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 judiciary 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.

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.

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.
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 be entered on the journal, unless they be withheld by a two thirds vote of that House."
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 a vote of two thirds of both houses, remove such President, in case of treason, bribery, or other high crimes and misdeemeanors.

**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 superior 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, and those in which a state shall be 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 thereof.

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. This section of the Constitution 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 the place where the said person may be when the Congress of the United States, shall order it; and such Congress may order the trial, when the place for the same shall be within any district within which the judges of the said district shall not sit.

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, but no person shall 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 state 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 quarters 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 way 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.

All debts contracted and engagements entered into, before the adoption of this Constitution, shall be valid and binding according to the laws under which they were made; but all debts contract ed and engagements entered into, after the adoption thereof, shall be valid and binding according to the Constitution and laws then prevailing; and all public debts contracted, and engagements entered into, before as well as after the adoption thereof, shall be as valid and binding against the United States, under this Constitution, as under the Confederation.

**Article VI**

The Congress, whenever the right of choice shall devolve upon them, before three days after their meeting, shall appoint one of themselves to be President of the United States, or, if they agree upon none, then from the two highest numbers on the list, the Senate shall choose a President. A quorum for the purpose shall consist of two thirds of the whole number of Senators, and a majority of the whole number of the other Senators who shall not have omitted to attend the session for which they were elected.

**AMENDMENTS TO THE CONSTITUTION**

(The Bill of Rights consists of the first ten amendments. The Amendments 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** [1798]

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 name 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 preceding 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 the 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 such 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 XII  
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 XV  
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.

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

Amendment XVI  
Section 1. 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  
The Senate of the United States shall be composed of two Senators from each State, elected by the legislature 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 legislature. 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 construed to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

Amendment XVIII  
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 shall have power to enforce this article by appropriate legislation.

Amendment XIX  
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  
Section 1. If at the time fixed for the beginning of the term of the President the President-elect shall have died, then the Vice President-elect shall act as President, the Congress may by law provide who shall act accordingly in case of the death of the President-elect, or of the President any time before he takes office.

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 alter the time.

Amendment XXI  
Section 1. The Eighteenth Amendment to the Constitution of the United States is hereby repealed.

Section 2. 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 its submission.

The Bill of Rights of the United States Constitution applies these protections for some of a criminal defendant's protections against the federal government toward the defendant. The Due Process clause of the Fourteenth Amendment of the US Constitution applies these protections to criminal defendants in most states by way of state constitutions.

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. The protections consist of two types: (1) substantive rights (such as the right to a fair trial, to counsel, and to protection against unreasonable searches and seizures) 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 most states by way of state constitutions.

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

First Amendment. Provision for: access to the courts.

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

Fifth Amendment. Provision for: grand jury indictments for infractions of criminal law, protection 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 the accused. We find it reasonable to assume that the Sixth Amendment was included to provide a framework for fair trials.

Eighth Amendment. Prohibition against: excessive bail, excessive fines, and cruel or unusual punishment. State constitutions and statute(s).

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.) 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 police power—meaning the right to pass laws that protect 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 theaters, 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 interpreting the Constitution:

1. the text and structure of the Constitution,
2. prior precedents (usually judicial),
3. the political, social, and economic consequences of alternative interpretations, and
4. natural law.

Interpretation. Judges are not discounting any of these sources when they interpret the Constitution. However, some sources are given more weight than others. Judges must take into account the nature and purpose of each source and give them the weight they believe them to deserve.

Justifications for Originalism.

• Originalism reduces the likelihood that unelected judges will write the laws that a state has decided to enact.

• Originalism in the long run preserves the authority of the Court.

• Non-originalism does not allow too much room for judges to impose their own subjective and elitist values. Judges need neutral, objective, and 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-originalism).

• 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 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.


Judge Bork on Originalism: “If the Constitution is law, then presumably, if something is not in the Constitution, then it is not in the law. If something is in the Constitution, then that is the law.”

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 it is often impossible to determine their intentions.

• Non-originalism allows judges to head off the crises that could result from an interpretation of a provision in the Constitution that no longer serves its original purpose. The nation cannot rely upon the very difficult science of history to learn about life and law there as well as in other Greek and Roman times.

• 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) to make legislative change.

• Originalists lose sight of the forest because they pay too much attention to trees. The nation ought to focus on the big picture. Text often contains ambiguities and is difficult to interpret.

• Originalists may never create new constitutional rights or destroy old ones. Any time a judge does, he violates not only the limits of his own authority but, for that reason, also violates the rights of the legislature and the people. The philosophy of original understanding is a necessary prerequisite to the structure of government apparent on the face of the Constitution.

Justifications for Non-originalism.

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The Term “Originalism” refers to persons who favor heavy weighting to text, structure, and purpose when they guide the courts in different interpretations.

The Term “Non-originalism” 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 concern 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 the people who ratified the Constitution.

“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 to be contrary to the “original intent” 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.
The colonists then elected John Carver as their first governor. The colonists successfully abided by their compact for more than a year 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. Justinian, an important draftsmen of law in contemporary society, and was inspired by logico-based Greek legal principles. Justinian's Code resulted in many legal maxims still in use today. His work inspired the modern concept and, of the English word "justice" as a legal term. Important concepts in his Roman Code survived 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.

The English Bill of Rights, 1689. The English Bill of Rights, 1689, is an important British legal document that set, in clear English, thus making English law suddenly accessible to the public. His thoroughness also made his commentary essential reference material for both lawyers and students.

The American Declaration of Independence, 1776. The American Declaration of Independence, 1776, proclaimed that "all political connection between [the United Colonies] and the State (Nation) of Great Britain is and ought to be totally dissolved, and that it is necessary for them to have a Constitution and a Government of their own, which they may completely independant, and which may be instituted at the free and equal consent of the whole people of the United Colonies."

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slavery, again took her place among the free nations of the world. The glorious path taken by the American aviators of the Kosciuszko Squadron in our war against the Bolshy'erk ships 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 you 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, have done so with you in honor of their second country, to this tribute, paid by over three million Polish immigrants, is added that of thirty million Polish-Americans, 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 United 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 respect the rights of the minority, especially in our motherland, Poland, which is proud of its many Poles, including the President, national and regional officials, religious authorities, members of social organizations, and newspapers may use, the president does not have the power to introduce a bill into Congress. The president must sign every bill that the legislature passes and the executive, for both the federal and the state judiciaries.

The United States Supreme Court.

The district courts.

The federal court hierarchy consists of three layers: the trial court of general jurisdiction, known as the district courts; the courts of appeal; and the Supreme Court. Several other courts exercise special jurisdiction of no constitutional significance, including bankruptcy courts, tax courts, courts of special maritime and aviat, and the federal district courts. A district's entire judiciary may be handled by one judge or by a panel of three judges, or by more judges in cases of great complexity or with a statutory limit on the number of cases that can be handled by one judge.

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Middle layer. The middle level of courts contains the "trial courts of general jurisdiction." These courts allow them to hear and dispose of civil and criminal cases generally. They maintain necessary jurisdiction considers them as "courts of record." These middle level of courts use very formal procedures. Some such courts do not have jurisdiction over petty cases. Nevertheless, "district court" and "circuit court" 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 "superior court" to these middle level courts.

In addition to these trial courts of general jurisdiction, other courts exist at this level which exercise special jurisdiction of their own. They dispose of special cases such as: probate matters, divorces, 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 the authority to recognize true appellate jurisdiction in their review of decisions from regulatory agencies (e.g., the executive branch of government).

Highest layer. This layer contains the appellate courts. Most states use only one appellate court – the highest court in the state. This court hears appeals from lower courts at the state level. These courts may hear appeals from the judgments of the trial courts of general jurisdiction, and either affirm or reverse the decision.

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 "extraordinary writ." The court may issue an "interlocutory writ" (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 over 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 the trial court. This court is called a "docketing court." The appellate court has only the transcript and the record of appeal and can only jurisdiction to consider issues alleging errors in the proceedings of the intermediate 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, the court must certify a "final appeal." If the court does not, (1) has ruled contrary to the existing precedent, (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 standards 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 does favor the petitioner, and many dissent from the denial of certiorari have merit. 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 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 they may make "interlocutory" and "collateral" appeals, mostly on issues regarding preliminary injunctions. These courts also exercise discretionary appellate review of any interlocutory order in a civil case if the trial judge fails to raise 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 appeal to 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 also allocates 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 it as undermining the Constitution's provision for an independent branch of government.

