WEST'S ENCYCLOPEDIA *of* AMERICAN LAW

2ND EDITION

How to Use This Book

❚1❚ Article Title

❚2❚ Definition in italics with Latin translation provided

❚3❚ First-level subhead

❚4❚ Timeline for subject of biography, including general historical events and life events

❚5❚ Sidebar expands upon an issue addressed briefly in the article

❚6❚ Quotation from subject of biography

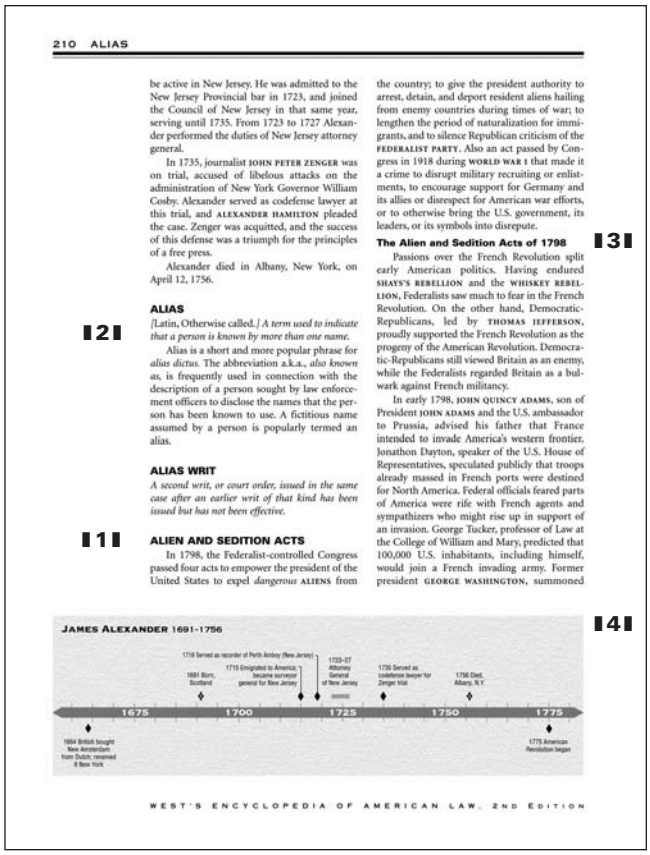
❚7❚ Biography of contributor to American law

❚8❚ Internal cross-reference to entry within WEAL

❚9❚ In Focus article examines a controversial or complex aspect of the article topic

❚10❚ Cross-references at end of article

❚11❚ Full cite for case



be active in New Jersey. He was admitted to the New Jersey Provincial bar in 1723, and joined the Council of New Jersey in that same year, serving until 1735. From 1723 to 1727 Alexander performed the duties of New Jersey attorney general.

In 1735, journalist JOHN PETER ZENGER was on trial, accused of libelous attacks on the administration of New York Governor William Cosby. Alexander served as codefense lawyer at this trial, and ALEXANDER HAMILTON pleaded the case. Zenger was acquitted, and the success of this defense was a triumph for the principles of a free press.

Alexander died in Albany, New York, on April 12, 1756.

ALIAS

❚2❚ *[Latin, Otherwise called.] A term used to indicate that a person is known by more than one name.*

Alias is a short and more popular phrase for *alias dictus.* The abbreviation a.k.a., *also known as,* is frequently used in connection with the description of a person sought by law enforcement officers to disclose the names that the person has been known to use. A fictitious name assumed by a person is popularly termed an alias.

ALIAS WRIT

A second writ, or court order, issued in the same case after an earlier writ of that kind has been issued but has not been effective.

❚1❚ **ALIEN AND SEDITION ACTS**

In 1798, the Federalist-controlled Congress passed four acts to empower the president of the United States to expel *dangerous* ALIENS from the country; to give the president authority to arrest, detain, and deport resident aliens hailing from enemy countries during times of war; to lengthen the period of naturalization for immigrants, and to silence Republican criticism of the FEDERALIST PARTY. Also an act passed by Congress in 1918 during WORLD WAR I that made it a crime to disrupt military recruiting or enlistments, to encourage support for Germany and its allies or disrespect for American war efforts, or to otherwise bring the U.S. government, its leaders, or its symbols into disrepute.

❚3❚ **The Alien and Sedition Acts of 1798**

Passions over the French Revolution split early American politics. Having endured SHAYS'S REBELLION and the WHISKEY REBELLION, Federalists saw much to fear in the French Revolution. On the other hand, Democratic-Republicans, led by THOMAS JEFFERSON, proudly supported the French Revolution as the progeny of the American Revolution. Democratic-Republicans still viewed Britain as an enemy, while the Federalists regarded Britain as a bulwark against French militancy.

In early 1798, JOHN QUINCY ADAMS, son of President JOHN ADAMS and the U.S. ambassador to Prussia, advised his father that France intended to invade America's western frontier. Jonathon Dayton, speaker of the U.S. House of Representatives, speculated publicly that troops already massed in French ports were destined for North America. Federal officials feared parts of America were rife with French agents and sympathizers who might rise up in support of an invasion. George Tucker, professor of Law at the College of William and Mary, predicted that 100,000 U.S. inhabitants, including himself, would join a French invading army. Former president GEORGE WASHINGTON, summoned

❚4❚

❚5❚

The First Payments of Social Security

After the enactment of the Social Security Act of 1935 (42 U.S.C.A. § 301 et seq.) and the creation of the Social Security Administration (SSA), the federal government had a short time to establish the program before beginning to pay benefits. Monthly benefits were to begin in 1940. The period from 1937 to 1940 was to be used both to build up the trust funds and to provide a minimum period for participation for persons to qualify for monthly benefits.

From 1937 until 1940, however, Social Security paid benefits in the form of a single, lump-sum payment. The purpose of these one-time payments was to provide some compensation to people who contributed to the program but would not participate long enough to be vested for monthly benefits.

The first applicant for a lump-sum benefit was Ernest Ackerman, a Cleveland motorman who retired one day after the Social Security Program began. During his one day of participation in the program, five cents was withheld from Ackerman's pay for Social Security, and upon retiring, he received a lump-sum payment of seventeen cents.

Payments of monthly benefits began in January 1940. On January 31, 1940, the first monthly retirement check was issued to Ida May Fuller of Ludlow, Vermont, in the amount of $22.54. Fuller died in January 1975 at the age of one hundred. During her thirty-five years as a beneficiary, she received more than $20,000 in benefits.

tions to Social Security. There is no financial need requirement to be satisfied. Once a worker qualifies for protection, his family is also entitled to protection. The entire program is geared toward helping families as a matter of social policy.

Two large funds of money are held in trust to pay benefits earned by people under OASDI: the Old Age and Survivors Trust Fund and the Disability Insurance Trust Fund. As workers and employers make payroll contributions to these funds, money is paid out in benefits to people currently qualified to receive monthly checks.

The OASDI program is funded by payroll taxes levied on employees and their employers and on the self-employed. The tax is imposed upon the employee's taxable income, up to a maximum taxable amount, with the employer contributing an equal amount. The self-employed person contributes twice the amount levied on an employee. In 2003 the rate was 6.2 percent, levied on earned income up to a maximum of $87,000.

Old Age Benefits A person becomes eligible for Social Security old age benefits by working a minimum number of calendar quarters. The number of quarters required for full insurance increases with the worker's age. Forty quarters is the maximum requirement. The individual is credited for income up to the maximum amount of money covered by Social Security for those years. This amount is adjusted to reflect the impact of inflation on normal earnings and ensure that a worker who pays increasing Social Security contributions during his or her work life will receive retirement benefits that keep pace with inflation.

Persons born before 1950 can retire at age 65 with full benefits based on their average income during their working years. For those born between 1950 and 1960, the retirement age for full benefits has increased to age 66. Persons born in 1960 or later will not receive full retirement benefits until age 67. Any person, however, may retire at age 62 and receive less than full benefits. At age 65, a worker's spouse who has not contributed to Social Security receives 50 percent of the amount paid to the worker.

Since 1975 Social Security benefits have increased annually to offset the corrosive effects of inflation on fixed incomes. These increases, known as cost of living allowances (COLAs), are based on the annual increase in consumer prices. Allowing benefits to increase automatically ended the need for special acts of Congress, but it has also steadily increased the cost of the Social Security Program.

have the same inheritance rights as other children. The ruling was believed to be the first on the controversial issue by any state supreme court.

Also in January 2002, Marshall addressed the Massachusetts Bar Association Conference, where she called for "a revolution in the administration of justice" stating that the court system needed to improve its management system as well as its staffing and budget controls. In March 2002, her discussion of the court system's problems were amplified in a 52-page report that was published by a blue-ribbon panel appointed by Marshall.

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THE GOVERNMENT [THAT THE FRAMERS OF THE CONSTITUTION] DEVISED REQUIRED SEVERAL AMENDMENTS, A CIVIL WAR, AND MOMENTOUS SOCIAL TRANSFORMATION TO ATTAIN THE SYSTEM OF CONSTITUTIONAL GOVERNMENT, AND ITS RESPECT FOR THE INDIVIDUAL FREEDOMS AND HUMAN RIGHTS, THAT WE HOLD AS FUNDAMENTAL TODAY.
THURGOOD MARSHALL

MARSHALL PLAN

After **WORLD WAR II**, Europe was devastated and urgently needed an organized plan for reconstruction and economic and technical aid. The Marshall Plan was initiated in 1947 to meet this need.

The originator of the plan, U.S. Secretary of State George C. Marshall, introduced it in a speech at Harvard University on June 5, 1947. He pointed out two basic reasons for providing aid to Europe: the United States sought the reestablishment of the European countries as independent nations capable of conducting valuable trade with the United States; and the threat of a Communist takeover was more prevalent in countries that were suffering economic depression.

In 1947 a preliminary conference to discuss the terms of the program convened in Paris. The Soviet Union was invited to attend but subsequently withdrew from the program, as did other Soviet countries.

Sixteen European countries eventually participated, and, in July 1947, the Committee for European Economic Cooperation was established to allow representatives from member countries to draft a report that listed their requirements for food, supplies, and technical assistance for a four-year period.

The Committee for European Economic Cooperation subsequently became the Organization of European Economic Cooperation, an expanded and permanent organization that was responsible for submitting petitions for aid. In 1948, Congress passed the Economic Cooperation Act (62 Stat. 137), establishing funds for the Marshall Plan to be administered under the Economic Cooperation Administration, which was directed by Paul G. Hoffman.

Between 1948 and 1952, the sixteen-member countries received more than $13 billion dollars in aid under the Marshall Plan. The plan was generally regarded as a success that led to industrial and agricultural production, while stifling the Communist movement. The plan was not without its critics, however, and many Europeans believed the **COLD WAR** hostilities between the Soviet nations and the free world were aggravated by it.

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◊ MARSHALL, THURGOOD

Thurgood Marshall, the first African American to serve on the U.S. Supreme Court, saw law as a catalyst for social change. For nearly 60 years, as both a lawyer and a jurist, Marshall worked to dismantle the system of **SEGREGATION** and improve the legal and social position of minorities.

Marshall was born July 2, 1908, in Baltimore, the son of a Pullman porter and a schoolteacher. He was a graduate of Lincoln University, a small, all-black college in Pennsylvania, and Howard University Law School in Washington, D.C. At Howard, Marshall excelled under the guidance of Vice Dean **CHARLES HAMILTON HOUSTON**, the first African American to win a case before the U.S. Supreme Court. Houston encouraged his students to become not just lawyers but "social engineers" who could use the legal system to improve society. Marshall graduated first in his law class in 1933.

Marshall's attendance at predominantly black Howard University illustrates the barriers faced by African Americans during the early twentieth century. Although Marshall wished to attend law school at the University of Maryland (a public institution in his home town of Baltimore), he was prohibited by law from doing so because of his race. This injustice helped set Marshall on a course of opposing all forms of official segregation that denied equal opportunities to African Americans.

After law school, Marshall set up a practice in Baltimore, representing indigent clients in civil rights cases. In 1936, his mentor Houston offered him a position with the National Association for the Advancement of Colored People (**NAACP**),

and in 1940, Marshall became director of the **NAACP LEGAL DEFENSE AND EDUCATIONAL FUND**, a position he held until 1961. Determined to eliminate segregation, Marshall coordinated a nationwide campaign to integrate higher education. He filed several successful lawsuits against public graduate and professional schools that refused to accept African-American students. These suits paved the way for similar cases at the high school and elementary school levels. Marshall also journeyed throughout the deep South, traveling fifty thousand miles a year to fight **JIM CROW LAWS** (a series of laws that provided for racial segregation in the South) and to represent criminal defendants.

Marshall argued 32 cases before the U.S. Supreme Court and won 29 of them. No doubt his most famous and far-reaching triumph before the High Court was **BROWN V. BOARD OF EDUCATION OF TOPEKA, KANSAS**, 347 U.S. 483, 74 S. Ct. 686, 98 L. Ed. 873 (1954). In that case, the father of African-American student Linda Brown sued the school board of Topeka, Kansas, over its segregation policy. Brown was required by law to attend an all African-American school several blocks from her home even though an all white public school was located in her own neighborhood. Under Kansas law, cities of more than 15,000 people, such as Topeka, could choose to operate segregated schools. Marshall argued that these segregated schools, defended by officials as "separate but equal," were unconstitutional.

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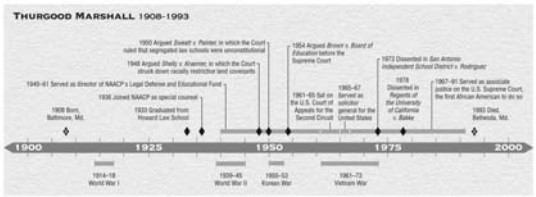
The **SEPARATE-BUT-EQUAL** doctrine originated in **PLESSY V. FERGUSON**, 163 U.S. 537, 16 S. Ct. 1138, 41 L. Ed. 256 (1896), a case allowing segregated public accommodations for whites

Thurgood Marshall.
LIBRARY OF CONGRESS

and blacks. In a plainspoken argument, Marshall dismissed as fallacy the notion that segregated schools offered the same educational experiences to black and white students. Sociological and psychological studies demonstrated that black children were in fact harmed by the policy of school segregation. The students' self-esteem was damaged and their future diminished when they were forced to accept inadequate facilities, equipment, and educational opportunities. Marshall argued that the only purpose segregation served was to perpetuate the myth of African-Americans' inferiority. A unanimous Court agreed and struck down the separate-but-equal doctrine, a



THE FUTURE OF SOCIAL SECURITY

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The payment of **OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE** (OASDI) benefits has been a cornerstone of U.S. social welfare policy since the establishment of the **SOCIAL SECURITY ADMINISTRATION** in 1935. At the same time, the long-term financial stability of OASDI has been a constant worry. In the early years of the twenty-first century, concerns about Social Security mounted as policy makers assessed the impact of the retirement of the "Baby Boom" generation. Many younger people raised the issue of "generation equity." They express doubt that Social Security benefits will be available when they retire, and anger that they will be forced to pay, through payroll taxes, for the baby boomers' retirement benefits.

Reform of the Social Security system has always been a political hot potato. Retirees and those approaching retirement form a strong **LOBBYING** force, and they zealously protect their benefits. Employers and employees are equally vocal in their opposition to higher payroll taxes to fund OASDI. Thus, changes in Social Security required bipartisan support, which materialized in the face of an impending Social Security crisis. The 1982–83 National Commission on Social Security Reform successfully secured from Congress the short-term financing of OASDI. As a result, Congress passed a series of laws meant to accumulate surpluses as a hedge against future burdens. The Social Security surplus is the amount by which revenue from the federal payroll tax exceeds the amount of Social Security benefits paid out.

IN FOCUS

Shortly after these new laws went into effect, Social Security began running a surplus. Surplus Social Security revenue can be used to fund other government programs and to help retire the national debt. During the favorable economic climate of the late 1990s, Congress began to use the surplus to pay down the federal debt, hoping to better position the government to meet its obligations to future retirees. And, in 2000, the federal government generated enough revenue so that the entire Social Security surplus was available for paying off debt.

The state of Social Security became a major campaign issue in the 2000 elections, with both Republicans and Democrats attempting to appear as though they were guardians of Social Security assets. Candidates from both parties promised to create a "lockbox," meaning that the Social Security surplus would be spent entirely on debt retirement. With the advent of fiscally lean years in the early 2000s, the lockbox approach was largely disregarded by politicians who advanced other ideas about what to do with Social Security surpluses. These ideas included using the surplus to help offset decreases in revenues brought about by tax cuts and using the surplus to fund new or expanded spending initiatives.

Analysts argue that the real issue often is clouded. It is not how to spend the surplus now, but how to maintain the long-term solvency of the Social Security trust fund. Planners estimate that the income from the trust fund will exceed expenses each year until 2020. The trust fund balances will then start to decline as investments are redeemed to meet the increased expenses from a swelling retired workforce. Although it is estimated that 75 percent of the costs would continue to be met from current payroll and income taxes, in the absence of any changes, full benefits could not be paid beginning in 2030.

In its 1996 report, the Social Security Administration's Advisory Council looked at various long-term financing options for OASDI. The council could not reach consensus on a specific long-term plan, but it did suggest several types of financing that represent a marked departure from previous efforts to fund Social Security. The council noted that past efforts have generally featured cutting benefits and raising tax rates on a "pay-as-you-go" basis. The council agreed that this approach must be changed and offered three ways of restoring financial solvency.

One approach, called Maintenance of Benefits (MB), calls for an increase in income taxes on OASDI benefits, a redirection of some revenue from other trust funds, and, most importantly, the adoption of a plan allowing the federal government to invest a portion of the trust fund assets directly in common stocks. Rates of returns on stocks have historically exceeded those on federal government bonds, where all Social Security

A person who continues to work past the retirement age may lose some benefits because Social Security is designed to replace lost earnings. If earnings from employment do not exceed the amount specified by law, the person receives the full benefits. If earnings are greater than that amount, one dollar of benefit is withheld for every two dollars in wages earned above the exempt amount. Once a person reaches age 70, however, he does not have to report earnings to the SSA, and the benefit is not reduced.

Survivors' Benefits Survivors' benefits are paid to family members when a worker dies. Survivors can receive benefits if the deceased worker was employed and contributed to Social

momentous victory for Marshall, affecting public schools in twenty-one states.

Marshall was appointed to the U.S. Court of Appeals for the Second Circuit in 1961, and served there until 1965 when he was named **SOLICITOR GENERAL** for the United States. He was appointed to the U.S. Supreme Court in 1967 by President **LYNDON B. JOHNSON** and served as an associate justice for 24 years.

While on the Court, Marshall was known more for his impassioned dissents than for his majority opinions. In particular, as a staunch opponent of **CAPITAL PUNISHMENT**, he regularly voiced his disagreement with the majority in death penalty cases. He was also a firm backer of **AFFIRMATIVE ACTION** and contributed one of his most famous dissents in **REGENTS OF THE UNIVERSITY OF CALIFORNIA V. BAKKE**, 438 U.S. 265, 98 S. Ct. 2733, 57 L. Ed. 2d 750 (1978). In that case, Marshall criticized the high court's ruling that a public medical school's policy of reserving 16 of 100 spots for minority students was unconstitutional. Marshall also dissented in *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 93 S. Ct. 1278, 36 L. Ed. 2d 16 (1973), disagreeing with the majority view that a Texas property tax system used to fund public education was acceptable, even though it allowed wealthier districts to provide a better school system for students in those districts than less wealthy districts could provide. Marshall objected strongly to the property tax arrangement, claiming that it deprived poor children of an equal education.

Marshall wrote the majority opinion in *Amalgamated Food Employees Union v. Logan Valley Plaza*, 391 U.S. 308, 88 S. Ct. 1601, 20 L. Ed. 2d 603 (1968), in which the Court declared that a shopping center was a public forum from which picketers could not be barred by private owners.

Marshall retired from the Court in 1991, but continued his criticism of government policies that were detrimental to African Americans or other disenfranchised groups.

Marshall died on January 24, 1993, in Bethesda, Maryland. Upon Marshall's death, nearly 20,000 mourners filed by his casket during the 12 hours it lay in state in the Great Hall of the U.S. Supreme Court.

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CROSS-REFERENCES

10

Civil Rights Movement; Integration; School Desegregation.

MARTIAL LAW

The exercise of government and control by military authorities over the civilian population of a designated territory.

11

Martial law is an extreme and rare measure used to control society during war or periods of civil unrest or chaos. According to the Supreme Court, the term *martial law* carries no precise meaning (*Duncan v. Kahanamoku*, 327 U.S. 304, 66 S. Ct. 606, 90 L. Ed. 688 [1946]). However, most declarations of martial law have some common features. Generally, the institution of martial law contemplates some use of military force. To a varying extent, depending on the martial law order, government military personnel have the authority to make and enforce civil and criminal laws. Certain civil liberties may be suspended, such as the right to be free from unreasonable **SEARCHES AND SEIZURES**, **FREEDOM OF ASSOCIATION**, and freedom of movement. And the writ of **HABEAS CORPUS** may be suspended (this writ allows persons who are unlawfully imprisoned to gain freedom through a court proceeding).

In the United States, martial law has been instituted on the national level only once, during the Civil War, and on a regional level only once, during **WORLD WAR II**. Otherwise, it has been limited to the states. Uprisings, political protests, labor strikes, and riots have, at various times, caused several state governors to declare some measure of martial law.

Martial law on the national level may be declared by Congress or the president. Under

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DEDICATION

West's Encyclopedia of American Law (WEAL) is dedicated to librarians and library patrons throughout the United States and beyond. Your interest in the American legal system helps to expand and fuel the framework of our Republic.

Contents

PREFACE

The U.S. legal system is admired around the world for the freedoms it allows the individual and the fairness with which it attempts to treat all persons. On the surface, it may seem simple, yet those who have delved into it know that this system of federal and state constitutions, statutes, regulations, and common-law decisions is elaborate and complex. It derives from the English common law, but includes principles older than England, along with some principles from other lands. The U.S. legal system, like many others, has a language all its own, but too often it is an unfamiliar language: many concepts are still phrased in Latin. The second edition of *West's Encyclopedia of American Law (WEAL)* explains legal terms and concepts in everyday language, however. It covers a wide variety of persons, entities, and events that have shaped the U.S. legal system and influenced public perceptions of it.

MAIN FEATURES OF THIS SET

Entries

This encyclopedia contains nearly 5,000 entries devoted to terms, concepts, events, movements, cases, and persons significant to U.S. law. Entries on legal terms contain a definition of the term, followed by explanatory text if necessary. Entries are arranged alphabetically in standard encyclopedia format for ease of use. A wide variety of additional features, listed later in this preface, provide interesting background and supplemental information.

Definitions Every entry on a legal term is followed by a definition, which appears at the beginning of the entry and is italicized. The Dictionary and Indexes volume includes a glossary containing all the definitions from *WEAL*.

Further Readings To facilitate further research, a list of Further Readings is included at the end of a majority of the main entries.

Cross-References *WEAL* provides two types of cross-references, within and following entries. Within the entries, terms are set in small capital letters—for example, LIEN—to indicate that they have their own entry in the encyclopedia. At the end of the entries, related entries the reader may wish to explore are listed alphabetically by title.

Blind cross-reference entries are also included to direct the user to other entries throughout the set.

In Focus Essays

In Focus essays accompany related entries and provide additional facts, details, and arguments on particularly interesting, important, or controversial issues raised by those entries. The subjects covered include hotly contested issues, such as abortion, capital punishment, and gay rights; detailed processes, such as the Food and Drug Administration's approval process for new drugs; and important historical or social issues, such as debates over the formation of the U.S. Constitution.

Sidebars

Sidebars provide brief highlights of some interesting facet of accompanying entries. They

complement regular entries and In Focus essays by adding informative details. Sidebar topics include the Million Man March and the branches of the U.S. armed services. Sidebars appear at the top of a text page and are set in a box.

Biographies

WEAL profiles a wide variety of interesting and influential people—including lawyers, judges, government and civic leaders, and historical and modern figures—who have played a part in creating or shaping U.S. law. Each biography includes a timeline, which shows important moments in the subject's life as well as important historical events of the period. Biographies appear alphabetically by the subject's last name.

ADDITIONAL FEATURES OF THIS SET

Enhancements Throughout *WEAL*, readers will find a broad array of photographs, charts, graphs, manuscripts, legal forms, and other visual aids enhancing the ideas presented in the text.

Indexes *WEAL* features a cases index and a cumulative index in a separate volume.

Appendixes

Three appendix volumes are included with *WEAL*, containing hundreds of pages of documents, laws, manuscripts, and forms fundamental to and characteristic of U.S. law.

Milestone Cases in the Law

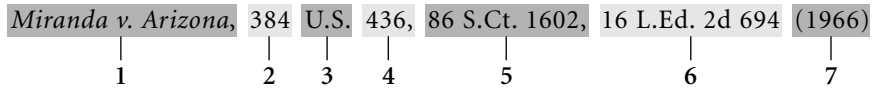
A special Appendix volume entitled Milestones in the Law, allows readers to take a close look at landmark cases in U.S. law. Readers can explore the reasoning of the judges and the arguments of the attorneys that produced major decisions on important legal and social issues. Included in each Milestone are the opinions of the lower courts; the briefs presented by the parties to the U.S. Supreme Court; and the decision of the Supreme Court, including the majority opinion and all concurring and dissenting opinions for each case.

Primary Documents

There is also an Appendix volume containing more than 60 primary documents, such as the English Bill of Rights, Martin Luther King Jr.'s Letter from Brimingham Jail, and several presidential speeches.

Citations

Wherever possible, *WEAL* entries include citations for cases and statutes mentioned in the text. These allow readers wishing to do additional research to find the opinions and statutes cited. Two sample citations, with explanations of common citation terms, can be seen below and opposite.



1. *Case title.* The title of the case is set in i and indicates the names of the parties. The suit in this sample citation was between Ernesto A. Miranda and the state of Arizona.
2. *Reporter volume number.* The number preceding the reporter name indicates the reporter volume containing the case. (The volume number appears on the spine of the reporter, along with the reporter name).
3. *Reporter name.* The reporter name is abbreviated. The suit in the sample citation is from the reporter, or series of books, called *U.S. Reports,* which contains cases from the U.S. Supreme Court. (Numerous reporters publish cases from the federal and state courts.)
4. *Reporter page.* The number following the reporter name indicates the reporter page on which the case begins.
5. *Additional reporter page.* Many cases may be found in more than one reporter. The suit in the sample citation also appears in volume 86 of the *Supreme Court Reporter*, beginning on page 1602.
6. *Additional reporter citation.* The suit in the sample citation is also reported in volume 16 of the *Lawyer's Edition*, second series, beginning on page 694.
7. *Year of decision.* The year the court issued its decision in the case appears in parentheses at the end of the cite.

Brady Handgun Violence Prevention Act, Pub. L. No. 103–159, 107 Stat. 1536 (18 U.S.C.A. §§ 921–925A)

1 2 3 4 5 6 7 8

1. *Statute title.*
2. *Public law number.* In the sample citation, the number 103 indicates this law was passed by the 103d Congress, and the number 159 indicates it was the 159th law passed by that Congress.
3. *Reporter volume number.* The number preceding the reporter abbreviation indicates the reporter volume containing the statute.
4. *Reporter name.* The reporter name is abbreviated. The statute in the sample citation is from *Statutes at Large.*
5. *Reporter page.* The number following the reporter abbreviation indicates the reporter page on which the statute begins.
6. *Title number.* Federal laws are divided into major sections with specific titles. The number preceding a reference to the U.S. Code stands for the section called Crimes and Criminal Procedure.
7. *Additional reporter.* The statute in the sample citation may also be found in the *U.S. Code Annotated.*
8. *Section numbers.* The section numbers following a reference to the *U.S. Code Annotated* indicate where the statute appears in that reporter.

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SARBANES-OXLEY ACT OF 2002

The Sarbanes-Oxley Act of 2002 (Public Company Accounting Reform and Investor Protection Act, Pub.L. 107-204, July 30, 2002, 116 Stat. 745, July 30, 2002) was enacted by Congress in the wake of corporate and accounting scandals that led to bankruptcies, severe stock losses, and a loss of confidence in the STOCK MARKET. The act imposes new responsibilities on corporate management and criminal sanctions on those managers who flout the law. It makes SECURITIES fraud a serious federal crime and also increases the penalties for WHITE-COLLAR CRIMES. In addition, it creates a new oversight board for the accounting profession.

During the 1990s, the stock market rose dramatically in value, fueled by the promise of the INTERNET revolution as well as large corporate MERGERS AND ACQUISITIONS. Several of that decade's changes produced severe consequences during the first years of the new century. The five major U.S. accounting firms developed consulting divisions that advised corporations on ways to maximize their profits. Their advice often clashed with the traditional auditing functions and standards of these accounting firms. At worst, the accounting firms forfeited their traditional oversight function and allowed or encouraged financial reporting practices that misled investors. On the corporate side, managers were expected to produce short-term gains on a quarterly basis to satisfy investment analysts who worked for stock brokerages. These analysts were sometimes encouraged and directed by management to tout the value of questionable stocks. Some corporate managers, who skirted or broke laws that mandated honest financial reporting, transformed the drive for profitability into a lust for personal fortune. The bubble burst when the Enron Corporation filed for BANKRUPTCY in December 2001 and the accounting firm of Arthur Andersen was convicted of OBSTRUCTION OF JUSTICE for its actions in shredding Enron-related documents. As the stock market plummeted and investor confidence waned, Congress responded. Senator Paul S. Sarbanes (D-Md.) and Representative Michael Oxley (R-Ohio) worked to enact a set of provisions that would prevent future debacles such as those that ruined Enron and Arthur Andersen. President GEORGE W. BUSH, after initially downplaying the need for reform, signed the bill into law on July 30, 2002.

Under the act, the SECURITIES AND EXCHANGE COMMISSION (SEC) has the authority to prohibit, conditionally or unconditionally, permanently or temporarily, any person who has violated laws governing the issuing of stock from acting as an officer or director of an corporation if the SEC has found that such person's conduct "demonstrates unfitness" to serve as an officer or a director. The act also imposes new disclosure requirements when companies file financial reports. Under Section 302 of the act, the SEC is required to issue a rule that mandates that the principal executive officer and the principal

financial officer certify in each annual or quarterly report the accuracy of certain information. The signing officer must disclose to the auditors and audit committee any significant deficiencies in the design or operation of the internal controls, any fraud, whether or not material, that involves management or other employees who have a significant role in the issuer's internal controls, and any significant changes in the internal controls. Section 906 requires that the chief executive officer and chief financial officer provide written statements to be filed with each periodic report filed under the Securities Exchange Act of 1934 certifying that the periodic report containing the financial statements fully complies with the requirements of Sections 13(a) or 15(d) of the Securities Exchange Act of 1934 and that the information contained in the periodic report fairly presents, in all material respects, the financial condition and results of operations of the issuer. A knowing violation of Section 906 is punishable by up to ten years in jail and a $1 million fine. A willful violation is punishable by up to 20 years in jail and a $5 million fine.

Section 303 prohibits any officer, director, or person acting at their direction "to fraudulently influence, coerce, manipulate, or mislead" an accountant who is conducting an audit. Under Section 304, if an issuer is required to restate its financial statements as a result of misconduct, the chief executive officer and chief financial officer must reimburse the issuer for any bonus or other incentive-based compensation paid during the twelve-month period following the improper reporting. Those officers also must pay to the company any profits realized from the sale of its securities during that twelve-month period.

The Sarbanes-Oxley Act also authorizes the establishment of a Public Company Accounting Oversight Board, which will oversee the accounting profession. Under Section 1 of the act, the board will have five financially experienced members who are appointed to five-year terms. Two of the members must be or have been certified public accountants, and the remaining three must not be, and must never have been, CPAs. The chair may be held by one of the CPA members, provided that he or she has not been engaged as a practicing CPA for five years. The board's members will serve on a full-time basis. Members of the board are appointed by the SEC "after consultation with" the chairman of the FEDERAL RESERVE BOARD and the secretary of the Treasury. No member may, concurrent with service on the Board, "share in any of the profits of, or receive payments from, a public accounting firm," other than "fixed continuing payments," such as retirement payments. The Commission may remove members "for good cause."

The Accounting Oversight Board will register accounting firms, develop auditing standards and rules of ethics for the profession, and investigate accounting firms. The board may discipline and sanction accounting firms that violate rules. It is required to "cooperate on an on-going basis" with designated professional groups of accountants and any advisory groups convened in connection with standard-setting, and although the board may, "to the extent that it determines appropriate," adopt standards proposed by those groups, it will have authority to amend, modify, repeal, and reject any standards suggested by the groups. The board must report to the SEC on its standard-setting activity on an annual basis.

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♦ SARGENT, JOHN GARIBALDI

John Garibaldi Sargent served as attorney general of the United States under President CALVIN COOLIDGE. He was born October 13, 1860, in Ludlow, Vermont, to John Henmon and Ann Eliza Hanley Sargent. He was schooled locally and then entered Tufts College in Boston, receiving a bachelor's degree in 1887. Early in his college years, Sargent became active in the Zeta Psi Kappa Society; through the fraternity's activities he was introduced to many of Boston's oldest and most influential political families, including the Coolidges.

After college, Sargent returned to Ludlow, where he married Mary Lorraine Gordon in 1887. Sargent studied law with attorney, and future Vermont governor, William Wallace Stickney. Following Sargent's admission to the

Vermont bar in 1890, he joined Stickney in the practice of law.

Sargent's first political appointment came in 1898 when he was named state's attorney for Windsor County, Vermont. He served until 1900 when he was appointed secretary of civil and military affairs for the state of Vermont by his law partner, who was then serving his first term as governor. After completing the two-year assignment, Sargent returned to the firm and resumed the practice of law. From 1902 to 1908, he argued the majority of his cases in federal court, and he established a national reputation as a trial lawyer.

In 1908 Sargent was named attorney general of Vermont. While in office, he was involved in one of the leading cases in the history of Vermont's highest court. In *Sabre v. Rutland Railroad Co.*, 86 Vt. 347, 85 Aik. 693 (1912), attorneys for the railroad argued that the powers enjoyed by Vermont's Public Service Commission (which regulated railroads) violated the Vermont Constitution by commingling legislative, executive, and judicial functions. Sargent, arguing for Sabre and the state, disagreed. His position was that the SEPARATION OF POWERS was only violated when one branch exercised all of the powers of another branch. The court agreed with Sargent and recognized the QUASI-JUDICIAL powers of executive-branch state agencies. The decision led the way for commissions and boards across the country to wield court-like powers.

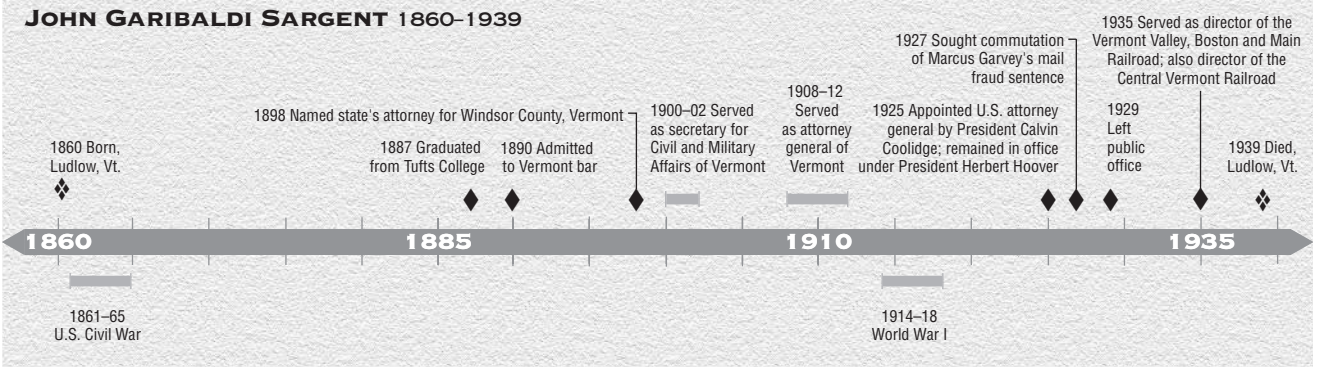
While serving as Vermont's attorney general, Sargent also returned to school, receiving a master's degree from Tufts College in 1912. When Sargent returned to his law firm in 1913, he turned his attention to partisan politics. He supported REPUBLICAN PARTY candidates in Vermont and throughout the Northeast and

John Sargent.
CORBIS

campaigned vigorously for WARREN G. HARDING in 1920 and Calvin Coolidge in 1924.

Sargent was named attorney general of the United States on March 17, 1925, but only after the president's first choice, financier Charles B. Warren, withdrew after the Senate questioned his willingness to enforce ANTITRUST LAWS. Sargent proved to be a safe and noncontroversial alternative. He was confirmed in just one day, and he served from March 18, 1925, until March 4, 1929.

Sargent was not known as a leader in the fight for racial equality, but he did ask the president to commute the sentence of MARCUS GARVEY in 1927. Garvey was a political activist from Jamaica who had been convicted of MAIL FRAUD for his efforts to recruit black Americans for his Universal Negro Improvement League and



African Communities Association *Garvey v. United States,* 267 U.S. 604, 45 S. Ct. 464 (1925). The tainted proceeding against Garvey was orchestrated by an overzealous young JUSTICE DEPARTMENT attorney named J. EDGAR HOOVER.

Sargent was outspoken in his disapproval of Hoover's tactics in the Garvey case, and he was among the first attorneys general to condemn the gathering of evidence through WIRETAPPING, a tactic approved by Hoover when he was director of the FEDERAL BUREAU OF INVESTIGATION. Testifying before a congressional committee, Sargent said, "Wire tapping, ENTRAPMENT, or use of any illegal or unethical tactics in procuring information will not be tolerated. . . ."

In 1930 Sargent returned to Vermont and again took an active role in his law firm. In his later years, Sargent devoted his time and energy to local businesses and community organizations. When years of political infighting finally forced the reorganization of Vermont's railroads in the early 1930s, Sargent was appointed to oversee the process.

Sargent died at his home in Ludlow, Vermont, on March 5, 1939.

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SATISFACTION

The discharge of an obligation by paying a party what is due—as on a mortgage, lien, or contract—or by paying what is awarded to a person by the judgment of a court or otherwise. An entry made on the record, by which a party in whose favor a judgment was rendered declares that she has been satisfied and paid.

The fulfillment of a gift by will, whereby the testator—one who dies leaving a will—makes an inter vivos gift, one which is made while the testator is alive to take effect while the testator is living, to the beneficiary with the intent that it be in lieu of the gift by will. In EQUITY*, something given either in whole or in part as a substitute or equivalent for something else.*

Saving Clause

All acts of limitations, whether applicable to civil causes and proceedings, or to the prosecution of offenses, or for the recovery of penalties or forfeitures, embraced in the Revised Statutes and covered by the repeal contained therein, shall not be affected thereby; but suits, proceedings, or prosecutions, whether civil or criminal, for causes arising, or acts done or committed prior to said repeal, may be commenced and prosecuted within the same time as if said repeal had not been made. July 30, 1947, c. 388, §1, 61 Stat. 633.

An example of a saving clause

SAVE

To except, reserve, or exempt; as where a statute saves *vested—fixed—rights. To toll, or suspend the running or operation of; as, to* save *the* STATUTE OF LIMITATIONS.

SAVING CLAUSE

In a statute, an exception of a special item out of the general things mentioned in the statute. A restriction in a repealing act, which is intended to save rights, while proceedings are pending, from the obliteration that would result from an unrestricted repeal. The provision in a statute, sometimes referred to as the severability clause, that rescues the balance of the statute from a declaration of unconstitutionality if one or more parts are invalidated.

With respect to existing rights, a saving clause enables the repealed law to continue in force.

SAVINGS AND LOAN ASSOCIATION

A financial institution owned by and operated for the benefit of those using its services. The savings and loan association's primary purpose is making loans to its members, usually for the purchase of real estate or homes.

The savings and loan industry was first established in the 1830s as a building and loan association. The first savings and loan association was the Oxford Provident Building Society in Frankfort, Pennsylvania. As a building and loan association, Oxford Provident received regular weekly payments from each member and then lent the money to individuals until each member could build or purchase his own home. Building and loan associations were financial intermediaries, which acted as a conduit for the

flow of investment funds between savers and borrowers.

Savings and loan associations may be state or federally chartered. When formed under state law, savings and loan associations are generally incorporated and must follow the state's requirements for incorporation, such as providing articles of incorporation and bylaws. Although it depends on the applicable state's law, the articles of incorporation usually must set forth the organizational structure of the association and define the rights of its members and the relationship between the association and its stockholders. A savings and loan association may not convert from a state corporation to a federal corporation without the consent of the state and compliance with state laws. A savings and loan association may also be federally chartered. Federal savings and loan associations are regulated by the OFFICE OF THRIFT SUPERVISION.

Members of a savings and loan association are stockholders of the corporation. The members must have the capacity to enter into a valid contract, and as stockholders they are entitled to participate in management and share in the profits. Members have the same liability as stockholders of other corporations, which means that they are liable only for the amount of their stock interest and are not personally liable for the association's NEGLIGENCE or debts.

Officers and directors control the operation of the savings and loan association. The officers and directors have the duty to organize and operate the institution in accordance with state and federal laws and regulations and with the same degree of diligence, care, and skill that an ordinary prudent person would exercise under similar circumstances. The officers and directors are under the common-law duty to exercise due care as well as the duty of loyalty. Officers and directors may be held liable for breaches of these common-law duties, for losses that result from violations of state and federal laws and regulations, or even for losses that result from a violation of the corporation's bylaws.

The responsibilities of the officers and directors of a savings and loan association are generally the same as the responsibilities of officers and directors of other corporations. They must select competent individuals to administer the institution's affairs, establish operating policies and internal controls, monitor the institution's operations, and review examination and audit reports. Furthermore, they also have the power to assess losses incurred and to decide how the institution will recover those losses.

Prior to the 1930s, savings and loan associations flourished. However, during the Great Depression the savings and loan industry suffered. More than 1,700 institutions failed, and because depositor's insurance did not exist, customers lost all of the money they had deposited into the failed institutions. Congress responded to this crisis by passing several banking acts. The Federal Home Loan Bank Act of 1932, 12 U.S.C.A. §§ 1421 et seq., authorized the government to regulate and control the financial services industry. The legislation created the Federal Home Loan Bank Board (FHLBB) to oversee the operations of savings and loan institutions. The Banking Act of 1933, 48 Stat. 162, created the FEDERAL DEPOSIT INSURANCE CORPORATION (FDIC) to promote stability and restore and maintain confidence in the nation's banking system. In 1934, Congress passed the National Housing Act, 12 U.S.C.A. §§ 1701 et seq., which created the National Housing Administration (NHA) and the Federal Savings and Loan Insurance Corporation (FSLIC). The NHA was created to protect mortgage lenders by insuring full repayment, and the FSLIC was created to insure each depositor's account up to $5,000.

The banking reform in the 1930s restored depositors' faith in the savings and loan industry, and it was once again stable and prosperous. However, in the 1970s the industry began to feel the impact of competition and increased interest rates; investors were choosing to invest in money markets rather than in savings and loan associations. To boost the savings and loan industry, Congress began deregulating it. Three types of deregulation took place during this time.

The first major form of deregulation was the enactment of the Depository Institutions Deregulation and Monetary Control Act of 1980 (94 Stat. 132). The purpose of this legislation was to allow investors higher rates of return, thus making the savings and loan associations more competitive with the money markets. The industry was also allowed to offer money-market options and provide a broader range of services to its customers.

The second major form of deregulation was the enactment of the Garn-St. Germain Depository Institutions Act of 1982 (96 Stat. 1469). This act allowed savings and loan associations to diversify and invest in other types of loans

besides home construction and purchase loans, including commercial loans, state and municipal SECURITIES, and unsecured real estate loans.

The third form of deregulation decreased the amount of regulatory supervision. This deregulation was not actually an "official" deregulation; instead it was the effect of a change in required accounting procedures. The Generally Accepted Accounting Principles were changed to Regulatory Accounting Procedures, which allowed savings and loan associations to include speculative forms of capital and exclude certain liabilities, thus making the thrifts appear to be in solid financial positions. This resulted in more deregulation.

In the 1980s, the savings and loan industry collapsed. By the late 1980s at least one-third of the savings and loan associations were on the brink of insolvency. Eight factors were primarily responsible for the collapse: a rigid institutional design, high and volatile interest rates, deterioration of asset quality, federal and state deregulation, fraudulent practices, increased competition in the financial services industry, and tax law changes.

In an effort to restore confidence in the thrift industry, Congress enacted the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) (103 Stat. 183). The purpose of FIRREA, as set forth in Section 101 of the bill, was to promote a safe and stable system of affordable housing finance; improve supervision; establish a general oversight by the TREASURY DEPARTMENT over the director of the Office of Thrift Supervision; establish an independent insurance agency to provide deposit insurance for savers; place the Federal Deposit Insurance System on sound financial footing; create the Resolution Trust Corporation; provide the necessary private and public financing to resolve failed institutions in an expeditious manner; and improve supervision, enhance enforcement powers, and increase criminal and civil penalties for crimes of FRAUD against financial institutions and their depositors.

FIRREA increased the enforcement powers of the federal banking regulators and conferred a wide array of administrative sanctions. FIRREA also granted federal bank regulators the power to hold liable "institution-affiliated parties" who engage in unsound practices that harm the insured depository institution. The institution-affiliated parties include directors, officers, employees, agents, and any other persons, including attorneys, appraisers, and accountants, participating in the institution's affairs. FIRREA also allows federal regulators to seize the institution early, before it is "hopelessly insolvent" and too expensive for federal insurance funds to cover.

Criminal penalties were also increased, in 1990, by the CRIME CONTROL ACT, 104 Stat. 4789, which included the Comprehensive Thrift and Bank Fraud Prosecution and Taxpayer Recovery Act of 1990 (104 Stat. 4859). This act increased the criminal penalties "attaching" to crimes related to financial institutions.

FIRREA created the Office of Thrift Supervision (OTS) and the Resolution Trust Corporation (RTC). FIRREA eliminated the FHLBB and created the OTS to take its place. The RTC was created solely to manage and dispose of the assets of thrifts that failed between 1989 and August 1992. In addition, the FSLIC was eliminated, and the FDIC, which oversaw the banking industry, began dealing with the troubled thrifts.

The RTC was in existence for six years, closing its doors on December 31, 1996. During its existence, it merged or closed 747 thrifts and sold $465 billion in assets, including 120,000 pieces of property. The direct cost of resolving the failed thrifts amounted to $90 billion; however, analysts claim that it will take approximately 30 years to fully bail out the savings and loan associations at a cost of approximately $480.9 billion.

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❖ SAXBE, WILLIAM BART

William Bart Saxbe, a quotable lawyer, politician, and U.S. senator from Ohio, served as U.S. attorney general under President RICHARD M. NIXON. He also served as ambassador to India under President GERALD R. FORD.

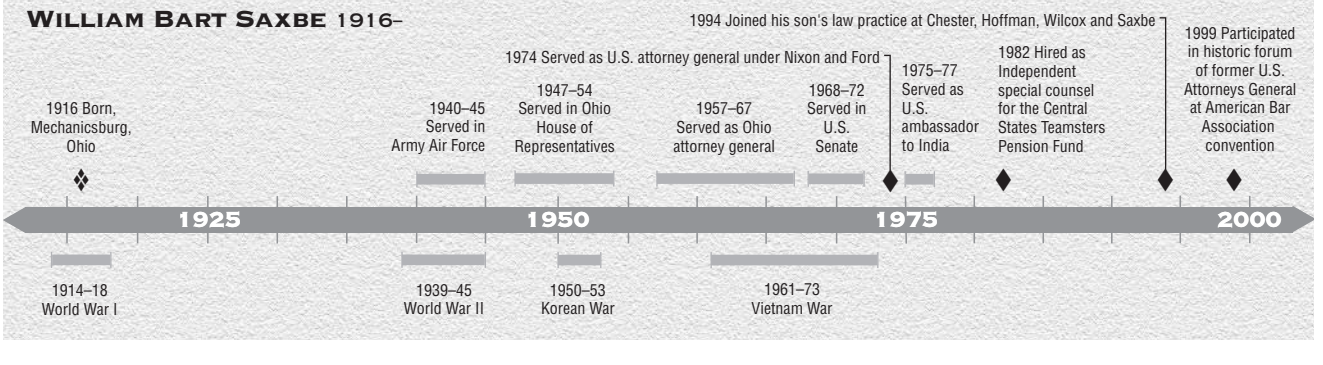
Saxbe was born on June 24, 1916, in the farming community of Mechanicsburg, Ohio, to Bart Rockwell Saxbe, a religious and plain-spoken community leader who made his living as a cattle buyer, and Faye Henry Carey Saxbe, a political free-spirit who counted PATRICK HENRY among her ancestors. Saxbe's education seemed to be influenced by his parents' example; when he entered Ohio State University in 1936, he chose political science as his major field of study. He received a Bachelor of Arts degree in 1940. In the fall of that year, he married Ardath Louise ("Dolly") Kleinhans. They eventually had three children: William Bart Jr., Juliet Louise, and Charles Rockwell.

While attending college, Saxbe was a member of the Ohio National Guard. After college, he enlisted in the Army Air Corps, serving from 1940 to 1945. Saxbe was called to serve again during the Korean conflict in the 1950s; he was discharged from the reserve with the rank of colonel in 1963.

Immediately after WORLD WAR II, Saxbe returned to Ohio with the intention of furthering his education. He gave serious thought to pursuing a career in the ministry of the Episcopal Church, but his long-standing interest in political and community service prevailed. Saxbe entered law school at Ohio State Univversity in 1945 and, simultaneously, launched a campaign to serve in the Ohio House of Representatives. He was elected and served four terms from 1947 to 1954. Saxbe completed his law degree at the end of his second term. He served as House majority leader in 1951 and 1952, and as speaker of the House in 1953 and 1954.

William B. Saxbe.
AP/WIDE WORLD PHOTOS

Saxbe left the Ohio legislature at the conclusion of his fourth term. He returned to Mechanicsburg, where he raised cattle on the family farm. He also partnered with two longtime friends to establish the Columbus, Ohio, law firm of Saxbe, Boyd, and Prine. He practiced law for two years before re-entering the political arena in 1956. In 1957, he ran as the Republican candidate for state attorney general. Over the next decade, he served four terms in that state office. As attorney general, Saxbe proved to be a tough and capable crime fighter. He believed that CAPITAL PUNISHMENT was a strong deterrent and that stiff prison sentences should be imposed for gun-related crimes.



Although conservative in his views on crime and money, Saxbe described himself as "liberal on the rights of people." In 1968, Saxbe took his unique mix of fiscal conservatism and social responsibility to the electorate. He ran as the Republican candidate for a U.S. Senate seat, and he won a close election over liberal Democrat John J. Gilligan. His stand against the Pentagon's deployment of antiballistic missiles during the VIETNAM WAR surprised many of those who thought his campaign promises were mere rhetoric. Gilligan was quoted as saying, "If I had known he was going to be like this, I would have voted for him myself." Saxbe's voting record on most major issues showed that he moved gradually to the right during his four years in the U.S. Senate.

Saxbe was quickly disenchanted with life as a senator. He felt that many of his senate colleagues were sadly out of touch with the electorate. He alienated most of Washington when he said, "The first six months I kept wondering how I got [here]. After that, I started wondering how all of them did."

"I FEEL VERY STRONGLY THAT THE JUSTICE DEPARTMENT IS THE VERY HEART AND SOUL OF OUR COUNTRY, BECAUSE GOVERNMENT WITHOUT LAW IS TYRANNY."
—WILLIAM B. SAXBE

In addition to his disdain for the insulated lives of Washington politicians, Saxbe was frustrated with the pace of legislation on Capitol Hill. To address the problem, he joined forces with Senator Alan M. Cranston to develop a two-track system of moving legislation through the Senate. The system allowed less controversial bills to pass through the legislative process quickly, while more volatile measures were held for debate and discussion. When other efforts to improve the process stalled, Saxbe removed himself from the Senate entirely, by taking part in travel junkets. Saxbe's pleas for aid to East Bengal and for discontinuation of aid to Pakistan were direct results of his findings while on a trip; he considered these actions to be among his greatest achievements in the Senate.

Saxbe's frustration with Washington was not limited to the Senate. For example, Saxbe had defied protocol by challenging Nixon's Vietnam policy during a social gathering at the White House for freshman senators. In response, the president's staff kept Saxbe out of the Oval Office and away from Nixon for almost two years after that disastrous first meeting with the chief executive.

Saxbe's growing contempt for the White House staff reached a new height in 1971, when he referred to Nixon aides H. R. Haldeman and John D. Ehrlichman as "a couple of Nazis" and again in 1972 when he commented on Nixon's professed innocence in the WATERGATE scandals, saying that the chief executive sounded "like the fellow who played the piano in a brothel for twenty years, and insisted that he didn't know what was going on upstairs." (The Watergate scandals began with a break-in at the Democratic National Committee headquarters—located in the Watergate Office Towers—and eventually toppled the Nixon administration.)

In September 1973, Saxbe announced that he would not seek reelection to the Senate. Just a month later, Nixon asked him to accept an appointment as attorney general of the United States to replace ELLIOT RICHARDSON. Richardson, Nixon's third attorney general, had resigned rather than obey an EXECUTIVE ORDER to fire Watergate prosecutor ARCHIBALD COX. Saxbe was reluctant to accept the nomination, but he knew that the administration wanted to avoid a long confirmation battle and that his past criticism of the president would make him a credible candidate with both Nixon supporters and detractors.

After a two-hour discussion with Nixon, in which the president denied any knowledge or involvement in the Watergate scandals, Saxbe accepted the nomination. He took office in January 1974. His goal was to restore the Department of Justice's credibility with the U.S. public and to keep the public informed of the department's activities.

Saxbe initiated weekly news conferences at the beginning of his term but curtailed them quickly when he found that his offhand comments generated more interest than did his substantive efforts. Among Saxbe's more printable gaffes were his reference to PATTY HEARST as a common criminal and his observation that Jewish intellectuals of the 1950s were enamored with the Communist party.

As attorney general, Saxbe supported legislation limiting access to criminal records of arrested and convicted persons, and he continued to favor capital punishment and tough sentences for gun-related crimes. He conducted an investigation into the FBI's counterintelligence program—Cointelpro—and condemned the program for its harassment of left-wing groups, black leaders, and campus radicals. He also worked on two of the biggest antitrust cases in history, against IBM and AT&T.

After Nixon's resignation, Saxbe continued to serve as attorney general in the Ford adminis-

tration. He resigned in December 1974 to accept an appointment as U.S. ambassador to India.

For the next 20 years, Saxbe practiced law in Florida, Ohio, and Washington, D.C., and he remained active in REPUBLICAN PARTY politics. In March 1994, he announced that he would join the Columbus, Ohio, law firm of Chester, Hoffman, Willcox, and Saxbe, where his son was a partner.

Saxbe is often called upon to speak about the turmoil of the Watergate years and his experience in the final days of the Nixon administration. On the eve of Nixon's funeral in April 1994, Saxbe acknowledged that he had never made an attempt to see Nixon again after his resignation because the former president had lied to him about his involvement in the Watergate scandals.

Saxbe published an autobiography in 2000 while continuing to practice law at Chester, Willcox & Saxbe, where he specialized in general business law and strategic counsel. In 2002, the auditorium of Ohio State University's Moritz College of Law was named the William B. Saxbe Law Auditorium in recognition of his history of public service and his generous donations to the school.

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SCAB

A pejorative term used colloquially in reference to a nonunion worker who takes the place of a union employee on strike or who works for wages and other conditions that are inferior to those guaranteed to a union member by virtue of the union contract.

CROSS-REFERENCES

Labor Union.

❖ SCALIA, ANTONIN

In 1986, Antonin Scalia was appointed to the U.S. Supreme Court by President RONALD REAGAN, becoming the first American of Italian descent to serve as an associate justice. Known for his conservative judicial philosophy and narrow reading of the Constitution, Scalia has repeatedly urged his colleagues on the Court to overturn ROE V. WADE, 410 U.S. 113, 93 S. Ct. 705, 35 L. Ed. 2d 147 (1973), the decision recognizing a woman's right to terminate her pregnancy under certain circumstances.

Scalia was born March 11, 1936, in Trenton, New Jersey. Before he began grade school, Scalia and his family moved to Elmhurst, New York, where he spent much of his boyhood. Scalia is the only child of Eugene Scalia, an Italian immigrant who taught romance languages at Brooklyn College for 30 years, and Catherine Scalia, a first-generation Italian-American who taught elementary school.

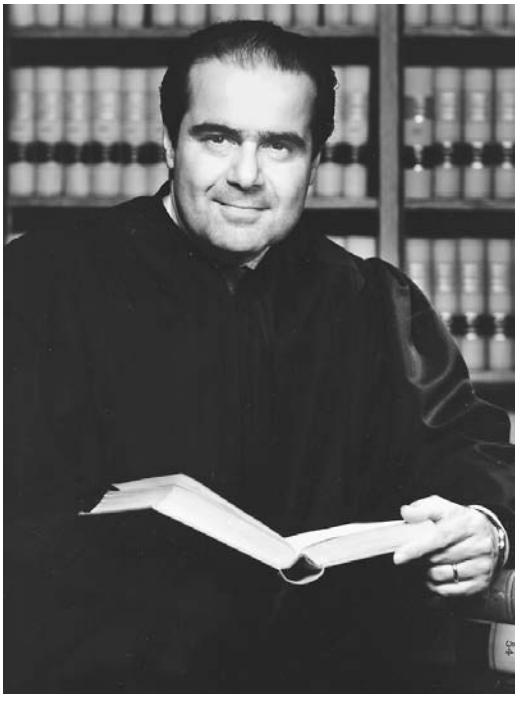
In 1953, Antonin Scalia graduated first in his class at St. Francis Xavier High School, a Jesuit military academy in Manhattan. Four years later, Scalia was valedictorian at Georgetown University, receiving a bachelor's degree in history. In the spring of 1960, Scalia graduated magna cum laude from Harvard Law School where he served as an editor for the *Harvard Law Review.* Known to his friends as Nino, Scalia was known to many of his classmates as an eager and able debater.

"JUDGES IN A REAL SENSE 'MAKE' LAW. . . . [T]HEY MAKE IT AS JUDGES MAKE IT, WHICH IS TO SAY AS THOUGH THEY WERE 'FINDING' IT—DISCERNING WHAT THE LAW IS, RATHER THAN DECREEING WHAT IT IS TODAY CHANGED TO, OR WHAT IT WILL TOMORROW BE."
—ANTONIN SCALIA

Upon graduation from law school, Scalia accepted a position as an associate attorney with a large law firm in Cleveland, Ohio, where he practiced law until 1967. He resigned to teach at the University of Virginia School of Law. In 1970, Scalia joined the Nixon Administration to serve as general counsel for the Office of Telecommunications Policy. Under President GERALD R. FORD, Scalia served as assistant attorney general for the JUSTICE DEPARTMENT, where he drafted a key presidential order establishing new restrictions on the information-gathering activities of the CENTRAL INTELLIGENCE AGENCY and FEDERAL BUREAU OF INVESTIGATION.

In 1977, Scalia left public office to become a visiting scholar at the American Enterprise Institute, a conservative think tank in Washington, D.C. During this same year, Scalia also returned to academia, accepting a position as law professor at the University of Chicago, where he developed a reputation as an expert in ADMINISTRATIVE LAW. In 1982, President Reagan appointed Scalia to the U.S. Court of Appeals for the District of Columbia, which many lawyers consider to be the second most powerful court in the country.

When Chief Justice WARREN BURGER retired in 1986, President Reagan elevated sitting justice



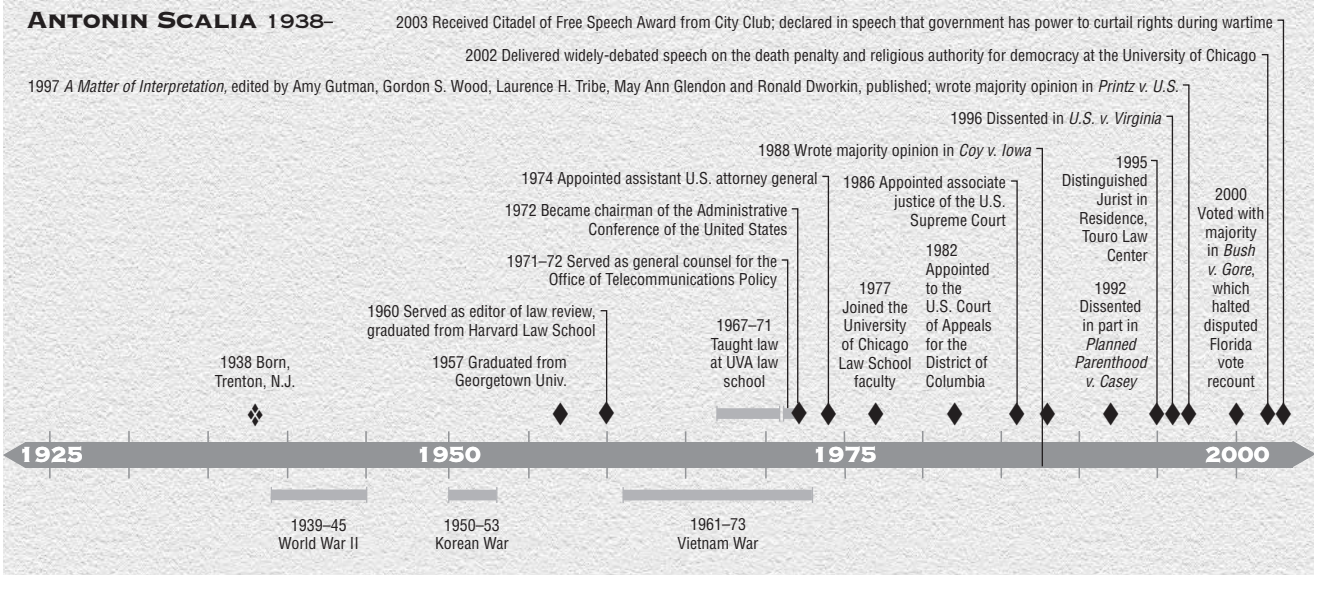
Antonin Scalia.
PHOTOGRAPH BY JOSEPH LAVENBURG, NATIONAL GEOGRAPHIC. COLLECTION OF U.S. SUPREME COURT

WILLIAM REHNQUIST to the chair of chief justice and nominated Scalia to fill the vacancy of associate justice. Confirmed by a vote of 98–0 in the Senate, Scalia became the first Roman Catholic to be appointed to the U.S. Supreme Court since WILLIAM J. BRENNAN JR. in 1957.

Scalia's tenure on the high court has been marked by a JURISPRUDENCE of ORIGINAL INTENT. Proponents of original intent, also called originalists, believe that the Constitution must be interpreted in light of the way it was understood at the time it was framed and ratified. According to Scalia, originalism has two virtues: preserving the SEPARATION OF POWERS in a democratic society, and curbing judicial discretion.

The Constitution delegates specific enumerated powers to the three branches of the federal government. The Legislative Branch is given the power to make law under Article I; the EXECUTIVE BRANCH is given the power to enforce the law under Article II; and the Judicial Branch is given the power to interpret and apply the law under Article III. Originalists believe that democracy is enhanced when the lawmaking power is exercised by the federal legislature because, unlike federal judges who are appointed by the president and given life tenure on the bench, members of Congress are held accountable to the electorate at the ballot box.

This separation of powers is blurred, Scalia argues, when unelected federal judges decide cases in accordance with their own personal preferences, which may be contrary to those expressed by the framers and ratifiers. In such instances, Scalia asserts, federal judges usurp the legislative function by making new law that effectively replaces the popular understanding of the Constitution at its time of adoption. The only way to curb this type of judicial discretion and to preserve the separation of powers, Scalia concludes, is by requiring federal judges to interpret and apply the Constitution in light of its original meaning. This meaning can be illuminated, Scalia says, by paying careful attention to



the express language of the Constitution and the debates surrounding the framing and ratification of particular provisions.

Scalia's interpretation and application of the EIGHTH AMENDMENT best exemplifies his judicial philosophy. The Eighth Amendment prohibits CRUEL AND UNUSUAL PUNISHMENT. Courts that evaluate a claim under the Cruel and Unusual Punishments Clause, Scalia argues, must determine whether a particular punishment was allowed in 1791 when the Eighth Amendment was framed and ratified. Moreover, he argues that courts must not take into account notions of the evolving standards of human decency. For example, Scalia contends that CAPITAL PUNISHMENT was clearly contemplated by the framers and ratifiers of the federal Constitution. The FIFTH AMENDMENT explicitly references capital crimes, Scalia observes, and capital punishment was prevalent in the United States when the Constitution was adopted. Whether states presently support or oppose capital punishment plays only a negligible role in Scalia's analysis.

Scalia's interpretation of the DUE PROCESS CLAUSE of the Fifth and Fourteenth Amendments provides another example of his judicial philosophy. According to Scalia, the Due Process Clause was originally understood to offer only procedural protection, such as the right to a fair hearing before an impartial judge and an unbiased jury. Nowhere in the text of the Constitution, Scalia notes, is there any hint that the Due Process Clause offers substantive protection. It is not surprising then that Scalia has dissented from U.S. Supreme Court decisions that have relied on the Due Process Clause in protecting the substantive right of women to terminate their pregnancies under certain circumstances (*Planned Parenthood v. Casey,* 505 U.S. 833, 112 S. Ct. 2791, 120 L. Ed. 2d 674 [1992]). Likewise, Scalia disagreed with the Court's decision that a state law granting VISITATION RIGHTS to grandparents was unconstitutional because it infringed upon the fundamental rights of parents to raise their children (*Troxel v. Granville*, 530 U.S. 57, 120 S. Ct. 2054, 147 L. Ed. 2d 49 (2000)). No such right, Scalia has commented, can be found in the express language of any constitutional provision.

Scalia has surprised some observers by his literal reading of the SIXTH AMENDMENT, which guarantees the right of criminal defendants to be "confronted with witnesses against them." In *Coy v. Iowa,* 487 U.S. 1012, 108 S. Ct. 2798, 101 L. Ed. 2d 857 (1988), Scalia wrote that the Sixth Amendment requires a face-to-face confrontation and that such an opportunity had been denied when a large screen had been placed between a defendant charged with CHILD MOLESTATION and the child who was accusing him. The Sixth Amendment, Scalia concluded, intended for courts to preserve the adversarial nature of the criminal justice system by protecting the rights guaranteed by the Confrontation Clause over governmental objections that face-to-face cross-examination may be emotionally traumatic for some victims.

Scalia drew the ire of advocates for GAY AND LESBIAN RIGHTS with his dissent in ROMER V. EVANS, 517 U.S. 620, 116 S. Ct. 1620, 134 L. Ed. 2d 855 (1996). The Court invalidated a constitutional amendment by the state of Colorado that prohibited anti-discrimination laws intended to protect gays, lesbians, and bisexuals. According to the majority in the decision, the state constitutional amendment violated the FOURTEENTH AMENDMENT of the U.S. Constitution. Scalia disagreed, writing a scathing dissent. According to Scalia, the majority opinion "places the prestige of this institution behind the proposition that opposition to homosexuality is as reprehensible as racial or religious bias."

Whether Scalia is writing about the Sixth Amendment, the Eighth Amendment, or any other Constitutional provision, some regard his judicial opinions as among the most well written in the history of the U.S. Supreme Court. The clarity, precision, and incisiveness with which he writes is frequently praised. However, some of Scalia's opinions take on an acerbic quality. Often relegated to the role of dissenting justice, Scalia is not above hurling invectives at his colleagues on the Court, sometimes criticizing their opinions as silly and preposterous.

Scalia married the former Maureen McCarthy in 1960. They have nine children. Scalia has written numerous articles on a variety of issues and is the author of *A Matter of Interpretation: Federal Courts and the Law* (1997).

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SCHECHTER POULTRY CORP. V. UNITED STATES

A.L.A. Schechter Poultry Corp. v. United States, 295 U.S. 495, 55 S. Ct. 837, 79 L. Ed. 1570 (1935), is one of the most famous cases from the Great Depression era. The case tested the legality of certain methods used by Congress and President FRANKLIN D. ROOSEVELT to combat the devastating economic effects of the depression. After the U.S. Supreme Court declared the methods unconstitutional, Roosevelt publicly scolded the Court and later used the decision as one justification for a controversial plan to stock the Court with justices more receptive of Roosevelt's programs.

At the heart of the *Schechter* case was legislation passed by Congress in 1933. The NATIONAL INDUSTRIAL RECOVERY ACT (NIRA) (48 Stat. 195) was passed in response to the unemployment and poverty that swept the nation in the early 1930s and provided for the establishment of local codes for fair competition in industry. The codes were written by private trade and industrial groups. If the president approved the codes, they became law. Businesses were required to display a Blue Eagle insignia from the NATIONAL RECOVERY ADMINISTRATION to signify their compliance with the codes. Typical local codes set minimum wages and maximum hours for workers and gave workers the right to organize into unions and engage in COLLECTIVE BARGAINING with management. Codes also prescribed fair trade practices, and many codes set minimum prices for the sale of goods.

The Schechter Poultry Corporation, owned and operated by Joseph, Martin, Alex, and Aaron Schechter, was in the business of selling chickens at wholesale. The corporation purchased some of the poultry from outside the state of New York. It bought the poultry at markets and railroad terminals in New York City and sold the poultry to retailers in the city and surrounding environs. In April 1934 President Roosevelt approved the code of fair competition for the live poultry industry of the New York City metropolitan area (Live Poultry Code). In July 1934 the Schechters were arrested and indicted on 60 counts of violating the Live Poultry Code. The indictment included charges that Schechter Poultry had failed to observe the MINIMUM WAGE and maximum hour provisions applicable to workers and that it had violated a provision of the Live Poultry Code prohibiting the sale of unfit chickens. The case became popularly known as the *Sick Chicken* case.

The Schechters pleaded not guilty to the charges. At trial, the Schechters were convicted on 18 counts of violating the Live Poultry Code and two counts of conspiring to violate the Live Poultry Code. An appeals court affirmed their convictions, but the U.S. Supreme Court agreed to hear their appeal.

The Schechters presented several arguments challenging the Live Poultry Code. According to the Schechters, the code system of the NIRA was an unconstitutional ABDICATION of the legislative power vested in Congress by Article I, Section 1, of the U.S. Constitution. The Schechters argued further that their intrastate wholesale business was not subject to congressional authority under the COMMERCE CLAUSE of Article I, Section 8, Clause 3, of the Constitution and that the procedures for enforcing the NIRA codes violated the DUE PROCESS CLAUSE of the FIFTH AMENDMENT.

In support of the Live Poultry Code, the federal government argued that the code was necessary for the good of the nation. According to the government, the Live Poultry Code ensured the free flow of chickens in interstate commerce. This arrangement kept chicken prices low and helped ease, however slightly, the financial burden on the general public. The government also argued that it was within the power of Congress to enact the NIRA regulatory scheme that gave rise to the Live Poultry Code because codes such as the Live Poultry Code applied only to businesses engaged in interstate commerce.

The Court unanimously disagreed with the federal government. Under the Commerce Clause, Congress had the power to regulate commerce between the states, not intrastate commerce. The power to enact legislation on intrastate commerce was reserved to the states under the TENTH AMENDMENT to the Constitution. According to the Court, the business conducted by the Schechters was decidedly intrastate. Their business was licensed in New York, they bought their poultry in New York, and they sold it to retailers in New York. Because it was intended to reach intrastate businesses like Schechter Poultry, the Live Poultry Code

regulated intrastate commerce, and it was therefore an unconstitutional exercise of congressional power. The Court reversed the Schechters' convictions and declared the Live Poultry Code unconstitutional.

The *Schechter* decision was decided around the same time as other, similar Supreme Court decisions striking down federal attempts to address the economic crises of the depression. However, the *Schechter* decision was a particularly troublesome setback for the Roosevelt administration. The NIRA was the centerpiece of Roosevelt's plan to stabilize the national economy (the NEW DEAL), and the government's loss in the *Sick Chicken* case marked the end of the NIRA and its fair trade codes. Less than one week after the *Schechter* decision was announced, Roosevelt publicly condemned the Court. Roosevelt declared that the Court's "horse-and-buggy definition of interstate commerce" was an obstacle to national health.

Roosevelt's remarks were controversial because they appeared to cross the line that separated the powers of the EXECUTIVE BRANCH from those of the judicial branch. They sparked a national debate on the definition of interstate commerce, the role of the U.S. Supreme Court, and the limits of federal power. Several citizens and federal legislators began to propose laws and constitutional amendments in an effort to change the makeup of the Supreme Court. At first, Roosevelt refused to back any of the plans, preferring instead to wait and see if the Court would reconsider its stand and reverse the *Schechter* holding. After the Supreme Court delivered another series of opinions in 1936 that nullified New Deal legislation, Roosevelt began to push for legislation that would modify the makeup of the Court. In 1937 the Supreme Court began to issue decisions upholding New Deal legislation. Congress never enacted Roosevelt's so-called court-packing plan.

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CROSS-REFERENCES

Federalism.

SCHENCK V. UNITED STATES

Schenck v. United States, 249 U.S. 47, 39 S. Ct. 247, 63 L. Ed. 470 (1919), is a seminal case in CONSTITUTIONAL LAW, representing the first time that the U.S. Supreme Court heard a FIRST AMENDMENT challenge to a federal law on free speech grounds. In upholding the constitutionality of the ESPIONAGE ACT OF 1917 (40 Stat. 217), the Supreme Court articulated the CLEAR AND PRESENT DANGER doctrine, a test that still influences the manner in which state and federal courts decide free speech issues. This doctrine pioneered new territory by drawing a line that separates protected speech, such as the public criticism of government and its policies, from unprotected speech, such as the advocacy of illegal action.

On December 20, 1917, Charles Schenck was convicted in federal district court for violating the Espionage Act, which prohibited individuals from obstructing military recruiting, hindering enlistment, or promoting insubordination among the armed forces of the United States. Schenck, who was the general secretary of the Socialist party in the United States, had been indicted for mailing antidraft leaflets to more than fifteen thousand men in Philadelphia. The leaflets equated the draft with SLAVERY, characterized conscripts as criminals, and urged opposition to American involvement in WORLD WAR I.

Schenck appealed his conviction to the Supreme Court, which agreed to hear the case. Attorneys for Schenck challenged the constitutionality of the Espionage Act on First Amendment grounds. FREEDOM OF SPEECH, Schenck's attorneys argued, guarantees the liberty of all

The 1919 Schenck *case marked the first time the Court heard a First Amendment challenge to a federal law on free speech grounds. The Court was comprised of the following justices: (standing, l-r) Brandeis, Pitney, McReynolds, Clarke, (seated, l-r) Day, McKenna, White, Holmes, Van Devanter.*

U.S. SUPREME COURT

Americans to voice their opinions about even the most sensitive political issues, as long as their speech does not incite immediate illegal action. Attorneys for the federal government argued that freedom of speech does not include the freedom to undermine the SELECTIVE SERVICE SYSTEM by casting aspersions upon the draft.

In a 9–0 decision, the Supreme Court affirmed Schenck's conviction. Justice OLIVER WENDELL HOLMES JR. delivered the opinion. Holmes observed that the constitutionality of all speech depends on the circumstances in which it is spoken. No reasonable interpretation of the First Amendment, Holmes said, protects utterances that have the effect of force. For example, Holmes opined that the Freedom of Speech Clause would not protect a man who falsely shouts fire in a crowded theater.

"The question in every case," Holmes wrote, "is whether the words are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent." Holmes conceded that during peacetime Schenck's vituperative leaflets might have received constitutional protection. However, Holmes said, during times of war no American has the right to speak or publish with the intent of obstructing the CONSCRIPTION process when such speech has a tendency to incite others to this unlawful purpose.

The Supreme Court's decision in *Schenck* established two fundamental principles of constitutional law. First, *Schenck* established that the First Amendment is not absolute. Under certain circumstances, the rights protected by the Freedom of Speech Clause must give way to important countervailing interests. Preserving the integrity of the military draft during wartime and protecting theater patrons from the perils of pandemonium are two examples of countervailing interests that will override First Amendment rights.

Second, *Schenck* established the standard by which subversive and seditious political speech would be measured under the First Amendment for the next fifty years. Before the government may punish someone who has published scurrilous political material, the Court in *Schenck* said, it must demonstrate that the material was published with the intent or tendency to precipitate illegal activity and that it created a clear and present danger that such activity would result.

Schenck did not settle every aspect of free speech JURISPRUDENCE. It left unresolved a number of crucial questions and created ambiguities that could only be clarified through the judicial decision-making process. It was unclear after *Schenck,* for example, how immediate or probable a particular danger must be before it becomes clear and present. If *Schenck* permitted the government to regulate speech that has an unlawful tendency, some observers feared, Congress could ban speech that carried with it any harmful tendency without regard to the intent of the speaker or the likely effect of the speech on the audience.

In 1969 the Supreme Court articulated the modern clear-and-present-danger doctrine in *Brandenburg v. Ohio,* 395 U.S. 444, 89 S. Ct. 1827, 23 L. Ed. 2d 430, stating that the government may not forbid or punish subversive speech except where it advocates or directs imminent lawless action and is likely to incite or produce such action.

