crime Control Act. Some states have passed their own RICO-like statutes.

right. A liberty, power, privilege, immunity, or entitlement expressed either explicitly or implicitly (or interpreted).

right of allocution. A statutory provision permitting crime victims to speak at the sentencing of convicted offenders. A federal right of allocution was established for victims of federal violent and sex crimes under the Violent Crime Control and Law Enforcement Act of 1994.

right of way. The right of a party to pass over the land of another.

riot. A tumultuous disturbance of the peace by three or more persons assembled of their own authority.

Robinson-Patman Act. The amendment to the Clayton Act that deals with price discrimination.

robbery. The unlawful taking of property that is in the immediate possession of another by force or threat of force. Also, larceny from a person by violence, intimidation, or by placing the person in fear. Felonious taking of another's property, from his or her person or immediate presence and against his or her will, by means of force or fear. Cf. larceny.

rout. The preparatory stage of a riot.

rule of law -or- **supremacy of law.** The maxim that an orderly society must be governed by established principles and known codes that are applied uniformly and fairly to all of its members.

rules. Established standards, guides, or regulations set up by authority.

rules of evidence. Standards governing whether a court admits evidence in a civil or criminal case.

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scienter. Knowledge; guilty knowledge.

search warrant. A written order issued by a judge that directs a law enforcement officer to search a specific area for a particular piece of evidence.

seal. To mark a document with a seal; to authenticate or make binding by affixing a seal. Court seal, corporate seal.

second degree murder. Depending upon jurisdiction, either: 1. murders committed during the perpetration or attempted perpetration of an enumerated felony such as arson, rape, robbery, and burglary, or 2. all murder not classified by statute as first degree.

secondary authority. Legal encyclopedias, treatises, legal texts, law review articles, and citators. Writings which set forth the opinion of the writer as to the law.

secured debts. In bankruptcy, a debt that the debtor gave the creditor a right to repossess the property or goods used as collateral.

Securities and Exchange Commission (SEC). A federal agency which monitors the securities industry.

sedition. A crime that consists of a communication or agreement intended to defame the government or to incite treason.

selective incapacitation. A sentencing strategy that imprisons or otherwise removes from society a select group of offenders - especially those considered to be most dangerous.

self-defense. The claim of legal justification of an otherwise criminal act due to the necessity to protect a person or property from the threat or action of another. A defense to a criminal charge that is based upon the recognition that a person has an inherent right to self-protection and that to reasonably defend oneself from unlawful attack is a "natural" response to threatening situations.

self-incrimination, privilege against. The constitutional right of people to refuse to give testimony against themselves that could subject them to criminal prosecution. The Fifth Amendment to the United States Constitution guarantees this right, thus, people often refer to the assertion of this right is as "taking the Fifth."

self-proving will. A will whose validity does not require testimony in court by the witnesses to it, where the witnesses executed an affidavit reflecting proper execution of the will prior to the will maker's death.

sentence. The punishment ordered by a court for a defendant convicted of a crime. Cf. concurrent sentences, consecutive sentences, cumulative sentences.

Sentence Report. Presentence Report, qv.

sentencing. The process through which a sentencing authority imposes a lawful punishment or other sanction upon a person convicted of violating the criminal law.

sequester. To separate. Sometimes courts separate juries from outside influences during a trial or during their deliberations. For example, due to a highly publicized trial.

sequestration of witnesses -or- **separation of witnesses.** Keeping all witnesses (except plaintiff and defendant) out of the courtroom except for their time on the stand, and cautioning them not to discuss their testimony with other witnesses.

service of process -or- **service.** The delivering of writs, summonses, and subpoenas by delivering them to the party named in the document.

session law. Laws bound in volumes in the order of their enactment by a state legislature, prior to their possible codification.

settlement. An agreement between the parties disposing of a lawsuit.

settlor -or- **grantor.** The person who sets up a trust.

sexual assault. A statutory crime that combines all sexual offenses into one offense (often with various degrees). It is broader than the common law crime of rape.

sexual battery. The unlawful touching of an intimate part of another person against that person's will and for the purpose of sexual arousal, gratification, or abuse.

sexual contact. Any touching of the anus, breast, or any part of the genitals of another person with intent to arouse or gratify the sexual desire of any person.

Shepardizing. Method for finding subsequent development of a legal theory by tracing status of a case as legal authority. Refer to the Shepardizing section of the We the People Legal Primer.

sheriff. The executive officer of local court in some areas. In other jurisdictions the sheriff acts as the chief law enforcement officer of a county.

Sherman Act. The basic antitrust statute prohibiting any unreasonable interference, conspiracy, restraint of trade, or monopolies with respect to interstate commerce.

shock incarceration. A sentencing option that makes use of "boot camp"-type prisons in order to impress upon convicted offenders the realities of prison life.

shock probation. The practice of sentencing offenders to prison, allowing them to apply for probationary release, and enacting such release in surprise fashion. Offenders who receive shock probation may not be aware of the fact that they will be released on probation and may expect to spend a much longer time behind bars.

sidebar. A conference between the judge and lawyers, usually in the courtroom, out of earshot of the jury and spectators.

simple assault. Assault, qv.

slander. Spoken defamation that tends to injure a person's reputation. Cf. libel, invasion of privacy.

Small Business Administration -or- **SBA.** A federal agency that provides assistance of all kinds, including loans, to small businesses.

Small Claims Court. A state court that handles civil claims for small amounts of money where people often represent themselves rather use an attorney.

social debt. A sentencing principle that objectively counts an offender's criminal history in sentencing decisions.

Social Security. A system, begun in 1935, of federal old-age pensions for employed persons. Employers deduct a portion of the payment from the employee's salary – employers also contribute an equal portion.

Social Security Administration -or- **SSA.** The federal agency that administers the national social security program.

Social Security Tax. A payroll deduction based on gross wages paid. The employer matches this amount as required by the Federal Insurance Contribution Act (FICA).

sodomy -or- **crime against nature.** Made a felony in England in the early 1500s by statute and, thus, considered as a common law felony in the United States. Sodomy includes bestiality (sexual acts with animals) and human buggery (copulation per anus) and has been expanded to include other unnatural sexual intercourse. Some modern statutes define such deviant sexual intercourse as, for example, sexual conduct between persons not married to each other consisting of contact between the penis and anus, the mouth and penis, or the mouth and vulva. However, many states have removed sodomy from the category of crime except, of course, for acts regarding force, underage participants, and flouting accepted standards of morality in the community. Perkins & Boyce, Criminal Law, 468 (3rd ed. 1982).

soliciting prostitution. The act of asking, enticing, or requesting another to commit the crime of prostitution.

Son of Sam laws -or- **notoriety-for-profit laws.** Statutes that provide support for the rights of victims by denying convicted offenders the opportunity to further capitalize on their crimes. Son of Sam laws set the stage for civil action against infamous offenders who might otherwise profit from the sale of their "story."

sovereign immunity. The doctrine that bestows immunity to lawsuits upon the government, state or federal, unless it give its consent.

sovereignty. Preeminent among others. Having supreme rank or power. Self-governing. In a monarchy, the king or queen exercises sovereign power; in a democracy, the people exercise sovereign power. In the United States, the people have by way of their state and federal constitutions, delegated, their legislative, executive, and judicial sovereign powers to their legislators, executive officers, and judges, respectively – most of whom the people elect.

specific deterrence. A goal of criminal sentencing which seeks to prevent a particular offender from engaging in repeat criminality.

specific performance. A remedy requiring a person who has breached a contract to perform specifically what he or she greed to do. A court may order specific performance if it decides damages would amount to inadequate compensation.

specific intent. A thoughtful, conscious intention to perform a specific act in order to achieve a particular result.

specific intent crimes. Literally, crimes that require a specific intent. Generally speaking, specific intent crimes involve a secondary purpose.

Speedy Trial Act. Federal law establishing time limits for carrying out major events, i.e. indictment, arraignment, etc., in a criminal prosecution.

spendthrift trust. A trust set up for the benefit of someone who the grantor believes as incapable of managing his or her own financial affairs.

split sentence. A sentence explicitly requiring the convicted person to serve a period of confinement in a local, state, or federal facility followed by a period of probation.

stalking. The intentional frightening of another through following, harassing, annoying, tormenting, or terrorizing activities.

standard of proof. Indicates the degree to which the complaining party must prove a point. In a civil case, the burden of proof rests with the plaintiff, who must establish his or her case by such standards of proof as a "preponderance of evidence" or "clear and convincing evidence." In a criminal case, the prosecution must meet the standards of "beyond a reasonable doubt." Proof, qv.

standing. The legal right to bring a lawsuit. Only a person with something at stake has standing to bring a lawsuit.

status. A person's state of being.

status offenders. Youths charged as beyond the control of their legal guardian or as habitually disobedient, truant from school, or having committed other acts that would not be a

crime if committed by an adult, such as smoking. Also referred to as minors or children in need of supervision.

statute. Legislative enactment. An act of the legislature, adopted pursuant to its constitutional authority, by prescribed means and in certain form such that it becomes the law governing conduct within its scope. A single act of a legislature or a body of acts that the legislature collects and arranges for a session. Legislatures enact laws to prescribe conduct, to define crimes, to create lower bodies of government, to specify use of public monies, and generally to promote the public good and welfare. Cf. statutory law.

statute of frauds. A statutory requirement that certain contracts must be in writing.

statute of limitations -or- **limitation of action.** A statute which limits the right of a plaintiff to file an action unless done within a specified time period after the occurrence which gives rise to the right to sue.

statutory. Relating to a statute; created or defined by a law.

statutory construction. Process by which a court seeks to interpret the meaning and scope of legislation.

statutory law. Laws promulgated by Congress and state legislatures. Cf. case law, common law.

statutory rape. The crime of sexual intercourse with a female under the "age of consent" set by statute, regardless of whether or not she consents to the act. Virtually every jurisdiction now refuses to recognize a mistake of fact as to the age of the female as a defense to the crime of statutory rape.

statutory research. Research of legislation enacted by a state or the United States.

stay. A court order halting a judicial proceeding.

stipulation. An agreement between the parties involved in a suit regulating matters incidental to trial.

strict liability. Concept applied by the courts in product liability cases that when a manufacturer presents his goods for public sale, he represents them as suitable for their intended use. Liability without fault or intention. Strict liability offenses do not require mens rea.

strict liability crimes. Violations of law for which one may incur criminal liability without fault or intention.

strike. Highlighting, in the record of a case, of evidence that has been improperly offered and will not be relied upon.

subject matter jurisdiction. The empowerment of a court to hear and determine a particular category of cases. Federal courts can exercise only "limited jurisdiction" q.v. as explicitly conferred by federal statutes. 28 U.S.C. §1251 et seq. Many state trial courts have "general jurisdiction" to hear almost all matters. The parties to a lawsuit may not waive a requirement of subject matter jurisdiction.

subject research. Research of matter by determining all law related to that matter by finding everything on the subject.

subpoena. A command to appear at a certain time and place to give testimony upon a certain matter.

Subpoena Duces Tecum. A court order commanding a witness to bring certain documents or records to court.

substantial capacity test. A test developed by the American Law Institute and embodied in the Model Penal Code. The test holds that "A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity either to appreciate the criminality [wrongfulness] of his conduct or to conform his conduct to the requirements of the law."

substantial step. Significant activity undertaken in furtherance of some goal. An act or omission that is a significant part of a series of acts or omissions constituting a course of conduct planned to culminate in the commission of a crime. Also, an important or essential step toward the commission of a crime that is considered as sufficient to constitute the crime of criminal attempt. A substantial step is conduct that is strongly corroborative of the actor's criminal purpose. According to one court, a substantial step is "behavior of such a nature that a reasonable observer, viewing it in context could conclude beyond a reasonable doubt that it was undertaken in accordance with a design to violate the statute."

substantive criminal law. Law with the purpose of prevention of harm to society and which prescribes punishment for specific offenses. The basic law of rights and duties as opposed to "remedial law" which provides methods of enforcement.

substantive law. The statutory or written law that governs rights and obligations of those subjected to it.

substantive law. The positive law that creates, defines, and regulates the rights and duties of parties, and which may give rise to a cause of action. 192 P.2d 589, 593-594. Cf. adjective law.

sudden passion. As in instances of voluntary manslaughter, passion directly caused by and rising out of provocation by the victim or of another acting with the victim, and includes the understanding that the passion arises at the time of the killing and is not solely the result of former provocation.

summary judgment. A judgment given on the basis of pleadings, affidavits, and exhibits presented for the record without any need for a trial. Used when no parties do not dispute the facts of the case and a matter of law entitles one party to a judgment.

summons. Instrument used to commence a civil action or special proceeding. A means of acquiring jurisdiction over a party.

support trust. A trust that instructs the trustee to spend only as much income and principal (the assets held in the trust) as needed for the beneficiary's support.

suppress. For the court to forbid the use of evidence at a trial because police or a party improperly obtained it. Cf. exclusionary rule, fruit of the poisonous tree doctrine.

Surety Bond. A bond purchased at the expense of the estate to insure the executor's proper performance. Also referred to as "fidelity bond."

survivorship. Cf. joint tenancy.

suspension. A temporary loss of the right to practice law by an attorney. Cf. disbarment, censure.

sustain. A court ruling upholding an objection or a motion.

syndrome. A complex of signs and symptoms presenting a clinical picture of a disease or disorder.

syndrome-based defense. A defense predicated upon, or substantially enhanced by, the acceptability of syndrome-related claims.