Discretionary. Congress did drastically reduce a party's ability to appeal to the Supreme Court by pro se defendants for writ of certiorari, order to keep the Supreme Court from becoming overburdened.

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

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Discretionary. Congress did drastically reduce a party's ability to appeal to the Supreme Court by pro se defendants for writ of certiorari, order to keep the Supreme Court from becoming overburdened.

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

Pro se and Certiorari. Of the several thousand appeals to the Supreme Court by pro se defendants for writ of certiorari, the Court denied about 90% of them. These rejections amount to about 1 in every 200 cases. The rejected 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 JUDICORIES

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

Lowest layer. The lowest, or petty, courts deal only with petty cases involving small monetary values or small criminal penalties. In rural areas, justices of the peace, open part-time positions, preside over such courts. In urban areas, a magistrate or judge may preside over such courts, which tends toward specialization, 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 maintain a record of their proceedings beyond what is already described above. Thus, people don’t consider these lowest 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, it would be a matter of纯粹 what the judge said in his or her own words. The judge, or jury in the trial court already considered and determined the facts of the case. An appellate court does not have the same information as the judge in the fact 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. An appellate court has only the transcript and the record of appeal before it.

Appellant. The appellant’s trial attorney may identify issues upon which the appellant can raise an appeal. However, appellant must remember that these issues, can usually find other issues as well. Although the appellant attorney didn’t attend the trial and has only the transcript and record before him, the appellate court works with the same materials. More importantly, the appellate attorney often finds...
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 instructed the jury; whether the judge 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 court; whether the issue of the trial court should not be allowed to appear exculpatory evidence or testimony; whether the court imposed a lawful sentence.

Appellate focus. Many criminal defendants believe that they must bomb 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 such means, but ultimately the appellate attorney, 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 examines a full record of an issue if defense counsel in the trial court objected to the record on the basis that the court failed to perform a “harmless error analysis” of the alleged error to determine whether it was a “harmless error” or whether it significantly prejudiced the defendant’s defense in the trial court. If defense counsel failed to object to the alleged error, 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 made it if he had been aware of the facts.

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 demeanor to attorneys and don’t anger the people who can grant you relief. (Basically, look upon judges as human, fact, go one better by limiting the amount of footnotes, which detracts from the credibility and character of the appellant’s brief.)

Appellant 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 hardback 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 court for a further 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 a constitutionally sound result.

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 five. Some of 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 whether the person is lawfully being held in the custody of minors. For such applications of the writ, courts do not recognize.

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. The US Constitution’s Fifth Amendment grants due process protection against the federal government and its agencies.

The Fourth Amendment extends due process protection toward all state governments, agencies, and courts. In the United States, due process refers to the “how’s” and the “why’s” 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 also declare a law which prohibits wise behavior but which permits husband beating as illegal because of unfair application. A clear and fair law having a presumption of innocence should withstand challenge. An impartial court 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. 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 in an abortion; during the second trimester, a state could reasonably regulate abortion in the interest of the health of mothers; and in the third trimester, a state could restrict abortion 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 include, but are not limited to:

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

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 guarantees and immunities inherited from our English ancestors.

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 read 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 dismembered, 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? The court’s answer was that the government must not enact legislation that would deprive an individual of any right to which he is entitled under the US Constitution. The court upheld the right of a citizen to receive just compensation from the government for any such legislation.

Due process does not apply to actions by ordinary, private citizens. For example, a landlord wants to reclassify a tenant in a private housing complex in order to make room for a person with special housing needs. The tenant cannot bring 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. In this case, the government had taken one of the rights a law that the government had 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 building that it intends to bulldoze. The tenant cannot bring about due process of law against the landlord. The tenant, however, may have contractual rights to exercise to prevent this from happening.

Due process means that the government cannot enact arbitrary or unreasonable legislation.

Clear laws. Governments must create laws so that a person of ordinary discernment at their meaning. Criminal laws require great amounts of scrutiny regarding the clarity of their language. A law that states: “A person cannot be deprived of life, liberty, or property, without due process of law” cannot survive a proper analysis for substantive due process. The courts must allow a defendant the opportunity to state objections to the government’s plans and to propose alternatives.

Purposeful laws. If a law lacks an analysis for substantive due process, if it and the means provided for their enforcement must have a legitimate governmental purpose. For example, a state’s law that subjects some citizens 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.

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. 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. 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 suspect. 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.

Due Process and the Fourteenth Amendment

In the first years of the life of our new country, our founding fathers feared the power of the federal government to infringe anyone of life, liberty, or property without due process of law. Experience later showed that the states could also act tyrannically in depriving a person of these rights. In Ex Parte Yarbrough (1884), the US Supreme Court ruled 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 – directly to the courts, so as to preserve judicial independence, protect

A free primer. For imprisoned people only.
CHAPTER II – Five Required Elements of a Lawsuit.

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 or 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 was killed, would the driver for running the stoplight be sued for the injuries received by you of your car. The law considers those injuries a tort, and if 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 I 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 law. Sometimes they overlap, such as in diverse 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 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 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 he performed his duties as directed by law.

Immunity from suit extends to most government employees for an act included in the performance of their official duties. You cannot sue someone just based on your anger at him or her. An act included in the performance of his/her duties as an employee does not fall under his judicial duties.

Immunity from suit extends to most government employees for an act included in the performance of his 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 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 that he/she intended 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 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 continue a suit with a claim of someone or someone’s 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 in 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 in that court.

CHAPTER III – Representation by an Attorney. This chapter deals with information regarding representation by legal counsel. Please take time to read this information. Attorneys exist to help you, 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 you do, should understand the alternatives to representing yourself. Also, another extremely complex matters that deserve appropriate representation by an attorney.

In a criminal case against you, the United States entities you to legal representation if you cannot afford an attorney. However, no law exists which entitles you to legal representation if you cannot afford an attorney. In a private matter, some attorney will represent you, 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 you do, should understand the alternatives to representing yourself. Also, another extremely complex matters that require appropriate representation by an attorney.

In a civil case against you, the United States entities you to legal representation if you cannot afford an attorney. However, no law exists which entitles you to legal representation if you cannot afford an attorney. In a private matter, some attorney will represent you, 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 you do, should understand the alternatives to representing yourself. Also, another extremely complex matters that require appropriate representation by an attorney.
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. Each system has its own hierarchy. The 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, maritime matters, United States patent, trademark, and copyright matters; bankruptcy proceedings; proceedings against ambassadors, consuls, and ministers; and certain other matters. They 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 entities of different states and the amount in controversy.

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 a 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 imports of foreign goods, and other matters.
- The United States Court of Military Appeals. This court hears appeals from court martial decisions. Parties cannot appeal its decisions to any other court.
- The 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 District 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 may 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 by both criminal and civil cases. They may also review decisions of federal administrative agencies. At least one United States District Court exercises jurisdiction within 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 exports 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. United States Constitution, any act 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 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 concerning or involving consul or vice consuls of foreign states or citizens or subjects thereof.
- 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 United 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 Department of Agriculture.

CHAPTER V – Rules and Procedures for Filing a Case in District Court. Whether an attorney represents you as a party to a lawsuit in district court or 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 rules that govern the matter.

In the United States District Court enforce not only all of the federal rules of procedure, but also the Local Rules of the United States Court of Appeals for the District of Columbia, 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 responsibility of knowing this material, 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.
- Infrants and incompetent persons.
- Disclosure of facts.
- Limitation on depositions.
- Limitation on interrogatories.
- Notices of judgment or other paper.

B. FILING PROCEDURES, RULES AND TIME LINES:

1. CIVIL COVER SHEET
   Description: The document that must accompany the complaint and summons before filing can occur. (Form 1.)
   Applicable Rule(s): LR 5.1(d)
   Time Line: Initial filing.

2. COMPLAINT
   Description: Sets out the parties, the controversy and the governing law, allegations of facts, and demand for relief.
   Applicable Rule(s): LR 3.1, LR 5.1(b), FRCP 10
   Time Line: Initial filing.

3. 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 Z.)
   Applicable Rule(s): FRCP 4, LR 5.2
   Time Line: Issued with the seal of the Clerk.

4. 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.

5. 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.

6. 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.

7. COPIES OF PLEADINGS
   Description: When motions and stipulations are filed, you are required to include copies of the proposed order and stamp, 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.