Under *Brandenburg,* courts must consider the intention of the speaker or writer, as well as her ability to persuade and arouse others when evaluating the danger presented by particular speech. Courts must also consider the susceptibility of an audience to a particular form of expression, including the likelihood that certain members of the audience will be aroused to illegal action. Despite the reformulation of the clear-and-present-danger test, *Schenck* retains constitutional vitality in cases concerning the Freedom of Speech Clause, having been cited in more than one hundred state and federal judicial opinions in the 1980s and 1990s.

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Communism; *Dennis v. United States*; Smith Act.

♦ SCHLAFLY, PHYLLIS STEWART

The demise of the EQUAL RIGHTS AMENDMENT (ERA) on June 30, 1982, can be attributed in large part to Phyllis Stewart Schlafly. During the 1970s, Schlafly was the United States' most visi-

ble opponent of the ERA, a proposed constitutional amendment that she predicted would undermine the traditional family and actually diminish the rights of U.S. women.

The ERA stated, "Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex." After passing Congress, the amendment was sent to the 50 states on March 22, 1972, for ratification. To become law, the amendment needed to be passed by 38 states within seven years. By 1973, 30 states had already ratified the ERA. However, as momentum for Schlafly's anti-ERA campaign grew, the ratification process slowed. Only four states approved the ERA in 1974 and 1975, and it became unlikely that pro-ERA forces could persuade four more states to ratify it. In 1977, Indiana became the last state to ratify the amendment. Despite a congressional reprieve in July 1978 that extended the ratification deadline to June 30, 1982, the ERA failed.

Schlafly was born August 15, 1924, in St. Louis, to Odile Dodge Stewart and John Bruce Stewart. She excelled academically at her parochial school, Academy of the Sacred Heart. After graduating as class valedictorian in 1941, she enrolled at Maryville College of the Sacred Heart. As a junior, she transferred to Washington University, in St. Louis, where she graduated Phi Beta Kappa in 1944. After receiving a scholarship, Schlafly earned a master's degree in political science from Radcliffe College in 1945. In 1978, she returned to Washington University and earned a law degree.

For about a year after receiving her master's degree, Schlafly worked in Washington, D.C., as a researcher for several members of Congress.

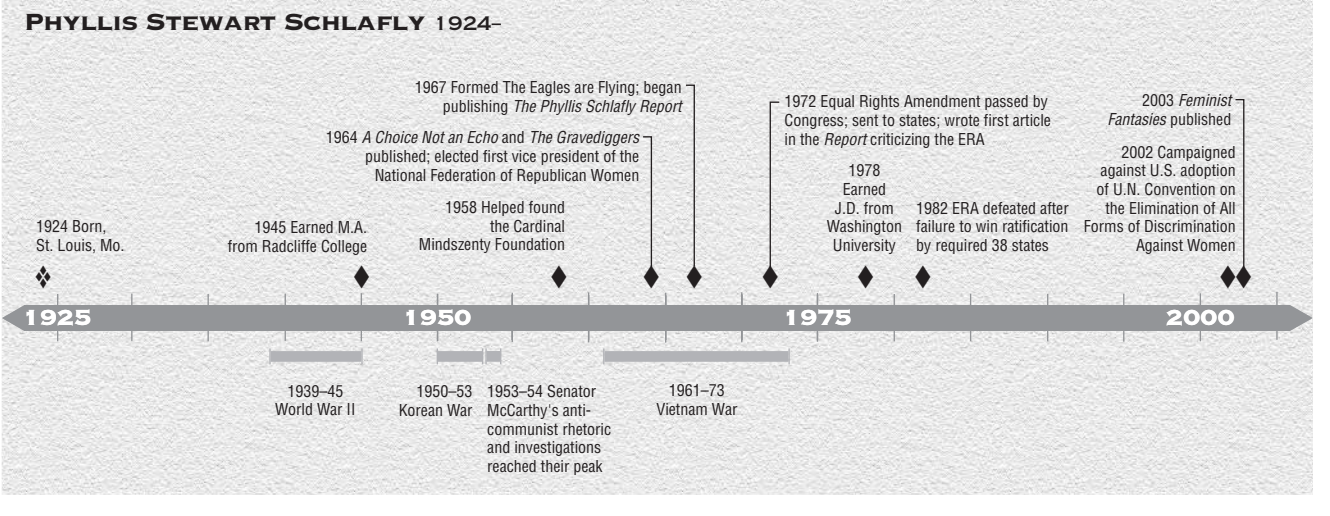
Phyllis Schlafly.
AP/WIDE WORLD PHOTOS

Returning to St. Louis in 1946, she became an aide and campaign worker for a Republican representative, and then worked as a librarian and researcher for a bank.

In 1949, she married Fred Schlafly, also a lawyer. After moving to Alton, Illinois, Schlafly and her husband became involved in anti-Communist activities. Schlafly was a researcher for Senator JOSEPH R. MCCARTHY during the 1950s and helped to found the Cardinal Mindszenty Foundation, an organization opposed to COMMUNISM.

"VIRTUOUS WOMEN ARE SELDOM ACCOSTED BY UNWELCOME SEXUAL PROPOSITIONS . . . OBSCENE TALK OR PROFANE LANGUAGE."
—PHYLLIS SCHLAFLY

PHYLLIS STEWART SCHLAFLY 1924–



Schlafly supported Republican BARRY M. GOLDWATER's presidential campaign in 1964. Her first book, *A Choice Not an Echo,* was written in 1964 specifically for the Goldwater campaign. In 1964, Schlafly published *The Gravediggers,* a book accusing key figures in the administration of President LYNDON B. JOHNSON of deliberately undermining U.S. military strength and leaving the country vulnerable to Communist aggression. Schlafly is the author of several other books on political topics.

While raising six children, Schlafly kept her hand in community activities and Republican politics. Her interest in public policy and government affairs prompted her to run for Congress three times: once in 1952 as the GOP candidate from the Twenty-fourth District of Illinois; once in 1960 as a write-in candidate; and once in 1970 as the endorsed candidate of Chicago insurance mogul W. Clement Stone. All three campaigns were unsuccessful.

"WHEN MEN RATHER THAN THE LAW GOVERN, PEOPLE USUALLY FIND IT MORE PRUDENT TO SEEK A POWERFUL HUMAN PROTECTOR THAN TO STAND ON LEGAL RIGHTS AGAINST THE STATE."
—RUDOLF B. SCHLESINGER

Schlafly had more luck in her successful 1964 bid to be elected the first vice president of the National Federation of Republican Women. Her victory came at a time when Goldwater Republicans dominated the party. Usually, the first vice president of the federation automatically advanced to president, but in 1967, Schlafly was opposed by a more moderate candidate who ultimately defeated her. In the wake of her loss, Schlafly formed a separatist group called The Eagles Are Flying. Bolstered by a core of conservative supporters, she began publishing the *Phyllis Schlafly Report,* a newsletter assessing current political issues and candidates. In a 1972 issue of the *Report,* Schlafly wrote the first of many articles criticizing the ERA. As her personal opposition to the amendment grew, Schlafly formed Stop ERA and the Eagle Forum, organizations supported by conservative U.S. citizens, fundamentalist religious groups, and factions of the John Birch Society.

Schlafly argued that ratification of the ERA would lead to compulsory military service for all mothers, unisex toilets in public places, automatic 50 percent financial responsibility for all wives, and homosexual marriages. In 1992, Schlafly's oldest son John Schlafly disclosed his homosexuality in an interview with the *San Francisco Examiner.* He stated that he supported his mother's conservative political views, but also that gays and lesbians have family values.

Since the defeat of the ERA, Schlafly has remained active with the Eagle Forum and other conservative causes, including the antiabortion movement. She has made more than 50 appearances before congressional and state legislative committees, where she has testified on such issues as national defense, foreign policy, and family concerns. Schlafly has continued to publish her monthly newsletter, *The Phyllis Schlafly Report.* She also continues as an author, speaker and commentator.

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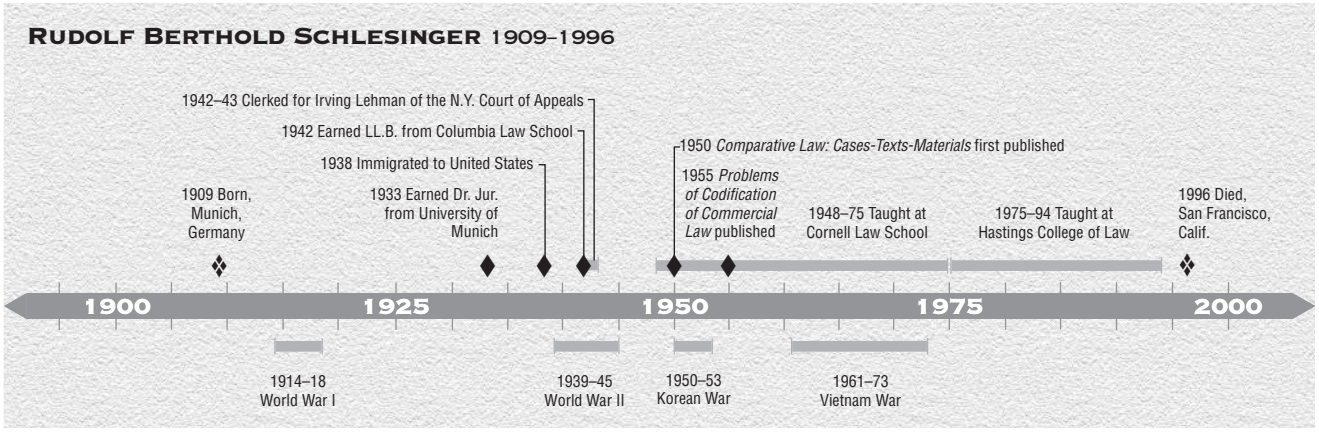
CROSS-REFERENCES

Republican Party; Women's Rights.

♦ SCHLESINGER, RUDOLF BERTHOLD

Legal scholar, author, and professor, Rudolf B. Schlesinger achieved fame for his ground-breaking work in the study of international legal systems. Schlesinger was known as the dean of comparative law, a discipline that examines the differences and similarities among the legal systems of nations. His arrival in the field during the early 1950s helped to give it both greater legitimacy and popularity in legal academia. *Comparative Law: Cases-Texts-Materials* (1950), written while Schlesinger taught at Cornell University, became a staple of law school curricula and entered its fifth edition in the late 1990s. He also wrote important studies of CIVIL PROCEDURE and international business transactions and directed a ten-year international research project on contracts.

Born in Munich, Germany, in 1909, Rudolf Berthold Schlesinger fled nazism before WORLD WAR II to live in the United States. He had earned his degree in law from the University of Munich in 1933. He developed a background in finance while working in a Munich bank, where he helped German Jews transfer their assets out of the country in order to escape persecution. In 1938, with the Nazi party gaining strength, Schlesinger emigrated to New York and promptly enrolled at Columbia Law School, where he earned his degree in 1942. He briefly practiced financial law, then served as a professor at Cornell from 1948 to 1975. Upon retirement from Cornell, he joined the faculty of the Hastings College of Law at the University of California.



Schlesinger had an enormous impact on U.S. and European legal studies. Foremost was his pioneering 1950 book on comparative law, which ultimately influenced two generations of readers. In 1955, working on behalf of the New York Law Revision Commission, he examined the important question of whether to codify COMMERCIAL LAW. His study, *Problems of Codification of Commercial Law* (1955), anticipated the subsequent development of the UNIFORM COMMERCIAL CODE. In 1995, the *American Journal of Comparative Law* published a tribute to Schlesinger that praised his "heroic work" and noted that its influence went beyond U.S. law: "Today's serious efforts to find and develop a unitary European private law is, consciously or unconsciously, a continuation of Schlesinger's effort."

Schlesinger died on November 10, 1996, in San Francisco, when he and his wife committed suicide.

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SCHOOL DESEGREGATION

The attempt to end the practice of separating children of different races into distinct public schools.

Beginning with the landmark Supreme Court case of BROWN V. BOARD OF EDUCATION, 347 U.S. 483, 74 S. Ct. 686, 98 L. Ed. 873 (1954), the United States' legal system has sought to address the problem of racial SEGREGATION, or separation, in public schools. In *Brown,* a unanimous Supreme Court found that segregating children of different races in distinct schools violates the Equal Protection Clause of the FOURTEENTH AMENDMENT, which guarantees that "[n]o state shall . . . deny to any person . . . the EQUAL PROTECTION of the laws" (§ 1). In writing the Court's opinion, Chief Justice EARL WARREN stressed the crucial role education plays in socializing children, and he maintained that racial segregation "generates a feeling of inferiority" in children that will limit their opportunities in life. A related decision, *Brown v. Board of Education,* 349 U.S. 294, 75 S. Ct. 753, 99 L. Ed. 1083 (1955), (*Brown II*), empowered lower courts to supervise desegregation in local school districts and held that desegregation must proceed "with all deliberate speed."

A number of Supreme Court decisions in the decades since *Brown* have further defined the constitutional claims regarding desegregation first set forth in *Brown.* In many cases, these decisions have resulted in court-imposed desegregation plans, sometimes involving controversial provisions for busing students to schools outside their immediate neighborhood. Despite such judicial actions, desegregation in the United States achieved mixed success. Although many more children attend school with children of other races now than in 1954, in numerous cities, racial segregation in education remains as high as ever. Faced with the challenges of shifting populations, segregated housing patterns, impatient courts, and the stubborn persistence of racism, comprehensive school desegregation—long a hoped-for remedy to past discrimination against African Americans—remains an elusive goal.

1954–1970: School Desegregation After Brown

Brown and *Brown II* inspired a great deal of hope that the races would soon be joined in public schools and that the United States would take a giant step toward healing the racial animosities of its past. THURGOOD MARSHALL, an African American who led the National Association for the Advancement of Colored People's Legal Defense Fund in its challenge to school segregation in *Brown* and later became a justice of the Supreme Court, predicted that after *Brown,* schools would be completely desegregated within six months.

Marshall's statement proved to be wildly optimistic. By 1964, ten years after *Brown,* a Department of Health, Education, and Welfare (HEW) study indicated that only 2.4 percent of African Americans in the South were attending largely white schools. Such statistics indicated that *Brown* had led to only token INTEGRATION. By the mid-1960s, many observers felt that the Supreme Court, and the United States as a whole, had lost an opportunity to more quickly create a desegregated society. De facto segregation (segregation in fact or actuality)—as opposed to de jure segregation (segregation by law)—remained a stubborn reality, and racism remained its leading cause. Whites who did not want their children attending school with children of another race found many ways to avoid desegregation, from gerrymandering school boundaries (adjusting school boundaries to their advantage) to manipulating school transportation and construction policies. And in a phenomenon dubbed *white flight*, many transferred their children to private schools or simply moved to suburbs where few, if any, nonwhites lived.

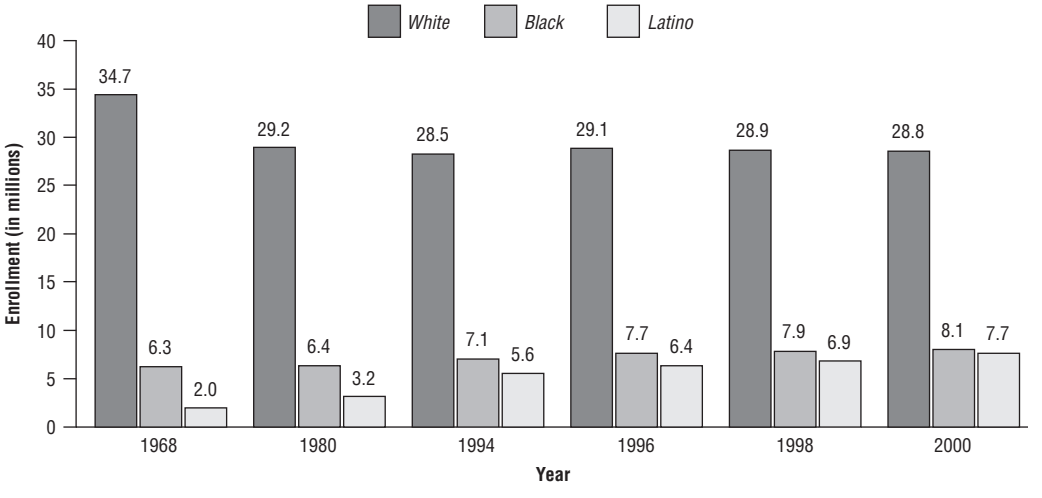
Congress joined the Supreme Court in its efforts to assist desegregation, by passing the CIVIL RIGHTS ACT OF 1964 (28 U.S.C.A. § 1447, 42 U.S.C.A. §§ 1971, 1975a to 1975d, 2000a to 2000h-6). Among its many features, the act authorized HEW to create specific guidelines with which to measure the progress of school desegregation. In 1966, for example, these guidelines called for specific levels of integration: 16 to 18 percent of African–American children in all school districts must be attending predominantly white schools. The act also allowed HEW to cut off federal funding to school districts that did not meet integration guidelines. However, this punishment proved difficult to use as a means of enforcement.

In the mid-1960s, a judge on the Fifth Circuit Court of Appeals, JOHN MINOR WISDOM, issued a number of influential opinions that strengthened the cause of racial integration of schools. Wisdom's rulings established that it was not enough simply to end segregation; instead, school districts must actively implement desegregation. In one of these cases, *United States v. Jefferson Board of Education,* 372 F.2d 836 (5th Cir. 1966), he wrote, "[T]he only adequate redress for a previously overt system-wide policy of segregation directed against Negroes as a collective entity is a system-wide policy of integration." Wisdom's ruling also detailed measures that the school district must take toward the goal of integration, including deciding how children were to be informed of the schools available to them for attendance, where new schools must be constructed, where transportation routes must run, and how faculty and staff were to be hired and assigned.

In 1968, the Supreme Court again addressed the issue of school desegregation, in *Green v. County School Board,* 391 U.S. 430, 88 S. Ct. 1689, 20 L. Ed. 2d 716, which dealt with the schools of New Kent County, a rural area in eastern Virginia. In its opinion, the Court acknowledged that the integration guidelines set forth in *Brown II* had not produced adequate results. School districts such as those of New Kent County—where in 1967, 85 percent of black children still attended an all-black school—had avoided meaningful integration. It was not enough, the Court argued, to simply end segregation and allow a "freedom-of-choice" plan—by which African–American children supposedly had the freedom to attend predominantly white schools—to be the only means of combining the races in an educational setting. In comments during Court hearings on the case, Chief Justice Warren noted that though the "fence" of outright segregation had been taken down, socially constructed "booby traps" still prevented most children from attending integrated schools.

Green also introduced two concepts—dual school systems and unitary school systems—that remain a part of the school desegregation debate. A dual school system is a segregated school system. In other words, it consists of separate segments—one black, the other white—existing side by side but with widely different educational conditions and outcomes. The Court in *Green* identified six indicators of a dual

Public School Enrollment, by Race/Ethnicity, 1968 to 2000



SOURCE: Harvard University, The Civil Rights Project, *A Multiracial Society with Segregated Schools: Are We Losing the Dream?*, 2003.

system: racial separation of students, faculty, staff, transportation, extracurricular activities, and facilities. A unitary school system, on the other hand, is racially integrated at every level. In a later ruling, *Alexander v. Holmes County Board of Education,* 396 U.S. 19, 90 S. Ct. 29, 24 L. Ed. 2d 19 (1969), the Court described a unitary system as one "within which no person is to be effectively excluded from any school because of race or color."

Even more important, in its opinion in *Green,* the Court held that New Kent County would be expected to immediately begin remedying the lasting effects of segregation. "The burden on a school board today," the Court said, "is to come forward with a plan that promises realistically to work, and promises realistically to work *now*" (*Green*). Thus, the Court abandoned its previous position that school desegregation must proceed "with all deliberate speed" in favor of a call for immediate and prompt action.

The Court also held that the Fourteenth Amendment required action to remedy past racial discrimination—or what has come to be called AFFIRMATIVE ACTION. It found an "affirmative duty to take whatever steps might be necessary to convert to a unitary system in which RACIAL DISCRIMINATION would be eliminated root and branch" (*Green*). Moreover, school boards would have to provide meaningful statistical evidence that their school district was moving toward the goal of integration.

In a footnote to its opinion, the Court advanced suggestions for achieving school desegregation, including combining all children in a particular age range, white and black, into the same building.

Green and subsequent judicial decisions through 1970 caused a remarkable change in school desegregation. By 1971, HEW statistics indicated that the South had become the most racially integrated region in the United States. HEW estimated that 44 percent of African–American students attended majority white schools in the South, as opposed to 28 percent in the North and West. In many communities, however, these changes resulted in white flight. In Mississippi, for example, white public school enrollment dropped between 25 and 100 percent in the 30 school districts with the highest black enrollment.

The 1970s: Swann and Busing

In SWANN V. CHARLOTTE-MECKLENBURG BOARD OF EDUCATION, 402 U.S. 1, 91 S. Ct. 1267, 28 L. Ed. 2d 554 (1971), the focus of school desegregation shifted from largely rural school districts to urban ones, a change of scene that offered new challenges to desegregation. In the rural South before the *Brown* decision,

The Busing Debate

Busing is a plan for promoting school desegregation, by which minority students are transported to largely white schools and white students are brought to largely minority schools. It is intended to safeguard the **CIVIL RIGHTS** of students and to provide equal opportunity in public education. Busing is also an example of affirmative action—that is, the attempt to undo or compensate for the effects of past discrimination. Such action is sometimes called compensatory justice.

Busing was first enacted as part of school desegregation programs in response to federal court decisions establishing that racial **SEGREGATION** of public schools violates the **EQUAL PROTECTION CLAUSE** of the **FOURTEENTH AMENDMENT** to the Constitution. In *Green v. County School Board,* 391 U.S. 430, 88 S. Ct. 1689, 20 L. Ed. 2d 716 (1968), and **SWANN V. CHARLOTTE-MECKLENBURG BOARD OF EDUCATION,** 402 U.S. 1, 91 S. Ct. 1267, 28 L. Ed. 2d 554 (1971), the Supreme Court established that federal courts could require school districts to implement busing programs as a means of achieving racial **INTEGRATION** of public schools.

However, busing was nothing new in U.S. education. Even before these decisions, nearly 40 percent of the nation's schoolchildren were bused to school. And before 1954, when the Court declared racial segregation in public schools unconstitutional in **BROWN V. BOARD OF EDUCATION,** 347 U.S. 483, 74 S. Ct. 686, 98 L. Ed. 873, children were often bused to segregated schools that were beyond walking distance from their homes.

With the Supreme Court decisions in *Green* and *Swann,* busing became one of the most controversial topics in U.S. law and politics, particularly in the 1970s. Although the zeal for busing as a remedy for past racial injustice had waned greatly by the 1990s, busing remained a feature—if many times a limited one—of most school desegregation programs and continued to inspire heated debate.

Those who are in favor of busing claim, as did the Supreme Court in *Green* and *Swann,* that racial integration in and of itself is a worthy social goal and that busing is an effective means of achieving that goal in public education. Supporters point to the harmful legacy of segregation in education. Before *Brown,* African-American children were schooled in separate facilities that were usually inferior to the facilities used by whites, despite official claims that they were equal. Such segregation worked to keep African Americans at a disadvantage in relation to whites. It instilled feelings of inferiority in African–American children and seriously diminished their educational achievement and opportunities.

Supporters of busing also often claim that de facto (actual) segregation exists even decades after the **CIVIL RIGHTS MOVEMENT** and the striking down of racial segregation laws, which occurred in the 1960s. A largely white, wealthy upper class and a largely minority, poor underclass, they argue, are transported, employed, housed, and educated in different settings. Often wealthy people live in the suburbs, and the poor live in the cities. Growing up in their separate neighborhoods, children from higher socioeconomic levels thus have many advantages that poorer children do not: more space at home, better nutrition and **HEALTH CARE**, greater cultural and intellectual stimulation, and friends and acquaintances with higher social status providing better job and career prospects. Some even compare the isolation of impoverished minorities in the United States' inner cities with that of impoverished blacks under South Africa's former apartheid system.

Advocates of desegregation through busing assert that these existing inequalities must not become greater and that desegregation in education will go a long way toward ending them and creating a more just society. They also point out blacks and whites lived largely in the same communities or areas, and requiring that their children attend the same neighborhood schools could resolve segregation. In urban settings, however, blacks and whites lived in different neighborhoods, so combining the two races in the same schools meant transporting children, usually by bus, to institutions that were often far from their homes.

In *Swann,* the Court took the final step toward making busing a part of school desegregation plans, by giving the lower courts power to impose it as a means for achieving integration. *Swann* involved the Charlotte-Mecklenburg School District, in North Carolina, a district in which African Americans made up 29 percent of the student body. After the Supreme Court's decision in *Green,* a federal district judge ruled that the school district had not achieved adequate levels of integration: 14,000 of the 24,000 African–American students still attended schools that were all black, and most of the 24,000 did not have any white teachers. The judge called for the adoption of a desegregation plan that involved busing 13,300 additional children at an initial start-up cost of over $1 million.

The Supreme Court upheld the district court's plans. Just as in *Brown II,* it gave school

that U.S. education has historically worked to ensure a society in which class hierarchy is minimized and social mobility—both upward and downward—is maximized. Busing, they argue, will therefore help avoid the creation of a permanent underclass in the United States.

Supporters of busing also maintain that it is an affordable way to achieve school desegregation. While admitting that the initial start-up costs of a busing program can be large, they point to statistics that indicate the operating costs of compulsory busing are generally less than five percent of a school district's entire budget.

Those who oppose busing make a variety of different points against it, although they do not necessarily oppose integration itself. Opponents claim that busing serves as a distraction from more important educational goals such as quality of instruction. Busing, they hold, too easily becomes a case of form over substance, in which the form of racial integration of education becomes of greater value than the substance of what is actually taught in schools. Critics of busing would rather focus on the environment in a school and in its classrooms than on achieving a particular number of each race in a school. Justice **LEWIS F. POWELL JR.** echoed these sentiments in an opinion to a school desegregation case, *Keyes v. Denver School District,* 413 U.S. 189, 93 S. Ct. 2686, 37 L. Ed. 2d 548 (1973). In *Keyes,* he wrote that in an era of declining student achievement, it is wrong to turn the attention of communities "from the paramount goal of quality in education to a perennially divisive debate over who is to be transported where."

Critics also claim that busing causes white flight—where whites move their children from integrated public schools to private and suburban schools that are largely white—which results in an even greater disparity between white and black, rich and poor. According to this scenario, busing only exacerbates the current situation, making public schools and cities even more the exclusive province of the poor.

Some noted experts on the issue of busing have concluded that although they favor a society that is racially integrated, the social costs of busing and the resulting white flight are too high. Others have sought a middle ground on the issue by arguing that judges should choose carefully the districts in which they decide to implement busing. For example, they claim that white flight is more likely to occur in communities and schools where whites form a small minority, and that as a result, busing has higher social costs in such districts.

Another prominent complaint in the anti-busing opinion is that court-ordered busing programs represent an abuse of judicial power. According to this view, busing is an example of undesirable judicial activism. The large-scale social changes caused by transporting thousands of children many miles each day should be imposed only by an elected body of representatives such as a state legislature or Congress. Moreover, adherents of this view argue that supervising school desegregation programs only bogs down the courts and takes time away from other pressing legal matters.

Critics of busing also point out that many times, the same court that requires busing does not provide guidance as to funding it, thereby creating financial headaches for school districts. Related to this issue is the claim that busing is too costly, especially when school districts are forced to purchase new buses in order to start a busing program. In financially strapped school districts, spending on busing sometimes takes away funding for other educational priorities.

Some of those who oppose busing favor racial desegregation but do not view busing as a good way to achieve that goal. Instead, they support a gradualist approach to social reform. According to the gradualist view, it will take generations to achieve the goal of racial desegregation in education and in society as a whole. Busing only interferes with the overall goal of integration, because of the sudden and disruptive changes—including white flight—that it imposes on society.

Others oppose busing on the ground that neighborhood schools are the best way to educate children. In this camp are both those in favor of racial integration in education and those against it. Neighborhood schools, it is argued, allow par-

(continued)

authorities and district judges primary responsibility for school desegregation. This time, however, the Court provided more guidance. To create desegregated schools, it encouraged faculty reassignment; the redrawing of school attendance zones; and an optional, publicly funded transfer program for minority students. Most important, the Court recommended mandatory busing to achieve desegregation. It did note that busing could be excessive when it involved especially great distances. It also hinted at an end to court-imposed desegregation plans, saying, "Neither school authorities nor district courts are constitutionally required to make year-by-year adjustments of the racial composition of student bodies" (*Brown II*). In Court decisions decades later, these words would be cited in support of ending court-supervised school desegregation programs.

As a result of *Swann,* throughout the 1970s, courts ordered busing to achieve desegregation in many city school districts, including Boston, Cleveland, Indianapolis, and Los Angeles. However, *Swann* was one of the last desegregation opinions in which all nine justices were in complete agreement. The Court's unanimity on the issue of school desegregation, which had been the rule in every decision since *Brown,* broke

The Busing Debate (continued)

ents to have a greater influence on their child's education by making it easier, for example, to visit the school and speak with a teacher. Such schools also give children a sense of identity and instill pride in their community. Busing children to a school across town, they argue, will not inspire pride in their school. Advocates of neighborhood schools also point to statistics that indicate that bused students are more alienated from their school and thus experience greater problems, including poorer academic performance and increased delinquency.

An even more fundamental question related to busing is whether racial integration is in itself a valuable goal for public schools. Those who take opposite sides on this question marshal different sociological evidence. In the 1950s and 1960s the Supreme Court was influenced by the "contact" theory of racial integration. According to this theory, the better one knows those of another race, the more one is able to get along with them. Sociologists reasoned, therefore, that integrated schools would increase understanding between the races and lower racial tensions.

In the same years, many studies claimed to show that racial integration would boost the self-esteem, academic achievement, and ultimately opportunities and choices of members of minorities. For example, a well-known report issued by sociologist James S. Coleman in 1966, *Equality of Educational Opportunity,* concluded that minority children improve their academic performance when they attend classes where middle-class white pupils are the majority. Coleman's report also claimed that the most important indicator of the academic performance of minority and lower-class students is the educational level of their classmates. The report was seized upon by many as a reason to institute court-imposed busing plans for school districts.

By the 1970s and later, other sociologists challenged the liberal theories that school desegregation would lead to greater racial harmony and improved academic performance by African Americans. Coleman, too, became more skeptical about busing and argued that voluntary programs were more effective than government-imposed plans in achieving school desegregation. Others went so far as to claim that integration only increases hostility and tensions between the races. African–American students who are bused, they argued, experience a decline in their educational achievement in school. Some studies have in fact shown that students who are bused grow more rather than less hostile toward the other race or races. In addition, some studies have indicated that in many schools where the desired percentages of races have been achieved through busing, students interact largely with those of their own race and thus segregation *within* the school prevents true desegregation.

By 2003 the anti-busing viewpoint appeared to have prevailed. During the 1990s federal courts released many school districts from supervision by declaring these districts free of the taint of state-imposed segregation. The 1999 release of the Charlotte-Mecklenburg district from court supervision was a symbolic moment, marking the end of an almost 30 year experiment in which the courts used busing to attempt the desegregation of public schools. That same year the Boston public schools, which had endured years of conflict over busing, ended race-based admissions and its busing program. Even cities such as Seattle, which voluntarily adopted a busing program in the 1970s, abandoned the practice in 1999.

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down in the next major case, *Milliken v. Bradley,* 418 U.S. 717, 94 S. Ct. 3112, 41 L. Ed. 2d 1069 (1974).

Milliken shifted the scene of school desegregation from the South to the North—specifically, to Detroit. In *Milliken,* the Supreme Court addressed the issue of whether courts could bus suburban pupils to desegregate inner-city schools. The case dealt with federal district judge Stephen Roth's decision to join the Detroit School District with 53 of the city's 85 outlying suburbs in a desegregation decree. The proposed plan would have created a metropolitan school district with 780,000 students, of which 310,000 would be bused daily to achieve desegregation goals. The shocked white community, much like others in the South, and its elected representatives denounced the plan.

Detroit reflected the situation of many U.S. cities. Although African Americans made up only 23 percent of the city's population in 1970, they constituted 61 percent of its school-age population. Whites were underrepresented in the inner-city public schools for various reasons. Young white married couples, who constituted the demographic group most likely to have school-age children, were also the most likely to move to the suburbs. The whites who did live in

the cities tended to be older people, singles, and childless couples. Urban whites who did have school-age children often sent them to private schools.

Such a situation caused Judge Roth to ask the question, "How do you desegregate a black city, or a black school system?" (*Milliken*). Busing within city limits alone would still leave many schools 75 to 90 percent black. The only solution was one that took into consideration the entire metropolitan area of Detroit by joining the city school district with the surrounding suburban school districts.

In support of this position, Judge Roth argued that a variety of causes had led to the concentration of blacks in ghettos. Governments, he wrote in his opinion, "at all levels, federal, state and local, have combined, with . . . private organizations, such as loaning institutions and real estate associations and brokerage firms, to establish . . . residential segregation throughout the Detroit metropolitan area" (*Bradley*). Residential segregation had resulted from a whole variety of types of discrimination that caused African Americans and members of other minorities to live in segregated neighborhoods and, as a result, attend segregated schools. Thus, Roth framed his metropolitan school desegregation plan as a remedy for past discriminatory conduct.

Judge Roth's plan promised to promote class as well as racial interaction, complicating still further the issue of desegregation. Mixing of the different classes of U.S. society became as much a goal of desegregation decrees as did mixing of different races. Such a plan, its proponents argued, might also remedy the funding inequities between different school districts and even end white flight.

In 1974, by a vote of 5–4, the Supreme Court ruled in *Milliken* that Judge Roth had wrongly included the suburbs with the city in his desegregation decree. The district court's plan, the Court held, could only be justified if de jure segregation existed in outlying suburbs; remedies to past discriminatory conduct must be limited to Detroit, since it was the only district that had such policies. Disagreeing with Roth, the Court also held that state housing practices were not relevant to the case. Writing the Court's opinion, Chief Justice WARREN E. BURGER argued for local control of school districts, over court control: "No single tradition in public education is more deeply rooted than local control over the operation of schools; local autonomy has long been thought essential both to the maintenance of community concern and support for public schools and to the quality of the educational process."

Based on the Court's decision in Swann, *courts ordered busing in many city school districts to achieve desegregation during the 1970s. Here, a policeman stands guard as African American students board a bus outside South Boston High School in September 1974.*

AP/WIDE WORLD PHOTOS

Many saw the *Milliken* decision as the first Supreme Court defeat for the cause of school desegregation. Some, including Justice Marshall, the first African American to sit on the Court, interpreted *Milliken* as an abandonment of the cause of racial justice. "Today's holding, . . ." Marshall wrote in his dissenting opinion, "is more a reflection of a perceived public mood that we have gone far enough in enforcing the Constitution's guarantee of equal justice than it is the product of neutral principles of law." Supporters of the decision, on the other hand, pointed to the myriad potential problems a plan like Roth's might impose, including greater bureaucratic red tape, more white flight, and even greater racial tensions.

The 1980s and After

In the 1980s, the attitude of the public and of the courts toward activist school desegregation programs—and toward other forms of affirmative action, for that matter—became more skeptical and sometimes even hostile. Courts began to require that busing, for example, be used as a remedy only in school districts where there had been "deliberate" or "intentional" segregation. A large busing program that had been begun in

Los Angeles in 1978 was ended in 1981 through a statewide REFERENDUM that banned compulsory busing except in districts where there had been deliberate segregation. By the late 1980s and 1990s, the Supreme Court, now having the influence of more conservative justices appointed by Republican presidents RONALD REAGAN and GEORGE H. W. BUSH, established that court-ordered desegregation decrees, including busing plans, could end short of specific statistical goals of integration when everything "practicable" had been done to eliminate the vestiges of past discrimination.

Two court decisions in the early 1990s—*Board of Education v. Dowell,* 498 U.S. 237, 111 S. Ct. 630, 112 L. Ed. 2d 715 (1991), which dealt with the Oklahoma City School District, and *Freeman v. Pitts,* 503 U.S. 467, 112 S. Ct. 1430, 118 L. Ed. 2d 108 (1992), which covered the schools of DeKalb County, Georgia—addressed the manner in which court supervision of school districts and their desegregation programs might end. In *Freeman,* the Court identified three factors that may be used in such determinations: (1) whether the school system has complied with the desegregation decree's provisions, (2) whether continued judicial control is necessary or practicable to achieve compliance with any aspect of the decree, and (3) whether the school system has demonstrated to the once-disfavored race its GOOD FAITH commitment to the whole of the decree. Ultimately, the school system must be held to have engaged in a good faith effort to comply with any judicially supervised desegregation program, and to have eliminated to the extent practicable any vestiges of discrimination. *Freeman* also established that courts may end desegregation decrees in incremental stages, gradually returning administrative functions and decisions to local authorities.

In another case—*Missouri v. Jenkins,* 515 U.S. 70, 115 S. Ct. 2038, 132 L. Ed. 2d 63 (1995), which dealt with the Kansas City (Missouri) School District—the Court stopped just short of ending judicial supervision of desegregation programs. However, the decision did strike down two requirements imposed by a district court on the state of Missouri, declaring them outside that court's authority. Those two requirements would have attempted to improve the "desegregative attractiveness"—in this case, the ability to attract white students from the suburban school districts—of the school district by requiring the state to fund salary increases for all staff in the school district, as well as "quality education" programs, including magnet schools. Such "interdistrict" remedies, the Court held, are beyond the scope of the district court. The Court, citing *Milliken,* disagreed with the contention that white flight justifies an interdistrict remedy to segregation. The Court also rejected student test scores as evidence for determining whether a school district has adequately responded to judicial desegregation decrees.

Those who supported these decisions saw them as returning to local authorities their proper control over their schools. They also saw these decisions as guiding the courts back to a more proper and limited social role. The courts, they argued, should not be engaged in programs of "social engineering." Others, both black and white, simply abandoned desegregation as a goal and instead focused on improving neighborhood schools, even when those schools remain largely segregated.

Critics of these decisions have seen them as a step backward for the CIVIL RIGHTS of minorities in the United States. Such decisions, they argued, merely perpetuated racism by returning school districts to those who often do not share the goal of creating racially integrated public schools. Others have argued that the changing pattern in the judicial response to desegregation has been caused by the legal system's exhaustion and impatience in the face of complex and protracted desegregation plans. Accustomed to seeing more rapid results, district courts, according to this argument, have been eager to return the control of school districts to local authorities.

Others have argued that the Supreme Court decisions on school desegregation have ignored the effect of discriminatory housing patterns. They have maintained that without a change in segregated housing patterns, desegregation, whether in schools or in the larger society, cannot be achieved. They claim that by ignoring housing as an issue, the Supreme Court enabled white America to escape its responsibilities in creating the urban ghetto.

Still others have argued that school desegregation can yet be achieved through the court system, maintaining that social change of the kind required for true desegregation will take many years. In the mid-1990s, organizations such as the AMERICAN CIVIL LIBERTIES UNION began to focus on making the case for school desegregation on the state rather than federal level. Some state constitutions, they pointed out,

contain language more conducive to their cause. Connecticut's constitution, for example, declares that no person "shall . . . be subjected to segregation" (Conn. Const. art. 1, § 20), and Minnesota's requires that all students be given an adequate education. Lawsuits based on state constitutions have met with mixed success, prevailing in Connecticut but failing in Minnesota.

By 2003 most school districts had been released from federal court supervision. In addition, school districts had abandoned busing to achieve desegregation. The Minneapolis, Minnesota school district, which has a predominantly non-white student population, dropped busing in the late 1990s, opting instead to emphasize strong neighborhood schools. The Charlotte-Mecklenburg school district, which was at the center of the school busing controversy, ended its busing program after a federal judge ended supervision in 1999. School desegregation has not been the panacea that it was claimed to be in the heady days of *Brown.* Though significant success in integration has been achieved, as of 2003 there was little evidence that comprehensive school desegregation would come any time soon.

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CROSS-REFERENCES

Civil Rights Movement; Equal Protection; Schools and School Districts.

SCHOOL PRAYER

See **ENGEL V. VITALE; RELIGION.**

SCHOOLS AND SCHOOL DISTRICTS

School districts are quasi-municipal corporations created and organized by state legislatures and charged with the administration of public schools within the state. A quasi-municipal corporation is a political body created for the sole purpose of performing one public function. States divide up their school systems into districts because localized administration and policy making are more efficient and more responsive to community needs than one state-level bureaucracy.

A school district encompasses a specific geographical area with defined boundaries. In most areas, the head of the school district is called the superintendent. Each school district contains at least one school. Typically, a school district includes primary schools, also called grade schools, middle or junior high schools, and high schools. A school district's boundaries may be the same as the boundaries of a city. Multiple school districts may exist within larger cities, and in rural areas, a school district may encompass several towns.

Each state has numerous laws pertaining to public schools and school districts, but state statutes do not cover every educational concern. State legislatures delegate many aspects of public education to school districts. School districts have the power to fashion curricula and make rules and regulations that apply to the schools, school employees, and students within the district. School districts also have power over such matters as arranging for the construction and maintenance of educational buildings and facilities in the district. School districts may, in turn, delegate some of their powers to individual schools.

State and federal revenues pay for only about half of all educational costs. The rest of the burden for construction, maintenance, and improvement of school facilities, salaries, and other educational costs is borne by local government. Most states give school districts the power to levy local taxes for educational purposes. This taxing power is limited by the state legislature. If a school district wants to raise taxes beyond what the legislature allows, it may seek approval from the voters in the district in a **REFERENDUM** or proposition vote.

Most state legislatures require that school districts be governed by a school board, board of education, or similar body. School boards govern the school district's actions and can also take action on their own. School boards appoint

Private School Vouchers: Church vs. State

The specifics of school tuition voucher systems vary from program to program, but generally such systems offer parents of schoolchildren a tax-funded voucher that is redeemable at the educational institution of their choice. The vouchers are issued yearly or at some other regular interval, and they pay for a certain amount of tuition fees each year at nonpublic and alternative charter schools. The most controversial programs allow parents to use the publicly funded vouchers to pay tuition at a sectarian, or religious, school.

Private school vouchers implicate at least two provisions in the U.S. Constitution: the Establishment and Free Exercise of Religion Clauses in the **FIRST AMENDMENT**. According to the U.S. Supreme Court, the Establishment Clause prohibits the federal government and the states from setting up a religious place of worship, passing laws that aid religion, and giving preference to one religion or forcing belief or disbelief in any religion (*Everson v. Board of Education,* 330 U.S. 1, 67 S. Ct. 504, 91 L. Ed. 711 [1947]). Private school vouchers have been challenged under the Establishment Clause because they involve a form of governmental support that may be used for religious-oriented activities.

Critics of private school vouchers have charged that taxpayer support for religious schools is a patent violation of the Establishment Clause. Critics also note that because vouchers do not cover the entire amount of tuition at a private school, the option of private school remains out of reach for the lowest-income students. Opponents of private school vouchers further claim that vouchers rob public schools of funds because funding is based in part on student enrollment. Finally, critics maintain that vouchers implicate other constitutional provisions, such as the **EQUAL PROTECTION CLAUSE** of the **FOURTEENTH AMENDMENT**, because they provide taxpayer funds to institutions that may discriminate on the basis of race, religion, disability, or socioeconomic status.

Supporters of private school vouchers have argued that voucher systems are actually protected by the First Amendment. According to advocates, the First Amendment, with its guarantee of the free exercise of religion, protects vouchers because they give devoutly religious parents the same rights as less devout parents: public funding for the education of their children. In this view, educational systems without private school vouchers violate the First Amendment by discouraging religion and placing devout parents at a disadvantage. Supporters contend that vouchers merely provide some balance of rights between devoutly religious parents and less devout or nonreligious parents.

Other supporters of private school vouchers focus on the aspect of choice. Whereas public schools are increasingly perceived as inadequate and dangerous, private schools are viewed by many as offering safe, high-quality education. In response to these perceptions, legislators have offered private school vouchers as a means of escape from public schools. Supporters of private school vouchers assert that they offer potential benefits for impoverished children. Under some proposals, private school vouchers would give a limited number of low-income families another choice for their children's schooling.

Proponents of private school vouchers cite such intellectual stalwarts as **JOHN STUART MILL**, **THOMAS PAINE**, and Adam Smith as early advocates of school vouchers. Mill, Paine, and Smith did in fact argue that the fairest and most efficient way to fund public education would be to give parents money that they could spend on tuition at a school of their choice. Detractors counter that these views received no attention until 1955, the year after the Supreme Court outlawed racial **SEGREGATION** in public schools in **BROWN V. BOARD OF EDUCATION OF TOPEKA,** 347 U.S. 483, 74 S. Ct. 686, 98 L. Ed. 873 (1954). According

superintendents, review important decisions made by the district's administrators, and fashion educational policies for the district. Most school boards are comprised of several members elected by voters who live within the boundaries of the district. In some states, school board members may be appointed by a state or local governing body or a designated government official.

School boards hold regular meetings that are open to the public. A school board must give notice to the public prior to the meeting. Notice generally is given through mailings or by publishing the time and place of the meeting in local newspapers. School board meetings give the public an opportunity to express opinions on educational policy.

State statutes set forth minimum qualifications for public school teachers. Most states require full-time teachers to have a four-year degree from a college or university and to have completed a student teaching program. States

to many voucher opponents, the real driving force behind private school vouchers is an effort to facilitate the flight of white persons from city schools that have large nonwhite student populations.

Proposals for private school voucher systems have been rejected by courts and defeated at the polls, but voucher advocates have been unrelenting. In 1998, in an 8–1 ruling, the U.S. Supreme Court refused to hear a challenge to the Wisconsin school voucher system, which was upheld as constitutional by the Wisconsin Supreme Court in *Jackson v. Benson,* 218 Wis. 2d 835, 578 N.W.2d 602 (1998). While the Court's action set no national legal precedent, it signaled a willingness by the Court to permit vouchers.

Wisconsin had been using a voucher system since 1989, but, in 1995, the Wisconsin legislature amended the law. The original voucher plan allowed up to 1.5 percent of Milwaukee public school students to attend any private nonsectarian school of their choice. The new program allowed use of the vouchers for enrollment in sectarian private schools, and it increased allowable student enrollment to 15 percent. But most significant was the mandate that monies would no longer be paid directly to the chosen schools. Instead, a state check would be paid to the student's parent or guardian, who would endorse the check and forward it to the school of choice. Opponents challenged the new law, claiming that it violated the Establishment Clause. The Wisconsin Supreme Court disagreed. It concluded that the statute did not promote religion, but rather provided parents with a "religious-neutral benefit."

The U.S. Supreme Court took up vouchers again in *Zelman v. Simmons-Harris,* 536 U.S. 639, 122 S.Ct. 2460, 153 L.Ed.2d 604 (2002). The Court, in a 5–4 decision, upheld the constitutionality of a voucher program established for Cleveland, Ohio. The voucher program pays scholarships based on family income, with a maximum annual payment of $2,250 per child. The parents are sent a check which may be used to pay tuition at private and parochial schools. For the 1999–2000 school year, approximately 3,700 children enrolled in the program, with 60 percent of the children from families at or below the poverty level. Of the 56 schools that participated, 46 were church-affiliated and actively taught Christian doctrines; 96 percent of the scholarship students attended the religious schools. The curriculum of these schools intertwined religious beliefs and secular topics.

After a parent filed suit in federal court challenging the law, the district court ruled the voucher program unconstitutional. The Sixth Circuit Court of Appeals upheld this decision, basing its ruling on a 1973 Supreme Court decision, *Committee for Public Education v. Nyquist*, 413 U.S. 756, 93 S.Ct. 2955, 37 L.Ed.2d 948 (1973). The Court in *Nyquist* struck down a New York tuition reimbursement plan that provided low-income parents with partial reimbursement for sending their children to private elementary and secondary schools only.

The Supreme Court overturned the Sixth Circuit decision. Chief Justice **WILLIAM REHNQUIST**, in his majority opinion, ruled that the program did not violate the Establishment Clause. Rehnquist stated that the "program is entirely neutral with respect to religion" because "it provides benefits directly to a wide spectrum of individuals, defined only by financial need and residence in a particular school district." The law "permits such individuals to exercise genuine choice among options, public and private, secular and religious."

Proponents of vouchers saw *Zelman* as a major victory. They believed that the decision cleared the way for similar voucher programs throughout the United States. Opponents reiterated their concerns that voucher programs would take away public education dollars from school systems and divert them to private schools. As of 2003, only a handful of states had enacted some type of school voucher program. A number of states, however, including Louisiana, Texas, and Colorado, had legislation in the pipeline.

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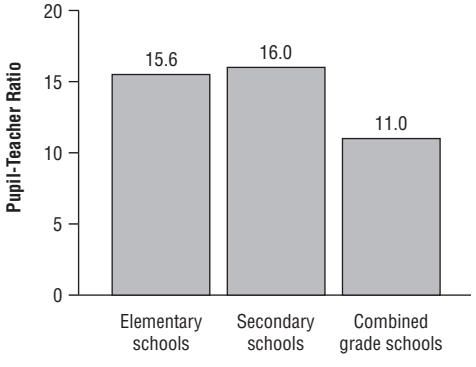
may add other prerequisites, such as physical and psychological examinations and drug tests. Upon completing all the prerequisites, a teacher may obtain the license or permit necessary to teach in a particular state.

States require public school teachers to complete a probationary period before they receive tenure. In the context of employment, tenure is a status that carries with it certain rights and protections, the most important of which is the protection from summary dismissal. A teacher who has gained tenure status may not be terminated from a teaching position without the benefit of a lengthy procedure. The termination process may include a detailed account of reasons for the termination, an opportunity for the teacher to correct any problems, a hearing with school district administrators, review and judgment by school district administrators, and, finally, a meeting with the school board, which votes on whether the teacher should be dismissed. Teachers who have not attained tenure

Pupil-Teacher Ratios for Public Schools, 1999–2000



SOURCE: U.S. National Center for Education Statistics, *Schools and Staffing Survey, 1999-2000: Overview of the Data for Public, Private, Public Charter, and Bureau of Indian Affairs Elementary and Secondary Schools*.

have no recourse for a firing. In any case, a public school teacher can only be terminated for cause, or some substantial, articulable reason.

A teaching license may be revoked if the teacher engages in conduct that demonstrates unfitness to teach. The prohibited conduct varies with different states, school districts, and school boards. A criminal conviction that involves moral turpitude, such as a conviction for theft, dishonesty, or sexual assault, generally is a valid ground for revocation of a teaching license.

Schools and school districts have a great deal of control over public school students. Rules and regulations can vary from school to school and range from restrictions on appearance and hair length to prohibitions on electronic transmission devices, or beepers. Schools may not implement unreasonable rules, however. Before a student can be suspended from school for a lengthy time period, the school must give the student notice of the intent to suspend and an opportunity to be heard by school officials. Students may not be forced to pray in school or to pledge allegiance to the U.S. flag. Teachers may inflict CORPORAL PUNISHMENT to control, train, or educate a student but may use only such force as is necessary for those purposes. The amount of force that is permissible varies according to the situation, with careful consideration given to the student's age and maturity. A teacher may use more force on an older, physically mature high school student than on a younger, less mature student. Despite the general acceptance by the courts of some measure of corporal punishment, the threat of litigation makes corporal punishment a potentially risky behavior.

Beginning in the 1990s, school boards adopted ZERO TOLERANCE polices towards drugs and weapons on school grounds. Violations of zero tolerance policies typically lead to suspension or expulsion from the school. The federal Drug Free School Act and Gun Free School Act require the expulsion and arrest of students who bring illegal drugs and firearms to school. At the heart of these policies and laws is the desire to protect students and teachers and to prevent illegal activities from taking place on school district property.

However, school districts have broadened zero tolerance to include an array of infractions, including the wearing of clothing associated with GANGS and threats directed at other persons. Zero tolerance policies have attracted critics, who contend that overly rigid interpretations of the rules, coupled with severe punishments, can lead to disproportionate results. In 2001, the AMERICAN BAR ASSOCIATION (ABA) issued a statement in which it criticized zero tolerance rules for failing to take into account the individual circumstances of each case or the individual student's history. The ABA called for the end of such rigid policies. Nevertheless, the courts generally support school district zero tolerance policies, especially when drugs or weapons are the issue.

School districts have the right to require students to take drug tests if they wish to participate in athletic and extracurricular activities. The Supreme Court, in *Board of Education, Pottawatomie County v. Earls,* 536 U.S. 822, 122 S.Ct. 2559, 153 L.Ed.2d 735 (2002), concluded that the drug-testing program was reasonable under the FOURTH AMENDMENT because it furthered the school district's "important interest in preventing and deterring drug use among its schoolchildren." Moreover, the Court found that violation of student privacy interests was minimal.

School districts are also not bound by rigid rules of privacy when it comes to having students grade each others papers and tests. The Supreme Court, in *Owasso Independent School District No. I-011 v. Falvo,* 534 U.S. 426, 122 S.Ct. 934, 151 L.Ed.2d 896 (2002), reviewed the scope of the federal Family Educational Rights and Privacy

Charter Schools: The Educational Petri Dish

Most families think that they have only three choices for the education of their school-age children: a sectarian school or other form of private school that charges tuition, a free public school, or home schooling. In many states there is a fourth option: a charter school. Charter schools do not have a religious agenda and are free of cost, but they differ from the typical public school. Although charter schools are governed by the public school district in which they are located, they are free of many of the constraints imposed on other public schools in the district.

Charter schools are created to be innovative and experimental in nature and to serve as models for future changes in ordinary public schools. The classes offered by charter schools may differ in substance from classes in public schools, and the teachers may use new, alternative approaches to education. Charter schools represent an opportunity to experience a form of experimental, alternative schooling that was previously open only to students who could afford alternative private schools or who could be educated at home. Parents also like charter schools because they have a say in the school's administration.

Charter schools usually are run by a board comprised of the teachers in the school and a few of the students' parents. The board makes its own decisions on-site. Unlike other public schools, a charter school does not have to seek approval from the school district or school board before it can take action. To teach English literature, for example, the teachers at a charter school might discard the traditional texts prescribed for other public schools and assign only contemporary poetry. They might even decide that their students should study poetry by attending open poetry readings or by setting up their own regular poetry readings.

The first charter school legislation was passed in Minnesota in 1991 (Minn. Stat. Ann. §§ 120.064, 124.248 [West 1996]). Since 1991 approximately half of the states have enacted some form of charter school legislation. The details vary, but the programs share the basic goal of creating a limited number of schools where teachers may experiment with a variety of learning techniques. The schools have a high degree of independence, but they are all results oriented. Thus, each school must show a state or local governmental education agency that its students are making satisfactory progress. A state may, for example, require that students in charter schools pass a yearly achievement test to prove that they are receiving a well-rounded education.

By virtue of their experimental nature, charter schools are highly individualistic. Some schools focus on a particular area of study, such as computers, the environment, the arts, or aeronautics. A school that emphasizes computers, for instance, will have a large number of personal computers and many teachers who specialize in computer education. Other schools are designed for certain types of students, such as teenage students who have dropped out before earning their high school degree.

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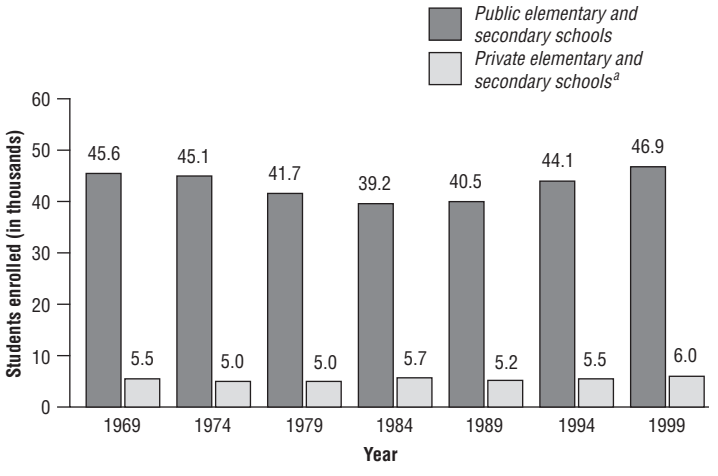
Act of 1974 (FERPA) 20 U.S.C.A. § 1232 (g), which regulates the release of student education records. The Court rejected the claim that peer grading violated FERPA. To rule otherwise would "force all instructors to take time, which otherwise could be spent teaching and in preparation, to correct an assortment of daily student assignments." The Court concluded that Congress would never have meant to "intervene in this drastic fashion with traditional state functions."

A school board has power only over the public schools within its school district. Private schools must comply with generally applicable federal, state, and local laws, but they are privately owned and operated and are not obligated to follow the rules and regulations of the school

Enrollment in Public and Private Schools, 1969 to 1999



[a]All private school numbers are estimates. Beginning in fall 1980, data include estimates for an expanded universe of private schools. Therefore, these totals may differ from figures shown in other tables, and direct comparisons with earlier years should be avoided.

SOURCE: U.S. National Center for Education Statistics, *Schools and Staffing Survey, 1999-2000: Overview of the Data for Public, Private, Public Charter, and Bureau of Indian Affairs Elementary and Secondary Schools*.

district in which they are located. Private schools are not governed by the U.S. Constitution and state constitutions in the same way that public schools are. Constitutions are designed mainly to protect persons from the actions of government. Public schools are funded by governments and so must answer to constitutions, but private schools are not funded by public monies, so their actions are not deemed governmental in nature.

Public school districts have little involvement with private schools for another reason: the Establishment Clause of the FIRST AMENDMENT. Under the Establishment Clause, Congress may not make any laws respecting the establishment of, or prohibiting the free exercise of, religion. The Establishment Clause has been made applicable to the states by the U.S. Supreme Court, which has interpreted the clause to mean that public schools should be free of religious influences. This does not mean that public schools can have no connection with private schools. In many school districts, public schools share buses and textbooks with private schools, and these arrangements have not been declared unconstitutional. In 1997, in AGOSTINI V. FELTON, 521U.S. 203, 117 S. Ct. 1997, 138 L. Ed. 2d 391, the Supreme Court reversed its decisions in *Aguilar v. Felton,* 473 U.S. 402, 105 S. Ct. 3232, 87 L. Ed. 2d 290 (1985) and *School District of the City of Grand Rapids v. Ball,* 473 U.S. 373, 105 S. Ct. 3216, 87 L. Ed. 2d 267 (1985), and held that a public school teacher may teach disadvantaged students in a private school classroom if the legislation authorizing such activity contains safeguards that prevent the teacher from advancing religion.

Many states have set up programs that challenge the limits of the Establishment Clause. Voucher programs are an example of education-related legislative experimentation with the Establishment Clause. Under a voucher program, the state provides taxpayer money to parents and guardians of public school students to be used to send the students to religious or private schools. The Supreme Court, in *Zelman v. Simmons-Harris,* 536 U.S. 639, 122 S.Ct. 2460, 153 L.Ed.2d 604 (2002), upheld the constitutionality of an Ohio program that provided low-income Cleveland parents tax-supported VOUCHERS worth $2,250 per pupil, which they could use to transfer a child to a participating private school of the family's choice. The Court stated that "Cleveland's pilot program permits individuals to exercise genuine choice among options public and private, secular and religious." The decision cleared the way for other states to adopt voucher programs.

School districts do not have power over sectarian private schools, but they do have authority over home schools. Home schooling is a form of education provided by parents or guardians.

Schools and school districts continually adapt their policies, rules, and regulations to keep pace with societal changes and to meet the needs of students and the community. Curricula, grades, attendance requirements, and age standards vary from district to district and even from school to school.

The federal government imposed new requirements on local school districts when it enacted the No Child Left Behind Act of 2001 (NCLB). The act, which was proposed by President GEORGE W. BUSH, contained sweeping reforms for the U.S. public school system and was centered on four basic principles: increased accountability by school districts, increased flexibility and local control, expanded options for parents, and an emphasis on proven teaching methods. States must develop learning standards for students and must institute annual testing to ensure that the standards have been

met. Schools that fail to perform up to expectations are to be held accountable. States that do not comply with the act risk the loss of federal aid. The NCLB, though only in its infancy, promised major changes for public education.

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SCIENTER

[Latin, Knowingly.] *Guilty knowledge that is sufficient to charge a person with the consequences of his or her acts.*

The term *scienter* refers to a state of mind often required to hold a person legally accountable for her acts. The term often is used interchangeably with MENS REA, which describes criminal intent, but *scienter* has a broader application because it also describes knowledge required to assign liability in many civil cases.

Scienter denotes a level of intent on the part of the defendant. In *Ernst and Ernst v. Hochfelder,* 425 U.S. 185, 96 S. Ct. 1375, 47 L. Ed. 2d 668 (1976), the U.S. Supreme Court described *scienter* as "a mental state embracing intent to deceive, manipulate, or defraud." The definition in *Ernst* was fashioned in the context of a financial dispute, but it illustrates the sort of guilty knowledge that constitutes *scienter.*

Scienter is relevant to the pleadings in a case. Plaintiffs and prosecutors alike must include in their pleadings allegations that the defendant acted with some knowledge of wrongdoing or guilt. If a legislative body passes a law that has punitive sanctions or harsh civil sanctions, it normally includes a provision stating that a person must act willfully, knowingly, intentionally, or recklessly, or it provides similar *scienter* requirement. Legislative bodies do not, however, always refer to *scienter* in statutes.

In the *Ernst* case, the investors in a brokerage firm brought suit against an accounting firm after the principal investor committed suicide and left a note revealing that the brokerage firm was a scam. The investors brought suit for damages against the brokerage firm's accounting firm under sections 10(b) and 10b-5 of the Securities Exchange Act of 1934 (15 U.S.C.A. § 78a et seq.), which makes it unlawful for any person to engage in various financial transgressions, such as employing any device, scheme, or artifice to defraud, or engaging in any act, practice, or course of business that operates as a FRAUD or deceit upon any person in connection with the purchase or sale of any security.

Significantly, the Securities Exchange Act does not mention any standard for intent. The courts had to decide whether a party could make a claim under the act against a person without alleging that the person acted intentionally, knowingly, or willfully.

The investors in *Ernst* did not allege that the accounting firm had an intent to defraud the investors. Rather, they alleged only that the accounting firm had been negligent in its accounting and that the NEGLIGENCE constituted a violation of the Securities Exchange Act. The Supreme Court ruled that an allegation of negligent conduct alone is insufficient to prove a violation of the Securities Exchange Act. According to the Court, the language in the act reflected a congressional intent to require plaintiffs to prove *scienter* on the part of the defendant to establish a claim under the act.

Most courts hold that reckless conduct may also constitute *scienter.* The definition of *reckless* includes conduct that reasonable persons know is unsafe or illegal. Thus, even if a defendant did not have actual knowledge that his behavior was criminal, *scienter* may be implied by his reckless actions.

In some cases the level of *scienter* required to find a defendant liable or culpable may fluctuate. In *Metge v. Baehler,* 762 F.2d 621 (1985), a group of investors brought suit against a bank, alleging that the bank had aided and abetted a

securities fraud operation. To establish a defendant's liability for aiding and abetting a securities fraud transaction, the plaintiff must prove that there was a SECURITIES LAW violation, that the defendant knew about the violation, and that the defendant substantially assisted in the violation. In sending the case back to the trial court, the U.S. Court of Appeals for the Eighth Circuit stated that in a case alleging aiding and abetting, more *scienter* is required if the plaintiff has little proof that the defendant substantially assisted in the violation. The court noted that the bank seemed blameworthy only because it failed to act on possible suspicions of impropriety and that the bank had no duty to notify the plaintiffs about the actions of others. In such a case, the court advised that "an alleged aider-abettor should be found liable only if scienter of the high 'conscious intent' variety can be proved. Where some special duty of disclosure exists, then liability should be possible with a lesser degree of scienter."

In some cases or claims, a plaintiff need not prove that the defendant acted with any *scienter.* These cases or claims are based on STRICT LIABILITY statutes, which impose criminal and civil liability without regard to the mental state of the defendant. For example, a statute that prohibits the sale of cigarettes to minors may authorize punishment for such a sale even if the seller attempted to verify the buyer's age and believed that the buyer was not a minor. Courts have held that a legislative body may not authorize severe punishment for strict liability crimes because severe punishment is generally reserved for intentional misconduct, reckless conduct, or grossly negligent conduct.

In *United States v. Wulff,* 758 F.2d 1121 (1985), the U.S. Court of Appeals for the Sixth Circuit declared that the felony provision of the MIGRATORY BIRD TREATY Act, 16 U.S.C.A. § 703 et seq., was unconstitutional because it made the sale of part of a migratory bird a felony without proof of *scienter.* According to the court, eliminating the element of criminal intent in a criminal prosecution violates the DUE PROCESS CLAUSE of the FIFTH AMENDMENT to the U.S. Constitution unless the penalty is relatively small and the conviction does not gravely besmirch the reputation of the defendant. The penalty in the act authorized two years in prison and a $2,000 fine, and the court considered that punishment too onerous to levy against a person who had acted without any *scienter.*

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CROSS-REFERENCES

Aid and Abet.

SCIENTIFIC EVIDENCE

Evidence presented in court that is produced from scientific tests or studies.

Scientific evidence is evidence culled from a scientific procedure that helps the trier of fact understand evidence or determine facts at issue in a judicial proceeding. Under rule 702 of the FEDERAL RULES OF EVIDENCE and similar state court rules of evidence, "a witness qualified as an expert by knowledge, skill, experience, training, or education" may testify and offer opinions in court if "scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue." Article VII of the Federal Rules of Evidence contains other rules on EXPERT TESTIMONY and scientific evidence. All states have rules on expert testimony and scientific evidence that are similar to the rules in article VII.

Expert testimony on scientific evidence is different from ordinary testimony from laypersons. A lay witness may testify to inferences and give opinions only if they are rationally based upon the witness's perceptions of the subject of the testimony. Experts, by contrast, may give opinions and testify about possible inferences based in part on information obtained from secondhand sources and not from observation of the object of the testimony. For example, a layperson would not be allowed to take the witness stand and offer an opinion on a plaintiff's injury unless the individual had witnessed relevant information regarding the injury. However, a doctor who is certified as a specialist in the particular injury could take the stand and offer opinions on the injury based not only on an examination of the plaintiff but also on secondhand information that is normally relied on by experts in that particular field of medical study.

One of the most important issues that arises in expert testimony is which scientific procedures a court should accept as evidence. Many scientific procedures are not seriously in dispute and are accepted by courts with little or no inquisition into their validity. Examples include fingerprint tests for purposes of identification, blood tests, breathalyzer tests for alcohol consumption, and ballistics tests of bullets and their impact areas. These scientific procedures are so widely accepted that a court may take JUDICIAL NOTICE of the procedure's validity. Judicial notice means that the parties in the case do not have to present evidence to the court to establish the validity of the scientific procedure. In some instances legislatures have specifically authorized the use of scientific tests, such as breathalyzer tests for suspected drunk drivers.

Whether they are judicially noticed or legislatively mandated, scientific tests that are universally accepted must be presented by a qualified expert. A person is established as a qualified expert before the court through questioning by the attorney who is using the witness as an expert. The attorney asks a series of questions to establish that the witness has adequate education and training to testify as an expert—a process called laying a foundation for the witness. Once the court is convinced that the witness is an expert on the procedure or subject matter that will be presented as evidence, the witness gives an expert opinion to the exact procedures that were used or the factual circumstances that arose in the case at hand. For example, assume that a person sues a doctor for MEDICAL MALPRACTICE, arguing that the defendant failed to set a broken bone properly. If the plaintiff offers a bone specialist as an expert witness on the issues surrounding the care he received from the defendant, the expert witness must testify about the witness's credentials and give details about the plaintiff's treatment.

Some scientific tests and examinations that are not universally accepted are nevertheless generally considered reliable. Some examples are neutron activation analysis to determine the identity of goods, voiceprints to determine a person's identity, and genetic testing or DNA analysis. These types of scientific procedures may be accepted in the medical communities, but they are not so established that they may be judicially noticed as automatically valid sources of scientific evidence. They may be admitted as evidence, but only after an expert witness has testified to the validity of the test. In determining whether to admit scientific evidence from procedures that are not universally accepted, a court must ask whether the test is reliable. A technique's reliability depends on a number of factors, including whether the technique can be or has been tested, whether it has been subjected to peer review, whether the test procedures have been published, whether the test has a margin of error and, if so, at what rate, and whether the technique, as applied, conformed to existing standards for the test (*Daubert v. Merrell Dow Pharmaceuticals, Inc.,* 509 U.S. 579, 113 S. Ct. 2786, 125 L. Ed. 2d 469 [1993]).

In *Kumho Tire Co., Ltd. v. Carmichael*, 526 U.S. 137, 119 S. Ct. 1167, 143 L. Ed. 2d 238 (1999) the U.S. Supreme Court ruled that the *Daubert* standards govern not just the admissibility of scientific evidence in federal court, but should be applied to all witnesses seeking federal court approval to testify as an expert. Thus, the Supreme Court found that a purported expert on tire failure was subject to a *Daubert* inquiry before he could be permitted to testify on the subject in a products liability trial, even if some of his proffered testimony was not wholly "scientific." The lower court had attempted to draw a distinction between *scientific* expert for which the *Daubert* standards did apply and a *technical* expert for which the *Daubert* standards did not apply. By expanding the DAUBERT TEST, the Court reemphasized the trial court's broad discretion in matters of expert testimony.

In some instances courts are reluctant to admit certain scientific evidence because the procedures yield results that are not considered sufficiently reliable to be used as evidence. Such procedures include POLYGRAPH and chemical tests that have been created to determine whether a person is telling the truth. If all parties agree that testimony derived from such procedures shall be admissible, however, a court is free to allow the evidence to be introduced.

In any case, regardless of the level of acceptance of a particular scientific procedure, the scientific evidence presented must be relevant to the issue at hand. Furthermore, the scientific evidence must have been obtained in a manner that is consistent with the way such evidence is normally obtained. For instance, assume that a physicist intends to testify to the speed of the defendant's vehicle in a personal injury case stemming from a car accident. If the physicist used different methods from those used by other

physicists in determining a vehicle's speed, the court may refuse to allow the physicist to testify as to the vehicle's speed.

An expert witness giving testimony on scientific evidence may offer opinions on issues related to that evidence. An expert witness may also give an opinion on the ultimate issue in the case. Under rule 704 of the Federal Rules of Evidence, however, an expert witness testifying with respect to the mental state or condition of a criminal defendant may not state "an opinion or inference as to whether the defendant did or did not have the mental state or condition constituting an element of the crime charged or of a defense thereto." This rule, which is applied by courts only in criminal cases, was approved by the U.S. Congress in 1984, largely in response to the outcome of the criminal prosecution of John Hinckley, who attempted to assassinate President RONALD REAGAN in 1981. Hinckley was charged with attempted assassination, assault on a federal officer, and use of a firearm in the commission of a federal offense, but was found not guilty by reason of insanity after the jury heard testimony from a psychiatrist who declared that Hinckley could not be found guilty because he lacked the knowing mental state required for a conviction on the charges.

The weight given to scientific evidence may vary according to the particular test that yielded the evidence. One party's expert testimony may be convincing, but it may not be dispositive of the case because the other party may have experts from the same field who have studied the same evidence and come to different conclusions. Experts have become indispensable to the vast majority of litigated cases, and many cases, civil and criminal alike, come down to a battle between experts. One notable exception to this trend is the PATERNITY case, in which blood test results or DNA test results can establish the ultimate issue in the case. This is true, however, only if the parties in the paternity case agree that the particular tests will be conclusive and if the tests show that the individual named as the father could not be a parent of the child in question. If the tests show that the individual named as the father could be the parent, the test results will not dispose of the case, and the parties will have to present further evidence.

Courts have the discretion to appoint an expert witness to testify to scientific evidence. Under rule 706 of the Federal Rules of Evidence and similar state court rules of evidence, a court may appoint an expert to present evidence on a particular topic and order compensation for the expert's time and effort. Typically, in a civil case, the parties must apportion the costs as the court directs. In just compensation cases under the FIFTH AMENDMENT and in criminal cases, the court orders payment for the expert out of government funds.

One of the most well-known experts on scientific evidence in the United States is Barry Scheck, a criminal defense lawyer who rose to prominence during the 1995 O.J. SIMPSON murder trial as a member of Simpson's so-called "Dream Team." In 1992 he and fellow Dream-Team member Peter Neufeld opened the National Association of Criminal Defense Lawyers' Innocence Project, a nonprofit legal clinic at the BENJAMIN N. CARDOZO School of Law in New York. Through testing of DNA EVIDENCE, the Innocence Project has helped exonerate 127 wrongly convicted inmates. Scheck, 43, has chronicled the stories of his exonerated clients in books and on the lecture circuit. He also assisted Colorado prosecutors and police officers investigating the Jon-Benet Ramsey murder case.

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CROSS-REFERENCES

Fingerprints; Forensic Science; Insanity Defense.

SCINTILLA

A glimmer; a spark; the slightest particle or trace.

"Scintilla of evidence" is a metaphorical expression describing a very insignificant or trifling item of evidence. The common-law rule provides that if there is any evidence at all in a case, even a mere scintilla, that tends to support a material issue, the case cannot be taken from the jury but must be left to its decision.

SCIRE FACIAS

[Latin, Made known.] *A judicial writ requiring a defendant to appear in court and prove why an*

existing judgment should not be executed against him or her.

In the law, scire facias is a judicial writ that is brought in a case that has already been before a court. *Writ* is the old English term for a judicial order. Some states still use the term. A scire facias writ commands the person against whom it is brought to appear before the court and show why the record should not be resolved in favor of the party who brought the writ.

The scire facias writ originated in England, and its use was adopted by the American colonists. In eighteenth-century England, the writ was used to repeal letters patent. Letters patent were letters written by the king or queen that granted inventors exclusive patent rights over their inventions. Any person who thought a patent was invalid based on false information or the existence of a prior invention could ask the royal Court of Chancery to request the presence of the patent holder to justify the patent. If there was a genuine dispute about the validity of the patent, the patent holder could request a trial before a jury in the Court of King's Bench. The jury resolved any issues of fact, and then the case was sent back to the Chancery. The chancellor made the final judgment on whether to revoke the patent.

The scire facias writ did not survive in patent law. Under modern law, only a person with a case or controversy with respect to a particular patent may challenge the patent. Also, a claim of patent invalidity is not tried before a royal court but a federal patent court. However, the issue of patent validity may be tried before a jury, much like the old scire facias writ.

In modern practice, the writ of scire facias is used in the enforcement and collection of judgments. When a plaintiff in a civil case obtains a money judgment against a defendant, the court order to pay the judgment may expire after a certain number of years if the judgment remains unpaid. State and federal laws allow the plaintiff to make a motion to the court before the time period expires to continue the effect of the court's order. If the plaintiff fails to make such a motion, she may file a writ of scire facias to revive the judgment. The defendant would then have to appear before the court and explain why the judgment should not be revived. If the defendant has already paid the plaintiff, or if the defendant has evidence that he owes the plaintiff nothing, the defendant may present evidence and shift the burden of proof to the plaintiff.

If the defendant is unable to defend his failure to pay the judgment, the court will order execution of the judgment. The court may order the defendant to submit to a financial status examination, to sell property to satisfy the judgment, or to take other measures to satisfy the judgment.

The writ of scire facias has been abolished on the federal level and in most states. Plaintiffs may revive an expired or dormant judgment by filing a civil claim in a court of general jurisdiction and asking for revival of the judgment. The courts that have eliminated the writ have found its complex procedures unsuited to the needs of modern society.

In some jurisdictions that still permit a scire facias writ, the writ has fallen into disuse. In Connecticut, for example, the judicially created creditor's bill has supplanted the writ. This bill creates an equitable remedy for a person who cannot enforce a judgment in a court of law. A court provides an equitable remedy based not on legal authority but on principles of fairness.

States that maintain the scire facias writ require it to be filed within a certain time after expiration of the judgment. In Texas, for example, the Civil Practice and Remedies Code specifies that a scire facias writ may be brought no later than two years after the date that the judgment became dormant (Tex. Civ. Prac. & Rem. Code Ann. § 31.002 [West 1995]).

The term *scire facias* also is used in the law to describe a particular form of judicial foreclosure of a mortgage. After a mortgagor of property defaults on payment obligations, the mortgagee may obtain a writ of scire facias, which is an order commanding the respondent to appear and explain why the mortgaged property should not be sold to satisfy the mortgage debt.

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SCOPE OF EMPLOYMENT

Activities of an employee that are in furtherance of duties that are owed to an employer and where the employer is, or could be, exercising some control, directly or indirectly, over the activities of the employee.

Under the doctrine of RESPONDEAT SUPERIOR, a principal is liable for the TORTS, civil

wrongs, of an agent committed within the ambit of the agent's occupation.

The scope of employment includes all acts reasonably necessary or incident to the performance of work, including matters of personal convenience and comfort that do not conflict with specific instructions.