T — T — T — T — T — T — T — T — T — T

Tangible Personal Property Memorandum -or- **TPPM**. A legal document referred to in a will and used to guide the distribution of tangible personal property.

tangible property. Property that has physical form and is capable of being touched, such as land, goods, jewelry, furniture, and so forth. Movable property that can be taken and carried away.

taxable income. The income against which the government applies tax rates to compute tax paid. Gross income of businesses or adjusted gross income of individuals less deductions and exemptions.

Tax Court of the United States. A judicial body which hears cases concerning federal tax laws.

temporary relief. Any form of action by a court granting one of the parties an order to protect its interest pending further action by the court.

Temporary Restraining Order -or- **TRO.** An emergency remedy of brief duration, such as ten days, issued by a court only in exceptional circumstances, usually when immediate or irreparable damages or loss might result before the opposition could take action.

tender of performance. An offer or attempt to do which a contract or law requires.

testamentary capacity. The legal ability to make a will.

testamentary trust. A trust set up by a will.

testator (male) -or- **testatrix** (female). A person who makes a will.

testimony. The evidence given by a witness under oath. It does not include evidence from documents and other physical evidence.

theft. A general term embracing a wide variety of misconduct by which a person is unlawfully deprived of his or her property.

theft of computer services. An offense in which a person willfully uses a computer or computer network with intent to obtain computer services without authority.

third party complaint. A petition filed by a defendant against a third party (not presently a party to the suit) which alleges the third party as liable for all or part of the damages the plaintiff may win from the defendant.

three-strikes legislation. Statutory provisions that mandate lengthy prison terms for criminal offenders convicted of a third violent crime or felony.

title. Legal ownership of property, usually real property or automobiles.

tort. A private or civil wrong or injury for which the court provides a remedy through an action for damages. The unlawful violation of a private legal right other than a mere breach of contract, express or implied.

tort-feasor. An individual, business, or other legally-recognized entity that commits a tort.

trademark. A word, name, symbol, or devise used by a manufacturer to distinguish his goods from those sold by others.

transferred intent. A legal construction by which an unintended act that results from intentional action undertaken in the commission of a crime may also be illegal.

transcript. A written, word-for-word record of what someone said. Usually refers to a record of a trial, hearing, or other proceeding transcribed from a recording or from shorthand.

transmittal form. Form required in certain courts for transmitting documents for filing.

treason. Violation of allegiance toward one's country or sovereign, esp. the betrayal of one's own country by waging war against it or by consciously and purposely acting to aid its enemies.

trespassory taking. For purposes of crimes of theft, a taking without the consent of the victim.

treatise. A formal a systematic book or writing containing a narrative statement on a field of law.

trial brief. A written document prepared for and used by an attorney at trial. It contains the issues for trial, synopsis of evidence for presentation, and case and statutory authority to substantiate the attorney's position at trial.

trust. A legal device used to manage real or personal property, established by one person (grantor or settlor) for the benefit of another (beneficiary). Cf. trustee.

trust agreement -or- **declaration.** The legal document that sets up a living trust. Wills set up trust agreements.

trustee. The person or institution that manages the property put in trust.

truth in lending. Statutes which provide that the proposed lender provide precise and meaningful cost of credit information to the credit customer.

truth in sentencing. A close correspondence between the sentence imposed upon those sent to prison and the time actually served prior to prison release.

U — U — U — U — U — U — U — U — U — U

unfair labor practice. Actions by the employer that interfere with, restrain, coerce, or threaten employees with respect to their rights.

Uniform Commercial Code -or- **UCC.** A uniform law governing commercial transactions. All states except Louisiana have adopted the UCC.

Uniform Crime Reports -or- **UCR.** A summation of crime statistics tallied annually by the Federal Bureau of Investigation (FBI), and consisting primarily of data on crimes reported to the police and of arrests.

Uniform Determination of Death Act -or- **UDDA.** A standard supported by the American Medical Association, the American Bar Association, and by The National Conference of Commissioners on Uniform State Laws which provides that "An individual who has sustained either (1) irreversible cessation of circulatory and respiratory functions, or (2) irreversible cessation of all functions of the entire brain, including the brain stem, is dead." The UDDA provides a model for legislation, and has been adopted in various forms by many states.

Uniform Laws Annotated. Annotated uniform and model acts approved by the National Conference of Commissioners on Uniform State Laws.

uniform law. Those uniform laws approved the Commissioners on Uniform State Laws and proposed to all state legislatures for their consideration and adoption. All 50 states adopt many of these uniform laws with minor changes to their language. A state may adopt a uniform law regardless of whether any other state does.

Uniform State Laws, The Commissioners on. The Commissioners on Uniform State Laws approve and propose uniform laws to all state legislatures for their consideration and adoption. All 50 states adopt many of these uniform laws with minor changes to their language. A state may adopt a uniform law regardless of whether any other state does.

unilateral contract. An agreement by which one undertakes an express performance without receiving any express promise of performance from the other.

union. An organization of workers formed for the purpose of collective bargaining.

United States Attorney. A federal district attorney (legal counsel) appointed by the President to prosecute for all offenses committed against the United States; to prosecute or defend for the government in all civil actions involving it as a party, and to perform all duties of his/her assigned district. 28 USC §§541 et seq.

United States Attorney General. The chief federal attorney and legal counsel appointed by the President to prosecute for

all offenses committed against the United States. Cf. United States Solicitor General.

United States Bankruptcy Court. The judicial body which hears matters pertaining to bankruptcy and reorganization.

United States Court of Appeals. Courts that hear appeals from federal district courts, bankruptcy courts, and tax courts.

United States Court of Claims. The court that hears actions against the US Government.

United States Court of Military Appeals. The court that hears appeals from court marshal decisions.

United States Court of Customs & Patent Appeals. The court that hears appeals from all US customs and patent courts.

United States Court of International Trade. The court that hears cases concerning federal tariff laws.

United States District Courts. Courts that try both criminal and civil actions and admiralty cases.

United States Magistrate Judge. Courts given authority by 28 USC §636. This court hears all preliminary criminal matters, but does not conduct felony trials, and any pretrial civil matters referred by the district court. If all parties consent, criminal misdemeanor and civil trials can be heard by this court.

United States Marshal's Service. Agency that serves civil and criminal process in federal courts.

United States Postal Service. The federal office that provides mail delivery to individuals and businesses within the United States.

United States Reports. Publication of court decisions of the United States Supreme Court.

United States Solicitor General. The counterpart to the Attorney General in that the Solicitor General defends the United States in all lawsuits against the United States government (to which the government must first give its consent).

United States Supreme Court. The highest court in the land, established by US Constitution.

unlawful assembly. A gathering of three or more persons for the purposes of doing an unlawful act or for the purpose of doing a lawful act in a violent, boisterous, or tumultuous manner.

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

unliquidated debt. Remaining not determined. Unassessed or unsettled. In dispute as to the proper amount.

unsecured debts. In bankruptcy, debts such as open accounts at department stores for which the debtor has not pledged collateral to guarantee payment.

urban. A city or town.

usury. Extraction of interest on a loan above the maximum rate permitted by statute.

uttering. The offering, passing, or attempted passing of a forged instrument with knowledge that the document is false and with intent to defraud.

V — V — V — V — V — V — V — V — V

vacate. To set aside, void, or nullify a judgment.

vagrancy. Under common law, the act of going about from place to place by a person without visible means of support, who was idle, and who, though able to work for his or her maintenance, refused to do so, but lived without labor or on the charity of others.

vagrant -or- **vagabond.** A wanderer; an idle person who, being able to maintain himself by lawful labor, either refuses to work or resorts to unlawful practices, e.g., begging, to gain a living.

vehicular homicide. The killing of a human being by the operation of a motor vehicle by another in a reckless manner likely to cause the death of, or great bodily harm to, another.

venire. A writ summoning persons to court to act as jurors. Cf. venire facias in Latin Words & Phrases.

venue. The geographical location or place where a case can be prosecuted. Authority of a court to hear a matter based on geographical location.

verdict. A conclusion, as to fact or law, that forms the basis for the court's judgment. Cf. directed verdict.

Veterans' Administration -or- **VA.** The federal agency that administers a system of benefits for veterans and their dependents.

vicarious liability. The criminal liability of one party for the criminal acts of another party.

victim. Any individual against whom an offense has been committed. Or, for certain procedural purposes, a parent or legal guardian if the victim is below the age of eighteen years or is incompetent. Also, one or more family members or relatives designated by the court if the victim is deceased or incapacitated.

victim impact statement. The in-court use of victim- or survivor-supplied information by sentencing authorities wishing to make an informed sentencing decision. Also, a written document that describes the losses, suffering, and trauma experienced by the crime victim or by victim's survivors. In jurisdictions where victims impact statements are used, judges are expected to consider them in arriving at an appropriate sentence for the offender.

victimless crime. An offense committed against the social values and interests represented in and protected by the criminal law, and in which parties to the offense willingly participate.

victims rights. The fundamental right of victims to be equitably represented throughout the criminal justice process.

victim/witness assistance programs. Service organizations that work to provide comfort and assistance to victims of crime and to witnesses.

visa. An official endorsement on a document or passport denoting that the bearer may proceed.

VOCA. The 1984 Victims of Crime Act.

void. Invalid. For example, no remedy exists for a void agreement.

voidable. Capable of being declared invalid. For example, a party may avoid his obligation to a voidable contract, such as a contract between an adult and a minor.

voir dire. The preliminary examination made in court of a witness or juror to determine his competency or interest in a matter. Literally, to speak the truth.

voluntary bankruptcy. A proceeding by which a debtor voluntarily asks for a discharge of his debts under the Bankruptcy Code.

voluntary intoxication. Willful intoxication; intoxication that is the result of personal choice. Voluntary intoxication includes the voluntary ingestion, injection, or taking by any other means of any intoxicating liquor, drug, or other substance.

voluntary manslaughter. The unlawful killing of a human being, without malice, that is done intentionally upon a sudden quarrel or in the heat of passion. Also, a killing committed without lawful justification, wherein the defendant acted under a sudden and intense passion resulting from adequate provocation.

W — W — W — W — W — W — W — W — W

Wage Earner's Plan. Chapter 13 Protection, qv.

waiver. Intentionally given up a right.

waiver of immunity. A means authorized by statute by which a witness, before testifying or producing evidence, may relinquish the right to refuse to testify against himself or herself, thereby making it possible for his or her testimony to be used against him or her in future proceedings.

warrant. Most commonly, a court order authorizing law enforcement officers to make an arrest or conduct a search. An application seeking a warrant must be accompanied by an affidavit that establishes probable cause by detailing the facts upon which the request is based.

warranty. A promise that a proposition of fact is true.

warranty deed. A deed that guarantees that the title conveyed is good and its transfer rightful.

water rights. The right to use water.

Wharton's Rule. A rule applicable to conspiracy cases which holds that where the targeted crime by its very nature takes more than one person to commit, then there can be no conspiracy when no more than the number of persons required to commit the offense participate in it.

will. A legal declaration that disposes of a person's property when that person dies.

willfully. Of one's own free will; without reluctance.

withholding. A tax deducted from a salary, wage, or other income on behalf of the government at the time of payment of wages to the person who pays it.

with prejudice. A declaration that dismisses all rights. A judgment barring the right to bring or maintain an action on the same claim or cause.

without prejudice. A declaration that no rights or privileges of the party concerned are waived or lost. In a dismissal these words maintain the right to bring a subsequent suit on the same claim.

witness. One who personally sees or perceives a thing; one who testifies as to what he has seen, heard, or otherwise observed.

Words and Phrases Legally Defined. A set of books in dictionary form that lists judicial determinations of a word or phrase.

worker's compensation. A state agency that handles claims of workers injured on their jobs.

writ. A judicial order directing a person to do something.

writ of certiorari. An order issued by the Supreme Court directing the lower court to transmit records for a case for which it will hear on appeal. Cf. certiorari in Latin Words & Phrases.

writ of execution. An order of the court evidencing debt of one party to another and commanding the court officer to take property in satisfaction of the debt.

writ of garnishment. An order of the court whereby property, money, or credits in the possession of another person may be seized and applied to pay a debtor's debt. It is used as an incident to or auxiliary of a judgment rendered in a principal action.

X — X — X — X — X — X — X — X — X

(no entries)

Y — Y — Y — Y — Y — Y — Y — Y — Y

Year and a Day Rule. A common law requirement that homicide prosecutions could not take place if the victim did not die within a year and a day from the time that the fatal act occurred.

Z — Z — Z — Z — Z — Z — Z — Z — Z

Zoning Commission. Local agencies with jurisdiction to regulate use of properties within their geographic area.

DICTIONARY OF ABBREVIATIONS AND SYMBOLS

Look to the Latin Words and Phrases section for more information on Latin abbreviations, marked in this section with [L].

§ section. clause. **§§** sections. clauses.

afft. Affidavit.

aka. Also known as.

arg. Arguendo.

C.J. Corpus Juris.

C.J.S. Corpus Juris Secundum.

ca. resp. [L] capias ad respondendum.