8. DISCOVERY
   Description: Initial disclosures, disclosure of expert testimony, non-party depositions, interrogatories, requests for documents, requests for admission, and answers and responses thereto shall be served upon other counsel and parties but 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.

9. PRETRIAL PROCEDURES
   Description:
Forms to be used by Pro Se Litigants:

**Forms**

- **CIVIL COVER SHEET**
- **NOTICE OF ASSIGNMENT TO MAGISTRATE JUDGE**
- **SCHEDULING CONFERENCE FORM/LITIGATION PLAN INSTRUCTIONS**
- **PETITION UNDER 28 U.S.C. SECTION 2254 FOR WRIT OF HABEAS CORPUS BY A PERSON IN FEDERAL CUSTODY**
- **PETITION UNDER 28 U.S.C. SECTION 2255 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 but rather a process 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.

### A. Pretrial Conference and Order

Prior to the actual trial, a pretrial conference is scheduled to be called by the 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 an examination of issues between parties to an action. The parties each get the opportunity to present their case, and the judge and jury (if the trial is a jury trial) are responsible for hearing and deciding the case. The judge is the trier of fact, and the jury is the trier of fact. 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 from the venire. The judge will ask each juror questions to determine their suitability and to determine if they are capable of serving as a juror.

### D. Opening Statements

The trial begins with the judge declaring the jury is empanelled. Each party is given a chance to present an opening statement to the jury. Local Rule 39.1. The defendant is allowed to make 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 goes first. Any 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 question 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 the witness’s testimony is false, the witness is considered impeached.

### 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 for Judgment:** This motion is made prior to the jury selecting and requests that the judge allow the party to present evidence which is not admissible to the jury.

- **Motion for Instructed or Directed Verdict:** This motion is usually made by the party defendant at the close of evidence presented by the opposing side. If the judge concludes in the defendant’s favor, the court denies the motion, the trial concludes 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 in limine are presented to the jury. If the judge grants the motion for mistrial, the trial is immediately ended and the jury is dismissioned.

- **Objections:** During the examination of a witness, one side may object to the questioning or testimony of a witness or presentation of evidence. The judge determines whether the testimony or evidence about to be given should be excluded. If the objection is sustained by the judge, the testimony or evidence may be given. A ruling on an objection may be the basis for appeal; however, in many cases, the parties must ask the court reporter that portion of the trial in 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 their favor. 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 judge delivers his charge to the jury, usually in the form of written instructions. Each side may present proposed written instructions to the judge, and the judge may modify or change any proposed instructions. The judge has considered all proposed instructions, the jury is given each instruction which sets forth the jury’s responsibility to determine the facts in light of the 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 the 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 that has not reached 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 both sides 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 losing party 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, 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 recovered upon presentation of a judgment of the court after such fact-finding procedure as the judge shall order. Local Rule 54.3.

### M. Satisfaction of Judgment

When the amount directed to be paid by any judgment or order, together with interest (if interest accrues) and costs has been satisfied, it 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 judgment or order 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 the 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 most commonly used 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 “Harvard Citation.” 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 facts of the case. Legal research 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. 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, or 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 presented to the court.

### 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.

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Fifth Edition Condensed

First Edition May 2004

Sandra N. I. More, LLC

A Free primer for imprisoned people only.

This document was created with the purpose of providing legal information to those who are incarcerated. It is not intended to be a substitute for the advice of a qualified attorney.

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If you or someone you know is incarcerated and needs legal advice, please visit the website of the organization that produced this document. If you are unable to access the internet, you may be able to obtain legal advice from a qualified attorney through a legal aid organization or a law school clinic.
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 to the nation intervene to correct an error on the part of the state court.

- Requests the federal trial court to order the jail or prison to release the defendant upon a showing that the state appeals courts order the jail or prison holding the defendant to a "three strikes" sentencing law.

U.S. Supreme Court Appeal. Requests the highest court in the nation to review the decision of the federal trial court.

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, act as though they had never had them. 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. In certain states, 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. The defense attorney or the defendant must file a motion for expungement.

- 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, a defendant 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, convictions will not be expunged 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.

THEINING 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 office lives. Yet, for the incarcerated person who has only a limited legal education, there is no substitute for understanding the logic used by lawyers and judges to determine the legal facts 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 us to make. If we know the rules, we can use the rules to make decisions and subjectively. The part "shall be punished..." states the legal requirements of the statute. Determining whether a defendant's behavior fits the statutory language is a purely subjective decision. Explanations of the specific legal decisions that the law requires us to make. Determining whether a defendant's behavior fits the statutory language is a purely subjective decision.

A court can immediately seal the arrest and charge if it acquitted the defendant of the criminal charge.

Virtually every rule leaves more intellectual work because rule-making authorities, by necessity, create rules to replace, thereby imposing the rules. Although the rules 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 obviously describe.

- Rules. Virtually every rule leaves more intellectual work because rule-making authorities, by necessity, create rules to replace, thereby imposing the rules. Although the rules 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 obviously describe.

- Cases. Cases provide the substance, the living instance, of rules. But studying and using cases, for making predictions and as a basis for persuading persons 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 too 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 entire system upon the idea that judges apply the law 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 cases. 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 base their opinions on the precedents of particular cases, 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.

A First Edition Condensed

May 2004

We the People: Legal Primer

First Edition Condensed

May 2004

We the People: Legal Primer

- 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 that 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 which cases are listed in the "Table of Cases." However, the rules about eligibility for expungement, and the effect of expungement, vary from state to state.

- All legal citations are written with the volume number first, followed by the page number, etc., e.g., 152 P.2d 967 or 144 A.L.R. 422.

- Be aware of "2d" and "3d" in citations. They distinguish one series of reporter from another.

- Checking the pocket part of law books is a must.

- Give priority to cases from your own jurisdiction.

- Pay attention to dates on books, i.e., copyright date and date of pocket parts.

- Consider a simple rule, such as: "No person shall sleep in a city park.

- As 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.
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 prison. They may also try making requests to the authorities about 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.

Legal publications. Most legal publications attempt to make a national argument that supports a certain perspective of justice. Readers should be cautious about the 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 stories. Many legal arguments have complex and abstract components. Equally compelling reasons often support conflicting stories. Many legal arguments have complex and abstract components. Equally compelling reasons often support conflicting stories. Many legal arguments have complex and abstract components. Equally compelling reasons often support conflicting stories.
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

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 the 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 volume supplement volumes, through the interim paperbacks, to the most recent update.

Shepardizing a Case

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 (or most current) in the set. Find it, and check the "What Your Attorney Should Contain" section on its cover.
4. Collect all the volumes of a case 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 cases within a volume. The 1st cases cited subject case appears following the cited case's page number.
7. Write down all the case citations or photocopy the pages. Small, raised (superimposed) number to the right of a reporter's abbreviation 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 to the cited case name.
- 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 abbreviations 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 (ALLR) among citing sources in state and federal.
- Some state Shepard's include references to Attorney General opinions.
- Shepard's may include references to legal treatises published by Shepard'sMcGraw-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 case letters to the left of the cited case. These notations refer either to the "history" or "treatment" of the cited case.

History

The definitions below of the history assignments explain how the "citing case" (or case) 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.

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

c. Dismissed. The citing case dismisses the cited case.


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

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

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May 2004

Use the method below to all state and federal statute citations. 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 sections and groups of sections. Citations to subdivisions appear under the related section.

Shepardizing statute citations. Follow the same procedure described 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, Lawyer’s Edition
- You should always Shepardize statutes on three levels:
  - The statute as a whole (for example 147.19);
  - The subsarts 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 sold 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.

Sheppard’s abbreviations for statutes.

- Shepard’s uses unique abbreviations for statutes. To interpret these abbreviations turn to the “Abbreviations-Analysts” section in the front of each bound Shepard volume’s 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

1983 U.S.C.

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

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

Shepard’s publishes nearly 200 different citations. Each correlates to different cited and citing references. Shepard’s organizing system is 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).

Specialized citators. Specialized citators collect and organize data according to particular areas 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. Shepardizing, however, targets exactly those authorities — and only those authorities — that specifically cited your precedent.