SCOPES MONKEY TRIAL

The criminal prosecution of John T. Scopes was an attack by citizens of Dayton, Tennessee, on a Tennessee statute that banned the teaching of evolution in public schools. The Butler Act, passed in early 1925 by the Tennessee General Assembly, punished public school teachers who taught "that man has descended from a lower order of animals" or any theory "that denies the story of the Divine Creation of man as taught in the Bible."

Some citizens of Dayton decided to challenge the statute. On the last day of school in May 1925, they congregated in Robinson's Drug Store and devised a plan to use a willing teacher to challenge the constitutionality of the statute. According to the plan, a teacher would admit to teaching evolution and volunteer to face criminal charges under the statute. One person in the assemblage suggested John T. Scopes, a popular substitute teacher who had taught science and coached athletics at the high school for the past year.

In May 1925, John T. Scopes challenged the Butler Act, a Tennessee state law that prohibited public school teachers from teaching evolution.

AP/WIDE WORLD PHOTOS

Scopes agreed, and within days he was accused of criminal teachings. He was arrested, indicted, and released pending trial in the town of Dayton. He faced no jail time. If convicted of the offense, Scopes would have had to pay a fine of at least $100, but no more than $500.

News of the case touched off a national debate on creationism, evolution, and public school teaching. Vendors, preachers, journalists, and gawkers descended on the town of Dayton during the months of June and July. The case also attracted legal celebrities. General A. T. Stewart was joined by a host of special counsel for the prosecution, including WILLIAM JENNINGS BRYAN. Bryan, age 65, was a skilled speaker, veteran lawyer, and former presidential candidate. A Dayton newspaper asked the eminent litigator CLARENCE SEWARD DARROW, age 68, to defend Scopes. Darrow, an ardent opponent of religious fundamentalism, agreed to defend Scopes free of charge. He was assisted by Dudley Field Malone and Arthur Garfield Hays of the AMERICAN CIVIL LIBERTIES UNION.

The trial began on July 10 in the midst of a blistering heat wave, but the intense heat did not deter spectators. The courtroom was so crowded that the last part of the trial was held outside in the courthouse yard to accommodate the large audience.

Much of the trial was consumed by arguments on evidence and orations delivered by Bryan, Darrow, or Hays. Some of these orations were directed not toward the judge and jury but toward the gallery, which responded with jeers, cheers, and catcalls. Because Scopes did not deny that he had taught evolution, his lawyers sought to sway the jury into nullifying the statute by acquitting him in spite of the evidence. Darrow, Malone, and Hays attempted to win over the jury by attacking creationism and confirming the theory of evolution.

The most significant evidence offered by the defense did not make it into the record. Darrow placed Bryan on the witness stand and questioned him on the merits of evolution and creationism. The most memorable moments of the trial consisted of the debate between the two men. However, the examination of Bryan had little impact on the jury's decision because the jury was not present to hear it. After Bryan stepped down from the witness stand, the defense rested. The Tennessee jury found Scopes guilty.

Raulston instructed the jury that it could leave the punishment to the court. The jury did

not set the fine, so Raulston set it at $100. Scopes appealed the verdict to the Tennessee Supreme Court, arguing that the statute was unconstitutional because it violated the separation of church and state under the FIRST AMENDMENT to the U.S. Constitution. Unfortunately, his local counsel, John R. Neal, failed to file a bill of exceptions within 30 days after the trial. Without such a bill, Scopes's arguments on appeal were limited to the actual trial transcript.

The Tennessee Supreme Court did not decide whether the statute was constitutional. It held merely that the fine was invalid under the state constitution (*Scopes v. State,* 154 Tenn. 105, 289 S.W. 363 [1927]). Under article VI, section 6, of the Tennessee Constitution, a judge could not fine anyone more than $50. In the opinion, written by Chief Justice Grafton Green, the court urged the state to dismiss the case against Scopes, noting that Scopes was no longer in the employ of the state and declaring, "We see nothing to be gained by prolonging the life of this bizarre case."

Bryan died shortly after the trial. Darrow litigated several more high-profile cases, and Scopes returned to his teaching career. Scopes never had to pay the fine levied by Raulston. When asked later in life whether he had any regrets about the case, Scopes said, ". . . my decision would be the same as it was in 1925. I would go home and think about it. I would sleep on it. And the next day I would do it again."

Scopes received a measure of vindication shortly before his death in 1970. In 1968 the U.S. Supreme Court declared unconstitutional statutes that forbid the teaching of evolution (*Epperson v. Arkansas,* 393 U.S. 97, 89 S. Ct. 266, 21 L. Ed. 2d 228). Since the *Epperson* case, advocates of creationism have been hard pressed to find public schools willing to teach scientific creationism. In a gradual reversal of fortune, scientific creationists have been unable to obtain equal time for the teaching of creationism in public schools. In 1987, a splintered U.S. Supreme Court ruled that a Louisiana statute that mandated equal time for the teaching of creationism violated the First Amendment because it served no identified secular purpose and had the primary purpose of promoting a particular religious belief (*Edwards v. Aguillard,* 482 U.S. 578, 107 S. Ct. 2573, 96 L. Ed. 2d 510).

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CROSS-REFERENCES

Religion; Schools and School Districts.

SCORCHED-EARTH PLAN

A slang expression for a defensive tactic used by an unwilling corporate takeover target to make itself less attractive to a buyer.

Scorched-earth tactics include selling off assets or entering into long-term contractual commitments. A difficulty with such maneuvers is that they tend to be irreversible and may permanently harm the company. As a result, they tend to be used as a last resort in a takeover struggle.

CROSS-REFERENCES

Mergers and Acquisitions.

SCOTTSBORO CASES

See POWELL V. ALABAMA.

SEA

See LAW OF THE SEA.

SEABED ARMS CONTROL TREATY OF 1971

The Seabed Arms Control Treaty of 1971 was an agreement for the denuclearization of the seabed, the ocean floor, and the subsoil of the seabed. It may be regarded as a NUCLEAR NONPROLIFERATION TREATY since it limits or prevents the spread of nuclear devices to the seabed areas.

CROSS-REFERENCES

Arms Control and Disarmament.

The Great Seal of King Edward III of England. Often used as a signature or imprimatur, seals once had a practical importance. Today, many government offices have seals, though they are mainly decorative in function.

BRITISH MUSEUM COLLECTION

SEAL

To close records by any type of fastening that must be broken before access can be obtained. An impression upon wax, wafer, or some other substance capable of being impressed.

The use of seals began at a time when writing was not common, but when every person of means possessed a coat-of-arms or other distinctive device. Great significance was attached to the use of seals as a means of distinguishing persons. With the spread of education, the signature on an instrument became more important than the seal, and seals lost their former dignity and importance.

Modern judicial decisions minimize or eliminate the distinctions between sealed and unsealed instruments, and most statutes have abolished the use of seals. Other statutes abolishing the use of private seals do not make sealed instruments unlawful, but merely render the seals ineffective. In jurisdictions that still recognize the use of seals, the seal can assume the form of a wax impression, an impression made on paper, or a gummed sticker attached to the document. The letters *L.S.,* an abbreviation for the Latin phrase *locus sigilli,* meaning "the place of the seal," can also be used in place of a material seal, as can the word *seal* or a statement to the effect that the document is to take effect as a sealed instrument.

Seals are currently used for authenticating documents, such as birth and marriage records and deeds to real property. They are also used to authenticate signatures witnessed by a NOTARY PUBLIC and in formalizing corporate documents.

In regard to contracts, at COMMON LAW a promise under seal was enforceable without the necessity of legal consideration—something of value—either because the seal was a substitute for consideration or because the existence of consideration was conclusively presumed. Although most states have abolished seals, some states have provided by statute that a seal raises a presumption of consideration. Article 2 of the UNIFORM COMMERCIAL CODE (UCC)—a body of law adopted by the states to govern commercial transactions—has eliminated the seal as consideration in commercial sales to which the act is applicable. At one time, the statute of limitations—the prescribed period during which legal proceedings must be instituted—was longer for an action brought on a contract under seal than for one not under seal.

SEAL OF THE UNITED STATES

The official die or signet, which has a raised emblem and is used by federal officials on documents of importance.

The United States seal is sometimes officially known as the great seal. The SECRETARY OF STATE has custody and charge of the official seal and makes out, records, and affixes the seal to all civil commissions for officers of the United States, who are appointed by the president alone, or by the president with the advice and consent of the Senate. In order for the seal to be affixed to any commission or other instrument, the president must sign or specially warrant the commission. When the seal is affixed to an appointment, such appointment is made and the commission is valid.

Each state also has an official seal, which is carefully described by law and serves functions on the state level of government that are similar to those of the seal of the United States on the federal level.

SEALED VERDICT

A decision reached by the jury when the court is not in session, which is placed in a closed envelope by the jurors, who then separate.

A sealed verdict is opened and read when the court reconvenes, and it has the same effect as if it had been returned in open court before the jury separated. However, the court holds that a sealed verdict is merely an agreement reached by the jurors and does not become final until it is read into the record and the jurors are discharged.

SEARCH AND SEIZURE

A hunt by law enforcement officials for property or communications believed to be evidence of crime, and the act of taking possession of this property.

In INTERNATIONAL LAW, *the right of ships of war, as regulated by treaties, to examine a merchant vessel during war in order to determine whether the ship or its cargo is liable to seizure.*

Overview

Search and seizure is a necessary exercise in the ongoing pursuit of criminals. Searches and seizures are used to produce evidence for the prosecution of alleged criminals. The police have the power to search and seize, but individuals are protected against ARBITRARY, unreasonable police intrusions. Freedom from unrestricted search warrants was critical to American colonists.

Under England's rule, many searches were unlimited in scope and conducted without justification. Customs officials could enter the homes of colonists at will to search for violations of customs and trade laws, and suspicionless searches were carried out against outspoken political activists. Searches in the colonies came to represent governmental oppression.

To guard against arbitrary police intrusions, the newly formed United States in 1791 ratified the U.S. Constitution's FOURTH AMENDMENT, which states:

> 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.

State Action

Law enforcement officers are entrusted with the power to conduct investigations, make arrests, perform searches and seizures of persons and their belongings, and occasionally use lethal force in the line of duty. But this power must be exercised within the boundaries of the law, and when police officers exceed those boundaries they jeopardize the admissibility of any evidence collected for prosecution. By and large, the Fourth Amendment and the case law interpreting it establish these boundaries.

The safeguards enumerated by the Fourth Amendment only apply against STATE ACTION, namely action taken by a governmental official or at the direction of a governmental official. Thus, actions taken by state or federal law enforcement officials or private persons working with law enforcement officials will be subject to the strictures of the Fourth Amendment. Bugging, WIRETAPPING, and other related snooping activity performed by purely private citizens, such as private investigators, do not receive Fourth Amendment scrutiny.

Reasonable Expectation of Privacy

Individuals receive no Fourth Amendment protection unless they can demonstrate that they have a reasonable expectation of privacy in the place that was searched or the property that was seized. The U.S. Supreme Court explained that what "a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection. . . . But what he seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected." *Katz v. United States*, 389 U.S. 347, 88 S. Ct. 507, 19 L. Ed. 2d 576 (1976). In general the Court has said that individuals enjoy a reasonable expectation of privacy in their own bodies, PERSONAL PROPERTY, homes, and business offices. Individuals also enjoy a qualified expectation of privacy in their automobiles.

Individuals ordinarily possess no reasonable expectation of privacy in things like bank records, vehicle location and vehicle paint, garbage left at roadside for collection, handwriting, the smell of luggage, land visible from a public place, and other places and things visible in plain or open view. Houseguests typically do not possess a reasonable expectation of privacy in the homes they are visiting, especially when they do not stay overnight and their sole purpose for being inside the house is to participate in criminal activity such as a drug transaction. *Minnesota v. Carter*, 525 U.S. 83, 119 S. Ct. 469, 142 L. Ed. 2d 373 (1998). Similarly, a defendant showing only that he was a passenger in a

searched car has not shown an expectation of privacy in the car or its contents. *Rakas v. Illinois,* 439 U.S. 128, 99 S. Ct. 421, 58 L. Ed. 2d 387 (1978). Both the houseguest and the motor vehicle passenger must assert a property or possessory interest in the home or motor vehicle before a court will recognize any Fourth Amendment privacy interests such that would prevent a police officer from searching those places without first obtaining a warrant.

Probable Cause and Reasonable Suspicion

Once it has been established that an individual possesses a reasonable expectation of privacy in a place to be searched or a thing to be seized, the Fourth Amendment's protections take hold, and the question then becomes what are the nature of those protections. Police officers need no justification to stop someone on a public street and ask questions, and individuals are completely entitled to refuse to answer any such questions and go about their business. However, a police officer may only search people and places when the officer has probable cause or reasonable suspicion to suspect criminal activity.

"Probable cause" means that the officer must possess sufficiently trustworthy facts to believe that a crime has been committed. In some cases, an officer may need only a reasonable suspicion of criminal activity to conduct a limited search. *Reasonable suspicion* means that the officer has sufficient knowledge to believe that criminal activity is at hand. This level of knowledge is less than that of probable cause, so reasonable suspicion is usually used to justify a brief frisk in a public area or a traffic stop at roadside. To possess either probable cause or reasonable suspicion, an officer must be able to cite specific articulable facts to warrant the intrusion. Items related to suspected criminal activity found in a search may be taken, or seized, by the officer.

Arrest and Miranda

Under the Fourth Amendment, a *seizure* refers to the collection of evidence by law enforcement officials and to the arrest of persons. An arrest occurs when a police officer takes a person against his or her will for questioning or criminal prosecution. The general rule is that to make an arrest, the police must obtain an arrest warrant. However, if an officer has probable cause to believe that a crime has been committed and there is no time to obtain a warrant, the officer may make a warrantless arrest. Also, an officer may make a warrantless arrest of persons who commit a crime in the officer's presence. An invalid arrest is not generally a defense to prosecution. However, if an arrest is unsupported by probable cause, evidence obtained pursuant to the invalid arrest may be excluded from trial.

When an arrest is made, the arresting officer must read the *Miranda* warnings to the arrestee. The *Miranda* warnings apprise an arrestee of the right to obtain counsel and the right to remain silent. If these warnings are not read to an arrestee as soon as he or she is taken into custody, any statements the arrestee makes after the arrest may be excluded from trial.

Legal commentators have criticized *Miranda* and its subsequent line of decisions, stating that criminal suspects seldom truly understand the meaning or importance of the rights recited to them. Studies have indicated that the *Miranda* decision has had little effect on the numbers of confessions and requests for lawyers made by suspects in custody. Moreover, critics of *Miranda* cite concerns that the police may fabricate waivers, since a suspect's waiver of *Miranda* rights need not be recorded or made to a neutral party. Defenders of *Miranda* argue that it protects criminal suspects and reduces needless litigation by providing the police with concrete guidelines for permissible interrogation.

In 1999 the U.S. Court of Appeals for the Fourth Circuit fueled long-standing speculation that *Miranda* would be overruled when it held that the admissibility of confessions in federal court is governed not by *Miranda*, but by a federal statute enacted two years after *Miranda.* The statute, 18 U.S.C.A. § 3501, provides that a confession is admissible if voluntarily given. Congress enacted the statute to overturn *Miranda,* the Fourth Circuit said, and Congress had the authority to do so pursuant to its authority to overrule judicially created RULES OF EVIDENCE that are not mandated by the Constitution. *U.S. v. Dickerson*, 166 F.3d 667 (4th Cir. 1999).

The U.S. Supreme Court reversed. In an opinion authored by Chief Justice WILLIAM REHNQUIST, the Court said that, whether or not it agreed with *Miranda*, the principles of STARE DECISIS weighed heavily against overruling it. While the Supreme Court has overruled its precedents when subsequent cases have undermined their doctrinal underpinnings, that has not happened to the *Miranda* decision, which

the Court said "has become embedded in routine police practice to the point where the warnings have become part of our national culture." Although the Court acknowledged that a few guilty defendants may sometimes go free as the result of the application of the *Miranda* rule, "experience suggests that the totality-of-the-circumstances test [that] § 3501 seeks to revive is more difficult than *Miranda* for law enforcement officers to conform to and for courts to apply in a consistent manner." *Dickerson v. United States*, 530 U.S. 428, 120 S. Ct. 2326, 147 L. Ed. 2d 405 (2000).

The Search Warrant Requirement

A SEARCH WARRANT is a judicially approved document that authorizes law enforcement officials to search a particular place. To obtain a search warrant, a police officer must provide an account of information supporting probable cause to believe that evidence of a crime will be found in a particular place or places. The officer must also make a list of the particular places to be searched and the items sought. Finally, the officer must swear to the truthfulness of the information. The officer presents the information in an AFFIDAVIT to a magistrate or judge, who determines whether to approve the warrant.

An officer may search only the places where items identified in the search warrant may be found. For example, if the only item sought is a snowmobile, the officer may not rummage through desk drawers. Only the items listed in the warrant may be seized, unless other evidence of illegal activity is in plain view. Judges or magistrates may approve a variety of types of searches. The removal of blood from a person's body, a search of body cavities, and even surgery may be approved for the gathering of evidence. ELECTRONIC SURVEILLANCE and phone records may also be used to gather evidence upon the issuance of a warrant.

A warrant is not required for a search incident to a lawful arrest, the seizure of items in plain view, a border search, a search effected in open fields, a vehicle search (except for the trunk), an inventory search of an impounded vehicle, and any search necessitated by exigent circumstances. It is also not required for a STOP AND FRISK, a limited search for weapons based on a reasonable suspicion that the subject has committed or is committing a crime. A police officer may also conduct a warrantless search if the subject consents.

Exceptions to Warrant Requirement

Administrative agencies may conduct warrantless searches of highly regulated industries, such as strip mining and food service. Federal and state statutes authorize warrantless, random drug testing of persons in sensitive positions, such as air traffic controllers, drug interdiction officers, railroad employees, and customs officials. In each of these types of searches, the Supreme Court has ruled that the need for public safety outweighs the countervailing privacy interests that would normally require a search warrant. However, a few lower federal courts have ruled that warrantless searches of public housing projects are unconstitutional, not withstanding the fact that residents of the public housings projects signed petitions supporting warrantless searches to rid their communities of drugs and weapons.

Nor may states pass a law requiring candidates for state political office to certify that they have taken a drug test and that the test result was negative without violating the Fourth Amendment's warrant requirement. In *Chandler v. Miller*, 520 U.S. 305, 117 S.Ct. 1295, 137 L.Ed.2d 513 (U.S. 1997), the state of Georgia failed to show a special need that was important enough to justify such drug testing and override the candidate's countervailing privacy interests, the Court said. Moreover, the Court found, the certification requirement was not well designed to identify candidates who violate anti-drug laws and was not a credible means to deter illicit drug users from seeking state office, since the Georgia law allowed the candidates to select the test date, and all but the prohibitively addicted could abstain from using drugs for a pretest period sufficient to avoid detection.

The Supreme Court has given law enforcement mixed signals over the constitutionality of warrantless motor vehicle checkpoints. The Court approved warrantless, suspicionless searches at roadside sobriety checkpoints. These searches must be carried out in some neutral, articulable way, such as by stopping every fifth car. However, a highway checkpoint program whose primary purpose is the discovery and interdiction of illegal narcotics violates the Fourth Amendment. In distinguishing between sobriety and drug interdiction checkpoints, the Court said that the sobriety checkpoints under review were designed to ensure roadway safety, while the primary purpose of the narcotics checkpoint under review had been to uncover

evidence of ordinary criminal wrongdoing, and, as such, the program contravened the Fourth Amendment. *City of Indianapolis v. Edmond*, 531 U.S. 32, 121 S.Ct. 447, 148 L.Ed.2d 333 (U.S. 2000).

Warrant exceptions have been carved out by courts because requiring a warrant in certain situations would unnecessarily hamper law enforcement. For example, it makes little sense to require an officer to obtain a search warrant to seize contraband that is in plain view. Under the Fourth Amendment's reasonableness requirement, the appropriateness of every warrantless search is decided on a case-by-case basis, weighing the defendant's privacy interests against the reasonable needs of law enforcement under the circumstances.

The Exclusionary Rule and the Fruit of the Poisonous Tree Doctrine

A criminal defendant's claim of unreasonable search and seizure is usually heard in a suppression hearing before the presiding trial judge. This hearing is conducted before trial to determine what evidence will be suppressed, or excluded, from trial. When a judge deems a search unreasonable, he or she frequently applies the EXCLUSIONARY RULE.

For the entire nineteenth century, a Fourth Amendment violation had little consequence. Evidence seized by law enforcement from a warrantless or otherwise unreasonable search was admissible at trial if the judge found it reliable. This made the Fourth Amendment essentially meaningless to criminal defendants. But in 1914, the U.S. Supreme Court devised a way to enforce the Fourth Amendment. In *Weeks v. United States,* 232 U.S. 383, 34 S. Ct. 341, 58 L. Ed. 652 (1914), a federal agent conducted a warrantless search for evidence of gambling at the home of Fremont Weeks. The evidence seized in the search was used at trial, and Weeks was convicted. On appeal, the Supreme Court held that the Fourth Amendment barred the use of evidence secured through a warrantless search and seizure. Weeks's conviction was reversed and thus was born the exclusionary rule.

The exclusionary rule is a judicially created remedy used to deter POLICE MISCONDUCT in obtaining evidence. Under the exclusionary rule, a judge may exclude incriminating evidence from a criminal trial if there was police misconduct in obtaining the evidence. Without the evidence, the prosecutor may lose the case or drop the charges for lack of proof. This rule provides some substantive protection against illegal search and seizure.

The exclusionary rule was constitutionally required only in federal court until MAPP V. OHIO, 367 U.S. 643, 81 S. Ct. 1684, 6 L. Ed. 2d 1081 (1961). In *Mapp,* the Court held that the exclusionary rule applied to state criminal proceedings through the DUE PROCESS CLAUSE of the FOURTEENTH AMENDMENT. Before the *Mapp* ruling, not all states excluded evidence obtained in violation of the Fourth Amendment. After *Mapp,* a defendant's claim of unreasonable search and seizure became commonplace in criminal prosecutions.

The application of the exclusionary rule has been significantly limited by a GOOD FAITH exception created by the Supreme Court in *United States v. Leon,* 468 U.S. 897, 104 S. Ct. 3405, 82 L. Ed. 2d 677 (1984). Under the good faith exception, evidence obtained in violation of a person's Fourth Amendment rights will not be excluded from trial if the law enforcement officer, though mistaken, acts reasonably. For example, if an officer reasonably conducts a search relying on information that is later proved to be false, any evidence seized in the search will not be excluded if the officer acted in good faith, with a reasonable reliance on the information. The Supreme Court has carved out this exception to the exclusionary rule because, according to a majority of the court, the rule was designed to deter police misconduct, and excluding evidence when the police did not misbehave would not deter police misconduct.

A companion to the exclusionary rule is the FRUIT OF THE POISONOUS TREE doctrine, established by the Supreme Court in *Nardone v. United States,* 308 U.S. 338, 60 S. Ct. 266, 84 L. Ed. 307 (1939). Under this doctrine, a court may exclude from trial any evidence derived from the results of an illegal search. For example, assume that an illegal search has garnered evidence of illegal explosives. This evidence is then used to obtain a warrant to search the suspect's home. The exclusionary rule excludes the evidence initially used to obtain the search warrant, and the fruit of the poisonous tree doctrine excludes any evidence obtained in a search of the home.

The Knock and Announce Requirement

The Fourth Amendment incorporates the COMMON LAW requirement that police officers entering a dwelling must knock on the door and

announce their identity and purpose before attempting forcible entry. At the same time, the Supreme Court has recognized that the "flexible requirement of reasonableness should not be read to mandate a rigid rule of announcement that ignores countervailing law enforcement interests." *Wilson v. Arkansas*, 514 U.S. 927, 115 S.Ct. 1914, 131 L.Ed.2d 976 (1995). Instead, the Court left to the lower courts the task of determining the circumstances under which an unannounced entry is reasonable under the Fourth Amendment.

The Wisconsin Supreme Court concluded that police officers are *never* required to knock and announce their presence when executing a search warrant in a felony drug investigation. But the U.S. Supreme Court overturned the state high court's decision in *Richards v. Wisconsin*, 520 U.S. 385, 117 S.Ct. 1416, 137 L.Ed.2d 615 (U.S. 1997). In *Richards* the Court said Fourth Amendment does not permit a blanket exception to the knock-and-announce requirement for the execution of a search warrant in a felony drug investigation. The fact that felony drug investigations may frequently present circumstances warranting a no-knock entry, the Court said, cannot remove from the neutral scrutiny of a reviewing court the reasonableness of the police decision not to knock and announce in a particular case. Rather, it is the duty of a court to determine whether the facts and circumstances of the particular entry justified dispensing with the knock-and-announce requirement. To justify a no-knock entry, the Court stressed that police must have a reasonable suspicion that knocking and announcing their presence, under the particular circumstances, would be dangerous or futile, or that it would inhibit the effective investigation of the crime by, for example, allowing the destruction of evidence.

The Fourth Amendment does not hold police officers to a higher standard when a no-knock entry results in the destruction of property. *U.S. v. Ramirez*, 523 U.S. 65, 118 S.Ct. 992, 140 L.Ed.2d 191 (U.S. 1998). The "reasonable suspicion" standard is still applicable. No Fourth Amendment violation occurred when, the Supreme Court found, during the execution of a "no-knock" warrant to enter and search a home, police officers broke a single window in a garage and pointed a gun through the opening. A reliable confidential informant had notified the police that an escaped prisoner might be inside the home, and an officer had confirmed that possibility, the Court said. The escapee had a violent past and reportedly had access to a large supply of weapons, and the police broke the window to discourage any occupant of the house from rushing to weapons. However, excessive or unnecessary destruction of property in the course of a search may violate the Fourth Amendment, the court emphasized, even though the entry itself is lawful and the fruits of the search are not subject to suppression.

Search and Seizure at Public Schools

A public school student's protection against unreasonable search and seizure is less stringent in school than in the world at large. In *New Jersey v. T.L.O.*, 469 U.S. 325, 105 S.Ct. 733, 83 L.Ed.2d 720 (U.S. 1985), the U.S. Supreme Court held that a school principal could search a student's purse without probable cause or a warrant. Considering the "legitimate need to maintain an environment in which learning can take place," the Court set a lower level of reasonableness for searches by school personnel.

Under ordinary circumstances, the Court said, a search of a student by a teacher or other school official will be "justified at its inception" when there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school. Such a search will be permissible in its scope when the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction. The "ordinary circumstances" justifying a warrantless search and seizure of a public school student, the Court continued, are limited to searches and seizures that take place on-campus or off-campus at school-sponsored events. Warrantless searches of public school students who are found off campus and not attending a school-sponsored event would still contravene the Fourth Amendment.

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Alcohol; Automobiles; Criminal Law; Criminal Procedure; Drugs and Narcotics; Due Process of Law; *Mapp v. Ohio*; *Miranda v. Arizona*; *Olmstead v. United States*; Plain View Doctrine; Search Warrant; *Terry v. Ohio*; Wiretapping.

SEARCH WARRANT

A court order authorizing the examination of a place for the purpose of discovering contraband, stolen property, or evidence of guilt to be used in the prosecution of a criminal action.

A search warrant is a judicial document that authorizes police officers to search a person or place to obtain evidence for presentation in criminal prosecutions. Police officers obtain search warrants by submitting affidavits and other evidence to a judge or magistrate to establish PROBABLE CAUSE to believe that a search will yield evidence related to a crime. If satisfied that the officers have established probable cause, the judge or magistrate will issue the warrant.

The FOURTH AMENDMENT to the U.S. Constitution states that persons have a right to be free from unreasonable SEARCHES AND SEIZURES and that "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." State constitutions contain similar provisions.

The U.S. Supreme Court has not interpreted the Fourth Amendment to mean that police must always obtain a search warrant before conducting a search. Rather, the Supreme Court holds that a search warrant is required for a search unless it fits into a recognized exception.

The exceptions to the search warrant requirement are numerous. One common exception is the search of a person incident to a lawful arrest. The Supreme Court held in *Chimel v. California,* 395 U.S. 752, 89 S. Ct. 2034, 23 L. Ed. 2d 685 (1969), that an officer may search the arrestee as well as those areas in the arrestee's immediate physical surroundings that may be deemed to be under the arrestee's control. Other exceptions to the warrant requirement include situations in which an officer is in HOT PURSUIT of a person, in which an emergency exists, and in which the item to be searched is mobile, such as an automobile. Similarly, searches at public way checkpoints, airports, and international borders may be conducted without first obtaining a search warrant.

To obtain a search warrant, an officer must personally appear before, or speak directly with, a judge or magistrate. The officer must present information that establishes probable cause to believe that a search would yield evidence related to a crime. Probable cause exists when an officer has either personal knowledge or trustworthy HEARSAY from an informant or witness. The officer must fill out an AFFIDAVIT stating with particularity the person to be seized and searched, the area to be searched, and the objects sought. The warrant need not specify the manner in which the search will be executed.

The officer must sign the affidavit containing the supporting information establishing the grounds for the warrant. By signing the affidavit, the officer swears that the statements in the affidavit are true to the best of his or her knowledge. A police officer who lies when obtaining a warrant may be held personally liable to the searched person. According to the Supreme Court's ruling in *Anderson v. Creighton,* 483 U.S. 635, 107 S. Ct. 3034, 97 L. Ed. 2d 523 (1987), however, a police officer is not personally liable for a wrongful search if a reasonable officer could have believed that the warrantless search would be lawful in light of clearly established law and the information the officer possessed at the time.

Following the SEPTEMBER 11TH ATTACKS in 2001, the United States government sought to expand the means by which law enforcement personnel could investigate potential terrorist activities. The USA PATRIOT ACT OF 2001, Pub. L. No. 107-56, 115 Stat. 272, created and expanded a number of exceptions to the traditional search warrant requirements. Although a person subject to a search warrant is ordinarily entitled to notice that the warrant was issued, the USA PATRIOT Act allows magistrates to issue so-called "sneak and peak" warrants, which do not require police to notify the person subject to the search. Moreover, the act expanded the abilities of officers to install "roving" wiretaps of telephones and other communications devices used by individual suspects without naming the specific telephone carrier in the warrant. The act also expanded police officers' abilities to search stored E-MAIL and voicemail messages.

Although the provisions of the USA PATRIOT Act are purportedly designed to

A sample affidavit for a search warrant

Affidavit for Search Warrant

UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF KENTUCKY

Commissioner's Docket No. 2
Case No. 166
UNITED STATES OF AMERICA
vs.
Green Brick Constructed Building W/Green Shingled
Roof Known as 413 E. 17th Street, Covington, Kentucky
and Occupied by Southern Scientific Co.
AFFIDAVIT FOR SEARCH WARRANT

Eastern District of Kentucky
Filed Apr. 17, 1968
Davis T. McGarvey, Clerk
U.S. District Court

Before Robert Cetrulo [Commissioner], Covington, Kentucky.

The undersigned being duly sworn deposes and says:

That he has reason to believe that on the premises known as 413 E. 17th Street, Covington, Kentucky, in the Eastern District of Kentucky, there is now being concealed certain property, namely hallucinogenic drugs, to wit: Diethyltryptamine and Diemethyltryptamine, commonly known as DET and DMT; and certain paraphernalia and chemical precursors utilized in the illicit manufacture of said drugs, which are the means and instrumentalities used to commit offenses in violation of 21 U.S.C. § 331 (q) (1) and (3) and which are also subject to seizure and condemnation under 21 U.S.C. § 334(a) (2).

And that the facts tending to establish the foregoing grounds for issuance of a Search Warant are as follows:

(SEE ATTACHED, WHICH IS MADE PART OF THIS AFFIDAVIT)

/s/ Chantland Wysor, Agent, Bureau of Drug Abuse Control

Sworn to before me and subscribed in my presence, March 31, 1968.

/s/ Robert C. Cetrulo, U.S. Commissioner

During the first part of March 1968 the Chicago Field Office of the Bureau of Drug Abuse Control received information from the New York Field Office, Bureau of Drug Abuse Control, reporting that a firm using the name of AA, 100 N. LaSalle Street, Chicago, Illinois, allegely *(sic)* a Cosmetic Firm, had ordered a large quantity of chemical precursors which are known to be used in the illicit manufacture of hallucinogenic drugs, within the meaning of the Drug Abuse Control Amendments of 1965.

Investigation then revealed the following as regards AA: Responsible person in this alleged firm is Thomas R. Anderson and it was later determined that this individual's true identity may possibly be C.M. and that the name A. is fictitious. Investigation shows that the address listed for this firm is an answering service which has been contracted to accept all telephone calls, correspondence and parcels. Persons associated with AA who transact business with the answering service are C. M. and R. T. Investigation revealed that Moore is a resident of Columbus, Ohio and Terry is a resident of Chicago, Illinois. During the month of March 1968, the answering service received parcels containing chemical precursors for utilization in the manufacture of hallucinogenic drugs, to be held for C. M. Inquiry with the U.S. Food and Drug Administration revealed that this firm is not of record with that Agency as a legitimate cosmetic firm.

Further investigation determined that arrangements had been made for C. M. to travel from Columbus, Ohio to Chicago, Illlinois, on March 29, 1968, to pick up the chemical precursors, which were being held for AA. Surveillance determined that M. did arrive in Chicago on March 29, 1968, and that on March 30, 1968, the subject did pick up the chemical precursors. Continuous surveillance on subject M. by Agents of the Bureau of Drug Abuse Control determined that the subject did leave Chicago on March 30, 1968, with the chemical precursors in his vehicle and delivered the items to Southern Scientific Company, 413 E. 17th Street, Covington, Kentucky, on that same date. After remaining inside 413 E. 17th Street for a short period of time subject M. left the rear of the bulding, walked to an alleyway behind the building and placed a cardboard container on the ground. Examination of that container revealed that it was empty and had labeled thereon "American Indole," which is a common precursor utilized in the illicit manufacturing of hallucinogens.

Surveillance determined that subject M. and an individual tentatively identified as J.S., and an unknown person, were inside Southern Scientific Company from 7:30 PM to 11:30 PM, on March 30, 1968; this being a Saturday and if the firm is legitimate these are not normal working-business hours. Surveillance again determined that the same three subjects went to the building on Sunday, March 31, 1968, at approximately 11:00 AM.

Indications that persons at Southern Scientific Company are engaged in the illegal manufacture of Hallucinogenic Drugs are: Unusual manner utilized in ordering, receiving and ultimate delivery of chemical precursors, which is a known Modus Operandi used by individuals engaged in the illicit manufacture of hallucinogenic drugs; the unusual activity at the building not during normal working-business hours; it is known that the chemical precursors in question are utilized in the illicit manufacture of Diethyltryptamine (DET) and Dimethyltryptamine (DMT), which are hallucinogenic drugs within the meaning of the Drug Abuse Control Amendments of 1965; it is a known factor that either is utilized in the illicit manufacture of DET and DMT; and during surveillance of said location of Sunday, March 31, 1968, surveillance Agents could smell strong odors coming from the building in question which is believed to be ether. In addition it is known that the chemical precursors obtained are not common in the manufacture of cosmetics.

/s/ Chantland Wysor, Agent Bureau of Drug Abuse Control

Sworn to before me, and subscribed in my presence this 31st day of March, 1968.

/s/ Robert C. Cetrulo, Commissioner

enhance the ability of law enforcement agencies to prevent terrorist activities against the United States, many of these provisions can be applied to U.S. citizens who are not engaged in such activities. Several commentators and organizations, such as the AMERICAN CIVIL LIBERTIES UNION, have criticized the act because of its detrimental impact on civil liberties. Supporters of the act counter that the attacks on September 11, 2001, could have been prevented if law enforcement had available to them some of the tools provided under the new law.

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CROSS-REFERENCES

Automobile Searches; Search and Seizure.

SEASONABLE

Within a reasonable time; timely.

The term *seasonable* is usually used in connection with the performance of contractual obligations that must be completed "seasonably." The facts and circumstances of each case define a reasonable period of time.

SEAT BELTS

A restraining device used to secure passengers in motorized vehicles.

Congress first passed seat-belt legislation in 1966. By the 1990s, increased measures were being taken to enforce the laws. Under section 402 of 23 U.S.C.A. (1997), a portion of federal highway funds may be withheld from states if they do not have an approved highway safety program to reduce the number and severity of traffic accidents. One of the measures a state must include in its highway safety program is a provision that encourages drivers and passengers to use seat belts. In 2003, the GEORGE W. BUSH administration proposed incentives, which would amount to $100 million in highway funding, for states to enact mandatory seat-belt laws. According to the U.S. TRANSPORTATION DEPARTMENT, "Every 1 percent increase in nationwide safety belt use means a savings of about 250 lives."

In states that require the use of seat belts by all drivers and front-seat passengers, the failure to use a seat belt is a violation that carries a fine. In most of these states, police officers do not stop persons in vehicles for failing to use a seat belt. This is called a secondary seat-belt law. In West Virginia, for example, Section 17C-15-49 of West Virginia Code states, "Enforcement . . . shall be accomplished only as a secondary action when a driver of a passenger vehicle has been detained for PROBABLE CAUSE of violating another section of this code." In other words, once a vehicle is stopped for any other infraction, the driver may be ticketed if the driver or a front-seat passenger is not belted. In other states, such as Washington and Delaware, for example, a police officer may pull over a car if he suspects a driver or a passenger of not using a seat belt. This is a called a primary seat-belt law. The fine for violating a mandatory seat-belt law usually is minimal; in Delaware, the fine is $25.

New Hampshire is the only state that does not have an adult seat-belt requirement (N.H. Rev. Stat. Ann. § 265: 107-a [1995]). Motor vehicle passengers under the age of 12, however, must wear a seat belt. The New Hampshire Department of Safety administers programs that increase public awareness of the importance of seat belts, and roadside signs placed throughout the state remind drivers that buckling up is mandatory for children and sound advice for all persons.

All states have some type of mandatory seat-belt laws for children. The laws, however, vary by state. They also vary depending on the age, weight, and height of the child. For example, in Delaware, children who are under the age of 12, or under 65 inches tall, must sit in the back seat of a car if there are active air bags in the front passenger seat. Fines for violating child seat-belt laws vary by state. In Delaware, the fine for violating the law is $28.75.

In an effort to improve child restraint safety, Congress passed Anton's Law (H.R. 5504) in November 2002. The law was named for four-year-old Anton Skeen, who was thrown from a car because the adult seat belt he was wearing was too large to hold him. The legislation, which was signed into law in December 2002, requires improved testing standards for child booster seats and also mandates that automak-

ers upgrade their current seat-belt features. In addition, the legislation requires that the National Highway Traffic Safety Administration (NTHSA) construct test dummies that can be used in simulated car crashes to determine the effectiveness of seat belts for children.

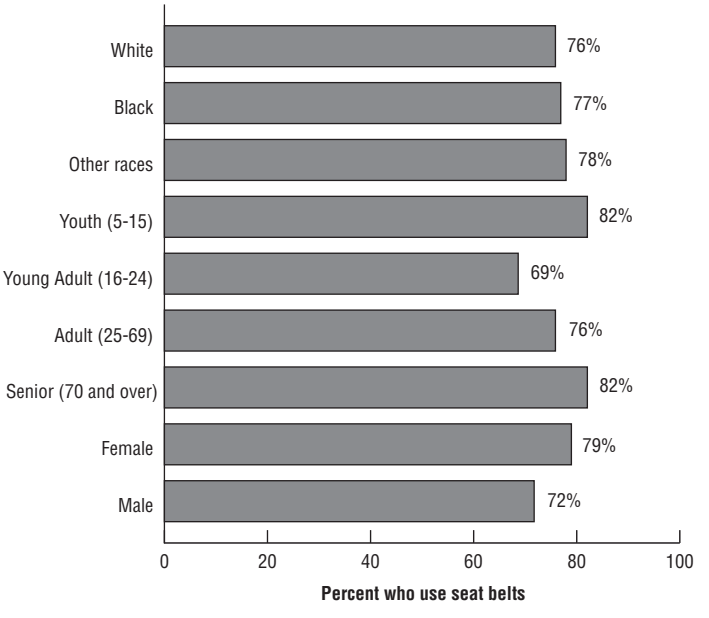
In May 2003, federal and state agencies launched a nationwide effort to mobilize support of seat-belt use. The campaign, called "Click It or Ticket," coincided with the Memorial Day holiday, traditionally one of the busiest for automobile traffic. Some 12,000 law enforcement agencies across the country set up seat-belt checkpoints between May 23 and June 1 to pull over unbuckled drivers and write them tickets. The event was widely publicized in the media to fully enforce the message that during the campaign there would be a zero-tolerance enforcement of safety-belt laws. A major focus was to educate young drivers about the importance of wearing seat belts.

The failure of a driver or front-seat passenger to wear a seat belt can have consequences in personal injury lawsuits. Under court decisions and statutes in some states, the plaintiff's failure to wear a seat belt can decrease his or her recovery for injuries in a car accident. In other states, cases and statutes hold that the failure to wear a seat belt may not be used in court as a mitigating factor in figuring the plaintiff's damages.

In states that limit the recovery of unbelted plaintiffs, courts employ various methods to mitigate damages. Under the causation approach, a plaintiff may not recover damages for injuries caused by the failure to wear a seat belt. Some states require that the plaintiff prove that the accident injuries would have occurred even if the plaintiff had worn a seat belt. Other states hold that the defendant must prove that the plaintiff's injuries would not have occurred had the plaintiff worn a seat belt. Identifying and apportioning the various factors contributing to the plaintiff's injuries is a difficult task. Personal injury cases involving unbelted plaintiffs in these states rely heavily on medical EXPERT TESTIMONY.

Under the plaintiff misconduct approach, the court examines whether the plaintiff was at fault in failing to wear a seat belt. If the plaintiff should have been wearing a seat belt under the state seat-belt laws, the failure to wear the belt may mitigate the plaintiff's damages or completely bar any recovery.

Seat Belt Use, in 2002[a]



[a]Includes overall usage, i.e., both passenger cars and light trucks.

SOURCE: U.S. Department of Transportation, National Highway Traffic Safety Administration, Nation Center for Statistics and Analysis, *Safety Belt Use in 2002—Demographic Characteristics.*

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CROSS-REFERENCES

Automobiles; Mitigation of Damages.

SEC

An abbreviation for the SECURITIES AND EXCHANGE COMMISSION.

SECESSION

The act of withdrawing from membership in a group.

Secession occurs when persons in a country or state declare their independence from the ruling government. When a dissatisfied group

secedes, it creates its own form of government in place of the former ruling government. Secessions are serious maneuvers that lead to, or arise from, military conflict.

A secession can affect international relationships as well as the civil peace of the nation from which a group secedes. Most countries consider secession by a town, city, province, or other body to be a criminal offense that warrants retaliation using force. Because the primary mission of most governments is to maximize the comfort and wealth of its citizens, nations jealously guard the land and wealth that they have amassed. In rare cases a government may recognize the independence of a seceding state. This recognition may occur when other countries support the independence of the seceding state. However, for most countries, the involuntary loss of land and wealth is unthinkable.

Most countries have laws that punish persons who secede or attempt to secede. The United States has no specific law on secession, but the federal government and state governments maintain laws that punish SEDITION and other forms of insurrection against the government. On the federal level, for example, chapter 115 of title 18 of the U.S. CODE ANNOTATED identifies TREASON, rebellion, or insurrection, seditious conspiracy, and advocation of the overthrow of the government as criminal offenses punishable by several years of imprisonment and thousands of dollars in fines. These are the types of crimes that can be charged against persons who attempt to secede from the United States.

The U.S. CIVIL WAR was the result of the single most ambitious secession in the history of the United States. In February 1861 South Carolina seceded from the Union, and Virginia, North Carolina, Georgia, Florida, Alabama, Mississippi, Texas, Arkansas, and Tennessee followed suit shortly thereafter. These states seceded because they objected to attempts by the federal government to abolish the enslavement of black people. The mass secession led to four years of civil war and the death of hundreds of thousands of people. The seceding states established their own government called the Confederate States of America and fought the U.S. military forces with their own army. When the Confederate forces were defeated in April 1865, the seceding states rejoined the United States.

CROSS-REFERENCES

U.S. Civil War.

SECOND AMENDMENT

The Second Amendment to the U.S. Constitution reads:

> 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.

The subject matter and unusual phrasing of this amendment led to much controversy and analysis, especially in the last half of the twentieth century. Nevertheless, the meaning and scope of the amendment have long been decided by the Supreme Court.

Firearms played an important part in the colonization of America. In the seventeenth and eighteenth centuries, European colonists relied heavily on firearms to take land away from Native Americans and repel attacks by Native Americans and Europeans. Around the time of the Revolutionary War, male citizens were required to own firearms for fighting against the British forces. Firearms were also used in hunting.

In June 1776, one month before the signing of the Declaration of Independence, Virginia became the first colony to adopt a state constitution. In this document, the state of Virginia pronounced that "a well regulated Militia, composed of the body of the people, trained to arms, is the proper, natural, and safe defence of a free State." After the colonies declared their independence from England, other states began to include the right to bear arms in their constitution. Pennsylvania, for example, declared that

> the people have a right to bear arms for the defence of themselves and the state; and as standing armies in the time of peace are dangerous to liberty, they ought not to be kept up; And that the military should be kept under strict subordination to, and governed by, the civil power.

The wording of clauses about bearing arms in late-eighteenth-century state constitutions varied. Some states asserted that bearing arms was a "right" of the people, whereas others called it a "duty" of every able-bodied man in the defense of society.

Pennsylvania was not alone in its express discouragement of a standing (professional) army. Many of the Framers of the U.S. Constitution rejected standing armies, preferring instead the model of a citizen army, equipped with weapons and prepared for defense. According to Framers such as Elbridge Gerry of Massachusetts and GEORGE MASON of Virginia a standing

army was susceptible to tyrannical use by a power-hungry government.

At the first session of Congress in March 1789, the Second Amendment was submitted as a counterweight to the federal powers of Congress and the president. According to constitutional theorists, the Framers who feared a central government extracted the amendment as a compromise from those in favor of centralized authority over the states. The Revolutionary War had, after all, been fought in large part by a citizen army against the standing armies of England.

The precise wording of the amendment was changed two times before the U.S. Senate finally cast it in its present form. As with many of the amendments, the exact wording proved critical to its interpretation.

In 1791 a majority of states ratified the BILL OF RIGHTS, which included the Second Amendment. In its final form, the amendment presented a challenge to interpreters. It was the only amendment with an opening clause that appeared to state its purpose. The amendment even had defective punctuation; the comma before *shall* seemed grammatically unnecessary.

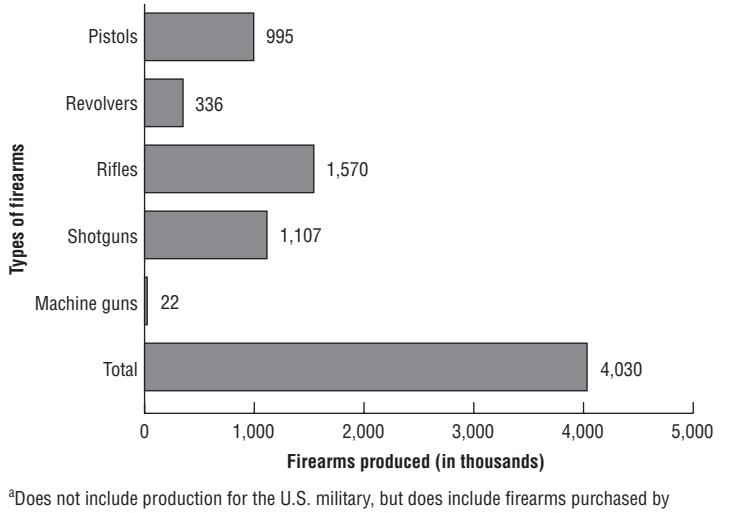
Legal scholars do not agree about this comma. Some have argued that it was intentional and that it was intended to make *militia* the subject of the sentence. According to these theorists, the operative words of the amendment are "[a] well regulated Militia . . . shall not be infringed." Others have argued that the comma was a mistake, and that the operative words of the sentence are "the right of the people to . . . bear arms . . . shall not be infringed." Under this reading, the first part of the sentence is the rationale for the absolute, personal right of the people to own firearms. Indeed, the historical backdrop—highlighted by a general disdain for professional armies—would seem to support this theory.

Some observers argue further that the Second Amendment grants the right of insurrection. According to these theorists, the Second Amendment was designed to allow citizens to rebel against the government. THOMAS JEFFERSON is quoted as saying that "a little rebellion every now and then is a good thing."

The Supreme Court makes the ultimate determination of the Constitution's meaning, and it has defined the amendment as simply granting to the states the right to maintain a militia separate from federally controlled militias. This interpretation first came in *United States v. Cruikshank,* 92 U.S. 542, 23 L. Ed. 588 (1875). In *Cruikshank,* approximately one hundred persons were tried jointly in a Louisiana federal court with felonies in connection with an April 13, 1873, assault on two African–American men. One of the criminal counts charged that the mob intended to hinder the right of the two men to bear arms. The defendants were convicted by a jury, but the circuit court arrested the judgment, effectively overturning the verdict. In affirming that decision, the Supreme Court declared that "the second amendment means no more than that [the right to bear arms] shall not be infringed by Congress, and has no other effect than to restrict the powers of the national government."

In *Presser v. Illinois,* 116 U.S. 252, 6 S. Ct. 580, 29 L. Ed. 615 (1886), Herman Presser was charged in Illinois state court with parading and drilling an unauthorized militia in the streets of Chicago in December 1879, in violation of certain sections of the Illinois Military Code. One of the sections in question prohibited the organization, drilling, operation, and parading of militias other than U.S. troops or the regular organized volunteer militia of the state. Presser was tried by the judge, convicted, and ordered to pay a fine of $10.

Firearms Manufactured in the United States, in 1999[a]



[a]Does not include production for the U.S. military, but does include firearms purchased by domestic law enforcement agencies. Also includes firearms manufactured for export.

SOURCE: U.S. Department of the Treasury, Bureau of Alcohol, Tobacco, and Firearms, *Firearms Commerce in the United States, 2001/2002.*

Private Militias

Private militias are armed military groups that are composed of private citizens and not recognized by federal or state governments. Private militias have been formed by individuals in America since the colonial period. In fact, the Revolutionary War against England was fought in part by armies comprising not professional soldiers but ordinary male citizens.

Approximately half the states maintain laws regulating private militias. Generally, these laws prohibit the parading and exercising of armed private militias in public, but do not forbid the formation of private militias. In Wyoming, however, state law forbids the very formation of private militias. Under section 19-1-106 of the Wyoming Statutes, "No body of men other than the regularly organized national guard or the troops of the United States shall associate themselves together as a military company or organization, or parade in public with arms without license of the governor." The Wyoming law also prohibits the public funding of private militias. Anyone convicted of violating the provisions of the law is subject to a fine of not more than $1,000, imprisonment of six months, or both, for each offense.

In states that do not outlaw them, private militias are limited only by the criminal laws applicable to all of society. Thus, if an armed private militia seeks to parade and exercise in a public area, its members will be subject to arrest on a variety of laws, including disturbing-the-peace, firearms, or even riot statutes.

Many private militias are driven by the insurrection theory of the Second Amendment. Under this view, the Second Amendment grants an unconditional right to bear arms for **SELF-DEFENSE** and for rebellion against a tyrannical government—when a government turns oppressive, private citizens have a duty to "insurrect," or take up arms against it.

The U.S. Supreme Court has issued a qualified rejection of the insurrection theory. According to the Court in *Dennis v. United States,* 341 U.S. 494, 71 S. Ct. 857, 95 L. Ed. 1137 (1951), "[W]hatever theoretical merit there may be to the argument that there is a 'right' to rebellion against dictatorial governments is without force where the existing structure of the government provides for peaceful and orderly change." Scholars have interpreted this to mean that as long as the government provides for free elections and trials by jury, private citizens have no right to take up arms against the government.

Some people have disagreed with the Supreme Court's definition of tyranny.

On appeal to the U.S. Supreme Court, Presser argued, in part, that the charges violated his Second Amendment right to bear arms. The Court disagreed and upheld Presser's conviction. The Court cited *Cruikshank* for the proposition that the Second Amendment means only that the federal government may not infringe on the right of states to form their own militias. This meant that the Illinois state law forbidding citizen militias was not unconstitutional. However, in its opinion, the Court in *Presser* delivered a reading of the Second Amendment that seemed to suggest an absolute right of persons to bear arms: "It is undoubtedly true that all citizens capable of bearing arms constitute the reserved military force or reserve militia of the United States," and "states cannot . . . prohibit the people from keeping and bearing arms."

Despite this generous language, the Court refused to incorporate the Second Amendment into the **FOURTEENTH AMENDMENT**. Under the first section of the Fourteenth Amendment, passed in 1868, states may not abridge the **PRIVILEGES AND IMMUNITIES** of citizens of the United States. The privileges and immunities of citizens are listed in the Bill of Rights, of which the Second Amendment is part. Presser had argued that states may not, by virtue of the Fourteenth Amendment, abridge the right to bear arms. The Court refused to accept the argument that the right to bear arms is a personal right of the people. According to the Court, "The right to drill or parade with arms, without, and independent of, an act of congress or law of the state authorizing the same, is not an attribute of national citizenship."

The *Presser* opinion is best understood in its historical context. The Northern states and the federal government had just fought the Civil War against Southern militias unauthorized by the federal government. After this ordeal, the Supreme Court was in no mood to accept an expansive right to bear arms. At the same time, the Court was sensitive to the subject of federal encroachment on **STATES' RIGHTS**.

Several decades later, the Supreme Court ignored the contradictory language in *Presser*

Many of these people label the state and federal governments as tyrannical based on issues such as taxes and government regulations. Others cite government-sponsored racial and ethnic **INTEGRATION** as driving forces in their campaign against the federal and state governments. Many of these critics have formed private militias designed to resist perceived government oppression.

Some private militias have formed their own government. The legal problems of these private militias are generally unrelated to military activities. Instead, any criminal charges usually arise from activities associated with their political beliefs. The Freemen of Montana is one such militia. This group denied the legitimacy of the federal government and created its own township called Justus. The Freemen established its own court system, posted bounties for the arrest of police officers and judges, and held seminars on how to challenge laws its members viewed as beyond the scope of the Constitution. According to neighbors, the group also established its own common-law court system and built its own jail for the imprisonment of trespassers and government workers, or "public hirelings."

In the 1990s, the Freemen came to the attention of federal prosecutors after members of the group allegedly wrote worthless checks and money orders to pay taxes and to defraud banks and credit card companies. One Freeman had also allegedly threatened a federal judge, and some had allegedly refused to pay taxes for at least a decade.

In March 1996, law enforcement officials obtained warrants for the arrest of many of the Freemen. However, remembering the violence that occurred when officials attempted to serve arrest warrants on another armed group in Waco, Texas, in 1993, law enforcement authorities did not invade the Freemen's 960-acre ranch in Jordan, Montana. Although the Freemen constituted an armed challenge to all government authority, its beliefs and its military activities were not illegal, and most of its members were charged with nonviolent crimes, such as **FRAUD** and related conspiracy. Two men were also charged with threatening public officials. In addition, several Freemen faced charges of criminal syndicalism, which is the advocacy of violence for political goals.

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and cemented a limited reading of the Second Amendment. In *United States v. Miller,* 307 U.S. 174, 59 S. Ct. 816, 83 L. Ed. 1206 (1939), defendants Jack Miller and Frank Layton were charged in federal court with unlawful transportation of firearms in violation of certain sections of the National Firearms Act of June 26, 1934 (ch. 757, 48 Stat. 1236–1240 [26 U.S.C.A. § 1132 et seq.]). Specifically, Miller and Layton had transported shotguns with barrels less than 18 inches long, without the registration required under the act.

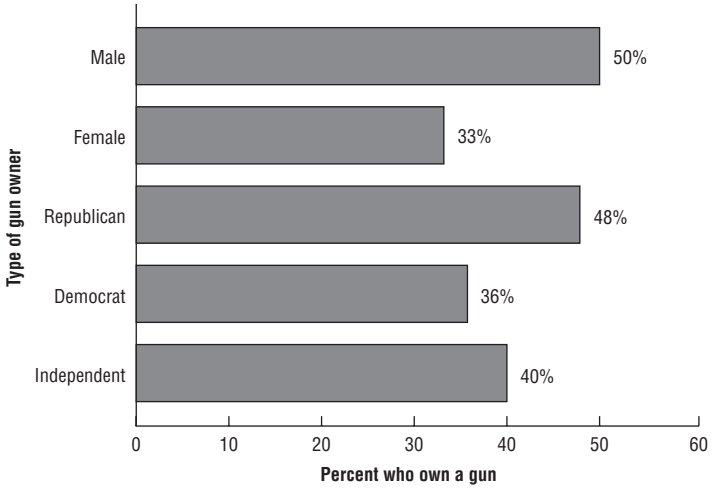
The district court dismissed the indictment, holding that the act violated the Second Amendment. The United States appealed. The Supreme Court reversed the decision and sent the case back to the trial court. The Supreme Court stated that the Second Amendment was fashioned "to assure the continuation and render possible the effectiveness of . . . militia forces."

The *Miller* opinion confirmed the restrictive language of *Presser* and solidified a narrow reading of the Second Amendment. According to the Court in *Miller,* the Second Amendment does not guarantee the right to own a firearm unless the possession or use of the firearm has "a reasonable relationship to the preservation or efficiency of a well regulated militia."

The legislative measures that inspire most Second Amendment discussions are **GUN CONTROL** laws. Since the mid-nineteenth century, state legislatures have been passing laws that infringe a perceived right to bear arms. Congress has also asserted the power to regulate firearms. No law regulating firearms has ever been struck down by the Supreme Court as a violation of the Second Amendment.

Historically, the academic community has largely ignored the Second Amendment. However, gun control laws have turned many laypersons into scholars of the Second Amendment's history. The arguments for a broader interpretation are many and varied. Most center on the **ORIGINAL INTENT** of the Framers. Some emphasize that the Second Amendment should be interpreted as granting an unconditional personal right to bear arms for defensive and sport-

Gun Ownership in 2002



SOURCE: U.S. Bureau of Justice Statistics, *Sourcebook of Criminal Justice Statistics.*

ing purposes. Others adhere to an insurrection theory, under which the Second Amendment not only grants the personal right to bear arms, it gives citizens the right to rebel against a government perceived as tyrannical.

In response to these arguments, supporters of the prevailing Second Amendment interpretation maintain that any right to bear arms should be secondary to concerns for public safety. They also point out that other provisions in the Constitution grant power to Congress to quell insurrections, thus contradicting the insurrection theory. Lastly, they argue that the Constitution should be interpreted in accordance with a changing society and that the destructive capability of semiautomatic and automatic firearms was not envisioned by the Framers.

In response to the last argument, critics maintain that because such firearms exist, it should be legal to use them against violent criminals who are themselves wielding such weapons.

In the 2000s, federal courts continue to revisit the scope and detail of the Second Amendment right to bear arms. In particular federal courts have recast much of the debate as one over whether the Second Amendment protects a "collective" right or an "individual" right to bear arms. If the Second Amendment protects only a collective right, then only states would have the power to bring a legal action to enforce it and only for the purpose of maintaining a "well-regulated militia." If the Second Amendment protects only an individual right to bear arms, then only individuals could bring suit to challenge gun-control laws that curb their liberty to buy, sell, own, or possess firearms and other guns.

Not surprisingly, courts are conflicted over how to resolve this debate. In *United States v. Emerson*, 270 F.3d 203 (5th Cir. 2001), the U.S. Court of Appeals for the Fifth Circuit found that the original intent of the Founding Fathers supported an individual-rights interpretation of the Second Amendment, while the Ninth Circuit came to the opposite conclusion in *Nordyke v. King*, 319 F.3d 1185 (9th Cir. 2003). Although no court has concluded that the original intent underlying the Second Amendment supports a claim for *both* an individual- and a collective-rights based interpretation of the right to bear arms, the compelling historical arguments marshaled on both sides of the debate would suggest that another court faced with the same debate may reach such a conclusion.

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SECOND LOOK DOCTRINE

In the law of future interests, a rule that provides that even though the validity of interests created by the exercise of a power of appointment is ordinarily measured from the date the power is created, not from its exercise, the facts existing on the date of its exercise can be considered in order to determine if the RULE AGAINST PERPETUITIES *has been violated.*

At COMMON LAW, the rule against perpetuities prescribed that no interest in property is valid unless it vests, if at all, not later than 21 years plus the period of gestation after some life or lives in being at the time of the creation of the interest. A property interest vests when it is given to a person in being and is not subject to a condition precedent (the occurrence of a designated event). This rule restricts a person's power to control the ownership and possession of her property after her death and ensures the transferability of property.

The second look doctrine has been applied to mitigate the harsh effect of the rule against perpetuities on a power of appointment—authority granted by one person by deed or will to another, the donee, to select a person or persons who are to receive property.

For example, B was the life income beneficiary (one who profits from the act of another) of a trust and the donee of a special power over the succeeding remainder—the property that passes to another after the expiration of an intervening income interest. His father, F, who predeceased him, established the trust in his will. B exercised his power through his own will, directing that the income be paid after his death to his children for the life of the survivor and that, upon the death of his last surviving child, the corpus—the main body or principal of a trust—be paid to his grandchildren. At F's death, B had two children, X and Y. No other children were born to B, and at his death, X and Y are still alive.

B's appointment is valid. The perpetuity period is measured from F's death. If only the facts existing at F's death could be considered, however, B's appointment would partly fail because of the possibility that he might have another child after F's death who would have children more than 21 years after the deaths of B, X, and Y. In considering the validity of B's appointment, however, not just the facts existing when the perpetuity period commences to run on B's appointment are considered. The facts existing at B's death can be taken into account under the second look doctrine, which thereby saves B's appointment. At B's death, it is known that no additional children were born to him after F's death. Thus B's last surviving child will be either X or Y, both of whom were "in being" at F's death and, therefore, constitute the measuring lives.

The second look doctrine is a departure from the fundamental principle that only the facts in existence when the perpetuity period commences to run can be taken into account in determining validity. Until the appointment is made, the appointed interests cannot be litigated. No useful purpose, therefore, is served by invalidating appointed interests because of what might happen after the power is created, but which at the time of exercise can no longer happen.

In some jurisdictions, this doctrine has been extended to gifts-in-default, which involve the expiration of the power, such as when the donee releases the power or dies without having exercised it.

For example, B was the life income beneficiary of a trust and the donee of a power over the succeeding remainder interest. In default of appointment (that is, B fails to name anyone to receive the property after he dies), the income after B's death was to be paid to his children for the life of the survivor, and on the death of B's last surviving child, the corpus was to be paid to B's grandchildren. B's father, F, who predeceased him, created the trust in his will. At F's death, B had two children, X and Y. B died without having additional children and without exercising his power. B was survived by X and Y.

F's death marks the commencement of the running of the perpetuity period as to the gift-in-default. Nevertheless if a second look at the facts existing at B's death is permissible, the gift-in-default is valid. The measuring lives are X and Y. If no second look is permissible, the remainder interest in favor of B's grandchildren is invalid. As of F's death, there was a possibility that B might have a child after F's death, that such a child might have survived B, and that such child might have had a child, B's grandchild, more than 21 years after the death of the survivor of B, X, and Y.

A default clause creates property interests no different from other property interests except that they are subject to divestment upon the exercise of the power. If B had not been granted a power of appointment in the above example, the interests created by the default clause would

clearly be judged on the basis of the facts existing when F died. No second look as of B's death would be permissible, unless the jurisdiction had adopted the WAIT AND SEE DOCTRINE. Until the power of appointment expires, it cannot be known whether the gift-in-default of appointment is to control the disposition of the property or whether it is to be superseded by some appointment that the donee makes. Therefore no possible delay in adjudging the validity of the remainder is entitled in examining facts that exist at the date the power expires unexercised.

Jurisdictions that do not apply the doctrine to gifts-in-default maintain that its application to appointments is justified because the appointed interests are unknown, and, consequently, it is impossible to adjudicate their validity until the appointment is made, not because it is unlikely that anyone would want to adjudicate their validity until that time. The interests created by a default clause, unlike appointed interests, are known, and their validity can be litigated before the expiration of the power. These jurisdictions reason that the rationale for taking a second look in the case of appointed interests does not apply to interests created in the default clause.

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CROSS-REFERENCES

Estate.

SECONDARY AUTHORITY

Sources of information that describe or interpret the law, such as legal treatises, law review articles, and other scholarly legal writings, cited by lawyers to persuade a court to reach a particular decision in a case, but which the court is not obligated to follow.

Secondary authority is information cited by lawyers in arguments and used by courts in reaching decisions. Secondary authority is distinct from primary authority. The sources of primary authority are written laws passed by legislative bodies, prior judicial decisions, government administrative regulations, and court rules. Courts are obliged to decide cases by following the dictates of primary authority, and lawyers must make arguments based on the primary authority that is applicable to the case.

Neither lawyers nor courts are required to use secondary authority, but both may do so to buttress arguments based on primary authority. Among the most commonly cited sources of secondary authority are the RESTATEMENTS OF LAW, written by the authors, scholars, and legal professionals that make up the American Law Institute. The restatements contain suggested laws and rules on a wide assortment of legal topics ranging from contracts to TORTS to conflicts of laws.

Law reviews and other scholarly works are other commonly cited sources of secondary authority. Law reviews are articles about legal topics published by law schools and other legal organizations and written by law professors, law students, and other academics. Other groups publish legal literature that may be cited by lawyers and courts. The *American Law Reports* provide case synopses of recent legal developments with a focus on court decisions, and CONTINUING LEGAL EDUCATION programs conducted by and for attorneys produce literature that may be used by lawyers and judges.

Legal encyclopedia articles and legal dictionaries are less commonly cited in court although the U.S. Supreme Court has, on occasion, used *Black's Law Dictionary* to support its definition of a legal word or phrase.

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SECONDARY BOYCOTT

A group's refusal to work for, purchase from, or handle the products of a business with which the group has no dispute.

A secondary boycott is an attempt to influence the actions of one business by exerting pressure on another business. For example, assume that a group has a complaint against the Acme Company. Assume further that the Widget Company is the major supplier to the Acme Company. If the complaining group informs the Widget Company that it will persuade the public to stop doing business with the company unless it stops doing business with Acme Company, such a boycott of the Widget Company would be a secondary boycott. The intended effect of such a boycott would be to influence

the actions of Acme Company by organizing against its major supplier.

LABOR UNIONS are the most common practitioners of secondary boycotts. Typically a labor union involved in a dispute with an employer will arrange a secondary boycott if less drastic measures to reach a satisfactory accord with the employer have been ineffective. Secondary boycotts have two main forms: a secondary consumer boycott, in which the union appeals to consumers to withhold patronage of a business, and a secondary employee boycott, in which the union dissuades employees from working for a particular business.

Generally a secondary boycott is considered an **UNFAIR LABOR PRACTICE** when it is organized by a labor union. Congress first acted to prohibit secondary boycotts in the **LABOR-MANAGEMENT RELATIONS ACT** of 1947 (29 U.S.C.A. § 141 et seq.), also called the **TAFT-HARTLEY ACT**. The Taft-Hartley Act was a set of amendments to the National Labor Relations Act, also known as the **WAGNER ACT** of 1935 (29 U.S.C.A. § 151 et seq.). Congress limits the right of labor unions to conduct secondary boycotts because such activity is considered basically unfair and because it can have a devastating effect on intrastate and interstate commerce and the general state of the economy.

On the federal level, the right of a labor union to arrange a secondary boycott is limited by section 8(b)(4) of the National Labor Relations Act. Under the act, no labor union may threaten, coerce, or restrain any person engaged in commerce in order to force that person to cease doing business with any other person (29 U.S.C.A. § 158(b)(4)(ii)(B)). Secondary boycotts may be enjoined, or stopped, by order of a federal court, and an aggrieved business may file suit in court against the party initiating the secondary boycott to recover any monetary damages that resulted. If the federal act somehow does not cover the actions of a labor union in a particular case, an aggrieved business may seek relief under state laws.

The statutory limitation on the right of labor unions to instigate a secondary boycott is an exception to the guarantee of free speech contained in the **FIRST AMENDMENT** to the U.S. Constitution. But in **BALANCING** free speech rights against the rights of secondary employers and the right of Congress to manage interstate commerce, Congress has carved out an important exception to the ban on secondary boycotts by labor unions. Under this section of the act, a labor union may induce a secondary boycott if the information dispensed by the labor union is truthful, does not cause a work stoppage, and has the purpose of informing the general public that the secondary neutral employer distributes a product that is produced by the primary employer. This exception is called the publicity exception to the ban on secondary boycotts by labor unions.

The publicity proviso does not cover picketing. Picketing is a physical presence at a business to publicize a labor dispute, influence customers and employees, or show a union's desire to represent employees. The U.S. Supreme Court has held that Congress may prohibit a union from picketing against a secondary employer if the picketing would predictably result in financial ruin for the picketed secondary employer (*National Labor Relations Board v. Retail Store Employees, Local 1001 [Safeco],* 447 U.S. 607, 100 S. Ct. 2372, 65 L. Ed. 2d 377 [1980]). The Supreme Court also has ruled that the publicity exception does not apply to the distribution of handbills that encourage a boycott of a shopping mall department store if the dispute is with the company constructing the department store and the boycott includes cotenants of the shopping mall who had no relationship with the construction company (*Edward J. DeBartolo Corp. v. National Labor Relations Board,* 463 U.S. 147, 103 S. Ct. 2926, 77 L. Ed. 2d 535 [1983]). In 1988 the High Court held that section 158(b)(4)(ii)(B) of 29 U.S.C.A. did not prohibit the peaceful distribution of handbills at a shopping mall urging consumers not to shop at the mall until the mall's owner promised that all mall construction would be done by contractors paying fair wages (*Edward J. DeBartolo Corp. v. Florida Gulf Coast Building and Construction Trades Council,* 485 U.S. 568, 108 S. Ct. 1392, 99 L. Ed. 2d 645 [1988]). According to the Court, such activity did not constitute threats, coercion, or restraint and therefore did not fall within the prohibition of the National Labor Relations Act.

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Labor Law; Strike.

SECONDARY EVIDENCE

A reproduction of, or substitute for, an original document or item of proof that is offered to establish a particular issue in a legal action.

Secondary evidence is evidence that has been reproduced from an original document or substituted for an original item. For example, a photocopy of a document or photograph would be considered secondary evidence. Another example would be an exact replica of an engine part that was contained in a motor vehicle. If the engine part is not the very same engine part that was inside the motor vehicle involved in the case, it is considered secondary evidence.

Courts prefer original, or primary, evidence. They try to avoid using secondary evidence wherever possible. This approach is called the best evidence rule. Nevertheless, a court may allow a party to introduce secondary evidence in a number of situations. Under rule 1003 of the FEDERAL RULES OF EVIDENCE, a duplicate is admissible unless a genuine question is raised as to its authenticity or unless it would be unfair to admit the duplicate in place of the original piece of evidence.

After hearing arguments by the parties, the court decides whether to admit secondary evidence after determining whether the evidence is in fact authentic or whether it would be unfair to admit the duplicate. However, when a party questions whether an asserted writing ever existed, or whether a writing, recording, or photograph is the original, the trier of fact makes the ultimate determination. The trier of fact is the judge if it is a bench trial; in a jury trial, the trier of fact is the jury.

Rule 1004 of the Federal Rules of Evidence lists specific exceptions to the best evidence rule. Under rule 1004, secondary evidence of a writing, recording, or photograph is admissible if (1) all originals are lost or destroyed, unless they were lost or destroyed in bad faith by the party seeking to introduce the secondary evidence; (2) no original can be obtained by judicial process or procedure; (3) the party's opponent in the case has possession of the original and does not produce it after being given sufficient notice that the evidence would be subject to examination at a court hearing; or (4) the original evidence is not closely related to a controlling issue in the case.

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CROSS-REFERENCES

Primary Evidence.

SECONDARY MEANING

A doctrine of TRADEMARK *law that provides that protection is afforded to the user of an otherwise unprotectable mark when the mark, through advertising or other exposure, has come to signify that an item is produced or sponsored by that user.*

Under trademark law a mark associated with a marketed product generally cannot receive full trademark protection unless it is distinctive. Trademark protection gives the holder of a mark the exclusive right to use that mark in connection with a product.

Full trademark protection is given when the U.S. PATENT AND TRADEMARK OFFICE places the mark on the principal register of trademarks. Suggestive, ARBITRARY, and fanciful marks distinguish a product from other products, so they automatically qualify for the principal register. Descriptive and generic marks ordinarily do not qualify for the principal register. A person may not, for example, claim the right to the word "fine" in connection with a product because the word is merely descriptive. A descriptive or generic mark may, however, be placed on the supplemental register, which gives the holder of the mark a certain measure of trademark protection. If the mark acquires a secondary meaning after five years of continuous, exclusive use on the market, the mark may be placed on the principal register (15 U.S.C.A. § 1052(f)).

A descriptive or generic mark attains a secondary meaning if the producer so effectively markets the product with the mark that consumers come to immediately associate the mark with only that producer of that particular kind of goods. To illustrate, assume that an apple grower markets red apples under the term "Acme." Because the term is generic, it would

not qualify for full trademark protection at first. If, however, customers immediately recognize Acme apples as the apples produced by that grower, after five years the producer may prevent all others from using the mark "Acme" in connection with red apples.

Under 15 U.S.C.A. § 1052(a)–(d), (f), immoral or scandalous marks, national symbols, and names of living figures cannot acquire trademark protection, even through secondary meaning. Surnames generally are not given trademark protection, but a surname may qualify for protection if it acquires a secondary meaning (*Ex parte Rivera Watch Corp.,* 106 U.S.P.Q. 145, 1955 WL 6450 [Com'r 1955]).

SECRET SERVICE

The U.S. Secret Service (USSS) is a government agency charged with preventing counterfeiting and protecting the president of the United States, other high-ranking government officials, and presidential candidates. From its establishment in 1865 until March 1, 2003, the Secret Service was housed within the TREASURY DEPARTMENT. The Secret Service was thereafter a part of the HOMELAND SECURITY DEPARTMENT. Its headquarters are in Washington, D.C., and a director, who is appointed by the president, administers the agency. It has field offices throughout the United States and overseas.

President ABRAHAM LINCOLN appointed a commission to combat the counterfeiting of U.S. currency and coins, which had led to dire economic consequences during the Civil War. He established the Secret Service in April 1865 to carry out the commission's recommendations. During the remainder of the nineteenth century the Secret Service successfully addressed the issue of counterfeiting. Its role changed after the 1901 assassination of President WILLIAM MCKINLEY, however. Congress at first informally requested the Secret Service to protect President THEODORE ROOSEVELT and in 1907 began to appropriate funds for presidential protection. In 1917, threats against the president became a felony and Secret Service protection was broadened to include all members of the First Family. In 1951, protection of the vice president and the president-elect was added. After the assassination of presidential candidate ROBERT KENNEDY in 1968, President LYNDON B. JOHNSON authorized the Secret Service to protect all presidential candidates. In 1971 Congress authorized the Secret Service to protect visiting heads of a foreign state or government; in 1975 this responsibility was broadened to include the protection of foreign diplomatic missions throughout the United States. In 1994 Congress passed a law that limits Secret Service protection of former presidents to 10 years after leaving office.

With the growing threat of TERRORISM, the mission of the Secret Service has expanded. In 2000 Congress enacted the Presidential Threat Protection Act. This law authorized the Secret Service to participate in the planning, coordination, and implementation of security operations at special events of national significance ("National Special Security Event"), as determined by the president. Following the SEPTEMBER 11TH TERRORIST ATTACKS in 2001 on New York City and Washington, D.C., Congress passed the USA PATRIOT ACT. This sprawling statute sought to respond to the attacks on many fronts. The act increased the Secret Service's role in investigating FRAUD and related activity in connections with computers. In addition it authorized the director of the Secret Service to establish nationwide electronic crimes taskforces to assist the law enforcement, private sector, and universities in detecting and suppressing computer-based crime. The law also increased the penalties for the manufacturing, possession, dealing, and passing of counterfeit U.S. or foreign obligations. Most importantly, it authorized enforcement action to be taken to protect U.S. financial payment systems while combating transnational financial crimes directed by terrorists or other criminals.

The Secret Service has established the National Threat Assessment Center (NTAC), which advises law enforcement agencies and other professionals on how to investigate and prevent targeted violence, including assassination. The NTAC has collaborated with Carnegie Mellon University to develop the Critical Systems Protection Initiative (CSPI). CSPI seeks to develop better cyber security measures, including the prevention of computer "insiders" from using networks to compromise the integrity of the system.

Though often overlooked, the Secret Service's Counterfeit Division continues to investigate counterfeiters. With the advent of color copiers and computer scanners, criminals have access to powerful tools that aid in counterfeiting. The agency's Financial Crimes Division

investigates crimes associated with financial institutions. The division's jurisdiction includes bank fraud, credit and debit card fraud, TELECOMMUNICATIONS and computer crimes, MONEY LAUNDERING, and IDENTITY THEFT.

Congress established the Homeland Security Department in 2002. The department consists of agencies that were previously housed in the various executive divisions, including the JUSTICE DEPARTMENT and the Treasury. The Secret Service was transferred from Treasury to Homeland Security, effective March 1, 2003. The agency was to remain intact and its primary mission would remain the protection of the president and other government leaders. It would have access to Homeland Security intelligence analysis. In addition, the Secret Service's fight against counterfeiting and financial crimes has been characterized as a battle to protect economic security.