Cf. [L] confer. Compare with.

e.g. [L] exempli gratia. For example.

eq. equity.

et al. [L] et alii. And others.

et seq. [L] et sequentes. And the following (of that described – clauses, paragraphs, pages, etc).

etc. [L] et cetera. And the rest. **NOT** spelled "ect."

ex rel. [L] Abbrev. of "ex relatione" Upon relation.

fka. Formerly known as.

ib. [L] ibidem. Refers to the same book or page.

ibid. [L] ibidem. Refers to the same book or page.

id. [L] idem. The same.

i.e. [L] id est. That is.

L.S. [L] locus sigilli. Place of the seal.

N.B. [L] nota bene. Note well.

nmn. No middle name.

N.O.V. [L] non obstante veredicto.

nol. pros. [L] nolle prosequi. Will not prosecute.

non seq. [L] non sequitur. It does not follow.

non vult [L] non vult contendere. He will not contest.

pro tem [L] pro tempore. For the time being.

q.v. [L] quod vide. Which see.

viz. [L] videlicet. That is to say.

DICTIONARY OF LATIN WORDS AND PHRASES

The legal profession borrows some words and phrases from Latin. (Spanish-language people may find some familiarity with Latin words because the Spanish language comes mostly from Latin.)

actus reus (AKT-us RAY-us) "guilty act" or "deed of crime" Every crime has two components: actus reus (unlawful action) and mens rea (evil intent). Perkins and Boyce, Criminal Law 830-831 (3rd ed. 1982); 93 N.E. 249; 342 U.S. 246, 256; 361 U.S. 147, 150; Hall, General Principles of Criminal Law 222-227 (2d ed. 1960).

ad testificandum (ad TES-ti-fi-KAHN-doom) "for testifying" Refers to any person sought as a witness. Generally refers to a type of habeas corpus writ to bring a prisoner to court to testify.

additur (AD-dih-tur) "add onto" An increase made by the court which reduces the jury's insufficient verdict.

a fortiori (ah FOR-shee-OH-ree) "from the most powerful reason" Refers to drawing conclusion based on a powerful requirement. A person not guilty of larceny, because he did not steal, also not guilty of robbery (stealing with threat of force).

aliunde (AHL-ee-UN-day) "from elsewhere" The aliunde rule says a verdict may not be impeached by evidence held by a juror unless based on competent evidence from elsewhere. Evidence aliunde refers to that evidence from elsewhere. 141 Ohio St. 423.

amicus curiae (uh-MEE-kus KYEW-ree-eye) "friend of the court" A person, not a party, who calls the court's attention to information which might otherwise escape its attention to allow a proper decision (for the sake of justice). Amicus brief, a brief so submitted. 264 F. 276, 279; 64 N.Y.S.2d 510, 512.

a posteriori (ah POS-ter-ee-OH-ree) "from what comes after" Refers to knowing a cause from its effects. Reasoning from particular facts to general principles: inductive logic. Cf a priori.

a priori (ah pree-OH-ree) "from what comes before" Refers to predicting an effect from its cause(s). Reasoning from general principles to particular fats: deductive logic. Cf a posteriori. 185 F.2d 679, 685.

arguendo (ahr-gyew-EN-doh) -or- **arg.** "[for the sake of] arguing" To make a hypothetical statement.

bona fide (BOH-nah FIDE) "in good faith" Without fraud, made in good faith. Authentic, genuine. 80 Cal. Rptr. 89, 97; 458 P.2d 33, 41; 20 A.2d 414, 416.

brutum fulmen (BREW-tum FUL-men) "empty thunder" Refers to potentially powerful documents, judgments, etc made useless due to an error in them which renders them unenforceable. 179 S.W.2d 346, 348; 153 A.2d 888, 892.

capias ad audiendum judicium (KAY-pee-as ad aw-dee-EN-dum jew-DIH-shee-um) "you take to hear judgment" A writ to bring defendant to court to receive judgment regarding guilty verdict on misdemeanor.
3 Bl. Comm. *282; 178 A. 843, 844; 4 Bl. Comm *375.

capias ad respondendum (KAY-pee-as ad RES-pon-DEN-dum) often just ca. resp. "you take to respond" A writ to arrest and produce defendant prior to judgment. In effect, an arrest warrant and summons.
3 Bl. Comm. *282; 178 A. 843, 844; 4 A.2d 883, 885.

causa proxima (KAW-zah PROK-sih-mah) "most closely related cause" The cause responsible for the effect or result. Used to shift blame to show guilt; also to shift blame away from less guilty persons. 169 F.2d 203, 206; 323 P.2d 108, 114.

causa sine qua non (KAW-zah SEE-nah kwah nuhn) "cause without which it could not occur" A cause essential to the occurrence of the result. 169 F.2d 203, 206.

certiorari (sir-shee-oh-RAH-ree) "to be certified" An upper court may issue a writ of certiorari commanding a lower court to certify and return to the upper court the record in the particular case and, thus, to allow the upper court to inspect the proceedings and determine irregularities. US Supreme Court has discretionary power to issue such writ, upon four or more of its nine justices voting to hear a case, will issue the writ to any applicable court in the land. Some state courts issue similar writs called "certification". 6 Cyc. 737.

Cf. (see eff) Abbrev. for "confer" (CON-fer) Has the meaning of "compare with".

compos mentis (KOM-pohs MEN-tis) "mentally competent. Cf non-compos mentis.

contra bonos mores (KON-tra BOH-nohs MOH-rayz) "against good morals" "...conduct of such character as to offend the average conscience, as involving injustice according to commonly accepted standards..."
231 F. 950, 969.

coram nobis (KOR-am NOH-bis) "before us" Refers to a writ to seek relief from a judgment by bringing the attention of the court to errors of facts on the face of the record in that court, if known at the time, would have prevented rendition and entry of the judgment in question. Such as facts not present due to duress, fraud, or excusable mistake. 198 P.2d 505, 506; 269 N. Y. S. 2d 983, 986.

corpus delecti (KOR-pus deh-LEK-tie) "body of the crime" Objective proof of occurrence of a crime. Not the body of a killing. Corpus delecti has two parts: occurrence of specific kind of injury or loss, and somebody's criminality. 323 P.2d 117, 123; 247 P.2d 665; 1 Q.B. 388; 7 Wigmore, Evidence §2702.

corpus juris (KOR-pus JUR-is) "body of law" Refers to a series of text which contained much of the civil and the ecclesiastical law.

crimen falsi (KRIH-men FAL-see) "crime of deceit" For example: forgery, perjury, causing the absence of a witness, and fraudulent writings. 141 N.E.2d 202, 206; 1 F. 784, 787; 207 F. 327, 331; 5 A.2d 804, 805.

de facto (day FAK-toh) "of fact" Refers to the fact of the deed; in reality; actually. Refers to a matter not founded upon law. Cf de jure. 139 P. 1057, 1059; 77 P. 114, 115; 97 P. 96, 98; 197 A. 667, 669; 269 F. Supp. 401, 445.

de jure (day JEW-ray) "of right, of decree" Refers to a matter founded upon law. Cf. de facto. 269 F. Supp. 401, 443.

de minimis (day MIH-nih-mis) "of minor things" Refers to issues not important enough for the courts.
121 F.2d 829, 832; Model Penal Code §2.12.

de novo (day NOH-voh) "of new, renewed" Refers to a second time. For example, a trial de novo.
47 N.W.2d 126, 128.

Duces Tecum "Bring with you" Refer to the "Subpoena Duces Tecum" entry in the Dictionary of Legal Words and Phrases in this legal primer.

e.g. (ee gee) or (for example) Abbrev. for exempli gratia (eg-ZEM-PLEE GRAH-tee-ah) For example.

ejustem generis (eh YEWS-dem JEN-ehr-iss) "of the same kind" Courts may narrowly interpret general words which follow named classes of persons or objects as only those same kinds of things. Thus, a court may narrowly construe "other dangerous weapons" in the phrase "...pistols, revolvers, and derringers, or other dangerous weapons" as only firearms or more narrowly as only handguns. Cf. noscitur a sociis. 49 F. Supp. 846.

en banc (uhn bahnk) [French] "in the [full] bench" By the full court. Upon a court's motion *sua sponte* or a litigant's request, the full court (instead of just one or a few judges) will hear a matter.

et al. (et al) Abbrev. of "et alii" meaning "and others"

et seq. (et sek) Abbrev. for "et sequentes" or "et sequentia" meaning "and the following" Mostly refers to page references and to sections of statutes.

etc. Abbrev. for "et cetera" (et SEH-ter-ah) "and the rest" And other unspecified items of the same class. And so forth. Spelled "etc." **NOT** "ect." Very old spelling as "&c."

ex gratia (eks GRAH-shee-uh) "from grace or favor" Refers to acting as a favor, not from task or duty.

ex officio (eks oh-FEE-shee-oh) "from the office" By virtue of the office. 44 S.E.2d 88, 95; 90 So. 423, 424; 251 N.W. 395.

ex parte (eks PAR-tay) "from one party" Refers to an appilcation from one party to a proceeding without notice to or knowledge of another party.

ex post facto (eks post FAK-toh) "from after the fact" Retroactive. Usually "expost facto law" – a law that attempts to make a previous act criminal. Article 1 sections 9 &10 of US Constitution prohibits such laws. 171 S.W.2d 880; 3 U.S. 386; U.S. Const. Art. 1, Sec. 9, Cl. 3 and Sec 10.

ex rel. (eks rel) abbrev. for "ex relatione" meaning "upon relation or report" Refers to legal proceedings, when the right to sue resides solely in the state, brought in the name of the state but on the information and at the instigation of a private individual, the relator (the real party in interest), who has a private interest in the outcome. 329 P.2d 118, 133. In other instances, the court issues certain writs on behalf of a relator, such as "informations" in the nature of "quo warranto." 175 S.W. 940, 942. Such a habeas corpus may have the title "United States ex rel. [defendant] vs. [warden]."

habeas corpus (HAY-bee-us KOR-pus) See the larger Habeas Corpus section in the We the People Legal Primer. 488 F.2d 218, 221; 261 U.S. 86; 456 U.S. 107; 455 U.S. 509.

ib. (ib) -or- **ibid.** (IB-id) abbrev. for "ibidem" "in the same place" It refers to the same book or page. Used in references to avoid repeating same data from the immediately preceding reference.

id. (id) Abbrev. for "idem" "the same" Used in citations to avoid repeating author's name and title. See ibid.

i.e. (aye ee) or (that is) Abbrev. for id est (id est) "that is" That is. That is to say. (To explain further).

in camera (in KEH-mer-ah) "in chambers" Refers tio proceedings held in the judge's chambers.
66 Cal. Rptr. 825, 829.

in delicto (in deh-LIK-toh) "in fault" At fault but not necessarily at equal fault.

indicia (in-DEE-shee-ah) "indications" Circumstances or evidence which support but not necessarily prove a proposition or conclusion. 53 S.E. 2d 122, 125; 277 S.W. 2d 413, 316.

in extremis (in eks-TREH-mis) "in the extreme" toward the end, especially anticipating eminent death. 167 Cal. Rptr. 297, 302.

in forma pauperis (in FOR-mah PAW-per-is) "in the manner of a pauper" Courts may grant a party the right to proceed without assuming the burden of cost or the strict adherence to pleadings. Courts granting in forma pauperis status to a criminal defendant may also grant a court-appointed counsel.

infra (IN-frah) "below" Refers to discussion or citation appearing below or following this spot. Cf. supra.

in genere (in JEH-neh-ray) "in the same kind" Of the same class or species of anything. Applies to different laws for the same general purpose.

in haec verba (in heek VER-bah) "in these words"
In these words. In the same words.

in hoc (in hock) "in this" In this. Regarding this.

in limine (in LIH-mih-nee) "at the beginning" At the beginning or at the threshold.

in omnibus (in OM-nih-boos) "in all things" In all the world. In all nature. In all respects.

in pari materia (in PAH-ree deh-LIK-toh) "in the subject matter" Relating to the same person or matter. Interpret those portions of statutes etc. relating to the same subject or purpose together, according each the same importance or weight. 43 Okl. 682.

in personam (in per-SOH-nam) "into or against the person" Actions on personal liability against a person(s) requiring jurisdiction over such person(s). Cf. in rem. 237 So. 2d 592, 594.

in re (in ray) "in the matter of" "regarding" Usually refers to an opponentless legal proceeding, such as name change or estate of decedent.

in rem (in rem) "against a thing" Actions against the res or thing without reference to any claimants of it. Outcomes of such proceedings bind all claimants. Cf. in personam.

in se (in seh) "in (and of) itself"

inter alia (IN-ter AH-lee-uh) "among other things"

ipse dixit (IP-say DIK-sit) "he himself said it" An assertion by one whose sole authority for it is that he himself has said it.

ipso facto (IP-soh FAK-toh) "by the fact itself" In and of itself. 270 N.Y.S. 737.

ipso jure (IP-soh JUH-ray) "by the law itself" Merely by the law.

jurat (JUR-at) "sworn" A certification on an affidavit showing when, where, & before whom affiant swore.

lex "law"

lex loci delicti (lex LOH-kee deh-LIK-toh) -or- **locus delikto** (LOH-kus deh-LIK-toh) "the place of the wrong" The place where the last event necessary to make the actor liable occurred.

liber "book" A book of records, as of deeds.

locus sigilli (LOH-kus sih-JIL-lee) "the place of the seal" Often abbrev. "L.S." – within brackets on copies. 71 S.E. 142, 143.