(under construction)
Writing Citations

Quotations — the simplified rules

Long quotations (50 words or more). Set off long quotations 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). Endorse 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: "[Prosecutors 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 change in emphasis and omissions of citations or footnotes with parenthetical remarks, such as: "...may not bring citation omitted,..." (under construction)

Underlining or Italicizing in Citations. You may have already asked yourself why authorities show certain parts of citations in italics (stated 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, such as "in the original" and pressing Ctrl+I for italics instead of Ctrl+U for underlining.

However, you need to underline 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 defining one or 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 references words: "Id.", "supra", and "infra."

However, you should not underline or italicize: constitutions, statutes, regulations, 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 etymological word origins and etymology — 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, underlining precedes 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 typeweights, do not switch back and forth in order to italicize case names. Typeweights and printweights cannot tolerate this abuse, and a broken typewriter or printwheel can have catastrophic consequences for people in prison.
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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 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.

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 short-sleeved 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 your 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 tenency and assistance for incarcerated pro se litigants. If the judge doesn't offer it, you can politely request it. Watch the judge's attitude about it: 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 stay calm, serene, or cough quietly and unobtrusively. 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 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.

• 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. Shine to be happy.

DICTIONARY OF LEGAL WORDS AND PHRASES


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, revocation of a sentence, 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 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 their depend.

accessory. A person who aids or contributives in a secondary way or assists in or contributes to a crime as a subordinate. 212 So. 2d 829, 831. Mere silence or approval of the commission of the crime does not amount to accessory liability. 81 Mo. 483. Failure to report a felony may constitute a crime in itself. A 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. 293 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 not attend, actively or constructively, at such perpetration. 262 A.2d 154. Cf. accomplice, aid and abet, complicity, conspiracy, misprision.
accomplish. A person who knowingly and voluntarily participates with another in the commission or facilitation of a crime. 156 N.E.2d 614. A person liable for the consequences of another’s crime is charged against the defendant. 233 F.2d 347. A person who knowingly, voluntarily, or purposefully, and with common intent with the principal offender unites in the commission or facilitation of a crime. 156 N.E.2d 614. A person who is present and without legal justification is charged against the defendant. 247 F.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, conspiracy.

accusation. The formal declaration before an authorized officer by the accused or his attorney stating an instrument as his true and deed. The certificate of the official on such instrument attesting to such accusation.

acquit. 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.

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

adjunctive law. Law of body which governs the process of protecting the rights under substantive law. adjectival law. The law pertaining to and prescribing the practice and procedure of the legislative process for determining or making effective 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 taxation, education, and labor.

administrator. 1. 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, 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 recent unreported cases and rape cases. Publishers publish a bound volume of advanced sheets as sufficient numbers of them become available.

adversarial system. The two-sided structure under which the prosecutor prosecute 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 oaths.

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 to a matter as a defense to the complaint in his or her answer joined in the case. A defense is not subject to jury negligence or estopped in civil actions. In criminal cases, such defenses include insanity, duress, and self-defense.

affirm. 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 to another person, 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. Maimed, 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, 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.

allegation of a defense. Setting 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.

annex. To actively, knowingly, intentionally, purposefully, to recover for an injury received when he has voluntarily exposed himself to a known danger.

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

appeal Bond. A bond required, in most cases, for the payment of court costs.

appeal and abet, aid and abet. To deprive a person of his liberty by legal authority. 249 N.E.2d 533, 557. "Menacing" to refer to "assault" at common law. "Trespass to land" is the term used in the District of Columbia. Cf. dangerous proximity, indispensable element, commission or attempted commission of a crime. Those acts characterized by affirmative criminal but not by omissions or negative acquiescence.

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

antiforestry measure. Induce crime, qv.

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

appeal. A formal declaration before an authorized officer to arrest an identified person.

arrest. To deprive a person of his liberty by legal authority. 249 N.E.2d 533, 557. "Menacing" to refer to "assault" at common law. "Trespass to land" is the term used in the District of Columbia. Cf. dangerous proximity, indispensable element, commission or attempted commission of a crime. Those acts characterized by affirmative criminal but not by omissions or negative acquiescence.

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.D. 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 of another. Other, less severe forms of arson are punished by methods other than burning, explosion. The intentional causing of property not his domicile.

arsonist. A person who knowingly, voluntarily, or purposely sets fire to another person’s legal name. 234 S.W.2d 535, 539. Also refer to “aka” and “fka” in Abbreviations & Symbols.

arrest. To deprive a person of his liberty by legal authority. 249 N.E.2d 533, 557. "Menacing" to refer to "assault" at common law. "Trespass to land" is the term used in the District of Columbia. Cf. dangerous proximity, indispensable element, commission or attempted commission of a crime. Those acts characterized by affirmative criminal but not by omissions or negative acquiescence.

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assault. Threat to inflict an 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, accompanied by the apparent present ability to give effect to the attempt if not prevented. 125 P.2d 661, 690. Threat, accompanied by present ability to inflict serious injury upon another, accompanied by the apparent present ability to give effect to the attempt if not prevented. 447 F.2d 264, 272-276 S. 45, 46. As a tort, an assault may exist even where no actual intent to make one exists (where the actor intends to create fear). A false accusation of assault or battery is not actionable if the actor places the victim in reasonable fear. Because an assault need not result in touching so as to constitute a battery, the third party need not recover for an injury received when he has voluntarily exposed himself to a known danger.

assignee. A person to whom a property right has been assigned. Assignment. The transfer to another person of any property, real or personal.

assignment of a defense. 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.

attorney. The two-sided structure under which the prosecutor prosecute 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.

attorney at law. A person having present authority, 3. the arresting officer communicating the intention or purpose of arrest to the third party.

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

attempt. An act directed, but not completed, involving the intent to commit a crime. A failure to complete a crime. A failure to complete a crime. A failure to complete a crime.

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attachment. Taking a person’s property to satisfy a court-ordered debt.
A condition characterized by a history of physical and psychological abuse that makes the victim feel unable to leave the situation.

Battered Woman’s Syndrome (BWS) is a recognized legal doctrine in the United States that describes a condition of dependency and emotional vulnerability that can be caused by a partner's abuse. It has been defined by California courts as “a series of common relationship violations of such severity that they cause significant distress to the victim.”

The term was originally coined in the 1980s by psychologist Lenore Walker, who stated that BWS has been defined as a “series of common relationship violations of such severity that they cause significant distress to the victim.”

The syndrome includes a range of physical and emotional abuses, such as physical and sexual abuse, emotional and psychological abuse, financial abuse, and social isolation. It is characterized by a cycle of violence and non-violence, with the abuser alternating between periods of tenderness and severe violence.

BWS has been recognized as a legal doctrine in many states and is used to determine custody and visitation in cases of domestic violence.

The term “Battered Woman’s Syndrome” has been widely criticized for being too narrow and excluding other forms of abuse, such as those experienced by men or children. It is also criticized for being too legalistic and not taking into account the experiences of the survivors themselves.
of violence or a controlled substance offense; (2) 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 U.S. 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 used rather than on a compendium 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 person's 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 and present danger, 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 bankruptcy 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 Code, in the form of a petition subscribed to by promises (for payment of a percentage of his debts from future earnings) offered by a debtor in return for government protection from creditors. Termined "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 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 trustable distribution among creditors, if needed. Cf. bankruptcy.

court. 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.

chastie. An article of personal property.

child. Offspring of parenthood; 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., used as the basis of laws. Based on the written 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. Common law cannot require 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 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.

complaint. 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 who aids, abets, counsels, commands, directs, advises, or in any other way procures or urges another person to commit a crime. An agreement to aid or solicit the commission of a crime.