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CROSS-REFERENCES

Counterfeiting; Homeland Security Department; President of the United States.

SECRETARY GENERAL

See UNITED NATIONS.

SECRETARY OF STATE

Holding one of the ranking positions in the president's cabinet, the secretary of state is the president's principal foreign policy adviser. In this pivotal role, the secretary undertakes the overall direction, coordination, and supervision of relations between the United States and foreign nations. The position is fourth in line of presidential succession. Like other cabinet members who implement the president's policies, the secretary heads a federal department: the STATE DEPARTMENT. As its director, the secretary oversees a vast network of U.S. offices and agencies, conducts negotiations with foreign governments, and often travels in the role of chief U.S. representative abroad. In 1997 then-president BILL CLINTON named MADELEINE K. ALBRIGHT as the first female secretary of state. Four years later, President GEORGE W. BUSH named Colin L. Powell as the first black person to hold the office.

The position of secretary of state developed shortly after the founding of the nation in the late eighteenth century. In 1781 Congress created the Department of Foreign Affairs but abolished it and replaced it with the Department of State in 1789. Lawmakers designated the secretary of state as head of the State Department with two principal responsibilities: to assist the president in foreign policy matters and to be the chief representative of the United States abroad. Nomination of the secretary was left to the president, but the appointment was made contingent upon the approval of the U.S. Senate. The first secretary of state, THOMAS JEFFERSON, served under President GEORGE WASHINGTON from 1790 to 1793.

Since the end of WORLD WAR II, the U.S. foreign policy apparatus has greatly expanded, and its principal body is the State Department. The United States maintains diplomatic relations with some 180 countries worldwide as well as ties to many international organizations, and most of this diplomatic business flows through the State Department. The secretary is aided by a deputy secretary and five undersecretaries who serve as key advisers in political affairs; economic, business, and agricultural affairs; ARMS CONTROL and international security affairs; management; and global affairs. Additionally, the secretary has general responsibility for the U.S. INFORMATION AGENCY, the Arms Control and Disarmament Agency, and the Agency for International Development.

The secretary is very important. Under the U.S. Constitution, the president has most of the power to set foreign policy; some of this power is shared by the U.S. Senate, which approves treaties as well as diplomatic and consular appointments. In practical terms the secretary of state generally becomes the architect of U.S. foreign policy by implementing the president's objectives. Not all foreign policy advice is given by the secretary, however. In 1947 the creation of the NATIONAL SECURITY COUNCIL provided the president with an additional advisory board (National Security Act of 1947, 50 U.S.C.A. §§ 401–412 [1982]).

Some secretaries have exerted enormous influence on U.S. policy—largely as a reflection

of the president under whom they served. HENRY KISSINGER, who served as secretary of state from 1973 to 1976 under presidents RICHARD M. NIXON and GERALD R. FORD, had a leading role in shaping the nation's participation in nuclear arms treaties and in the VIETNAM WAR. By contrast, Secretary of State George Schultz found his influence eclipsed by that of the National Security Council during the IRAN-CONTRA scandal that rocked the presidency of RONALD REAGAN in the mid-1980s.

Powell has maintained a particularly high profile during his tenure. Nine months after taking office, on September 11, 2001, terrorists attacked targets within the United States, causing the destruction of the World Trade Center towers in New York City and severe damage to the Pentagon in Washington, D.C. The United States immediately embarked upon a war against TERRORISM, leading to an attack on the Taliban regime in Afghanistan. Powell played a pivotal role in foreign diplomacy by meeting with several world leaders regarding the United States' involvement in Afghanistan. Powell's presence was likewise visible in such controversies as the Palestinian uprising against Israel, where Powell called upon both the Palestinians and Israel to work for peace.

On February 5, 2003, Powell appeared before the UNITED NATIONS, seeking to establish evidence that the nation of Iraq possessed weapons of mass destruction. The presentation was a precursor to the United States' eventual attack on Iraq, which resulted in the overthrow of the regime of Saddam Hussein. Powell is viewed as a realist among the members of the Bush cabinet, and his conservative views of military action are seen as a counterbalance to those of Bush and other cabinet members. In this sense, Powell maintains an unusual position as a secretary of state—a former military leader who promotes restraint in the use of military force to resolve disputes.

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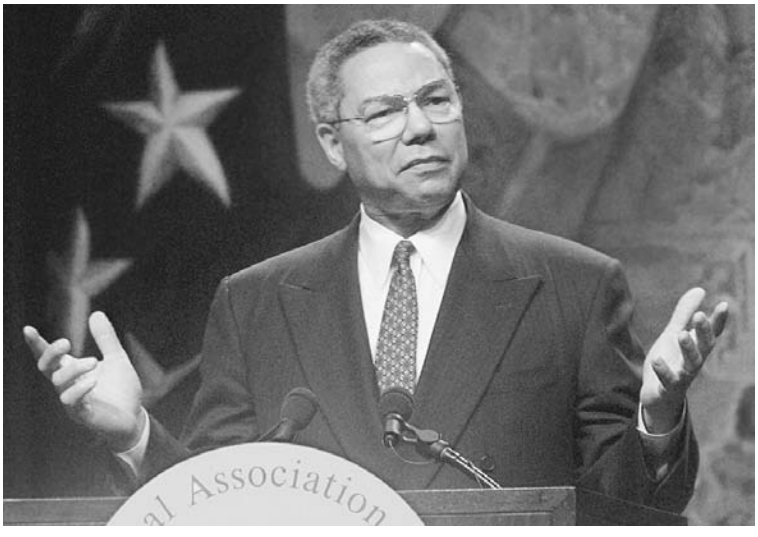
Ambassadors and Consuls; Arms Control and Disarmament; International Law; State Department.



Colin Powell, as secretary of state, directs relations between the United States and foreign countries.

AP/WIDE WORLD PHOTOS

SECTION

The distinct and numbered subdivisions in legal codes, statutes, and textbooks. In the law of real property, a parcel of land equal in area to one square mile, or 640 acres.

SECTION 1983

Section 1983 of Title 42 of the U.S. Code is part of the CIVIL RIGHTS ACT of 1871. This provision was formerly enacted as part of the KU KLUX KLAN ACT of 1871 and was originally designed to combat post-CIVIL WAR racial violence in the Southern states. Reenacted as part of the Civil Rights Act, section 1983 is as of the early 2000s the primary means of enforcing all constitutional rights.

Section 1983 provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

On March 23, 1871, President ULYSSES S. GRANT sent an urgent message to Congress calling for national legislation that could combat the alarming increase in racial unrest and violence in the South. Congress reacted swiftly to this request, proposing a bill just five days later. The primary objective of the bill was to provide a means for individuals and states to enforce, in

the federal or state courts, the provisions of the FOURTEENTH AMENDMENT. The proposed bill created heated debate lasting several weeks but was eventually passed on April 20, 1871.

During the first 90 years of the act, few causes of action were brought due to the narrow and restrictive way that the U.S. Supreme Court interpreted the act. For example, the phrase "person . . . [acting] under color of any statute" was not interpreted to include those wrongdoers who happened to be state or municipal officials acting within the scope of their employment but not in accordance with the state or municipal laws. Those officials were successfully able to argue that they were not acting under color of statute and therefore their actions did not fall under the mandates of section 1983. In addition, courts narrowly construed the definition of "rights, privileges, or immunities."

But the Supreme Court decisions in *Monroe v. Pape,* 365 U.S. 167, 81 S. Ct. 473, 5 L. Ed. 2d 492 (1961), and *Monell v. Department of Social Services,* 436 U.S. 658, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978), finally recognized the full scope of Congress's ORIGINAL INTENT in enacting section 1983. The Supreme Court began accepting an expansive definition of rights, privileges, or immunities and held that the act does cover the actions of state and municipal officials, even if they had no authority under state statute to act as they did in violating someone's federal rights.

Jurisdiction

Federal courts are authorized to hear cases brought under section 1983 pursuant to two statutory provisions: 28 U.S.C.A. § 1343(3) (1948) and 28 U.S.C.A. § 1331 (1948). The former statute permits federal district courts to hear cases involving the deprivation of civil rights, and the latter statute permits federal courts to hear all cases involving a federal question or issue. Cases brought under section 1983 may therefore be heard in federal courts by application of both jurisdictional statutes.

State courts may also properly hear section 1983 cases pursuant to the SUPREMACY CLAUSE of Article VI of the U.S. Constitution. The Supremacy Clause mandates that states must provide hospitable forums for federal claims and the vindication of federal rights. This point was solidified in the Supreme Court decision of *Felder v. Casey,* 487 U.S. 131, 108 S. Ct. 2302, 101 L. Ed. 2d 123 (1988). The *Felder* case involved an individual who was arrested in Wisconsin and later brought suit in state court against the police officers and city for violations of his federal rights. The state court dismissed the claim because the plaintiff failed to properly comply with a state procedural law. But the Supreme Court overturned the state decision, holding that the Wisconsin statute could not bar the individual's federal claim.

To bring an action under section 1983, the plaintiff does not have to begin in state court. However, if the plaintiff chooses to bring suit in state court, the defendant has the right to remove the case to federal court.

Elements of a Section 1983 Claim

To prevail in a claim under section 1983, the plaintiff must prove two critical points: a person subjected the plaintiff to conduct that occurred under color of state law, and this conduct deprived the plaintiff of rights, privileges, or immunities guaranteed under federal law or the U.S. Constitution.

A state is not a "person" under section 1983, but a city is a person under the law (*Will v. Michigan Department of State Police,* 491 U.S. 58, 109 S. Ct. 2304, 105 L. Ed. 2d 45 [1989]). Similarly, state officials sued in their official capacities are not deemed persons under section 1983, but if sued in their personal capacities, they are considered to be persons. Thus if a plaintiff wants to bring a section 1983 claim against a state official, she or he must name the defendants in their personal capacity and not in their professional capacity. Like a state, a territory, such as the territory of Guam, is not considered to be a person for the purposes of section 1983.

The Supreme Court has broadly construed the provision "under color of any statute" to include virtually any STATE ACTION including the exercise of power of one "possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law" (*United States v. Classic,* 313 U.S. 299, 61 S. Ct. 1031, 85 L. Ed. 1368 [1941]). Thus, the wrongdoer's employment by the government may indicate state action, although it does not conclusively prove it. Even if the wrongdoer did not act pursuant to a state statute, the plaintiff may still show that the defendant acted pursuant to a "custom or usage" that had the force of law in the state. In *Adickes v. S. H. Kress & Co.,* 398 U.S. 144, 90 S. Ct. 1598, 26 L. Ed. 2d 142 (1970), the plaintiff

was able to prove that she was refused service in a restaurant due to her race because of a state-enforced custom of racial SEGREGATION, even though no state statute promoted racial segregation in restaurants.

A successful section 1983 claim also requires a showing of the deprivation of a constitutional or federal statutory "right." This showing is required because section 1983 creates a REMEDY when rights are violated but does not create any rights itself. It is not enough to show a violation of a federal law because all federal laws do not necessarily create federal rights. A violation of the Fourth Amendment's guarantee against unreasonable SEARCHES AND SEIZURES or a violation of the COMMERCE CLAUSE are examples of federal constitutional rights that may be deprived. Deprivation of federal statutory rights is also actionable when it can be shown that the statute creates a federal right. To show that a federal statute creates a federal right, the plaintiff must demonstrate that the federal law was designed and clearly intended to benefit the plaintiff, resulting in the creation of a federal right. For example, the Supreme Court held that a person's entitlement to WELFARE benefits under the federal SOCIAL SECURITY ACT is a federal right stemming from a federal statute that can be protected by section 1983 (*Maine v. Thiboutot,* 448 U.S. 1, 100 S. Ct. 2502, 65 L. Ed. 2d 555 [1980]). However, the Court made clear in *Blessing v. Freestone* (520 U.S. 329, 117 S. Ct. 1353, 137 L. Ed. 2d 569 [1997]) that individuals cannot sue state and local agencies to force overall compliance with federal regulations.

If the plaintiff can demonstrate that a federal law granted her a federal right that was then violated, the defendant can defeat the plaintiff's claim by demonstrating that Congress specifically foreclosed a remedy under section 1983 for the type of injury that the plaintiff is PLEADING. The Supreme Court has held that the defendant must prove that a section 1983 action would be inconsistent with the cautious and precise scheme of remedies provided by Congress. For example, if a federal law specifically provides for a means to privately enforce that law, or if the statute does not create "rights" within the meaning of section 1983, the defendant may prevail in showing that Congress did not intend a section 1983 remedy to apply in that circumstance. It is the defendant's burden to demonstrate congressional intent to prevent a remedy under section 1983.

Absolute and Qualified Immunities

Although section 1983 does not specifically provide for absolute IMMUNITY for any parties, the Supreme Court has deemed that some officials are immune. The Supreme Court reached this conclusion by applying the common-law principles of tort immunity that existed in the United States at the time section 1983 was enacted, assuming that Congress had intended those common-law immunities to apply without having to specifically so provide in the statute. State and regional legislators are absolutely immune, as long as they are engaged in traditional legislative functions. Local legislators, such as city council members and county commissioners, have been guaranteed absolute immunity since *Bogan v. Scott-Harris,* 523 U.S. 44, 118 S. Ct. 966, (1998). Previously, local officials were protected in some localities by state laws.

Judges have also been held to be absolutely immune from section 1983 actions, as long as they are performing adjudicative functions (*Pierson v. Ray,* 386 U.S. 547, 87 S. Ct. 1213, 18 L. Ed. 2d 288 [1967]; STUMP V. SPARKMAN, 435 U.S. 349, 98 S. Ct. 1099, 55 L. Ed. 2d 331 [1978]). Judges are considered to be performing their adjudicative functions as long as they had jurisdiction over the subject matter at the time they acted and the action was a judicial act. A minority of lower courts have extended this absolute JUDICIAL IMMUNITY to QUASI-JUDICIAL agencies, such as PAROLE boards, when they have performed functions similar to those of judges (*Johnson v. Wells,* 566 F.2d 1016 [5th Cir. 1978]). Absolute judicial immunity has also been extended in some cases to those judicial employees who act under the direction of the judge, such as a law clerk, court administrator, paralegal, or court reporter (*Lockhart v. Hoenstine,* 411 F.2d 455 [3d Cir. 1969]).

State prosecuting attorneys who are acting within the scope of their duty in presenting the state's case are also absolutely immune from suits for damages under section 1983 claims but are not absolutely immune from suits seeking prospective relief (*Imbler v. Pachtman,* 424 U.S. 409, 96 S. Ct. 984, 47 L. Ed. 2d 128 [1976]). Moreover, the U.S. Supreme Court has ruled that criminal prosecutors do not have absolute immunity when engaged in actions not associated with advocacy. (*Kalina v. Fletcher,* 522 U.S. 118, 118 S. Ct. 502, 139 L. Ed. 2d 471 [1997]). Other state officials who act in a prosecutorial

role are similarly immune. The Supreme Court differentiated public defenders, however, in *Polk County v. Dodson,* 454 U.S. 312, 102 S. Ct. 445, 70 L. Ed. 2d 509 (1981), holding that they do not act under color of state law when performing their duties and therefore are not in need of immunity because their conduct is not covered by section 1983.

Witnesses who testify in court are absolutely immune from section 1983 actions for damages, even if the claim arises out of the witness's perjured testimony (*Briscoe v. LaHue,* 460 U.S. 325, 103 S. Ct. 1108, 75 L. Ed. 2d 96 [1983]).

The Supreme Court has also recognized a qualified immunity defense to section 1983 actions in certain circumstances. Most state and local officials and employees, who do not enjoy absolute immunity, are entitled to qualified immunity. Thus, a prosecuting attorney who enjoys absolute immunity in performing her prosecutorial functions may also enjoy a qualified immunity in hiring and firing subordinates. The Supreme Court has held that school board members, state mental institution administrators, law enforcement officers, prison officials, and state and local executives have qualified immunity (*Wood v. Strickland,* 420 U.S. 308, 95 S. Ct. 992, 43 L. Ed. 2d 214 [1975]; *O'Connor v. Donaldson,* 422 U.S. 563, 95 S. Ct. 2486, 45 L. Ed. 2d 396 [1975]; *Pierson v. Ray,* 386 U.S. 547, 87 S. Ct. 1213, 18 L. Ed. 2d 288 [1967]; *Procunier v. Navarette,* 434 U.S. 555, 98 S. Ct. 855, 55 L. Ed. 2d 24 [1978]; *Scheuer v. Rhodes,* 416 U.S. 232, 94 S. Ct. 1683, 40 L. Ed. 2d 90 [1974]). Most federal circuit courts have deemed that parole board members and prison disciplinary committee members have qualified immunity (*Fowler v. Cross,* 635 F.2d 476 [5th Cir. 1981]; *Thompson v. Burke,* 556 F.2d 231 [3d Cir. 1977]). Lower courts have extended the defense of qualified immunity to a number of other officials, such as city managers, county health administrators, and state VETERANS' AFFAIRS DEPARTMENT trust officers.

While prison guards employed by the government (local, state, or federal) are covered under qualified immunity, guards who work in for-profit prison management companies are not. This issue was raised in part because of a growing trend on the part of state prison systems to hire outside companies to manage their prisons—a move that reduces the costs of hiring permanent staff. The U.S. Supreme Court ruled in a 5–4 vote in 1997 that privately employed individuals did not warrant the same level of protection. (*Richardson v. McKnight,* 521 U.S. 399, 117 S. Ct. 2100, 138 L. Ed. 2d 540 (1997).)

If the defendant can raise the defense of absolute or qualified immunity, then it is his duty to plead it (*Gomez v. Toledo,* 446 U.S. 635, 100 S. Ct. 1920, 64 L. Ed. 2d 572 [1980]).

Remedies

The Supreme Court has held that section 1983 creates "a species of tort liability" (*Imbler v. Pachtman,* 424 U.S. 409, 96 S. Ct. 984, 47 L. Ed. 2d 128 [1976]). Thus, the Supreme Court has held that, as in TORT LAW, a section 1983 plaintiff is entitled to receive only nominal damages, not to exceed one dollar, unless she or he can prove actual damages (*Carey v. Piphus,* 435 U.S. 247, 98 S. Ct. 1042, 55 L. Ed. 2d 252 [1978]). The jury is not entitled to place a monetary value on the constitutional rights of which the plaintiff was deprived (*Memphis Community School District v. Stachura,* 477 U.S. 299, 106 S. Ct. 2537, 91 L. Ed. 2d 249 [1986]). Plaintiffs bear the burden, therefore, of presenting evidence of all expenses incurred, such as medical or psychiatric expenses, lost wages, and any damages due to pain and suffering, emotional distress, or damage to reputation. The plaintiff is also under a burden to mitigate his damages, and the award of damages may be reduced to the extent that the plaintiff failed to do so.

A section 1983 plaintiff is also required to prove that a federal right was violated and, similar to tort law, that the alleged violation was a proximate or legal cause of the damages that the plaintiff suffered (*Arnold v. IBM Corp.,* 637 F.2d 1350 [9th Cir. 1981]).

The Supreme Court has also held that, similar to tort law, PUNITIVE DAMAGES are available under section 1983 (*Smith v. Wade,* 461 U.S. 30, 103 S. Ct. 1625, 75 L. Ed. 2d 632 [1983]). A plaintiff is entitled to punitive damages if the jury finds that the defendant's conduct was reckless or callously indifferent to the federally protected rights of others or if the defendant was motivated by an evil intent. The jury has the duty to assess the amount of punitive damages. Because the purpose of punitive damages is to punish the wrongdoer, such damages may be awarded even if the plaintiff cannot show actual damages (*Basista v. Weir,* 340 F.2d 74 [3d Cir. 1965]). As in tort law, the judge has the right to overturn a jury verdict if the jury awards what the judge considers to be excessive punitive damages.

Courts also have broad power to grant equitable relief to plaintiffs in section 1983 actions. Equitable remedies that courts have provided in the past include SCHOOL DESEGREGATION, restructuring of state mental health facilities, and restructuring of prisons (*United States v. City of Yonkers,* 96 F. 3d 600 [2nd Cir. 1996]; *Wyatt v. Stickney,* 344 F. Supp. 373 [M.D. Ala. 1972]; *Hutto v. Finney,* 437 U.S. 678, 98 S. Ct. 2565, 57 L. Ed. 2d 522 [1978]). When the court does provide equitable relief, it usually also provides ongoing evaluation and supervision of the enforcement of its orders.

The Civil Rights Attorney's Fee Awards Act of 1976 (42 U.S.C.A. § 1988[b]) allows for the award of reasonable attorneys' fees to the prevailing party in cases brought under various federal civil rights laws, including section 1983. This provision applies whether or not COMPENSATORY DAMAGES were awarded. This provision also applies whether the plaintiff or the defendant prevails. However, if the defendant is the prevailing party, attorneys' fees have been held to be appropriate only where the lawsuit was "vexatious, frivolous, or brought to harass or embarrass the defendant" (*Hensley v. Eckerhart,* 461 U.S. 424, 103 S. Ct. 1933, 76 L. Ed. 2d 40 [1983]). In addition, section 1988 does not require that the attorneys' fees awarded be in proportion to the amount of damages recovered (*City of Riverside v. Rivera,* 477 U.S. 561, 106 S. Ct. 2686, 91 L. Ed. 2d 466 [1986]).

Rule 68 of the Federal Rules of Civil Procedure can lead to the adjustment of the amount of damages awarded by a jury in a section 1983 case. Enacted to encourage parties to settle their matters out of court, rule 68 provides that if the plaintiff rejected a settlement offer made by the defendant before trial that is better than the award the plaintiff ultimately received in the trial, the defendant is not liable for plaintiff's attorneys' fees incurred after the time the defendant made the settlement offer (*Marek v. Chesny,* 473 U.S. 1, 105 S. Ct. 3012, 87 L. Ed. 2d 1 [1985]). Under rule 68, section 1983 plaintiffs need to carefully consider any settlement offers made by the defendants.

Bars to Relief

Section 1983 does not provide a specific STATUTE OF LIMITATIONS, which is a time limit in which a claim must be brought after the alleged violation occurred. But 42 U.S.C.A. § 1988 (1976) states that where the federal law does not provide a statute of limitations, state law shall apply. In determining which state statute of limitations to apply in a section 1983 case, the Supreme Court has held that in the interests of national uniformity and predictability, all section 1983 claims shall be treated as tort claims for the recovery of personal injuries (*Wilson v. Garcia,* 471 U.S. 261, 105 S. Ct. 1938, 85 L. Ed. 2d 254 [1985]). If the state has various statutes of limitations for different intentional torts, the Supreme Court mandates that the state's general or residual personal injury statute of limitations should apply (*Owens v. Okure,* 488 U.S. 235, 109 S. Ct. 573, 102 L. Ed. 2d 594 [1989]).

The Supreme Court has also held that state tolling statutes, which provide a plaintiff with an additional period of time in which to bring a lawsuit equal to the period of time in which the plaintiff was legally disabled, apply to section 1983 cases (*Board of Regents v. Tomanio,* 446 U.S. 478, 100 S. Ct. 1790, 64 L. Ed. 2d 440 [1980]).

Under section 1983, the statute of limitations does not begin to run until the CAUSE OF ACTION accrues. The cause of action accrues when "the plaintiff knows or has reason to know of the injury which is the basis of the action" (*Cox v. Stanton,* 529 F.2d 47 [4th Cir. 1975]). However, in EMPLOYMENT LAW cases, the Supreme Court has held that the cause of action accrues when the discriminatory act occurs (*Delaware State College v. Ricks,* 449 U.S. 250, 101 S. Ct. 498, 66 L. Ed. 2d 431 [1980]). Thus, if an employee is being terminated for reasons that violate section 1983, the statute of limitations begins on the day that the employee learns of the termination, not when the termination actually begins (*Chardon v. Fernandez,* 454 U.S. 6, 102 S. Ct. 28, 70 L. Ed. 2d 6 [1981]).

The legal rules of RES JUDICATA (claim preclusion) and COLLATERAL ESTOPPEL (issue preclusion) apply to section 1983 claims. This means that federal courts must give state court judgments the same preclusive effect that the law of the state in which the judgment was rendered would give. Plaintiffs need to be careful to raise all potential federal claims in cases brought in state court because they will not be allowed to bring those claims later in federal court after the state court has rendered a decision on the issues before it.

A plaintiff may waive his or her right to sue under section 1983, but such a waiver may be deemed unenforceable if "the interest in its

enforcement is outweighed in the circumstances by a public policy harmed by enforcement of the agreement" *Town of Newton v. Rumery,* 480 U.S. 386, 107 S. Ct. 1187, 94 L. Ed. 2d 405 [1987].

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CROSS-REFERENCES

Civil Rights; Remedy.

SECURE

To assure the payment of a debt or the performance of an obligation; to provide security.

A debtor "secures" a creditor by giving him or her a lien, mortgage, or other security to be used in case the debtor fails to make payment.

SECURED CREDITOR

One who holds some special monetary assurance of payment of a debt owed to him or her, such as a mortgage, collateral, or lien.

SECURED TRANSACTIONS

Business dealings that grant a creditor a right in property owned or held by a debtor to assure the payment of a debt or the performance of some obligation.

A secured transaction is a transaction that is founded on a security agreement. A security agreement is a provision in a business transaction in which the obligor, or debtor, in the agreement gives to the creditor the right to own property owned or held by the debtor. This property, called collateral, is then held by either the debtor or the secured party to ensure against loss in the event the debtor cannot fulfill the obligations under the transaction.

The purchase of a car through financing is an example of a secured transaction. The car dealership or some other lender pays for the vehicle in return for a promise from the buyer to repay the loan with interest. The buyer receives the vehicle, but the lender retains the title to the car as security against the risk that the buyer will be unable to make the loan payments. If the buyer defaults on the payments, the lender, called the secured party, may repossess the car to recover losses from the default.

If the same transaction was unsecured, the buyer would receive the title to and possession of the car, and the lender would receive only the buyer's promise to repay the loan. If the buyer defaulted on the payments, the lender could sue the buyer, but the simple remedy of taking the property would not be available.

A security interest may be transferred, or assigned, to a third party. The party receiving the assignment becomes the secured party, and the original secured party no longer holds a claim to the collateral.

The law of secured transactions varies little from state to state because all 50 states plus the District of Columbia and the U.S. Virgin Islands have adopted Article 9, the secured transactions portion of the UNIFORM COMMERCIAL CODE (UCC). The UCC is a set of model laws written by lawyers, professors, and other legal professionals in the American Law Institute. In 1999 the institute, in conjunction with the National Conference of Commissioners of Uniform State Laws (NCCUSL), drafted a revised Article 9, which was adopted uniformly on July 1, 2001. The revisions marked the first comprehensive overhaul of Article 9 since 1972. They expand the scope of property and transactions governed by the UCC, clarify existing elements of the article, and provide guidelines for dealing with the growing phenomenon of electronic commerce.

Common Forms of Secured Transactions

Secured transactions come in many forms, but three types are most common for consumers: pledges, chattel mortgages, and conditional sales. A pledge is the delivery of goods to the secured party as security for a debt or the performance of an act. For example, assume that one person has borrowed $500 from another. Assume further that the debtor gives a piece of expensive jewelry to the creditor. If the jewelry is to be returned to the debtor after the debt is repaid, and if the creditor has the right to take full ownership of the jewelry if the debtor does not pay the debt, the arrangement is called a pledge.

A chattel mortgage is like a pledge, but in a chattel mortgage transaction, the debtor is allowed to retain possession of the property that

is put up as collateral. If the debtor fails to repay the debt, the creditor may take ownership of the property.

A third type of secured transaction, the conditional sale, uses a purchase money security interest. A purchase money security interest arises when a creditor lends money to a borrower, who uses the money to purchase a particular item. To secure repayment of the loan, the creditor receives a lien on, or claim to, the purchased item. The lien gives the creditor a claim to the property that may be asserted if the borrower does not repay the loan.

Common Forms of Collateral

Any property accepted as security by a creditor can serve as collateral, but generally collateral falls into one of five categories: consumer goods, equipment, farm products, inventory, and property on paper. Consumer goods are items used primarily for personal, family, or household purposes. Equipment consists of items of value used in business or governmental operations. Farm products are items such as crops, livestock, or supplies used or produced in a farming operation. Under the revised Article 9, agricultural liens can also be considered collateral. Inventory consists of goods held for sale or lease or furnished under contracts of service, raw materials, works in process, materials used or consumed in a business, and goods held for sale or lease or furnished under contracts of service.

Paper collateral consists of a writing that serves as evidence of a debtor's rights in PERSONAL PROPERTY. Stocks and bonds are examples of paper collateral. Another common form of paper collateral is chattel paper. Chattel paper is a writing that indicates that the holder is owed money and has a security interest in valuable goods associated with the debt. For example, assume that a car dealership has sold a car on financing to a buyer and has retained the title as security. The dealership may then use the security agreement with the buyer as collateral for a loan of its own from the bank. The revised Article 9 also recognizes "electronic chattel paper." This allows for the validity of so-called electronic signatures, which Article 9 refers to as "authenticated records." The electronic screens in some retail stores that allow customers to sign with a special stylus are thus just as valid as a signature in ink on a paper document.

Among the new areas governed by the revised Article 9 are commercial deposit accounts, promissory notes, and commercial TORT claims. HEALTHCARE insurance receivables are also covered, which allows doctors and hospitals to include claims against insurance companies for services to their patients as part of the collateral they offer to healthcare lenders.

The Formalities

To be valid, a secured transaction must contain an express agreement between the debtor and the secured party. The agreement must be in writing, must be signed by both parties, must describe the collateral, and must contain language indicating a grant of a security interest to the creditor. Furthermore, something of value must be given by one party to the other party. This can be a binding commitment to extend credit, the satisfaction of an already existing claim, the delivery and acceptance of goods under a contract, or any other exchange of value sufficient to create a contract. Once these formalities have been completed, the security associated with the principal agreement is said to attach. Attachment simply means that the security side of the agreement is complete and legally enforceable.

To completely secure a secured transaction, or perfect the security, the secured party should file a financing statement with the local public records office, SECRETARY OF STATE, or other appropriate government body. Perfecting the security makes the secured party's claim official, puts the rest of the world on notice as to the creditor's rights in the property, and gives the creditor the right to take advantage of special remedies in the event the debtor does not repay the loan. A financing statement is a document that fully describes the secured transaction. The written document that created the agreement may serve as a financing statement, but the law on financing statements varies from state to state. A state may require the secured party to file a financing statement in addition to a copy of the agreement.

In most states financing statements are effective only for a limited duration, such as five years. A secured creditor may extend the length of perfection by filing a continuation statement before the designated time period has expired. If a secured creditor fails to continue the perfection, the security is not lost, but other creditors may claim the property. The secured creditor may file another financing statement, but this would require another signature from the debtor.

Amendments may be made to a financing statement. A secured party may file a statement

of release on some of the collateral once the debtor has made payments equal in value to the value of the released collateral. If the amendment adds collateral, the security for the new collateral is effective from the date of the amendment, and not the date of the filing of the original financing statement.

One exception to the filing rule occurs when the secured party has possession of the collateral. In this situation the creditor's security is complete once the parties have agreed to the primary transaction. Another exception is the purchase money security interest in consumer goods other than building fixtures and motor vehicles. The filing of a purchase money security interest for such consumer goods is optional. If a secured party to a conditional sale does not record or file the agreement, however, he may lose the security if the buyer sells the goods to a third party.

Failure to perfect the security may have drastic consequences for the secured party who does not possess the collateral, although such failure does not automatically mean that the security will be lost. If, however, another party later stakes a claim to the collateral and files the proper papers, the secured party may lose his or her claim to the property because claims that have been properly recorded or filed have priority. Thus a secured party is wise to file a financing statement and other required documents to perfect the security and protect against claims by other creditors of the debtor.

Article 9 of the UCC is primarily concerned with protecting the secured party's right to the collateral. Many sections of Article 9 delineate who has the first right to a debtor's property if multiple claims arise. Precisely who has the first right to the debtor's property depends on a number of factors, including whether the security was perfected, who the other claimant is, and the time that the claims arose.

If a security interest has not been perfected, the secured party's claim to the collateral property may be subordinate to any number of creditors. A person who has a lien on the property takes before the secured party, as does a person who has received a court order for attachment of the property. If a person buys the collateral from the debtor and did not know of the security interest, the secured party loses the property if the security was not perfected. This is true only if the buyer purchases the property in the ordinary course of business from a person who is in the business of selling goods of that particular kind. A pawnbroker, for example, is not such a seller because a pawnbroker will sell almost anything if the profit is worth the time and trouble.

The identity of the buyer may influence the outcome of a dispute between a buyer of secured goods and the secured party. Generally, a merchant, or a buyer who purchases property for a business, is held to a higher standard than a person who buys an item for personal use. Merchants are more familiar with markets than are ordinary consumers, and they may be expected to know that a seller was insolvent and that the goods being sold were subject to claims from other parties. In any case, if any buyer knows that another party has a security interest in the property at the time the buyer made the purchase, the secured party retains the first claim to the property and may keep the property out of that buyer's possession until the debt associated with the secured property is fully paid.

If two parties have a security interest in the same property, the party who filed first takes first. If the competing security interests are both unperfected, the party who was first to attach the property as collateral has priority.

Other creditors of a debtor may have the first claim on secured property. However, the federal government has priority in some instances for collection of federal tax liens. Most states have artisan's lien statutes, which give servicers of property the right to hold the property in their possession as security for payment of the service bill. If the bill remains unpaid, the servicer has priority even over a secured party who has perfected his or her interest. Once a servicer or repairperson is paid for his services, he must release the goods to either their owner or the party with the security interest in the goods.

If the debtor to a secured party defaults, the secured party who has failed to perfect the security interest may lose first claim to the secured property to a receiver or an assignee for the benefit of creditors. A receiver is a party who is appointed by the BANKRUPTCY court to manage the finances of the debtor for the benefit of the debtor's creditors. An assignee for the benefit of creditors is a person chosen by the debtor to manage all or substantially all of the debtor's property and to distribute it to creditors. A secured party who has perfected the security interest has priority over an assignee or a receiver, but even a secured party who has perfected may not receive all of the debt owed

under a security agreement by a bankrupt debtor. Federal bankruptcy laws are designed to distribute the assets of an insolvent debtor in a fair and ratable manner among all of the debtor's creditors.

Satisfaction of the Secured Debt

Once a secured debt is repaid in full, the secured party must, upon written request by the debtor, send a termination statement to the debtor and file a termination statement with all offices that hold the financing statement. A termination statement serves as evidence that the debt has been paid in full. If the debtor makes a written request for the termination statement, the creditor must send the statement within ten days of the date of the request. Even if the debtor does not so request, the secured party must send a termination statement to offices that hold the financing statement within 30 days of the satisfaction of the debt.

Default

If a debtor defaults on his obligations under a secured transaction, the secured party may foreclose on the security interest. Foreclosure can be accomplished in different ways. The secured party may calculate the amount of the debt owed and sue the debtor without taking possession of the property. Alternatively, unless the parties have agreed otherwise, the secured party may take possession of the collateral property and either keep it or sell it. In either case, if the value received by the secured party does not fully satisfy the debt, the secured party may sue the debtor for the deficiency.

In most states a secured party may take possession of the collateral without judicial involvement if this can be accomplished without a breach of the peace. For example, the secured party may repossess a vehicle if it is parked outdoors. If, however, the agent of the secured party must break into a garage to repossess the vehicle, such action would be a breach of the peace because it would require breaking and entering, a criminal offense.

If a consumer has defaulted on a secured transaction but has paid 60 percent or more on the debt, most states prohibit a secured party from taking the security and keeping the windfall. In such cases the secured party may either sue in court for the money outstanding or take the property and return part of the money. In other situations a secured party may be entitled to any excess value or income that results from the debtor's default.

The retention of collateral by a secured party after the debtor's default is called strict foreclosure. If a secured party decides to keep collateral in satisfaction of a debt, the secured party must send written notice to the debtor. In transactions involving collateral other than consumer goods, a secured party may be obliged to send notice of the strict foreclosure to any other parties who have security in the collateral property. If a party objects to the strict foreclosure, the secured party must sell or otherwise dispose of the collateral. If no other party objects to the strict foreclosure, the secured party may keep the collateral.

A secured party who sells or leases collateral after a debtor defaults may charge the debtor for reasonable expenses incurred in the sale or lease. This can include attorneys' fees and court costs. The money made from a sale of collateral rarely satisfies a debt because such sales do not bring favorable prices. If there is a surplus of money after the collateral is sold, all expenses are accounted for, and the sale or lease is applied to the debt, other parties holding a security interest in the collateral must be paid with the surplus money.

Unless the parties have agreed otherwise, a debtor who is in possession of the collateral and who has defaulted on the obligations in a secured transaction has the right to redeem the collateral before the secured party takes action. To avoid foreclosure of the security interest by the secured party, the debtor may pay the unpaid balance of the debt secured by the collateral, as well as any reasonable expenses incurred by the secured party in taking, holding, and preparing the foreclosure. This does not mean the debtor must pay the entire amount of the debt; rather, the debtor must make those payments that are in default. Some security agreements have an acceleration clause that makes all payments due immediately upon default, but a court may hold that such a clause should not be enforced if the debtor has brought the payments up to date before the secured party has acted on the delinquency. A secured party who violates default provisions may be liable to the debtor for losses resulting from that conduct.

FURTHER READINGS

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CROSS-REFERENCES

Attachment; Bankruptcy; Collateral; Consumer Credit; Express; Obligor; Security; Sales Law.

SECURITIES

Evidence of a corporation's debts or property.

Securities are documents that merely represent an interest or a right in something else; they are not consumed or used in the same way as traditional consumer goods. Government regulation of consumer goods attempts to protect consumers from dangerous articles, misleading advertising, or illegal pricing practices. Securities laws, on the other hand, attempt to ensure that investors have an informed, accurate idea of the type of interest they are purchasing and its value.

Types of securities include notes, stocks, treasury stocks, bonds, debentures, certificates of interest or participation in profit-sharing agreements, collateral-trust certificates, preorganization certificates or subscriptions, transferable shares, investment contracts, voting-trust certificates, certificates of deposit for a security, and a fractional undivided interest in gas, oil, or other mineral rights. Under certain circumstances, interests in oil- and gas-drilling programs, interests in partnerships, real estate CONDOMINIUMS AND COOPERATIVES, and farm animals and land also have been found to be securities. Certain types of notes, such as a note secured by a home mortgage or a note secured by accounts receivable or other business assets, are not securities.

Both federal and state laws regulate securities. Before 1929 companies could issue stock at will. Bogus corporations sold worthless stock; other companies issued and sold large amounts of stock without considering the effect of unlimited issues on shareholders' interests, the value of the stock, and ultimately the U.S. economy. Federal securities law consists of a handful of laws passed between 1933 and 1940, as well as legislation enacted in 1970. The federal laws stem from Congress's power to regulate interstate commerce. Therefore the laws are generally limited to transactions involving transportation or communication using interstate commerce or the mail. Federal laws are generally administered by the SECURITIES AND EXCHANGE COMMISSION (SEC), established by the Securities Exchange Act of 1934 (15 U.S.C.A. § 78a et seq.). Securities regulation focuses mainly on the market for common stocks. The SARBANES-OXLEY ACT OF 2002 (Public Company Accounting Reform and Investor Protection Act, Pub.L. 107-204, July 30, 2002, 116 Stat. 745, July 30, 2002) makes securities FRAUD a serious federal crime and also increases the penalties for WHITE-COLLAR CRIMES. In addition, it creates a new oversight board for the accounting profession.

Securities are traded on markets. Some, but not all, markets have a physical location. The essence of a securities market is its formal or informal communications systems whereby buyers and sellers make their interests known and execute transactions. These trading markets are susceptible to manipulative and deceptive practices, such as manipulation of prices or "insider trading," that is, gaining an advantage on the basis of nonpublic information. To prevent such fraudulent practices, all securities laws contain general antifraud provisions.

Exchange markets, of which the New York Stock Exchange is the largest, have traditionally operated in a rigid manner by careful delineation of numbers and qualifications of members and the specific functions members may perform. Conversely, over-the-counter markets (OTC) are less structured and typically do not have a physical location.

Based upon dollar volume, the bond market is the largest. Bonds are the debt instruments issued by federal, state, and local government, as well as corporations. The bond market attracts mainly professional and institutional investors, rather than the general public. In addition, many of these obligations are exempt from direct regulatory provisions of the federal securities laws and consequently usually receive little attention from SEC regulators. However, in the mid-1980s, a debacle occurred in the JUNK BOND market, which included insider trading charges. (Junk bonds are highly risky bonds with a high yield.) The scandal, which involved the investment firm of Drexel Burnham Lambert Inc. and trader Michael R. Milken, attracted much attention and a flurry of SEC enforcement activity.

Securities Act of 1933

The first significant federal securities law was the Securities Act of 1933 (15 U.S.C.A. § 77a et seq.), passed in the wake of the great STOCK MARKET crash of 1929. This law is essentially a disclosure statute. Although the 1933 act applies by its terms to any sale by any person of any security, it contains a number of exemptions. The most important exemption involves securities sold in certain kinds of transactions, including transactions by someone other than an issuer, underwriter, or dealer. In essence, this provision effectively exempts almost all secondary trading, which involves securities bought and sold after their original issue. Certain small offerings are also exempt.

Although the objective of the 1933 act's registration requirements is to enable a prospective purchaser to make a reasoned decision based on reliable information, this goal is not always accomplished. For example, an issuer may be reluctant to divulge real weaknesses in an operation and so may try to obfuscate some of the problems while complying in theory with the law. In addition, complex financial information can be extremely difficult to explain in terms understandable to the average investor.

Disclosure is accomplished by the registration of security offerings. In general, the law provides that no security may be offered or sold to the public unless it is registered with the SEC. Registration does not imply that the SEC approves of the issue but is intended to aid the public in making informed and educated decisions about purchasing a security. The law delineates the procedures for registration and specifies the type of information that must be disclosed.

The registration statement has two parts: first, information that eventually forms the prospectus, and second, information, which does not need to be furnished to purchasers but is available for public inspection within SEC files. Full disclosure includes management's aims and goals; the number of shares the company is selling; what the issuer intends to do with the money; the company's tax status; contingent plans if problems arise; legal standing, such as pending lawsuits; income and expenses; and inherent risks of the enterprise.

A registration statement is automatically effective 20 days after filing, and the issuer may then sell the registered securities to the public. Nevertheless, if a statement on its face appears incomplete or inaccurate, the SEC may refuse to allow the statement to become effective. A misstatement or omission of a material fact may result in the registration's suspension. Although the SEC rarely exercises these powers, it does not simply give cursory approval to registration statements. The agency frequently issues "letters of comment," also known as "deficiency letters," after reviewing registration documents. The SEC uses this method to require or suggest changes or request additional information. Most issuers are willing to cooperate because the SEC has the authority to permit a registration statement to become effective less than 20 days after filing. The SEC will usually accelerate the 20-day waiting period for a cooperative issuer.

For many years an issuer was entitled only to register securities that would be offered for sale immediately. Since 1982, under certain circumstances an issuer has been permitted to register securities for a quick sale at a date up to two years in the future. This process, known as shelf registration, enables companies that frequently offer debt securities to act quickly when interest rates are favorable.

The 1933 act prohibits offers to sell or to buy before a registration is filed. The SEC takes a broad view of what constitutes an offer. For example, the SEC takes the position that excessive or unusual publicity by the issuer about a business or the prospects of a particular industry may arouse such public interest that the publicity appears to be part of the selling effort.

Offers but not sales are permitted, subject to certain restrictions, after a registration statement has been filed but before it is effective. Oral offers are not restricted. Written information may be disseminated to potential investors during the waiting period via a specially designed preliminary prospectus. Offers and sales may be made to anyone after the registration statement becomes effective. A copy of the final prospectus usually must be issued to the purchaser.

The 1933 act provides for civil liability for damages arising from misstatements or omissions in the registration statement, or for offers made in violation of the law. In addition, the law provides for civil liability for misstatements or omissions in any offer or sale of securities, whether or not the security is registered. Finally, the general antifraud provision in the law makes it unlawful to engage in fraudulent or deceitful practices in connection with any offer or sale of securities, whether or not they are registered.

In general, any person who acquires an EQUITY whose registration statement, at the time it became effective, contained an "untrue statement of a material fact or omitted to state a material fact" may sue to recover the difference between the price paid for the security (but not more than the PUBLIC OFFERING price) and the price for which it was disposed or (if it is still owned) its value at the time of the lawsuit. A purchaser must show only that the registration statement contained a material misstatement or omission and that he or she lost money. In many circumstances the purchaser need not show that he or she relied on the misstatement or omission or that a prospectus was even received. The SEC defines "material" as information an average prudent investor would reasonably need to know before purchasing the security.

Securities Exchange Act of 1934

The Securities Exchange Act of 1934 addresses many areas of securities law. Issuers, subject to certain exemptions, must register with the SEC if they have a security traded on a national exchange. This requirement should not be confused with the registration of an offering under the 1933 act; the two laws are distinct. Securities registered under the 1933 act for a public offering may also have to be registered under the 1934 act.

To provide the public with adequate information about companies with publicly traded stocks, issuers of securities registered under the 1934 act must file various reports with the SEC. Since 1964 this disclosure requirement has applied not only to companies with securities listed on national securities exchanges but also to companies with more than 500 shareholders and more than $5 million in assets. False or misleading statements in any documents required under the 1934 act may result in liability to persons who buy or sell securities in reliance on these statements.

Under the 1934 act, the SEC may revoke or suspend the registration of a security if after notice and opportunity for hearing it determines that the issuer has violated the 1934 act or any rules or regulations promulgated thereunder. Moreover, the 1934 act authorizes the SEC to suspend trading in any security for not more than ten days, or, with the approval of the president, to suspend trading in all securities for not more than 90 days, or to take other measures to address a major market disturbance.

Proxy Solicitation The 1934 act also regulates proxy solicitation, which is information that must be given to a corporation's shareholders as a prerequisite to soliciting votes. Prior to every shareholder meeting, a registered company must provide each stockholder with a proxy statement containing certain specified material, along with a form of proxy on which the security holder may indicate approval or disapproval of each proposal expected to be presented at the meeting. For securities registered in the names of brokers, banks, or other nominees, a company must inquire into the beneficial ownership of the securities and furnish sufficient copies of the proxy statement for distribution to all the beneficial owners.

Copies of the proxy statement and form of proxy must be filed with the SEC when they are first mailed to security holders. Under certain circumstances preliminary copies must be filed ten days before mailing. Although a proxy statement does not become "effective" in the same way as a statement registered under the 1933 act, the SEC may comment on and require changes in the proxy statement before mailing. Proxies for an annual meeting calling for election of directors must include a report containing financial statements covering the previous two fiscal years. Special rules apply when a contest for election or removal of directors is scheduled.

A security holder owning at least $1,000, or one percent, of a corporation's securities may present a proposal for action via the proxy statement. Upon a shareholder's timely notice to the corporation, a statement of explanation is included with the proxy statement. Security holders will have an opportunity to vote on the proposal on the proxy form. The device is unpopular with management, but shareholders have used this provision to change or challenge management compensation, the conduct of annual meetings, shareholder VOTING RIGHTS, and issues involving discrimination and pollution in company operations.

A company that distributes a misleading proxy statement to its shareholders may incur liability to any person who purchases or sells its securities based on the misleading statement. The U.S. Supreme Court has held that an omitted fact is material if a "substantial likelihood" exists that a reasonable shareholder would consider the information important in deciding how to vote. Mere NEGLIGENCE is sufficient to permit recovery; no evil motive or reckless dis-

regard need be shown. Oftentimes, an appropriate remedy might be a preliminary injunction requiring circulation of corrected materials; it may not be feasible to rescind a tainted transaction after voting. Courts have, however, sometimes ordered a new election of directors, but such action must be in the best interests of all shareholders.

Takeover Bids and Tender Offers Since the 1960s, increasing numbers of takeover bids and tender offers have resulted in bitter contests between the aggressor and the target of the bid. A corporate or individual aggressor might attempt to acquire controlling stock in a publicly held corporation in a number of ways: by buying it outright for cash, by issuing its own securities in exchange, or by a combination of both methods. Stock may be acquired in private transactions, by purchases through brokers in the open market, or by making a public offer to shareholders to tender their shares either for a fixed cash price or for a package of securities from the corporation making the offer.

Takeover bids that involve a public offer for securities of the aggressor company in exchange for shares of the targeted company require that the securities be registered under the 1933 act and that a prospectus be delivered to solicited shareholders. For many years, however, cash tender offers had no SEC filing requirements. The WILLIAMS ACT of 1968, 15 U.S.C.A. §§ 78l, 78m, 78n, amended many sections of the 1934 act to address problems with tender offers. Although most litigation under the Williams Act is between contending parties, courts generally focus on whether the relief sought serves to protect public stockholders.

Pursuant to the Williams Act, any person or group who takes ownership of more than 5 percent of any class of specific registered securities must file a statement within ten days with the issuer of the securities, as well as with the SEC. Required information includes the background of the person or group; the source of funds used and the purpose of the acquisition; the number of shares owned; and any relevant contracts, arrangements, or understandings. The issue of whether an acquisition has taken place, thereby triggering the filing requirement, has been the subject of litigation. Courts have disagreed on this issue when confronted with a group of shareholders who in the aggregate own more than 5 percent and who agree to act together for the purpose of affecting control of the company but who do not act to acquire any more shares.

Restrictions also apply to persons making a tender offer that would result in ownership of more than 5 percent of a class of registered securities. Such a person must first file with the SEC and furnish to each offeree a statement similar to that required of a person who has obtained more than 5 percent of registered stock. A tender offer must be held open for 20 days; a change in the terms holds an offer open at least ten more days. In addition, the offer must be made to all holders of the class of securities sought, and a uniform price must be paid to all tendering shareholders. A shareholder may withdraw tendered shares at any time while the tender offer remains open. Moreover, if the person making the offer seeks fewer than all outstanding shares and the response is oversubscribed, shares will be taken up on a pro rata basis.

The 1934 act also requires every person who directly or indirectly owns more than 10 percent of a class of registered equity securities, and every officer and director of every company with a class of equity securities registered under that section, to file a report with the SEC at the time he acquires the status, and at the end of any month in which he acquires or disposes of these securities. This provision is designed to prevent "short-swing" profits, earned when an individual with inside information engages in short-term trading.

Antifraud Provisions One impetus for enactment of the 1934 act was the damage caused by "pools," which were a device used to run up the prices of securities on an exchange. The pool would engage in a series of well-timed transactions, designed solely to manipulate the market price of a security. Once prices were high, the members of the pool unloaded their holdings just before the price dropped. The 1934 act contains specific provisions prohibiting a variety of manipulative activities with respect to exchange-listed securities. It also contains a catchall section giving the SEC the power to promulgate rules to prohibit any "manipulative or deceptive device or contrivance" with respect to any security. Although isolated instances of manipulation still exist, the provisions manage to prevent widespread problems.

Section 10(b) of the 1934 act contains a broadly worded provision permitting the SEC to promulgate rules and regulations to protect the

public and investors by prohibiting manipulative or deceptive devices or contrivances via the mails or other means of interstate commerce. The SEC has promulgated a rule, known as rule 10b-5, that has been invoked in countless SEC proceedings. The rule states:

> It shall be unlawful for any person, directly or indirectly, by use of any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, (1) to employ any device, scheme, or artifice to defraud, (2) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of circumstances under which they were made, not misleading, or (3) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security.

In the 1960s and early 1970s, the courts broadly interpreted rule 10b-5. For example, the rule was applied to impose liability for negligent misrepresentations and for breach of fiduciary duty by corporate management and to hold directors, lawyers, accountants, and underwriters liable for their failure to prevent wrongdoing by others. Beginning in 1975, the U.S. Supreme Court sharply curtailed this broad reading. Doubt exists as to the continued viability of the decisions in some of the prior cases. Nevertheless, although rule 10b-5 does not address civil liability for a violation, since 1946 courts have recognized an implied private right of action in rule 10b-5 cases, and the Supreme Court has acknowledged this implied right (*Superintendent v. Bankers Life,* 404 U.S. 6, 30 L. Ed. 2d 128, 92 S. Ct. 165 [1971]).

Rule 10b-5 applies to any purchase or sale, by any person, of any security. There are no exemptions: it applies to registered or unregistered securities, publicly held or closely held companies, and any kind of entity that issues securities, including federal, state, and local government securities.

Clauses 1 and 3 of rule 10b-5 use the terms *fraud* and *deceit.* Fraud or deceit must occur "in connection with" a purchase or sale but need not relate to the terms of the transaction. For example, in *Superintendent v. Bankers Life,* the U.S. Supreme Court found a violation of rule 10b-5 when a group obtained control of an insurance company, then sold certain securities and misappropriated the proceeds for their own benefit. In another case a publicly held corporation made misstatements in a press release. Even though the company was not engaged at that time in buying or selling its own shares, a U.S. court of appeals ruled that the statements were made "in connection with" purchases and sales being made by shareholders on the open market.

Insider Trading Rule 10b-5 protects against insider trading, which is a purchase or sale by a person or persons with access to information not available to those with whom they deal or to traders generally. Originally, the prohibition against insider trading dealt with purchases by corporations or their officers without disclosure of material, favorable corporate information. Beginning in the early 1960s, the SEC broadened the scope of the rule. The rule now operates as a general prohibition against any trading on inside information in anonymous stock exchange transactions, in addition to traditional face-to-face proceedings. For example, in *In re Cady, Roberts & Co.,* 40 S.E.C. 907 (1961), a partner in a brokerage firm learned from the director of a corporation that it intended to cut its dividend. Before the news was generally disseminated, the BROKER placed orders to sell the stock of some of his customers. In another case officers and employees of an oil company made large purchases of company stock after learning that exploratory drilling on some company property looked extremely promising (*SEC v. Texas Gulf Sulphur,* 401 F. 2d 833 [2d Cir. 1968]). In these cases the persons who made the transactions, or persons who passed information to those individuals, were found to have violated rule 10b-5.

However, not every instance of financial unfairness rises to the level of fraudulent activity under rule 10b-5. In *Chiarella v. United States,* 445 U.S. 222, 100 S. Ct. 1108, 63 L. Ed. 2d 348 (1980), Vincent F. Chiarella, an employee of a financial printing firm, worked on some documents relating to contemplated tender offers. He ascertained the identity of the targeted companies, purchased stock in those companies, and then sold the stock at a profit once the tender offers were announced. The Supreme Court overturned Chiarella's criminal conviction for violating rule 10b-5, ruling that an allegation of fraud cannot be supported absent a duty to speak and that duty must arise from a relationship of "trust and confidence between the parties to a transaction." However, following *Chiarella,* criminal convictions of lawyers, printers, stockbro-

kers, and others have been upheld by courts that have ruled that these employees traded on confidential information that was "misappropriated" from their employers, an issue that was not raised in *Chiarella.* Moreover, courts have also ruled that the person who passes inside information to another person who then uses it for a transaction is as culpable as the person who uses it for his or her own account.

The test for materiality in a rule 10b-5 insider information case is whether the information is the kind that might affect the judgment of reasonable investors, both of a conservative and speculative bent. Furthermore, an insider may not act the moment a company makes a public announcement but must wait until the news could reasonably have been disseminated.

The Insider Trading Sanctions Act of 1984 (Pub. L. No. 98-376, 98 Stat. 1264) and the Insider Trading and Security Fraud Enforcement Act of 1988 (15 U.S.C.A. §§ 78u-1, 806-4a, and 78t-1) amended the 1934 act to permit the SEC to seek a civil penalty of three times the amount of profit gained from the illegal transaction or the loss avoided by it. The penalty may be imposed on the actual violator, as well as on the person who "controlled" the violator—generally the employing firm. A whistle-blower may receive up to 10 percent of any civil liability penalty recovered by the SEC. The maximum criminal penalties were increased from $100,000 to $1 million for individuals and from $500,000 to $2.5 million for business or legal entities.

Regulation of the Securities Business

Only dealers or brokers who are registered with the SEC pursuant to the 1934 act may engage in business (other than individuals who deal only in exempted securities or handle only intrastate business). Firms act in three principal capacities: broker, dealer, and investment adviser. A broker is an agent who handles the public's orders to buy and sell securities for a commission. A dealer is a person in the securities business who buys and sells securities for her or his own account, and an investment adviser is paid to advise others on investing in, purchasing, or selling securities. Investment advisers are regulated under the Investment Advisers Act of 1940 (15 U.S.C.A. § 80b et seq.). This law provides for registration similar to that in the 1934 act for brokers and dealers, but its coverage is generally not as comprehensive. Certain fee arrangements are prohibited, and adverse personal interests in a transaction must be disclosed. Moreover, the SEC may define and prohibit certain fraudulent and deceptive practices.

The SEC has the power to revoke or suspend registration or impose a censure if the broker-dealer has violated federal securities laws or committed other specified misdeeds. Similar provisions apply to municipal securities dealers and investment advisers.

Problems may arise in a number of ways. For example, a broker-dealer may recommend or trade in securities without adequate information about the issuer. "Churning" is another problem. Churning occurs when a broker-dealer creates a market in a security by making repeated purchase from and resale to individual retail customers at steadily increasing prices. This conduct violates securities antifraud provisions if the broker-dealer does not fully disclose to customers the nature of the market. Churning also occurs when a broker causes a customer's account to experience an excessive number of transactions solely to generate repeated commissions. Fraudulent "scalping" occurs when an investment adviser publicly recommends the purchase of securities without disclosing that the adviser purchases such securities before making the recommendation and then sells them at a profit when the price rises after word of the recommendation spreads.

In 1990 Congress enacted the Penny Stock Reform Act (15 U.S.C.A. § 78q-2), which gives the SEC authority to regulate the widespread incidence of high-pressure sales tactics in the peddling of low-priced speculative stocks to unsophisticated investors. Dealers in penny stocks must provide customers with disclosure documents discussing the risk of such investments, the customer's rights in the event of fraud or abuse, and compensation received by the broker-dealer and the salesperson handling the transaction.

Securities Investor Protection Corporation

The Securities Investor Protection Act of 1970 (15 U.S.C.A. § 78aaa et seq.) created the Securities Investor Protection Corporation (SIPC) to supervise the liquidation of securities firms suffering from financial difficulties and to arrange for the payment of customers' claims through its trust fund in the event of a broker-dealer's BANKRUPTCY. SIPC is a government-sponsored, private, nonprofit corporation. It

relies on the SEC and self-regulatory organizations to refer brokers or dealers having financial difficulties. In addition, SIPC has authority to borrow money (through the SEC) if its trust fund from which it pays claims is insufficient. SIPC guarantees repayment of money and securities up to $100,000 in cash equity and up to $500,000 overall per customer.

Self-Regulatory Organizations

Although the SEC plays a major role in regulating the securities industry, regulation responsibilities also exist for self-regulatory organizations. These organizations are private associations to which Congress has delegated the authority to devise and enforce rules for the conduct of an association's members. Before 1934 stock exchanges had regulated themselves for well over a century. The 1934 act required every national security exchange to register with the SEC. An exchange cannot be registered unless the SEC determines that its rules are designed to prevent fraud and manipulative acts and practices and that the exchange provides appropriate discipline for its members.

Congress extended federal registration to non-exchange, or OTC, markets in 1938 and authorized the establishment of national securities associations and their registration with the SEC. Only one association, the National Association of Securities Dealers, had been established as of the mid 1990s.

In 1975 Congress expanded and consolidated SEC authority over all self-regulatory organizations. The SEC must give prior approval for any exchange rule changes, and it has review power over exchange disciplinary actions.

Investment Companies

Under the Investment Company Act of 1940 (15 U.S.C.A. § 80a et seq.), investment companies must register with the SEC unless they qualify for a specific exception. Investment companies are companies engaged primarily in the business of investing, reinvesting, or trading in securities. They may also be companies with more than 40 percent of their assets consisting of "investment securities" (securities other than securities of majority owned subsidiaries and government securities). Investment companies include "open-end companies," commonly known as mutual funds. The SEC regulatory responsibilities under this act encompass sales load, management contracts, the composition of boards of directors, capital structure of investment companies, approval of adviser contracts, and changes in investment policy. In addition, a 1970 amendment imposed restrictions on management compensation and sales charges.

Every investment company must register with the SEC. Registration includes a statement of the company's investment policy. Moreover, an investment company must file ANNUAL REPORTS with the SEC and maintain certain accounts and records. Strict procedures safeguard against looting of investment company assets. Officers and employees with access to the company's cash and securities must be bonded, and LARCENY or EMBEZZLEMENT from an investment company is a federal crime. In addition, the Investment Company Act of 1940 imposes substantive restrictions on the activities of registered investment companies and persons connected with them and provides for a variety of SEC and private sanctions.

State Regulation

State securities laws are commonly known as BLUE SKY LAWS because of an early judicial opinion that described the purpose of the laws as preventing "speculative schemes which have no more basis than so many feet of blue sky" (*Hall v. Geiger-Jones,* 242 U.S. 539, 372 S. Ct. 217, 61 L. Ed. 480 [1917]).

In 1956, the COMMISSIONERS ON UNIFORM LAWS approved the first Uniform Securities Act. A total of 37 states adopted the uniform law, though states frequently diverted from some of its provisions. The commissioners approved a second version of the act in 1985, but only six states adopted the revised version. A third version was approved in 2002. As of May 2003, the state of Missouri had adopted the 2002 version, and two other state legislatures were considering its adoption. Changes in the 2002 Uniform Securities Act include a simplified process for registering securities; more regulation of investment professionals; expanded enforcement powers of administrative agencies; new penalties for violations of the act; and several other changes.

Despite the existence of the various versions of the Uniform Securities Act, much diversity among state securities laws still exists. Typical provisions include prohibitions against fraud in the sale of securities, registration requirements for brokers and dealers, registration requirements for securities to be sold within the state, and sanctions and civil liability under certain cir-

cumstances. In addition to complying with the registration requirements of the 1933 act, a nationwide distribution of a new issue requires compliance with state blue sky provisions as well.

A majority of states have laws regulating takeovers of companies incorporated or doing business within the state. Although the courts have invalidated some of these statutes, these laws tend to aid in preserving the status quo of management.

Securities Scandals

During the early 2000s, a number of high-profile companies became embroiled in major scandals that adversely affected consumer confidence in the companies and led to a number of investigations by the SEC. The most notorious of these scandals involved Houston-based Enron Corporation, one of the world's largest energy, commodities, and service companies. The company suffered a collapse in 2001 that resulted in the largest bankruptcy in U.S. history and numerous lawsuits alleging violations of federal securities laws.

As recent as December 2000, Enron's stock sold for $84.87 per share. However, stock prices fell throughout 2001. On October 16, 2001, the company reported losses of $638 million in the third quarter of 2001 alone. It also announced that it was reducing shareholder equity by $1.2 billion. The SEC began a formal investigation shortly thereafter regarding potential conflicts of interest within the company regarding outside partnerships. Many of the problems centered on flawed accounting practices by Enron and its accounting firm, Arthur Andersen, L.L.P. In 2002, Arthur Andersen was found guilty of obstructing justice by destroying thousands of Enron documents.

Despite the outrage surrounding the Enron fiasco, by May 2003, only 12 individuals had been charged with wrongdoing in relation to their dealings with the company. However, only seven of these individuals were insiders in the company. In August 2002, Michael Kopper, who served as an aide to Enron's chief financial officer Andrew Fastow, pleaded guilty to charges of MONEY LAUNDERING and conspiracy to commit fraud. In November 2002, the JUSTICE DEPARTMENT indicted Fastow on 78 counts, including fraud, money laundering, and OBSTRUCTION OF JUSTICE. None of the other top executives with the company, including the former chief executive officer, had been charged as of May 2003.

Enron's downfall was followed by investigations of alleged improprieties by other major companies. The major companies investigated and charged by the SEC in 2002 and 2003 included Xerox Corporation, WorldCom, Inc., and Bristol-Myers Squibb. The scandals had a major effect on the accounting profession, and the SEC was at the center of attention by those calling for enhanced disclosure requirements and enforcement mechanisms.

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CROSS-REFERENCES

Accounting; Mergers and Acquisitions; Risk Arbitrage; Stock Market; Stockholder's Derivative Suit.

SECURITIES AND EXCHANGE COMMISSION

The Securities and Exchange Commission (SEC) is the federal agency primarily responsible for administering and enforcing federal SECURITIES laws. The SEC strives to protect investors by ensuring that the securities markets are honest and fair. When necessary, the SEC enforces securities laws through a variety of means, including fines, referral for criminal prosecution, revocation or suspension of licenses, and injunctions.

Headquartered in Washington, D.C., the commission itself is comprised of five members appointed by the president; one position expires each year. No more than three members may be from one political party. With more than 900 employees, the agency has five regional and six district offices throughout the country and enjoys a generally favorable reputation.

Securities Laws

Before the October 29, 1929, STOCK MARKET crash on Wall Street, a company could issue stock without disclosing its financial status. Many bogus or severely undercapitalized corporations sold stock, eventually leading to the disastrous plunge in the market and an

ensuing panic. From the havoc wreaked by the crash came the first major piece of federal securities legislation, the Securities Act of 1933 (15 U.S.C.A. § 77a et seq.). The act regulates the primary, or new issue, market. The following year, Congress provided for the creation of the Securities and Exchange Commission when it enacted far-reaching securities legislation in the Securities Exchange Act of 1934 (15 U.S.C.A. § 78a et seq.). These two laws, along with the Trust Indenture Act of 1939 (15a U.S.C.A. §§ 77aaa–77bbbb), the Investment Company Act of 1940 (15 U.S.C.A. §§ 80-1–80a-64), the Investment Advisers Act of 1940 (15 U.S.C.A. §§ 80b-1–80b-21), and the Public Utility Holding Company Act of 1935 (15 U.S.C.A. §§ 79a–79z-6) make up the bulk of federal securities laws under the jurisdiction of the SEC.

In addition to federal statutory authority, the SEC has broad rule-making authority. It has used this power to fashion procedural and technical rules, define terms used in the laws, and make substantive rules implementing the laws. The SEC also devises forms that must be used to fulfill various requirements in the statutes and rules. Moreover, the SEC engages in a significant amount of informal lawmaking through the distribution of SEC releases containing its opinions on questions of current concern. These releases are disseminated to the press, companies and firms registered with the SEC, and other interested persons. In addition to these general public statements of policy, the SEC also responds to individual private inquiries.

Securities Act of 1933 The Securities Act of 1933 regulates the PUBLIC OFFERING of new issues. All public offerings of securities in interstate commerce or through the mails must be registered with the SEC before they can be offered and sold, subject to exemptions for specifically enumerated types of securities, such as government securities, nonpublic offerings, offerings below a certain dollar amount, and intrastate offerings. The registration provisions apply to issuers of securities or others acting on their behalf. Issuers must file a registration statement with the SEC containing financial and other pertinent data about the issuer and the securities that are being offered. The Securities Act of 1933 also prohibits fraudulent or deceptive practices in the offer or sale of securities, whether or not the securities are required to be registered.

A major part of the SEC work is to review the registration documents required by the 1933 act and determine when registration is required. Registration with the SEC is intended to allow potential investors to make an informed evaluation regarding the worth of securities. Registration does not mean that the commission approves of the issue or that the disclosures in the registration are accurate, nor does it insure an investor against loss in the purchase.

Registration requires extensive disclosure on behalf of a corporation. For example, full disclosure includes management's aims and goals; the number of shares the company is selling; what the issuer intends to do with the money; the company's tax status; contingent plans if problems arise; legal standing, such as pending lawsuits; income and expenses; and inherent risks of the enterprise. Registration consists of two parts: a prospectus, which must be furnished to every purchaser of the security, and other information and attachments that need not be furnished to purchasers but are available in SEC files for public inspection. A registration statement is generally effective 20 days after filing, but the SEC has the power to delay or suspend the effectiveness of the registration statement. When a disclosure or registration statement becomes effective, it is called a prospectus and is used to solicit orders for the security.

Securities Exchange Act of 1934 The Securities Exchange Act of 1934 transferred responsibility for administration of the 1933 act from the FEDERAL TRADE COMMISSION to the newly created SEC. The 1934 act also provided for federal regulation of trading in already issued and outstanding securities. Other provisions include disclosure requirements for publicly held corporations; prohibitions on various manipulative or deceptive devices or contrivances; SEC registration and regulation of brokers and dealers; and registration, oversight, and regulation of national securities exchanges, associations, clearing agencies, transfer agents, and securities information processors.

The SEC has broad oversight responsibilities for the self-regulatory organizations within the securities industry. For approximately 140 years prior to 1934, stock exchanges regulated their own members. Self-regulation continues to be an important component of the industry, but as of 2003 the SEC provides additional regulation, including authority to review disciplinary actions taken by a self-regulatory organization.

The 1934 act also established the Municipal Securities Rulemaking Board and conferred oversight power upon the commission. The Municipal Securities Rulemaking Board formulates rules for the municipal securities industry. The commission has the authority to approve or disapprove most proposed rules of the board.

The 1934 act seeks to provide the public with adequate information about companies with publicly traded securities. Subject to certain exemptions, disclosure requirements apply not only to companies with securities listed on national securities exchanges but to all companies with more than 500 shareholders and more than $5,000,000 in assets. Companies must file detailed statements with the SEC when first registering under the 1934 act and must provide periodic reports as prescribed by the commission.

Under the 1934 act, the SEC also regulates the solicitation of proxies. Proxies are voting solicitations allowing stockholders to participate in the annual or special meetings of stockholders without actually attending the meeting; the proxy empowers someone else to vote on behalf of the shareholder. Detailed SEC regulations delineate the form of proxies and the information that must be furnished to stockholders. A registered company must furnish each stockholder, before every stockholder meeting, a proxy statement and a proxy form on which he or she can indicate approval or disapproval of each proposal expected to be introduced at the meeting. Companies must file with the commission copies of the proxy statement and the proxy form. The SEC may comment on the proxy statement and insist on changes before it is mailed to security holders.

The WILLIAMS ACT of 1968 (Pub. L. No. 90-439, 82 Stat. 454) amended the 1934 act to address recurring problems arising in tender offers and corporate takeovers. A tender offer is a formal request that stockholders sell their shares in response to a large purchase bid; the buyer reserves the right to accept all, none, or a certain number of shares tendered for sale. A takeover occurs when a corporation assumes control of another corporation through an acquisition or merger. Pursuant to the law as amended, any person or group that takes ownership of more than 5 percent of any class of specific registered securities must file a statement within 10 days with the issuer of the security and with the SEC. This statement provides the background of the purchaser, the source of funds used in the purchase, the purpose of the purchase, the number of shares owned, and any relevant contracts, arrangements, or understandings. In addition, no person may make a tender offer unless he or she has first filed with the SEC and provided certain specific information to each offeree. A tender offer must remain open for a minimum of 20 days and at least 10 days after any change in the terms of the offer.

The Securities Act of 1934 also requires any person who beneficially owns, whether directly or indirectly, more than 10 percent of a class of certain registered securities and every officer or director of every company with specific registered securities to report to the SEC. Reports must be filed at the time the status is acquired and at the end of any month in which such a person acquires or disposes of any EQUITY securities of that company. This provision is designed to discourage short-term trading by preventing corporate insiders from unfairly using nonpublic information.

Investment Company Act of 1940 Pursuant to the Investment Company Act of 1940, investment companies must register with the SEC. Investment companies are companies engaged primarily in the business of investing, reinvesting, or trading in securities. They may also be companies with more than 40 percent of their assets consisting of investment securities, that is, securities other than those of majority-owned subsidiaries and government securities. Among other types of companies, this act covers "open-end companies," commonly known as mutual funds. The SEC regulatory responsibilities under this act encompass sales load, management contracts, the composition of boards of directors, capital structure of investment companies, approval of adviser contracts, and changes in investment policy. In addition, a 1970 amendment imposed restrictions on management compensation and sales charges.

The act prohibits various transactions by investment companies, unless the commission has first made a determination that the transaction is fair. Moreover, the act permits the SEC to bring a court action to enjoin the execution of mergers and other reorganization plans of investment companies if the plans are unfair to security holders. The SEC also has the power to impose sanctions pursuant to administrative proceedings for violation of this act and may file suit to enjoin

the acts of management officials involving breaches of fiduciary duties or personal misconduct and may bar such officials from office.

Investment Advisers Act of 1940 This act provides for SEC regulation and registration of investment advisers. The act is comparable to provisions of the 1934 act with respect to broker-dealers but is not as comprehensive. Generally speaking, an investment adviser is a person who engages in the business of advising others with respect to securities and does so for compensation. Certain fee arrangements are prohibited; adverse personal interests in a transaction must be disclosed. Moreover, the SEC may define and prohibit certain fraudulent and deceptive practices.

Other Securities Laws The Trust Indenture Act of 1939 applies to public issues of debt securities in excess of a certain amount. This law prescribes requirements to ensure the independence of indenture trustees. It also requires the exclusion of certain types of exculpatory clauses and the inclusion of certain protective clauses in indentures. In addition, the Public Utility Holding Company Act of 1935 (15 U.S.C.A. §§ 79a–79z-6) was enacted to correct abuses in the financing and operation of electric and gas public utility holding companies; SEC functions under these provisions were substantially completed by the 1950s.

In the wake of major corporate scandals involving the Enron Corporation and the Arthur Andersen accounting firm, Congress enacted the SARBANES-OXLEY ACT OF 2002 (also known as the Public Company Accounting Reform and Investor Protection Act). The act imposes new disclosure requirements when companies file financial reports. It mandates that the SEC, by rule, requires the principal executive officer and principal financial officer to certify in each annual or quarterly report the accuracy and completeness of the information contained in the report. A knowing violation of this section is punishable by up to 10 years in jail and a $1 million fine. A willful violation is punishable by up to 20 years in jail and a $5 million fine. The act authorizes the establishment of a Public Company Accounting Oversight Board to oversee the accounting profession. The SEC appoints the five-person board. The board is charged with developing standards and enforcing them with appropriate sanctions. It must file an ANNUAL REPORT with the SEC.

SEC Enforcement Authority

The commission enforces the myriad laws and regulations under its jurisdiction in a number of ways. The SEC may seek a court INJUNCTION against acts and practices that deceive investors or otherwise violate securities laws; suspend or revoke the registration of brokers, dealers, investment companies, and advisers who have violated securities laws; refer persons to the JUSTICE DEPARTMENT for criminal prosecution in situations involving criminal FRAUD or other willful violation of securities laws; and bar attorneys, accountants, and other professionals from practicing before the commission.

The SEC may conduct investigations to determine whether a violation of federal securities laws has occurred. The SEC has the power to subpoena witnesses, administer oaths, and compel the production of records anywhere in the United States. Generally, the SEC initially conducts an informal inquiry, including interviewing witnesses. This stage does not usually involve sworn statements or compulsory testimony. If it appears that a violation has occurred, SEC staff members request an order from the commission delineating the scope of a formal inquiry.

Witnesses may be subpoenaed in a formal investigation. A witness compelled to testify or produce evidence is entitled to see a copy of the order of investigation and be accompanied, represented, and advised by counsel. A witness also has the absolute right to inspect the transcript of his or her testimony. Typically the same privileges one could assert in a judicial proceeding, such as the Constitution's FOURTH AMENDMENT prohibition against unreasonable SEARCHES AND SEIZURES and the Fifth Amendment's PRIVILEGE AGAINST SELF-INCRIMINATION, apply in an SEC investigation. Proceedings are usually conducted privately to protect all parties involved, but the commission may publish information regarding violations uncovered in the investigation. In a private investigation, a targeted person has no right to appear to rebut charges. In a public investigation, however, a person must be afforded a reasonable opportunity to cross-examine witnesses and to produce rebuttal testimony or evidence, if the record contains implications of wrongdoing.

When an SEC investigation unearths evidence of wrongdoing, the commission may order an administrative hearing to determine responsibility for the violation and impose sanc-

tions. Administrative proceedings are only brought against a person or firm registered with the SEC, or with respect to a security registered with the commission. Offers of settlement are common. In these cases the commission often insists upon publishing its findings regarding violations.