malum in se (MAH-lum in say) "wrong in and of itself" An act (e.g. murder) considered evil and wrong by civilized people. An inherently evil and wrongful act. Acts that are regarded, by tradition and convention, as wrong in themselves Cf. malum prohibitum. 259 P. 893, 898; 373 S.W. 2d 90, 93.

malum prohibitum (MAH-lum pro-HIH-bih-tum) "wrong as prohibited (by statute)" An act (e.g. driving fast) not inherently evil but prohibited by law – how fast is "too fast"? But reckless driving is malum in se. Cf. malum in se. 223 N.E.2d 755, 757; 262 F.2d 245, 248.

mandamus (man-DAY-mus) "we command" When all other judicial remedies fail, an extraordinary writ commanding an official to perform an absolute duty (such as feeding or medically treating prisoners).
9 F. Supp. 422, 423; 74 P. 695, 501.

mens rea (menz REE-ah) "guilty mind" One (of four possible) mental states accompanying, and required for, a criminal act: intentionally, knowingly, recklessly, and grossly negligent. Mens rea may amount to general or a specific mental element, depending on the alleged crime. Prosecution must prove, beyond a reasonable doubt, that mens rea coexisted with the wrongful act. Insanity, intoxification, or mistake may nullify or mitigate the existence of a mens rea. Malum prohibitum crimes, being crimes of strict liability) often do not require a specific mens rea. Model Penal Code §2.02; 343 U.S. 790.

modus operandi (MOH-dus OP-er-AN-dee) "manner of operating" "manner of committing an act" The characteristic method employed in allegedly repeated criminal acts. 249 C.A.2d 81.

nisi prius (NEE-see PREE-us) "unless the first" Sometimes used to describe a court in which originally heard a case (not an appellate court). Actually translates as "the first".

nolle prosequi (NOLL-ee PROHS-ee-kyee) "unwilling to prosecute" Sometimes abbrev'd. nol. pros. (noll prohs) The formal entry of a declaration that the prosecution shall not prosecute a case further. State can re-indict within statute of limitations and prosecute defendant again. Cf. dismissal. 91 So. 2d 857, 859; 443 A.2d 86, 89; 419 N.E.2d 47, 51; 418 S.W.2d 629, 632; 213 S.E.2d 91, 93.

nolo contendere (NOH-loh kon-TEN-deh-ray) "I don't wish to contend" Not a plea. A statement that a defendant will not contend a charge. An implied confession admitting to all facts stated in indictment. Equal to a guilty plea. Accepted only by decision of the trial court, satisfied that defendant made it knowingly and willingly and factual basis supports it. Cf. non vult. 119 F. Supp. 288; 139 P.2d 682; F.R. Crim. Proc. 11(b)

non compos mentis (non Kom-pos MEN-tis) "not in control of the mind" Insane. In some instances, it just means not legally competent. 108 A.2d 820, 822; 1 S.E.2d 768, 770.

non obstante veredicto (non ob-STAN-teh veh-reh-DIK-toh) not withstanding the verdict. Abbrev. N.O.V. A judgment N.O.V. reverses a jury verdict due to lack of support by reasonable facts or contrary to law. Thus, a second chance at a directed verdict by the moving party.

non sequitur (non SEH-kwih-tur) "it does not follow" often abbrev'd non seq. Refers to an action or proceeding unrelated to the previous events. Or it has not logical or timely purpose for its place of events. Or logically, timely, physically out of order.

non vult (non vult) abbrev. of non vult contendere (non vult kon-TEN-deh-ray) "he will not contest" Refers to a criminal plea which does not expressly admit guilt but does not contest charge and agrees to treatment as though guilty. Cf. non contendere.

noscitur a sociis (NOH-sih-ter ay SOH-shee-is) "it is known by its associates" Ascertaining the meaning of a word in a statute in light of the meaning of the word(s) associated with it. With such words of similar meaning but not equally comprehensive, the specific word limits and qualifies the general word. Cf. ejustem generis. 950 N. W.2d 412, 413; 218 S.E.2d 735, 740.

nota bene (NOH-tah BEH-nay) "note well" commonly abbrev'd "N.B." Refers to an important part of text.

nuisance per se (NEW-sehns per say) "a nuisance by itself" An act, under any circumstances and at all times, which invades the rights of others. Once established by proof, it becomes a nuisance as a matter of law.
281 S.W.2d 721, 723; 268 N.W.2d 525, 528.

nunc pro tunc (nunk proh tunk) "now for then" An action after the point when the movant should have taken it. Retroactive. Thus, a nunc pro tunc court order corrects the record, supplementing a matter it originally had jurisdiction over. If time to appeal expired, party may seek leave to file notice of appeal out-of-time. If permitted, the court will file the notice nunc pro tunc and, thus, render the appeal timely.

obiter dicta (OH-bih-ter DIK-tah) "passing comments" Statements or decisions made in a court opinion not necessary to the disposition of the case at hand.

per curiam (per KOO-ree-ahm) "by the court" Refer to "opinion" entry in the Dictionary of Legal Words and Phrases in this legal primer.

per infortunium (per in-for-TU_nee-um) "by accident" By accident. By misadventure. Homocide *pre infortunium*: Someone who, while doing a lawful act without any intention to harm or injure, kills another.

posse comitatus (PAH-say KOH-mih-TAH-toos) "to be able to be an attendant" A sheriff may summon (even verbally) to his assistance any person to assist him in making an arrest for a felony. A person so summoned acts as neither officer nor as private citizen but as posse comitatus, and the protection of the law clothes his actions. A posse comitatus need not remain in the physical presence of the sheriff but may act in concert to effect the stated purpose. 449 S.W.2d 656, 661.

post mortem. (post MOR-tem) "after death" Refers generally to the examination of a body of a deceased to determine the cause of death. It may include only such examination as that performed by a coroner and may not extend to a true medical determination of the cause of death which would involve autopsy and dissection. 31 N.Y.S. 865, 866. Cf. autopsy.

praecipe (PREE-sih-pee) "order, command" A writ commanding the defendant to perform a requirement or to show reason why defendant did not do it. 257 U.S. 10.

prima facie (PREE-mah FAY-shee-ah) "at first view" Sufficient to establish existence, validity, credibility, etc. But does not compel a certain conclusion. Trier of the facts must weigh it. However, sufficient to avoid a directed verdict or motion to dismiss. 105 N.E.2d 454, 458; 185 N.E.2d 115, 124.

pro bono publico (proh BOH-noh POOB-lee-koh) "for the good of the public" Often just pro bono. Attorneys represent a party pro bono for the general good of the public. Done for indigent defendants in criminal cases.

procendendo (proh-say-DEN-doh) "duty to have proceeded" Commonly called a remand. A writ by an upper court when a party has improperly removed a cause to it, as by certiorari, commanding the lower court to assume jurisdiction and to proceed to judgment on the cause.

pro forma (proh FOR-mah) "for the sake of the form" In an appealable decree or judgment, usually that the court rendered decision, not upon intellectual conviction of the decree, but merely to facilitate further proceedings. 267 F. 564, 568.

pro hac vice (proh hak VEE-chay) "for this turn" The allowance of an exception; usually the permission granted an out-of-state attorney to appear in a particular case wit the same standing as an attorney admitted to practice in the jurisdiction. And a locally admitted attorney is usually the "attorney of record". 184 F.2d 119, 123; 439 U.S. 438.

pro se (proh say) "for himself" Refers to representing oneself without the aid of counsel.

pro tanto (proh TAHN-toh) "to such extent" As far as it goes. To the extent, but only to the extent. 104 N.W.2d 462, 466.

pro tempore (proh TEM-por-ray) "for the time being" Commonly abbrev'd pro tem (proh tem).

pro nunc (proh nunk) "for now"

quasi (KWAH-sih) (KWAH-see) "almost" Nearly. Almost. Cf. pseudo.

quid pro quo (kiwd proh kwoh) "what for what" Tit for tat. This for that. Something that a party receives or expects for something he promises, gives, or does. For example, a defendant's guilty plea to a lesser offense in exchange for his testimony. 209 S.W.2d 851.

q. v. (kyew vee) Abbrev. for quod vide (kwod VEE-day). "which see" (which means "refer to this")

ratio decidendi (RAH-shee-oh day-see-DEN-dee) "reason for the decision" The principle which the case establishes.

ratio legis (RAH-shee-oh LAYG-is) "legal reason" The underlying principle, reasoning, grounds, scheme, theory, doctrine, or science of the law.

reductio ad absurdum (ray-DUK-tee-oh ad ab-SUR-dum) "to reduce to the absurd" To disprove a legal argument by showing that it ultimately leads to an absurd position.

remittitur (ree-MYT-tih-tur) "send back" A reduction made by the court (without the consent) of the jury which reduces its excessive verdict. A court may not grant a remittitur for a new trial except by consent of the party unfavorably affected by it. Cf. additur. 116 S.E.2d 867, 871; 258 F.2d 17, 30.

res (reez) "the matter" The subject matter of an action. 42 N.Y.S. 626, 628.

res gestae (reez JES-tee) "things done" Rule that covers spoken words so closely connected to an event that the rule considers them part of the event. Spontaneous exclamations or statements made by participants, victims, or witnesses contemporaneous with (immediately before, during, or after) an event. Courts admit such written or oral evidence as declarations as to present bodily conditions, declarations of present mental states and emotions, and declarations of present sense impressions. 257 N.E.2d 816, 818; 432 S.W.2d 349, 352; 266 P.2d 992, 1003; 383 A.2d 858, 860; Fed. R. Evid. 803.

res judicata -or- **res adjudicata** (reez [ah] JOO-dih-KAY-tah) "the thing decided" A matter judged. A matter conclusive upon the parties in any subsequent litigation involving the same cause of action. Supported by the doctrines of repose, statute of limitations, stale claims, and finality.

respondeat superior (RAY-spon-DAY-at soo-PER-ee-or) "let the superior respond" Doctrine in a "master-slave" (employer-employee) relationship where the superior bears responsibility for an agent who acts on the superior's behalf. In common law, duty rests upon all persons to conduct their affairs so as not to injure another, whether acting directly or through another. 143 P.2d 554, 556; 9 N.W.2d 518, 521.

scienter (SEE-en-ter) "knowledge" Often signifies "guilty knowledge." Signifies a wrongful act committed designedly, understandingly, knowingly, or with guilty knowledge, usually involving fraud. 211 N.W. 346; 444 S.W.2d 498, 505.

secundum (seh-KUN-dum) "immediately after" Refers, in law publishing, to the second series of a treatise. For example Corpus Juris Secumdum.

seriatum (seh-ree-AH-tum) "in [proper] order" In order, in succession; one by one.

sic (sik) "thus" Usually used with quotes to refer to an incorrectly spelled, surprising, or paradoxical word, phrase, or fact quoted properly (not mistakenly). Usually written in brackets "[sic]."

sine die (SEE-nay DEE-ay) "without day" Legislative bodies adjourn sine die when it does not set a date to assemble again. 300 S.W.2d 806.

sine qua non (SEE-nay kwah non) "without which not" The essence of a thing. The alleged act.

status quo (STAH-tus kwoh) "existing conditions" 498 S.W.2d 42, 48; 28 P. 764, 767.

stare decisis. (STAH-ray deh-SEE-sis) "to stand by that which was decided" Rule by which common law courts "are slow to interfere with principles announced in the former decisions and often uphold them even though they would decide otherwise were the question a new one." 156 P.2d 340, 345. Although [stare decisis] is not inviolable, our judicial system demands that it be overturned only on a showing of good cause. Where such a good cause is not shown, it will not be repudiated." The doctrine is of particularly limited application in the field of constitutional law. 298 U.S. 38, 94. Cf. precedent.

sua sponte SOO-ah SPON-tay) "on one's own" Often refers to a court issuing a declaration, such as a mistrial, without motion from any party.

sub judice (sub JOO-dih-say) "under a court" Refers to the matter before the court. The case at bar. The instant case.

sub modo (sub MOH-doh) "under a qualification" Subject to a condition or qualification.

sub nomine (sub NOH-mih-nay) "under the name" Indicates that the title of a case altered during a later phase in the proceedings.

subpoena (suh-PEE-nah) from "sub poena" meaning "under penalty" A writ issued under authority of a court compelling the appearance of a witness at a judicial proceeding. Court can treat failure to comply as contempt of court. 183 N.Y.S.2d 125, 129; 12 A.2d 128, 129.

sub silencio (sub sih-LEN-shee-oh) "under silence" Refers overruling a prior authority by necessary implication of a later opinion reaching a result contrary to the apparent controlling authority.

sui generis (SOO-ee JEN-er-is) "of its own kind" Unique; in a class by itself. See ejusdem generis.

suo nomine (SOO-oh NOH-mee-nay) "in his own name"

supersedeas (soo-per SEE-dee-as) "you shall forbear" A writ commanding stay of proceedings to maintain the status quo that existed before the entry of a lower court's judgment or decree. 183 P.2d 275, 277.

supra (SOO-prah) "above" Refers to discussion or citation appearing above or before this spot. Cf. infra.

venire facias (veh-NEE-ray fah-SHEE-uhs) "to make to come [before the court]" A writ commanding a sheriff to cause to come before the court certain persons, typically jurors or parties. 46 A.2d 921, 923.

viz. (viz) Abbrev. of videlicet (VEE-deh-LEE-sit) "that is to say" That is to say. To wit. Namely. In pleadings, to explain, particularize, or specify a preceding word.
48 A. 639, 642; 116 N.W.2d 243, 244.