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

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 by that computer, that or will or may cause loss to those of the authorized owner of the computer or the user of the computer or which accesses which is accessed by such "program."

compounding a crime -or- compounding a felony. Consists of the receipt of proceeds of a crime; the 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. other crimes.

concealed weapon. Any weapon that is carried or used in a concealed manner; any weapon that is not easily seen by the public.

conciliation. A form of alternative dispute resolution in which the parties agree to their dispute in a neutral third party, who helps to lower tensions, improve communications, and explore possible solutions. Similar to mediation but perhaps less formal.
concurrency. 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 or printed material.
consecutive sentences. Sequential 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, gift, or real estate.
conspiracy. A combination or two or more person to commit an unlawful act, or to commit a law by criminal or unlawful means; or a combination of two or more persons 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, allow for a conviction of two or more. Cf. current cases, consecutive sentences.
consciences. Sentence. Determining the act of the court to be unlawful and the mental state of the defendant.
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. A court where a party initiates a matter and the court hears it in the first instance; a trial court.
court reporter. A person who transcribes shorthand or stenographically taking 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, justificación, and made punishable by the state in a judicial proceeding in the owner’s name.
crime against nature. A general term which includes 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 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 proceeding or 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 punishment or correction for public nuisance, 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, defining public policy and imposing a penalty for its violation. Cf. civil law 2. 191 N.Y.S.2d 54, 57. Some statutes grant privileged [civic] actions against such a wrongdoer in a remedial, not penal, capacity. 216 W.S.2d 75, 78; 59 S.W. 926. 927.
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 or dangerous consequences of such a nature and in 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 in court to answer the charging of the jury or in the event of a conviction.
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 proximity, 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 disposing of the litigation. Cf. interlocutory.
defamation. That which tends to injure a person’s reputation. Cf. libel, slander.
default. Failure of the defendant to answer and appear at 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. Juves or other tatters of fact deleted 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 operating; 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 "demos krateia," 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.

depressed heart murder. 1. Unjustifiable conduct which is extremely unwholesome, 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.

deterrent. A system of awarding which seeks to prevent offers from committing crimes similar to the one for which an offender is being sentenced.

deviate sexual intercourse. Any contact between any part of the genitalia 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 the 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 obligation to pay back, 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. Specifically 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 which occurs when any person(a)s act(acts) 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 citizenship 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 case be handled under some sort of rehabilitation or make restitution for damages.

The process by which a deceased person’s property goes to the state if it finds no heir.

A pleading filed by the defendant claiming that the filed complaint as insufficient to require an answer.

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.

estoppel. An impediment that prevents a person from asserting or doing something contrary to his own previous assertion or act.

effects. 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 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 rule does not apply in civil proceedings, although some statutes specifically provide for exclusion of such evidence.

A defense to a criminal charge (such as assault) which is often codified, and which 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.

exclusion of public duty defense. A defense to a criminal charge (such as assault) which is often codified, and which

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 party nor the court notifies the person subject to the search of the proceeding, nor does that person attend the hearing.

executor. A personal representative, named in a will, who administers an estate.

exempt property. All property of the debtor not attachable under the Bankruptcy Code or the state statute.

exhibit. 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. All such 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. Justices administered according to fairness; the spirit or habit of fairness in dealings with 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 the defendant.

echeque. A process by which a deceased person’s property goes to the state if it finds no heir.
false imprisonment—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—FAA. A federal agency which regulates air commerce to promote aviation Administration safety.

Federal Bureau of Investigation—FBI. A federal agency which investigates all violations of federal laws.

Federal Communications Commission—FCC. A federal agency which regulates interstate and foreign communications by wire and radio.

Federal Deposit Insurance Corporation—FDIC. An agency which insures deposits in banking institutions in the event of financial failure.

Federal Insurance Contribution Act—FICA. A tax levied 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 federal institution, such as the United States Government, or one which is used by or for a financial institution in 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. A federal act which imposes a tax on employers and employees used to fund the Social Security system. IRC §3101 et seq.

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)

felatio. 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, without provocation, 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.Ed. 1301.

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. Final conclusion by any court, and thus, not influenced by a jury and thus, not influenced by stare decision. Cf. question of law, stare decisis.

fleeing felon rule. A rule that establishes murder liability for a defendant if he or she kills another person during the commission of certain felonies.

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, threats, duress, menace, or fear of immediate and unlawful body injury to the victim.

forclosure. 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 money, 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 involved.

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.

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 obtained by torture (see hairy witness). 456 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 evidence), then any “fruit of the tree” (any primary, secondary or other evidence) resulting from that illegal search also contains that “poison.”

G-G-G-G-G-G-G-G-G gambling. The wagering of money, or of some other thing of value, on the outcome or occurrence of an event.

gamishment. 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 perpetrator.

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 West. 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—settlor. The person who sets up a trust.

gratuity. In labor law, a payment fied by an employee regarding working conditions seeking resolution by procedural machinery provided. 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 his or her self.

guilty but mentally ill—GBMI. Equivalent to a finding of "guilty, but a GBMI verdict in situations that the defendant, although mentally ill, was sufficiently in possession of his faculties to be morally blameworthy for his acts."
incapacity. Lack of legal ability to act; disability, incompetence; lack of adequate power.

incarceration. Imprisonment in a jail or penal institution.

incest. Unlawful sexual intercourse with a relative through blood or marriage.

inchoate crime or anticipatory offense. An offense that generally leads to another crime, 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 or her 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 proceedings against him or to assist in the preparation of his own defense.

inculpators. Testators, executors, or trustees, which tend 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 to a term of imprisonment to a specified minimum and maximum period of time, specifically authorized by statute, and not calculated at the suit of the complaining party, which forbids the courts to determine the cause of death in a sudden death, a death under circumstances in which the death is caused by another person.

insanity. An affirmative defense to a criminal charge, a social and legal term that includes mental illness and insanity. A term that refers to a condition which renders the affected person unfit to enjoy liberty of action because of the unreasonableness 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. The act describes the 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 exceeds the value of all of its property.

instruction to the jury or charge to the jury. Judge's explanation of 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 a right of value; intangible personal property may include documents, deeds, records of ownership, promises and 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 voluntarily 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, and community service in lieu of, or 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 has the power to regulate commerce among the states and foreign 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 right to be interested. 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, 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 a crime.

insolvent. When the total debt of an entity exceeds the value of all of its property.

inquest. A judiciary inquiry. An inquiry made by a coroner to determine the cause of death in a sudden death, a death under circumstances, a death in prison, or a killing. Generally, a trial of an issue of fact where the plaintiff has the burden of proving an issue of fact by introducing testimony [and which] does not necessitate a juror." 6 How. Prac. 118, 119.

insanity. An affirmative defense to a criminal charge, a social and legal term that includes mental illness and insanity. A term that refers to a condition which renders the affected person unfit to enjoy liberty of action because of the unreasonableness 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. The act describes the 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.

issue. The disputed point in a disagreement between parties in a lawsuit. To send out officially, as in to issue an order.

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 timely habeas corpus relief. 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 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 can not 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. A lien or judgment by 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.

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. The study of the structure of legal systems – differences in the study of the structure of legal systems and the study of its content. 2. The overall course sometimes used by a writer to simply mean "law.

jurist. 1. One well-versed in law, especially an eminent judge, lawyer, 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, 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)). Some courts, in an effort to inform a whole 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.

justifiable homicide. Homicide that is permitted under the law. 2. A killing justified by necessity.

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. K — K — K — K — K — K — K.

keeping a place of prostitution. Knowingly granting or permits the use of place for the purpose of prostitution.

copy 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 murder or a rape 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.

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 before performing 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 courts, or by the state, 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 definition, must change — and criminal laws change as criminal changes or as the people’s view of criminality changes. 123 N.W. 3d 504, 505. Cf. adjective law, case law, common law, session law, statute, substantive law, uniform law.


Law Clerk. In the United States, usually a law school student employed by the law school 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 to 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 of ordinary intellect who cannot 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 tests. 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 legislature that should be enforced by the courts 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 “spirt” 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.

light. Pubished defamation which tends to injure a person’s reputation. Cf. slander.

licensing boards. State agencies created to regulate the issuance of licenses, where they issue to contractors, lawyers, 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 statute 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.

lordship. The act of delaying, lingering, or to be idle about something the parties desire to have in written evidence.

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 because of a specific and clear threat of 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 definition, must change — and criminal laws change as criminal changes or as the people’s view of criminality changes. 123 N.W. 3d 504, 505. Cf. adjective law, case law, common law, session law, statute, substantive law, uniform law.

lost 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.

so-called 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.Ed.2d 694.

mixed. An accident. Mishap.

conduct 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.

misdeemeanor. 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.

melanoma. Improper performance of an act which a person might lawfully do. Cf. misfeasance.

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. A model code of criminal laws intended to standardize general provisions of criminal liability, sentencing, defenses, and the definitions of specific crimes.

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 not or may not be aware of what he or she possesses.

merely 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 of the mens rea for a substantive crime.

merry-go-round. A preparatory action 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 to the constitutional guarantee of equal protection, it refers to an identifiable and specifically disadvantaged group, and includes criminal defendants both prior to and after conviction. 343 F. Supp. 704, 730.

minute book. A book maintained by the courthouse deputy (bafliff), which contains minute entries of all hearings and trial conducted by the judge.

minutes. Memorandum of a transaction or proceeding.