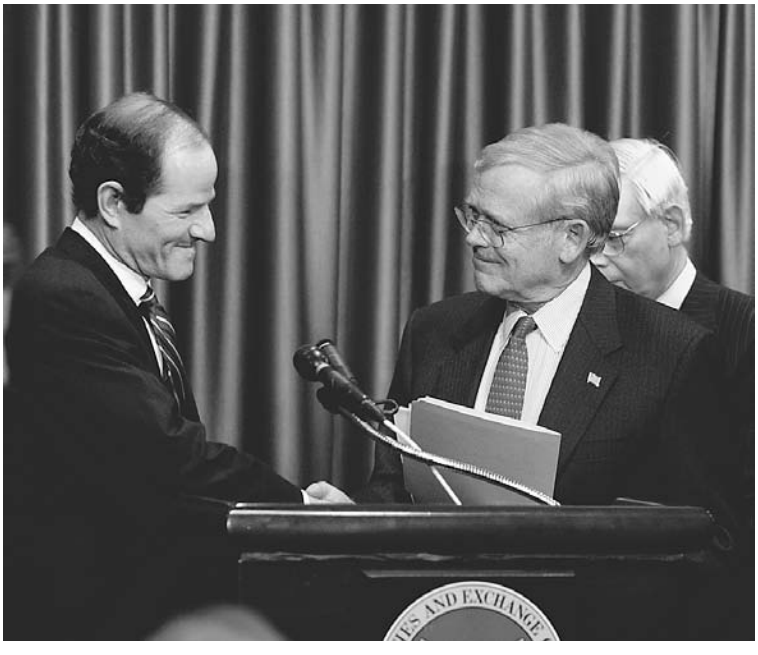
An administrative hearing is held before an ADMINISTRATIVE LAW judge, who is actually an independent SEC employee. The hearing is similar to that of a nonjury trial and may be either public or private. After the hearing the judge makes an initial written decision containing findings of fact and conclusions of law. If either party requests, or if the commission itself chooses, the commission may review the decision. The SEC must review cases involving a suspension, denial, or revocation of registration. The commission may request oral argument, will study briefs, and may modify the decision, including increasing the sanctions imposed. Possible sanctions in administrative proceedings include censure, limitations on the registrant's activities, or revocation of registration. In 1990 SEC powers were expanded to include the authority to impose civil penalties of up to $500,000, to order disgorgement of profits, and to issue cease and desist orders against persons violating or about to violate securities laws, whether or not the persons are registered with the SEC.

The U.S. Court of Appeals for the District of Columbia or another applicable circuit court of appeals has jurisdiction to review most final orders from an SEC administrative proceeding. Certain actions by the commission are not reviewable.

The SEC may request an injunction from a federal district court if future securities law violations are likely or if a person poses a continuing menace to the public. An injunction may include a provision that any future violation of law constitutes CONTEMPT of court.

The SEC may request further relief, such as turning over profits or making an offer to rescind the profits gained from an insider trading transaction. In cases of pervasive corporate mismanagement, the SEC may obtain appointment of a receiver or of independent directors and special counsel to pursue claims on behalf of the corporation.

Willful violations may be punished by fines and imprisonment. The SEC refers such cases to the Department of Justice for criminal prosecution. "Willfulness" means only that the defendant intended the act, not that he knew that it was a violation of securities laws.



In April 2003, William Donaldson (right), Securities and Exchange Commission chairman, and Eliot Spitzer, New York's attorney general, announce the $1.4 billion settlement of investigations of ten Wall Street firms.

AP/WIDE WORLD PHOTOS

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CROSS-REFERENCES

Administrative Law and Procedure; Bonds; Mergers and Acquisitions; Securities.

SECURITY

Protection; assurance; indemnification.

The term *security* is usually applied to a deposit, lien, or mortgage voluntarily given by a debtor to a creditor to guarantee payment of a debt. Security furnishes the creditor with a resource to be sold or possessed in case of the debtor's failure to meet his or her financial obligation. In addition, a person who becomes a surety for another is sometimes referred to as a "security."

A sample security agreement

SECURITY AGREEMENT

AGREEMENT made this _____ (month & day), _____ (year) between _____ ("Debtor"), and _____ ("Secured Party").

1. SECURITY INTEREST. Debtor grants to Secured Party a security interest in all inventory, equipment, appliances, furnishings, and fixtures now or hereafter placed upon the premises known as _____, located at _____ (the "Premises") or used in connection therewith and in which Debtor now has or hereafter acquires any right and the proceeds therefrom. As additional collateral, Debtor assigns to Secured Party, a security interest in all of its right, title, and interest to any trademarks, trade names, contract rights, and leasehold interests in which Debtor now has or hereafter acquires. The Security Interest shall secure the payment and performance of Debtor's promissory note of even date herewith in the principal amount of _____ ($_____) and the payment and performance of all other liabilities and obligations of Debtor to Secured Party of every kind and description, direct or indirect, absolute or contingent, due or to become due now existing or hereafter arising.

2. COVENANTS. Debtor hereby warrants and covenants:

   (a) The collateral will be kept at _____, and that the collateral will not be removed from the Premises other than in the ordinary course of business.

   (b) The Debtor's place of business is _____, and Debtor will immediately notify Secured Party in writing of any change in or discontinuance of Debtor's place of business.

   (c) The parties intend that the collateral is and will at all times remain personal property despite the fact and irrespective of the manner in which it is attached to realty.

   (d) The Debtor will not sell, dispose, or otherwise transfer the collateral or any interest therein without the prior written consent of Secured Party, and the Debtor shall keep the collateral free from unpaid charges (including rent), taxes, and liens.

   (e) The Debtor shall execute alone or with Secured Party any Financing Statement or other document or procure any document, and pay the cost of filing the same in all public offices wherever filing is deemed by Secured Party to be necessary.

   (f) Debtor shall maintain insurance at all times with respect to all collateral against risks of fire, theft, and other such risks and in such amounts as Secured Party may require. The policies shall be payable to both the Secured Party and the Debtor as their interests appear and shall provide for ten (10) days written notice of cancellation to Secured Party.

   (g) The Debtor shall make all repairs, replacements, additions, and improvements necessary to maintain any equipment in good working order and condition.

   At its option, Secured Party may discharge taxes, liens, or other encumbrances at any time levied or placed on the collateral, may pay rent or insurance due on the collateral and may pay for the maintenance and preservation of the collateral. Debtor agrees to reimburse Secured Party on demand for any payment made, or any expense incurred by Secured Party pursuant to the foregoing authorization.

3. DEFAULT. The Debtor shall be in default under this Agreement upon the happening of any of the following:

   (a) Any misrepresentation in connection with this Agreement on the part of the Debtor.

   (b) Any noncompliance with or nonperformance of the Debtor's obligations under the Note or this Agreement.

   (c) If Debtor is involved in any financial difficulty as evidenced by (i) an assignment for the benefit of creditors, or (ii) an attachment or receivership of assets not dissolved within thirty (30) days, or (iii) the institution of Bankruptcy proceedings, whether voluntary or involuntary, which is not dismissed within thirty (30) days from the date on which it is filed.

   Upon default and at any time thereafter, Secured Party may declare all obligations secured hereby immediately due and payable and shall have the remedies of a Secured Party under the Uniform Commercial Code. Secured Party may require the Debtor to make it available to Secured Party at a place which is mutually convenient.

   No waiver by Secured Party of any default shall operate as a waiver of any other default or of the same default on a future occasion. This Agreement shall inure to the benefit of and bind the heirs, executors, administrators, successors, and assigns of the parties. This Agreement shall have the effect of an instrument under seal.

Date: _____ By: _____

_____
Signature

NOTE:
FILE FINANCING STATEMENTS IN OR WITHIN FIVE (5) DAYS FROM DATE.

SECURITY COUNCIL

See UNITED NATIONS.

SECURITY DEPOSIT

Money aside from the payment of rent that a landlord requires a tenant to pay to be kept separately in a fund for use should the tenant cause damage to the premises or otherwise violate terms of the lease.

A security deposit is usually in the amount of one or two months' rent. It usually must be paid at the time that the LANDLORD AND TENANT sign the lease. The landlord must place the funds in an escrow account and give the tenant any interest generated by such funds. Upon the termination of the lease, the landlord must return the security deposit to the tenant if no violations of the lease occurred. He or she may keep the security deposit or portion thereof for the amount of any damages, which can be proven, pursuant to the terms of the lease.

CROSS-REFERENCES

Landlord and Tenant.

SEDITION

A revolt or an incitement to revolt against established authority, usually in the form of TREASON *or* DEFAMATION *against government.*

Sedition is the crime of revolting or inciting revolt against government. However, because of the broad protection of free speech under the FIRST AMENDMENT, prosecutions for sedition are rare. Nevertheless, sedition remains a crime in the United States under 18 U.S.C.A. § 2384 (2000), a federal statute that punishes seditious conspiracy, and 18 U.S.C.A. § 2385 (2000), which outlaws advocating the overthrow of the federal government by force. Generally, a person may be punished for sedition only when he or she makes statements that create a CLEAR AND PRESENT DANGER to rights that the government may lawfully protect (SCHENCK V. UNITED STATES, 249 U.S. 47, 39 S. Ct. 247, 63 L. Ed. 470 [1919]).

The crime of seditious conspiracy is committed when two or more persons in any state or U.S. territory conspire to levy war against the U.S. government. A person commits the crime of advocating the violent overthrow of the federal government when she willfully advocates or teaches the overthrow of the government by force, publishes material that advocates the overthrow of the government by force, or organizes persons to overthrow the government by force. A person found guilty of seditious conspiracy or advocating the overthrow of the government may be fined and sentenced to up to 20 years in prison. States also maintain laws that punish similar advocacy and conspiracy against the state government.

Governments have made sedition illegal since time immemorial. The precise acts that constitute sedition have varied. In the United States, Congress in the late eighteenth century believed that government should be protected from "false, scandalous and malicious" criticisms. Toward this end, Congress passed the Sedition Act of 1798, which authorized the criminal prosecution of persons who wrote or spoke falsehoods about the government, Congress, the president, or the vice president. The act was to expire with the term of President JOHN ADAMS.

The Sedition Act failed miserably. THOMAS JEFFERSON opposed the act, and after he was narrowly elected president in 1800, public opposition to the act grew. The act expired in 1801, but not before it was used by President Adams to prosecute numerous public supporters of Jefferson, his challenger in the presidential election of 1800. One writer, Matthew Lyon, a congressman from Vermont, was found guilty of seditious libel for stating, in part, that he would not be the "humble advocate" of the Adams administration when he saw "every consideration of the public welfare swallowed up in a continual grasp for power, in an unbounded thirst for ridiculous pomp, foolish adulation, and selfish avarice" (*Lyon's Case,* 15 F. Cas. 1183 [D. Vermont 1798] [No. 8646]). Vermont voters reelected Lyon while he was in jail. Jefferson, after winning the election and assuming office, pardoned all persons convicted under the act.

In the 1820s and 1830s, as the movement to abolish SLAVERY grew in size and force in the South, Southern states began to enact seditious LIBEL laws. Most of these laws were used to prosecute persons critical of slavery, and they were abolished after the Civil War. The federal government was no less defensive; Congress enacted seditious conspiracy laws before the Civil War aimed at persons advocating secession from the United States. These laws were the precursors to the present-day federal seditious conspiracy statutes.

In the late nineteenth century, Congress and the states began to enact new limits on speech,

most notably statutes prohibiting OBSCENITY. At the outset of WORLD WAR I, Congress passed legislation designed to suppress antiwar speech. The ESPIONAGE ACT OF 1917 (ch. 30, tit. 1, § 3, 40 Stat. 219), as amended by ch. 75, § 1, 40 Stat 553, put a number of pacifists into prison. Socialist leader EUGENE V. DEBS was convicted for making an antiwar speech in Canton, Ohio (*Debs v. United States,* 249 U.S. 211, 39 S. Ct. 252, 63 L. Ed. 566 [1919]). Charles T. Schenck and Elizabeth Baer were convicted for circulating to military recruits a leaflet that advocated opposition to the draft and suggested that the draft violated the Thirteenth Amendment's ban on INVOLUNTARY SERVITUDE (*Schenck v. United States,* 249 U.S. 47, 39 S. Ct. 247, 63 L. Ed. 470 [1919]).

The U.S. Supreme Court did little to protect the right to criticize the government until after 1927. That year, Justice LOUIS D. BRANDEIS wrote an influential concurring opinion in *Whitney v. California,* 274 U.S. 357, 47 S. Ct. 641, 71 L. Ed. 1095 (1927), that was to guide First Amendment JURISPRUDENCE for years to come. In *Whitney* the High Court upheld the convictions of political activists for violation of federal anti-syndicalism laws, or laws that prohibit the teaching of crime. In his concurring opinion, Brandeis maintained that even if a person advocates violation of the law, "it is not a justification for denying free speech where the advocacy falls short of incitement and there is nothing to indicate that the advocacy would be immediately acted on." Beginning in the 1930s, the Court became more protective of political free speech rights.

The High Court has protected the speech of racial supremacists and separatists, labor organizers, advocates of racial INTEGRATION, and opponents of the draft for the VIETNAM WAR. However, it has refused to declare unconstitutional all sedition statutes and prosecutions. In 1940, to silence radicals and quell Nazi or communist subversion during the burgeoning Second World War, Congress enacted the SMITH ACT (18 U.S.C.A. §§ 2385, 2387), which outlawed sedition and seditious conspiracy. The Supreme Court upheld the constitutionality of the act in *Dennis v. United States,* 341 U.S. 494, 71 S. Ct. 857, 95 L. Ed. 1137 (1951).

Sedition prosecutions are extremely rare, but they do occur. Shortly after the 1993 bombing of the World Trade Center in New York City, the federal government prosecuted Sheik Omar Abdel Rahman, a blind Egyptian cleric living in New Jersey, and nine codefendants on charges of seditious conspiracy. Rahman and the other defendants were convicted of violating the seditious conspiracy statute by engaging in an extensive plot to wage a war of TERRORISM against the United States. With the exception of Rahman, they all were arrested while mixing explosives in a garage in Queens, New York, on June 24, 1993.

The defendants committed no overt acts of war, but all were found to have taken substantial steps toward carrying out a plot to levy war against the United States. The government did not have sufficient evidence that Rahman participated in the actual plotting against the government or any other activities to prepare for terrorism. He was instead prosecuted for providing religious encouragement to his coconspirators. Rahman argued that he only performed the function of a cleric and advised followers about the rules of Islam. He and the others were convicted, and on January 17, 1996, Rahman was sentenced to life imprisonment by Judge Michael Mukasey.

Following the SEPTEMBER 11TH ATTACKS of 2001, the federal government feared that terrorist networks were very real threats, and that if left unchecked, would lead to further insurrection. As a result, Congress enacted the Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT) Act of 2001, Pub. L. No. 107-56, 115 Stat. 272. Among other things, the act increases the president's authority to seize the property of individuals and organizations that the president determines have planned, authorized, aided, or engaged in hostilities or attacks against the United States.

The events of September 11 also led to the conviction of at least one American. In 2001, U.S. officials captured John Philip Walker Lindh, a U.S. citizen who had trained with terrorist organizations in Pakistan and Afghanistan. Lindh, who became known as the "American Taliban," was indicted on ten counts, including conspiracy to murder U.S. nationals. In October 2002, he was sentenced to 20 years in prison.

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CROSS-REFERENCES

Cold War; Communism; Freedom of Speech; Socialism.

SEDITIOUS LIBEL

Written or spoken words, pictures, signs, or other forms of communication that tend to defame, discredit, criticize, impugn, embarrass, challenge, or question the government, its policies, or its officials; speech that advocates the overthrow of the government by force or violence or that incites people to change the government by unlawful means.

The crime of seditious libel was used by the British Crown to stifle political opponents and consolidate power in the seventeenth and eighteenth centuries. English juries were permitted only to decide the factual issue of whether or not the defendant had communicated the speech in public; judges decided the legal issue of whether the communication constituted seditious LIBEL. Truth was not a defense, and malicious intent to cause SEDITION was not an element of the crime.

In the United States, legal experts disputed whether the English COMMON LAW of seditious libel remained intact after the American Revolution. FEDERALIST PARTY members in Congress concluded that it did, enacting the Sedition Act of 1798, which made it a crime to "write, print, utter or publish . . . any false, scandalous and malicious" words against the government, the president, or Congress. The U.S. Supreme Court narrowed the debate in NEW YORK TIMES CO. V. SULLIVAN, 376 U.S. 254, 84 S.Ct. 710, 11 L.Ed.2d 686 (U.S. 1964), holding that the FIRST AMENDMENT forbids public officials from recovering money damages for libel in civil court, unless they can prove that the allegedly injurious speech was defamatory, false, and made with "actual malice," or in reckless disregard of the truth.

CROSS-REFERENCES

Censorship; Freedom of Speech; Freedom of the Press; Libel and Slander.

SEDUCTION

The act by which a man entices a woman to have unlawful sexual relations with him by means of persuasions, solicitations, promises, or bribes without the use of physical force or violence.

At COMMON LAW, a woman did not ordinarily have the right to sue on her own behalf; the right to sue for seduction belonged to a father who could bring an action against a man who had sexual relations with his daughter. A woman who was seduced by a marriage promise could sue for breach of promise, and if she became sexually involved with a man due to force or duress, she might be able to sue for rape or assault. Regardless of whether the woman was a legal adult or an infant, seduction was considered to be an injury to her father.

Seduction suits are rarely brought in modern times and have been eliminated by some states, primarily because they publicize the victim's humiliation.

CROSS-REFERENCES

Breach of Marriage Promise.

SEGREGATION

The act or process of separating a race, class, or ethnic group from a society's general population.

Segregation in the United States has been practiced, for the most part, on African Americans. Segregation by law, or de jure segregation, of African Americans was developed by state legislatures and local lawmaking bodies in southern states shortly after the Civil War. De facto segregation, or inadvertent segregation, continues to exist in varying degrees in both northern and southern states.

De facto segregation arises from social and economic factors and cannot be traced to official government action. For example, ZONING laws that forbid multifamily housing can have the effect of excluding all but the wealthiest persons from a particular community.

De jure segregation was instituted in the southern states in the late nineteenth and early twentieth centuries. The state legislatures in the

Yonkers, New York, Battles Segregation

In 1980, the **JUSTICE DEPARTMENT** and the Yonkers branch of the National Association of the Advancement of Colored People (**NAACP**) filed a civil lawsuit against the city of Yonkers, New York, the Yonkers School Board, and the Yonkers Community Development Agency, charging that the city had engaged in systematic segregation for the previous 30 years. The plaintiffs alleged that the city government had disproportionately restricted new subsidized housing projects to certain areas of the city already heavily populated by minorities. The case marked the first time racial segregation charges were levied against housing and school officials in the same suit.

After years of preparation and a three-month trial, the U.S. District Court for the Southern District of New York found that the defendants had in fact segregated the city's housing and schools based on racial identity. *United States v. Yonkers Board of Education* 624 F.Supp. 1276 (S.D.N.Y. 1985). The city was ordered to designate sites for public housing by November 1986, but the city refused to comply during the appeals process. The U.S. Court of Appeals for the Second Circuit upheld the **RACIAL DISCRIMINATION** rulings (837 F.2d 1181 [2nd Cir. 1987]) but did not resolve the compliance issue. The U.S. Supreme Court denied the city's petition for certiorari, and in January 1988 the parties agreed to a **CONSENT DECREE** that established a new housing plan. The Yonkers city council voted to approve the decree, which was submitted to the trial court and accepted. The city was to pass legislation outlining the new housing plan within 90 days.

The city did not pass the legislation by the deadline, and the **JUSTICE DEPARTMENT** and the Yonkers NAACP submitted a "Long-Term Plan Order" to the trial court, which ordered the city to pass the legislation by August 1, 1988. The city council did vote, but the measure was defeated 4–3. The trial court held the city and the council in **CONTEMPT**, a move affirmed by the Second Circuit. The city requested a stay of the sanctions from the Supreme Court. The stay was granted, but only for the individual council members; the city incurred stiff fines totaling nearly $1 million per day. The council, by a vote of 5–2, enacted an Affordable Housing Ordinance on September 9, 1988. In 1990, the Supreme Court ruled 5–4 that the trial court had the right to sanction the city, but it had overstepped its bounds in sanctioning the individual council members. *Spallone v. United States,* 493 U.S. 265, 111 S. Ct 625, 107, L. Ed. 2d 644 (1990).

In 1993, the Yonkers Board of Education and the Yonkers NAACP reactivated the original case, alleging that while the city schools were no longer pursuing policies that were pursued or implemented in a racially-identifiable manner, vestiges of segregation remained. The plaintiffs included the state of New York in this new suit because, they believed, the state had exacerbated the problem by continually underfunding Yonkers. The trial court agreed with the plaintiffs about the segregation and found that the city needed additional money to carry out meaningful desegregation. The court refused to hold the state of New York fiscally responsible because the state had never affirmatively participated in the segregation. *United States v. Yonkers Board of Education,* 880 F. Supp. 212 (S.D.N.Y. 1995).

The Second Circuit appeals court vacated the trial court's decision regarding the state's fiscal responsibility, holding that the state had a fiscal obligation to alleviate segregation in Yonkers. *United States v. Yonkers Board of Education,* 96 F.3d 600 (2d Cir. 1996), cert. Denied 117 U.S. 2479, 138 L. Ed.2d 988 (1996). Still another trial ensued. The state attempted to prove that there were no vestiges of segregation in the Yonkers public schools, but the court thought otherwise and ordered the city and the state to share in the costs of a second desegregation plan—devised by the court—called the "Educational Improvement Plan." *United States v. Yonkers Board of Education,* 984 F. Supp 687, 123 Ed. Law Rep 544 (1997) (S.D.N.Y.).

The next several years saw little agreement over progress or culpability, but the parties pushed on in the hope of reaching common ground. Early in 2002 a pact was announced that would provide $300 million in state funding to the school district over a five-year period, to be used to fund programs that boost

academic achievement for all city students. Under the terms of the agreement, a monitor was supposed to be assigned to ensure that the school district was living up to its promises. As of March 2003 the district had been unsuccessful in filling the position, which led some observers to question its commitment to the pact.

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CROSS-REFERENCES

Civil Rights Acts; Discrimination.

southern states accomplished de jure segregation by creating separate facilities, services, and areas for African Americans. Blacks were separated from the rest of society in virtually every facility, service, and circumstance, including schools, public drinking fountains, public lavatories, restaurants, theaters, hotels and motels, welfare services, hospitals, CEMETERIES, residences, military facilities, and all modes of transportation.

The quality of these facilities and services was invariably inferior to the facilities and services used by the rest of the communities. Laws in many states also prohibited miscegenation, or marriage between racially mixed couples. If an African American failed to observe segregation and used facilities reserved for white persons, she could be arrested and prosecuted.

In 1896 the U.S. Supreme Court gave explicit approval to segregation in PLESSY V. FERGUSON, 163 U.S. 537, 16 S. Ct. 1138, 41 L. Ed. 256 (1896). The High Court declared in *Plessy* that segregation did not violate the EQUAL PROTECTION CLAUSE of the U.S. Constitution's FOURTEENTH AMENDMENT if the separate facilities and services for African Americans were equal to the facilities and services for white persons. This SEPARATE-BUT-EQUAL doctrine survived until 1954.

That year, in BROWN V. BOARD OF EDUCATION, 347 U.S. 483, 74 S. Ct. 686, 98 L. Ed. 873 (1954), the Court reversed the *Plessy* decision. In *Brown,* the Court ruled that state-sponsored segregation did violate the guarantee of equal protection under the laws provided to all citizens in the Fourteenth Amendment. The *Brown* case concerned only the segregation of schools, but the Court's rationale was used throughout the 1950s to strike down all the remaining state and local segregation laws.

In the 1960s Congress took steps to curtail segregation in private life. The CIVIL RIGHTS ACT OF 1964 (42 U.S.C.A. § 2000a et seq.) forbade segregation in all privately owned public facilities subject to any form of federal control under the Interstate Commerce Clause in Article I, Section 8, Clause 3, of the U.S. Constitution. Facilities covered by the act included restaurants, hotels, retail stores, and recreational facilities. States began to follow suit by passing laws that prohibited discrimination in housing and employment. In 1968 the Supreme Court ruled that a seller or lessor of property could not refuse to sell or rent to a person based on that person's race or color (*Jones v. Alfred H. Mayer Co.,* 392 U.S. 409, 88 S. Ct. 2186, 20 L. Ed. 2d 1189 [1968]).

In 1971 the Court held in SWANN V. CHARLOTTE-MECKLENBURG BOARD OF EDUCATION, 402 U.S. 1, 91 S. Ct. 1267, 28 L. Ed. 2d 554 (1971), that busing schoolchildren to different schools was an acceptable means of combating de facto segregation in schools. However, subsequent court decisions have rejected the forced INTEGRATION of predominantly white suburban school districts with largely black urban districts, and public education remains effectively segregated in many areas of the United States.

CROSS-REFERENCES

Civil Rights; Integration; Jim Crow Laws; School Desegregation. See also primary documents in "From Segregation to Civil Rights" section of Appendix.

SEISIN

See LIVERY OF SEISIN.

SEIZURE

Forcible possession; a grasping, snatching, or putting in possession.

In CRIMINAL LAW, a seizure is the forcible taking of property by a government law enforcement official from a person who is suspected of violating, or is known to have violated, the law. A SEARCH WARRANT usually must be presented to the person before his property is seized, unless the circumstances of the seizure justify a warrantless SEARCH AND SEIZURE. For example, the police may seize a pistol in the coat pocket of a person arrested during a ROBBERY without presenting a warrant because the search and seizure is incident to a lawful arrest. Certain federal and state laws provide for the seizure of particular property that was used in the commission of a crime or that is illegal to possess, such as explosives used in violation of federal law or illegal narcotics.

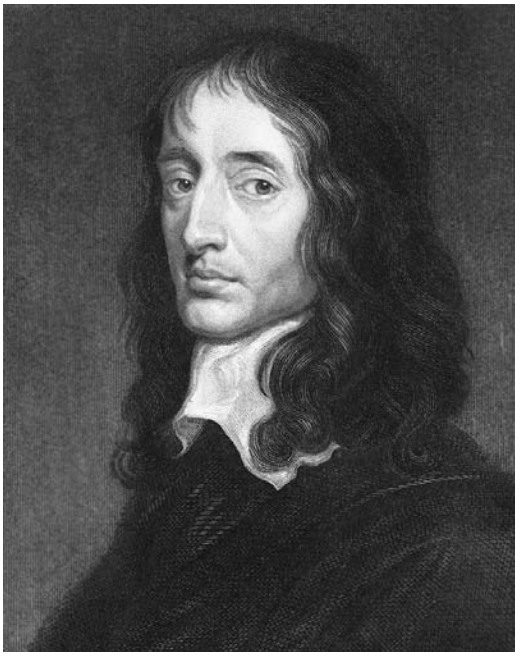
In the law of civil practice, the term refers to the act performed by an officer of the law under court order when she takes into custody the property of a person against whom a court has rendered a judgment to pay a certain amount of money to another. The property is seized so that it can be sold under the authority of the court to satisfy the judgment. Property can also be seized if a substantial likelihood exists that a defendant is concealing or removing property from the jurisdiction of the court so that in the event a judgment is rendered against her, the property cannot be used to pay the judgment. By attaching or seizing a defendant's property, the court prevents her from perpetrating a FRAUD on the courts.

"IGNORANCE OF THE LAW EXCUSES NO MAN; NOT ALL MEN KNOW THE LAW, BUT BECAUSE IT IS AN EXCUSE EVERY MAN WILL PLEAD, AND NO MAN CAN TELL HOW TO CONFUTE HIM."
—JOHN SELDEN

♦ SELDEN, JOHN

John Selden was a brilliant lawyer, author, politician, legal analyst, and historian in seventeenth-century England. John Milton, the famed poet and a contemporary of Selden, called Selden "the chief of learned men reputed in this Land."

Selden was born in Salvington, Sussex, England, in 1584. His baptismal record says only, "John, the sonne of John Selden, ye ministrell, was baptized the xxth day of December," the brevity of which indicating Selden likely was born within the customary four days of the ceremony but leaving in question the exact day of birth. The elder John Selden was a musician—a minstrel—who married Margaret Baker, the only child and, therefore, heir of a landed nobleman. The Selden family improved its status further so that by 1609 they held more than 80 acres of land and could afford to send their only surviving child to university.



John Selden. BETTMANN/CORBIS

After attending Oxford University and the Inns of Court, Selden was called to the bar in 1612, and then apprenticed for at least another two years. He published a number of works about English LEGAL HISTORY before he was admitted to the bar, and he continued to write while practicing law. His earliest work was a study of Syrian mythology in the Bible, *De dis Syris,* a treatise finished in 1605 and published in 1617. It established his reputation as of one Europe's leading scholars on Asian history.

History of Tithes, a masterpiece of research on the history of ENGLISH LAW published in 1618, is by far his most influential work. In *History of Tithes,* Selden argued that the clergy had a legal but not a divine right to tithes, or 10 percent of a person's income. Selden also claimed that tithes were not ordained by God's law. This conclusion was controversial because it implicitly denied the divine right of kings, or the notion that monarchs were descended from rulers appointed by God, for it implied a separation of state law and divine law. The divine right of kings supported the rule that kings could not forfeit their right to the throne

through misconduct, but *Tithes* put this rule in doubt.

Three years after the publication of *Tithes,* Selden became embroiled in another controversy when he helped Parliament draft the House of Commons Protestation, a complaint to the Crown about the rights and privileges of the House of Commons. Selden professed the belief that Parliament did not owe its powers to the Crown and that the independence of Parliament was rooted in the lawful and traditional heritage of the English people. This belief, argued Selden, was supported by early records that showed that parliamentary government was an ancient Anglo-Saxon custom. King James I imprisoned Selden in the Tower of London for five weeks for what he deemed treasonous statements.

In 1623 Selden was elected to the House of Commons. He promptly earned a reputation for candor and conviction in his support of religious and civil freedoms. He also became known for his opposition to the taxation of cargo by its weight. Selden was so persuasive that the House of Commons passed a resolution prohibiting the tax. The resolution did not win the approval of King Charles I, and Selden was sent to the Tower of London for another brief stay.

Selden continued to publish works that used historical analysis to explain or correct England's order of affairs. Along with predecessor SIR EDWARD COKE (1552–1634) and protégé Sir Matthew Hale (1609–76), Selden helped provide an intellectual basis for the early seventeenth-century parliamentary revolution against the power of the Crown. In 1640 Selden became a member of the Long Parliament, a special parliament created in that year by Charles I, who had governed without a parliament for 11 years. Ironically, Selden spent his later years keeping the rolls and records for the Tower of London.

Selden's most famous work was published after his death. This was *Table Talk,* a survey of Selden's witty conversations with famous friends such as poet Ben Jonson. Published in 1689, *Table Talk* presented a more relaxed, colorful image of Selden that was not apparent in his scholarly works. Selden's emphasis on the importance of history lives on through the SELDEN SOCIETY, a group that promotes the study of English legal history.

Selden died in London on November 30, 1654.

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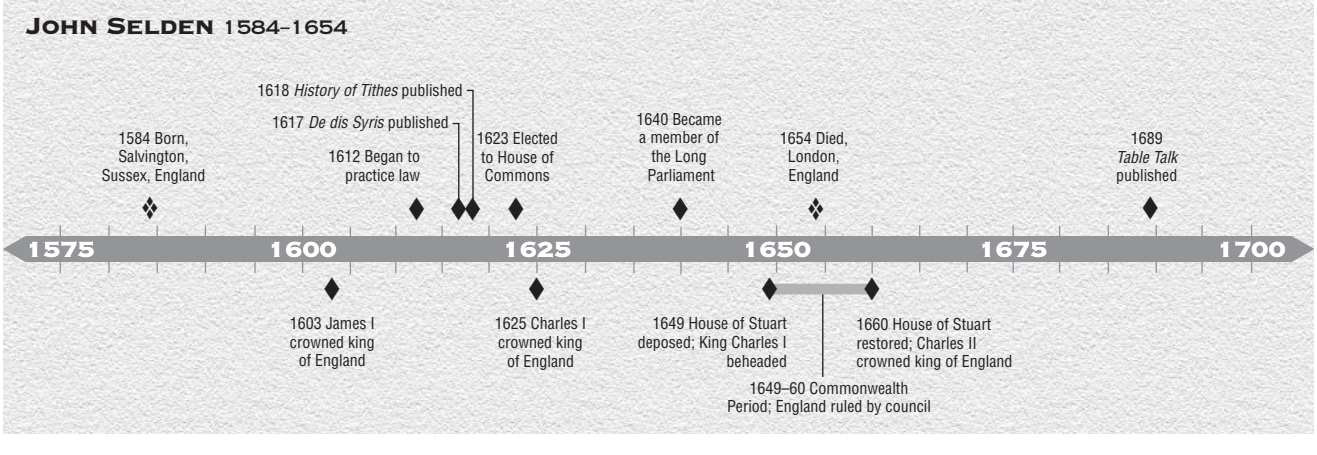
SELDEN SOCIETY

The Selden Society is an association of legal historians that publishes scholarly works on the LEGAL HISTORY of England. It was founded in 1886 by English legal professionals and scholars, including the renowned historian FREDERIC WILLIAM MAITLAND. Named for the revered seventeenth-century legal historian JOHN SELDEN, the Selden Society exists to encourage the study and advance the knowledge of the history of ENGLISH LAW. Selden Society members include legal historians, lawyers, and law librarians, primarily from English-speaking countries.



The principal activity of the Selden Society is the publication of an annual series on the history of English law. This series is of considerable value to courts in countries with legal systems that have borrowed heavily from the English legal system. The Selden Society also publishes books about various legal topics and holds lectures and symposiums about historical topics of legal significance.

FURTHER READINGS

Selden Society Web site. Available online at <www.selden-society.qmw.ac.uk> (accessed January 12, 2004).

SELECTIVE PROSECUTION

Criminal prosecution based on an unjustifiable standard such as race, religion, or other ARBITRARY *classification.*

Selective prosecution is the enforcement or prosecution of criminal laws against a particular class of persons and the simultaneous failure to administer criminal laws against others outside the targeted class. The U.S. Supreme Court has held that selective prosecution exists where the enforcement or prosecution of a CRIMINAL LAW is "directed so exclusively against a particular class of persons . . . with a mind so unequal and oppressive" that the administration of the criminal law amounts to a practical denial of EQUAL PROTECTION of the law (*United States v. Armstrong,* 517 U.S. 456, 116 S. Ct. 1480, 134 L. Ed. 2d 687 [1996], quoting YICK WO V. HOPKINS, 118 U.S. 356, 6 S. Ct. 1064, 30 L. Ed. 220 [1886]). Specifically, police and prosecutors may not base the decision to arrest a person for, or charge a person with, a criminal offense based on "an unjustifiable standard such as race, religion, or other arbitrary classification" (*United States v. Armstrong,* quoting *Oyler v. Boles,* 368 U.S. 448, 82 S. Ct. 501, 7 L. Ed. 2d 446 [1962]).

Selective prosecution is a violation of the constitutional guarantee of equal protection for all persons under the law. On the federal level, the requirement of equal protection is contained in the DUE PROCESS CLAUSE of the FIFTH AMENDMENT to the U.S. Constitution. The Equal Protection Clause of the FOURTEENTH AMENDMENT extends the prohibition on selective prosecution to the states. The equal protection doctrine requires that persons in similar circumstances must receive similar treatment under the law.

Selective prosecution cases are notoriously difficult to prove. Courts presume that prosecutors have not violated equal protection requirements, and claimants bear the burden of proving otherwise. A person claiming selective prosecution must show that the prosecutorial policy had a discriminatory effect and that it was motivated by a discriminatory purpose. To demonstrate a discriminatory effect, a claimant must show that similarly situated individuals of a different class were not prosecuted. For example, a person claiming selective prosecution of white Protestants must produce evidence that shows that white Protestants were prosecuted for a particular crime and that persons outside this group could have been prosecuted but were not.

The prohibition of selective prosecution may be used to invalidate a law. In *Yick Wo v. Hopkins,* the U.S. Supreme Court struck down a San Francisco ordinance that prohibited the operation of laundries in wooden buildings. San Francisco authorities had used the ordinance to prevent Chinese from operating a laundry business in a wooden building. Yet the same authorities had granted permission to eighty individuals who were not Chinese to operate laundries in wooden buildings. Because the city enforced the ordinance only against Chinese-owned laundries, the Court ordered that Yick Wo, who had been imprisoned for violating the ordinance, be set free.

CROSS-REFERENCES

Criminal Procedure.

SELECTIVE SERVICE SYSTEM

The Selective Service System is responsible for supplying U.S. armed forces with people in the event of a national emergency. It is an independent agency of the federal government's EXECUTIVE BRANCH.

The agency was established in its first form in 1917 and is authorized by the Military Selective Service Act (50 U.S.C.A. app. 451–471a). This act, as amended, requires male citizens of the United States, and all other male persons who are in the United States and who are between the ages of eighteen and a half and twenty-six, to register for possible military service. It exempts active members of the armed forces, personnel of foreign embassies and consulates, and nonimmigrant ALIENS.

All registrants between the ages of eighteen and a half and twenty-six, except those who are deferred, are liable for training and service in the armed forces should Congress decide to conscript registrants. Those who have received a deferral are liable for training and service until age thirty-five. Aliens are not liable for training and service until they have remained in the United States for more than one year. In the event of the CONSCRIPTION of registrants into the armed forces, conscientious objectors are required to do civilian work in place of conscription.

In 1980 President JIMMY CARTER issued a proclamation (Proclamation 4771, July 2, 1980) requiring all males who were born after January 1, 1960, and who have attained age eighteen, to register with the Selective Service. Registration is conducted at U.S. post offices and at U.S. embassies and consulates outside the United States. The Selective Service maintains several field offices in addition to its headquarters in Arlington, Virginia.

CROSS-REFERENCES

Armed Services; Solomon Amendment.

SELECTMAN OR SELECTWOMAN

A municipal officer elected by a town in the New England states.

A selectman possesses executive authority and is usually empowered to transact the general public business of the town. The "first selectman" usually holds a position equivalent to the position held by a mayor.

SELF-DEALING

The conduct of a trustee, an attorney, or other fiduciary that consists of taking advantage of his or her position in a transaction and acting for his or her own interests rather than for the interests of the beneficiaries of the trust or the interests of his or her clients.

Self-dealing is wrongful conduct by a fiduciary. A fiduciary is a person who has duties of GOOD FAITH, trust, special confidence, and candor toward another person. Examples of fiduciary relationships include attorneys and their clients, doctors and their patients, investment bankers and their clients, trustees and trust beneficiaries, and corporate directors and stockholders. Fiduciaries have expert knowledge and skill, and they are paid to apply that knowledge and skill for the benefit of another party. Under the law, a fiduciary relationship imposes certain duties on fiduciaries because a fiduciary is in a special position of control over an important aspect of another person's life.

One important duty of a fiduciary is to act in the best interests of the benefited party. When a fiduciary engages in self-dealing, she breaches this duty by acting in her own interests instead of the interests of the represented party. For example, self-dealing occurs when a trustee uses money from the trust account to make a loan to a business in which he has a substantial personal interest. A fiduciary may make such a transaction with the prior permission of the trust beneficiary, but if the trustee does not obtain permission, the beneficiary can void the transaction and sue the fiduciary for any monetary losses that result.

The laws pertaining to self-dealing are found mainly in case law, judicial opinions, and some statutes. Case law authorizes the recovery of monetary damages from the self-dealing fiduciary.

One of the most notable statutes relating to self-dealing is 26 U.S.C.A. § 4941 (1969), which allows the INTERNAL REVENUE SERVICE to impose a five percent excise tax on each act of self-dealing by a disqualified person with a private, nonprofit foundation. Disqualified persons include substantial contributors to the foundation, foundation managers, owners of more than 20 percent of the foundation's interest, and members of the family of disqualified persons. If the self-dealing act is not timely corrected, the IRS may impose on the self-dealer an additional 200 percent excise tax on the amount of the transaction.

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Attorney Misconduct.

SELF-DEFENSE

The protection of one's person or property against some injury attempted by another.

Self-defense is a defense to certain criminal charges as well as to some civil claims. Under both CRIMINAL LAW and TORT LAW, self-defense is commonly asserted in cases of HOMICIDE, ASSAULT AND BATTERY, and other crimes involving the attempted use of violence against an

Self-Defense or Unjustified Shooting?

On December 22, 1984, at approximately 1:00 P.M., Troy Canty, Darryl Cabey, James Ramseur, and Barry Allen boarded an express subway train in the Bronx borough of New York City. The young black men sat in the rear section of their car. A short time later, Bernhard Goetz boarded the same car and took a seat near the youths. Goetz, a white computer technician, had been mugged some two years earlier.

Canty and Allen approached Goetz, and Canty said, "Give me five dollars." Goetz responded by standing up and firing at the youths with a handgun. Goetz fired four shots before pausing. He then walked up to Cabey and reportedly said, "You seem to be all right, here's another," whereupon he fired his fifth and final bullet into Cabey's spinal cord. Goetz had shot two of the youths in the back. Ramseur and Cabey each had a screwdriver, which they said they used to break into coin boxes and video machines.

Goetz fled the scene and traveled north to New Hampshire. On December 31, 1984, he turned himself in to police in Concord, New Hampshire. Goetz was returned to New York where he was indicted on a charge of criminal possession of a weapon. The state fought for a second **GRAND JURY**, and Goetz was eventually indicted a second time on charges of attempted murder, assault, criminal possession of a weapon, and reckless endangerment. At trial Goetz argued that he had acted in self-defense, and a jury convicted him only of illegal gun possession. Ultimately Goetz was sentenced to one year in jail and fined $5,000.

Goetz's shooting of Darryl Cabey left Cabey with brain damage and paralyzed from the chest down. Cabey sued Goetz, and in April 1996, a Bronx jury found Goetz liable for Cabey's injuries and awarded Cabey $43 million.

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individual. Statutory and case law governing self-defense is generally the same in tort and criminal law.

A person claiming self-defense must prove at trial that the self-defense was justified. Generally a person may use reasonable force when it appears reasonably necessary to prevent an impending injury. A person using force in self-defense should use only so much force as is required to repel the attack. Nondeadly force can be used to repel either a nondeadly attack or a deadly attack. DEADLY FORCE may be used to fend off an attacker who is using deadly force but may not be used to repel an attacker who is not using deadly force.

In some cases, before using force that is likely to cause death or serious bodily harm to the aggressor, a person who is under attack should attempt to retreat or escape, but only if an exit is reasonably possible. Courts have held, however, that a person is not required to flee from his own home, the fenced ground surrounding the home, his place of business, or his automobile.

A person who is the initial aggressor in a physical encounter may be able to claim self-defense if the tables turn in the course of the fight. Generally a person who was the aggressor may use nondeadly force if the victim resumes fighting after the original fight ended. If the original aggressor attacked with nondeadly force and was met with deadly force in return, the aggressor may respond with deadly force.

Courts and tribunals have historically accepted self-defense as a defense to a legal action. As a matter of public policy, the physical force or violence associated with self-defense is considered an acceptable response to aggression.

The same values that underpin self-defense support the defense of property. Generally a person has greater latitude in using physical force in the defense of her dwelling than in the defense of other property. In most jurisdictions deadly force is justified if a person unlawfully enters

onto property and the property owner reasonably believes that the trespasser is about to commit a felony or do harm to a person on the premises. Deadly force may also be justified to prevent a BURGLARY if the property owner reasonably believes the burglar intends to kill or seriously injure a person on the premises. However, a person may not, for example, rig a door handle so that any person who enters the dwelling is automatically shot by a gun. (*Katko v. Briney,* 183 N.W.2d 657 [Iowa 1971]).

Use of deadly force is never justified to protect PERSONAL PROPERTY other than a dwelling. For example, a person would not be justified in shooting a person who is taking an automobile, no matter how expensive. Reasonable nondeadly force may be used to protect such personal property.

A person may use force to defend a third person from attack. If the defender is mistaken, however, and the third party does not need assistance, most jurisdictions hold that the defender may be held liable in civil court for injuries inflicted on the supposed attacker. In criminal cases a defendant would be relieved of liability if she proved she had made a reasonable mistake.

A defendant who successfully invokes self-defense may be found not guilty or not liable. If the defendant's self-defense was imperfect, the self-defense may only reduce the defendant's liability. Imperfect self-defense is self-defense that was arguably necessary but somehow unreasonable. For example, if a person had a GOOD FAITH belief that deadly force was necessary to repel an attack, but that belief was unreasonable, the defendant would have a claim of imperfect self-defense. In some jurisdictions, the successful invocation of such a defense reduces a murder charge to MANSLAUGHTER. Most jurisdictions do not recognize imperfect self-defense.

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SELF-DETERMINATION

The political right of the majority to the exercise of power within the boundaries of a generally accepted political unit, area, or territory.

The principle of self-determination is mentioned in the United Nations Charter and has often been stressed in resolutions passed by the UN General Assembly. The concept is most often used in connection with the right of colonies to independence. It does not relate to attempts at independence by groups, such as the French Canadians or the Nagas of India, who do not possess their own sovereign states.

SELF-EXECUTING

Anything (e.g., a document or legislation) that is effective immediately without the need of intervening court action, ancillary legislation, or other type of implementing action.

A constitutional provision is self-executing when it can be given effect without the aid of legislation, and there is nothing to indicate that legislation is intended to make it operative. For example, a constitutional provision that any municipality by vote of four-sevenths of its qualified electors may issue and sell revenue bonds in order to pay for the cost of purchasing a municipally owned public utility is *self-executing* and effective without a legislative enactment.

Constitutional provisions are not self-executing if they merely set forth a line of policy or principles without supplying the means by which they are to be effectuated, or if the language of the constitution is directed to the legislature. As a result, a constitutional provision that the legislature shall direct by law in what manner and in what court suits may be brought against the state is not self-executing.

Just as with constitutional provisions, statutes and court judgments can be self-executing.

SELF-EXECUTING TREATY

A compact between two nations that is effective immediately without the need for ancillary legislation.

A treaty is ordinarily considered self-executing if it provides adequate rules by which given rights may be enjoyed or imposed duties may be enforced. Conversely it is generally not self-executing when it merely indicates principles without providing rules giving them the force of law.

SELF-HELP

Redressing or preventing wrongs by one's own action WITHOUT RECOURSE *to legal proceedings.*

Self-help is a term in the law that describes corrective or preventive measures taken by a private citizen. Common examples of self-help include action taken by landlords against tenants, such as eviction and removal of property from the premises, and repossession of leased or mortgaged goods, such as automobiles, watercraft, and expensive equipment. Persons may use self-help remedies only where they are permitted by law. State and local laws permit self-help in commercial transactions, TORT and NUISANCE situations, and LANDLORD AND TENANT relationships.

Self-help is permissible where it is allowed by law and can be accomplished without committing a breach of the peace. A breach of the peace refers to violence or threats of violence. For example, if a person buys a ship financed by a mortgage, the mortgage company may repossess the ship if the buyer fails to make the mortgage payments. If the buyer is present when the ship is being taken away and the buyer objects to the repossession, the mortgage company breaches the peace if it can repossess the ship only through violence or the threat of violence. In such a case, the mortgage company would be forced to file suit in court to repossess the ship. Repossessors attempt to circumvent objections by distracting or deceiving the defaulting party during the repossession.

A majority of states have banned self-help by landlords in the eviction of delinquent tenants. These legislatures have determined that the interests of the landlord in operating a profitable business must be balanced against a tenant's need for shelter. In place of the self-help remedy, states have devised expedited judicial proceedings for evictions. These proceedings make it possible for a landlord to evict a tenant without unacceptable delays while giving the tenant an opportunity to present to a court arguments against eviction.

In states that give landlords the right of self-help, landlords may evict a tenant on their own only if they can do so in a peaceful manner. The precise definition of *peaceful* varies from state to state. In some states any entry by a landlord that does not involve violence or a breach of the peace is acceptable. In other states any entry that is conducted without the tenant's consent is illegal.

In any case, if a landlord evicts a tenant through self-help, the eviction must be performed reasonably. For example, a landlord may not nail plywood across the entrance to a tenant's second-story apartment while the tenant is inside and then remove the steps leading up to the apartment. One landlord who performed such self-help faced criminal penalties after the trapped tenant and her two-year-old daughter needed the help of the local fire department to escape the apartment. A landlord who violates laws on self-help may face criminal charges and a civil suit for damages filed by the tenant.

One new form of self-help that poses interesting problems is self-help by providers of computer software. Businesses in the United States that use computers have become dependent on computer software. Sometimes when disputes have arisen between the buyer of software and the software provider, software providers have disabled the buyer's software from a remote location. In one case a software supplier called Logisticon entered into a contract with Revlon Group to provide it with computer software. After a dispute arose between the two parties, Logisticon accessed Revlon's software system and disabled it, causing Revlon to suffer $20 million in product delivery delays. Revlon brought suit against Logisticon, alleging that Logisticon had violated the contract and that it had misappropriated Revlon's trade secrets. The two parties settled the suit out of court, and the terms of the settlement remain undisclosed.

Self-help measures are controversial because they amount to taking the law into one's own hands. Opponents of self-help laws argue that they encourage unethical and sometimes illegal practices by creditors and that they diminish public respect for the law. Proponents counter that self-help, if performed peaceably, is a valuable feature of the justice system because it gives creditors an opportunity to alleviate losses and keeps small, simple disputes from glutting the court system.

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CROSS-REFERENCES

Secured Transactions.

SELF-INCRIMINATION

Giving testimony in a trial or other legal proceeding that could subject one to criminal prosecution.

The right against self-incrimination forbids the government from compelling any person to give testimonial evidence that would likely incriminate him during a subsequent criminal case. This right enables a defendant to refuse to testify at a criminal trial and "privileges him not to answer official questions put to him in any other proceeding, civil or criminal, formal or informal, where the answers might incriminate him in future criminal proceedings" (*Lefkowitz v. Turley,* 414 U.S. 70, 94 S. Ct. 316, 38 L. Ed. 2d 274 [1973]).

Confessions, admissions, and other statements taken from a defendant in violation of this right are inadmissible against him during a criminal prosecution. Convictions based on statements taken in violation of the right against self-incrimination normally are overturned on appeal, unless there is enough admissible evidence to support the verdict. The right of self-incrimination may only be asserted by persons and does not protect artificial entities such as corporations (*Doe v. United States,* 487 U.S. 201, 108 S. Ct. 2341, 101 L. Ed. 2d 184 [1988]).

This testimonial privilege derives from the FIFTH AMENDMENT to the U.S. Constitution. Most state constitutions recognize a similar testimonial privilege. However, the term *self-incrimination* is not actually used in the Fifth Amendment. It provides that "[n]o person . . . shall be compelled in any criminal case to be a witness against himself."

Although the language of the Fifth Amendment suggests that the right against self-incrimination applies only during criminal cases, the Supreme Court has ruled that it may be asserted during civil, administrative, and legislative proceedings as well. The right applies during nearly every phase of legal proceedings, including GRAND JURY hearings, preliminary investigations, pretrial motions, discovery, and the trials themselves. However, the right may not be asserted after conviction when the verdict is final because the constitutional protection against DOUBLE JEOPARDY protects defendants from a second prosecution for the same offense. Nor may the privilege be asserted when an individual has been granted IMMUNITY from prosecution to testify about certain conduct that would otherwise be subject to criminal punishment.

At the same time, the right against self-incrimination is also narrower than the Fifth Amendment suggests. The Fifth Amendment allows the government to force a person to be a witness against herself or himself when the subject matter of the testimony is not likely to incriminate the person at a future criminal proceeding. Testimony that would be relevant to a civil suit, for example, is not protected by the right against self-incrimination if it does not relate to something that is criminally inculpatory. By the same token, testimony that only subjects a witness to embarrassment, disgrace, or opprobrium is not protected by the Fifth Amendment.

The right against self-incrimination is sometimes referred to as the right to remain silent. The Self-Incrimination Clause affords defendants the right not to answer particular questions during a criminal trial or to refuse to take the witness stand altogether. When the accused declines to testify during a criminal trial, the government may not comment to the jury about his or her silence. However, the prosecution may assert during closing argument that its case is "unrefuted" or "uncontradicted" when the defendant refuses to testify (*Lockett v. Ohio,* 438 U.S. 586, 98 S. Ct. 2954, 57 L. Ed. 2d 973 [1978]). However, before the jurors retire for deliberations, the court must instruct them that the defendant's silence is not evidence of guilt and that no adverse inferences may be drawn from the failure to testify.

In MIRANDA V. ARIZONA, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966), the Supreme Court extended the right to remain silent to pretrial CUSTODIAL INTERROGATIONS. The Court said that before a suspect is questioned, the police must apprise him of his right to remain silent and that if he gives up this right, any statements may be used against him in a subsequent criminal prosecution. Under *Miranda,* suspects also have a Fifth Amendment right to consult with an attorney before they

submit to questioning. *Miranda* applies to any situation in which a person is both held in "custody" by the police, which means that he is not free to leave, and is being "interrogated," which means he is being asked questions that are designed to elicit an incriminating response. A person need not be arrested or formally charged for *Miranda* to apply.

In *Mitchell v. United States,* 526 U.S. 314, 119 S.Ct. 1307, 143 L.Ed.2d 424 (1999), the Supreme Court held that a person who pleads guilty to a crime does not waive the self-incrimination privilege at sentencing. The Court acknowledged that it is well established that a witness, in a single proceeding, may not testify voluntarily about a subject and then invoke the PRIVILEGE AGAINST SELF-INCRIMINATION when questioned about the details. However, the Court found a significant difference between the waiver of the right against self-incrimination in a trial and in a sentencing hearing. The concerns, which justify the cross-examination when the defendant testifies, are absent at a plea hearing. Treating a guilty plea as a waiver of the self-incrimination clause would allow prosecutors to indict a person without specifying the quantity of drugs at issue, obtain a guilty plea, and then put the defendant on the witness stand to tell the court the quantity. Such a scenario would make the defendant "an instrument of his or her own condemnation." This would undermine constitutional CRIMINAL PROCEDURE, turning an adversarial system into an inquisition.

In *Miranda* the Supreme Court examined a number of police manuals outlining a variety of psychological ploys and stratagems that they employed to overcome the resistance of defiant and stubborn defendants. Such interrogation practices, the Court said, harken back to the litany of coercive techniques used by the English government during the seventeenth century.

The Founding Fathers drafted the Fifth Amendment to forestall the use of torture and other means of coercion to secure confessions. The founders believed that coerced confessions not only violate the rights of the individual being interrogated but also render the confession untrustworthy. Once a confession has been coerced, it becomes difficult for a judge or jury to distinguish between those defendants who confess because they are guilty and those who confess because they are too weak to withstand the coercion.

Defendants may waive their Fifth Amendment right to remain silent. However, the government must demonstrate to the satisfaction of the court that any such waiver was freely and intelligently made. The Supreme Court ruled that a confession that was obtained after the suspect had been informed that his wife was about to be brought in for questioning was not the product of a free and rational choice (*Rogers v. Richmond,* 365 U.S. 534, 81 S. Ct. 735, 5 L. Ed. 2d 760 [1961]). It also held that a statement was not freely and intelligently made when a defendant confessed after being given a drug that had the properties of a truth serum (*Townsend v. Sain,* 372 U.S. 293, 83 S. Ct. 745, 9 L. Ed. 2d 770 [1963]).

Congressional anger at the *Miranda* decision led to the passage in 1968 of a law, 18 U.S.C.A. § 3501 (1985), that restored voluntariness as the test for admitting confessions in federal court. As long as a court could conclude that the defendant's statements were voluntary, the confession was admissible. The JUSTICE DEPARTMENT refused to employ the law, believing the law was unconstitutional. However, in the late 1990s the law was briefly revived when the Fourth Circuit Court of Appeals ruled that Congress had the authority to invalidate *Miranda.* The Supreme Court, in *Dickerson v. United States,* 30 U.S. 428, 120 S.Ct. 2326, 147 L.Ed.2d 405 (2000), overturned this ruling. The Court reaffirmed that it had announced a constitutional rule in *Miranda.* Therefore, Congress could not revoke the decision by statute; the only option for Congress was a constitutional amendment.

The right against self-incrimination is not absolute. A person may not refuse to file an income tax return on Fifth Amendment grounds or fail to report a hit-and-run accident. The government may compel defendants to provide fingerprints, voice exemplars, and writing samples without violating the right against self-incrimination because such evidence is used for the purposes of identification and is not testimonial in nature (*United States v. Flanagan,* 34 F.3d 949 [10th Cir. 1994]). Despite the dubious grounds for the distinction between testimonial and non-testimonial evidence, courts have permitted the use of videotaped field sobriety tests over Fifth Amendment objections.

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CROSS-REFERENCES

Criminal Law; Criminal Procedure; Exclusionary Rule; Lineup.

SENATE

The upper chamber, or smaller branch, of the U.S. Congress. The upper chamber of the legislature of most of the states.

The U.S. Constitution reserves for the Senate special powers not available to the other branch of Congress, the House of Representatives. These powers include the trial of all impeachments of federal officials; the ratification, by a two-thirds vote, of all treaties obtained by the president of the United States; and approval or rejection of all presidential appointments to the federal judiciary, ambassadorships, cabinet positions, and other significant EXECUTIVE BRANCH posts.

The Senate, with terms of six years for its members—as opposed to two years for members of the House of Representatives—and a tradition of unlimited debate, has long prided itself as the more deliberate of the two branches of Congress. Under its rules a senator may speak on an issue indefinitely, which is known as the filibuster. Sixty senators present and voting may pass a motion of cloture to stop debate.

Members

Under Article II, Section 3, of the Constitution, the Senate is made up of two members from each state, each of whom has one vote. Unlike the House of Representatives, in which the entire chamber is up for election every two years, only one-third of the senators are up for reelection every two years.

The Constitution requires that a senator be at least thirty years of age and a U.S. citizen for a minimum of nine years. A senator must make her legal residence in the state that she represents.

The Constitution originally provided for the election of senators by state legislatures. However, the SEVENTEENTH AMENDMENT to the Constitution, adopted in 1913, mandated the election of senators by popular vote. The Senate may punish members for disorderly behavior. With the concurrence of two-thirds of the senators, it can expel a member.

When a vacancy occurs in the representation of any state in the Senate, the governor of that state issues a writ of election to fill the vacancy. The state legislature, however, can empower the governor to make a temporary appointment until the people fill the vacancy through an election.

The vice president of the United States is president of the Senate but has no vote unless the senators are equally divided on a question. His vote breaks the tie.

Committees

The Senate uses a committee system to evaluate, draft, and amend legislation before it is submitted to the full chamber. During the 108th Congress (2003–04), the Senate had sixteen standing, or permanent, committees: Agriculture, Nutrition, and Forestry; Appropriations; Armed Services; Banking, Housing, and Urban Affairs; Budget; Commerce, Science, and Transportation; Energy and Natural Resources; Environment and Public Works; Finance; Foreign Relations; Governmental Affairs; Judiciary; Health, Education, Labor, and Pensions; Rules and Administration; Small Business; and Veterans' Affairs. The committees have an average of six to seven subcommittees. Senators typically belong to three committees and eight subcommittees. The Senate also has joint committees with the House, special committees, and investigative committees.

Officers

The vice president acts as the president of the Senate. In the vice president's absence, that position is filled by the president pro tempore, who is usually the most senior senator of the majority party. The majority leader has significant powers in the appointment of majority senators to committees. Political parties also elect majority and minority leaders to lead their efforts in the Senate. They are assisted by an assistant floor leader (whip) and a party secretary.

Other Senate officers include the secretary, who oversees Senate finances and official Senate pronouncements related to IMPEACHMENT

A Day in the Life of the Senate

As the bells ring in the halls of the Capitol and its office buildings, the U.S. Senate starts the day's session. The presiding officer of the Senate, sometimes the vice president but usually the president pro tempore, accompanies the Senate chaplain to the rostrum to lead the chamber in an opening prayer.

After short speeches by the majority and minority leaders, the Senate begins the "morning hour"—a session that generally lasts two hours. During this time senators introduce bills, resolutions, and committee reports and speak briefly on subjects of concern. Bills are referred to approrpiate committees at this time.

Following the morning hour, the Senate may take up executive or legislative business. If in executive session, the Senate considers treaties or nominations that the president has submitted for Senate approval. Before 1929 executive sessions were conducted behind closed doors. Since then, however, the public and the press have been allowed to observe these sessions.

Most of the Senate's time, however, is spent in legislative session. This time is used to debate and vote on bills. Bills with unanimous consent are enacted by a simple voice vote without debate, whereas more controversial bills may be debated at length and may undergo roll call votes. Some bills may not come up for a vote at all.

During debate of a bill, assistant floor leaders, or whips, from each party usually occupy the seats of the majority and minority leaders, located in the front row, center aisle, of the Senate chamber. They enforce established time limits, if any, for debate on specific bills. Frequently, only a few senators are on the Senate floor, while the majority are attending committee meetings or working in their offices. From their offices, senators may apprise themselves of Senate proceedings either through "hot lines" to the Senate floor or live television coverage on the Cable-Satellite Public Affairs Network (**C-SPAN**), which began broadcasting Senate sessions in 1986.

A Senate legislative day may end in either adjournment or recess. If the Senate adjourns, a legislative day is officially over. If it merely recesses, however, the legislative day resumes on the following calendar day. In the case of a recess, the Senate may forego the rituals of the morning hour on the next calendar day. This is frequently done to save time during busy legislative sessions.

Sometimes, when there is a filibuster or heavy legislative load, the Senate does not stop at the end of the day but continues through the night. During these night sessions, a lantern at the top of the Capitol dome remains lit. The public has access to Senate galleries at all times that the Senate is in session, day or night.

proceedings and treaty ratification, and the sergeant at arms, who serves as the law enforcement and protocol officer and organizes ceremonial functions.

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CROSS-REFERENCES

Congress of the United States; Constitution of the United States.

SENATE JUDICIARY COMMITTEE

The U.S. Senate established the Committee on the Judiciary on December 10, 1816, as one of the original 11 standing committees. It is also one of the most powerful committees in Congress; among its wide range of jurisdictions is investigation of federal judicial nominees and

oversight of criminal justice, antitrust, and INTELLECTUAL PROPERTY legislation. Meeting each year since the Fourteenth Congress, the Judiciary Committee reviews a vast range of legal issues and advises the larger Senate on how to handle them. Just like any other congressional committee, it cannot pass laws or approve presidential nominees on its own, but its recommendations are highly regarded by the larger body.

Historically, initial issues before the Senate Judiciary Committee centered largely on the widespread western expansion and growth of the nation, with corresponding concerns about the role of the federal judiciary and JUDICIAL ADMINISTRATION. Boundary disputes between states were another early concern. The issue of SLAVERY was perhaps the most controversial, however. The committee was partially responsible for the enactment of the COMPROMISE OF 1850, which included the FUGITIVE SLAVE ACT. Also, after the Civil War, beginning in 1868, the committee shared jurisdiction to oversee federal reconstruction.

The authority to investigate nominees to the federal court system is the most powerful and controversial authority delegated to the committee. Although the U.S. Constitution grants authority to the full Senate to approve judges nominated by the president, the Senate has delegated much of this responsibility to the committee since 1868. When the president submits judicial nominations, the Senate immediately submits them to the committee for consideration. The committee votes whether to approve or disapprove a nomination of a judge, and it votes whether to submit the nomination to the full Senate for its consideration. Both votes require a majority of the members of the committee. If the Senate approves a judge, he or she receives lifetime tenure on the federal bench, barring IMPEACHMENT or retirement.

The nomination process of federal judges traditionally has caused a significant amount of controversy regarding the criteria that are used by committee members in determining whether to approve or disapprove a judicial nominee. Some commentators suggest that the nomination process should only involve considerations of ethics and professional competence, while others argue that the real considerations among committee members relate to the ideologies and philosophies of the nominees.

When President RONALD REAGAN nominated ROBERT BORK in 1987 to fill a vacancy on the U.S. Supreme Court, it was evident from the questioning during the nomination hearing that the senators took numerous factors into account. Bork, who had been a judge on the U.S. Court of Appeals for the District of Columbia and known for his conservative views, was selected by the Republican president to replace Justice LEWIS POWELL, whose views were more moderate. Both the committee and the full Senate eventually turned down Bork's nomination, based largely on ideology. Public-interest groups supporting or opposing Bork spent a reported $20 million in their attempts to influence the nomination. Similar questions of ideology and philosophy have been raised about the 1991 confirmation hearings for Justice CLARENCE THOMAS.

The publicity surrounding the nomination process in the federal judiciary did not begin until the twentieth century. Historically, few nominees appeared before the committee. Several high-profile nominees, including LOUIS BRANDEIS, HUGO BLACK, and FELIX FRANKFURTER, offered statements for the committee to consider. It is now common for all nominees to make statements before the committee.

With a high number of nominations to the federal judiciary, it is not uncommon for the committee to send nominations of judges in lower courts to subcommittees. This process continues to be lengthy.

Other areas of jurisdiction of the committee include legislative oversight of APPORTIONMENT of representatives; BANKRUPTCY; mutiny, ESPIONAGE, and counterfeiting; civil liberties; constitutional amendments; government information; holidays and celebrations; immigration and naturalization; interstate compacts; local courts in territories and possessions of the United States; national penitentiaries; PATENTS, copyrights, and TRADEMARKS; protection of trade and commerce against unlawful restraints and monopolies; and state and territory boundary lines.

After the terrorist attacks on the World Trade Center and the Pentagon on September 11, 2001 (*See* SEPTEMBER 11TH ATTACKS), the Judiciary Committee held a number of hearings on the issues of TERRORISM and homeland defense. The committee also has taken an active role in such social issues as CIVIL RIGHTS protection, law enforcement, and reform of the criminal justice system. Controversies in 2001 extended to the cabinet nominees, including the position of attorney general. When President

GEORGE W. BUSH nominated then-Senator JOHN ASHCROFT (R-Mo.) for the position in 2001, Senator Patrick Leahy (D-Vt.) immediately indicated that he would oppose the confirmation. While Ashcroft was eventually confirmed, he also was required to appear before the committee numerous times throughout 2001 to report on issues involving the Attorney General's Office and the JUSTICE DEPARTMENT.

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SENECA FALLS CONVENTION

The Seneca Falls Convention, which took place in Seneca Falls, New York, in July 1848, was the first national women's rights convention and a pivotal event in the continuing story of U.S. and women's rights.

The idea for the convention occurred in London in 1840 when ELIZABETH CADY STANTON and Lucretia Mott, who were attending a meeting of the World Anti-Slavery Society, were denied the opportunity to speak from the floor or to be seated as delegates. Mott and Stanton left the hall where the meeting was taking place and began to discuss the fact that while they were trying to secure rights for enslaved African Americans, American women found themselves treated unequally in numerous ways. They concluded that what was needed was a national convention in which women could take steps to secure equal rights with men. Although they agreed that the need for such a convention was a pressing one, they were not to take action on their plan for several years.

Both Stanton and Mott were progressive leaders who had been active in reform movements. Mott, a former teacher who had grown up in Boston, had become interested in women's rights when she discovered that because she was female, she was earning a salary that was exactly half that of male teachers. In 1811 she married fellow teacher James Mott and moved to Philadelphia. She became a member of the Society of Friends (also known as the Quakers) and began to travel the country speaking on the topic of religion and issues including temperance, peace, and the ABOLITION of SLAVERY. In 1833 Mott attended the founding meeting of the American Anti-Slavery Society. Shortly afterwards she founded a women's auxiliary, the Philadelphia Female Anti-slavery Society, and was elected president of the group. Her new position caused a rift within the Society of Friends, and some sought to revoke her membership. Undeterred by the conflict, Mott was an organizer of the Anti-Slavery Convention of American Women in 1837.

Stanton, the daughter of a lawyer and U.S. congressman, had studied her father's law books. In 1840 she married Henry Brewster Stanton, a lawyer and abolitionist. The command for the wife to "obey" her husband was left out of their wedding vows. Like Mott, Stanton and her husband were active members of the American Anti-Slavery Society. Following her meeting with Mott in London, Stanton returned to the United States where she began to travel and speak on the subject of women's rights. In 1848 Stanton helped circulate petitions that led to the enactment of a New York State married women's property bill. This law allowed married women to keep in their own name property they brought into the marriage. The law also gave them the right to keep the wages they had earned and to retain guardianship of their children in cases of separation or DIVORCE.

In 1848, Stanton and Mott met with Mott's sister, Martha Coffin Wright, along with Jane Hunt and Mary Ann McClintock to organize the long-awaited women's rights convention. The plan was to hold a meeting in Seneca Falls, New York (where Stanton lived), on July 19 and 20, with follow-up meetings to take place in Rochester, New York. An announcement in the *Seneca County Courier*, a local periodical, stated that there would be "A Convention to discuss the social, civil and religious condition and rights of woman" and gave the particulars. The first day of the meeting was to be exclusively for women who were "earnestly invited to attend," with the second day open to the general public to hear a speech by Lucretia Mott.

The historic meeting took place at the Wesleyan Church chapel in Seneca Falls. Despite the plan to have the first day for women only, a large crowd of both men and women sought entry to the locked chapel. A male professor from Yale volunteered to enter through an open window and once the doors were opened, the crowd streamed in. Approximately 100 to 300 people were in attendance, including many men who supported the idea of women's rights. Although the majority was Caucasian, there were also some African Americans in attendance. Because none of the women felt capable of overseeing the proceedings, James Mott presided.

On the first day, Elizabeth Cady Stanton presented the organizers' *Declaration of Sentiments and Resolutions*. The Seneca Falls declaration was carefully patterned on the Declaration of Independence that had been crafted by the colonial revolutionaries. The declaration written primarily by THOMAS JEFFERSON stated that all men are created equal. The Seneca Falls declaration held that "all men and women" are created equal and are endowed with inalienable rights including life, liberty, and the pursuit of happiness. The Declaration of Independence listed 18 charges against George III, the king of England. The *Declaration of Sentiments* described 18 charges of "repeated injuries and usurpations on the part of man toward woman" including the denial of the right to vote, unfair laws regarding separation and divorce, and inequality in regard to religion, education, and employment. It stated the hope that the convention in Seneca Falls would be followed by a series of conventions throughout the country. The 12 resolutions enunciated in the *Declaration of Sentiments* called for the repeal of laws that enforced unequal treatment of women, the recognition of women as the equals of men, the granting of the right to vote, the right for women to speak in churches, and the equal participation of women with men in "the various trades, professions, and commerce."

After much discussion and debate, the *Declaration of Sentiments and Resolutions* was passed largely as written. The biggest obstacle was the resolution that called for women's right to vote, known as woman suffrage. Numerous attendees, men and women alike, felt that the right to vote was too radical an idea to gain public acceptance. Lucretia Mott was open to discarding the resolution, but Stanton held firm with strong support from the prominent African–American abolitionist FREDERICK DOUGLASS. After Douglass stated that "Suffrage is the power to choose rulers and make laws, and the right by which all others are secured," the woman suffrage resolution passed by a very narrow margin.

A depiction of Elizabeth Cady Stanton speaking to attendees of the Seneca Falls Convention on July 19, 1848. Stanton presented the "Declaration of Sentiments and Resolutions."
CORBIS

After two days of vigorous discussion and debate, 100 women and men signed the Seneca Falls Declaration, although some later removed their names after being subjected to intense criticism. A storm of sarcasm and protest broke out after the convention prompting Frederick Douglass to write that a discussion of ANIMAL RIGHTS would have brought forth less opposition than a call for women's rights. James Gordon Bennett, publisher of the widely read *New York Herald*, published the entire declaration as a gesture of ridicule. Welcoming the publicity, Stanton and many of the Seneca Falls attendees hailed Bennett's move as a way to disseminate their message on a broader scale.

For the next several decades, Stanton, Mott and temperance supporter SUSAN B. ANTHONY led the struggle for women's rights including the vote. Stanton helped co-found the National Woman Suffrage Association (NWSA) in 1869. The following year the FIFTEENTH AMENDMENT that secured the right to vote for African–American males was ratified by Congress. In 1876

Mott and the NWSA issued a *Declaration and Protest of the Women of the United States* that renewed the fight for women's rights and sought the IMPEACHMENT of political leaders who permitted women to be taxed while denying them representation and who also did not allow women on juries thus denying them the right to a trial by a jury of their peers. Mott, who continued to actively support the abolition of slavery as well as temperance, peace, and women's rights, died in 1880. In 1890 the NWSA merged with a rival organization, the American Woman Suffrage Association, to form the National American Woman Suffrage Association. Stanton was elected president. She was succeeded in 1892 by Anthony. In 1878 Stanton had drafted a federal woman suffrage amendment that continued to be introduced in each new term of Congress. Stanton died in 1902 and her amendment continued to be brought up until it was passed in the form of the NINETEENTH AMENDMENT to the U.S. Constitution in 1920. At the time that woman suffrage passed, only one signer from the 1848 Seneca Falls Convention, Charlotte Woodward, lived long enough to cast her ballot.

Despite the long delay before women were politically enfranchised, the movement that emanated from the Seneca Falls convention made slow but inexorable progress. Some colleges began to admit women as students and more states enacted married women's property acts.

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SENIOR CITIZENS

Elderly persons, usually more than sixty or sixty-five years of age.

People in the United States who are more than sixty years of age are commonly referred to as *senior citizens* or *seniors.* These terms refer to people whose stage in life is generally called old age, though there is no precise way to identify the final stage of a normal life span. People are said to be senior citizens when they reach the age of sixty or sixty-five because those are the ages at which most people retire from the workforce.

U.S. law and society recognize the special needs of senior citizens. The most important aid to senior citizens is the SOCIAL SECURITY program. More than twenty-five million Americans receive old-age benefits each month under federal OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE, and those payments amount to almost $20 billion a year. Senior citizens who are age sixty-five or older qualify for a full benefit payment by having been employed for the mandatory minimum amount of time and by having made contributions to Social Security. A person may retire at age sixty-two and receive less than full benefits. There is no financial need requirement to be satisfied.

Because of enormous financial pressures on the Social Security program, changes have been made that will push the retirement age higher in the coming decades. Persons born before 1950 can retire at age sixty-five with full benefits based on the average income during working years. Those born between 1950 and 1960 can retire at age sixty-six with full benefits. For those born in 1960 or later, full benefits will be awarded for retirement at age sixty-seven.

Senior citizens are also protected by the MEDICARE program. This program provides basic HEALTH CARE benefits to recipients of Social Security and is funded through the Social Security Trust Fund. Medicare is divided into a hospital insurance program and a supplementary medical insurance program. The hospital insurance plan covers reasonable and medically necessary treatment in a hospital or skilled nursing home, meals, regular nursing care services, and the cost of necessary special care. Medicare also pays for home health services and hospice care for terminally ill patients.

Medicare's supplementary medical insurance program is financed by monthly insurance premiums paid by people who sign up for coverage, combined with money contributed by the federal government. The government contributes the major portion of the cost of the program, which is funded out of general tax revenues. Persons who enroll pay a regular monthly premium and also a small annual deductible fee for any medical costs incurred during the year above the amount funded by the

How to Avoid Being Defrauded

Local law enforcement agencies, state attorneys general, the federal Consumer Protection Agency, and groups such as the **AMERICAN ASSOCIATION OF RETIRED PERSONS** provide information to senior citizens on how to avoid being defrauded. These organizations advise the following:

- Watch out if a caller promises prizes for buying products such as vitamins, beauty and health aids, or office supplies. These products are sold at outrageously inflated prices, costing a buyer $500 to $2,000 for items with a value of less than $100.
- Never give a caller your credit card number or checking account number.
- Be especially cautious if a caller reaches you when you are feeling lonely. The person may call day after day until you feel that the caller is a friend, not a stranger trying to sell you something.
- If you think a caller is dishonest, hang up the phone. If a caller is trying to cheat you, it is not rude to end the conversation.
- Never act in haste. If a caller is pressuring you to make a quick decision, consult with friends and family or your state or local consumer protection office before taking a financial risk.
- Always remember that if you really win a prize, you will get it absolutely free, with no fee required.
- Beware if you have been cheated by con artists. They sell information to other con artists, who are likely to call.
- Remember, con artists are liars. They will say anything to get your money.
- If it sounds too good to be true, it usually is not true. Be skeptical of offers that promise rewards greatly out of proportion to your investment.

government. Once the deductible has been paid, Medicare pays 80 percent of any medical bills.

Some warm-weather states such as Arizona and Florida have senior citizen retirement communities. These planned communities allow only senior citizens to buy or rent housing. Many seniors feel more independent and secure in a retirement community than in an ordinary neighborhood. Legal provisions in a retirement community's development plan are incorporated into the deeds of all property owners, prohibiting, for example, children from residing in the community. In this way, the special nature of the neighborhood is preserved.

However, not all senior citizens wish to retire from the workforce. Amendments to the federal Age Discrimination in Employment Act of 1967 (ADEA) (29 U.S.C.A. § 621 et seq.) have eliminated the age of mandatory retirement for most employees and have made the act applicable to more workers. The ADEA itself prohibits employers from discriminating on the basis of age.

Senior citizens also are concerned about crime. Because of their physical vulnerability and personal isolation, they are robbed more often than are the members of other age groups. Seniors are also the most likely group in society to be swindled. The **AMERICAN ASSOCIATION OF RETIRED PERSONS** and state and local governments seek to educate senior citizens about mail and telemarketing schemes that defraud thousands of seniors each year.

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Scamming the Elderly

Senior citizens are often the victims of street crimes, such as **ROBBERY** and assault. But they are more often the target of trained con artists who use a variety of techniques to trick senior citizens into giving them money for their fraudulent schemes. Whether it is a promise of a lucrative investment, a free vacation, or a great deal on home repair, senior citizens too often succumb to a variety of scams.

It is estimated that U.S. consumers lose up to $60 billion annually to **CONSUMER FRAUD**. An estimated 50 percent of phone scam victims are over the age of sixty-five. Convicted con artists report that senior citizens are more trusting than younger persons. Some commentators attribute this to the fact that today's senior citizens grew up and matured in a society that was less threatening. Nevertheless, a study by the **AMERICAN ASSOCIATION OF RETIRED PERSONS** indicates that the stereotypical victim—a lonely, forgetful, gullible senior—bears little resemblance to the persons who are scammed. Victims are relatively affluent, educated, well-informed, and connected with their communities. Most, however, are not aware that con artists use the telephone to accomplish their fraudulent schemes. They believe that the person on the other end of the phone line is honest and hardworking.