LEGISLATIVE WORDS AND PHRASES

annotated codes. Publications that combine state or federal statutes with summaries of cases that have interpreted the statutes. With a very few exceptions, only a law library will have annotated codes.

bill. The name of a piece of legislation when introduced in Congress or a state legislature. When both houses of a legislature passes a bill and the President or a state governor, the government will usually publish it according to its bill number in a publication called "Session Laws" or "Statutes at Large."

bill number. Legislators refer to bills by their number. The number really has two parts: the abbreviation for the specific wing of the legislature that introduced the bill, "H" or "HB" for a house bill or "S" or "SB" for a senate bill, and the number which identifies the particular bill, as in "1860." Thus, "S1860" means senate bill number 1860.

chapter. A term that identifies a group of related state or federal statutes that have been gathered together within a particular Title or Code.

chaptered. A bill becomes chaptered if it clears the legislature and the governor signs it.

citation. Formal references to statutes that describe where a government publishes a statute. For instance, the citation "23 Vt. Stat. Ann. Section 1185" means the statute in Section 1185 of Title 23 of the Vermont Statutes Annotated. And the federal citation "42 U.S.C. 1395" means the federal statute found in Title 42, Section 1395 of the United States Code.

code. In general the term "code" refers to the main body of statutes of the jurisdiction (for example, the United States Code or the Arizona State Code). A government groups its statutes in its code by subject matter (titles), as in Title 11 of the United States Code (bankruptcy laws). Some states, including California, Texas and New York, use the term "code" to refer to the overall collection of statutes and the separate subject matter groupings of statutes, as in "Penal Code," "Family Code" or "Probate Code."

engrossed. A legislative body (such as the House) engrosses a bill by voting to approve it and sending it on to the other legislative body (such as the Senate).

enrolled. A legislature enrolls a bill when both houses of a legislative body approve it and send it on to the executive branch (the President or a governor) for signing.

legislative history. Assorted materials generated in the course of creating legislation, including committee reports, analysis by legislative counsel, floor debates and a history of actions taken. You can find legislative history for recently enacted federal statutes at http://thomas.loc.gov/. You usually cannot find legislative history for state statutes on the Web.

session laws. When a bill become law, the legislature publishes it in a text according to the session of the legislature that enacted them into law. For instance, the California legislature passed laws in 1999 in its 1999-2000 session. You can find the individual laws in the publication for a particular session (such as Session Laws 1999-2000) according to their original bill number.

sponsor. Those legislators that introduce a bill.

statutes at large. See Session Laws.

statutory schemes. Groups of statutes that relate to one particular subject. For instance, all of the federal statutes that make up Title VII of the Civil Rights Act (which forbids employment discrimination and sexual harassment) amount to a statutory scheme because they all relate to each other.

title. In the federal system and in some states, "title" denotes a collection of state or federal statutes by subject matter, as in Title 11 of the U.S. Code for bankruptcy statutes or Title 42 of the U.S. Code for civil rights statutes. The word "title" also denotes a group of statutes within a larger set of statutes, as in Title IX of the Civil Rights Act (itself located in Title 42 of the U.S. Code).

LEGAL QUOTATIONS

(Sayings and quotes about law and the legal system.)

APPEALS.

It is needless to enter into many reasons for quashing the conviction, when one alone is sufficient.
– William Murray, British chief justice (1756)

The appellant goes before the appeals court as a plaintiff claiming he suffers a wrong committed by the justice system. – *We the People Legal Primer*

ARGUMENTS.

Prepare your proof before you argue.
– Jewish proverb

Arguments derived from probabilities are idle.
– Plato, *Phaeto* c. late 4th century BC

[He] who overrefines his arguments brings himself to grief.
– Petrarch, c.1350

Be calm in arguing; for fierceness makes error a fault and truth a discourtesy. – George Herbert, 1633

Be brief, be pointed, let your matter stand
Lucid in order, solid and at hand;
Spend not your words on trifles but condense;
Strike with the mass of thought, not drops of sense;
Press to the close with vigor, once begun,
And leave – how hard the task! – leave off when done.
– Joseph Story, *Advice to a Young Lawyer*, 1835

But to generalize is to omit...
– Oliver Wendell Holmes Jr., 208 U.S. 267, 273 (1908)

The obvious is better than obvious avoidance of it.
– H W Fowler, *A Dictionary of Modern English Usage*, 1926

A doctrine capable of being stated only in obscure and involved terms is open to reasonable suspicion of being either crude or erroneous. – Sir Frederick Pollock, 1845-1937

The more you explain it,
the more I don't understand it. – Mark Twain

The best way to win an argument
is to begin by being right – Jill Ruckelshaus, 1973

CASES.

The laws are adapted to those cases which most frequently occur. – Legal maxim

Decided cases are the anchors of the law.
– Francis Bacon, *De Augumentis Scientiarum*, 1623

A case is only an authority for what it actually decides. I deny it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logical at all. – Hardinge Stanley Giffard, English jurist, lord chancellor, Quinn v. Leathem, 1901

The job of the courts is not to dispose of cases but to decide them justly. – Jim Carrigan, American jurist, justice, Supreme Court of Colorado, 1977

[Law is called] a glorious uncertainty.
– Horace Mayhew, English journalist, 1848

COMPETITION.

One bush, they say, can never hide two thieves.
– Aristophanes, *The Wasps*, 422 BC

CONSEQUENCES.

When anything is forbidden, everything which leads to the same result is also forbidden. – Latin legal saying

CONSTITUTION.

Our Constitution is in actual operation; everything appears to promise that it will last; but in this world nothing is certain but death and taxes. – Benjamin Franklin, 13 Nov 1789

Constitutions are intended to preserve practical and substantial rights, not to maintain theories.
– Oliver Wendell Holmes Jr., 194 U.S. 451, 457 (1904)

...the ultimate touchstone of constitutionality is the Constitution itself and not what we have to say about it.
– Felix Frankfurter, 306 U.S. 466 (1939)

While the Declaration [of Independence] was directed against an excess of authority, the Constitution was directed against anarchy. – Robert H Jackson, *The Struggle for Judicial Supremacy*, 1941

The validity of a doctrine does not depend on whose ox it gores. – Robert H Jackson, 364 U.S. 388, 406 (1960)

COURTS.

The business of the court is to try the case, not the man; and a very bad man may have a very righteous case.
– Anonymous, Thompson v Church, 1 Root 312 (1791)

The penalty for laughing in a courtroom is six months; if it were not for this penalty, the jury would never hear the evidence. – H L Mencken, 1880-1956

Courtroom: A place where Jesus Christ and Judas Iscariot would be equals, with the betting odds in favor of Judas. – H L Mencken

CRIME.

No crime is founded upon reason.
– Livy, *History of Rome*, c.10 BC

There is no crime without a precedence.
– Seneca, *Hippolytus*, c. 60 AD

The source of every crime is some defect in understanding, or some error in reasoning, or some sudden force of the passions. – Thomas Hobbes, *Leviathan*, 1651

CRIMINALS.

The act is not criminal unless the mind is criminal.
– Legal maxim

The wrathful man does not see the law.
– Publilius Syrus, 1st century BC

DECISIONS.

Out of thy mouth I will judge thee.
– *New Testament, Luke* 19:22

DEFENSE.

Even God himself did not pass sentence upon Adam before he was called upon to make his defense: "Adam, where are you?" ... "Have you eaten of the tree which I commanded you not to eat?" ... "Why did you do that?"
– *Old Testament, Genesis*

DOUBT.

An honest man can never surrender an honest doubt.
– Walter Malone, 1866-1915

DUE PROCESS.

No man should be condemned unheard. – Legal maxim

That no man of what estate or condition, shall be put out of land or tenement, nor taken nor imprisoned, nor disinherited, nor put to death, without being brought in answer by due process of law. – *Statute of Westminister*, c. 13th century

ERRORS.

The cautious seldom err. – Confucius, *Analects*, c.500 BC

Delay is preferable to error. – Thomas Jefferson to George Washington, a letter written 16 May 1792

EVIL.

Better to suffer a great evil at the hand of another than to commit a little one yourself. – Proverb

Evil deeds never prosper.
– Homer, *Odyssey*, c. 8th century BC

Of two evils we should always choose the less.
– Thomas Kempis, *Imitation of Christ*, c.1420

INNOCENCE.

It is better than ten guilty persons escape than one innocent suffer. – Sir William Blackstone, *Commentaries on the Laws of England*, 1765-1769

Today, the grand jury is the total captive of the prosecutor who, if he is candid, will concede that he can indict anybody, at any time, for almost anything, before a grand jury. – William J Campbell, American jurist, judge, US District Court, *US News & World Report*, 19 June 1978

Those who make the attack ought to be very well prepared to support it. – Sir Giles Rooke, English jurist, *Almgill v Pierson* (1797) 2 Bos. & Pull. 104

[A] plaintiff must show that he stands on fair ground when he calls on a Court of justice to administer relief upon him. – Sir Lloyd Kenyon, English jurist, lord chief justice, *Booth v Hodgson* (1795), 6 T.R. 409

JURIES.

Let the judge answer the question of law; the jury on the question of fact. – Latin legal phrase

Twelve good honest men shall decide in our cause, And be judges of fact though not judges of law.
– William Pulteney, Earl of Bath, 1684-1764

Every new tribunal, erected for the decision of facts, without the intervention of a jury ... is a step towards establishing aristocracy, the most oppressive of absolute governments.
– Sir William Blackstone, *Commentaries on the Laws of England*, 1765-1769

JUSTICE.

Justice is blind, he knows nobody.
– John Dryden, *The Wild Gallant*, 1663

Justice, I think, is the tolerable accommodation of the conflicting interests of society, and I don't believe there is any royal road to attain such accommodations concretely. – Learned Hand, *Life*, 4 Nov 1946

LAW.

Every law has a loophole. – Proverb

Where no law is, there is no transgression.
– Bible, *New Testament*, *Romans* 4:15

The law is good if a man use it lawfully.
– Bible, *New Testament*, 1 *Timothy* 1:8

Taking the law into one's own hands.
– Aesop, *Fables*, c.620-560 BC

Law can never issue an injunction binding on all [parties] which really embodies what is best for each; it cannot prescribe with perfect accuracy what is good and right for each member of the community at any one time. The differences of human personality, the variety of men's activities and the inevitable unsettlement attending all human experience make it impossible for any act whatsoever to issue unqualified rules holding good on all questions at all times. – Plato, *Politicus*, 427?-347 BC

Even when laws have been written down, they ought not always to remain unaltered. – Aristotle, *Politics*, c.322 BC

Law is a pledge that citizens of a state will do justice to one another. – Aristotle, *Politics*, c.322 BC

Law is reason free from passion. – Aristotle, 384-322 BC

Time is the best interpreter of every doubtful law.
– Dionysius of Halicarnassus, *Antiquities of Rome*, c. 20 BC

No law perfectly suits the convenience of every member of the community; the only consideration is, whether upon the whole it be profitable to the greater part.
– Livy, *History of Rome*, c. 10 BC

The precepts of law are these: to live honorably, to injure no other man, to render every man his due.
– Justinian I, *Institutes*, c. 533

There is no worst torture than the torture of laws.
– Francis Bacon, "Of Judicature," *Essayes*, 1597

Laws are spiders' webs, which stand firm when any light and yielding object falls upon them, while a larger thing breaks through them and escapes. – Solon, Diogenes Laertius, *Lives of Eminent Philosophers*, 3rd Century

Possession is nine points of the law.
– Thomas Fuller, *Holy War*, 1608-1661

Where good laws are, much people flock thither.
– Benjamin Franklin, *Poor Richard's Almanack*, 1734

Let all laws be clear, uniform, and precise;
to interpret laws is almost always to be corrupt.
– Voltaire, *Philosophical Dictionary*, 1764

The standards of the law are standards of general application. The law takes no account of the infinite varieties of temperament, intellect, and education which make the internal character of a given act so different in different men. It does not attempt to see men as God sees them.
– Oliver Wendell Holmes Jr., US Supreme Court justice, in *The Common Law*, 1881

For law's sake only, to be held in bonds?
– Algernon Charles Swineburne, *Mary Smart*, 1881

It is the capacity to command free assent that makes law a substitute for power. The force of legitimacy — and conversely the habit of voluntary compliance — is the

foundation of the law's civilizing and liberalizing influence. Indeed ... law in this sense is the very fabric of a free society. – Arichbald Cox, et al, *Civil Rights, the Constitution, and the Courts*, 1967

In the whole history of law and order the longest step forward was taken by primitive man when, as if by common consent, the tribe sat down in a circle and allowed only one man to speak at a time.
– Derek Curtis Bok, "*If We Are to Act Like Free Men...*" Saturday Review, 13 Feb 1954

Crime is contagious. If the Government becomes a lawbreaker, it breeds contempt for the law; it invites every man to become a law unto himself; it invites anarchy. – Louis Brandeis, *Olmstead v United States,* 277 U.S. 438 (1928)

This won't be the first time I've arrested somebody and then built my case afterward.
– James Garrison, district attorney, New Orleans LA

I'm not against the police, I'm just afraid of them.
– Alfred Hitchcock (He actually feared the police.)