Miranda warnings. An affirmative rule that requires police to inform 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.Ed.2d 694.


mistake of fact. Misinterpretation, misunderstanding, or forgivable ignorance 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.

misfeasance. Improper performance of an act which a person might lawfully do. Cf. malfeasance.

mistake in judgment. The act of delaying, lingering, or to be idle about something the parties desire to have in written evidence.

misprision of treason. The concealment or nondisclosure of the known treason of another.

mistake of fact. Misinterpretation, misunderstanding, or forgivable ignorance 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.

miscarriage of justice. A model code of criminal laws intended to standardize general provisions of criminal liability, sentencing, defenses, and the definitions of specific crimes.
moral certainty. At least "reasonable certainty" or "certainty beyond a reasonable doubt" but less than an absolute certainty. A new or building conviction based on convincing reasons and excluding all reasonable doubts that the defendant was in error.

motive. Information required by the court disallow the hearing in a case of possibly prejudicial

morals. Ethical principles, or principles meant to guide human conduct and behavior; principles or standards of right and wrong.

moot. Regarding a moot court 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 of fact depending on the case. A motion made by counsel requesting that the court disallow the hearing in a case of possibly prejudicial information.

motivation. A person's reason for committing a crime.

murder. The unlawful killing of a human being with deliberate intent to kill. (1) premeditated murder in the first degree; (2) a sudden and instant murder to kill or cause injury without caring whether the injury kills or not, characterized murder in the second degree. According to the common law, both types are being killed by another person. Moot.

mutual assent. A meeting of the minds agreement.

National Labor Relations Board. (NLRB). A federal agency designed to develop and promote occupational safety and health standards.

National Labor Relations Board. (NLRB). A federal agency which prevents and remedies unfair labor practices of employers.

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 human-made laws. This law that so positively agrees with the nature 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 agreement 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. Negligence. 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 to do it for its approval, means that the grand jury found the evidence as insufficient to indict.

No-contest Clause. A federal agency designed to develop and promote occupational safety and health standards.

objection. The process by which one party takes exception to some statement or procedure. A judge either sustains (allows) or overrules (denies) an objection. Objection.

obscenity. That which appeals to the prurient interest and lacks serious literary, artistic, or scientific value.

Occupational Safety and Health Act (OSHA). An occupational safety and health standard designed to protect workers from hazards in the workplace.

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. Offer of proof.

official report. A publication which appears regularly but less frequently than a quarterly. Public report.

official reports. A publication which appears regularly but less frequently than a quarterly. Official reports.

oral argument. A 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 defined as if done to cause the court's decision to be overturned. 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.

punishment and restores rights and privileges forfeited on account of the offense.

parole 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 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, who are therefore criminally liable for the offense.

patent. 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 making, 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 Pennsylvania state legislature in the 1830s and used for offenders 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 repentance (penitence) — thus the word "penitentiary.” It competed with the Auburn system.

peremptory challenge. A request by a party that a judge not allow a certain prospective juror as a member of the jury. qv. 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 defendant to avoid 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 a daily.

perjury. The wilful 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 in that it is 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.
person in need of supervision. Juvenile found to have committed a “status offense” rather than a crime that would provide a basis for detention of delinquency or status offense. personal crime. Also called violent crime, 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 that 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’.” 236 S.W.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 also appo 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. Abetting, 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 may also plead 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 other charge in return of a multiple-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. 404 U.S. 227, 230-231. ABA Minimum Standards for Criminal Justice—Standards Relating to Pleas of Guilty (1988). 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 “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 civil or criminal case. 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 them in good shape and organization. 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 “basically.” post-crime victimization or—secondary victimization. Problems that follow from initial victimization, such as the loss of employment, medical bills, the insolvency 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 by the donor’s surviving spouse. 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 execution 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 application 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 must follow in cases involving identical circumstances. Cf. stare decisis in Latin Words & Phrases. preclusive 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 than 50 percent). Evidence precedes its location 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. pretended 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 at which the disposition 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 allowing it to continue in the judicial process, and free from palpable defects. 105 N.E.2d 454, 456. A case that appears capable of prevailing in the absence of contradictory evidence. 185 N.E. 115, 124. A case where a directed verdict or a motion to dismiss. Cf. prima facie in the Latin Words & Phrases. principal 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 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 subject to that contract. 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 beyond the ordinary. 610, 623. 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. probable. 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 in 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 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 individual 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 supervision of an officer. A violation of probation can lead to its revocation and 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 promise 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. enticing, inducing, or otherwise purposely causing a person to become a prostitute; 4. soliciting or attempting to procure 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. prosecutor. 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 which, when, and how to prosecute. prosecutorial duty to disclose—or—Brady Rule. Due process in the form 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
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 or a secondary cause which 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.

punitive damages. Monetary award given to punish the defendant or wrongdoer.

public law. Law that 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, breaches of peace, disorderly conduct, vagrancy, loitering, unlawful assembly, public intoxication, obstructing public passage, and (illegally) carrying weapons.

Public Service Commission. A state agency which regulates utilities.

punitive damages. Money awarded to punish the defendant or wrongdoer.

purchase agreement. An agreement by which the buyer acquires and pays for the purchase and delivery of goods by the seller.

putative. Alleged; supposed; reputed.

reason to doubt. A legal defense to a charge of attempted criminal conduct. Also called reasonableness doubt. The test is whether a defendant acted reasonably. A court generally will admit evidence of reasonableness doubt in a criminal case. However, in a civil case, this defense is less frequently allowed.

real property. Land, buildings, fixtures, and whatever is attached or affixed to the land. Generally synonymous with the words "real estate.

real estate. Words "real estate." The instrument authorizing one person to represent, act, and vote for another at a shareholders' meeting of a corporation.

reasonable doubt. A jury is required to acquit a person if, in the minds of the jury, the prosecution has not proved his or her guilt beyond a reasonable doubt. If the jury is not convinced beyond a reasonable doubt, then they must decide whether the evidence is capable of giving rise to an honest belief in the innocence of the defendant. If the jury decides that the evidence is not capable of giving rise to an honest belief in the innocence of the defendant, then the jury must find the defendant guilty. If the prosecution fails to prove guilt beyond a reasonable doubt, then the defendant is acquitted.

reason to doubt. A legal defense to a charge of attempted criminal conduct. Also called reasonableness doubt. The test is whether a defendant acted reasonably. A court generally will admit evidence of reasonableness doubt in a criminal case. However, in a civil case, this defense is less frequently allowed.

reasonable force. A degree of force that is appropriate in a given situation and is not excessive. The minimum degree of force necessary to prevent oneself, one's 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 interests and the interests of others. Restatement of Torts 2d, §283(b). Thus, the court finds negligence based on either a failure to do something that a reasonable person, guided by considerations that an ordinary person would, would do or the doing of something that a reasonable and prudent (wise) person would not do. 43 S.W. 308, 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.

receipt of stolen property. 1. knowingly taking possession of or control over property which has been unlawfully stolen from another; or, 2. receiving of stolen property, knowing that it has been stolen.

reasonless behavior. Activity which increases the risk of harm.

reconnaissance. An obligation created by the law in 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.

recovery. The process by which the court discharges a judgment from hearing a case either on his or her own motion (sua sponte) or upon the objections of a party. re-direct examination. Opportunity to present rebuttal evidence after an adverse party submits to a direct examination.

redress. To set right. To remedy. To compensate. To remove the causes of a grievance.

reefer. 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.

reeharing. Another hearing of a civil or criminal case by the same court in which the case was originally heard.

registered mark. A trademark with the words "Registered in the U.S. Patent and Trademark Office" or the letter "R" enclosed within a circle thrice.

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 prevails, or redresses, compensates the violation of a right or privilege by a party.

remittitur. The reduction by a judge of the damages awarded by a jury.

removal. The transfer of the 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.

removal. The voluntary and complete abandonment of the intent and purpose to contest a criminal offense. Renunciation is a defense to attempted criminal activity.

replacement volumes. Volumes which replace books combined with their pocket parts when the pocket parts cease to be useful.

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 opposite 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.

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 "Republica" 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 every citizen should do his or her 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. cf. request for admission. Written statements of facts concerning the suit 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 for production of specified documents for review with respect to a suit; a discovery device.

request to admit. Request for Admission, qv.

recession. 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.