Legitimate telemarketing is big business, generating nearly $460 billion a year in sales. It is estimated that about $40 billion a year is lost to fraudulent telemarketers. The dishonest telemarketers are fly-by-night operators working out of leased space with banks of telephones staffed by trained con artists. Once they steal enough money in a location, they quickly pack up and move to another city, leaving their victims with little chance to reclaim their money.

A common scam involves bogus prize announcements. A senior will receive a phone call and be told that he has won the grand prize in a contest. The senior is told to either buy a product or pay shipping and taxes ranging from $200 to $24,000. When the prize arrives, it turns out to be cheap junk, worth a small fraction of the amount the senior has paid.

Con artists also use junk mail for their fraudulent contest solicitations. One of the scams that is most financially ruinous to a senior, whether it is done by phone or mail, is a "contest" set up in stages. The solicitations announce that the senior is in a select group eligible for a grand prize but that she must send in an entry fee to participate. Once the fee, ranging from $5 to $20, is paid, the process is repeated over and over, as the

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CROSS-REFERENCES

Age Discrimination; Consumer Protection; Death and Dying; Elder Law; Health Care Law; Health Insurance; Pension.

SENIOR INTEREST

A right that takes effect prior to others or has preference over others.

For example, a first mortgage is an interest that is senior to a second mortgage and all subsequent mortgages.

SENIORITY

Precedence or preference in position over others similarly situated. As used, for example, with reference to job seniority, the worker with the most years of service is first promoted within a range of jobs subject to seniority, and is the last laid off, proceeding so on down the line to the youngest in point of service. The term may also refer to the priority of a lien or encumbrance.

A person who holds a lien or has an encumbrance against the property of another, so that her claim must be satisfied before any others, has seniority or priority.

An employee has seniority if he is among those with the most years of service at the place of employment. Such seniority entitles the employee to compete for promotion to jobs for which junior (less senior) employees would be ineligible or would receive less consideration. Traditionally, it also gives him the status of being among the last to lose his job in case of lay-offs.

In the 1984 case of *Firefighters Local Union No. 1784 v. Stotts,* 467 U.S. 561, 104 S. Ct. 2576, 81 L. Ed. 2d 483, the Supreme Court upheld the validity of a seniority system that protected the jobs of white firefighters with seniority at the expense of recently hired black firefighters. The fire department in Memphis, Tennessee, implemented the traditional seniority principle of "last hired, first fired." In 1981 three white firefighters who otherwise would have kept their

contest promoters make more solicitations to the senior. Each time the senior "advances" from one stage to another, she must pay a new entry fee. Some seniors have lost tens of thousands of dollars by spending $5 to $20 at a time.

Another phone scam is based on convincing the victim that an extremely profitable business opportunity is available, but only for a limited time. With the promise of becoming millionaires, some seniors have sent thousands of dollars to con artists who give little, if anything, in return.

Fewer than 10 percent of people cheated out of their money report the **FRAUD** to authorities. Some seniors are embarrassed or ashamed to report the crime, fearing that they will look foolish for their gullible behavior. Some con artists even keep con games going by threatening to expose seniors to their family and friends.

Another scam plays on the anger and shame of seniors who have been duped by fraudulent telemarketers. A caller offers to help the senior recover the money the senior had paid to other dishonest companies in hopes of receiving a prize. The caller asks the senior to pay a fee ranging from $200 to $800 for this service. The services typically turn out to be worthless.

The "bank examiner" scam has been perpetrated on senior citizens for generations. An elderly person, usually living alone, gets a call from a con artist posing as a bank examiner. The senior is told that the examiner is investigating a bank teller suspected of embezzling money by falsifying withdrawal receipts. The teller gives each customer the amount asked for and steals a small amount with each transaction. The con artist asks the senior to withdraw $5,000 from his savings account and give it to a detective waiting outside the bank. The money, the senior is told, will be used as evidence and returned with a reward. Once the senior hands over the money, he usually never hears from the con artist. Some scams, however, involve a second call and a plea for another $5,000 withdrawal.

Fraudulent home repair services are a bane to all consumers, but seniors are often the victims. A large **ORGANIZED CRIME** group, known by law enforcement agencies as the Travelers, move from town to town. They go into a neighborhood and tell homeowners that they have finished a home repair job nearby and are willing to fix their houses with leftover materials at an extremely low price. These scam artists demand their money up front. Whether it is painting the exterior of a house, fixing a leaky roof, or sealing a drive-way, these con artists do little or no work and are quickly out of town before the homeowners realize they have been tricked.

Because of the growing population of senior citizens, law enforcement agencies have sought to educate seniors about telephone fraud and other common scams. Pamphlets distributed to senior citizens and community programs tell seniors to hang up the phone if they are pressured to part with their money and to toss the "you've won a prize" mailing in the wastebasket.

jobs under the system were laid off for a month while minority firefighters with less seniority continued working. This change in the seniority system resulted from an **INJUNCTION** to enforce consent decrees that resolved equal employment opportunity cases in Memphis. The lower court fashioned the decrees to remedy the past discriminatory practices of the fire department in its hiring and promotion of minorities. The district court concluded that the seniority system was not a bona fide one under section 706(g) of Title VII of the **CIVIL RIGHTS ACT OF 1964** since lay-offs made pursuant to it would have a racially discriminatory effect. The court, therefore, directed the modification of the system to increase and maintain the percentage of black firefighters. The court of appeals affirmed the revision of the seniority system but disagreed with the holding that the system was not bona fide.

On certiorari, the Supreme Court decided that the district court exceeded its authority in issuing the injunction that ultimately led to the lay-off of the senior white firefighters. The injunction was not a proper remedy. There was no finding that any of the black employees protected by the revised system had been a direct victim of discrimination, a requirement imposed by the Court in *International Brotherhood of Teamsters v. United States,* 431 U.S. 324, 97 S. Ct. 1843, 52 L. Ed. 2d 396 (1977). The Court, however, did not decide whether the **CONSENT DECREE** was valid or whether the Memphis Fire Department could, on its own, protect the jobs of black firefighters at the expense of their white colleagues who had more seniority.

CROSS-REFERENCES

Affirmative Action; Civil Rights; Employment Law; Equal Protection; Labor Law.

SENTENCING

The post-conviction stage of the criminal justice process, in which the defendant is brought before the court for the imposition of a penalty.

If a defendant is convicted in a criminal prosecution, the event that follows the verdict is called sentencing. A sentence is the penalty ordered by the court. Generally, the primary goals of sentencing are punishment, deterrence, incapacitation, and rehabilitation. In some states, juries may be entitled to pronounce sentence, but in most states, and in federal court, sentencing is performed by a judge.

For serious crimes, sentencing is usually pronounced at a sentencing hearing, where the prosecutor and the defendant present their arguments regarding the penalty. For violations and other minor charges, sentencing is either predetermined or pronounced immediately after conviction.

Sentencing in the United States has undergone several dramatic transformations. In the eighteenth century, the sentencing of criminal defendants was left to juries. If a defendant was convicted, the jury decided the facts that would affect sentencing, and a predetermined sentence was imposed based on those findings. In the late eighteenth century, legislatures began to prescribe imprisonment as punishment, replacing such punishments as public whipping and confinement in stocks.

Beginning in the late nineteenth century, legislatures began to pass statutes that left sentencing to the discretion of judges. This movement toward indeterminate sentencing allowed judges to order a sentence tailored to the needs of both the defendant and society. Under sentencing statutes, a sentence could be any combination of PROBATION, fines, restitution (repayment to victims), imprisonment, and community service. Judges were allowed to consider a wide range of evidence in fashioning a sentence, including MITIGATING CIRCUMSTANCES.

In the 1950s, Congress passed a spate of federal legislation requiring that judges impose mandatory minimum sentences for drug offenses. These laws directed that defendants must serve a minimum number of years in prison upon conviction for certain offenses, and prevented judges from reducing sentences in consideration of mitigating factors. In the 1960s, these laws came under attack for failing to deter drug crimes. Moreover, prosecutors were reluctant to prosecute mandatory minimum cases because they were considered unjustly severe.

By the late 1970s, indeterminate sentencing had fallen into disfavor. Many perceived that crime rates were soaring, and a powerful lobby emerged demanding sentencing reform. These critics argued for longer prison sentences, and they also pushed for uniformity in sentencing, noting that discretionary sentencing produced widely various sentences for the same crime.

Several states' legislatures enacted sentencing guidelines in the 1970s and early 1980s. These guidelines increased punishment for criminal offenses and limited judicial discretion in sentencing by identifying the punishment required upon conviction for a particular offense. Under many of the new sentencing statutes, PAROLE for prison inmates was either abolished or restricted to certain offenses. Conservatives hailed this "truth-in-sentencing" framework as a victory over liberal judges. Liberals endorsed sentencing reform because it purported to eliminate the possibility of racial disparity in sentencing.

Following the lead of these state legislatures, Congress passed the Sentencing Reform Act of 1984 (SRA) (Pub. L. No. 98-473, 98 Stat. 1987 [1984] [codified in 18 U.S.C.A. §§ 3551–3556 (1988 & Supp. V 1993)]). The SRA abolished parole for federal prisoners and reduced the amount of time off granted for good behavior.

The SRA also established the U.S. SENTENCING COMMISSION (USSC) and directed it to create a new sentencing system (28 U.S.C.A. §§ 991(b), 994(a)(1)-(2) [1988]). Between 1984 and 1987, the USSC crafted the Federal Sentencing Guidelines. Since Congress did not object to the guidelines, they became effective on November 1, 1987 (28 U.S.C.A. § 994 [1988 & Supp. V 1993]).

The Federal Sentencing Guidelines shift the focus in sentencing from the offender to the offense. The guidelines categorize offenses and identify the sentence required upon conviction. Judges are allowed to increase or decrease sentences or depart from the guidelines, but only if they have a very good explanation and clearly state the reasons on the record.

Upward departures, or increases in sentences, are easy to achieve under section 1B1.2 of the sentencing guidelines. This section allows the sentencing judge to consider all "relevant conduct," including the circumstances surrounding the conviction, offenses that were committed at the same time as the charged offense but were not charged, prior convictions, and acts for which the defendant was previously tried but acquitted.

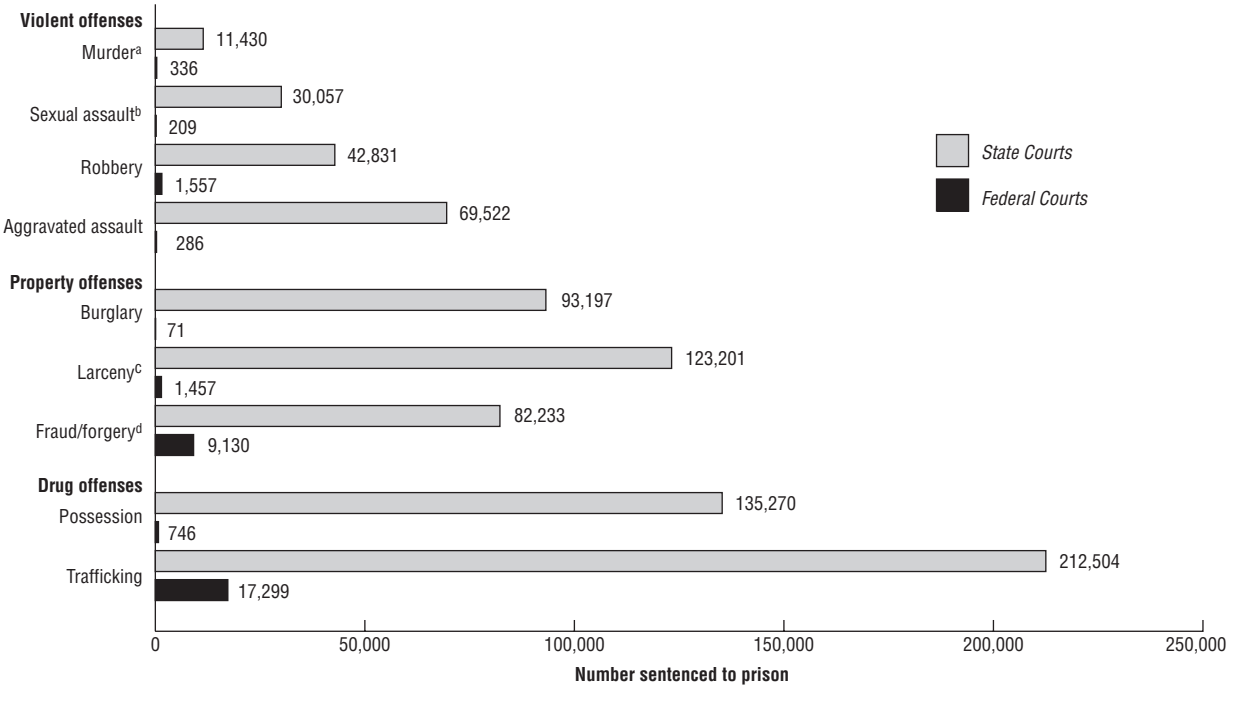
In limited circumstances, judges may decrease a sentence. For example, a judge may downwardly depart if the defendant accepts responsibility for the crime or committed the crime to avoid a more serious offense. Prosecutors often challenge decreased sentences on appeal, and they usually win because the guidelines call for adherence in all but exceptional cases.

Prosecutors receive tremendous discretion in the sentencing process, and they have virtually taken over the sentencing process in federal court. Under the guidelines, prosecutors can easily increase or decrease a sentence by tinkering with the number of counts either in the initial charge or pursuant to a plea agreement. For example, a prosecutor may not use evidence of certain conduct in pursuing a criminal charge. However, upon conviction or a guilty plea, the prosecutor can, in the sentencing hearing, introduce that evidence to increase the defendant's sentence. At this point, if the prosecutor is able to prove by a PREPONDERANCE OF THE EVIDENCE that the defendant committed the acts, the court is obliged to increase the defendant's sentence.

Furthermore, state police officers and prosecutors can make secret decisions about what cases to refer to federal prosecutors. State prosecutors can thus pressure defendants to enter a guilty plea in state court to avoid federal sentencing. The decision on whether to move the court for a downward departure in exchange for substantial assistance to law enforcement is also left to the prosecutor.

At first, many federal judges refused to recognize the Federal Sentencing Guidelines. In *Mistretta v. United States,* 488 U.S. 361, 109 S. Ct. 647, 102 L. Ed. 2d 714 (1989), the U.S. Supreme Court held that the guidelines did not violate the SEPARATION-OF-POWERS doctrine and were not an excessive delegation of legislative power. Since the *Mistretta* decision, federal courts have

Felons Sentenced to Prison by State and Federal Courts in 1996



[a]Does not include negligent manslaughter.
[b]Includes rape.
[c]Includes motor vehicle theft.
[d]Includes embezzlement.

SOURCE: U.S. Department of Justice, Office of Justice Programs, *Felony Sentences in the United States, 1996.*

Sentencing Guidelines: Fair or Unfair?

Sentencing guideline systems for determining criminal sentences have dramatically changed the way punishment is meted out in U.S. courtrooms. Twenty-two states and the federal government use sentencing guidelines, which require a judge to calculate a criminal sentence using a mathematical formula. Points are assigned based on the defendant's offenses, prior criminal record, and other factors. A total is calculated, and the sentence is computed. A judge has very little room to depart from the sentence mandated by the guidelines.

There has been controversy over the fairness and the legitimacy of using sentencing guidelines, with the most criticism directed at the U.S. Sentencing Guidelines. The criticism comes mostly from defense attorneys and judges, who argue that the guidelines give prosecutors too much power in the criminal justice system and give too little discretion to judges to shape a sentence to fit the individual defendant. Defenders of sentencing guidelines contend that they are a vast improvement over the way sentencing has traditionally been done, eliminating "judge shopping" and the **ARBITRARY** and disparate sentencing practices that come with unbridled judicial discretion.

Congress authorized the U.S. Sentencing Guidelines in 1984. The U.S. Sentencing Guidelines Commission, a seven-member panel appointed by the president and confirmed by the Senate, issued the first set of guidelines in 1987. The guidelines have been constantly changed, mostly by the commission, but also by congressional legislation. In addition, Congress has exercised its **VETO** power over amendments proposed by the commission. By 1996 the federal guidelines had grown to an 850-page manual, containing complex formulas for computing different types of sentences.

Proponents of federal sentencing guidelines believe that they reduce sentencing disparity and guarantee harsher punishment for federal felons, many of whom are convicted for selling illegal narcotics. Before the guidelines were created, the proponents argue, defendants tried to avoid judges who handed out tough sentences and to find one who would be lenient. Thus, in one court a bank robber would get an eighteen-year sentence, while in another a robber convicted of the same crime would receive only five years in prison. In addition, there was evidence to suggest that minorities received the harshest treatment. Sentencing guidelines have, therefore, reduced the arbitrary dispensation of punishment.

Proponents also contend that because the guidelines provide predictable sentences, they serve as a deterrent to crime.

abandoned the indeterminate approach to sentencing and have used the sentencing guidelines to determine criminal sentences.

As part of the Comprehensive **CRIME CONTROL ACT** of 1984 (Pub. L. No. 98-473, Title II, October 12, 1984, 98 Stat. 1976 to 2193), Congress passed legislation requiring mandatory minimum sentences for drug and firearm offenses (Pub. L. No. 98-473, §§ 503(a), 1005(a), 98 Stat. 2069, 2138 [1984] [amending 21 U.S.C.A. § 860 (formerly § 845a), 18 U.S.C.A. § 924(c)]). In 1986, as public fears of drug abuse increased, Congress enacted the Anti-Drug Abuse Act of 1986 (Pub. L. No. 99-570, 100 Stat. 3207 [1986]). This act created mandatory minimum sentences for drug trafficking and distribution, using the quantity of the drug involved to determine the minimum terms of imprisonment. In 1988, Congress broadened the mandatory minimums to cover conspiracy in certain drug offenses (Anti-Drug Abuse Act of 1988 [Pub. L. No. 100-690, § 6470(a), 102 Stat. 4377 (21 U.S.C.A. §§ 846, 963 [1988])]).

The 1988 act also established a minimum sentence for simple possession of crack cocaine. Under 21 U.S.C.A. § 844(a) (1988 & Supp. II 1990 & Supp. III 1991), a first-time offender caught with five grams of a mixture or substance containing a "cocaine base" must be sentenced to no less than five years in prison. In contrast, a person must possess at least five hundred grams of powder cocaine to receive a five-year sentence (21 U.S.C.A. §§ 841(b)(1)(B) (ii)-(iii) [1982 & Supp. V 1987]).

In 1994, Congress moved to limit the applicability of mandatory minimums to low-level, nonviolent drug offenders. Under 18 U.S.C.A. § 3553(f), a judge may use the guidelines instead of the statutory minimum sentence if (1) the defendant does not have a criminal history of more than one point (one minor conviction, such as a petit misdemeanor); (2) the defendant did not use violence or credible threats or a firearm in the offense and did not coerce another to do so; (3) the offense did not result in death or serious bodily injury; (4) the defendant

Criminals know the formula of past conviction plus new conviction equals a certain criminal sentence. Criminals no longer can play the angles in the criminal justice system to their advantage but must face a definite punishment.

Defenders of the guidelines also believe that the reduction of judicial discretion reduces the stress suffered by federal trial judges. No longer do judges have to wrestle with their emotions in devising an appropriate sentence. The guidelines provide an efficient means of delivering a criminal sentence that conforms to public policy goals set out by Congress and the guidelines commission.

Critics of the federal guidelines contend that while the idea of uniform criminal sentences may seem attractive, in practice the guidelines have created another arbitrary system of sentencing. A major criticism is the shift in power from the judge to the federal prosecutor. Because the criminal charge will trigger, upon conviction, a particular sentence in the guidelines, a prosecutor's charging decision is the most important one in the case. A prosecutor can determine whether a defendant's time in prison is short or long by manipulating the charges and a case's extenuating circumstances.

Critics argue that prosecutorial discretion has replaced judicial discretion, allowing defendants who hire defense counsel knowledgeable in the workings of the guidelines to negotiate plea agreements that reduce the charges and accompanying jail time. Defendants with less **EFFECTIVE COUNSEL** receive longer sentences. Critics point to the disparate sentences received by defendants involved in the same crime. Therefore, it is clear that prosecutors can manipulate the charges, with judges powerless to change the sentencing outcome.

Critics, especially federal judges, decry the loss of discretion to shape a criminal sentence that is appropriate to the individual. The federal guidelines impose mathematical formulas, reducing a human being to the number of points on a sentencing grid worksheet. Judges are forced to ignore the particular circumstances of the case and the individual and hand out the sentence dictated by the guidelines. Those judges who depart from the guidelines and give more lenient or more severe sentences invariably invite appellate review of their decisions.

Another criticism is that the guidelines reflect political concerns more than penological ones. Critics charge that Congress, in its zeal to be regarded as tough on crime, has imposed severe penalties that are out of proportion to the nature of some of the offenses. In addition, Congress has vetoed some sentencing commission revisions to the guidelines that it has regarded as politically unacceptable.

Critics also object to the growing complexity of the guidelines, analogizing the various provisions to the **INTERNAL REVENUE CODE**. The sentencing commission's continuous revisions, contend critics, have undermined the stability of the guidelines and lessened the goals of predictability and uniformity.

CROSS-REFERENCES

Determinate Sentence; Three Strikes Laws.

was not an organizer of others in the offense and was not engaged in a continuing criminal enterprise (such as a **RACKETEERING** scheme or the functioning of a street gang); and (5) by the time of the sentencing hearing, the defendant has informed the prosecutor of all the facts surrounding the case, including facts regarding offenses related to the case.

Also in 1994, Congress exercised its power over sentencing by passing the **VIOLENT CRIME CONTROL AND LAW ENFORCEMENT ACT OF 1994** (Pub. L. No. 103-322, September 13, 1994, 108 Stat. 1796). Under provisions of this act, violent offenders convicted of their third felony must be sentenced to life imprisonment (Pub. L. No. 103-322, §§ 70001–70002, 108 Stat. 1796, 1982–1985 [1984] [codified as amended at 18 U.S.C.A. §§ 3559, 3582(c)(1)(A) (1988)]).

Mandatory minimums are not the same as the Federal Sentencing Guidelines. Mandatory minimum sentences remove all discretion from the sentencing judge, whereas the guidelines allow for some leeway. In *United States v. Madkour,* 930 F.2d 234 (2d Cir. 1991), Michael P. Madkour, a recent graduate of the University of Vermont with no criminal record, received a mandatory minimum sentence of five years in federal prison for possessing more than one hundred marijuana plants with an intent to manufacture marijuana. Under the guidelines, the prison sentence would have been 15 to 21 months.

The most common punishments identified in state statutes are community service, probation, fines, restitution, and imprisonment. In the 1990s, some southeastern states authorized sentences of hard labor on chain **GANGS**. Many states have also reinstated the death penalty. Death penalty sentences are usually delivered by a jury, not a judge, and only after a hearing.

Criminal defendants are sentenced at a sentencing hearing. In the hearing, the judge may consider all relevant evidence, testimony, and a presentence report from a probation or court services officer. The **RULES OF EVIDENCE** do not apply in presentencing hearings, so **HEARSAY** and other fallible evidence may be introduced.

In 1995 a South Carolina juvenile court judge sentenced 15-year-old Tonya Kline to be shackled to her mother, Deborah Harter, for six weeks. AP/WIDE WORLD PHOTOS

In both federal and state courts, the sentencing hearing is preceded by a presentence investigation and report. These are conducted by a court services or probation officer, who then submits the report to all parties to the prosecution. At the hearing, the prosecutor and defendant are entitled to argue against the recommendations for sentencing made in the presentence report.

In many states, courts still possess the authority to craft sentences within the bounds of sentencing statutes. In these states, criminal statutes contain a sentencing provision that identifies minimum and maximum punishments for specific crimes. For example, in Georgia, a person convicted of hunting alligators without a license "shall be punished by a fine of not less than $500.00 and, in the discretion of the sentencing court, imprisonment for not more than 12 months" (Ga. Code Ann. § 27-3-19). This means that the judge *must* order a fine of at least $500 and *may* also order imprisonment of up to 12 months.

Many states have also passed so-called three-strikes-and-you're-out laws. Under these laws, when a person receives a third criminal conviction, the person's sentence is enhanced considerably. California's version of the three-strikes law has been at the center of attention in the legal community due to two high-profile cases that eventually reached the U.S. Supreme Court. Under California's law, if a person with two prior felony convictions is convicted for a third time, he or she will receive a greatly enhanced sentence. Cal. Pen. Code Ann. § 667 (West 1999). Some defendants have received convictions of 25 to 50 years for petty thefts.

In one California case, Leandro Andrade was convicted of stealing five video tapes from a K-Mart store. The petty theft charges were tried as felonies, and when he was convicted, he received two consecutive 25 years sentences. In another case, Gary Ewing, who was on parole from a nine-year prison term, was convicted of stealing three golf clubs. He received a sentence of 25 years. Both Andrade and Ewing appealed their sentences, alleging that California's law constituted CRUEL AND UNUSUAL PUNISHMENT in violation of the EIGHTH AMENDMENT to the U.S. Constitution.

The Supreme Court disagreed with both Andrade and Ewing. In *Ewing v. California*, 538 U.S. 11, 123 S. Ct. 1179, 155 L. Ed. 2d 108 (2003), the Court held that Ewing's sentence was not grossly disproportionate and, thus, not in violation of the Eighth Amendment. The crime he committed constituted a felony, and the decision of the California legislature to enhance the sentence of a repeat offender was within the discretion of the legislature. The Court also upheld the conviction of Andrade in *Lockyer v. Andrade*, 538 U.S. 63, 123 S. Ct. 1166, L. Ed. 2d (2003). The Andrade's case, the court found that the Ninth Circuit Court of Appeals had erred in granting HABEAS CORPUS relief because a California state court had not contradicted established federal law when it ruled that the California statute was constitutional. The Ninth Circuit had previously ruled that the three-strikes law violated the Eighth Amendment.

Opponents of DETERMINATE SENTENCING claim that it will result in increased crowding of prisons and greater costs of incarnation. Proponents note that the enhanced sentencing will result in long-term cost savings because repeat offenders will no longer be on the street. These supporters say that the state and federal governments will save on property loss, losses from pain and suffering, lost wages, police security, and medical insurance costs resulting from the crimes of these offenders.

Some judges who have become dissatisfied with high rates of RECIDIVISM have exercised their sentencing discretion by meting out innovative punishments intended to address the specific criminal conviction or the conviction history of the specific criminal. For example, a judge in Wilmington, North Carolina, gave a shoplifter the option of either serving a prison

term or standing outside J.C. Penney carrying a sign that advised passersby of her transgression. Similarly, in Seattle, a youthful car thief was sentenced to 90 days in detention, a monetary fine, and 16 months of supervision, during which time he was required to wear a sign saying, "I'm a car thief." Critics, including the AMERICAN CIVIL LIBERTIES UNION (ACLU) deplore such punishments as forms of public humiliation.

Juvenile court judges possess tremendous discretion in sentencing. In 1995, Judge Wayne Creech, of the Berkeley County Family Court, in South Carolina, ordered 15-year-old Tonya Kline to be physically tied, 24 hours a day, to her mother, Deborah Harter. This order was imposed on Kline and Harter after Kline was charged with truancy, shoplifting, and housebreaking. Under the tethering conditions, Kline and Harter were allowed to separate only to go to the bathroom and to shower.

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CROSS-REFERENCES

Capital Punishment; Corporal Punishment; Criminal Law; Criminal Procedure; Drugs and Narcotics; Incarceration; Juvenile Law; Plea Bargaining; Prison.

SEPARATE BUT EQUAL

The doctrine first enunciated by the U.S. Supreme Court in PLESSY V. FERGUSON, *163 U.S. 537, 16 S. Ct. 1138, 41 L. Ed. 256 (1896), to the effect that establishing different facilities for blacks and whites was valid under the* EQUAL PROTECTION CLAUSE *of the* FOURTEENTH AMENDMENT *as long as they were equal.*

The theory of separate but equal was used to justify segregated public facilities for blacks and whites until in BROWN V. BOARD OF EDUCATION OF TOPEKA, KANSAS, 347 U.S. 483, 74 S. Ct. 686, 98 L. Ed. 873 (1954), the Supreme Court recognized that "separate but equal" schools were "inherently unequal." The principle of "separate but equal" was further rejected by the CIVIL RIGHTS ACTS (42 U.S.C.A. § 2000a et seq.) and in subsequent cases, which ruled that racially segregated public facilities, housing, and accommodations violated the constitutional guarantee of equal protection of laws.

CROSS-REFERENCES

Civil Rights; Integration; "Plessy v. Ferguson" (Appendix, Primary Document).

SEPARATE MAINTENANCE

Money paid by one married person to the other for support if they are no longer living as HUSBAND AND WIFE. *Commonly it is referred to as separate support and follows from a court order.*

See ALIMONY.

SEPARATION

A termination of COHABITATION *of* HUSBAND AND WIFE *either by mutual agreement or, in the case of* judicial separation, *under the decree of a court.*

CROSS-REFERENCES

Divorce.

SEPARATION OF CHURCH AND STATE

See RELIGION.

SEPARATION OF POWERS

The division of state and federal government into three independent branches.

The first three articles of the U.S. Constitution call for the powers of the federal government to be divided among three separate branches: the legislative, the executive, and the judiciary branch. Under the separation of powers, each branch is independent, has a separate function, and may not usurp the functions of another branch. However, the branches are interrelated. They cooperate with one another

A sample separation agreement

SEPARATION AGREEMENT

_____
(name and address)

referred to as Husband and

_____
(name and address)

referred to as Wife, agree:

The parties were lawfully married on _____, _____, at

_____
(name and location)

Troubles have occurred between the parties, and they have agreed to live separate and apart.

The parties nevertheless desire to resolve certain issues and consequently, have entered into this agreement.

The parties have children born of this marriage who are as follows:

Name Age Date of Birth

1). _____ _____ _____

2). _____ _____ _____

3). _____ _____ _____

The parties have made a complete disclosure to one another of financial matters and each is satisfied that they have had sufficient disclosure of the parties individual and joint finances.

The parties have each been advised by counselors of their own choice regarding their legal rights and any disclosures made herein.

The husband shall assume the following debts and shall not hold the wife responsible for the same:

_____

_____

_____

The wife shall assume the following debts and shall not hold the husband responsible for the same:

_____

_____

_____

Neither party shall incur any further debts which may result in joint liability. In the event that either party incurs a debt on joint credit of the parties, that party shall be responsible for the total amount of that debt.

As child support, _____ (husband/wife) shall pay support _____ (weekly, monthly) the amount of

_____ Dollars ($_____).

The (husband/wife) shall maintain health insurance for the benefit of _____ .

Personal property of the parties shall be divided as follows:

The Husband shall have the following property: _____

_____

_____

The Wife shall have the following property: _____

_____

_____

[continued]

A sample separation agreement (continued)

SEPARATION AGREEMENT

If any debts are associated with the items of property divided herein, the party receiving the same shall assume the debt and hold the other party harmless from such debts.

Any property not specifically divided herein shall be subject to distribution at a later time.

The _____ (husband/wife) shall have temporary possession of the residence owned by the parties located at

_____.

Expenses related to the residence shall be borne by the parties as follows:

Husband: _____

_____

Wife: _____

_____

The parties agree that this agreement is intended to be a final disposition of the matters agreed upon herein. This agreement may be introduced into evidence and incorporated in a final decree of dissolution of marriage. In the event that any disputes occur regarding this agreement, the prevailing party shall be entitled to reasonable attorney's fees regarding such enforcement.

_____ _____
Signature of Husband **Date**

_____ _____
Signature of Wife **Date**

_____ _____
Witness for Husband **Date**

_____ _____
Witness for Wife **Date**

_____ My commission expires on:
Notary Public

Warning:

These forms are provided AS IS. They may not be any good. Even if they are good in one jurisdiction, they may not work in another. And the facts of your situation may make these forms inappropriate for you. They are for informational purposes only, and you should consult an attorney before using them.

and also prevent one another from attempting to assume too much power. This relationship is described as one of checks and balances, where the functions of one branch serve to contain and modify the power of another. Through this elaborate system of safeguards, the Framers of the Constitution sought to protect the nation against tyranny.

Under the separation of powers, each branch of government has a specific function. The legislative branch—the Congress—makes the laws. The executive branch—the president—implements the laws. The judiciary—the court system—interprets the laws and decides legal controversies. The system of federal taxation provides a good example of each branch at work. Congress passes legislation regarding taxes. The president is responsible for appointing a director of the INTERNAL REVENUE SERVICE to carry out the law through the collection of taxes. The courts rule on cases concerning the application of the tax laws.

Under the system of checks and balances, each branch acts as a restraint on the powers of the other two. The president can either sign the legislation of Congress, making it law, or VETO it. The Congress, through the Senate, has the power of advise and consent on presidential appointments and can therefore reject an appointee. The courts, given the sole power to interpret the Constitution and the laws, can uphold or overturn acts of the legislature or rule

on actions by the president. Most judges are appointed, and therefore Congress and the president can affect the judiciary. Thus at no time does all authority rest with a single branch of government. Instead, power is measured, apportioned, and restrained among the three government branches. The states also follow the three-part model of government, through state governors, state legislatures, and the state court systems.

Our system of government in the United States is largely credited to JAMES MADISON and is sometimes called the Madisonian model. Madison set forth his belief in the need for balanced government power in *The Federalist,* No. 51. However, the concept of separation of powers did not originate with Madison. It is often attributed to the French philosopher BARON MONTESQUIEU, who described it in 1748. At the Constitutional Convention of 1787, Madison played a leading role in persuading the majority of the Framers to incorporate the concept into the Constitution.

CROSS-REFERENCES

Congress of the United States; Constitution of the United States; Judicial Review; President of the United States; Presidential Powers; Supreme Court of the United States.

SEPTEMBER 11TH ATTACKS

On September 11, 2001, in the deadliest case of domestic TERRORISM in the history of the United States, a group of 19 terrorists hijacked four U.S. airliners for use as missiles against targets in New York City and Washington, D.C. The events shocked the country and the world and focused the U.S. government on a worldwide WAR ON TERRORISM. During the 18 months following the attacks, the United States engaged in military operations in Afghanistan and Iraq, causing changes in the regimes of both countries.

At 8:45 A.M. (EST), American Airlines Flight 11, hijacked after departing from Boston, crashed into the north tower of the World Trade Center. Approximately 18 minutes later, another hijacked Boston flight, United Airlines Flight 175, crashed into the south tower of the World Trade Center. Within an hour of the attacks, the Port Authority shut down all tunnels and bridges in the New York area, and the FEDERAL AVIATION ADMINISTRATION (FAA) shut down all New York airports. Soon thereafter, the FAA took the unprecedented step of halting all air traffic nationwide.

About an hour after the initial attack against the World Trade Center, a Boeing 757, American Airlines Flight 77, crashed into the Pentagon. The crash happened at approximately the same time as an evacuation at the White House. At 10:05 A.M., the south tower of the World Trade Center collapsed. At 10:10 A.M., part of the Pentagon collapsed.

As the Pentagon was attacked, another hijacked flight, United Airlines Flight 93, crashed in Pennsylvania, killing everyone aboard. Later, it was discovered that the passengers attempted to overcome the four hijackers. Passengers had learned their likely fates from cell phone calls informing them about the World Trade Center crashes. Government authorities later speculated that the plane's hijackers could have been targeting Camp David, the White House, or the U.S. Capitol building.

At 10:28 A.M., the north tower of the World Trade Center collapsed from the top down. As with the collapse of the first tower, debris rained down and a huge cloud of smoke and dust enveloped a wide area. Hundreds of rescue workers died as they attempted to evacuate the people from the buildings.

President GEORGE W. BUSH was visiting a Florida elementary school when he learned of the attacks. He quickly departed, stopping at Barksdale Air Force Base in Louisiana and Offut Air Force Base in Nebraska, before heading back to Washington. During the afternoon, Osama Bin Laden and the militant Islamic group, al Qaeda, surfaced as the main suspects. In an address to the nation during the evening of September 11, Bush vowed that the United States would make no distinction between terrorists committing the attacks and those nations harboring them, although he did not name Osama bin Laden, the leader of al Qaeda, until more evidence could be collected against him.

Bin Laden, one of 50 children of a billionaire Saudi family, purportedly uses his approximately $300 million inheritance to fund al Qaeda. Al Qaeda (Arabic, "the Base") was organized by bin Laden in the late 1980s, bringing together "Arabs who fought in Afghanistan against the Soviet invasion," according to the U.S. STATE DEPARTMENT. Al Qaeda's goal, the U.S. government says, is to "establish a pan-Islamic Caliphate throughout the world by working with allied Islamic extremist groups to overthrow regimes it deems 'non-Islamic' and

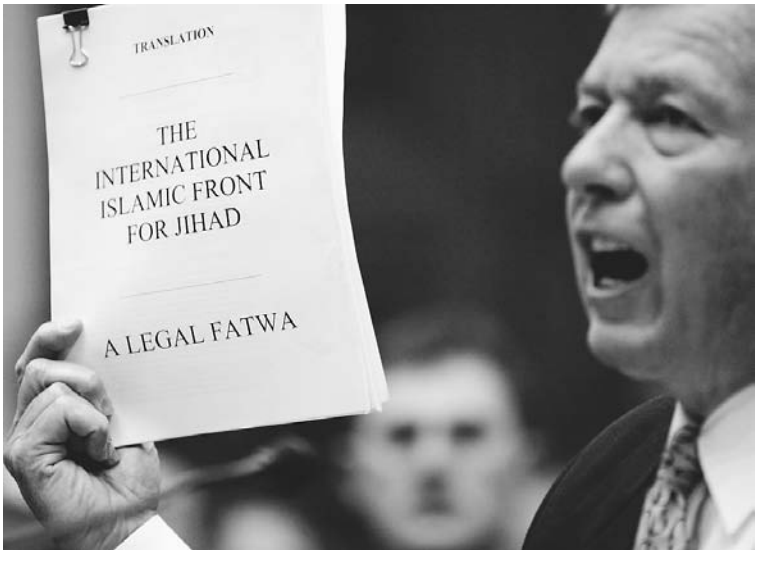
expelling Westerners and non-Muslims from Muslim countries."

In 1998, bin Laden issued a *fatwah*, a religious edict calling for attacks on U.S. civilians. He had previously issued a fatwah urging the killing of U.S. troops. Bin Laden and his organization are believed responsible for the October 2000 attack on the U.S.S. *Cole* in Aden, Sudan, which killed 17. He has been indicted for the 1998 embassy bombings in Kenya and Tanzania, where 224 died and thousands more were injured; four al Qaeda members were convicted in connection with those incidents. He has also been charged in connection with events in Somalia in October 1993, in which 18 U.S. servicemen died. His terrorist activities garnered him a spot on the Federal Bureau of Investigation's Ten Most Wanted Fugitives List in 1999.

On October 7, 2001, the United States sent warplanes and cruise missiles to Afghanistan to attack al Qaeda military installations and terrorist camps supported by the Taliban regime of that country. Great Britain joined the strikes, with intelligence efforts and logistical support provided by France, Germany, Australia, Canada, and others. In all, about 40 nations joined in a coalition with the United States, President Bush reported in an address to the country shortly after the strikes began.

The president characterized the fight against terrorism as involving military commitments, law enforcement actions, legislative and diplomatic actions, financial actions, and assistance to Afghanistan. Concurrent with the air strikes, Bush announced a humanitarian component of "Operation Enduring Freedom": airlifts of food, medicine, and supplies to the Afghan people. On October 8, 2001, he issued an **EXECUTIVE ORDER** establishing the **HOMELAND SECURITY DEPARTMENT**, to "coordinate the executive branch's efforts to detect, prepare for, protect against, respond to, and recover from terrorist attacks within the United States."

The air attacks against Afghanistan were followed by a controlled ground assault, as the United States assisted the Northern Alliance, a foe of the Taliban regime, in toppling the existing Afghan government. By December 2001, the Taliban had effectively been removed from power, and the United States and other nations began a process of rebuilding that country. Although bin Laden was constantly targeted during the attacks, the United States failed to capture him during the attack on the Taliban regime (it is unknown as to whether he was killed during the attack). As of June 2003, bin Laden was believed to remain at large.



John Ashcroft appears before the House Judiciary Committee in June 2003 to testify about the USA PATRIOT Act and defend efforts used since the September 11th attacks to prevent further acts of terrorism. AP/WIDE WORLD PHOTOS

In December 2001, U.S. officials raided the offices of two Muslim charities headquartered in Illinois, the Global Relief Foundation (GRF) and the Benevolence International Foundation (BIF). These organizations were believed to have contributed money to terrorists who planned unspecified attacks on the United States. The crackdown on these groups was also a result of the U.S. government's belief that bin Laden and the al Qaeda network use charitable groups, manufacturing companies, and credit card **FRAUD** to raise money for terrorist operations. Cracking down on the fund-raising became one of the U.S. government's strategies for defeating terrorism.

Congress responded to the attacks, with the urging of the president, by passing the **USA PATRIOT ACT OF 2001**, Pub. L. No. 107-56, 115 Stat. 272, the Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135, and other legislation designed to provide enhanced protection against further attacks. The United States has also continued its assault on terrorists and the nations that harbor them since September 11. In March 2003, the United States attacked Iraq, purportedly for Iraq's violation of resolutions banning its possession of weapons of mass destruction. The Bush administration suspected that Iraqi leader Saddam Hussein gave support to bin Laden and al Qaeda, and the attacks on Iraq have been seen by many as a continuation of the **WAR ON TERRORISM**.

The September 11th attacks also had a devastating impact on the U.S. airline industry. American Airlines and United Airlines each lost two planes during the attack, and the U.S. government ordered that all planes in the country remain grounded for a week following the attacks. In response to the heavy losses incurred by the airlines, Congress enacted the Air Transportation Safety and System Stabilization Act, Pub. L. No. 107-42, 115 Stat. 230, which was signed into law 11 days after the September 11th attacks. The act was designed to compensate air carriers for their losses during and after the attacks and also to preserve the continued vitality of the air transportation system in the United States. Despite this legislation, United Airlines filed for BANKRUPTCY in 2002, and American Airlines bordered on bankruptcy during much of the period following the attacks.

The attacks had a greater impact on the victims of the attacks and their families. As part of Public Law Number 107-42, Congress enacted the September 11th Victim Compensation Fund to provide a form of recovery for the victims of the attacks. The U.S. Attorney General's Office administers the fund through a SPECIAL MASTER. Recovery under these provisions is limited to those who were physically injured during the attacks, so victims of non-physical, economic loss cannot recover. As of May 2003, fund administrators had issued 495 award letters to victims of the attacks and their families. The average award to the family of a deceased victim is $1.44 million.

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CROSS-REFERENCES

Terrorism; War on Terrorism.

SEQUESTRATION

In the context of trials, the isolation of a jury from the public, or the separation of witnesses to ensure the integrity of testimony. In other legal contexts the seizure of property or the freezing of assets by court order.

In jury trials, judges sometimes choose to sequester the jurors, or place them beyond public reach. Usually the jurors are moved into a hotel, kept under close supervision twenty-four hours a day, denied access to outside media such as television and newspapers, and allowed only limited contact with their families.

Although unpopular with jurors, sequestration has two broad purposes. The first is to avoid the accidental tainting of the jury, and the second is to prevent others from intentionally tampering with the jurors by bribe or threat. Trial publicity, public sentiment, interested parties, and the maneuverings and machinations of lawyers outside the courtroom can all taint the jurors' objectivity and deny the defendant a fair trial. Judges are free to sequester the jury whenever they believe any of these factors may affect the trial's outcome.

Jury sequestration is rare. Typically ordered in sensational, high-profile criminal cases, sequestration begins immediately after the jury is seated and lasts until the jury has delivered its verdict. It is unusual for juries to be sequestered longer than a few days or a week. Occasionally, however, jurors are sequestered for weeks. The 1995 trial of former football star O. J. (Orenthal James) Simpson for murder was highly unusual: the Simpson jury was sequestered for eight and a half months—half as long as the period Simpson was imprisoned while under arrest and on trial. The experience provoked protest from the jurors and calls for legal reform.

The sequestration of witnesses differs from that of jurors. Whereas jurors are kept away from the public, witnesses typically are ordered not to attend the trial—or follow accounts of it—until they are to testify. This judicial order is intended to assure that the witnesses will testify concerning their own knowledge of the case without being influenced by testimony of prior witnesses. Witness sequestration also seeks to strengthen the role of cross-examination in developing facts.

Other definitions of sequestration relate to property. In CIVIL LAW, *sequester* has three distinct meanings. First, it means to renounce or disclaim, as when a widow appears in court and disclaims any interest in the estate of her deceased husband; the widow is said to

sequester. Second, it means to take something that is the subject of a controversy out of the possession of the contending parties and deposit it in the hands of a third person; this neutral party is called a sequestor. Third and most commonly, sequestration in civil law denotes the act of seizing property by court order.

In litigation and EQUITY practice, sequestration also refers to court-ordered confiscation of property. When one party sues another over an unpaid debt, the plaintiff may secure a writ of attachment. As another form of sequestration, this legal order temporarily seizes the alleged debtor's property in order to secure the debt or claim in the event that the plaintiff is successful. In equity practice—an antiquated system of justice that is now incorporated into civil justice—courts seize a defendant's property until the defendant purges herself of a charge of CONTEMPT.

In INTERNATIONAL LAW, the term *sequestration* signifies confiscation. Typically, it means the appropriation of private property to public use. Following a war, sequestration means the seizure of the property of the private citizens of a hostile power, as when a belligerent nation sequesters debts due from its own subjects to the enemy.

SERIATIM

*[*Latin, Severally; separately; individually; one by one.*]*

SERJEANT AT LAW

In English LEGAL HISTORY*, an elite order of attorneys who had the exclusive privilege of arguing before the Court of Common Pleas and also supplied the judges for both Common Pleas and the Court of the King's Bench.*

For six centuries starting in the 1300s, the serjeants at law ranked above all other attorneys in the kingdom. Only twelve hundred men were ever promoted to the dignity of serjeant, the last dying in 1921. Although the serjeants have never had an exact counterpart in the United States, the order has had a lasting impact on U.S. law: it has been cited as a reason for regarding U.S. attorneys as officers of the court and specifically for requiring court-appointed attorneys to subsidize the LEGAL REPRESENTATION of clients who cannot afford private attorneys.

The serjeants at law originated in the Court of Common Pleas, one of the four superior courts at Westminster, in the fourteenth century. They had an antecedent in the thirteenth-century legal practitioners known as *countors,* a term from the French meaning storytellers. Countors helped formulate the plaintiff's counts, or causes of action, and the preparatory work called *counting.* In the fourteenth century their role evolved and became a profession. The countors became *servientes ad legem,* or serjeants at law.

The serjeants were an exalted order. Paid by the Crown and admitted to practice before a single court, they belonged to a closed society that had significant power. Only serjeants could argue in the Court of Common Pleas, and their ranks provided the only candidates for judges of the Common Pleas and the King's Bench. By the fifteenth century, regard for the serjeants was so high that no practitioner in the legal profession was considered their equal.

Serjeants came from the elite of the legal profession. The chief justice of the Common Pleas prepared a list of seven or eight of the best lawyers who had at least sixteen years' experience, and the chancellor selected the new inductees. At their induction, an elaborate ceremony, they swore to serve the king's people. The serjeants' costume also distinguished them from other English attorneys. They wore a long, loose garment called a tabard, a hood, and a close-fitting white headdress called a coif. Eventually, from this costume, the serjeants became known as the ORDER OF THE COIF. The influence of the serjeants declined in the eighteenth century, and by the nineteenth century, their MONOPOLY on the Court of Common Pleas had ended. After the reorganization of the English justice system with the JUDICATURE ACTS of 1875, no more serjeants were created.

In U.S. law, the legacy of the serjeants derives from their role as officers of the court. The position was similar to holding public office and, as such, carried duties: the serjeants could be commanded to serve indigent clients. In the twentieth century, U.S. federal courts turned to this tradition for justification in viewing attorneys as officers of the court who also could be appointed to serve the needy. A significant example is the opinion in *United States v. Dillon,* 346 F.2d 633 (9th Cir. 1965), where the Ninth Circuit Court of Appeals required a court-appointed attorney to subsidize the costs of vacating the conviction of an indigent client. In citing "an ancient and established tradition" for this practice, the court looked in part to the English tradition of the serjeants at law.

SERVICE

Any duty or labor performed for another person.

The delivery of a legal document that notifies the recipient of the commencement of a legal action or proceeding in which he or she is involved.

The term *service* has various meanings, depending upon the context of the word.

Under feudal law, tenants had a duty to render service to their lords in exchange for use of the land. The service required could take many forms: monetary payments, farm products, loyalty, attendance upon the lord as an armed horseman, carrying the king's banner, providing a sword or a lance, or plowing or other farm labor done for the king.

In contract law, service refers to an act or deed, rather than property. It is a duty or labor done by a laborer under the direction and control of the one for whom the service is performed. The term implies that the recipient of the service selects and compensates the laborer. It is the occupation, condition, or status of being a servant and often describes every kind of employment relationship. In addition, *service* may be used to denote employment for the government, as in the terms *civil service, military service* or *the armed service,* or *public service.*

In the area of domestic relations, the term refers to the uncompensated work, guidance, and upkeep an injured or deceased family member previously provided for the family; the injury or death of the provider of these services means that the work will have to be obtained from another source and at a price. In this context the term traditionally was restricted to the "services" of a wife under the theory that the husband's duty was to provide support and the wife's duty was to provide service. After injury to his wife, a husband could bring an action on his own behalf against the responsible party for compensation of the loss of her aid, assistance, comfort, and society. The modern view holds that a wife may also sue for the loss of assistance and society of her husband.

Service also means the delivery of a writ, summons and complaint, criminal summons, or other notice or order by an authorized server upon another. Proper service thereby provides official notification that a legal action or proceeding against an individual has been commenced.

CROSS-REFERENCES

Feudalism; Service of Process.

SERVICE MARK

A TRADEMARK *that is used in connection with services.*

Businesses use service marks to identify their services and distinguish them from other services provided in the same field. Service marks consist of letters, words, symbols, and other devices that help inform consumers about the origin or source of a particular service. Roto-Rooter is an example of a service mark used by a familiar plumbing company. Trademarks, by contrast, are used to distinguish competing products, not services. Whereas trademarks are normally affixed to goods by means of a tag or label, service marks are generally displayed through advertising and promotion.

Service marks are regulated by the law of UNFAIR COMPETITION. At the federal level, service mark infringement is governed by the LANHAM TRADEMARK ACT of 1946 (15 U.S.C.A. § 1051 et. seq.). At the state level, service mark infringement is governed by analogous INTELLECTUAL PROPERTY statutes that have been enacted in many jurisdictions. In some states service mark infringement may give rise to a CAUSE OF ACTION under the COMMON LAW. Because service marks are a particular type of trademark, the substantive and procedural rules governing both types of marks are fundamentally the same.

The rights to a service mark may be acquired in two ways. First, a business can register the mark with the government. Most service marks are eligible for registration with the U.S. PATENT AND TRADEMARK OFFICE. Several state governments have separate registration requirements. Once a service mark has been registered, the law typically affords protection to the first mark filed with the government. Second, a business may acquire rights to a service mark through public use. However, a mark must be held out to the public regularly and continuously before it will receive legal protection. Sporadic or irregular use of a service mark will not insulate it from infringement.

To receive protection, a service mark must also be unique, unusual, or distinctive. Common, ordinary, and generic marks rarely qualify for protection. For example, a professional association of physicians could never acquire exclusive rights to register a service mark under the name "Health Care Services." Such a mark does little to distinguish the services provided by the business and tells consumers nothing about the HEALTH

A sample trademark/service mark application

Trademark/Service Mark Application

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

APPLICATION FOR REGISTRATION OF A TRADEMARK OR SERVICE MARK
(Please type or print)

Applicant (owner) name and address:_____

_____

Contact person name and address:_____

_____Daytime phone:_____ Fax number:_____

Applicant is a:_____Applicant's state or jurisdiction of formation: _____
(entity type i.e. corporation, partnership, etc)

Kind of mark (check one):Trademark _____ Service Mark _____

Identify the trademark or service mark (or attach an exhibit of the exact mark): _____

_____

Class number(s) of goods or services (see 21 VAC 5-120-100):_____

Describe the product(s) or service(s) the mark represents (identifies):_____

_____

Date mark was first used **anywhere** by applicant or applicant's predecessor: _____

Date mark was first used **in Virginia** by applicant or applicant's predecessor: _____

PLEASE NOTE: A specimen of the mark must accompany this application.

The applicant asserts that it is the owner of this mark and that the mark is in use in the Commonwealth of Virginia. No other person has registered this mark or has the right to use this mark in Virginia, either in the identical form thereof or in such near resemblance thereto as to be likely, when applied to the goods or services of such person, to cause confusion or mistake, or to deceive.

(**NOTE:** The application must be signed in the name of the applicant, either by the applicant or by a person authorized by the applicant. The application must be sworn to by the person who signed the name of the applicant.)

Signature:_____Date: _____

Signer's Name:_____Title:_____
(print or type)

State of:_____, County/City of:_____, to-wit:

The foregoing application was subscribed and sworn to before me by _____

on the _____ day of _____, _____.

My Commission Expires:_____ Notary Public: _____

TM 1 (7/99)

CARE practitioners involved. The law would give full legal protection to these same doctors, however, if they applied for a mark under the name "Snap and Jerk Chiropractic Services."

Once a business has established a vested right in a service mark, the law forbids other businesses from advertising their services with deceptively similar marks. Service mark infringement occurs when a particular mark is easily confused with other marks already established in the same trade and geographic market. Greater latitude is given when businesses that share similar marks are in unrelated fields or offer services in different consumer markets. For example, a court would be more inclined to allow two businesses to share the same mark when one business provides pest control services in urban areas, while the other provides film developing services in rural areas.

Two remedies are available for service mark infringement: injunctive relief (court orders restraining defendants from infringing on a plaintiff's service mark), and money damages (compensation for any losses suffered by an injured business). Both remedies are normally available whether a claim for infringement is pursued under state or federal law. However, the Lanham Act allows an injured business to recover significantly greater damages for infringement of a federally registered mark than it could recover under comparable state legislation.

Service marks protect the good will and reputation earned by businesses that have invested time, energy, and money in bringing quality services to the public. Service marks also encourage competition by requiring businesses to associate their marks with the quality of services they offer. In this way service marks function as a barometer of quality upon which consumers may rely when making decisions to purchase. However, service marks are often infringed, and consumers grow leery when inferior services are passed off as a competitor's through use of a deceptively similar mark. Thus legal protection of service marks can save consumers from making improvident expenditures for services of dubious or unknown origin.

CROSS-REFERENCES

Consumer Protection; Trademarks.

SERVICE OF PROCESS

Delivery of a writ, summons, or other legal papers to the person required to respond to them.

Process is the general term for the legal document by which a lawsuit is started and the court asserts its jurisdiction over the parties and the controversy. In modern U.S. law, process is usually a summons. A summons is a paper that tells a defendant that he is being sued in a specific court that the plaintiff believes has jurisdiction. Served with the summons is a complaint that contains the plaintiff's allegations of wrongdoing by the defendant and the legal remedy sought by the plaintiff. The summons also informs the defendant that he has a specified number of days under law to respond to the summons and complaint. If the defendant does not respond, the plaintiff may seek a default judgment from the court, granting the plaintiff the legal relief specified in the complaint.

Rules of CIVIL PROCEDURE and CRIMINAL PROCEDURE determine the proper form of legal process and how it should be served. The rules vary among federal and state courts, but they are meant to give the defendant notice of the proceedings and to command him to either respond to the allegations or to appear at a specified time and answer the claim or criminal charge. The concept of notice is critical to the integrity of legal proceedings. DUE PROCESS forbids legal action against a person unless the person has been given notice and an opportunity to be heard.

Process must be properly served on all parties in an action. Anyone who is not served is not bound by the decision in the case. A person who believes that proper service has not taken place may generally challenge the service without actually making a formal appearance in the case.

Whether service was proper is usually determined at a pretrial hearing. A defendant must request a special appearance before the court. A special appearance is made for the limited purpose of challenging the sufficiency of the service of process or the PERSONAL JURISDICTION of the court. No other issues may be raised without the proceeding becoming a general appearance. The court must then determine whether it has jurisdiction over the defendant.

Methods of Service

Three basic methods are used for service of process: (1) actual, or personal, service, (2) substituted service, and (3) service by publication. Although each method is legally acceptable, PERSONAL SERVICE is preferred because it is the most effective way of providing notice and it is difficult for the defendant to attack its legality.

Personal service means in-hand delivery of the papers to the proper person. Traditionally personal service was the only method of service allowed by law because it was best suited to give the defendant notice of the proceedings.

Substituted service is any method used instead of personal service. Forms of substituted service vary among different jurisdictions, but all are intended to offer a good chance that the defendant actually will find out about the proceedings. If a defendant is not at home, many states permit service by leaving the summons and complaint with any person at the defendant's home who is old enough to understand the responsibility of accepting service. Some states permit service by affixing the summons and complaint to the entrance of the defendant's home or place of business and then mailing a copy of the papers to that individual at his last known address. This method is often called "nail and mail" service. A number of states allow service simply by mailing the papers to the defendant's actual address; registered mail is generally required. States also consider service valid if the defendant's property is attached, or legally seized, within the state and the papers are then mailed to him.

Under the laws of some states, substituted service may be used only after diligent efforts to effect personal service have failed. Some forms of substituted service may have to be tried before others can be used. Other states permit substituted service at any time or after a single attempt to find the defendant and serve the papers personally.

A third method of service is publication of a notice in a newspaper. Publication is also called constructive service because the court construes it to be effective whether the defendant actually reads the notice or not. Generally, service by publication is allowed only by leave of the court, which usually grants permission only when the plaintiff can show that no other method of service can be effected. Usually the legal notice must be published in at least one newspaper of general circulation where the defendant is likely to be found or where the court is located, or in both places. Ordinarily the notice must be published on more than one occasion, such as once a week for three weeks.

In truth, courts realize that defendants rarely read notices published in newspapers, but the effort must be made when the defendant cannot be found and served in any other way. Plaintiffs prefer not to use publication because it is expensive and a court might later find that the defendant could have been served personally.

Where Process May Be Served

Legal papers may have to be served within the geographical reach of the jurisdiction, or authority, of the court. If the service itself is the basis for the court's jurisdiction over the defendant, then the service usually must be made within the state. For lower-level courts, service may have to be made within the county where the court is located. Trial courts of general jurisdiction usually permit service anywhere within the state. Service of process for an action in a federal district court may be made anywhere within the state where the court sits or, for some parties, any place in the United States that is not more than one hundred miles from the courthouse.

A variety of statutes permit state courts to exercise authority over persons not physically present within the state. These are called LONG-ARM STATUTES. They specify factors, other than the defendant's physical presence within the state, that provide sufficient justification for the court to exercise jurisdiction over the defendant, such as doing business within the state or having an automobile accident within the state. When one of these factors exists, the prospective defendant can be served with legal process outside the state because the service itself is not the basis of the court's jurisdiction.

Substituted or constructive methods of service may be used on a defendant who comes within the long-arm jurisdiction of the state. For example, many states permit a plaintiff to serve an out-of-state resident who was involved in a traffic accident in the state by serving legal process on the attorney general of the defendant's state and then sending copies to the defendant at his residence. The statute makes the attorney general the agent for the service of process on out-of-state drivers. Such a statute is based on the theory that a nonresident driver has consented to this method of service by using the highways and facilities within the state.

Who Must Be Served

Service of process is effective only if the right person is served. When the defendant can be described but not named, service by publication can be made with a fictional name like Richard Roe. Where the defendant is not a natural per-

son but a corporation, statutes generally provide for effective service on a managing agent, a director, an officer, or anyone designated an agent in the corporation's application for a charter or a license to do business within the state.

If the person to be sued is a child or a person incapable of managing his own legal affairs, service may be made on a parent, guardian, or someone else entrusted with the defendant's care or affairs. The plaintiff may ask the court to designate a proper person when there is doubt. An estate can be sued by service of process on an executor or administrator. The plaintiff may ask the court to appoint such a person if none has yet been named.

When more than one person is being sued, each of them must be served. For example, if a partnership is sued, each partner must be served.

When Papers Can Be Served

The proper time for service of process depends on the law of the jurisdiction. Service must be made within the time that the STATUTE OF LIMITATIONS allows for starting that particular kind of action because it is service that starts the lawsuit.

Many states have long prohibited personal or substituted service on Sunday. Service is also prohibited on legal holidays in some states.

Process Servers

Every jurisdiction specifies who may serve process. Many states take a simple approach and allow service by any person over the age of 18 who is not a party to the suit. Under federal law service of anything other than a summons, complaint, or subpoena must be made by a U.S. marshal, a deputy marshal, or someone else appointed by the court. Some states also follow this procedure and designate that such qualified service shall be by a sheriff or similar peace officer.

In some jurisdictions anyone who serves more than a specified small number of summonses a year must be licensed. Laws generally provide for fines or imprisonment of a process server who fails to obtain a required license. A court will not dismiss cases started with service by an unlicensed process server.

For the most part, courts have allowed process servers to use any means necessary to serve papers on reluctant defendants as long as no law is broken. For example, a process server can knock on the defendant's door and state that he has a package for the defendant. If the defendant opens the door, the resulting service of process is valid.

A defendant cannot avoid the service of process by refusing to accept delivery of the papers. Many cases have upheld service where the process server dropped the papers at the defendant's feet, hit the defendant in the chest with them, or even laid them on the defendant's car when he refused to get out or open the door.

Invalid Service

The tricks of serving process papers can, however, reach a point that the courts will not tolerate because they subvert the purpose of service or threaten to disrupt the administration of justice. The most intolerable abuse is called sewer service. It is not really service at all but is so named on the theory that the server tossed the papers into the sewer and did not attempt to deliver them to the proper party. Sewer service is a FRAUD on the court, and an attorney who knowingly participates in such a scheme can be disbarred.

Anyone who serves process must file an AFFIDAVIT of service with the court, giving details of the delivery of the papers. If the facts in an affidavit of service falsely assert that the papers were delivered, the person who swears to them can be prosecuted for the crime of perjury. In addition, the plaintiff's action will not have commenced. If the statute of limitations has expired by the time the true facts of the improper service are disclosed, the action is completely barred and the plaintiff has lost the right to sue.

Service is also invalid if the defendant has been enticed into the jurisdiction by fraud. Courts have ruled that luring a potential defendant into the state in order to serve him with process when no other grounds exist to assert jurisdiction over him in that state violates the individual's right to due process of law. Service of process by fraud is null and void.

Immunity from Service of Process

Courts typically grant IMMUNITY from process to anyone who comes within reach of the authority of the court only because he is required to participate in judicial proceedings. The purpose of this immunity is to ensure a fair trial by encouraging the active and willing participation of witnesses and parties. If a witness was discouraged from coming into a state

because of the risk of being sued in that state, justice would not be served.

Immunity also protects nonresident attorneys, parties, and witnesses from being served with process in unrelated actions while attending, or traveling to, criminal or civil trials within a state. This immunity has been extended to protect out-of-state parties who enter a state not for trial but to settle a controversy out of court. Diplomatic personnel, ambassadors, and consuls who are in the United States on official business are also immune from process.

SERVICEMEN'S READJUSTMENT ACT OF 1944

See GI BILL.

SERVITUDE

The state of a person who is subjected, voluntarily or involuntarily, to another person as a servant. A charge or burden resting upon one estate for the benefit or advantage of another.

INVOLUNTARY SERVITUDE, which may be in the form of SLAVERY, peonage, or compulsory labor for debts, is prohibited by the THIRTEENTH AMENDMENT to the U.S. Constitution. Article I, Section 9, of the original Constitution had given Congress the power to restrict the slave trade by the year 1808, which it did, but slavery itself was not prohibited until the Thirteenth Amendment was enacted in 1865. The slave trade had begun in the American colonies in the seventeenth century and involved the forcible taking and transport of Africans and others to sell as slaves. The Thirteenth Amendment's prohibition against slavery encompasses situations where an individual is compelled by force, coercion, or imprisonment, and against his will, to labor for another, whether he is paid or not.

The term *servitude* is also used in PROPERTY LAW. In this context, servitude is used with the term *easement,* a right of some benefit or beneficial use out of, in, or over the land of another. Although the terms *servitude* and *easement* are sometimes used as synonyms, the two concepts differ. A servitude relates to the servient estate or the burdened land, whereas an EASEMENT refers to the dominant estate, which is the land benefited by the right. Not all servitudes are easements because they are not all attached to other land as APPURTENANCES (an appurtenance is an appendage or that which belongs to something else).

All servitudes affecting lands are classified as either personal or real. Personal servitudes are established for the benefit of a particular person and terminate upon the death of that individual. A common example of a personal servitude is the use of a house. Real servitudes, also called landed servitudes, benefit the owner of one estate through some use of a neighboring estate.

At CIVIL LAW, real servitudes are divided into two types: rural and urban. Rural servitudes are established for the benefit of a landed estate; examples include a right of way over a servient tenement and a right of access to a spring, sandpit, or coal mine. Urban servitudes are established for the benefit of one building over another; some examples are a right of support, a right to a view, and a right to light. Despite the name *urban servitude,* the buildings do not have to be in a city.

Servitudes are also classified as positive and negative. A positive servitude requires the owner of the servient estate to permit something to be done on her property by another. A negative servitude does not bind the servient owner in this manner but merely restrains her from using the property in a manner that would impair the easement enjoyed by the owner of the dominant estate.

SESSION

The sitting of a court, legislature, council, or commission for the transaction of its proper business.

A session can be the period of time within any one day during which the body is assembled and engaged in business. In a more extended sense, the session can be the whole space of time from the first assembling of the body to its adjournment.

A *joint session* is the convening of the two houses of a legislative body to sit and act together as one body, instead of separately in their respective houses.

As applied to a court, the word *session* is not strictly synonymous with the word *term.* The session of a court is the time during which it actually sits each day for the transaction of judicial business. A term of a court is the period fixed by law—usually amounting to many days or weeks—during which it is open for judicial business and during which it can hold sessions from day to day. The two words are, however, frequently used interchangeably.

SET ASIDE

To cancel, annul, or revoke a judgment or order.

SET DOWN

To list a case in a court calendar or docket for trial or hearing during a particular term.

SET-OFF

A demand made by the defendant against the plaintiff that is based on some transaction or occurrence other than the one that gave the plaintiff grounds to sue.

The set-off is available to defendants in civil lawsuits. Generally, civil actions are brought by plaintiffs seeking an award of damages for injuries caused by the defendant. In customary practice the plaintiff files the suit and the defendant answers it. The defendant may assert a *counterclaim* against the plaintiff based on an event or transaction other than the event or transaction that forms the basis of the plaintiff's suit. A set-off is a counterclaim with the particular goal of defeating or diminishing the amount the defendant will have to pay if the plaintiff's suit succeeds.

The set-off has two distinctive features. It must be based on an entirely different claim from that of the plaintiff, and it must be a valid legal claim that the defendant could bring as a separate suit. For example, a stereo store sues a customer for $700 due in outstanding payments on a CD player. However, the customer's car was damaged in the store's parking lot when the store's delivery van backed into it, and the repairs cost $500. As the defendant, the customer has the right to assert a counterclaim for damages to the car; if the customer is successful, the set-off reduces the amount owed to the plaintiff store so that the defendant owes the plaintiff only $200.

The remedy of *recoupment* is similar in effect to a set-off but differs from it in several respects. Whereas a set-off is based on a different claim, recoupment is a common-law remedy based specifically on the contract between the plaintiff and defendant that gave rise to the suit. It allows defendants to claim damages against the plaintiff under two conditions: where the plaintiff has not complied with some contractual obligation or where the plaintiff has violated some duty that the law imposed in the making or performance of the contract. Recoupment usually occurs in cases where the plaintiff has performed only a portion of the contract and sues for compensation for the partial performance. For example, the defendant in the stereo store's action might demand recoupment for the store's failure to service the stereo under its WARRANTY.

Like all counterclaims, set-off and recoupment seek to achieve justice by BALANCING the plaintiff's and the defendant's rights. They are designed to prevent a plaintiff from recovering complete damages from a defendant who has suffered injury or damages caused by the plaintiff. They can also save time and money. By combining the entire controversy within one action, recoupment and set-off prevent the courts from being inundated with multiple lawsuits.

SETBACK

A distance from a curb, property line, or structure within which building is prohibited.

Setbacks are building restrictions imposed on property owners. Local governments create setbacks through ordinances and BUILDING CODES, usually for reasons of public policy such as safety, privacy, and environmental protection. Setbacks prevent landowners from crowding the property of others, allow for the safe placement of pipelines, and help to preserve wetlands. Setbacks form boundaries by establishing an exact distance from a fixed point, such as a property line or an adjacent structure, within which building is prohibited. Generally, prospective buyers learn that land is subject to setback provisions when they are considering purchasing it. This information is important to future development plans, because setbacks remain in effect until changed by law or special action of a local government.

Setbacks can significantly affect a property owner's right to develop land or to modify existing structures on the land. For this reason they can influence property values; severe restrictions on land can decrease its value. Violating setback provisions can lead to legal action against a property owner, and penalties can include fines as well as an order to remove noncompliant structures. Property owners whose desire to build is stymied by setbacks have few remedies. They can petition their local government by applying for a variance—a special permission to depart from the requirements of ZONING ordinances—but variances are generally granted only in cases of extreme hardship. Litigation over setbacks is common.

CROSS-REFERENCES

Land-Use Control.

SETTLE

To agree, to approve, to arrange, to ascertain, to liquidate, or to reach an agreement.

Parties are said to settle an account when they examine its items and ascertain and agree upon the balance due from one to the other. When the person who owes money pays the balance, he or she is also said to settle it. A trust is settled when its terms are established and it goes into effect.

The term *settle up* is a colloquial rather than legal phrase that is applied to the final collection, adjustment, and distribution of the estate of a decedent, a bankrupt, or an insolvent corporation. It includes the processes of collecting the property, paying the debts and charges, and remitting the balance to those entitled to receive it.

SETTLEMENT

The act of adjusting or determining the dealings or disputes between persons without pursuing the matter through a trial.

In civil lawsuits, settlement is an alternative to pursuing litigation through trial. Typically, it occurs when the defendant agrees to some or all of the plaintiff's claims and decides not to fight the matter in court. Usually, a settlement requires the defendant to pay the plaintiff some monetary amount. Popularly called *settling out of court,* a settlement agreement ends the litigation. Settlement is a popular option for several reasons, but a large number of cases are settled simply because defendants want to avoid the high cost of litigation. Settlement may occur before or during the early stages of a trial. In fact, simple settlements regularly take place before a lawsuit is even filed. In complex litigation, especially CLASS ACTION suits or cases involving multiple defendants, a settlement requires court approval.

Civil lawsuits originate when a claimant decides that another party has caused him or her injury and files suit. The plaintiff seeks to recover damages from the defendant. The defendant's attorney will evaluate the plaintiff's claim. If the plaintiff has a strong case and the attorney believes defendant is likely to lose, the attorney may recommend that the defendant settle the case. By settling, the defendant avoids the financial cost of litigating the case. Trials are often extremely expensive because of the amount of time required by attorneys, and even alternatives to trials, such as mediation and ARBITRATION, can be costly. In deciding whether to settle a claim, attorneys act as intermediaries. The parties to the suit must decide whether to offer, accept, or decline a settlement.

The cost of litigation is only one factor that encourages settlement. Both plaintiffs and defendants are often motivated to settle for other reasons. For one thing litigation is frequently unpleasant. The process of discovery—in which both sides solicit information from each other—can cause embarrassment because considerable personal and financial information must be released. Litigation can also have a harmful impact on the public reputation of the parties. Employers, for example, sometimes settle SEXUAL HARASSMENT claims in order to avoid unwanted media exposure or damage to employee morale.

Like litigation itself, settlement is a process. Generally, the easiest time to settle a dispute is before litigation begins, but many opportunities for settlement present themselves. As litigation advances toward trial, attorneys for both sides communicate with each other and with the court and gauge the relative strength of their cases. If either of the parties believes he is unlikely to prevail, he is likely to offer a settlement to the other party.

Litigation ends when a settlement is reached. The plaintiff typically agrees to forgo any future litigation against the defendant, and the defendant agrees to pay the plaintiff some monetary amount. Additionally, settlements can require the defendant to change a policy or stop some form of behavior.

Often, the exact terms of settlements are not disclosed publicly, particularly in high-profile cases where the defendant is seeking to protect a public reputation. In high-profile cases, settlements are often followed by a public statement by the defendant. It is not unusual for a large company to settle with a plaintiff for an undisclosed amount and then to issue a statement saying that the company did nothing wrong.

In some forms of litigation, settlement is more complex. In class actions, for example, attorneys represent a large group of plaintiffs, known as the class, who typically seek damages from a company or organization. Courts review the terms of a class action settlement for fairness. Complexities also arise in cases involving multiple defendants. In particular, when only

some of the defendants agree to settle, the court must determine the share of liability that accrues to those defendants who choose to pursue litigation.

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SETTLEMENT STATEMENT

A breakdown of costs involved in a real estate sale.

Before real estate is sold, federal law requires both the buyer and seller to provide a settlement statement. This official document lists all the costs involved in the sale. A settlement statement is typically prepared by either a lender or a third party known as an escrow agent, who must follow the regulations set forth in the Real Estate Settlement Procedures Act of 1974 (RESPA) (12 U.S.C.A. § 2601 et seq.). RESPA is a CONSUMER PROTECTION law enforced by the federal HOUSING AND URBAN DEVELOPMENT DEPARTMENT (HUD).

Historically, the secondary costs in real estate transactions have been expensive. These costs include broker's fees and appraiser's fees, some of which are required by lenders in real estate deals. Buyers and sellers have not always known the full extent of these costs in advance. Responding to the maze of hidden costs during the early 1970s, both the secretary of HUD and the administrator of Veterans' Affairs petitioned Congress on behalf of reform that would reduce the likelihood of unpleasant surprises for consumers.

RESPA set forth four goals. First, it attempted to improve advance disclosure of settlement costs to home buyers and sellers. Second, it sought to eliminate corruption in the form of kickbacks or referral fees that unfairly inflate settlement costs. Third, it aimed to reduce the amounts home buyers are required to deposit in an escrow account—in this case, a bank account established to ensure the payment of real estate taxes and insurance. Finally, Congress wished to modernize an outmoded system of local record keeping of land title information.

Besides a full accounting of sale costs, RESPA requires lenders to keep settlement statement records for five years or until they dispose of the loan. It provides no civil penalties for lenders who fail to properly disclose information. However, section 8, which includes anticorruption measures, sets forth criminal and civil penalties for illegal referral fees: it is designed to keep intermediaries in the deal from cheating consumers by piling up costs.

In the 1990s the scope of RESPA expanded. Initially RESPA had only covered home purchase loans, but it grew to include refinances and subordinate lien loans with the enactment of the Housing and Community Development Act of 1992 (Pub. L. No. 102-550, 106 Stat. 3672). These changes took effect in 1994 after HUD amended its rules (24 C.F.R. pt. 3500). As a result, lenders providing EQUITY or second mortgage loans, home improvement financing, and mobile home financing came under the regulation of RESPA.

The expansion of RESPA brought complaints from the finance industry about the burden of excess regulation. Yet with the signing of the Housing and Community Development Act by the usually antiregulatory President GEORGE H. W. BUSH, Washington signaled its approval of the benefits for consumers in regulating costs in real estate transactions.

SETTLOR

One who establishes a trust—a right of property, real or personal—held and administered by a trustee for the benefit of another.