It is not better that all felony suspects die than that they escape. Where the suspect poses no immediate threat to the officer and none to others, the harm resulting from failure to apprehend him does not justify the use of deadly force to do so. – Byron T White, *Tenn. v Garner*, US Supreme Court decision, 27 Mar 1985

LEGAL STUDIES.

To be a lawyer you have to learn to work off of precedents and to explore statutory ambiguities. But you should also understand that the law is not a disciplined set of rules. The landscape in which the law exists is changing.
– Charles Halpern, American educator, dean, City University of New York Law School at Queens College, *New York Times*, 14 Sep 1982

MOTIVES.

The act does not constitute a criminal unless the mind is criminal. – Latin legal phrase

Acts indicate the intention. – Legal maxim

An act against my will is not my act. – Legal maxim

What passes in the mind of man is not scrutable by any human tribunal; it is only to be collected from his acts.
– Sir John Willes, English jurist, *King v Shipley* (1784), 3 Doug. 177

NATURAL LAW.

It would not be correct to say that every moral obligation involves a legal duty; but every legal duty is founded on a moral obligation. – John Duke Coleridge, English jurist, lord chief justice, *The Queen v. Instam* (1893)

The law that will work is merely that summing up in legislative form of the moral judgment that the community has already reached. – Woodrow Wilson

NEED.

Inability suspends the law. – Latin legal phrase

No one is held bound to the impossible. – Latin legal phrase

The law does not seek to compel a man to do that which he cannot possibly perform. – Legal maxim

OBEDIENCE.

A strict observance of the written laws is doubtless one of the highest duties of a good citizen, but it is not the highest. The laws of necessity, of self preservation, of saving our country when in danger, are of a higher obligation. ... To lose a country by a scrupulous adherence to written law would be to lose the law itself, with life, liberty, property and all those who are enjoying them with us; thus absurdly sacrificing the ends to the means. – Thomas Jefferson

No man is above the law and no man is below it; nor do we ask any man's permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor. – Theodore Roosevelt

OPINIONS.

Our opinions are best provisional hypotheses.
– Learned Hand, American jurist

It is true of opinions as of other compositions that those who are seeped in them, whose ears are sensitive to literary nuances, whose antennae record subtle silences, can gather from their contents meaning beyond the words. – Felix Frankfurter

PLEAS.

It's only because we have plea bargaining that our criminal justice system is still in motion. That doesn't say much for the quality of justice. – Dorothy Wright Wilson, dean, University of S. California Law Center

Because of plea-bargaining, I guess we can say, "Gee, the trains run on time." But do we like where they are going? – Franklin E Zimring, American educator, professor, University of Chicago

POWER.

Power delegated cannot exceed that which was its origin. – Legal maxim

PRECEDENTS.

The doctrine of the law then is this: that precedents and rules must be followed, unless flatly absurd or unjust; for though their reason be not obvious at first view, yet we owe such a deference to former times as not to suppose that they acted wholly without consideration. – Sir William Blackstone

When a judge challenged Rufus Choate, the famous Massachusetts lawyer, to cite a precedent for his argument before the court, he replied: "I will look, your honor, and endeavor to find a precedent if you require it; though it would seem a pity that the court should lose the distinction of being the first to establish so just a rule." – Rufus Choate

The life of the law has not been logic; it has been experience. – Oliver Wendell Holmes Jr.

There is no superstitious sanctity attached to precedent ... Courts can only maintain their authority by correcting their errors to accord with justice and the advance and progress of each age. – Walter Clark, American jurist

The law can be compared to the fictional Killy-loo bird, a creature that insist on flying backward because it didn't care where it was going but was mightily interested in where it had been. – Fred Rodell, professor, Yale Law School

PREJUDICE.

We must be ever on our guard, lest we erect our prejudices into legal principles. – Louis Brandeis, justice, US Supreme Court, *New State Ice Co v. Liebmann*, 285 U.S. 262, 311 (1932)

PROSECUTION.

Those who make the attack ought to be very well prepared to support it. – Sir Giles Rooke, English jurist, *Almgill v. Pierson* (1797), 2 Bos. & Pull. 104

Today, the grand jury is the total captive of the prosecutor who, if he is candid, will concede that he can indict anybody, at any time, for almost anything, before a grand jury. – William J Campbell, American jurist, judge, US District Court, *US News & World Report*, 19 June 1978

PUNISHMENT.

No pain equals that of an injury inflicted under the pretense of a just punishment. – Luperico Leonardo de Argensola, Spanish poet and dramatist, *Sonetos*

RIGHTS.

Rights are lost by disuse. – Latin legal phrase

The laws assist those who are vigilant, not those who sleep over their rights. – Legal maxim

In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the State has undertaken to provide it, is a right which must be made available to all on equal terms. – Earl Warren, *Brown v. Board of Education of Topeka*, 347 U.S. 483; 74 S. Ct. 686

The First Amendment is often inconvenient. But that is beside the point. Inconvenience does not absolve the government of its obligation to tolerate speech.
– Justice Anthony M. Kennedy. U.S. Supreme Court

RULE OF LAW.

What due process of law means to Americans ... is bound up with our traditional notions of Magna Carta. Whether all that has been read into [that] document is ... legally sound, is not of first importance; belief itself is a historical fact, ... legend and myth cannot be left out of account on tracing the sequence of cause and effect. – Helen M Cam, English historian

Too often, practitioners of the law are ... not creators of legal justice and do not, in fact, understand, the philosophical bases of law, its ultimate goals, or its importance ... in a democratic society. It should be the role of universities to constantly explore the possibilities of improving the rule of law, of constantly studying the extension of the rule of law, of constantly working for the universalization of the basic principles which lead to an international conformity of basic law. It should be the role of universities to study the extension of law to other areas of human disputes and arguments and violence, so as to substitute basic principles and rational procedures for prejudice and violence. – Robert John Henle, American educator, president, Georgetown University

SELF-INCRIMINATION.

The critical point is that the Constitution places the right of silence beyond the reach of government.
– William O Douglas, justice, US Supreme Court, *Ullman v. United States*, 350 U.S. 422, 76 S. Ct. 497 (1956)

SENTENCES.

The toughest part of this job is sentencing. I've lost all kinds of sleep over sentences. I find it dreadful.
– Malcolm Muir, American jurist, judge, United States District Court, *San Francisco Examiner & Chronicle*, 8 March 1981

SEVERITY.

There is a point beyond which even justice becomes unjust. – Sophocles, *Electra*, c. 409 BC

SUPREME COURT.

By the very nature of the functions of the Supreme Court, each member of it is subject only to his own sense of the trusteeship of what are perhaps the most revered traditions on our national system.
– Felix Frankfurter, 63 *Harvard Law Review*, 1, 2 (1949)

TORTS.

It is a vain thing to imagine a right without a remedy; for want of right and want of remedy are reciprocal. – Sir John Holt, English jurist, chief justice, *Ashby v. White* (1703) 2 Raym. 953

That great principle of the common law which declares that it is your duty so to use and exercise your own rights as not to cause injury to other people.
– Sir Charles James Watkin Williams, English jurist, *Gray v. North-Eastern Rail. Co* (1883) 48 L.T.R. 905

TRIALS.

It is abominable to convict a man behind his back.
– Sir John Holt, English jurist, chief justice, *The Queen v. Dyer* (1703) 6 Mod. 41

In criminal trials a state can no more discriminate on account of poverty than on account of religion, race or color.
– Hugo Black, *Griffin v. Illinois*, 351 U.S. 12, 19; 76 S. Ct. 585; 55 A.L.R.2d 1055 (1956)

Guilt or innocence become irrelevant in a criminal trial as we flounder in a morass of artificial rules, poorly conceived and often impossible of application. Like the hapless centipede on the flypaper, our efforts to extricate ourselves from this self-imposed dilemma will, if we keep it up, soon have all of us immobilized. – Warren E Burger, justice, US Supreme Court, *Washington Post*, 26 May 1969

Those who think that the information brought out at a criminal trial is the truth, the whole truth, and nothing but the truth are fools. Prosecuting or defending a case is nothing more than getting to those people who will talk your side, who will say what you want said. ... I use the law to frustrate the law. But I didn't set up the ground rules. – F Lee Bailey, *New York Times Magazine*, 20 September 1970

[Preparation] is the be-all of good trial work. Everything else — felicity of expression, improvisational brilliance — is a satellite around that sun.
– Louis Nizer, *Newsweek*, 11 December 1973

To work effectively, it is important that society's criminal process "satisfy the appearance of justice," ... and the appearance of justice can best be provided by allowing people to observe it. – Warren E Burger, *Richmond Newspapers Inc v. Virginia*, 488 U.S. 555; 100 S. Ct. 2814 (1980)

TRUTH.

And, finally, that truth is great and will prevail if left to herself; that she is the proper and sufficient antagonist to error; and has nothing to fear from the conflict unless by human interposition disarmed of her natural weapons, free argument and debate; errors ceasing to be dangerous when it is permitted freely to contradict them. – Thomas Jefferson

Truth and falsehood, it has been well said, are not always opposed to each other like black and white, but oftentimes, and by design, are made to resemble each other so as to be hardly distinguishable; just as the counterfeit thing is counterfeit because it resembles the genuine thing. – Sir Anthony Cleasby, English jurist, *Johnson v. Emerson*, (1871), L.R. 6 Ex. Ca. 357.

All sides in a trial want to hide at least some of the truth. The defendant wants to hide the truth because he's generally guilty. The defense attorney's job is to make sure the jury does not arrive at that truth. The prosecution is perfectly happy to have the truth of guilt come out, but it, too, has a truth to hide; it wants to make sure the process by which evidence was obtained is not truthfully presented because, as often as not, that process will raise questions. – Alan M Derschowitz, *US News & World Report*, 9 August 1982

TYRANNY.

The purpose of law is to prevent the strong from always having their way. – Ovid, Roman poet, *Fasti*, ch. 8

It is from petty tyrannies that larger ones take root and grow. This fact can be no more plain than when they are imposed on the most basic rights of all. Seedlings planted in the soil grow great, and, in growing, break down the foundations of liberty. – Wiley B Rutledge, *Thomas v. Collins*, 323 U.S. 516; 65 S. Ct. 315 (1944)

WITNESSES.

One eye-witness is worth more than ten who tell what they have heard. – Plautus, Roman playwright, *Truculentus*

We better know there is a fire whence we see much smoke rising than we could know it by one or two witnesses swearing to it. The witnesses may commit perjury, but the smoke cannot. – Abraham Lincoln

There is an old story of blind men trying to describe an elephant. One felt it's leg and declared that the elephant was like a tree; another felt its enormous side and said the elephant was like a wall; while a third felt the tail and was positive that the elephant was like a rope. Each man had a notion of reality that was limited by the number and kind of attributes he had perceived. – Wayne C Minnick, American educator, *The Art of Persuasion*, 1957

WORDS.

All laws are promulgated for this end: that every man may know his duty; and therefore the plainest and most obvious sense of the words is that which must be put on them. – Sir Thomas More, *Utopia*, 1516

The heaviest thing that is, is one "et cetera." – John Florio, *Firste Fruites*, 1578

You do not examine legislation in the light of the benefits it will convey if properly administered, but in the light of the wrongs and the harms it would cause if improperly administered. – Pres. Lyndon B. Johnson

A word must become a friend or you will not understand it. Perhaps you do well to be cool and detached when you are seeking information, but I remind you of the wife who complained, "When I ask John if he loves me, he thinks I am asking for information." – Sir Edward Coke, *Case of Swans* (1592) 7 Rep. 15, 17

In the case at bar, also, the logic of words should yield to the logic of realities. – Louis D Brandeis, Justice, US Supreme Court, Di Santo v. Pennsylvania, 273 U.S. 34; 47 S. Ct. 267 (1927)

Words, after all, are symbols, and the significance of the symbols varies with the knowledge and experience of the mind receiving them. – Benjamin N Cardozo, *Cooper v. Dasher*, 290 U.S. 106, 54 S. Ct. 6, 78 (1933)

We live by symbols, and what shall be symbolized by any image of the sight depends upon the mind of him who sees it. – Oliver Wendell Holmes Jr., justice, US Supreme Court

There is no surer way to misread a document than to read it literally. – Learned Hand, American jurist, *Guiseppi v. Walling*, 324 U.S. 244, 65 S. Ct. 605 (1944)

Law has always been unintelligible, and I might say that perhaps it ought to be. And I will tell you why, because I don't want to deal in paradoxes. It ought to be unintelligible because it ought to be in words — and words are utterly inadequate to deal with the fantastically multiform occasions which come up in human life. – Learned Hand, American jurist, "*Thou Shalt Not Ration Justice*," *Brief Case*, 4 November 1951

A word may denote to an advocate something which he wished an audience to understand; yet it may have communications which will produce antagonistic impression. The resulting ambiguity can lead to misunderstanding of meaning. In 1954, such a connotative ambiguity victimized Secretary of Defense Charles Wilson. Discussing the plight of unemployed workers while in Detroit, Wilson expressed the opinion that they should show more initiative in seeking reemployment, and concluded saying, "Personally, I like bird dogs better than kennel-fed dogs ... bird dogs like to go out and hunt for food, but the kennel-dogs just sit on their haunches and yelp." – Wayne C Minnick, American educator, *The Art of Persuasion*, 1957

FORMS OF ADDRESS AND SALUTATIONS

Forms of address for use in external addresses on envelopes and in internal addresses on letters. Salutations for use as the greeting in a letter.