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. Also requires provision for 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.

retrial. 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 reasonable safety.

retribution. The act of taking revenge upon a criminal perpetrator. Also, the most punished-oriented of all sentencing goals, and one which claims that we are justified in punishing someone for what they have done.

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's 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.

revocation. 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 presence 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 admitts evidence in a civil or criminal case.

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, etc.

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 of using force 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 reasonable force is not unlawful to protect a person or property against an 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 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.


sentencing. The process through which a sentencing authority imposes a lawful punishment or other sanction upon a person convicted of a civil or criminal law.

sequel. To separate. Sometimes courts separate justices 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 passed 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.

setter–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 with trade or commerce, 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 this type of sentence normally do not come from outside influences during a trial or during their deliberations. For example, due to a highly publicized trial.

simple assault. Assault, pv.

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 amount 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 and survivors' benefits. Congress deducts 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 consistent monopoly in the United States. Sodomy includes bestiality (sexual acts with animals) and human buggery (copulation per anum) 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 flowing accepted standards of morality in the community. Perkins & Seymore, 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 of crimes. Enacts ondendent a portion of the offender's profits to the offender 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 bestowed immunity to lawsuits upon the government, state or federal, unless it gives its consent.

sovereignty. Preeminence among others. Having supreme rank or power. Self-governing, the king or queen exercises sovereign power, in democracy, the people exercise sovereign power. In the United States, the people have by way of their state and federal constitutions, legislated, 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 criminally.

specific performance. A remedy requiring a person who has breached a contract to perform specifically what he or she agreed 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. Legally, crimes that require a specific intent. Generally speaking, specific intent crimes involve a secondary purpose.

Speddy 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 supervision.

stalking. The intentional frightening of another through following, harassing, annoying, tormenting, or terrorizing activities.

standard of proof. Indicates the degree to which the complainant must prove his 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 “preponderance of evidence” or “clear and convincing evidence.” In a criminal case, the prosecution must meet the standards of “beyond a reasonable doubt.” Proof, pv.

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. Youth’s changes 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 such a manner as to become 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 particular purpose, such as enact laws to prescribe conduct, to define crimes, to create lower bodies of government, to specify use of public money, 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 when a manufacturer produces 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” or, 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 must 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. A test developed by the American Law Institute and embodied in the Model Penal Code. The test holds that a person has substantial capacity 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 or the 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, would have 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 preventing harm 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. 152 P.2d 589, 593-594. Cf. adjective law.
sudden passion. As in instances of voluntary manslaughter, passion directly caused by and arising out of provocation by the victim or of another acting with the victim, and includes the understanding that the provocation 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 trial of the issues on the merits. 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.

suppression. For the court to forbid the use of evidence at a trial because police or other officials obtained it in violation of the defendant's constitutional rights. 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 “fiduciary bond.”

survivorship. Cf. joint tenancy.

sustain. A temporary loss of the right to practice law by an attorney. Cf. disbarment, censure.

support trust. 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.

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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. Movables 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 on 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 and limited scope. A court issues a TRO 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 a reasonable basis for believing he would be authorized to obtain such services.

third party complaint. A petition filed by a defendant against a third party (not presently a party to the suit) which alleges the defendant’s rights were violated. May be filed by any party to any action.

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.

tortfeasor. 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 or an extendent act that results from intentional action undertaken in the commission of a crime may also be illegal.

transfer intent. 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 aiding 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. Will's 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.

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 the 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 promise or performance due to an 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

A free primer. For imprisoned people only.
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 and 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 martial decisions.


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 all cases arising under federal laws.

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 suits 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.


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 decision and judgment.

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 or entity 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 of 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 victim 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.

victims witness assistance programs. Services 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.


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. If willful intoxication: intoxication that is the result of personal choice. Willful 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


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 concerning 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 Legal 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 that 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

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

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 the abbreviations, marked in this section with [i].

§ section. clause. §§ sections. clauses.
aft. Affidavit.
aka. Also known as.
arg. Arguedo.
C.J. Corpus Juris.
C.J.S. Corpus Juris Secundum.
c. resp. [i] citations to respondent.
Cf. [i] compare with.
ed. [i] example.
Eq. equality.
et al. et alii. And others.
et seq. et sequentes. And the following (of that described—clauses, paragraphs, pages, etc).
etc. et al. et cetera. And the rest.
ex rel. [i] abbrev. “ex relatione” Upon relation.
Fka. Formerly known as.
ib. [i] idem. Refers to the same book or page.
ibid. [i] idem. Refers to the same book or page.
Id. [i] idem. The same.
I.e. id est. That is.
L.S. locus sigilli. Place of the seal.
N.B. [i] nota bene. Note well.
nm. No middle name.
N.O.V. [i] non obstante veredicto.
nol. pros. [i] nolle prossequi. Will not prosecute.
non seq. [i] non sequitur. It does not follow.
non vult. [i] non volunt contendere. He will not contest.
pro tem. [i] pro tempore. For the time being.
qu.v. [i] quod vide. Which see.
viz. [i] 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 RE-us) “guilty act” or “deed of crime” Every crime has two components: actus reus (unlawful action) and mens rea (evil intent). Perpetrator must possess both.

ad testificandum (ad TES-uh-KAHN-dohm) “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.

affordic (ah FORDER-ick) "from the most powerful reason" Refers to drawing conclusion based on a powerful requirement or necessity, because he did not steal, also not guilty of robbery (stealing with threat of force).

alunide (ahl-UN-ide) "from elsewhere" The alunide rule says a verdict may not be impeached by evidence held by a juror unless based on competent evidence from elsewhere. Evidence alunide refers to that evidence from elsewhere. 141 Ohio St. 432.

amicus curiae (ah-MIK-uss kur-ee-AY) "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 N.Y.S.2d 510, 512.

amicus (ah-MICK-uss) "proper decision (for the sake of justice)." Amicus brief, a brief 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.

anterior (ahn-POST-er-ur) "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 posteriori (ah POST-ur-ur) "from what comes before" Refers to predicting a cause from its effects. Reasoning from general principles to particular facts: deductive logic. Cf. a posteriori.

apx (ah-pax) "of the same" (as the same). Cf. apx (ah-pax) "of the same" (as the same).

a posteriori (ah POST-er-ur) "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 PRIH-ur) "from what comes before" Refers to predicting a cause from its effects. Reasoning from general principles to particular facts: deductive logic. Cf. a posteriori.

as ide (ah see) or (that is) Abbrev. for id est (ah see) or (that is) Abbrev. for id est.

At (ah te) Abbrev. of "at" meaning "at" or "in.

atheistic (ah THEE-ist-ick) "without God or theism" In the state of unbelief.

habeas corpus (ahl-bay-us KOR-pus) See the larger habeas corpus (ahl-bay-us KOR-pus).

habeas corpus (ahl-bay-us KOR-pus) See the larger habeas corpus (ahl-bay-us KOR-pus).
nunc pro tunc (nun-k proh-TOHN) "for this reason" (in an appealable decision or judgment, unless the court rendered, not upon intellectual conviction of the decree, but merely to facilitate further proceedings. 267 F. 564, 568.

pro hac vice (PAH-kay VAY-chay) "for this turn" The

pro forma (proh FAH-mah) "for the sake of the form" in an appealable decision or judgment, unless the court rendered, not upon intellectual conviction of the decree, but merely to facilitate further proceedings. 267 F. 564, 568.

pro hac vice (proh hak VAY-chay) "for this turn" The

pro hac vice (proh hak VAY-chay) "for this turn" The

pro hac vice (proh hak VAY-chay) "for this turn" The
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 it into law. For instance, the California legislature passed laws in 1999 in its 1999-2000 session. You can find 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) account 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, Baron 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. – H W Fowler, The New Fowler’s Modern English Usage, 1926

But to generalize is to omit... – Joseph Story

Delay is preferable to error. – Thomas Jefferson to George Washington, 1792

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 the law. – John Locke, Second Treatise of Government, 1690s

EVICTION.