SEVEN BISHOPS' TRIAL

A turning point in the history of ENGLISH LAW, the Seven Bishops' Trial, 12 Howell's State Trials 183 (1688), involved issues of church and state, the authority of the monarchy, and the power of the judiciary. In 1688 King James II brought the proceeding against seven prominent bishops of the Church of England. For defying a controversial order of the king, the prelates were accused of seditious libel, a grave offense that constituted rebellion against the Crown. Their successful defense against the charge helped to encourage the opposition to the king that culminated six months later in the so-called Glorious Revolution of 1688. The king fled, and subsequently

Settlement Statement

A. Settlement Statement | **U.S. Department of Housing and Urban Development** | OMB Approval No. 2502-0265

B. Type of Loan

1. ☐ FHA 2. ☐ FmHA 3. ☐ Conv. Unins. 4. ☐ VA 5. ☐ Conv. Ins.	6. File Number:	7. Loan Number:	8. Mortgage Insurance Case Number:

C. Note: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.c.)" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.

D. Name & Address of Borrower:	E. Name & Address of Seller:	F. Name & Address of Lender:

G. Property Location:	H. Settlement Agent:	
	Place of Settlement:	I. Settlement Date:

J. Summary of Borrower's Transaction		**K. Summary of Seller's Transaction**	
100. Gross Amount Due From Borrower		**400. Gross Amount Due To Seller**	
101. Contract sales price		401. Contract sales price	
102. Personal property		402. Personal property	
103. Settlement charges to borrower (line 1400)		403.	
104.		404.	
105.		405.	
Adjustments for items paid by seller in advance		**Adjustments for items paid by seller in advance**	
106. City/town taxes to		406. City/town taxes to	
107. County taxes to		407. County taxes to	
108. Assessments to		408. Assessments to	
109.		409.	
110.		410.	
111		411.	
112.		412.	
120. Gross Amount Due From Borrower		**420. Gross Amount Due To Seller**	
200. Amounts Paid By Or In Behalf Of Borrower		**500. Reductions In Amount Due To Seller**	
201. Deposit or earnest money		501. Excess deposit (see instructions)	
202. Principal amount of new loan(s)		502. Settlement charges to seller (line 1400)	
203. Existing loan(s) taken subject to		503. Existing loan(s) taken subject to	
204.		504. Payoff of first mortgage loan	
205.		505. Payoff of second mortgage loan	
206.		506.	
207.		507.	
208.		508.	
209.		509.	
Adjustments for items unpaid by seller		**Adjustments for items unpaid by seller**	
210. City/town taxes to		510. City/town taxes to	
211. County taxes to		511. County taxes to	
212. Assessments to		512. Assessments to	
213.		513.	
214.		514.	
215.		515.	
216.		516.	
217.		517.	
218.		518.	
219.		519.	
220. Total Paid By/For Borrower		**520. Total Reduction Amount Due Seller**	
300. Cash At Settlement From/To Borrower		**600. Cash At Settlement To/From Seller**	
301. Gross Amount due from borrower (line 120)		601. Gross amount due to seller (line 420)	
302. Less amounts paid by/for borrower (line 220)	( )	602. Less reductions in amt. due seller (line 520)	( )
303. Cash ☐ **From** ☐ **To Borrower**		**603. Cash** ☐ **To** ☐ **From Seller**	

Section 5 of the Real Estate Settlement Procedures Act (RESPA) requires the following: • HUD must develop a Special Information Booklet to help persons borrowing money to finance the purchase of residential real estate to better understand the nature and costs of real estate settlement services; • Each lender must provide the booklet to all applicants from whom it receives or for whom it prepares a written application to borrow money to finance the purchase of residential real estate; • Lenders must prepare and distribute with the Booklet a Good Faith Estimate of the settlement costs that the borrower is likely to incur in connection with the settlement. These disclosures are manadatory.

Section 4(a) of RESPA mandates that HUD develop and prescribe this standard form to be used at the time of loan settlement to provide full disclosure of all charges imposed upon the borrower and seller. These are third party disclosures that are designed to provide the borrower with pertinent information during the settlement process in order to be a better shopper.

The Public Reporting Burden for this collection of information is estimated to average one hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number. The information requested does not lend itself to confidentiality.

[continued]

A sample settlement statement

Settlement Statement

L. Settlement Charges			Paid From Borrowers Funds at Settlement	Paid From Seller's Funds at Settlement
700. Total Sales/Broker's Commission based on price $	**@**	**% =**		
Division of Commission (line 700) as follows:				
701. $ to				
702. $ to				
703. Commission paid at Settlement				
704.				
800. Items Payable In Connection With Loan				
801. Loan Origination Fee	%			
802. Loan Discount	%			
803. Appraisal Fee	to			
804. Credit Report	to			
805. Lender's Inspection Fee				
806. Mortgage Insurance Application Fee to				
807. Assumption Fee				
808.				
809.				
810.				
811.				
900. Items Required By Lender To Be Paid In Advance				
901. Interest from to	@$	/day		
902. Mortgage Insurance Premium for		months to		
903. Hazard Insurance Premium for		years to		
904.		years to		
905.				
1000. Reserves Deposited With Lender				
1001. Hazard insurance	months@$	per month		
1002. Mortgage insurance	months@$	per month		
1003. City property taxes	months@$	per month		
1004. County property taxes	months@$	per month		
1005. Annual assessments	months@$	per month		
1006.	months@$	per month		
1007.	months@$	per month		
1008.	months@$	per month		
1100. Title Charges				
1101. Settlement or closing fee	to			
1102. Abstract or title search	to			
1103. Title examination	to			
1104. Title insurance binder	to			
1105. Document preparation	to			
1106. Notary fees	to			
1107. Attorney's fees	to			
(includes above items numbers:		)		
1108. Title insurance	to			
(includes above items numbers:		)		
1109. Lender's coverage	$			
1110. Owner's coverage	$			
1111.				
1112.				
1113.				
1200. Government Recording and Transfer Charges				
1201. Recording fees: Deed $	; Mortgage $	; Releases $		
1202. City/county tax/stamps: Deed $	; Mortgage $			
1203. State tax/stamps: Deed $	; Mortgage $			
1204.				
1205.				
1300. Additional Settlement Charges				
1301. Survey to				
1302. Pest inspection to				
1303.				
1304.				
1305.				
1400. Total Settlement Charges (enter on lines 103, Section J and 502, Section K)				

Previous editions are obsolete

form HUD-1 (3/86)
ref Handbook 4305.2

A sample settlement statement (continued)

England had a new monarchy and a new **BILL OF RIGHTS**. The bishops' challenge to authority and the subsequent expression of popular political will were important precedents that helped to inspire later revolutionaries among the American colonists.

The trial took place against a backdrop of anti-Catholicism. The English Parliament had restricted the rights of Catholics to hold public office and engage in other activities. James II was a devout Catholic, however, and believed that it was his duty to protect the rights of English Catholics. Accordingly, on April 4, 1687, he issued the First Declaration of Indulgence, which suspended the restrictions and led directly to Catholics holding public offices. A year later, on April 27, 1688, James repeated his first order and went further: to better inform the citizenry, he commanded the Anglican clergy to read his Second Declaration of Indulgence in their churches.

The king's order was universally unpopular. Seven senior prelates took action. Led by William Sancroft, the archbishop of Canterbury, they sent the king a petition professing their loyalty to him but also indicating their refusal to read the declaration in church. The petition enraged James, especially since the ostensibly private statement was published throughout the kingdom. Viewing the bishops' petition as an act of rebellion, he began the process of prosecuting them for **SEDITIOUS LIBEL**. In such a case, the accused were required to post a payment called a recognizance or else await trial in prison. This the bishops refused to do, claiming that as members of the House of Lords, they were exempt from paying recognizances. The bishops' claim may have been a bit audacious in that the exemption probably did not extend to such serious offenses. In any event James promptly jailed the bishops in the Tower of London.

At trial both sides argued over the issue of **SEDITION**. The Crown maintained that the bishops should have taken their grievances to the king's courts or appealed to Parliament for action. Their failure to do so amounted to an attempt to incite popular hostility against the king. Lawyers for the bishops argued that they had simply exercised the same rights available to all English subjects. Anyone, they asserted, was free to petition the king when legal rights were infringed. Four judges presided at the trial. In giving their opinion on the law to the jury, they divided equally over whether the bishops had committed seditious libel. Boldly, the jury ruled against the Crown.

A depiction of the June 1688 release of the Seven Bishops following their acquittal on charges of seditious libel against King James II, one of the first major decisions against an executive branch of government. BETTMANN/CORBIS

The acquittal of the bishops had immediate and lasting implications. The verdict of not guilty was received with great popular acclaim and contributed to exactly what the king had feared—rebellion. During James's dispute with the bishops, his second wife had given birth to a son. Hitherto James's heir apparent had been Mary, his Protestant daughter from his first marriage, who was married to William of Orange, the ruler of the Netherlands. Now the birth of a son aroused fear that James would be succeeded by a Catholic. Accordingly, a coalition of nobles, encouraged by the popular response to the bishops' acquittal, invited the Protestant William of Orange and Mary to assume the throne. The so-called Glorious Revolution of 1688 saw King James II flee to France, while William and his wife Mary became king and queen. Their appointment by Parliament underscored that institution's supremacy as the maker of law in England; in a short time, the nation had not only new sovereigns but also a new Bill of Rights.

The significance of the Seven Bishops' Trial reached beyond England. Historically, it marked one of the first major decisions against an **EXECUTIVE BRANCH** of government. A jury had nullified what it considered an unjust law. Thus, historians see the case as marking the emancipation of the judiciary from executive control. This

lesson was not lost on the American colonists. They viewed the case as an exercise of popular political will against a tyrannical monarch; as such, it inspired early American republicans (and ultimately revolutionaries) who believed in the decentralization of power.

SEVENTEENTH AMENDMENT

The Seventeenth Amendment to the U.S. Constitution reads:

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

The Seventeenth Amendment, which was ratified in 1913, provided for the direct election of U.S. senators by citizens. Until 1913 state legislatures had elected U.S. senators. Ratification of the amendment followed decades of insistence that the power to elect senators should be placed in the hands of ordinary voters. This successful struggle marked a major victory for *progressivism*—the early twentieth-century political movement dedicated to pushing government at all levels toward reform. In addition to serving the longer-range goals of the reformers, the campaign on behalf of the amendment sought to end delays and what was widely perceived as corruption in the election of senators by state legislatures.

From 1787 until 1913, the U.S. Constitution specified that state legislatures would elect U.S. senators. Article 1, Section 3, reads:

> The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years; and each Senator shall have one Vote.

In giving the elective power to the states, the framers of the Constitution hoped to protect state independence. The framers were suspicious of majority rule and sought to restrain what they regarded as the potentially destructive forces of democracy. Thus, while providing for direct election to the House of Representatives, they countered this expression of the people's will by allowing legislatures to select members of the Senate. At the Constitutional Convention, the proposal for state election of senators aroused no controversy. Only one proposal for senatorial election by popular vote was offered, and it was soundly defeated. The states were receptive and did not protest when the Constitution was sent to them for ratification. Nor, over the next decades, did the system incur more than occasional criticism.

By the late nineteenth century, however, political opinion was changing in favor of a more fully participatory democracy. Starting in the 1880s, the concentration of elective power in the hands of state legislatures provoked criticism. The critics complained that the legislatures were dominated by party bosses who prevented citizen participation and thwarted popular political action. The critics also pointed to practical and ethical problems: lengthy deadlocks, which sometimes resulted when legislatures could not agree upon a candidate, and alleged BRIBERY. Progressivism, the reform movement that sought to address social inequities by broadening government power, helped to bring about this change in outlook. Under the pressure of the Progressive movement and the popular belief that citizens were capable of choosing their own senators, the states began to bend. By the turn of the century, several states were holding popular elections that served as advisories to the legislatures in selecting senators.

Over the next decade, increasing calls for change reached Congress, where the resistance to change was considerable. Federal lawmakers argued that direct election would strip states of their independence and sovereignty. The pressure continued to increase, however, until by 1910, thirty-one state legislatures had requested that Congress hold a constitutional convention to propose an amendment. The next year Congress buckled and passed the amendment; within two years, the amendment had been ratified by the states. It read, in relevant part:

> The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote.

Only ten states opposed ratification.

Ratification of the Seventeenth Amendment introduced significant changes to Congress. When states elected senators, they exercised the power of *instruction*—they could direct their senators to vote a certain way on important matters. The Seventeenth Amendment formally ended this power, for now senators were beholden to the voters. Historians and legal scholars continue to debate the other effects of the amendment. Some view it as a grave surrender of state sovereignty; others see it as a benign or even positive outgrowth of popular will. Direct election has seemingly contributed to the decline in the power of party bosses, but its impact upon the actual practice of Senate business has been negligible.

FURTHER READINGS

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CROSS-REFERENCES

Congress of the United States.

SEVENTH AMENDMENT

The Seventh Amendment to the U.S. Constitution reads:

> 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.

The Seventh Amendment to the U.S. Constitution guarantees the right to a jury trial in most civil suits that are heard in federal court. However, before the Seventh Amendment right to a jury trial attaches, a lawsuit must satisfy four threshold requirements. First, it must assert a claim that would have triggered the right to a jury trial under the English common law of 1791, when the Seventh Amendment was ratified. If a lawsuit asserts a claim that is sufficiently analogous to an eighteenth-century English common-law claim, a litigant may still invoke the Seventh Amendment right to a jury trial even though the claim was not expressly recognized in 1791 (*Markman v. Westview Instruments,* 517 U.S.370, 116 S. Ct. 1384, 134 L. Ed. 2d 577 [1996]). Claims brought under a federal statute that confer a right to trial by jury also implicate the Seventh Amendment (*Chauffeurs, Teamsters and Helpers, Local No. 391 v. Terry,* 494 U.S. 558, 110 S. Ct. 1339, 108 L. Ed. 2d 519 [1990]).

Second, a lawsuit must be brought in federal court before a litigant may invoke the Seventh Amendment right to a jury trial. This right is one of the few liberties enumerated in the **BILL OF RIGHTS** that has not been made applicable to the states through the doctrine of selective incorporation (*Minneapolis & St. Louis Railroad v. Bombolis,* 241 U.S. 211, 36 S. Ct. 595, 60 L. Ed. 961 [1916]). The Seventh Amendment does not apply in state court even when a litigant is enforcing a right created by federal law. However, most state constitutions similarly afford the right to trial by jury in civil cases.

Third, a lawsuit must assert a claim for more than $20. Because nearly all lawsuits are filed to recover much larger sums, this provision of the Seventh Amendment is virtually always met.

Fourth, a lawsuit must assert a claim that is essentially legal in nature before the Seventh Amendment applies. There is no right to a jury trial in civil actions involving claims that are essentially equitable in nature (*Tull v. United States,* 481 U.S. 412, 107 S. Ct. 1831, 95 L. Ed. 2d 365 [1987]). Lawsuits that seek injunctions, **SPECIFIC PERFORMANCE**, and other types of nonmonetary remedies are traditionally treated as equitable claims. Lawsuits that seek money damages, conversely, are traditionally treated as legal claims. However, these traditional categories of law and **EQUITY** are not always neatly separated.

If the monetary relief sought is only "incidental" to an equitable claim for an **INJUNCTION**, the right to a jury trial will be denied (*Stewart v. KHD Deutz of America,* 75 F.3d 1522 [11th Cir. 1996]). Even if a lawsuit is couched in terms of a legal claim for monetary relief, a court will deny a litigant's request for a jury trial if an

essentially equitable claim is being asserted. Lawsuits seeking restitution, though representing claims for monetary reimbursement, have been treated as equitable claims for the purposes of the Seventh Amendment (*Provident Life and Accident Insurance v. Williams,* 858 F. Supp. 907 [W.D. Ark. 1994]). On the other hand, an employee's action for back pay under Title VII of the CIVIL RIGHTS ACT OF 1964 (42 U.S.C.A. §§ 2000e et seq.) represents a legal claim despite the fact that the statute characterizes the remedy as equitable (*Local No. 391 v. Terry*).

When a lawsuit involves mixed QUESTIONS OF LAW and equity, litigants may present the legal questions to a jury under the Seventh Amendment, while leaving the equitable questions for judicial resolution (*Snider v. Consolidation Coal Co.,* 973 F.2d 555 [7th Cir. 1992]). For example, an action to recover attorneys' fees pursuant to a written agreement normally would be decided by a jury in accordance with the common law of contracts. However, in a subsequent proceeding to determine the amount of attorneys' fees owed, equitable principles of accounting would normally be applied by a judge alone (*McGuire v. Russell Miller, Inc.,* 1 F.3d 1306 [2nd Cir. 1993]). Any factual determinations made by the jury in the first proceeding would be binding on the judge during the second proceeding (*Lebow v. American Trans Air,* 86 F.3d 661 [7th Cir. 1996]).

Some types of lawsuits present issues that are neither wholly legal nor entirely equitable. In many such cases, the Seventh Amendment offers no protection. For example, there is no right to trial by jury for lawsuits that involve issues of maritime law or ADMIRALTY rights (*Parsons v. Bedford,* 28 U.S. [3 Pet.] 433, 7 L. Ed. 732 [1830]). Nor is the Seventh Amendment implicated in proceedings that relate to the naturalization (*Luria v. United States,* 231 U.S. 9, 34 S. Ct. 10, 58 L. Ed. 101 [1913]) or deportation (*Gee Wah Lee v. United States,* 25 F.2d 107 [5th Cir. 1928]), of ALIENS. Litigants also have no Seventh Amendment right to trial by jury in lawsuits brought against the federal government (*Lehman v. Nakshian,* 453 U.S. 156, 101 S. Ct. 2698, 69 L. Ed. 2d 548 [1981]).

The underlying rationale of the Seventh Amendment was to preserve the historic line separating the province of the jury from that of the judge in civil cases. Although the line separating questions of law from QUESTIONS OF FACT is often blurred, the basic functions of judges and juries are clear. Judges are charged with the responsibility of resolving issues concerning the admissibility of evidence and instructing jurors regarding the pertinent laws governing the case. Judges are also permitted to comment on the evidence, highlight important issues, and otherwise express their opinions in open court as long as each factual question is ultimately submitted to the jury. However, a judge may not interject her personal opinions or observations to such an extent that they impair a litigant's right to a fair trial (*Rivas v. Brattesani,* 94 F.3d 802 [2nd Cir. 1996]).

Juries perform three main functions. First, jurors are charged with the responsibility of listening to the evidence, ascertaining the relevant facts, and drawing reasonable inferences that are necessary to reach a verdict. Second, jurors are required to heed the instructions read by the court and apply the governing legal principles to the facts of the case. Third, jurors are obliged to determine the legal consequences of the litigants' behavior through the process of group deliberation and then publicly announce their verdict.

The Seventh Amendment expressly forbids federal judges to "re-examin[e]" any "fact tried by a jury" except as allowed by the common law. This provision has been interpreted to mean that no court, trial or appellate, may overturn a jury verdict that is reasonably supported by the evidence (*Taylor v. Curry,* 17 F.3d 1434 [4th Cir. 1994]). A jury must be allowed to hear a lawsuit from start to finish unless it presents a legal claim that is completely lacking an evidentiary basis (*Gregory v. Missouri Pacific Railroad,* 32 F.3d 160 [5th Cir. 1994]).

Together with the DUE PROCESS CLAUSE of the FIFTH AMENDMENT, the Seventh Amendment guarantees civil litigants the right to an impartial jury (*McCoy v. Goldston,* 652 F.2d 654 [6th Cir. 1981]). A juror's impartiality may be compromised by communications with sources outside the courtroom, such as friends, relatives, and members of the media. The presence of even one partial, biased, or prejudiced juror creates a presumption that the Seventh Amendment has been violated (*Haley v. Blue Ridge Transfer Co.,* 802 F.2d 1532 [4th Cir. 1986]). A litigant seeking to overcome this presumption bears a heavy burden to establish the harmlessness of an unauthorized jury communication. In *Haley,* for example, the Supreme Court overturned a verdict against the defendant because

jurors had communicated with an outside source who attempted to persuade them to side with the plaintiff.

Although every juror must be impartial, there is no Seventh Amendment right to a jury of 12 persons. In *Colgrove v. Battin,* 413 U.S. 149, 93 S. Ct. 2448, 37 L. Ed. 2d 522 (1973), the Supreme Court ruled that the quality of the deliberation process is not impaired when the size of a jury is reduced from 12 to six members. The Court cited one study suggesting that smaller juries promote more robust deliberations. Regardless of a jury's size, the Seventh Amendment requires unanimity among jurors who hear civil cases in federal court (*Murray v. Laborers Union Local No. 324,* 55 F.3d 1445 [9th Cir. 1995]). By contrast, the SIXTH AMENDMENT to the Constitution does not require juror unanimity in criminal trials, except in death penalty cases.

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CROSS-REFERENCES

Incorporation Doctrine.

SEVERABLE

That which is capable of being separated from other things to which it is joined and maintaining nonetheless a complete and independent existence.

The term *severable* is used to describe a contract that can be divided and apportioned into two or more parts that are not necessarily dependent upon each other. For example, a seller accepted a buyer's order for sixty dozen hats and caps of different sizes and colors. He shipped all but five dozen to the buyer, who then refused to accept the order. The seller brought an action against the buyer for breach of contract. There was no evidence to show that the contract called for delivery of the whole order at one time. The court held that the buyer could not escape liability because the seller had failed to ship five dozen hats and caps, since the order calling for hats and caps of different patterns, sizes, and colors constituted a "severable contract."

The term *severable* is also used in connection with statutes. A severable statute is one that after an invalid portion of it has been stricken remains self-sustaining and capable of separate enforcement without regard to the stricken provisions.

SEVERAL

Separate; individual; independent.

In this sense, the word *several* is distinguished from joint. When applied to a number of persons, the expression *severally liable* usually implies that each person is liable alone.

CROSS-REFERENCES

Joint and Several Liability.

SEVERALTY OWNERSHIP

Sole proprietorship of property; individual dominion.

SEVERANCE

The act of dividing, or the state of being divided.

The term *severance* has unique meanings in different branches of the law. Courts use the term in both civil and criminal litigation in two ways: first, when dividing a lawsuit into two or more parts, and second, when deciding to try multiple defendants' cases separately. In addition, severance also describes several actions relevant to property and EMPLOYMENT LAW.

In civil suits severance refers to the division of a trial into two or more parts. Plaintiffs in civil suits base their cases on a cause of action—facts that give the plaintiff the right to sue. For reasons of judicial economy, the court may order the lawsuit divided into two or more independent causes of action. This type of severance occurs only when each distinct CAUSE OF ACTION could be tried as if it were the only claim in controversy. As a result of severance, the court renders a separate, final, and enforceable judgment on each cause. A second type of severance occurs in cases involving multiple defendants. The court may sever one or more defendants from the trial and try their cases separately.

Severance works somewhat differently in federal criminal trials. When these cases involve the indictment of more than one defendant, usually only one trial is held. This process is

called JOINDER. Rule 8 of the Federal Rules of Criminal Procedure permits the joinder of the indictments of two or more defendants if they are alleged to have participated in the same act or transaction. For policy reasons courts prefer using joinder to holding separate trials because it saves time and money. However, joinder can create potential prejudices against a defendant, resulting in greater likelihood of conviction, and thus a defense attorney will often ask the court to sever his client's case. Less often, the prosecution requests severance because it believes joinder will prejudice its case. Severance results in a defendant being tried separately on one or all of the pending charges.

Severance is not automatic. Federal rule 14 allows judges broad discretion in deciding whether to grant severance. To be successful, a defense motion for severance must show that concerns for the defendant's right to a fair trial outweigh the goals of joinder. Concerns for judicial economy and efficiency make trial courts reluctant to grant severance, and rarely do appellate courts overturn a lower court decision to refuse severance. One of the most successful grounds for seeking severance arises when a defendant wishes not to testify on all counts in a trial but chooses to claim her FIFTH AMENDMENT privilege on one or more counts.

In property and employment law severance is used in several different contexts. First, it applies to JOINT TENANCY, a form of shared ownership of real property. Joint tenancy requires each tenant to share in the four unities of time, title, interest, and possession. When any of these unities no longer applies to any or all of the joint tenants, the joint tenancy is said to be severed, and the tenancy is terminated. Second, in regard to real property, severance is the cutting and removal of anything that is attached to the land, such as standing timber or crops. Third, severance is used when the government exercises its power to take private property for public use through the right of EMINENT DOMAIN. If only part of the property is taken and the value of the remaining property depreciates because of the government's proposed use of the taken share, the owner is entitled to compensation called severance damage. Fourth, severance pay is an amount of money paid to employees upon the termination of their employment. It is usually based on the employee's salary and duration of employment.

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SEX DISCRIMINATION

Discrimination on the basis of gender.

Women have historically been subjected to legal discrimination based on their gender. Some of this discrimination has been based on cultural stereotypes that cast women primarily in the roles of wives and mothers. In the patriarchal (male-dominated) U.S. society, women have been viewed as the "weaker sex," who needed protection from the rough-and-tumble world outside their homes. Such beliefs were used as justifications for preventing women from voting, holding public office, and working outside the home. In a culture that portrayed wives as appendages of their husbands, women have often been invisible to the law.

The ability of women to use the law to fight sex discrimination in employment, education, domestic relations, and other spheres is a recent development. With the passage of Title VII of the CIVIL RIGHTS ACT OF 1964 (42 U.S.C.A. § 2000e et seq.), discrimination in employment based on sex became illegal. In the 1970s and 1980s, the U.S. Supreme Court began to wrestle with the implications of sex discrimination in many contexts, often with conflicting or ambiguous results. Employers and social institutions have sought to justify discriminatory treatment for women on the basis of long-held traditions. In some cases the Court has agreed, while in others the justifications have been dismissed as cultural stereotypes that have no basis in fact.

Historical Background

To reshape gender roles, women have had to overcome centuries of tradition, much of which originated in medieval England. After the Norman Conquest in 1066, the legal status of a married woman was fixed by COMMON LAW. The identity of the wife was merged into that of the husband; he was a legal person but she was not. Upon marriage, he received all her PERSONAL PROPERTY and managed all property that she owned. In return, the husband was obliged to support his wife and children.

This legal definition of marriage persisted in the United States until the middle of the nineteenth century, when states enacted married women's property acts. These acts conferred

Sex Discrimination and Title VII: An Unusual Political Alliance

The legislative battle to pass the **CIVIL RIGHTS ACT OF 1964** (42 U.S.C.A. § 2000e et seq.) required the leadership of President **LYNDON B. JOHNSON** and the bipartisan support of legislators from outside the South. The original draft of title VII of the act, which prohibits employment discrimination, limited its scope to discrimination based on race, color, religion, and national origin. Sex was not included as a "protected class" because supporters of the bill feared such a provision might kill the act itself.

In February 1964 Representative Howard W. Smith, a powerful Democrat from Virginia, offered an amendment to include sex as a protected class. Supporters of the bill were suspicious of Smith's motives, as he had, for three decades, consistently opposed **CIVIL RIGHTS** laws prohibiting racial discrimination. Many suspected that he was including sex discrimination in title VII in an attempt to break the bipartisan consensus for the entire bill.

Smith, however, claimed he had no ulterior motive. Since the 1940s he had formed a loose alliance with the National Woman's party (NWP), a feminist organization headed by **ALICE PAUL**. Since 1945 Smith had been a sponsor of the **EQUAL RIGHTS AMENDMENT**, which Paul had originally drafted in 1923. Smith said he had introduced the amendment to title VII at the request of Paul and the NWP.

Sponsors of the bill urged that the amendment be defeated, but female representatives, such as Martha W. Griffiths of Michigan, led a bipartisan effort to adopt the amendment. The amendment was passed by a vote of 164 to 133, with most southern Democrats voting for it. The Senate then adopted the House language. If Smith and the other southerners thought the amendment would scuttle the bill, they were mistaken. The law was enacted on July 2, 1964, with Smith and other southern Democrats voting against the entire bill. Nevertheless, Smith had proved an unlikely hero for **WOMEN'S RIGHTS**.

legal status upon wives and permitted them to own and transfer property in their own right, to sue and be sued, and to enter into contracts. Although these acts were significant advances, they dealt only with property a woman inherited. The husband, by placing title in his name, could control most of the assets acquired during marriage, thereby forcing his wife to rely on his bounty.

The passage of the married women's property acts resulted from the efforts of feminist reformers, including LUCY STONE, ELIZABETH CADY STANTON, and SUSAN B. ANTHONY. The feminist political movement began in the nineteenth century with the call for female suffrage. At a convention in Seneca Falls, New York, in 1848, a group of women and men drafted and approved the Declaration of Sentiments. This declaration, which was modeled on the language and structure of the Declaration of Independence, was a BILL OF RIGHTS for women, including the right to vote. Stone, Stanton, and Anthony were persistent critics of male refusal to grant women political and social equality. Not until the NINETEENTH AMENDMENT to the U.S. Constitution was ratified in 1920, however, did women have VOTING RIGHTS in the United States.

The U.S. Supreme Court confronted the issue of sex discrimination in *Bradwell v. Illinois,* 83 U.S. 130, 21 L. Ed. 442 (1872). MYRA BRADWELL sought to practice law in Illinois, but the Illinois Supreme Court refused to admit her to the bar because she was a woman. Bradwell appealed to the U.S. Supreme Court, arguing that the refusal to grant her a license violated the PRIVILEGES AND IMMUNITIES CLAUSE of the FOURTEENTH AMENDMENT. By an 8–1 vote, the Court rejected Bradwell's argument. Though the majority opinion was on the argument that the Privileges and Immunities Clause applied only to matters involving U.S. citizenship and not state citizenship, a concurring opinion written by Justice JOSEPH P. BRADLEY and signed by two

other justices revealed the cultural stereotypes that lay behind the legal analysis. Observing that there is "a wide difference in the respective sphere and destinies of man and woman," Bradley went on to write that the "natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life." For Bradley, the "paramount destiny and mission of woman are to fulfill the noble and benign offices of wife and mother. This is the law of the Creator."

By the late nineteenth century, mass immigration from Europe to the industrialized cities of the United States had resulted in many immigrant women seeking work in factories. Though the Supreme Court was hostile to state laws that sought to regulate working conditions, the Court was more hospitable to laws aimed at protecting women in the workplace. The idea that women were the weaker sex and needed special treatment constituted discrimination based on sex, but the Court willingly embraced the concept. The landmark case in this regard was *Muller v. Oregon,* 208 U.S. 412, 28 S. Ct. 324, 52 L. Ed. 551 (1908). The Court upheld an Oregon law that prohibited the employment of women for more than ten hours a day, in large part because of the brief submitted in support of the law by LOUIS D. BRANDEIS. The brief contained information about the possible injurious effects of long work hours on women's health and morals, as well as on the health and welfare of their children, including their unborn children. Brandeis emphasized the differences between women and men. The Court unanimously agreed, noting that "woman's physical structure and the performance of maternal functions place her at a disadvantage in the struggle for subsistence."

WORLD WAR II played a decisive role in changing the social status of women. Large numbers of women left the home and entered the industrial workplace when men joined the ARMED SERVICES. Many women performed jobs that were previously thought to be beyond their physical and mental abilities. Though these women were unceremoniously fired after the war to free up jobs for returning servicemen, many traditional social assumptions about women had been shaken.

By the 1970s women had begun to compete with men for managerial and professional positions. Nevertheless, sex discrimination in employment and other areas of U.S. society remained a troubling issue. Congress, state legislatures, and the courts began to address the legality of this type of discrimination.

Sex Discrimination Laws

The first significant piece of federal legislation that dealt with sex discrimination was the Equal Pay Act (EPA) of 1963 (29 U.S.C.A. § 206(d)), which amended the FAIR LABOR STANDARDS ACT of 1938 (29 U.S.C.A. §§ 201–219) by prohibiting discrimination in the form of different compensation for jobs requiring equal skill, effort, and responsibility.

The inclusion of a prohibition against gender-based discrimination in Title VII of the Civil Rights Act of 1964 was a landmark achievement, though the provision was added by opponents of the comprehensive act in a last-minute attempt to prevent its passage. Title VII defines sex discrimination in employment as including failure or refusal to hire, discrimination in discharge, classification of employees or applicants so as to deprive individuals of employment opportunities, discrimination in apprenticeship and on-the-job training programs, retaliation for opposition to an unlawful employment practice, and sexually stereotyped advertisements relating to employment (42 U.S.C.A. §§ 2000e-2(a) & (d), 2000e-3(a) & (b)).

The Pregnancy Discrimination Act (PDA) of 1978 (42 U.S.C.A. § 2000e(k)) was the congressional response to the ruling of the Supreme Court in *General Electric Co. v. Gilbert,* 429 U.S. 125, 97 S. Ct. 401, 50 L. Ed. 2d 343 (1976), that an employer's refusal to grant pregnancy disability benefits under an otherwise all-inclusive short-term disability insurance program did not violate Title VII. The PDA prohibits discrimination against employees on the basis of pregnancy and childbirth with respect to employment and benefits.

In an interesting twist, men have found themselves the victims of sex discrimination when the issue of pregnancy and CHILD CARE arises. The case of Kevin Knussman provides a cautionary tale for men and women who are planning to become parents. Knussman, a 17-year veteran of the Maryland State Police, asked for a leave of absence from work in October 1994, a leave to which he was entitled under the Family and Medical Leave Act (Pub. L. 103-93, 1993). He asked for four to eight weeks of unpaid leave but was turned down. In November, his wife was hospitalized with complications

from the pregnancy, and he again asked for leave. He was informed that a new state law allowed only ten days of unpaid leave for "secondary caregiver," which was how he was viewed by his employer unless his wife was severely incapacitated. Knussman was told that if he did not return to work after the ten-day period his job would be in jeopardy.

Knussman filed federal suit in April 1995 against his employer (*Knussman v. Ste of Maryland,* No. B-95-1255), claiming that his rights under FMLA had been violated—as had his Fourteenth Amendment right of equal protection under the law. After nearly four years, during which the Maryland State Police claimed that they had merely been confused by the new statute, a jury awarded Knussman $375,000 for emotional suffering. Interestingly, during this time the Knussmans had a second child, and Knussman's request for 12 weeks of paid leave was granted.

Other legislation aimed at eradicating sex-based discrimination was also passed during this era. The Equal Credit Opportunity Act (15 U.S.C.A. § 1691) prohibits discrimination on the basis of sex or marital status in the extension of credit. Title IX of the Education Amendments of 1972 (20 U.S.C.A. §§ 1681–1686) prohibits educational institutions receiving federal financial assistance from engaging in sex discrimination, including the exclusion of individuals from noncontact team sports on the basis of sex. (In 1982 the Supreme Court extended this prohibition to sex-stereotyped admissions and employment practices of schools.)

The Equal Rights Amendment

The boldest attempt to outlaw sex discrimination was Congress's passage in 1972 of a constitutional amendment, popularly known as the EQUAL RIGHTS AMENDMENT (ERA). The ERA, which had originally been introduced in Congress in 1928, stated that "Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex." It gave Congress the authority to enforce this provision by appropriate legislation.

The ERA, like all constitutional amendments, had to be ratified by at least three-fourths of the states to become part of the Constitution. At first the amendment was met with enthusiasm and little controversy in the state legislatures. By 1976 the ERA had been ratified by 35 of the needed 38 states. In the late 1970s, however, conservative groups mounted strong opposition in those states that had yet to ratify. Opponents contended that the ERA would lead to women in combat, unisex bathrooms, and the overturning of legitimate sex-based classifications. Although Congress extended the period for ratification until 1982, the ERA ultimately failed to win approval from the required 38 states.

Kevin Knussman, with his wife Kim (seated) and ACLU lawyer Sara Mandelbaum, won a four-year legal battle with the Maryland State Police who had denied him unpaid parental leave during the latter stages of his wife's pregnancy in 1994. AP/WIDE WORLD PHOTOS

Judicial Review of Sex-Based Discrimination

With the defeat of the ERA, constitutional interpretation in the area of sex discrimination has been largely based on the Fourteenth Amendment. In 1971, in *Reed v. Reed,* 404 U.S. 71, 92 S. Ct. 251, 30 L. Ed. 2d 225, the Supreme Court extended the application of the EQUAL PROTECTION CLAUSE of the Fourteenth Amendment to gender-based discrimination in striking down an Idaho law that preferred men to women as probate administrators.

In *Reed* the Court appeared to be moving toward making sex a "suspect classification" under the Fourteenth Amendment. The SUSPECT CLASSIFICATION doctrine holds that laws classifying people according to race, ethnicity, and religion are inherently suspect and are subject to the STRICT SCRUTINY test of JUDICIAL REVIEW. Strict scrutiny forces the state to provide a compelling state interest for the challenged law and demonstrate that the law has been narrowly tailored to achieve its purpose. Although strict scrutiny is not a precise test, it is far more stringent than the traditional RATIONAL BASIS TEST, which requires only that the government offer a

Leading Occupations for Women, in 2001

Occupation	Total Employed (Men and Women)	Percent Women	Ratio of Women's Earnings to Men's Earnings
Managers and administrators	8,018	31.0	65.5
Secretaries	2,404	98.4	N.A.
Cashiers	2,974	76.9	89.3
Registered nurses	2,162	93.1	87.9
Sales supervisors and proprietors	4,836	41.1	70.5
Nursing aides, orderlies, and attendants	2,081	90.0	89.7
Elementary school teachers	2,216	82.5	94.9
Bookkeepers, accounting and auditing clerks	1,621	92.9	93.7
Waiters and waitresses	1,347	76.4	87.3
Receptionists	1,047	96.9	N.A.
Accountants and auditors	1,657	58.8	72.0
Investigators and adjusters, excluding insurance	1,171	75.0	89.4
Hairdressers and cosmetologists	854	90.4	N.A.
Secondary school teachers	1,304	58.5	91.9
General office clerks	903	83.7	96.0

SOURCE: U.S. Department of Labor, Women's Bureau, *20 Leading Occupations of Employed Women*, 2001.

reasonable ground for the legislation. Therefore, making sex a suspect classification would have dramatically improved the chances that sex-based laws would be struck down.

The Supreme Court, however, has declined to make sex a suspect classification. Nevertheless, it has invalidated a number of sex-based policies under a "heightened scrutiny" or "intermediate scrutiny" test. In *Craig v. Boren,* 429 U.S. 190, 97 S. Ct. 451, 50 L. Ed. 2d 397 (1976), the Court articulated its intermediate standard of review for sex-based policies. According to this test, "classifications by gender must serve important governmental objectives and must be substantially related to the achievement of those objectives." Presumably, this test is stricter than the rational basis test but less strict than the compelling state interest test.

In *Craig* the Court struck down an Oklahoma law that outlawed the sale of beer containing less than 3.2 percent alcohol to females under the age of 18 and males under the age of 21. Oklahoma argued that the law was a public safety measure and purported to show that men between 18 and 21 were more likely to be arrested for drunk driving than were women in the same age bracket. The Court rejected this argument, holding that the state had failed to demonstrate a substantial relationship between its sexually discriminatory policy and its admittedly important interest in traffic safety.

In *Orr v. Orr,* 440 U.S. 268, 99 S. Ct. 1102, 59 L. Ed. 2d 306 (1979), the Court reviewed an Alabama law that required divorced men, under certain circumstances, to make ALIMONY payments to their ex-wives but exempted women in the same circumstances from paying alimony to their ex-husbands. The state argued that this policy was designed to compensate women for economic discrimination produced by the institution of marriage. Though the Court accepted that such compensation was an important state interest, it concluded that the law was not substantially related to the achievement of this objective. Justice WILLIAM J. BRENNAN JR., in his majority opinion, pointed out that wives who were not dependent on their husbands benefited from the disparate treatment.

In other cases, however, the Court has upheld gender-based policies. In one of its most controversial decisions, ROSTKER V. GOLDBERG, 453 U.S. 57, 101 S. Ct. 2646, 69 L. Ed. 2d 478 (1981), the Court upheld the constitutionality of a male-only draft registration law, the Military Selective Service Act (MSSA) of 1980 (50 U.S.C.A. App. § 451 et seq.). In his majority opinion, Justice WILLIAM REHNQUIST rejected the idea that the MSSA violated the FIFTH AMENDMENT by authorizing the president to require the registration of males and not females. Rehnquist noted that the statute involved national defense and military affairs, an area that the Court had

accorded the greatest deference. He concluded that Congress had not acted unthinkingly or reflexively in rejecting the registration of women. He pointed out that the question had received national attention and was the subject of public debate in and out of Congress.

Rehnquist noted that "women as a group, unlike men as a group, are not eligible for combat" under statute and established policy. These combat restrictions meant that Congress had a legitimate basis for concluding that women "would not be needed in the event of a draft." Therefore, there was no need to register women. The law did not violate equal protection because the exemption of women from registration was closely related to the congressional purpose of registration as a way to "develop a pool of potential combat troops." In upholding the draft law, the Court avoided applying the intermediate scrutiny test.

Sex Discrimination by Educational Institutions

Numerous state-operated or publicly operated or supported educational institutions have limited enrollment to one sex. The Supreme Court first addressed whether such limitations on enrollment constituted sex discrimination in *Mississippi University for Women v. Hogan,* 458 U.S. 718, 102 S. Ct. 3331, 73 L. Ed. 2d 1090 (1982). The Court voted 5 to 4 to require the Mississippi University for Women to admit a male student to its nursing school. In defending its refusal to admit Joe Hogan, the school argued that having a school solely for women compensated for sex discrimination in the past and that the presence of men would detract from the performance of female students.

Writing for the majority, Justice SANDRA DAY O'CONNOR rejected both of the school's arguments. O'Connor rejected the "compensation" argument as contrived since the school had made no showing that women had historically lacked opportunities in the field of nursing. As for the concern that the presence of men would hurt the performance of female students, O'Connor pointed out that the school had been willing to admit Hogan to classes on a noncredit basis. In the Court's view, the principal effect of the female-only nursing program was to "perpetuate the stereotyped view of nursing as an exclusively woman's job."

In 1996 the Supreme Court again addressed the issue of educational sex discrimination in the highly publicized case of UNITED STATES V. VIRGINIA, U.S., 116 S. Ct. 2264, 135 L. Ed. 2d 735. The Court ruled that the Virginia Military Institute (VMI), a publicly funded military college, must give up its all-male enrollment policy and admit women. The all-male policy violated the Equal Protection Clause of the Fourteenth Amendment.

The lower federal courts had upheld the VMI admission policy, basing their decision on the need to preserve the "VMI experience," a physically and emotionally demanding military regimen that has remained the same since the early nineteenth century. Co-education would prevent both men and women from undergoing the "VMI experience" and would distract the male cadets. During the litigation the state of Virginia proposed the establishment of a parallel program for women, called the Virginia Women's Institute for Leadership (VWIL), with VMI remaining an all-male institution.

The Supreme Court rejected the arguments advanced by the courts below. Justice RUTH BADER GINSBURG, writing for the majority, stated that "Neither the goal of producing citizen-soldiers nor VMI's implementing methodology is inherently unsuitable to women." Ginsburg rejected Virginia's contention that single-sex education yields such important educational benefits that it justified the exclusion of women from VMI. The generalizations about the differences between men and women that the state offered to justify the exclusion of women were suspect. According to Ginsburg, the generalizations were too broad and stereotypical, with the result that predictions about the downgrading of VMI's stature if women were admitted were no more than self-fulfilling prophecies. The categorical exclusion of women from VMI denied equal protection to women.

The Court was also unimpressed with the creation of the VWIL as a remedy for the constitutional violation of equal protection. Justice Ginsburg noted numerous deficiencies, pointing out that VWIL afforded women no opportunity to "experience the rigorous military training for which VMI is famed."

Sex Discrimination to Protect Fetal Health

In the 1980s female employees in certain industries complained that they were barred from certain jobs because the employer believed the jobs exposed women to health hazards that

could affect their ability to reproduce and could also affect the health of a fetus. The Supreme Court, in *UAW v. Johnson Controls,* 499 U.S. 187, 111 S. Ct. 1196, 113 L. Ed. 2d 158 (1991), ruled that a female employee cannot be excluded from jobs that expose her to health risks that might harm a fetus she carries. The Court found that the exclusion of the women violated Title VII of the Civil Rights Act of 1964 because the company policy applied only to fertile women, not fertile men. The Court noted that the policy singled out women on the basis of gender and childbearing capacity rather than on the basis of fertility alone. If a job presented potential dangers to the worker or the worker's fetus, it was up to the worker to decide whether to accept the position.

Gender Bias in the Courts

Beginning in the 1980s, many state court systems have established task forces to investigate the existence of gender bias in the courts. The reports of these task forces have documented sex discrimination, with its victims more often women than men. The task forces have found that much gender-biased behavior is unconscious and that the manifestations of bias, although often subtle, are deeply ingrained in state judicial systems. For example, the studies have noted the existence of stereotypes concerning victims of DOMESTIC VIOLENCE and sexual assault; many judges believe that women who are beaten by a spouse or raped have provoked the attack. These studies also have shown that judges do not always treat men and women equally in the courtroom. For example, judges may identify women appearing before them by their first name but use professional titles or "Mister" when addressing men. In response to these findings, states have set up judicial educational programs on the dangers of gender-based stereotypes and have modified judges' and lawyers' codes of conduct to explicitly prohibit gender-biased behavior. These task forces have also recommended that more women be appointed to the bench.

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SEX OFFENSES

A class of sexual conduct prohibited by the law.

Since the 1970s this area of the law has undergone significant changes and reforms. Although the commission of sex offenses is not new, public awareness and concern regarding sex offenses have grown, resulting in the implementation of new RULES OF EVIDENCE and procedure, new police methods and techniques, and new approaches to the investigation and prosecution of sex offenses.

Forcible Sex Offenses

Forcible rape and SODOMY are sexual offenses that have been widely recognized since the beginning of American COMMON LAW. Rape was defined as an act of forcible sexual intercourse with a female other than the perpetrator's wife. Modern legislation in the United States has expanded that definition to include the act of forcible sexual intercourse with any person, even the spouse of the actor. The offense of rape combines the crime of assault (fear of imminent bodily harm) with the elements of fornication (sexual intercourse between two unmarried persons) or ADULTERY (sexual intercourse with someone other than the actor's spouse).

Sodomy is defined as anal intercourse but is often used in the law as a generic classification including bestiality (sexual intercourse with an animal) and fellatio and cunnilingus (two forms of oral sex). These forms of sexual conduct were outlawed because widely accepted religious beliefs and moral principles dictate that they are unnatural forms of sexual activity, often called "crimes against nature." Forcible rape and sodomy are generally perceived as similarly grave offenses.

Most state criminal statutes require some physical penetration in order to consummate the crime of rape or sodomy, but many statutes

have a low threshold for demonstrating penetration, calling only for a showing of "some penetration, however slight." Completion of the sex act as evidenced by orgasm, ejaculation, or achievement of sexual gratification, however, is not required to prove a rape or sodomy case.

Most forcible sex offense statutes do require some forcible compulsion to submit and earnest resistance. However, courts will consider the circumstances of the attack, including the characteristics of the perpetrator and the victim, the presence of a weapon, threats of harm, and the assault itself, in assessing the victim's resistance. Statutes do not require victims to resist if to do so would be futile or dangerous.

Although modern statutes have eliminated the marital rape exception, some states still have some form of restrictions in the prosecution of the crime of marital rape. For example, some states will only prosecute marital rape claims if the couple is legally separated or have filed for DIVORCE. However, due to legal criticism and growing public awareness of spousal abuse, the trend in the United States is toward the elimination of all exceptions to the prosecution of these crimes.

In the 1990s, the public became more aware of issues involving violence in the home among family members. Many studies showed that women are far more likely to be victims of violence at the hand of a husband or boyfriend than by a stranger. Victims of DOMESTIC VIOLENCE or rape are believed to be reluctant to report these crimes for fear of continued or retaliatory violence. In response to these issues, Congress enacted the VIOLENT CRIME CONTROL AND LAW ENFORCEMENT ACT OF 1994 (42 U.S.C.A. §§ 3796dd et seq.). One part of that act is the section entitled the Safe Homes for Women Act of 1994 (18 U.S.C.A. §§ 2261 et seq.). This section created new federal crimes and penalties for domestic violence.

Non-Forcible Sex Offenses

Non-forcible sex offenses include sexual conduct with individuals that the law assumes are not capable of giving consent to sexual acts. Because of this legal principle, it is said that in non-forcible sex offense cases, lack of consent by the victim may be a MATTER OF LAW. In other words, statutes will assume that underage, physically helpless, and mentally incompetent victims are incapable of giving consent to sexual acts and will not consider consent as a valid defense to the crime.

The age at which criminal statutes acknowledge that an individual is capable of consenting to sexual acts varies by state. Most jurisdictions have special statutes for sex offenses committed with an underage victim, usually termed STATUTORY RAPE laws. In some states non-forcible sexual acts with an underage individual are considered as serious as forcible sexual acts. In other states forcible sexual acts are deemed more serious and are punished more severely. Where the offense is committed forcibly with an underage individual, the more serious statute and punishments will apply. It does not matter if the perpetrator reasonably believed that the victim was of the age of consent because MISTAKE OF FACT is no defense in a statutory rape case.

The law also considers physically helpless and mentally disabled victims to be incapable of giving consent to sexual acts. Physically helpless individuals include those who are unconscious, paralyzed, restrained, or otherwise incapable of resisting the sexual acts. Mentally disabled victims may include those who are permanently mentally disabled or those who are drugged and in a temporary state of mental disability. Some state statutes even include involuntarily intoxicated individuals in the category of temporarily mentally disabled victims. Although mistake of fact is no defense for sexual offenses with a minor, it is a defense for a physically helpless or mentally disabled adult victim if the perpetrator can show that he reasonably believed that the victim was not physically helpless or mentally disabled.

Fornication and Adultery Fornication (sexual intercourse between two unmarried persons) and adultery (sexual intercourse with someone other than one's spouse) are non-forcible sex offenses that have been recognized since early American common law. These acts are still unlawful under some state statutes. Fornication, however, has been eliminated as a criminal offense in most jurisdictions as a result of a more liberal view of the role of public law in mandating moral principles. However, neither fornication nor adultery is prosecuted with much regularity. The requirements of penetration that must be proved in other sexual offenses involving sexual intercourse also must be proved for fornication and adultery.

Consensual Sodomy Consensual sodomy statutes outlaw the act of sodomy even when it is

Do Offender Laws Protect Public Safety or Invade Privacy?

The enactment of state and federal sex offender notification and registration laws came at a furious pace in the 1990s and has continued through the 2000s. Legislators and their constituents have endorsed notification and registration as simple but effective ways of protecting public safety. Even though support for such laws has been overwhelming, concerns have been raised by some legal commentators that these laws invade the privacy of released sex offenders and make it difficult for them to rebuild their lives.

Defenders of these laws note that requiring released offenders to register with the police is an easy way for police to keep tabs on potentially dangerous persons. With the release of large numbers of sex offenders into the general population, public safety demands that the police know where these potentially dangerous persons live. In the event of a new sex offense, the police have the ability to round up possible suspects quickly. Registration also gives police in nearby towns and cities the opportunity to share information on suspects and to help locate suspects for questioning.

The law's proponents believe, however, that notification is the most important element. Prior to the passage of **MEGAN'S LAW** in New Jersey, as well as similar laws throughout the United States, citizens did not know when a released sex offender moved in next door or down the block. Because certain sex offenders are likely to commit criminal acts again, no notification means that offenders can use their anonymity to help conceal their criminal pursuits. Community notification laws rob the released offender of anonymity by letting neighbors know the offender's criminal history and his place of residence. Public safety is enhanced, and, armed with this information, neighbors can be on guard and assist in the monitoring of the released offender's activities.

Communities also use notification to prevent a released offender from moving into the neighborhood. Once a public hearing is held and information is distributed, landlords often become reluctant to rent housing to a person who makes community members apprehensive. Even if the released offender does move into the community, the person will be isolated from his neighbors. Communities are therefore empowered to take control of their neighborhoods and assert their right to safe and secure homes.

Defenders of these laws agree that registration and notification do have an impact on the lives of released sex offenders. However, they believe that society as a whole should have more rights than an individual sex offender. Felons, for example, are not entitled to vote or possess firearms and can suffer other civil disabilities because of their criminal convictions. Registration and notification are legitimate civil disabilities that flow from the underlying criminal act. Public safety mandates that such laws be used effectively.

Critics of registration and notification are troubled by the departure these laws take from the traditional belief that once individuals serve a criminal sentence, they have paid their debt to society and should be allowed to reenter society without significant restrictions on privacy or liberty. According to the critics, released offenders share the same expectations of privacy as other citizens. Though some courts have acknowledged that notification laws infringe upon sex offenders' privacy interest by disseminating in a packaged form, various pieces of the registrant's personal history, the state's strong interest in protecting its citizens through public disclosure substantially outweighs the sex offenders' privacy interest. Critics contend that such rulings are a slippery slope, for they provide future legislatures with the opportunity to broaden the types of crimes that are subject to notification. Society will always have a strong interest in protecting its citizens, thereby allowing more intrusive government actions over an individuals' right to privacy.

Critics also believe registration and notification laws constitute **CRUEL AND UNUSUAL PUNISHMENTS**, which are banned by the **EIGHTH AMENDMENT**. These laws are penal, because they subject the released offender to additional punishment. Defenders of the laws may

consensual, meaning that it is accomplished without the use of force. The view supporting these statutes, which still exist in a minority of states, is that sodomy is an unnatural act, and when the act is consensual, all participants are guilty of wrongdoing. However, since the 1980s, most state courts have overturned consensual sodomy laws, calling them unconstitutional prohibitions of sexual conduct between two consenting adults.

The Supreme Court addressed the issue of the constitutionality of consensual sodomy laws in *Bowers v. Hardwick,* 478 U.S. 186, 106 S. Ct. 2841, 92 L. Ed. 2d 140 (1986). In *Bowers* two consenting men were found engaged in sodomy in a private home in a state that had an antisodomy law. The Supreme Court found no basis in the Constitution supporting the argument that homosexuals have a fundamental right to

claim that notification is merely a way to provide information to the public, but the impact on released offenders clearly can feel like punishment. Critics note that convicted sex offenders now have difficulty finding a place to live. Communities often use this information to prohibit entry or to try to remove the individuals from their surroundings. Offenders who do move into the community are subjected to taunts and threats, and their property is sometimes vandalized. It is unfair and unconstitutional, the critics allege, to subject individuals who have served the sentence of the court to another layer of punishment that is indefinite in length or scope.

Opponents further claim that notification has a detrimental effect on rehabilitating a released offender. Public notification may have improved personal safety, but it has also created public hysteria. Sex offenders are viewed as modern-day lepers, increasing the difficulty for them to find and retain jobs. For those released offenders who truly want to make a new life, notification makes such an effort almost impossible.

In addition, critics argue that notification laws undermine a community by promoting fear. Notification may inflame passions and sometimes lead to mob rule. Instead of providing rehabilitation or deterrence, notification shames convicted offenders in a way that registration and other civil disabilities do not. Though such laws satisfy a public demand that officials crack down on offenders, critics remain skeptical as to whether such laws truly promote public safety enough to justify their intrusiveness.

The criticisms of Megan's laws ultimately led to two cases that reached the U.S. Supreme Court in 2003. In *Smith v. Doe I,* ___ U.S. ___, 123 S. Ct. 1140, 155 L. Ed. 2d 164 (2003), the Court upheld Alaska's version of Megan's Law against a challenge that this law constitutes an **EX POST FACTO LAW** in violation of the U.S. Constitution. The same day, the Court in *Connecticut Department of Public Safety v. Doe,* ___ U.S. ___, 123 S. Ct. 1160, 155 L. Ed. 2d 98 (2003) held that Connecticut's version of Megan's Law does not deprive sex offenders of procedural **DUE PROCESS OF LAW**.

In *Smith*, the Court reviewed an argument that because Alaska's sex offender law applies to sex offenders who committed acts prior to the enactment of the statute, the law inflicted retroactive punishment and thus constituted an ex post facto law. In a 6–3 opinion written by Justice **ANTHONY M. KENNEDY**, the Court rejected the argument, finding that the law was designed to protect the public from sex offenders, rather than to punish sex offenders themselves. Under the Supreme Court's doctrine governing the Ex Post Facto Clause, if a law establishes civil proceedings that are not punitive in nature, then the law does not violate the Constitution even if offenders convicted prior to the statute must adhere to certain regulatory consequences, such as registering as sex offenders. Since the Court found that Alaska's legislature intended to establish a civil proceeding, rather than to impose punishment, the law was constitutional.

In *Connecticut Department of Public Safety v. Doe,* a unanimous Court rejected an argument that sex offenders were denied procedural due process because they were not afforded an opportunity to determine whether they were dangerous to the public. Chief Justice **WILLIAM REHNQUIST**, writing for the Court, found that the sex offenders were not entitled to a hearing about their dangerousness because the sex offenders' propensity for danger was not an issue of consequence under Connecticut's law. Because the law applies to all convicted sex offenders, rather than only those who are considered dangerous, dangerousness was not a material under the state statute. Accordingly, Connecticut's Megan's Law does not deprive the offenders of any procedural due process rights.

Although the Court's decisions in 2003 strongly indicate that the Court was inclined to uphold Megan's Laws, the Court did not address several key issues, such as whether these sex offender laws violate the offenders' **SUBSTANTIVE DUE PROCESS** or **EQUAL PROTECTION** rights. Several legal commentators expected that Megan's Laws would continue to be challenged in the courts, and it might take years before all of these issues were finally resolved.

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CROSS-REFERENCES

Child Abuse; Equal Protection; Megan's Law; Substantive Due Process.

engage in sodomy. In 2003, however, the Court reversed its ruling in **LAWRENCE V. TEXAS**, 538 U.S. ___, 123 S. Ct. 2472, 156 L. Ed. 2d 508 (2003). The situation of the case was similar to *Bowers*: two men were found having consensual sex in a private home by Houston police, who had been called to the residence on a reported weapons disturbance. The men were arrested because a Texas statute made it a crime for two people of the same sex to engage in "deviate sexual intercourse." In a 6–3 decision, the Court ruled that the Texas statute outlawing a same sex couple from having intimate conduct was unconstitutional under the **DUE PROCESS CLAUSE**.

Polygamy **POLYGAMY**, another non-forcible sex offense, is the crime of marrying more than

one spouse while the marriage to a first spouse is still valid and existing. Bigamy is when a person has exactly two spouses at the same time. Bigamy per se consists simply of a person's attempt to marry another person while already married. Bigamy per se does not require a showing of living together as HUSBAND AND WIFE or of sexual intercourse. Most statutes state that the person must know of the continued validity of the first marriage to be guilty of bigamy. Thus, if a woman reasonably believed that her husband was dead, which would have ended their marriage, she could marry another man without violating bigamy/polygamy statutes.

Indecent Exposure Indecent exposure, also called public lewdness, is the intentional exposure of one's genitals to unwilling viewers for one's sexual gratification. This crime is generally classified as a misdemeanor (a less serious crime).

Obscenity and Pornography OBSCENITY and PORNOGRAPHY are non-forcible sex offenses that have proven very difficult for the legislatures and courts to define. In MILLER V. CALIFORNIA, 413 U.S. 15, 93 S. Ct. 2607, 37 L. Ed. 2d 419 (1973), the Supreme Court held that material is pornographic or obscene if the average person, applying contemporary community standards, would find that the work taken as a whole appeals to the prurient interest, that it depicts sexual conduct in a patently offensive way, and that taken as a whole, it lacks serious literary, artistic, political, or scientific value. The Supreme Court has also held that obscenity and CHILD PORNOGRAPHY are not protected by the FIRST AMENDMENT.

With the advent of new technology, the law has changed to address and encompass more methods of disseminating obscene and pornographic materials. For example, current laws forbid obscenity and pornography transmitted via television and CABLE TELEVISION programs, telephone services, and the INTERNET.

The Internet in particular is one of the fastest-growing media for the transmission of information. Because the Internet is easily accessible to children as well as adults, many leaders advocate the restriction of obscene or pornographic material via the Internet. In 1996, Congress passed the Communications Decency Act (47 U.S.C.A. §§ 230, 560, 561), which made it a felony to place indecent or patently offensive material on the Internet that is accessible to children. However, this act came under fire almost immediately as violating the First Amendment. In 1997, the Supreme Court in *Reno v. American Civil Liberties Union,* 521 U.S. 1025, 117 S. Ct. 2329, 138 L. Ed. 2d 874, struck down the indecent and patently offensive provisions of the act as unconstitutional.

Other Sex-related Offenses

Another sex-related offense is INCEST (sexual intercourse with a close relative). Generally, laws against incest forbid sexual intercourse with those close relatives that the law forbids one from marrying.

Prostitution is another offense in and of itself, but that crime is often intermingled with other sex offenses, such as statutory rape or adultery where the prostitute or the john (the customer) is underage or married to someone else, respectively. Another criminal offense commonly charged in conjunction with other sex offenses is the offense of impairing the morals of a minor. Prosecutions for that offense are generally pursued when the evidence is insufficient to support a statutory or forcible rape or sodomy charge.

Child Sexual Assault

Child sexual assault, long considered to be one of the most horrific of sexual offenses, presents many difficult issues to courts and legislatures. One controversial issue is the BALANCING of the defendant's right to confront an accuser versus the need to protect child witnesses from undue trauma in facing their abusers. The Supreme Court has considered this issue in several cases. In *Coy v. Iowa,* 487 U.S. 1012, 108 S. Ct. 2798, 101 L. Ed. 2d 857 (1988), the Court held that it is a violation of the right of confrontation to allow a child victim to testify in court separated from the defendant by a screen. But in *Maryland v. Craig,* 497 U.S. 836, 110 S. Ct. 3157, 111 L. Ed. 2d 666 (1990), the Court upheld the use of a one-way closed-circuit television to receive the out-of-court testimony of a child witness. In *Craig* the Court held that the defendant does not have an absolute right to confront his accuser face-to-face, especially where it is necessary to protect a child victim from trauma.

In 1990, in response to the alarming increase in reported CHILD ABUSE cases, Congress enacted the Victims of Child Abuse Act, 42 U.S.C.A. §§ 13001 et. seq. It requires professionals who work with children to report all sus-

pected cases of child abuse. It also amended the United States Criminal Code to ensure that the rights of children are protected in court proceedings. As a result, the JUSTICE DEPARTMENT created model rules to guide law enforcement officers, investigators, prosecutors, and any person officially involved in a child abuse case, in the "proper and appropriate treatment of child victims and witnesses." For example, a child witness does not have to be physically present in an open court. He or she may present testimony via closed-circuit television or videotaped deposition.

Every state, and the District of Columbia, Puerto Rico, and the Virgin Islands have mandatory reporting statutes that require certain individuals who work with children to report suspected cases of child abuse or neglect. The general definition of child abuse is any nonaccidental injury or pattern of injuries, including sexual molestation, to a child under the age of 18. The individuals who must report these cases include doctors, teachers, social workers, CHILD CARE providers, and psychologists. In some states priests, ministers, coroners, and attorneys are included. Individuals who report suspected abuse or neglect, even if their suspicions turn out to be false, are protected by IMMUNITY against legal action as long as they acted in GOOD FAITH. Reporters may also ask to be kept anonymous when making such allegations.

Prosecution of Sex Offenses

The prosecution of sex offenses differs in many respects from the prosecution of other crimes. The experience of the victim is very different from that of the victims of other crimes, the reaction of the police may be different, and sex offense prosecutions present many difficult issues. The Uniform Crime Reports and other national studies indicate that rape is the most underreported crime. Because of the victims' emotional trauma and the widespread bias in the legal system, whether perceived or real, many rape victims do not want to report the crime because they do not want to undergo the ordeal of testifying at the criminal trial.

Well-trained police officers are taught about the difficulties presented in sex offense investigations and prosecutions, including their own susceptibility to societal biases toward sex offenses. Some police departments have specially trained sex offense detectives, including female officers, who may reduce the amount of trauma victims undergo in reliving and recounting their injuries.

Investigators' biases may be manifested in several ways. They may disbelieve or doubt the victim, which may discourage the victim from cooperating with police investigations. In child sex offense cases, defendants often have argued that the police officers or prosecuting attorneys coerced or powerfully suggested certain facts until the child victim adopted them as real.

Prosecution of Non-Forcible Sex Offenses

Some non-forcible sex offenses have been called victimless crimes, because the victim has been difficult to identify. For example, in the case of prostitution, it is argued that neither the prostitute nor the customer is a victim because they each willingly enter into the agreement. However, some argue that society itself is the victim of such crimes. Others argue that the prostitute is in fact the victim, even though she willingly commits the act, and that statutes should protect the individual from herself.

Society's responsibility to protect individuals from themselves is the rationale accepted for non-forcible sex offenses involving minors. These statutes simply assume that minors are not able to make sound judgments for themselves. Similar theories support statutes prohibiting sexual conduct with mentally impaired individuals.

For other non-forcible sex offenses such as adultery or bigamy, statutes are based on the premise that society strives to protect families and their stability. However, such justifications are not as easily applied to the sex offenses of fornication and consensual sodomy.

Prosecuting attorneys have some discretion to choose which non-forcible sex offenses to prosecute. Where the constitutionality of a statute is at issue, such as statutes forbidding consensual sodomy, prosecutors generally choose not to enforce those statutes through prosecution. Adultery and fornication are other non-forcible sex offenses that are rarely prosecuted.

Private individuals who are not the victims of the particular sex offense, whether forcible or non-forcible, do not have a legal right of action against the offender. Prosecuting attorneys carry out the public function of pursuing criminal complaints against sex offenders on behalf of the people of the state.

Constitutionality Issues

Many statutes making sexual conduct criminal have been attacked as unconstitutional. The most common claims made are that the statutes are too vague, violate personal rights to privacy, or violate the EQUAL PROTECTION CLAUSE.

The Supreme Court considered the argument that statutes violating sodomy are unconstitutionally vague in *Rose v. Locke,* 423 U.S. 48, 96 S. Ct. 243, 46 L. Ed. 2d 185 (1975). The *Rose* case involved a state statute that forbade "crimes against nature," and the defendants argued that the terms of the statute were imprecise and vague. The Supreme Court held that the statute did not violate the Constitution because even though the language may have been imprecise, it was still possible to determine the meaning of the statute so as to provide sufficient warning to people who may be affected by it. Courts have held that "crimes against nature" include sodomy, fellatio, and cunnilingus.

Statutes forbidding obscene language or conduct have also been challenged because they are vague. Specifically, critics claim that it is not clear what is considered obscene. State legislatures have attempted to define or describe the term *obscene,* but this often results in the use of other arguably vague terms such as *lewd, lascivious,* and *wanton.*

Sex offense statutes have also been challenged on the ground that they violate an individual's right to privacy. The Supreme Court addressed this argument in the 1986 case of *Bowers v. Hardwick,* when it held that there is no federal privacy right to engage in same-sex acts. Since *Bowers* many state courts issued similar rulings. However, the Supreme Court, in its 2003 landmark *Lawrence* decision, changed the landscape. According to the Court, private conduct is protected under the Due Process Clause, and as such, *Bowers* "should be and now is overruled." In his opinion, Justice ANTHONY KENNEDY stated, "The petitioners are entitled to respect for their private lives."

Sex offense laws have also been challenged on the ground that they violate equal protection guarantees under the Constitution. Most courts have followed the Supreme Court's decision in *Michael M. v. Superior Court,* 450 U.S. 464, 101 S. Ct. 1200, 67 L. Ed. 2d 437 (1981), that they do not.

The *Michael M.* case involved a state statutory rape law that prohibited sexual intercourse with a woman who is under 18 years old and who is not the perpetrator's wife. Thus, only males were liable under the law. The defendant was a 17-year-old boy who had sexual intercourse with a 16-year-old girl. The defendant argued that the statute violated the Equal Protection Clause of both the federal and state constitutions. The Supreme Court held that the "obviously discriminatory classification" was justified by the important STATE INTEREST in protecting women who, unlike men, can become pregnant and suffer the harmful and inescapable consequences of pregnancy. It has also been held that non-statutory rape laws do not violate the Equal Protection Clause in the following cases: *State v. Kelley,* 111 Ariz. 181, 526 P.2d 720 (1974), *cert. denied,* 420 U.S. 935, 95 S. Ct. 1143, 43 L. Ed. 2d 411 (1975); *Wilson v. State,* 288 So. 2d 480 (Fla. 1974); *State v. Lorenze,* 592 S.W.2d 523 (Mo. Ct. App. 1979); *State v. Rivera,* 62 Haw. 120, 612 P.2d 526 (1980); *Griffin v. Warden,* 277 S.C. 288, 286 S.E.2d 145 (1982).

Evidentiary Issues

A modern and revolutionary means of identifying criminal defendants in sex offense cases is the use of DNA EVIDENCE, often called DNA fingerprinting. Most of the cells of the body and bodily fluids contain a copy of the individual's DNA. Because every person has unique DNA (with the exception of identical twins) it can be used as reliably as a fingerprint in identifying someone. The Florida District Court of Appeals, in *Andrews v. State,* 533 So. 2d 841 (1988), *review denied,* 542 So. 2d 1332 (1989), was the first appellate court in the country to uphold the admissibility of DNA evidence in a criminal case. The *Andrews* case involved DNA testing of semen left at the crime scene that matched the DNA of the defendant. The court permitted the admission of the DNA evidence on the ground that it was considered scientifically reliable. Most states now permit such evidence to eliminate an individual from the list of criminal suspects.

DNA testing has also been used to examine evidence from crime scenes gathered years before DNA testing was available. These tests have been successful in many post-conviction proceedings to show that the individual convicted and incarcerated was not the actual offender. Thus, DNA evidence has secured the release of many innocent people.

DNA evidence has been successfully challenged based on the laboratory's methods of

running or performing the DNA tests. Human error can render unreliable results and make the basis for a challenge to such evidence in any trial. These attacks generally affect the weight of the evidence but usually do not make the evidence inadmissible.

Rape Shield Laws

Rape SHIELD LAWS are state statutes that restrict the admission of a rape victim's sexual history into evidence in rape trials. British and American common law routinely admitted evidence of a rape complainant's past sexual history. It was believed that this evidence could bear adversely on the complainant's credibility as a witness. In addition, courts adhered to the belief that if a woman had consented to sexual activities in the past, it was an indication that she was more likely to have consented to the sexual acts alleged.

Rape law reform gathered momentum in the 1970s and resulted in the enactment of rape shield laws in every jurisdiction in the United States in little more than a decade. Some states enacted special laws and other states amended their existing evidentiary rules to greatly restrict evidence of a rape victim's sexual history. However, there are several general exceptions in which such evidence is deemed relevant and thus admissible.

If the prosecution raises the issue of the complainant's physical condition, by arguing that the defendant was the source of pregnancy, sexually transmitted disease, or semen found on the complainant, the defendant may bring up the complainant's sexual history to show that another man was the actual source. Defendants may also introduce such evidence to show the complainant's MODUS OPERANDI (method of operating), most commonly used to demonstrate that the complainant regularly exchanged sexual favors for money; in other words, that she was known as a prostitute.

Another exception to most rape shield laws is using past sexual history of the complainant's sexual relations with the defendant to show that if she consented in the past, she was more likely to have consented on the occasion in which she alleges rape. Some states also permit evidence of prior sexual history to show that the defendant was informed of something that led him to believe that the complainant would readily consent to sex, thereby negating the defendant's mens rea (criminal intent) necessary to convict him. Past sexual history can also be introduced like any other evidence where it contradicts the witness's previous testimony, showing that the witness has been untruthful when testifying under oath.

Evidence that a complainant has previously fabricated sexual assault charges is also generally admissible to impeach the complainant's credibility as a witness. Finally, past sexual history may be admitted into evidence to show the complainant's motive to testify falsely. For example, a complainant may be trying to explain a pregnancy or hide the fact that she had sex with someone other than her boyfriend.

HIV and AIDS

Like other areas of law, sex offense law has been affected by the health concerns related to the human immunodeficiency virus (HIV) and ACQUIRED IMMUNE DEFICIENCY SYNDROME (AIDS) epidemic.

In 1990, Congress passed the Ryan White Comprehensive AIDS Resource Emergency Act (42 U.S.C.A. §§ 300ff et seq.), which requires states to prosecute people who knowingly or intentionally expose others to the virus through sexual contact, blood or tissue donations, or sharing of hypodermic needles. States must do so in order to be eligible for federal grant money.

Some states have used traditional criminal statutes to prosecute such offenders, by charging them with attempted murder or assault. For example, in *State v. Haines,* 545 N.E.2d 834 (Ind. Ct. App. 1989), the defendant was convicted of attempted murder for biting, scratching, spitting, and throwing blood on others with the intent to infect them with his HIV condition. In *Zule v. State,* 802 S.W.2d 28 (Tex. Ct. App. 1990), the court upheld the conviction of aggravated sexual assault and transmission of HIV where the defendant, who knew that he was HIV positive, engaged in sodomy with a 15-year-old boy who, two years later, tested positive for HIV.

Approximately half of the states have specific statutes that address the crime of knowingly transmitting HIV through sexual and other conduct. For a defendant to know that he is HIV positive is enough to establish intent under these statutes. Many of these statutes forbid "intimate contact" or conduct reasonably likely to result in the transmission of "bodily fluids." These statutes have withstood constitutionality challenges that they are vague (*People v. Dempsey,* 242 Ill. App. 3d 568, 610 N.E.2d 208

[1993]; *People v. Russell,* 158 Ill. 2d 23, 630 N.E.2d 794 [1994]. Consent is generally a defense to these crimes; however, lack of medical evidence supporting a likelihood of transmission or a lack of actual transmission of the disease is not a defense.

Another legal development that has arisen over the public concern about HIV and AIDS is mandatory AIDS testing of accused and convicted sexual offenders. In 1990, Congress passed the CRIME CONTROL ACT (42 U.S.C.A. §§ 3756 et seq.), which requires HIV testing of sex offenders when specifically requested by a victim of sexual assault. In response, most states enacted laws requiring individuals accused of certain crimes to be tested for AIDS. Some states mandate pre-conviction testing; others require post-conviction testing. In some states, testing is permitted if the alleged victim can demonstrate a compelling need to have the test results.

These laws have been challenged in the courts on the grounds that they violate privacy rights, FOURTH AMENDMENT rights against unreasonable searches, and the PRESUMPTION OF INNOCENCE of criminal defendants. Most courts have rejected such claims based on the Supreme Court's decision in *Schmerber v. California,* 384 U.S. 757, 86 S. Ct. 1826, 16 L. Ed. 2d 908 (1966), that a routine blood alcohol test is not a substantial intrusion into one's bodily integrity. Reasoning by analogy, most courts have held that a blood test for AIDS, where necessary to further an important government interest in the health and safety of the victim, is constitutional.

Sexual Psychopath Legislation

Approximately 20 states have statutes that address dangerous sex offenders and sexual psychopaths. These statutes are designed to protect public safety by removing habitual sex offenders from society for extended periods of time. Criminal defendants treated differently from others based on their classification as sexual psychopaths have challenged these laws, arguing that they violate the Equal Protection and the Due Process Clauses, but the laws have withstood such challenges (*Kansas v Hendricks,* 521 U.S. 346 [1997]; *Seling v. Young,* 531 U.S. 250 [2001]).

These statutes require that the court must specifically find that the sex offender suffers from mental illness that leads to sexually deviant behavior, and that the behavior is likely to continue in the future, in order to classify the offender as a sexual psychopath. These statutes also permit the state to retain custody of the sexual psychopath, or sexually dangerous person, until he or she is cured of the mental illness. In effect, this allows the state to impose an indeterminate, and often lifetime, sentence.

Sex Offender Registration and Community Notification

Because of growing public concern, since the 1980s, over RECIDIVISM (repeated offenses) among sexual offenders, all states have enacted sex offender registration acts. In 1994, Congress passed legislation that required states to enact such laws in order to receive certain federal funding (42 U.S.C.A. § 14071).

Although these laws vary in scope and effect, they share the common goal of protecting the public by requiring repeat sex offenders to register their names and addresses with local law enforcement officials. Some statutes allow the public to have access to this information. Other statutes, commonly called community notification laws, mandate that all residents in a certain geographic area be notified before a convicted sex offender moves into their neighborhood.

There have been numerous constitutional challenges to sex offender registration acts; however, most courts have found no constitutional violations. Specific attacks that have been unsuccessfully made include the arguments that the statutes constitute CRUEL AND UNUSUAL PUNISHMENT, they are EX POST FACTO LAWS (laws that retroactively punish behavior), they are bills of attainder (acts of the legislature to impose punishment without a court trial), they constitute DOUBLE JEOPARDY (multiple prosecutions for the same offense), or they violate the offender's right to privacy.

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CROSS-REFERENCES

Child Molestation; Criminal Law; Criminal Procedure; Family Law; Gay and Lesbian Rights; Sexual Abuse; Victims' Rights.

SEXUAL ABUSE

Illegal sex acts performed against a minor by a parent, guardian, relative, or acquaintance.

Sexual abuse is a general term for any type of sexual activity inflicted on a child by someone with whom the child is acquainted. It is considered an especially heinous crime because the abuser occupies a position of trust. Until the 1970s the prevalence of sexual abuse was seriously underestimated. Growing awareness of the problem led legislatures to enact reporting requirements, which mandate that any professional person (doctor, nurse, teacher, social worker) who knows or has reason to believe that a child is being abused report this information to the local WELFARE agency or law enforcement department. Statistics vary widely about the level of sexual abuse, but most researchers agree that it occurs at a higher rate than previously believed. Experts on the subject estimate that more than 130,000 children a year are sexually abused in the United States.

Perpetrators of sexual abuse are prosecuted under state CRIMINAL LAW statutes that have been toughened for sexual assaults on minors. The prosecution of reported sexual abuse has required children to testify in court about the abuse. Children are often unwilling to testify against the abuser, who may be a family member and may exert control over their victim. To relieve these pressures, courts have allowed the use of closed-circuit television to protect the child witness from the trauma of testifying in court before the defendant, expanded the HEARSAY evidence exception to allow testimony about what the child said if the child lacks a motive to lie or if the child uses sexual terminology unexpected of a child, and made rules that suspended the STATUTE OF LIMITATIONS until the abusive conduct is discovered.