When writing to women, please substitute the appropriate word(s) in parentheses for the previous word(s) shown.

Attorney

address Mr. John(Ms. Jane) Smith
Attorney at Law
–or–
John(Jane) Smith, Esq.

salutation Dear Mr.(Ms.) Smith:

Attorney General (state)

address The Honorable John(Jane) Smith
Attorney General State of _____

salutation Dear Mr.(Madam) Attorney General:

Attorney General (US)

address The Honorable John(Jane) Smith
Attorney General of the United States

salutation Dear Mr.(Madam) Attorney General:

Chief Justice (US Supreme Court)

address The Chief Justice of the United States

salutation Dear Mr.(Madam) Chief Justice:
–or–
Sir:(Madam:)

Chief Justice/Associate Justice (US Supreme Court)

address The Honorable John(Jane) Smith

salutation Dear Mr.(Ms.) Smith:
–or–
Dear Mr.(Madam) Justice:

Clerk (County)

address The Honorable John(Jane) Smith

salutation Dear Mr.(Ms.) Smith:

Clerk (of a court)

address John(Jane) Smith, Esq.
Clerk of the Court of _____

salutation Dear Mr.(Ms.) Smith:

District Attorney

address The Honorable John(Jane) Smith
District Attorney

salutation Dear Mr.(Ms.) Smith:

Governor

address The Honorable John(Jane) Smith
Governor of _____

salutation Dear Governor Smith:

Judge (federal)

address The Honorable John(Jane) Smith
Judge of the United States
District Court for the _____
District of _____

salutation Sir:(Madam:) –or– Dear Judge Smith:

Judge (state or local)

address The Honorable John(Jane) Smith
Judge of the United States

salutation Sir:(Madam:) –or– Dear Judge Smith:

Lieutenant Governor

address The Honorable John(Jane) Smith
Lieutenant Governor of _____

salutation Dear Mr.(Ms.) Smith:

Mayor

address The Honorable John(Jane) Smith
Mayor of _____

salutation Dear Mayor Smith:

President (US)

address The President
The White House

salutation Dear Mr. President:

Representative (state)

address The Honorable John(Jane) Smith

salutation Dear Mr.(Ms.) Smith:

Representative (US)

address The Honorable John(Jane) Smith
United States House of Representatives

salutation Dear Mr.(Ms.) Smith:

Secretary of State (state)

address The Honorable John(Jane) Smith
Secretary of State
State Capitol

salutation Dear Mr.(Madam) Secretary:

Senator (state)

address The Honorable John(Jane) Smith
The State Senate
State Capitol

salutation Dear Senator Smith:

Senator (US)

address The Honorable John(Jane) Smith
United States Senate

salutation Dear Senator Smith:

ENGLISH GRAMMAR AND USAGE

English Prime (also E-Prime or E´)

A variation of the English Language called "English Prime" or "E-Prime" represents reality in a more accurate and more positive manner. English Prime does this by not using any form of the verb "to be" (am, are, is, was, were, aren't, isn't, wasn't, weren't, I'm, you're, he's, she's, it's, we're, they're). Instead of writing,

"The Habeas Corpus was filed in court,"

"John Doe was charged with four felonies,"

"The suspect was violent,"

"He is a terrorist," or

"He was entering the house,"

someone using English Prime might write:

"The defendant filed the Habeas Corpus in court,"

"DA Smith charged John Doe with four felonies,"

"A witness described the suspect's behavior as violent,"

"The police suspect him of terrorist activity," or

"A neighbor says he saw him entering the house."

Notice how the E-Prime versions show who acted ("defendant filed" "prosecutor charged" "the witness described," etc) as compared to the common, but more passive and vague versions from popular English usage. Where possible, the We the People Legal Primer uses E-Prime because of its "active voice," its use of fewer words, and its more direct and honest reference to and description of reality. The author encourages readers to use English Prime in their writings, speech, and thoughts, and he recommends lots of practice with it.

Of grave importance to convicted persons, the use of E-Prime eliminates the definitions of persons that has plagued our thoughts and reasoning for ages. Consider, for example, the declaration that:

"John Doe is a thief."

This horrifically powerful sentence declares him as only a thief and nothing but a thief, and that he can never amount to anything other than a thief. It also implies interchangeability between him and a thief. Need a thief? Enlist John Doe who, with the robot-like mentality that the above statement attributes to him, will exercise the thievery skills required. The statement implies a present and persistent state — "thief" means "someone who steals" and makes the statement mean "John Doe is someone who steals" or "John Doe steals" — as if he steals right now — a present and ongoing activity!

Such lousy thinking involved with that poor wording forces people to come to grips with the difficulty of ever determining that:

"John Doe is no longer a thief."

To say today "This is an orange" and to say tomorrow (about the same thing) "This is not an orange" goes against our reasoning, even though it has rotted into an unfamiliar mess. Once we define John Doe as a thief, we cannot then re-define him as a non-thief. These types of declarations in standard English have no expiration date – they exist forever! Instead, consider an E-Prime version:

"John Doe stole a car in 1989."

Such an E-Prime statement corresponds with reality in every detail. It defines the single criminal act which concerns the government and, of which, the government found him guilty. It allows the government to consider what John Doe "has done since then" for purposes of determining parole eligibility.

Obviously, as victims of people's need to "define" others, we take great interest in the meanings and usages of words. Notice that people habitually define others as they define inanimate objects. Join in the E-Prime movement and take a step closer to reality.

Criminal. One who has committed a crime, or one whom a court has convicted of committing a crime. Thus, according to standard English: Once a criminal, always a criminal.

Convictions. Clearly, equating a person with a stereotype using standard English fails to represent reality. Let's face the facts: anyone can hurt others, steal, or lie; and, thus, everyone has the potential for becoming an "assailant," a "thief," or a "liar." E-Prime helps to eliminate the tools necessary for us to "label people." Also, the constitution empowers only courts to convict a defendant — defendant's cannot convict themselves. Thus, "being a convict" (forgive my standard English) always results from an act of a court, but not always from an act of a defendant. As everyone knows, courts haven't convicted some people who did commit a crime, while courts have convicted some people who did not commit a crime. Be aware that many wrongful convictions by courts amount to "over-convicting" defendants, for example, finding them guilty of murder instead of manslaughter, or guilty of seven burglaries instead of the three that they actually committed.

Ex-convict? A "convict" means someone convicted — "someone found or declared guilty of an offense or crime." So, would the word "ex-convict" mean "someone formerly found or declared guilty of an offense or crime?" Doesn't make sense, does it? It doesn't make sense because the word "ex-convict" doesn't really exist – at least not in dictionaries – but only in the

minds of wishful thinkers. The same holds true for the word "ex-offender." It doesn't exist in dictionaries. If we support the fallacy of the standard English language for labeling people, then: once a convict, always a convict; once an offender, always an offender.

Expirations. In standard English, all other such labels have expirations dates. When someone stops managing, people stop labeling him as "a manager." When someone stops waiting on tables, people stop labeling her as "a waitress." You certainly understand the obvious point here. Try asking a classification or parole board when the label of "convict," "offender," "killer," "thief," or whatever expires. (if you do this, try asking politely.) They may not love you for it, but it certainly may give them cause to think. (A sarcastic response from them: "Isn't that up to you, Mr. Doe?")

Everyone has a nasty label. As a little kid, we all have stolen something or lied. So, by using standard English, "Everyone is a thief and a liar" – FOREVER. Virtually everyone has exceeded the speed limit at some point in their lives. Thus, "Nearly everyone is a speeder." And the Bible says, "everyone is a sinner!" (Speaking of labels, some Bible scholars find interest in the passage where God allows Adam to "name" things.)

Final point. Do we all look at each other and recognize ourselves as the eternal liars, thieves, speeders, and sinners that the false and harmful labeling process makes of all of us, or do we honestly confront the labeling process and admit that it contains fatal flaws that cannot survive any test against reality??

Media Spin and Its Savage Games of Words

Subjects, Actions, and Offenses. Pay careful attention to the subject of sentences, the verbs (actions), and the descriptions of events. "The state will try John Doe for the murder of Fred Smith." Already, the author of that statement has declared Smith's death as, not only a crime, but also murder. "John Doe murdered Fred Smith, according to police." Notice the subject and verb, and notice the disclaimer which, although grammatically correct, comes a bit too late psychologically — the tabloid-style "John murdered Fred" statement (not a claim) has done its damage in the readers' minds.

Fair coverage. If the media wanted truly fair coverage of the news, it would use English such as: "Police label Fred Smith's death a murder," and "Police bring murder charge against John Doe." But the media doesn't focus on what the police do because it doesn't sell newspapers or airtime. Instead, the media uses current police actions as "stalking horses" to snipe and defame criminal defendants.

Media, the illegal forum. The police, prosecutors and media work hand-in-hand to try criminal defendants in the public forum prior to the court trial. They ruin a defendant's chance of a trial before a fair and impartial jury, and they know that they do this. The state, and the media as its henchmen, unilaterally inject copious amounts of accusations, both true and false, into the public. The defendant should not — cannot — effectively defend himself in this illegal forum without giving away his legal defense for use later in court. Thus, the state and the media poison the public and prevent the defendant from later defending himself in front of a fair and impartial jury. The state and its media henchmen sadistically crucify the unfortunate defendant and psychologically brutalize his family and friends. And they perform an injustice to society in general.

Gender spin. Notice how newspapers and newscasters word accusations differently for men and women: "John Doe murdered Fred Smith, according to police," but "Police arrest Jane Doe in Fred Smith's death." Notice the subject of the sentences, the actions, and the overall idea conveyed: "John murdered Fred," but "Police charge Jane." Some media accounts regarding female suspects never actually state the charge. For whatever reason, society seems to hold men more accountable for their actions than women. Perhaps men should get some fair play … at least from the media.

Media — The black birds that sit on tombstones. The media in general, and not just the paparazzi, should bear the nickname of "black birds that sit on tombstones."

The Dehumanizing of a Person Involves Words

Criminality begins with potential perpetrators dehumanizing potential victims in their own minds.

Anthropomorphism (Greek: *anthropos* = human, *morphe* = shape) refers to attributing human motivation, characteristics, or behavior to inanimate object, animals, or natural phenomena. This amounts to describing: mountains as "wise," animals as "loving," and storms as "angry." Language experts consider anthropomorphism as poor and undeveloped thinking or, at best, poetic or humorous language.

Likewise, attributing animal characteristics, motivation, or behavior to humans also comes from poor and underdeveloped thinking. This amounts to describing a person as "a monster," "an animal," and so on. People should consider these uses as serious prejudices and as inhuman roots of evil and criminality. This thinking dehumanizes people and allows the perpetrator to treat humans as something other than human. (Consider the excuses used by death penalty proponents.)

A person, who attributes animal or sub-human characteristics to another person, lowers him or herself into the dangerous and frightening realm of criminality. People, who use such an attitude, strip their victims of more than their personal identity – they strip them of their human identity. Thus, the potential perpetrator begins by thinking about and looking upon their victim as something non-human, something not deserving of human consideration and respect.

This potential for criminality applies to regular citizens and also to the media, police, prosecutors, jurors, judges, executioners, parole boards, and other government officers. Thus people in government can consider warehousing, torturing, and murdering their victims without the belief that they do these things to humans – because they look upon their targets as animals. This one "is a monster," that one "is an animal," and so on.

We lose track of reality when we start labeling people.

Sapir–Whorf–Korzybski Hypothesis

This hypothesis (theory) implicitly includes the topic of English Prime described in the section above.

Three linguists (Edward Sapir 1897-1941, Benjamin Whorf 1884-1939 [not the Star Trek alien], and Alfred Korzybski 1879-1950) contributed their ideas about language and perception to their hypothesis which, in essence, states:

> The grammar and the words and their definitions that a person uses also influences and shapes that person's perception of reality.

The author of this legal primer believes this, and encourages readers: to acquire a dictionary and a thesaurus (thih-SOAR-us), to expand their vocabulary, to pay closer attention to subtle shades of meaning among seemingly identical words, and perhaps to learn a new language. To quote an old adage:

> "To learn another language is to gain another soul."

Writing Arabic (Standard) Numerals

Arabic numerals refer to our standard numbers (0 through 9) as compared, for example, to Roman numerals. (European languages adopted and modified these numerals from the Arabic language.) Anyway, when writing numbers one through nine in a sentence, write out the names of the numbers (one, two three, ...). When writing numbers greater than nine, use the Arabic numerals (10, 11, 12, ...). For example, "...four of the nine justices..." as compared to "...the 50 states..." However, spell out all numbers that begin sentences; for example, "Fifty police officers raided the house." Use Arabic numerals when citing legal publications – do not convert them to words.

Roman Numerals

Some legal authors and authorities continue to use Roman numerals to enumerate pages, paragraphs, sections, the year, and so on.