Better to suffer a great evil at the hand of another than to commit the evil youfear. – Proverb

Evil deeds never prosper. – Homer, Odyssey, c. 8th century BC

Of two evils we should always choose the less. – Homer

There is no worst torture than the torture of laws. – Justinian I, 550 AD

Every new tribunal, erected for the decision of facts, without 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. – Sespe, 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, 477-479 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. – Cicero, On Duties, 44 BC

No law perfectly suits the convenience of every member of the community; the only consideration is, whether upon the whole it is profitable to the greater part. – Livy, History of Rome, c. 10 BC

The prospect of law is these are 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, Essays, 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, 1650

Legal principles are those that live honorably, to injure no other man, to render every man his due. – Justinian I, Institutes, c. 533

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Possession is nine points of the law. – Thomas Fuller, Holy War, 1650

Where good laws are, there are good 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? – Aesop

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
franklin E. zmiring, 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 flally absurd or unjust; for though their reason be not obvious to 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, and then i should 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 Wendelelson, Jr.

there is no such supernatural 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 merely interested in where it had been. – Frederick 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 US 262, 311 (1932)

prosecution.

those who make the attack ought to be very well prepared to support it... – Sir George Roeke, English jurist, Almg v. Pierson (1797), 2 B & P. 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 first, justice, US District Court, US News & World Report, 19 June 1978

punishment.

no pain equals that of an injuflict under the pretense of a just punishment... – Lupenico Leonardo de Argensola, Spanish poet and dramatist, Sonecos

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. – the life has a duty to the society, not the other way around.

the First Amendment is often forgotten. but that is beside the point, inconvenience does not absolve the government of its obligation to tolerate speech. – Johnson, M. Kennedy, US 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... – Helen M Cam, English historian

too often, practitioners of the law are... not creators of legal rules. the myth cannot be left out of account on tracing the sequence of cause and effect. – Helen M Cam, English historian

sentences.

the toughest part of this job is sentencing. I’ve lost all kinds of sleep over sentences. I find it dreadful. – Malcolm Mur, American jurist, US Supreme Court, US News & World Report, 8 Mar 1981

severality.

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 trustworthiness of the highest tribunal perhaps the most revered traditions on our national system.

– Felix Frankfurter, 63 Harvard Law Review, 1, 1 (1949)

torts.

it is a vain thing to imagine a right without a remedy; for want of it the want of it is an offense. – 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 Walker, 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) 4 Mod. & & World Report 162

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 US 12, 19, 76 S. Ct. 65, 56 L.R. 196 (1956)

guilt or innocence become irrelevant in a criminal trial as we founder in a morass of artificial rules, poorly conceived and often impossible of application. like the hapless centepede on the flypaper, our efforts to extricate ourselves from this self-imposed dilemma will, if we keep 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 in 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 would say, and 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 be created only by allowing people to observe it. – Warren E. Burger, Richmond Newspapers Inc v. Virginia, 488 US 555, 100 S. Ct. 2164 (1980)

truth.

and, finally, that truth is great and will prevail if it itself is the proper and sole 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 Clesby, English jurist, Johnson v. Emerson, (1871), 57 Ind. 534

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 evidence is the only thing that is being permitted freely to contradiction them. – Thomas Jefferson

tyranny.

the purpose of the 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. the facts behind no more than the attorney imposed on the most basic rights of all. Seedlings planted in the soil grow greatly, and, in growing, break down the foundations of liberty. – Wiley B. Rutledge, Thomas v. Collins, 332 US 516, 68 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, Piatre Fruttes, 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 harm 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 (1927) 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

"Dogs better than kennel-fed dogs..." – Learned Hand, American jurist, Truculentus

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 mislead a document than to read it literally. – Learned Hand, American jurist, Guespopii v. Wailing, 334 U.S. 244, 68 S. Ct. 623 (1944)

Law has always been untranslatable, 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. Ought to be untranslatable because it ought to be in words — and words are utterly inadequate to deal with the fantastically multifaceted 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 wishes an audience to understand; yet it may have communications which will produce antagonistic impression. The resulting ambiguity can lead to misunderstanding of reasoning. Even in 1954, such a commutative 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 like to go out and seek their livelihood..." – 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 of ______
salutation Mr. (Ms.) Attorney General:

Attorney General (US) address The Honorable John(Jane) Smith Attorney General of the United States

salutation Dear Mr. (Ms.) Attorney General:

Chief Justice (US Supreme Court) address The Chief Justice of the United States

salutation Mr. (Ms.) Chief Justice:

Chief Justice/Associate Justice (US Supreme Court) address The Honorable John(Jane) Smith

salutation Mr. (Ms.) Smith:

 Clerk (of a court) address John (Jane) Smith, Esq.

Clerk of the Court of ______
salutation Mr. (Ms.) Smith:

District Attorney address The Honorable John(Jane) Smith District Attorney

salutation Mr. (Ms.) Smith:

Judge (federal) address The Honorable John(Jane) Smith Judge of the United States District Court for the District of ______
salutation Mr. (Ms.) Smith:

Judge (state or local) address The Honorable John(Jane) Smith Judge of the United States District Court for the District of ______
salutation Mr. (Ms.) Smith:

Lieutenant Governor address The Honorable John (Jane) Smith Lieutenant Governor of ______
salutation Mr. (Ms.) Smith:

Mayor address The Honorable John (Jane) Smith Mayor of ______
salutation Mr. (Ms.) Smith:

President (US) address The President The White House

salutation Mr. (Ms.) President:

Representative (state) address The Honorable John(Jane) Smith United States House of Representatives

salutation Mr. (Ms.) Smith:

Representative (US) address The Honorable John(Jane) Smith United States House of Representatives

salutation Mr. (Ms.) Smith:

Secretary of State (state) address The Honorable John(Jane) Smith Secretary of State State Capitol

salutation Mr. (Ms.) Secretary:

Senator (state) address The Honorable John(Jane) Smith The Senate State Capitol

salutation Mr. (Ms.) Senator:

Senator (US) address The Honorable John(Jane) Smith United States Senate

salutation Mr. (Ms.) Senator:

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, is, was, were, isn't, wasn't, weren't, I'm, you're, it's, she's, he'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 convinced 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 morality or justice 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 treacherous skills required. This statement implies a present and persistent state — "thief" means "someone who steals" and makes the statement mean "John Doe is someone who steals a car" or "John Doe steals a car" as if he steals right now — a present and ongoing activity!

Such lousy thinking involved with that poor word forcing people to come to grips with the difficulty of ever determining that:

"John Doe stole a car in 1989."  

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 rooted 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 fluff others, steal, lie, or tell, 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?" Does it make sense? No, 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 “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?”)

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 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 false 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 reality? This hypothesis (theory) implicitly includes the topic of English Prime described in the section above.

Three linguists (Edward Sapir 1897-1941, Benjamin Whorf 1893-1941, and Alfred Korzybski 1879-1950) contributed their ideas about language and perception to their hypothesis, in essence, states: The grammar and the words and their definitions that a person uses also influences and shapes their perception of reality. The author of this legal primer believes this, and encourages ourselves as the eternal liars, thieves, speeders, and sinners that our bodies cannot manufacture them. Learn about Amino acids.

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. 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 needs.

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 create brain "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 dinner is fakery. It’s not real. Its lack of storage can create brain "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.

Dietary fiber. People laugh about fiber (formerly called roughage), but they also complain 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 literally to “pee away” the important B-complex vitamins (B-1, B-2, B-3, B-6, and B-12), mostly complex carbs. 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 and to use carbohydrates is getting less. 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 incorrigible people should purposely make exercise part of their daily routine. Aerobic exercising (walking, 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 hours) 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 forgot it? “I don’t want to tell on him,” and then you told on him? “I don’t want to pitch low and outside,” and your 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 his discovery as the most important finding of the last hundred years.

What do you mean by “No”? Understand an important — slight 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 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 find him drawing on the walls. Tell a kid, “Don’t fail out of the tree,” and that actually plants a seed in his mind to fail out of the tree. Tell yourself, “I don’t want to be broke,” or, “I 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 remaking 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 stuffing 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 you. You will find yourself in the literary 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, “Hand me that book.” 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 honestly.” And you will go to work understanding sobriety, finding reasons why and how sobriety and honesty works, seeing why you want to live soberly and honestly, 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. “How to work with will.”

— Want the donut —

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 happen? Although we can allure 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 their truth clearly and quietly; 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 are 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 heros.” Be yourself. Especialiy, don’t do fagen 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.

With all its sham, drudgery, and broken dreams, it is still a beautiful world. Be cheerful. Sitive to be happy.

(“written by Max Ehrmann in 1927”)

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