I = 1 V = 5 X = 10 L = 50
C = 100 D = 500 M = 1,000

Reading. Read Roman numerals from left to right; add the values as you read. Add equal valued numerals together; also add smaller numerals that follow larger ones. But – subtract a smaller numeral from the larger numeral that it comes before. Thus,

VI = 6 … but IV = 4 MC = 1,100 … but CM = 900

Writing. Write Roman numerals from left to right starting with the largest available values. Thus, "327" begins "CCC..." which means 300. Don't use more than three I's or X's or C's; instead, use the subtract rule. Thus,

CD (not CCCC) = 400 ix (not viiii) = 9

Don't subtract a V, L, or D because VX = 10 – 5 = 5, which is just V; LC = 100 – 50 = 50, which is just L; and DM = 1000 – 500 = 500, which is just D.

Use Roman numerals as capitals (MCMXXIV = 1,924) or as small letters (xvii = 17). Both styles can represent to the same value. However, don't use capitals for small letters or vice versa. Thus, don't write "XVII" for a page originally numbered as "xvii." And, don't mix capitals and small letters together (don't write "LVii" or "xXIil").

Using "Who" and "Whom"

Who. Use "who" as the "doer" of an action. Thus, "Who cooked dinner?", "The guy who drove the car."

Whom. Remember the "Ends With M" Rule: Use "whom" as you would use "him" or "them." Thus,

"by them" – "by whom" "ask him" – "ask whom"
"against whom" "with whom" "toward whom"
and the ever popular, "To Whom It May Concern:"

Using "Its" and "It's"

Its. Shows ownership without the usual apostrophe (to eliminate confusion). Thus, "The dog bit its tail," and "The court reversed its decision."

It's. A contraction that replaces "it is." "It's a boy!", "It's a nice day," and "It's my motion, Your Honor."

Spell Out Contractions, Abbreviations and Symbols

Contractions. Most people use contractions while speaking and in writing letters. However, strictly speaking, the use of contractions assumes a casual attitude between the writer and reader. Although lawyers may use contractions, such as "don't," in speaking to a judge, written legal briefs require a more formal attitude. Thus, try to use complete words instead of contractions. One exception – possessives, such as: "the court's ruling," "the defendant's lawyer," and "the DA's claim."

Abbreviations. Likewise, unless legal papers, court decisions, etc commonly use an abbreviation, spell all questionable abbreviations that you want to use. Use abbreviated titles such as "Mr." "Ms." "Dr." "Sr." and "Jr." Unlike the author of the We the People Legal Primer, you need to follow all abbreviations with periods. Thus, use "U.S." instead of "US," "etc." instead of "etc," and so on.

Symbols. Finally, unless legal papers, court decisions and so on commonly use a symbol, you should use words for all questionable symbols that you want to use. Mostly, you need to take care not to use "&" and "%" (instead, spell out "and" and "percent").

A More Accurate "I Before E" Rule

"I before E when sounding like 'ee' except after C."

This rule applies to more words than does the longer and more popular rule. Of course, when in doubt, look it up!

YOUR HEALTH ... AND YOUR FREEDOM

— A Sound Mind in a Sound Body —

Alcohol, drugs, nicotine, and caffeine. People use these chemicals in blind attempts to solve non-chemical problems, such as: fear, anger, stress, boredom, abuse, laziness, lack of sleep, general dissatisfaction with life, low self-esteem, etc. You can't "fit a square peg into a round hole." Learn more effective coping skills, live life honestly, and give up the chemical "crutches."

Nutrition. Proper nutrition involves: amino acids, vitamins, and steady dependable energy. Many people care for their car better than their own bodies.

Amino acids. Cells link amino acids into chains called proteins, which the cells use to regulate their health and to repair, to change, and to grow. Cells use proteins as carriers of information, instruments of operations, and as building blocks of the cell itself. Most people get the bulk of their proteins from meats, fish, and dairy products.

Water. Almost every chemical reaction in the body involves water. Extra water must be taken with meats and proteins in order to "dissolve" them into their amino acids. Our bodies absorb amino acids – not proteins. So drink extra water when you eat proteins.

Energy sources. If your body does not obtain enough energy from non-protein foods, it will "burn" proteins for fuel instead absorbing their amino acids. Eat enough non-proteins (carbohydrates) to fuel your body when you eat meats.

Essential amino acids. Nutritionists have identified eight essential types of amino acids out of the 20 types that our bodies use. "Essential" mean we must obtain them in our food because our bodies cannot manufacture them. Learn about essential amino acids and eat enough of them.

Carbohydrates. Carbohydrates, especially complex carbohydrates, provide our bodies with steady and dependable streams of energy. Complex carbs, formerly called starches, release their energies slowly. Simple carbs, from fruits or refined sugars, release their energies quickly and

cause you energy "highs" followed by energy "lows." Eat mostly complex carbs.

Brain food. Brain cells don't store energy as muscle cells do. They cannot "carbo load." All brain energy must come from the bloodstream as brain cells need it. Their lack of storage can cause brains to suffer from sugar highs and lows when blood sugar levels rise and fall. An excellent reason to provide steady and dependable streams of energy (complex carbs) to your mind and body.

Tell me no lies. The TV commercial describing a candy bar [obviously eaten on an empty stomach] as supposedly holding someone over until dinner falsely represents the facts about simple carbs. Slow but steady [complex carbohydrates] win the race – especially as we grow older and suffer diabetes-like symptoms.

Dietary fiber. People laugh about fiber (formerly called roughage), but they also cry about constipation, straining on the toilet, and hemorrhoids. Make the healthy choice. We get fiber from vegetables and fruits.

Vitamins. Vegetables also provide the great amounts of vitamins which our bodies use for various serious purposes. Look up kale, a veggie awesomely fortified with vitamins!

Stress. Human bodies react when exposed to stress. One reaction causes the body to literally "piss away" the important B-complex vitamins (B-1, B-2, B-6, and B-12). The nervous system needs these vitamins. Prison life can cause stress, and prisoners should eat more foods high in B vitamins or they should take supplements.

Meals in general. Eat three sufficient and regular meals per day to provide regular amounts of what we need. Consistency in the scheduling and nutrition of meals allows our bodies to learn to fit their digestion into our bodies' busy daily routine.

Aging process. As we age, our bodies' ability to provide sustained energy declines, giving us diabetes-like symptoms. Older people find that eating smaller main meals, with snacks in between them, helps sustain their energy. This failure to sustain energy may account for the desire by old people to take "cat naps".

Exercise. Everyone should exercise. Period. Sedentary or incarcerated people should purposely make exercise part of their daily routine. Aerobic exercising (walks, light work) helps the most. If you do heavy (anaerobic) workouts, which usually involves weights, workout every other day for maximum gains and benefits.

Sleep and rest. People abuse sleep and rest more than they do drugs and alcohol. At least seven hours (better with eight) of solid sleep at night provides our bodies – and minds – with enough rest and repairs. Also, a recent study shows that a lack of enough deep sleep causes fat build up in men's bodies.

Sleep schedule. Changing your sleep schedule – going to bed or rising, even by an hour or two, will shift your daily cycle and cause you to operate at a decreased mental and physical capacity for several days – similar to "jet lag" caused by flying between time zones. Find a sleep schedule that works for you. Practice it habitually, and it will help keep you in peak form. So, do not study late into the night for your court hearing the next day.

Mental health. (Refer to the poem "Desiderata.")

Spirituality. (Refer to the poem "Desiderata.")

THE STRANGEST SECRET IN THE WORLD

— You will become what you think about most —

How often have you found yourself doing something that you told yourself that you didn't want to do? Have you ever told yourself, "I must not forget her birthday," and then you forget about it? Ever told yourself, "I don't want to screw up," and then you screw up? Ever tell yourself, "I can't afford to lose this [whatever]," and then you lose it? You will gravitate toward whatever you think about most.

A true story (although I forget the name of the pitcher). A major league pitcher faced a tough hitter. He knew that this guy could hit low-and-outside pitches. He knew that he didn't want to pitch low and outside. His manager even came out and reminded him to not pitch low and outside. He pitched the ball, which went low and outside, and the batter hit it out of the park. Afterward, the pitcher furiously stormed off the mound vowing to himself to never again focus on what he didn't want to do!

Earl Nightingale, world-renowned self-help speaker, described the following statement as "the strangest secret in the world":

"You will become what you think about most."

William James, the undisputed father of American psychology, labeled this fact's discovery as the most important finding of the last hundred years.

What do you mean by "No" ? Understand an important – yet little known and little talked about – fact about the human mind: it seems unable to understand the concept of "no" and "not." The human mind simply does not work well on the reverse of an idea. Look at the major league pitcher in the example above. Tell a kid, "Stop screaming," and the kid goes on screaming. Tell a kid, "Don't draw on the floor with your crayons," and you'll find him drawing but maybe on the walls. Tell a kid, "Don't fall out of the tree," and that actually plants a seed in his mind to fall out of the tree. Tell yourself, "I don't want to be broke," or, "I don't want to be lonely," and, guess what? You end up broke or lonely – or both! This helps explain why you can drive your old wreck for years without a scratch, and then the first day with your new shiny set of wheels, you end up remodeling the whole front end!

Do you really expect to go into a store and tell the clerk, "I don't want peanut butter, milk or bread," and then go home with what you do want? You must learn to want the "donut" instead of not wanting the "hole." In other words, two wrongs don't make a right. For clarity, I've underlined two negatives: To not want the hole does not naturally bring your subconscious to focus on wanting the donut. You must focus on wanting the donut.

Thoughts work like muscles. Thoughts behave exactly like muscles in that, the more you exercise them, the stronger they become; the less you exercise them, the weaker they become. Exercising productive thoughts strengthens them. Not exercising destructive thoughts allows them to become flabby and weak.

Practice positive thinking. Positive thinkers dwell on what they want, and then they naturally gravitate toward their goals. Always think about what you want. When you do, your mind will work on your goals both consciously and subconsciously, day and night. You will dream about your goals, whether you know it or not. You will wake up with ideas and possibilities in mind. You will find yourself in "the right place at the right time." You will find yourself around people more positive and helpful to your goals. You will find yourself in the library looking at the books to help you. And you will find yourself reaching those goals which you desire most.

So focus on the donut. Tell your kid, "Play more quietly," "Draw on this pad of paper," or "Hang on." And tell yourself, "I want to save $50 a week," or, "I want to drive carefully."

Just as importantly, don't just tell yourself, "I don't want to drink," or, "I won't do drugs." Instead, tell yourself, "I want to live soberly" or "I want to live life honestly" and your mind will go to work understanding sobriety, finding reasons why and how sobriety and honesty works, seeing why you want to live soberly and honesty, and actually bringing yourself to live that way. Yes, do realize the destructiveness of drugs and drinking, but you probably know that running away from one addiction can cause you to run unconsciously and headlong into another one. "Run" toward a definite goal.

— Want the donut —

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The Strangest Secret in the World Revisited

— Your mind attracts what it thinks about —

Our thoughts work along subconscious undercurrents of communication. These channels of communication allow us to attract the people, the circumstances, the forces, and the information which harmonize with the nature of our dominating thoughts. This "secret" closely relates to the first "secret." So, now we know that pure luck does not account for being in the right place at the right time, just happening to meet the right people, as well as other kinds of so-called "coincidences." This attraction works separately from our conscious efforts to make things happen, and so, we don't consciously see the connection. We end up perceiving these things as "coincidences."

And how often have you found yourself in a situation that you said that you didn't want to happen? Although we can attract to us those things that we want, this process works with all thoughts – including thoughts involving worry and hate. As humans, we tend to occupy our thoughts mostly with what we love most and what we fear or hate most. Thus, we can also attract to us those things which we fear or hate.

For those people who believe in some form of God, to fear means to not trust God and to discount God's power and importance in their lives.

Successful people move themselves toward their successes; whereas, "losers" try to run away from their failures and almost never reach success. The ancient Chinese had a saying: When you don't know where you're going, any road will do."

Realize that the strangest secret in the world works both internally (within ourselves) and externally (outside of ourselves).

DESIDERATA

Go placidly amid the noise and haste,
and remember what peace there may be in silence.
As far as possible without surrender,
be on good terms with all persons.

Speak your truth quietly and clearly;
and listen to others,
even the dull and ignorant;
they too have their story.

Avoid loud and aggressive people,
they are vexations to the spirit.
If you compare yourself with others,
you may become vain and bitter;
for always there will be greater and
lesser people than yourself.

Enjoy your achievements as well as your plans.
Keep interested in your career, however humble;
it is a real possession in the changing fortunes of time.
Exercise caution in your business affairs;
for the world is full of trickery.
But let this not blind you to what virtue there is;
many persons strive for high ideals,
and everywhere life is full of heroism.

Be yourself.
Especially, do not feign affection.
Neither be cynical about love;
for in the face of all aridity
and disenchantment,
it is as perennial as the grass.

Take kindly the counsel of the years,
gracefully surrendering the things of youth.
Nurture strength of spirit to shield you in sudden misfortunes.
But do not distress yourself with imagings.
Many fears are born of fatigue and loneliness.

Beyond a wholesome discipline,
be gentle with yourself.
You are a child of the universe,
no less than the trees and the stars,
you have a right to be here.

And whether or not it is clear to you,
no doubt the universe is unfolding as it should.
Therefore be at peace with God,
whatever you conceive him to be,
and whatever your labors and aspirations,
in the noisy confusion of life,
keep peace with your soul.

With all its sham, drudgery, and broken dreams,
it is still a beautiful world. Be cheerful.
Strive to be happy.

(written by Max Ehrmann in 1927)