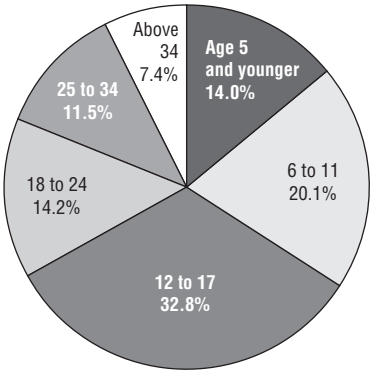
During the 1980s a rash of sexual abuse cases involving day care centers drew national attention. The McMartin preschool case in Manhattan Beach, California, which began in 1984, accused a group of day care employees of sexual abuse and bizarre rituals of animal sacrifice. Though none of the defendants was ever convicted, similar allegations around the United States resulted in 113 convictions.

A difference of opinion exists within the legal and medical communities over the truthfulness of child witness testimony in sexual abuse cases. Prosecutors and some health professionals argue that children do not lie. Defense attorneys and social researchers contend that faulty interviewing by parents, psychologists, and law enforcement can lead children to make up stories. Leading questions and demands that a child reveal abuse can press the child into making false statements in order to please the questioner.

The debate over child witnesses has led many law enforcement agencies to develop standard investigatory protocols that seek to prevent contamination of the child's testimony. Interviews are routinely videotaped to document the interview process.

Apart from criminal remedies, in the 1980s CHILD ABUSE victims gained the ability to sue their abusers for damages. Before that time, civil remedies were available only for child victims who filed claims soon after attaining the age of majority. State courts and legislatures accepted the concept of repressed memory, in which traumatic episodes are repressed by the victim for many years. As of 2003, in more than 23 states, adults who "recover" their memories of childhood sexual abuse, either spontaneously or

Victims of Sexual Assault, by Age



SOURCE: Department of Justice, Bureau of Justice Statistics, *Sexual Assault of Young Children as Reported to Law Enforcement*, 2000.

Child Testimony in Day Care Center Sexual Abuse Cases

Between 1983 and 1991, a series of cases involving allegations of sexual abuse by day care center workers drew national attention. During this period, investigations of suspected sexual abuse of preschool children by their teachers took place in more than 100 U.S. cities. Many persons were convicted of crimes, but others were either acquitted or had their convictions overturned on appeal. The key issue in these cases was whether the children involved had told the truth or whether their testimony had been tainted by the way they were interviewed by parents, social workers, and psychologists. Though this type of multiple victim, multiple offender sexual abuse charge has disappeared, the issue of the credibility of children discussing sexual matters and sexual abuse remains a charged issue.

The most famous case involved the McMartin preschool in Manhattan Beach, California. In 1984 authorities charged Virginia McMartin, age 76; her daughter Peggy McMartin Buckey; her grandson Raymond Buckey; a granddaughter; and three female teachers with sexually abusing 120 children. The children reported violent rituals where rabbits were mutilated and the children were forced to touch corpses. Eventually prosecutors dropped charges for lack of evidence against everyone except Peggy Buckey and her son Raymond. They went on trial in 1987.

In January 1990, after the longest (two-and-a-half years) and most expensive ($15 million) criminal trial in U.S. history, Peggy and Raymond Buckey were acquitted on 52 counts of **CHILD MOLESTATION**. The jury deadlocked on 12 counts of molestation against Raymond Buckey and on one count of conspiracy against both defendants. The charge against Peggy Buckey was dismissed, but Raymond was retried on 8 of the 13 counts. In July 1990 his second trial ended in a mistrial, and the case was finally dismissed.

The McMartin preschool case revealed troubling questions about the way the investigation had been conducted and how evidence had been obtained from young children. The initial allegation of abuse was made by a mother later diagnosed as paranoid schizophrenic. She accused Raymond Buckey of molesting her son. The police investigated and declined to file charges because of lack of evidence. The Manhattan police chief then sent a letter to the 200 parents of past or present McMartin preschool students and alleged that Buckey may have molested their children. Parents were urged to question their children about any sexual abuse.

through psychiatric and psychological counseling, may bring a civil lawsuit against the perpetrator. These states have rewritten their laws to start the statute of limitations from the time the victim knows or has reason to know that sexual abuse occurred.

During the 1980s and 1990s, many lawsuits were filed using these new laws. Adults successfully sued a number of Roman Catholic priests for sexual abuse that the victims had endured many years before. Health professionals argued that the victims needed the lawsuits as much for therapeutic as legal reasons. Confronting the abuser and holding the abuser accountable for the actions is a significant step for the victim, who often feels shame, guilt, and responsibility for the abuse.

However, a controversy arose over the validity of recovered memories. The dispute centers on memories that are coaxed or brought forth through the efforts of therapists. Some experts in law and mental health question the veracity of these memories and challenge their use as the evidentiary basis for lawsuits over conduct that allegedly occurred years, and sometimes decades, in the past. They contend that these are "implanted memories," brought about by hypnosis, truth serums, and therapists' suggestive remarks. They are also troubled that therapists may be allowed to testify as expert witnesses, when there is no **SCIENTIFIC EVIDENCE** to support their theories regarding recovered memories.

A 1994 California lawsuit by Gary Ramona was the first case in the United States in which an alleged abuser won a large damages award against the therapist who had treated his child. Ramona's daughter Holly had filed suit, accusing her father of sexually molesting her when she was a child. As a result of the lawsuit and the charges, Ramona's wife divorced him and he lost his high-paying job. He argued that Holly's recollections were the result of the psychiatrist's giving her the hypnotic drug sodium amytal and then eliciting from her confabulations, or false but coherent memories spliced together from

The letter caused a panic. Hundreds of children were given medical exams and interviewed by a group of psychologists at a counseling center. During these interviews, children were asked leading and suggestive questions and were rewarded for giving the "right" answers. Children reported bizarre events, including being taken into subterranean passages at the school where animal sacrifices were performed. No passages nor any traces of animal sacrifices were found at the school. Several children reported that they were taken on airplanes and molested.

At trial the jurors had difficulty distinguishing between fact and fantasy in the children's accounts. The prosecution argued that children seldom lie about abuse but that they are often reluctant to disclose what has happened to them. Therefore, the prosecution said, a therapist interviewing a child will often use suggestive questioning, prompting, and manipulation to encourage the child to disclose the truth about sexual abuse. As for the bizarre tales, they were simply the children's way of dealing with what had happened to them. The jurors did not accept these explanations, expressing concern that the children's testimony had been influenced by adults. The videotapes of the interviews showed therapists asking leading questions and the children appearing to try to provide answers that would please the interviewers.

Prosecutors and many therapists contend that children rarely lie about sexual abuse and that the implanting of false memories through leading and suggestive questions is unlikely. They worry that refusing to believe children's testimony victimizes the children a second time and sends a message that society does not want to hear about sexual abuse.

Others are more skeptical. About 20 studies have shown that suggestive questioning about events that never happened can contaminate young children's memories with fantasies. When police, social workers, therapists, and prosecutors conduct multiple interviews, details they provide in their questions and statements are likely to find their way into the statements of children. Children will use their imagination and confabulate stories that are richly detailed but are a mix of fact and fantasy. This is not to say that children are not to be believed. Children rarely lie when they spontaneously disclose abuse on their own or when a person seeks the complete story with the least probing or leading yes-no questions.

The McMartin preschool outcome has forced investigators to learn better ways of asking children questions. Many interviewers are trained to gain a child's trust, evaluate the child's ability to remember and give details of past events, and let the child tell what happened in her own words. Interviews are generally videotaped to allow both the prosecution and the defense to evaluate the investigator's methods.

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true events, that convinced Holly that she had been abused by her father. The jury agreed with the father, awarding him $500,000. The jury concluded that the recovered memories were unreliable and that the methods used to elicit them were improper.

The issue of sexual abuse perpetrated by Roman Catholic priests generated substantial interest beginning in 2000 when the Archdiocese of Portland, Oregon, agreed to pay an undisclosed amount to 22 plaintiffs who alleged that they had been abused by Father Maurice Grammond. The victims, ranging in age from 39 to 71, initially sued for $44 million. They claimed that the then 80-year-old Grammond had abused them and that neither Portland's archbishop nor the archdiocese took any action, such as warning parishioners, even though there had been complaints about the priest's behavior. The archdiocese apologized publicly and agreed to head a task force that would examine how abuse complaints were being handled and how to make the process work better.

A little more than a year later, in February 2002, a former priest in the Boston archdiocese, John Geoghan, was sentenced to up to 10 years in prison for molesting a 10-year-old boy. Geoghan, who had been defrocked in 1998, allegedly abused 130 children over a 30-year period. The Geoghan case opened up a much larger issue when it was revealed that the Boston archdiocese had allowed Geoghan to remain in positions that gave him access to children. Boston's cardinal, Bernard F. Law, was singled out because he was responsible for allowing Geoghan to keep ministering to children. Law said that he knew of Geoghan's problems and believed that he had been successfully treated for them. When the case of another Boston priest, Paul Shanley, came to light in April—and when the press found out that Cardinal Law had given Shanley a recommendation when he transferred to a west coast diocese even though he knew about Shanley's proclivities—the archdiocese of Boston was thrown into turmoil. To add to the difficulty, the archdiocese had agreed to settle

with several of Geoghan's victims but the number of alleged victims continued to increase. The archdiocese eventually said that it had to back out of the settlement agreement due to lack of adequate funds. Facing increasing outrage and no longer able to carry out his duties effectively, Law gave his resignation to Pope John Paul II in December 2002. In August 2003 John Geoghan was killed in prison by a fellow prison inmate.

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CROSS-REFERENCES

Children's Rights; Infants.

SEXUAL HARASSMENT

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that tends to create a hostile or offensive work environment.

Sexual harassment is a form of SEX DISCRIMINATION that occurs in the workplace. Persons who are the victims of sexual harassment may sue under Title VII of the CIVIL RIGHTS ACT OF 1964 (42 U.S.C.A. § 2000e et seq.), which prohibits sex discrimination in the workplace.

The federal courts did not recognize sexual harassment as a form of sex discrimination until the 1970s, because the problem originally was perceived as isolated incidents of flirtation in the workplace. Employers are now aware that they can be sued by the victims of workplace sexual harassment. The accusations of sexual harassment made by ANITA F. HILL against Supreme Court Justice CLARENCE THOMAS during his 1991 confirmation hearings also raised societal consciousness about this issue.

Courts and employers generally use the definition of sexual harassment contained in the guidelines of the U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC). This language has also formed the basis for most state laws prohibiting sexual harassment. The guidelines state:

> Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when
>
> 1. submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment,
> 2. submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individuals, or
> 3. such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment. (29 C.F.R. § 1604.11 [1980])

A key part of the definition is the use of the word *unwelcome.* Unwelcome or uninvited conduct or communication of a sexual nature is prohibited; welcome or invited actions or words are not unlawful. Sexual or romantic interaction between consenting people at work may be offensive to observers or may violate company policy, but it is not sexual harassment.

The courts have generally concluded that a victim need not say or do a particular thing to indicate unwelcomeness. Instead, a court will review all of the circumstances to determine whether it was reasonably clear to the harasser that the conduct was unwelcome. The courts have recognized that victims may be afraid to express their discomfort if the harasser is their boss or is physically intimidating. Victims may be coerced into going along with sexual talk or activities because they believe they will be punished or fired if they protest. Consent can be given to a relationship and then withdrawn when the relationship ends. Once it is withdrawn, continued romantic or sexual words or actions are not protected by the past relationship and may be sexual harassment.

The law prohibits unwelcome "sexual" conduct and words or actions "of a sexual nature." Some conduct, such as hugging, may be sexual or nonsexual and must be evaluated in context. Sexual harassment may be physical, such as kissing, hugging, pinching, patting, grabbing, blocking the victim's path, leering or staring, or standing very close to the victim. It may also be verbal, which may be oral or written and could include requests

Same-Sex Sexual Harassment

Sexual harassment in the workplace is usually associated with a heterosexual employee making unwelcome sexual advances to another heterosexual employee of the opposite gender. There are also cases where a homosexual employee harasses an employee of the same sex. But can a heterosexual employee sexually harass another heterosexual employee of the same gender?

The Supreme Judicial Court of Massachusetts, in *Melnychenko v. 84 Lumber Company,* 424 Mass. 285, 676 N.E.2d 45 (1997), concluded that same-sex sexual harassment is prohibited under state law regardless of the sexual orientation of the parties.

Leonid Melnychenko and two other employees at a Massachusetts lumberyard were subjected to humiliating verbal and physical conduct by Richard Raab and two other employees. Raab loudly demanded sexual favors from the men, exposed himself, and simulated sexual acts. Eventually the three employees quit their jobs with the lumber company and sued, claiming that sexual harassment was the reason for their departure.

At trial, the judge concluded that Raab's actions were not "true romantic overtures to the plaintiffs, and that they were not inspired by lust or sexual desire." Raab, who was "physically violent and sadistic," sought to "degrade and humiliate" the men.

The trial judge and the Supreme Judicial Court agreed that Raab's behavior constituted sexual harassment because it interfered with the three plaintiffs' work performance by creating an intimidating, hostile, humiliating, and sexually offensive work environment. Raab's sexual orientation did not excuse the conduct. The unwelcome sexual advances and requests for sexual favors were more than lewd horseplay and raunchy talk. They constituted sexual harassment.

In a subsequent case involving charges of same-sex sexual harassment, the Supreme Court held in *Oncale v. Sundowner Offshore Services, Inc., et al.,* 523 U.S. 75, 118 S.Ct. 998, 140 L.Ed.2d. 201 (U.S. 1998), that Title VII prohibits sexual harassment even when the harasser and target of harassment are of the same sex. Joseph Oncale worked for Sundowner Offshore Services on an oil platform in the Gulf of Mexico from August to November 1991. Oncale's supervisor and two co-workers forcibly subjected Oncale to humiliating sex-related actions in the presence of the rest of the crew. Oncale had even been threatened with rape. Oncale complained to other supervisors, but no remedial action was taken. Oncale eventually quit, requesting that Sundowner indicate that he voluntarily left due to sexual harassment and verbal abuse. He subsequently filed a Title VII action in the U.S. District Court for the Eastern District of Louisiana.

The Fifth Circuit ruled against Oncale, stating that the Title VII prohibition against sexual harassment does not include same-sex sexual harassment, even harassment as blatant as Oncale's supervisor exposing his penis and placing it on Oncale's body, and also, along with two co-workers, attacking Oncale in a shower and forcing a bar of soap into his anus while threatening rape. Justice Scalia wrote the opinion for a unanimous court that reversed the lower court. In a strongly worded opinion, he complained of the lack of common sense demonstrated by the lower courts that had hitherto excluded same-sex claims, and also those that had conditioned liability on a same-sex sexual harasser being gay or lesbian.

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CROSS-REFERENCES

Assault; Civil Rights Acts; Sex Offenses.

Clarence Thomas and Anita Hill Hearings

The issue of sexual harassment drew national attention during the 1991 Senate hearings on the confirmation of **CLARENCE THOMAS** to the U.S. Supreme Court. **ANITA FAYE HILL**, a professor at the University of Oklahoma Law Center, accused Thomas of sexually harassing her when she worked for him at the U.S. Department of Education and the **EQUAL EMPLOYMENT OPPORTUNITY COMMISSION** (EEOC) between 1981 and 1983. The public disclosure of the allegations resulted in nationally televised hearings before the **SENATE JUDICIARY COMMITTEE**.

The hearings, which drew a large national viewing audience, raised questions about Thomas's behavior, Hill's credibility, and the nature of sexual harassment in the workplace. The demeanor of the 12 white male members of the Senate Judiciary Committee and the questions they asked Hill raised the ire of many women's groups, who saw in the senators' behavior an unwillingness to acknowledge the dynamics of sexual harassment.

Thomas, then a judge on the U.S. Court of Appeals for the District of Columbia, had been nominated by President **GEORGE H. W. BUSH** to fill the seat vacated by Justice **THURGOOD MARSHALL**. Thomas's opponents, including many Democrats and interest groups, tried to block his nomination because they did not want Thomas, an outspoken conservative African American, replacing Marshall, an African American and one of the few remaining liberals on the Court. After questioning Thomas at length, the Judiciary Committee deadlocked 7–7 on whether to recommend the nominee to the full Senate and then sent the nomination to the floor without a recommendation. Nevertheless, it appeared that Thomas would win confirmation by a comfortable, though not necessarily large, margin.

Then on October 6, 1991, Anita Hill publicly accused Thomas of sexual harassment. The charges rocked the Senate. Hill had been contacted earlier by Senate staff members, and she told them of her allegations. The Judiciary Committee asked the **FEDERAL BUREAU OF INVESTIGATION** (FBI) to talk to Hill and Thomas about the allegations. The FBI produced a report that was inconclusive, being largely a matter of "he said, she said." The allegations would probably never have come to public attention except that Hill's statement was leaked to National Public Radio (NPR). Once NPR broke the story, Thomas's confirmation was thrown into doubt. In response, the Judiciary Committee announced that Thomas and Hill would be given a chance to testify before the committee.

The Hill-Thomas hearings took place the weekend of October 11th. Hill testified that after she had refused to date Thomas, he had initiated a number of sexually oriented conversations, some of which alluded to pornographic films. She provided vivid details about these conversations, but her credibility was questioned by Thomas supporters who suggested, among other things, that Hill might have fantasized the conversations. Senator Arlen Specter (R-Pa.) interrogated Hill as if she were a criminal suspect and suggested that she might be

or demands for dates or sex, sexual jokes, comments about the victim's body or clothing, whistles, catcalls, or comments or questions about the victim's or harasser's social life or sexual life. Sexual harassment may also be visual, such as cartoons, pictures, or objects of a sexual nature.

The laws against sexual harassment are violated when "submission to such conduct is made either explicitly or implicitly a term or condition of . . . employment." This language refers to what is sometimes called quid pro quo sexual harassment, in which a victim's hire, job security, pay, receipt of benefits, or status depends on her or his response to a superior's sexual overtures, comments, or actions. The quid pro quo may be direct, as when a superior explicitly demands sexual favors and threatens firing if the demands are not met, or it may be indirect, as when a superior suggests that employment success depends on "personality" or "friendship" rather than competence.

Sexual harassment also occurs when sexual conduct or communication "unreasonably interfer[es] with an individual's work performance." Tangible loss of pay, benefits, or the job itself is not required for sexual harassment to be claimed and proven. Generally, occurrences must be significant or repeated or both for substantial interference to be established.

Unreasonable interference can occur between coworkers of equal status as well as between superiors and subordinates. The employer of the coworker may be legally liable for such harassment if the employer knows or should know about it and fails to take timely and appropriate responsive action.

charged with perjury. Other senators wondered why she had followed Thomas from the **EDUCATION DEPARTMENT** to the EEOC if he had sexually harassed her. She replied that the harassment seemingly had ended and that she was uncertain about the future of her job at Education.

Thomas forcefully denied all of Hill's allegations and portrayed himself as the victim of a racist attack. According to him, Hill's allegations were "charges that play into racist, bigoted stereotypes." He reminded the committee that historically, when African American men were lynched, they were almost always accused of sexual misconduct, and he characterized the hearings as a "high-tech lynching."

Thomas's impassioned defense proved to be effective. It not only disarmed his Democratic opponents on the committee, who in the opinion of many commentators failed to question Thomas effectively, but it also won him sympathy throughout the country. A *New York Times*/CBS News poll taken October 28, 1991, found that 58 percent of the respondents believed Thomas: only 24 percent believed Hill.

The committee also heard from witnesses who said that Hill had discussed the harassment with them during the time she worked for Thomas. Thomas's supporters produced several men as character references, one of whom alleged that Hill's statements were a product of romantic fantasy. Several women who would have testified that Thomas exhibited similar behavior with them either declined to testify after seeing the committee's grilling of Hill or were not called by the committee.

Thomas was confirmed two days after the hearings, on a vote of 52–48, the narrowest margin for a Supreme Court justice since 1888.

Thomas's confirmation did not end the controversy. Some commentators characterized the hearings as a perversion of the process and suggested that Hill's charges should have been aired in closed committee hearings. Others criticized Hill as a pawn of liberal and feminist interest groups that sought to derail Thomas's nomination by any means. Some critics also accused Hill of being an active participant in the move to defeat Thomas; they claimed that she was a Democrat who pretended to be a Republican so as to appear politically impartial.

Hill's defenders were outraged by the committee's treatment of her. They described her plight as typical of women who bring sexual harassment claims. Unless the woman has third-party testimony backing up her charges, the "he said, she said" scenario always favors the man. The senators' questioning of Hill's motivations was also evidence of how men fail to understand sexual harassment. Many of the senators saw her as either a liar, a publicity seeker, or an emotionally disturbed woman who fantasized the alleged incidents. In response, T-shirts appeared that stated "I believe Anita Hill." There was also concern that Hill's treatment might discourage women from reporting sexual harassment. The Thomas-Hill hearings were a watershed event in the discussion of sexual harassment.

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The sexual harassment lawsuit filed in 1994 by Paula Jones against President **BILL CLINTON** highlighted this workplace issue. In 1991 Jones was an employee of the Arkansas Industrial Development Commission and Clinton was governor of Arkansas. Jones claimed that while working at an official conference at a Little Rock hotel, she was persuaded by a member of the Arkansas state police to visit the governor in a business suite at the hotel. She alleged that Clinton made sexual advances that she rejected. Jones also claimed that because she rejected his advances, her superiors dealt with her in a rude and hostile manner and changed her job duties.

Clinton denied the charges and sought to delay the lawsuit until after he left the presidency. The Supreme Court rejected this argument in *Clinton v. Jones,* 520 U.S. 681, 117 S.Ct. 1636, 137 L.Ed.2d 945 (1997), and he was forced to defend himself. In 1998 the federal district court dismissed her action, ruling that there was no proof that Jones was emotionally injured or punished in the workplace for rejecting Clinton's advances. Jones appealed this ruling but agreed to drop her lawsuit in return for $850,000. She also dropped her previous demand that Clinton apologize or make an admission of guilt.

The most far-reaching part of the EEOC definition is that dealing with a hostile or offensive working environment. The U.S. Supreme Court upheld the concept of a hostile work environment as actionable under the 1964 Civil Rights Act in *Meritor Savings Bank v. Vinson,* 477 U.S. 57, 106 S. Ct. 2399, 91 L. Ed. 49 (1986). The Court rejected a narrow reading of the statute,

under which an employer could not be held liable for sexual harassment unless the employee's salary and promotions were affected by the actions.

In the *Vinson* case, plaintiff Michelle Vinson, an employee of Meritor Savings Bank, claimed that her male supervisor, Sidney Taylor, had sexually harassed her. Taylor made repeated demands for sexual favors, and the pair engaged in sexual relations at least 40 times. Vinson testified that she engaged in sexual relations because she feared losing her job if she refused. The harassment stopped after Vinson began a steady relationship with a boyfriend. One year later, Taylor fired Vinson for excessive use of medical leave. Although the bank had a procedure for reporting harassment, Vinson had not used it because it required her to report the alleged offenses to her supervisor—Taylor.

Justice WILLIAM H. REHNQUIST, writing for the Court, established several basic principles for analyzing hostile environment cases. First, for sexual harassment to be actionable, it must be severe enough to change the conditions of the victim's employment and create an abusive working environment. Here, Rehnquist implied that isolated occurrences of harassment (such as the telling of a dirty joke or the display of a sexually explicit photograph) would not constitute a hostile work environment.

Second, Rehnquist made clear that there is a difference between voluntary behavior and welcome behavior. Noting that Vinson and Taylor's sexual relations were voluntary, Rehnquist rejected the conclusion that Vinson's willingness constituted a defense to sexual harassment. The critical issue was whether the sexual advances were welcome. If sexual advances are unwelcome, the inequality of power between a supervisor and subordinate strongly suggests that the employee engages in sexual relations out of fear.

Third, Rehnquist held that courts must view the totality of the circumstances when deciding the issue of welcomeness. In *Vinson,* however, the Court did not address the question of whose perspective should be used in determining whether certain behavior so substantially changes the work environment that it becomes abusive: should the standard be that of a reasonable man, a REASONABLE WOMAN, or a reasonable person?

In *Robinson v. Jacksonville Shipyards,* 760 F. Supp. 1486 (M.D. Fla. 1991), federal district judge Howell Melton applied the reasonable woman test to determine if the work environment was abusive to women. He held that a reasonable woman exposed to the pictures of nude or partially nude women that were posted in the workplace and to the sexually demeaning remarks and jokes by male workers would find that the work environment at the shipyards was abusive. The totality of the circumstances would lead a reasonable woman to these conclusions.

The Ninth Circuit Court of Appeals echoed this reasoning in *Ellison v. Brady,* 924 F.2d 872 (1991). In *Ellison,* the court rejected the reasonable person standard in favor of the reasonable woman standard. The court believed that using the reasonable person standard would risk enforcing the prevailing level of discrimination because that standard would be male biased.

Even with the acceptance of the reasonable woman standard by the courts, the diversity of outcomes in harassment claims created confusion as to what constitutes harassment. In *Harris v. Forklift Systems,* 510 U.S. 17, 114 S. Ct. 367, 126 L. Ed. 295 (1993), the Supreme Court attempted to clarify this issue. Teresa Harris had filed a discrimination claim based on the behavior of the company president, Charles Hardy. Hardy had insulted Harris and other women with demeaning references to their gender and with unwanted sexual innuendo.

The district court ruled that although Hardy's comments were sufficiently offensive to cause discomfort for a reasonable woman, they did not rise to the level of interfering with that woman's work performance. The court also held that Harris had not been injured by the comments.

The Supreme Court overruled the lower court, holding that courts must not focus their inquiry on concrete psychological harm, which is not required by Title VII of the Civil Rights Act. To maintain such a requirement would force employees to submit to discriminatory behavior until they were completely broken by it. So long as the workplace environment would reasonably be perceived as hostile or abusive, it did not need also to be psychologically injurious.

Thus, the plaintiff in a hostile work environment case must show that sexually harassing behavior is more than occasional, but need not document an abusive environment that causes actual psychological injury. The courts recognize that a hostile work environment will detract

from employees' job performance, discourage employees from remaining in their positions, and keep employees from advancing in their careers. The Title VII guiding rule of workplace equality requires that employers prevent a hostile work environment.

In *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742, 118 S.Ct. 2257, 141 L.Ed.2d 633 (1998), the Supreme Court sought to clarify the confusing state of sexual harassment law. It held that an employee could sue for damages for sexual harassment under Title VII even if the employee did not suffer any adverse job consequences, such as demotion or termination. The Court stated that under Title VII, an employee who refuses "unwelcome and threatening sexual advances of supervisor, yet suffers no adverse, tangible job consequences" may recover damages from an employer. The employee does not have to show that the employer was negligent or at fault for the supervisor's actions to recover damages. The Court based its new standard on principles of agency law. Agency law describes the responsibilities of employers and employees to each other and to third parties. The Court invoked the agency principle that makes employers liable for the TORTS of employees who act or speak on behalf of the employer and whose apparent authority the victimized employee relies upon.

The Court, however, also provided employers with more protection in *Ellerth.* If a supervisor has harassed an employee, but no tangible employment action is taken against the employee, the employer may present an AFFIRMATIVE DEFENSE. This defense includes a showing that the employer exercised reasonable care to prevent and correct sexually harassing behavior. A company's policy against sexual harassment would be relevant to demonstrate reasonable care. The defense also allows the employer to show that the employee had unreasonably failed to take advantage of the employer's anti-harassment procedures.

Ellerth gave employers an additional incentive to institute policies against sexual harassment. A first step is determining if a problem exists. Some companies conduct informal surveys of their employees concerning sexual harassment. In addition, employers often inspect the workplace for objectionable material, such as photographs of nude people or insensitive or explicit jokes with sexual connotations.

Employers typically include a policy against sexual harassment in personnel policies or employee handbooks. These policies use the EEOC definition of prohibited conduct as a guideline. The prohibited conduct must be stated in an understandable way.

A complaint procedure is typically part of the policy. Most employers recognize that a prompt and thorough investigation of a complaint, followed by appropriate disciplinary action, can minimize liability. These procedures usually specify to whom a victim of harassment can complain if the victim's supervisor is the alleged harasser. Companies also routinely train supervisors to recognize sexual harassment. Finally, some employers provide sexual harassment training for all their employees as a way of trying to improve workplace culture and behavior, as well as minimizing their legal liability.

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CROSS-REFERENCES

Employment Law; Women's Rights.

"PUT SIMPLY, A DEFENSE ATTORNEY'S JOB IS TO SEE TO IT THAT THE MAN OR WOMAN WHO STANDS UNDER . . . SCRUTINY DOES NOT STAND ALONE."
—ROBERT SHAPIRO

SHAM

False; without substance.

A sham PLEADING is one that is good in form but is so clearly false in fact that it does not raise any genuine issue.

♦ SHAPIRO, ROBERT LESLIE

Robert Leslie Shapiro is a prominent West Coast defense lawyer. He entered private practice in 1972 after a brief stint as a prosecutor. Within a decade, he was representing film stars, producers, professional athletes, and other celebrities. Shapiro is known for his calm, tactful manner in negotiations and for building relationships with law enforcement agencies and the press. In 1994, he turned these abilities to the defense of O.J. (Orenthal James) Simpson in a case that was followed closely throughout the nation.

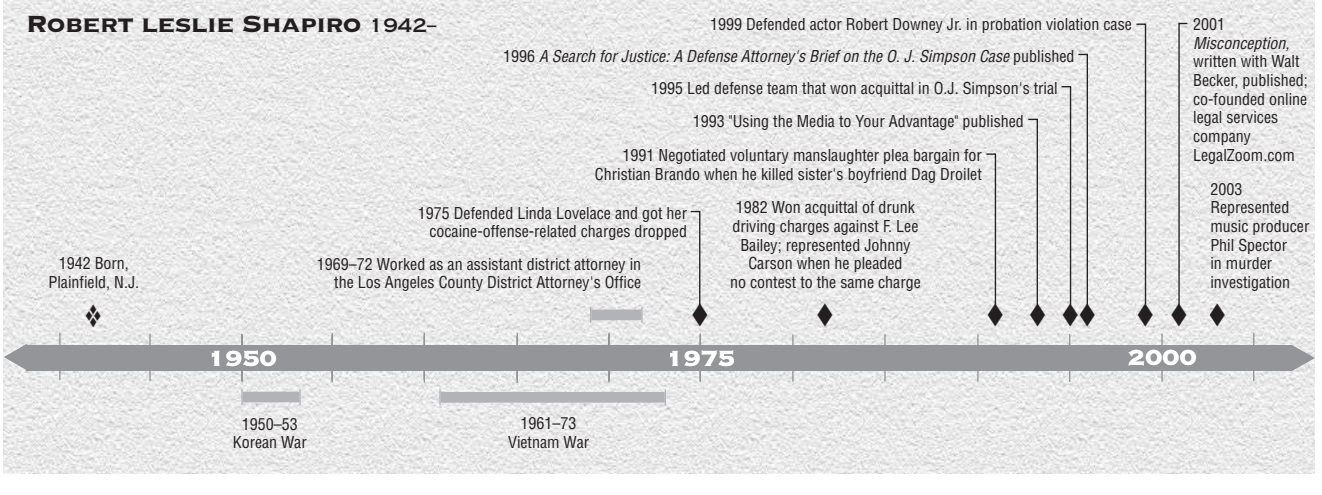
Shapiro was born on September 2, 1942, in Plainfield, New Jersey. While still a child, he moved to California with his family. He later studied finance at the University of California, Los Angeles, and then law at Loyola Law School. After earning his law degree in 1968, he joined the Los Angeles County District Attorney's Office as an assistant district attorney. That same office also served as a stepping stone for another noted West Coast attorney, JOHNNIE L. COCHRAN JR., who later became Shapiro's colleague on the Simpson defense team. In 1972, Shapiro left the public sector for private practice.

Shapiro's first well-known case was his defense of Linda Lovelace, an adult film star who had been charged with a cocaine offense in 1975. Shapiro got the charges dismissed. Famous figures in sports and entertainment began to call on Shapiro. He represented television comedian Johnny Carson, New York Mets outfielder Vince Coleman, film producer Robert Evans, and Christian Brando, the son of actor Marlon Brando. Shapiro also won an acquittal for his friend, attorney F. (Francis) Lee Bailey, who had been charged with drunk driving.

After two decades of success, Shapiro published some of his insights for other lawyers. In February 1993, he wrote an essay called "Using the Media to Your Advantage," which was published by the National Association of Criminal Defense Lawyers. The essay's message was that big cases are tried as much in the media as in court, and usually to the prosecution's advantage. Prosecutors know how to play to reporters, and defense attorneys usually do not. Shapiro contended that media headlines proclaiming an arrest destroy the PRESUMPTION OF INNOCENCE and instead create a presumption of guilt. Shapiro believed that combating the public mind-set that "if the press said it, it must be true," is the defense attorney's most challenging task. He advised defense lawyers to get to know reporters, to look into the camera, and to speak in sound bites, so that the defense's position also finds its way into news reports.

Shapiro's most prominent case was the trial of former football star O.J. SIMPSON for the 1994 murders of his ex-wife, Nicole Brown Simpson, and her friend, Ronald Lyle Goldman. One of Shapiro's first moves in the case was to arrange for Simpson's surrender to Los Angeles police, something that he had done for other clients. Instead of surrendering as arranged, however, Simpson fled, leaving a suicide note; shortly thereafter, he led police on a long, slow-speed chase along Los Angeles freeways, driven by his friend and former Buffalo Bills teammate, Al "A.C." Cowlings. Massive publicity followed, putting the case and Shapiro under virtually ceaseless scrutiny.

Shapiro worked to ensure that the defense's perspective would be part of the media's coverage of the case. He also assembled a powerful team of lawyers and scientific experts to prepare for trial. Shapiro's team of experts, though widely praised, may have been as big a challenge as the media, for the many well-known attorneys did not always agree on strategy or on who should play what role. Serious disagreements arose within the team, including one between Shapiro and Bailey, whom Shapiro accused of trying to undermine his reputation. Although Shapiro handled most of the early trial work, it was Cochran who



assumed the lead role toward the end of the trial, delivering the most widely quoted defense remarks in the closing arguments.

Simpson was ultimately acquitted of murder, and the team that Shapiro had assembled disbanded. By the trial's conclusion in 1995, Shapiro had gained nationwide fame for his part in one of the most widely followed cases in U.S. history.

In 1996, Shapiro published his recounting of the Simpson trial in a book titled *The Search for Justice: A Defense Attorney's Brief on the O.J. Simpson Case.* In recent years, Shapiro has practiced law as a partner in the firm of Christensen, Miller, Fink, Jacobs, Glaser, Weil & Shapiro. He also cofounded LegalZoom, an online provider of legal documentation services.

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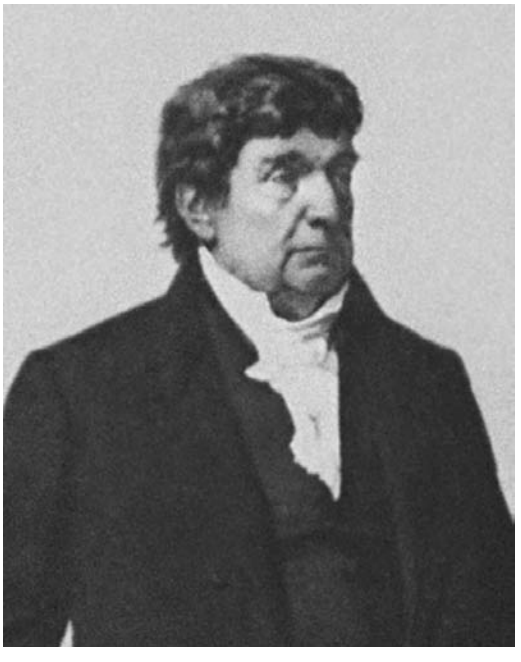
SHARE

A portion or part of something that may be divided into components, such as a sum of money. A unit of stock that represents ownership in a corporation.

♦ SHAW, LEMUEL

Lemuel Shaw served as chief justice of the Supreme Judicial Court of Massachusetts from 1830 to 1860. Shaw was a judicial pioneer. His long career as a judge coincided with a crucial period in the development of the United States, and his personal, idiosyncratic opinions fashioned legal doctrines that accommodated the tumultuous changes of the time. It is likely that no other state judge in the nineteenth century wielded the same influence as Shaw in the areas of commercial and CONSTITUTIONAL LAW. This influence was not merely on law in his state: Shaw's ideas and precedents were adopted nationally. Many decades after his death in 1861, Shaw's ideas still affected EMPLOYMENT LAW and civil rights cases.



Lemuel Shaw.
LIBRARY OF CONGRESS

Born on January 9, 1781, in West Barnstable, Massachusetts, Shaw was the second son of the Reverend Oaks Shaw, who taught his son English, the classics, and the Bible. In 1800 Shaw graduated from Harvard University with high distinction. A brief writing career led to studying law with a Boston lawyer, and in 1804 Shaw was admitted to the bar in both New Hampshire and Massachusetts. Over the next two decades, he practiced some law while immersing himself in his home state's politics. He was by turns a JUSTICE OF THE PEACE, an ardent Federalist organizer, a delegate to the Massachusetts Constitutional Convention of 1820, and a state senator in 1821 and 1822.

"[WHILE] THE MAINTENANCE OF SEPARATE SCHOOLS TENDS TO DEEPEN AND PERPETUATE THE ODIOUS DISTINCTION OF CASTE, . . . PREJUDICE, IF IT EXISTS, IS NOT CREATED BY LAW, AND PROBABLY CANNOT BE CHANGED BY LAW."
—LEMUEL SHAW

Shaw's decision to devote himself fully to legal practice marked the turning point in his career. From 1823 on, he devoted himself to the practice of COMMERCIAL LAW. The nation was in the process of transforming itself from an agrarian society into a modern urban industrial one. Alert to the changes underway, Shaw became wealthy and prominent as a lawyer to growing industrial concerns. In 1830, on the basis of this reputation, Governor LEVI LINCOLN offered Shaw the office of chief justice of the Supreme Judicial Court of Massachusetts. Shaw took the offer despite the sacrifice of a lucrative career and the prospect of long absences from his family.

Shaw's opinions broke from precedent. In *Farwell v. Boston and Worcester Rail Road,* 45

Mass. (4 Met.) 49 (1842), he denied recovery of damages to a railroad worker whose hand was lost due to the NEGLIGENCE of another worker. The injured worker had sued the employer. Shaw's concern was to limit the liability of employers, and he accomplished this by importing from English COMMON LAW the so-called FELLOW-SERVANT RULE. This rule protected employers from being sued in such cases on the theory that workers know that they take risks and that their salaries are compensation enough. By introducing to U.S. law this doctrine, which became widely popular, Shaw hoped to benefit the commonwealth with unhindered industrial growth. His decision helped frustrate injured workers' claims for more than a half century, until the advent of WORKERS' COMPENSATION laws in the early twentieth century eviscerated the doctrine in most jurisdictions.

Yet Shaw was not against labor. In his best-known and most praised decision, Shaw cleared the way for LABOR UNIONS to operate freely in Massachusetts. *Commonwealth v. Hunt,* 45 Mass. (4 Met.) 111 (1842), freed the state's unions from the prevailing judicial application of the law of criminal conspiracy to labor actions. In the twentieth century, the opinion has been hailed as the foremost nineteenth-century ruling on labor unions because it removed from them the stigma of criminality.

Shaw's views on CIVIL RIGHTS were among his most controversial. He was praised by abolitionists and condemned by southern slave states for his opinion in *Commonwealth v. Aves,* 35 Mass. (18 Pick.) 193 (1836). *Aves* held that a slave brought voluntarily into the state became free and could not be required by his or her master to leave to return to SLAVERY. But subsequently, Shaw always denied writs of HABEAS CORPUS to free fugitive slaves. In 1849 he upheld the SEGREGATION of black schoolchildren in *Roberts v. City of Boston,* 59 Mass. (5 Cush.) 198. As the first in a line of state and federal cases that supported school segregation, Shaw's opinion in *Roberts* was cited by the Supreme Court in 1896 when it upheld a Louisiana law requiring the separation of races in railroad cars in the infamous case of PLESSY V. FERGUSON, 163 U.S. 537, 16 S. Ct. 1138, 41 L. Ed. 256.

Shaw's thirty years on the Massachusetts bench ended with his retirement in 1860. He died in Boston on March 30, 1861.

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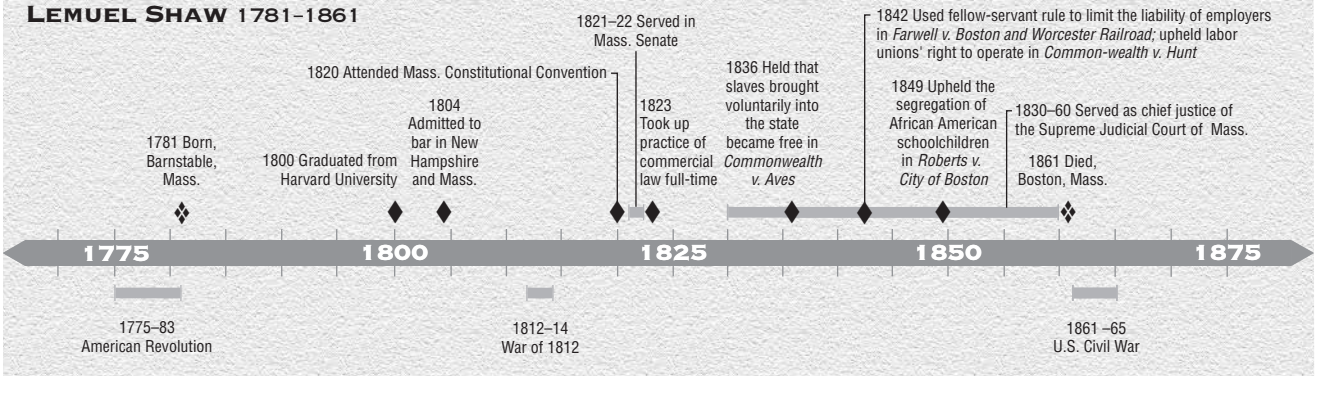
SHAW V. HUNT

In 1996 the U.S. Supreme Court dealt a severe blow to states' attempts to create election districts containing a majority of minority voters to ensure minority representation. In *Shaw v. Hunt,* 517 U.S. 899, 116 S. Ct. 1894, 135 L. Ed. 2d 207, the Court ruled that the redrawing of a North Carolina congressional district into a "bizarre-looking" shape to include a majority of African Americans could not be justified by the VOTING RIGHTS ACT OF 1965 (42 U.S.C.A. § 1973c), because it violated the EQUAL PROTECTION CLAUSE of the FOURTEENTH AMENDMENT to the U.S. Constitution.



The case arose out of two disputed congressional election districts created by the North Carolina legislature following the 1990 census. North Carolina increased its congressional delegation from 11 to 12 seats in the House of Representatives. In 1991 the state legislature reapportioned the election districts and included one black-majority district. The JUSTICE DEPARTMENT, which under the Voting Rights Act must "preclear" redistricting plans, rejected it. The department found that one black-majority district was insufficient in a state where 22 percent of the population is black.

In 1992 the North Carolina legislature prepared a new plan that created two black-majority districts, the First and the Twelfth. In November 1992 Eva Clayton and Mel Watt were elected from these districts, the first blacks to represent North Carolina since 1901. However, the REPUBLICAN PARTY and five white voters challenged the two election districts in federal court. The white plaintiffs argued that the two districts amounted to unlawful racial gerrymandering.

The Twelfth District was worm-shaped, stretching 160 miles from Gastonia to Durham, hugging the thin line of Interstate 85. The district was so narrow at one point that drivers in the northbound lane of the interstate were in the district while drivers in the southbound lane were in another district. Of the ten counties through which the district passed, five were cut into three different districts, with some towns divided. The First District was hook-shaped, with fingerlike extensions. It had been compared to a "Rorschach ink-blot test" and a "bug splattered on a windshield."

A three-judge panel reviewed the claims of the plaintiffs and dismissed the case. The court ruled that the plaintiffs had failed to state an equal protection claim because favoring minority voters was not discriminatory in the constitutional sense and the plan did not lead to proportional underrepresentation of white voters statewide (808 F. Supp. 461 [E.D.N.C. 1992]).

An appeal followed to the U.S. Supreme Court (*Shaw v. Reno,* 509 U.S. 630, 113 S. Ct. 2816, 125 L. Ed. 2d 511 [1993]), which laid the groundwork for the Court's 1996 decision. On a 5–4 vote, the Supreme Court reversed the three-judge panel and reinstated the lawsuit, ruling that the plaintiffs did have a CAUSE OF ACTION under the Fourteenth Amendment's Equal Protection Clause. Justice SANDRA DAY O'CONNOR, in her majority opinion, noted the long history of court cases involving efforts by southern states to restrict voting rights for black Americans. In *Gomillion v. Lightfoot,* 364 U.S. 339, 81 S. Ct. 125, 5 L. Ed. 2d 110 (1960), the state of Alabama redefined the boundaries of the city of Tuskegee "from a square to an uncouth twenty-eight-sided figure" to exclude black voters from the city limits. The passage of the Voting Rights Act of 1965 had a dramatic effect on these kinds of practices. By the early 1970s, voter registration had significantly improved for black voters. But black voters were frustrated in their efforts to elect their candidates because of multimember or at-large districts, which diluted their votes and enabled the white majority to elect its candidates. In 1982 Section 2 of the Voting Rights Act was amended to prohibit legislation that results in the dilution of a minority's voting strength, regardless of the legislature's intent.

It was against this background that O'Connor shaped her analysis. Reviewing the two districts in dispute, she found it "unsettling how closely the North Carolina plan resembles the most egregious racial gerrymandering of the past." O'Connor agreed that prior cases had never made race-conscious redistricting "impermissible in all circumstances," yet agreed with the plaintiffs that the redistricting was "so extremely irregular on its face that it rationally can be viewed only as an effort to segregate races for purposes of voting, without regard for traditional districting principles and without sufficiently compelling justification."

Under a constitutional challenge regarding the Equal Protection Clause, legislation that involves racial classification requires a court to use the STRICT SCRUTINY standard of review. A law will be upheld under strict scrutiny if it is supported by a compelling state interest and is narrowly drawn to achieve that interest in the least restrictive manner possible. O'Connor agreed that district lines "obviously drawn for the purpose of separating voters by race" required application of the strict scrutiny standard.

In examining the districts, O'Connor held that race-based districts will be considered suspect if they disregard traditional districting principles "such as compactness, contiguity, and respect for political subdivisions." These "objective" criteria are required because in reapportionment, "appearances do matter." O'Connor stated that a reapportionment plan that draws in

persons of one race from widely separated geographic and political boundaries and "who may have little in common with one another but the color of their skin, bears an uncomfortable resemblance to political apartheid." This type of redistricting reinforces "impermissible racial stereotypes" and may "exacerbate the very patterns of racial bloc voting that majority-minority districting is sometimes said to counteract."

O'Connor also characterized the redistricting plan as "pernicious," sending a message to voters that elected officials are to represent members of their voting group and not their entire constituency. For these reasons, the majority concluded that a reapportionment statute may be challenged when the plaintiffs claim that the plan is an "effort to separate voters into different districts on the basis of race, and that the separation lacks sufficient justification."

The Court remanded the case to the lower court, directing it to apply the standards articulated in the opinion to its analysis of the congressional districts. The lower-court panel ruled that the redistricting plan was narrowly tailored to serve compelling state interests and did not violate equal protection (861 F. Supp. 408 [E.D.N.C. 1994]). The plaintiffs again appealed.

In *Shaw v. Hunt,* the Court again split 5–4, with Chief Justice WILLIAM H. REHNQUIST writing the majority opinion that struck the redistricting plan. Compared with the first Court opinion, the decision was relatively brief and to the point. Rehnquist applied the strict scrutiny test because race was the predominant consideration in drawing the district lines. Therefore, North Carolina had to prove that its scheme was narrowly tailored to serve a compelling state interest. This burden, the majority concluded, it did not meet.

Rehnquist found the three "compelling interests" asserted by North Carolina to be lacking in merit. In addition, none was narrowly tailored. North Carolina had claimed that it had an interest in eradicating the effects of past discrimination, but the lower court had found that this interest did not precipitate the use of race in the redistricting plan. As Rehnquist noted, to prove a "compelling interest," North Carolina had to show that the alleged objective was the legislature's "actual purpose" for the redistricting plan. Therefore, the state could not assert this interest after the fact.

North Carolina also asserted a compelling interest in complying with Section 5 of the Voting Rights Act, arguing that it was the state's duty to follow the mandates of the Justice Department in the preclearance process and create two rather than one black-majority districts. Rehnquist rejected this interest because the Court disagreed with the Justice Department that Section 5 requires maximizing the number of black-majority districts wherever possible. Under the legislature's original plan, it had only proposed one black-majority district. Rehnquist concluded that this maximization policy was not grounded in Section 5; therefore, no compelling interest was at stake.

Rehnquist also saw no merit in the state's argument that under section 2 of the Voting Rights Act it had a compelling interest to create a second black-majority district. North Carolina contended that failure to do so would have brought a charge under Section 2 that it was diluting minority voting strength by confining most African Americans to one district. Rehnquist found this contention misplaced because a potential Section 2 violation could only be lodged if the minority group was "geographically compact." In this case the original one-district plan was anything but compact.

In 2001 the U.S. Supreme court made a final ruling on the issue in Hunt v. Cromartie, 526 U.S. 541, 121 S.Ct. 1452, 149 L.Ed.2d 430 (2001). Here the court ruled that a largely black district is constitutional, but only if it is drawn to satisfy political, rather than racial motives.

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CROSS-REFERENCES

Apportionment; Elections; Gerrymander; Voting.

SHAYS'S REBELLION

A revolt by desperate Massachusetts farmers in 1786, Shays's Rebellion arose from the economic

hardship that followed the WAR OF INDEPENDENCE. Named for its reluctant leader, Daniel Shays, the rebellion sought to win help from the state legislature for bankrupt and dispossessed farmers. More than a thousand rebels blocked courts, skirmished with state militia, and were ultimately defeated, and many of them were captured. But the rebellion bore fruit. Acknowledging widespread suffering, the state granted relief to debtors. More significantly, the rebellion had a strong influence on the future course of federal government. Because the federal government had been powerless under the ARTICLES OF CONFEDERATION to intervene, the Framers created a more powerful national government in the U.S. Constitution.

Three years after peace with Great Britain, the states were buffeted by inflation, devalued currency, and mounting debt. Among the hardest hit was Massachusetts. Stagnant trade and rampant unemployment had devastated farmers who, unable to sell their produce, had their property seized by courts in order to pay off debts and overdue taxes. Hundreds of farmers were dispossessed; dozens of them were jailed. The conditions for revolt were ripe, stoked by rumors that the state's wealthy merchants were plotting to seize farm lands for themselves and turn the farmers into peasants.

The rebellion that followed came in two stages. The first steps were taken in the summer and fall of 1786. In five counties, mobs of farmers stopped the courts from sitting. Their goal was to stop the trials of debtors until elections could be held. They hoped that a new legislature would follow the example of other states by providing legal relief for them. This action provoked the state's governor, James Bowdoin, into sending out the state militia. Reluctantly, Daniel Shays, a destitute 39-year-old former captain in the Continental Army, was pressed into leadership of the insurgents. Shays sought to prevent the court from sitting in Springfield, and on September 26, he defied the state militia with his own force of 500 men. The men prevailed at first, forcing the court to adjourn. But with the capture of another rebel leader in November, the rebellion collapsed.

By December the rebels had regrouped for another stand. Because they feared that this time the state was going to indict them on charges of TREASON, they marched on the federal arsenal in Springfield on January 25, 1784, planning to continue on to the courthouse. Shays had some 1,100 men under his command. But the militia there, under the command of Major General William Shepherd, easily held them off: four people died before a single cannon volley dispersed Shays's men, who were pursued and arrested. Despite scattered resistance, the rebellion was crushed by February 4.

However, by popularizing the plight of debtors, the defeated rebels succeeded in their goals. Massachusetts elected a new legislature that quickly acceded to several demands of Shays's followers, chiefly by enacting relief measures. Moreover, although 14 of the rebel leaders were convicted and sentenced to death, they all received pardons or short prison sentences. Within a year's time, the state was prosperous again and enmities had cooled.

The most lasting and significant impact came at the federal level. In light of the events in Massachusetts, it was clear to the congress of the Confederation that it lacked the legal power to send aid to the states in a time of crisis. Only six years earlier, the 13 original states had drawn up their governing document, the Articles of Confederation. Now the congress invited the states to send delegates to a convention in Philadelphia in May 1787 to revise the Articles. This plan was quickly dropped in favor of much broader action—the drafting of a new constitution that would establish a more powerful national government. In part due to the weaknesses exposed by Shays's Rebellion, many delegates at the Constitutional Convention gave support to greater federal power, ultimately embodied in the Constitution.

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CROSS-REFERENCES

Constitution of the United States.

SHELLEY'S CASE

See RULE IN SHELLEY'S CASE.

SHELTER

A general term used in statutes that relates to the provision of food, clothing, and housing for specified individuals; a home with a proper environment that affords protection from the weather.

SHEPARDIZING

A term used in the legal profession to describe the process of using a citator to discover the history of a case or statute to determine whether it is still good law.

The expression is derived from the act of using *Shepard's Citations.* An individual checking a citation by shepardizing a case will be able to find out various information, such as how often the opinion has been followed in later cases and whether a particular case has been overruled or modified.

CROSS-REFERENCES

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SHEPARD'S® CITATIONS

A set of volumes published primarily for use by judges when they are in the process of writing judicial decisions and by lawyers when they are preparing briefs, or memoranda of law, that contain a record of the status of cases or statutes.

Shepard's Citations provide a judicial history of cases and statutes, make note of new cases, and indicate whether the law in a particular case has been followed, modified, or overruled in subsequent cases. They are organized into columns of citations, and various abbreviations indicate whether a case has been overruled, superseded, or cited in the dissenting opinion of a later case.

The term *shepardizing* is derived from the act of using Shepard's citators.

SHEPPARD, SAMUEL H.

In 1954 a sensational murder trial laid the groundwork for a significant U.S. Supreme Court ruling on the rights of criminal defendants to a fair trial. Dr. Samuel H. Sheppard, a prominent Cleveland osteopath, was convicted of murdering his pregnant wife, Marilyn Sheppard. He was sentenced to life in prison, where he remained before his appeal reached the Supreme Court in 1966. The Court ordered a new trial, which led to Sheppard's eventual acquittal. *Sheppard v. Maxwell,* 384 U.S. 333, 86 S. Ct. 1507, 16 L. Ed. 2d 600, became the leading case on PRETRIAL PUBLICITY, shaping how judges have since treated the difficult problem of guaranteeing a defendant a fair trial in the face of massive media attention.

On July 4, 1954, 31-year-old Marilyn Sheppard who was four months pregnant, was bludgeoned to death in the bedroom of the couple's impressive Lake Erie, Pennsylvania home. According to Sheppard, he had been sleeping on a downstairs couch when he heard noises and moans coming from the bedroom where his wife was sleeping. He ran to help her but was knocked unconscious by a bushy-haired man. He awoke to find that his wife had been murdered and then chased the intruder across the lawn where he was knocked out a second time. After awakening outside the house, he immediately telephoned the mayor of Cleveland, his friend, and related the story.

Both prosecutors and the media seized on Sheppard as the murderer. Even before his arrest three weeks later, police interrogated Sheppard at the coroner's inquest without his lawyer present. Rumors of marital difficulties and Sheppard's alleged extra-marital affairs, led the Cleveland newspapers to sensationalize the case until it became notorious nationwide.

At the trial in the fall of 1954, prosecutors had no clear-cut motive to explain why Sheppard had allegedly killed his wife. The best they could offer was the intimation that he had been having an affair with a former laboratory technician. Following a chaotic trial, in which the media had telephones, special tables, opportunities to photograph the jurors, and even interviews with the judge on the courthouse steps, the jury returned a guilty verdict. Sheppard received a life sentence.

From 1954 to 1966, Sheppard continuously appealed the jury's verdict. He argued that pretrial publicity had destroyed his chance of a fair trial by prejudicing jurors. His appeals failed until 1964, when U.S. District Court Judge Carl A. Weinman ruled in his favor (*Sheppard v. Maxwell,* 231 F. Supp. 37 [S.D. Ohio]). Without addressing Sheppard's innocence or guilt, Weinman held that he had been denied DUE PROCESS because negative reporting by the Cleveland press had adversely affected the jurors' verdict. But a year later, the U.S. Court of Appeals in Cincinnati overruled Judge Weinman (*Sheppard v. Maxwell,* 346 F.2d 707 [6th Cir. 1965]). The appeals court said that qualified jurors are able to make thoughtful rulings in the face of publicity.

But the U.S. Supreme Court ruled that Sheppard's trial had been prejudiced by pretrial publicity. So virulent had been the negative publicity that prejudice could safely be presumed, the Court held. It blamed the trial judge for not

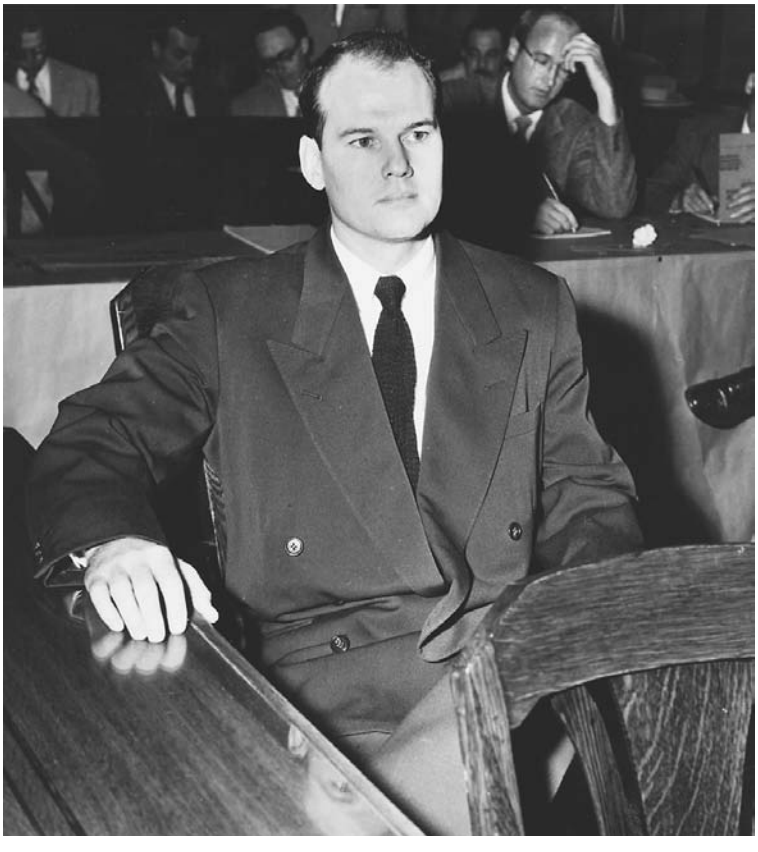
minimizing the effect of the publicity, which it likened to a circus atmosphere. The decision heightened consideration of criminal defendant's SIXTH AMENDMENT right to due process. Significantly, the Court did not seek to curtail the FREEDOM OF THE PRESS to report on trials. Instead, the Court said that in a case where a defendant's rights are threatened by pretrial publicity, the trial judge must protect the defendant. This, it said, could be accomplished by taking such measures as isolating the jury through a process called SEQUESTRATION, in which jury members are shielded from contact with the outside world during the course of a trial.

Although the Supreme Court did not rule on Sheppard's guilt or innocence, it reversed his conviction and ordered a new trial. In November 1966, 13 years after his conviction, he stood trial again. This time, represented by the high-profile attorney F. LEE BAILEY, Sheppard was acquitted. Four years later, after a brief career as a professional wrestler named "Killer Sheppard," a despondent Sheppard died on April 7, 1970, from liver complications caused by heavy drinking.

In 1995 Sheppard's son, Sam Reese Sheppard, used his father's estate to file a lawsuit against Ohio for the wrongful imprisonment of Dr. Sheppard. To win the case, Sheppard had to prove that his father was innocent, a more difficult standard than for the acquittal Dr. Sheppard was granted at his retrial. Sheppard hoped to prove his father's innocence using new DNA EVIDENCE. Although he said his sole intention was to clear his father's name, Sheppard stood to receive as much as $2 million in damages for the ten years his father spent in jail.

The younger Sheppard and his attorneys suggested that Marilyn Sheppard may have been killed by Richard Eberling, a window washer who had been employed by the Sheppards at the time of the murder. In 1984 Eberling had been convicted of killing an elderly woman named Ethel Durkin in order to inherit her estate. In 1996 Durkin's former nurse stated that Eberling had told her that he had killed Marilyn Sheppard. Eberling, who was in prison for Durkin's murder denied making the statement.

In February 1997 the Sheppard family attorneys announced that DNA testing conducted by Dr. Mohammed Tahir showed that the blood found in the Sheppard home the night of Marilyn's murder could conceivably be that of Richard Eberling. In September of that year Sam Reese Sheppard had his father's remains exhumed in order to conduct DNA testing. In March 1998 the Sheppard attorneys stated that the results of the DNA testing excluded Dr. Sheppard from the bloodstains found at the murder scene. In July 1998 Eberling died in prison. The state had the bodies of Mrs. Sheppard and the fetus she was carrying exhumed in 1999 so that DNA and other tests could be conducted. Prosecutors stated that the test results still pointed to Dr. Sheppard as the murderer.



Physician Sam Sheppard spent over a decade in prison for the murder of his wife before he was acquitted in a second trial ordered by the Supreme Court. AP/WIDE WORLD PHOTOS

The wrongful imprisonment trial commenced in February 2000. Led by William Mason, Ohio prosecutors maintained their position that Dr. Sheppard killed his wife. They challenged Tahir's DNA results, saying Tahir used contaminated DNA samples. Prominent trial lawyer F. Lee Bailey, who defended Dr. Sheppard during his retrial in 1966, was the first witness. Bailey testified that the 1954 trial was a conspiracy between police, prosecutors, the court, and newspapers to convict an innocent man.

The younger Sheppard testified about the night of the murder that took place when he was seven. He said there was no tension between his parents when his mother tucked him into bed that night. In the early morning hours, his uncle

and a neighbor woke him to tell him "something terrible had happened." Anticipating the defense's case, Sheppard admitted that his father had extramarital sexual relations while Marilyn recovered from sexual problems.

While Sheppard testified, the prosecutors had a surprise for the jury. Although Sheppard always said he was more interested in clearing his father's name than making money, prosecutor William Mason disclosed in open court that Sheppard once asked for $3.2 million to settle the case out of court. The judge described Mason's disclosure as "improper" because the offer had been confidential. Mason's tactic worked, however, as jurors got to hear damaging evidence they should not have heard.

When it came time for the prosecutors' case, they belittled Tahir's DNA evidence as "mumbo jumbo." They said Dr. Sheppard was a playboy who had an affair with his lab technician and then killed his pregnant wife to get out of the marriage. Dr. Robert White used medical records to testify that Dr. Sheppard's story of being knocked out by an intruder was shaky. In closing arguments, Prosecutor William Mason said to the jury, "It may just be that you are being asked to award the killer's son for the killer bludgeoning his wife."

After listening to testimony for two months, the jury deliberated for less than three hours on April 12, 2000, before finding in favor of the Ohio prosecutors. In a short statement after his loss, Sam Reese Sheppard said, "The Sheppard family may be bloodied, but we are unbowed. We've been unbowed for 45 years. We'll be unbowed for all time."

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CROSS-REFERENCES

DNA Evidence; First Amendment; Sequestration.

SHERIFF

Usually the chief peace officer of a county.

The modern office of sheriff in the United States descends from a one-thousand-year-old English tradition: a "shire-reeve" (shire-keeper) is the oldest appointment of the English crown. Because county governments were typically the first established units of government in newly settled American territories, sheriffs were among the first elected public officials in an area and thus developed a leading role in local law enforcement.

A dichotomy frequently exists today between a sheriff's jurisdiction and the jurisdiction of a local police department. A metropolitan area may encompass an entire county or more; police departments and sheriffs will often maintain concurrent jurisdiction in the overlapping area. A sheriff may assume that a local police department will do its duty in enforcing the law, but the primary obligation rests with the sheriff and requires him to act when evidence of neglect of that duty exists.

Some state constitutions specifically provide for the office of sheriff, and state legislatures frequently establish conditions of office. Sheriffs are typically chosen in a county election. To serve as sheriff, an individual must usually meet certain requirements: residence within the jurisdiction, no criminal record, U.S. citizenship, and compliance with provisions guarding against nepotism. Sometimes officeholders must also satisfy certain age, physical, and educational requirements. A sheriff typically takes an oath and posts a bond upon taking office to ensure the faithful performance of the duties of the office. Compensation typically consists of commissions or fees for particular services performed, a fixed salary, or a combination of fees and salary.

State statutes or state constitutions regulate many duties of a sheriff and emphasize preserving the peace and enforcing criminal laws. Sheriffs arrest and commit to jail felons and other lawbreakers, including pretrial detainees and sentenced prisoners. They transport prisoners to state penal facilities and mental patients to state commitment facilities. In addition, a sheriff is usually responsible for the custody and care of the county courthouse and the jail, attends upon courts of record in serving process, and often has the power to summon jurors. As an officer of the court, a sheriff is subject to a court's orders and direction. Sheriffs also have the power to serve process, including summons, mesne (intermediate) process, and final process.

State statutes define a sheriff's role in serving process. Generally a sheriff is the proper officer

to execute all writs returnable to court, unless another person is appointed. A sheriff must execute process without attempting to determine its validity. A court will not direct or advise a sheriff as to the manner of executing process, but she has a duty to effect service promptly, respectfully, and without unnecessary violence. A sheriff must exercise due diligence but need not expend all possible efforts in effecting service.

As part of the traditional common-law duties passed down from the English, sheriffs retain the power to summon the aid of a posse, or POSSE COMITATUS, as it is sometimes called. Ideally, a posse furnishes immediate, able-bodied assistance to a sheriff in need. For example, a sheriff may summon bystanders to assist in recapturing an escaped prisoner. These persons are neither officers nor private citizens. They are generally clothed with the same protection of the law as the sheriff and have full authority to provide the sheriff with any necessary assistance.

Sheriffs also levy writs of attachment, that is, the seizure of a debtor's property pursuant to a court order. The sheriff must safeguard seized goods from damage or loss, but he does not absolutely ensure their safety. Generally, property that is lost, destroyed, or damaged by something other than a sheriff's neglect will not result in liability for the sheriff. After seizure, the goods are sold at a sheriff's auction to satisfy creditors' claims. A sheriff decides the time, manner, and place of a JUDICIAL SALE, collects purchase monies, and distributes the proceeds pursuant to court instructions. A sheriff may not purchase property at a sheriff's sale.

In general, a sheriff may be liable in damages to any person injured as a consequence of a breach of duty connected with the office. A sheriff may not exceed the authority given by law: a sheriff who uses legal authority for illegal conduct is liable as if she had acted without process of law. Some instances where liability may be imposed include a negligent failure to seize sufficient available property that would reasonably be expected to satisfy a debt, a failure to execute process delivered for execution, a levy upon the wrong party, or an excessive levy. Liability is in a personal capacity, not in an official capacity. Limited IMMUNITY usually protects a sheriff from liability for acts performed in conjunction with official duties but will not shield her from liability caused by overstepping the authority of the office.

A sheriff typically has broad discretion in appointing, removing, and setting conditions of employment for deputies. A deputy is said to be clothed with the power and authority of the sheriff with respect to the sheriff's ministerial duties. For example, a deputy may act for the sheriff in the service and return of process, in making an execution or other judicial sale (including the appraisal of the property as a prerequisite to such sale), in executing a deed to a purchaser, in serving an execution for taxes, and in serving a GARNISHMENT summons.

A deputy's acts, breaches, or misconduct committed in the performance of official duties may result in liability on the sheriff's behalf. For example, in the absence of statutory authority to the contrary, a sheriff could be held liable for a deputy's reckless or wanton acts during an arrest, NEGLIGENCE in caring for and protecting prisoners, or failure to serve process or return a writ.

A sheriff may be removed from office for a variety of reasons, including habitual intoxication or intoxication on the job; misconduct in office, such as misuse of public funds or property; refusal to enforce the law; mistreatment of prisoners; neglect of duty; nepotism; or conviction of a crime.

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CROSS-REFERENCES

Service of Process.

SHERIFF'S DEED

A document giving ownership rights in property to a buyer at a sheriff's sale (a sale held by a sheriff to pay a court judgment against the owner of the property). A deed given at a sheriff's sale in foreclosure of a mortgage. The giving of said deed begins a STATUTORY REDEMPTION *period.*

SHERMAN ANTI-TRUST ACT

The Sherman Anti-Trust Act of 1890 (15 U.S.C.A. §§ 1 et seq.), the first and most significant of the U.S. ANTITRUST LAWS, was signed into law by President BENJAMIN HARRISON and is named after its primary supporter, Ohio Senator JOHN SHERMAN.

The prevailing economic theory supporting antitrust laws in the United States is that the

public is best served by free competition in trade and industry. When businesses fairly compete for the consumer's dollar, the quality of products and services increases while the prices decrease. However, many businesses would rather dictate the price, quantity, and quality of the goods that they produce, without having to compete for consumers. Some businesses have tried to eliminate competition through illegal means, such as fixing prices and assigning exclusive territories to different competitors within an industry. Antitrust laws seek to eliminate such illegal behavior and promote free and fair marketplace competition.

Until the late 1800s the federal government encouraged the growth of big business. By the end of the century, however, the emergence of powerful trusts began to threaten the U.S. business climate. Trusts were corporate holding companies that, by 1888, had consolidated a very large share of U.S. manufacturing and mining industries into nationwide monopolies. The trusts found that through consolidation they could charge MONOPOLY prices and thus make excessive profits and large financial gains. Access to greater political power at state and national levels led to further economic benefits for the trusts, such as tariffs or discriminatory railroad rates or rebates. The most notorious of the trusts were the Sugar Trust, the Whisky Trust, the Cordage Trust, the Beef Trust, the Tobacco Trust, John D. Rockefeller's Oil Trust (Standard Oil of New Jersey), and J. P. Morgan's Steel Trust (U.S. Steel Corporation).

Consumers, workers, farmers, and other suppliers were directly hurt monetarily as a result of the monopolizations. Even more important, perhaps, was that the trusts fanned into renewed flame a traditional U.S. fear and hatred of unchecked power, whether political or economic, and particularly of monopolies that ended or threatened equal opportunity for all businesses. The public demanded legislative action, which prompted Congress, in 1890, to pass the Sherman Act. The act was followed by several other antitrust acts, including the CLAYTON ACT of 1914 (15 U.S.C.A. §§ 12 et seq.), the Federal Trade Commission Act of 1914 (15 U.S.C.A. §§ 41 et seq.), and the ROBINSON-PATMAN ACT of 1936 (15 U.S.C.A. §§ 13a, 13b, 21a). All of these acts attempt to prohibit anticompetitive practices and prevent unreasonable concentrations of economic power that stifle or weaken competition.

The Sherman Act made agreements "in restraint of trade" illegal. It also made it a crime to "monopolize, or attempt to monopolize . . . any part of the trade or commerce." The purpose of the act was to maintain competition in business. However, enforcement of the act proved to be difficult. Congress had enacted the Sherman Act pursuant to its constitutional power to regulate interstate commerce, but this was only the second time that Congress relied on that power. Because Congress was somewhat uncertain of the reach of its legislative power, it framed the law in broad common-law concepts that lacked detail. For example, such key terms as *monopoly* and *trust* were not defined. In effect, Congress passed the problem of enforcing the law to the EXECUTIVE BRANCH, and to the judicial branch, it gave the responsibility of interpreting the law. Still, the act was a far-reaching legislative departure from the predominant laissez-faire philosophy of the era.

Initial enforcement of the Sherman Act was halting, set back in part by the decision of the Supreme Court in *United States v. E. C. Knight Co.,* 156 U.S. 1, 15 S. Ct. 249, 39 L. Ed. 325 (1895), that manufacturing was not interstate commerce. This problem was soon circumvented, and President THEODORE ROOSEVELT promoted the antitrust cause, calling himself a "trustbuster." In 1914, Congress established the Federal Trade Commission (FTC) to formalize rules for fair trade and to investigate and curtail unfair trade practices. As a result, a number of major cases were successfully brought in the first decade of the century, largely terminating trusts and basically transforming the face of U.S. industrial organization.

During the 1920s, enforcement efforts were more modest, and during much of the 1930s, the national recovery program of the NEW DEAL encouraged industrial collaboration rather than competition. During the late 1930s, an intensive enforcement of antitrust laws was undertaken. Since WORLD WAR II, antitrust enforcement has become increasingly institutionalized in the Antitrust Division of the JUSTICE DEPARTMENT and in the Federal Trade Commission, which over time, was granted greater authority by Congress. Justice Department enforcement activities against cartels are particularly vigorous, and criminal sanctions are increasingly sought. In 1992, the Justice Department expanded its enforcement policy to cover foreign company conduct that harms U.S. exports.

Restraint of Trade

Section one of the Sherman Act provides that "[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several states, or with foreign nations is hereby declared to be illegal." The broad language of this section has been slowly defined and narrowed through judicial decisions.

The courts have interpreted the act to forbid only unreasonable restraints of trade. The Supreme Court promulgated this flexible rule, called the Rule of Reason, in *Standard Oil Co. of New Jersey v. United States,* 221 U.S. 1, 31 S. Ct. 502, 55 L. Ed. 619 (1911). Under the Rule of Reason, the courts will look to a number of factors in deciding whether the particular restraint of trade unreasonably restricts competition. Specifically, the court considers the makeup of the relevant industry, the defendants' positions within that industry, the ability of the defendants' competitors to respond to the challenged practice, and the defendants' purpose in adopting the restraint. This analysis forces courts to consider the pro-competitive effects of the restraint as well as its anticompetitive effects.

The Supreme Court has also declared certain categories of restraints to be illegal per se: that is, they are conclusively presumed to be unreasonable and therefore illegal. For those types of restraints, the court does not have to go any further in its analysis than to recognize the type of restraint, and the plaintiff does not have to show anything other than that the restraint occurred.

Restraints of trade can be classified as horizontal or vertical. A horizontal agreement is one involving direct competitors at the same level in a particular industry, and a vertical agreement involves participants who are not direct competitors because they are at different levels. Thus, a horizontal agreement can be among manufacturers or retailers or wholesalers, but it does not involve participants from across the different groups. A vertical agreement involves participants from one or more of the groups—for example, a manufacturer, a wholesaler, and a retailer. These distinctions become difficult to make in certain fact situations, but they can be significant in determining whether to apply a per se rule of illegality or the Rule of Reason. For example, horizontal market allocations are per se illegal, but vertical market allocations are subject to the rule-of-reason test.

Concerted Action

Section one of the Sherman Act prohibits concerted action, which requires more than a unilateral act by a person or business alone. The Supreme Court has stated that an organization may deal or refuse to deal with whomever it wants, as long as that organization is acting independently. But if a manufacturer and certain retailers agree that a manufacturer will only provide products to those retailers and not to others, then that is a concerted action that may violate the Sherman Act. A company and its employees are considered an individual entity for the purposes of this act. Likewise, a parent company and its wholly owned subsidiaries are considered an individual entity.

Evidence of a concerted action may be shown by an express or written agreement, or it may be inferred from CIRCUMSTANTIAL EVIDENCE. Conscious parallelism (similar patterns of conduct among competitors) is not sufficient in and of itself to imply a conspiracy. The courts have held that conspiracy requires an additional element such as complex actions that would benefit each competitor only if all of them acted in the same way.

Joint ventures, which are a form of business association among competitors designed to further a business purpose, such as sharing cost or reducing redundancy, are generally scrutinized under the Rule of Reason. But courts first look at the reason that the JOINT VENTURE was established to determine whether its purpose was to fix prices or engage in some other unlawful activity. Congress passed the National Cooperative Research Act of 1984 (15 U.S.C.A. §§ 4301-06) to permit and encourage competitors to engage in joint ventures that promote research and development of new technologies. The Rule of Reason will apply to those types of joint ventures.

Price Fixing

The agreement to inhibit price competition by raising, depressing, fixing, or stabilizing prices is the most serious example of a per se violation under the Sherman Act. Under the act, it is immaterial whether the fixed prices are set at a maximum price, a minimum price, the actual cost, or the fair market price. It is also immaterial under the law whether the fixed price is reasonable.

All horizontal and vertical price-fixing agreements are illegal per se. Horizontal price-

fixing agreements include agreements among sellers to establish maximum or minimum prices on certain goods or services. This can also include competitors' changing their prices simultaneously in some circumstances. Also significant is the fact that horizontal price-fixing agreements may be direct or indirect and still be illegal. Thus, a promotion or discount that is tied closely to price cannot be raised, depressed, fixed, or stabilized, without a Sherman Act violation. Vertical price-fixing agreements include situations where a wholesaler mandates the minimum or maximum price at which retailers may sell certain products.

Market Allocations

Market allocations are situations where competitors agree to not compete with each other in specific markets, by dividing up geographic areas, types of products, or types of customers. Market allocations are another form of price fixing. All horizontal market allocations are illegal per se. If there are only two computer manufacturers in the country and they enter into a market allocation agreement whereby manufacturer A will only sell to retailers east of the Mississippi and manufacturer B will only sell to retailers west of the Mississippi, they have created monopolies for themselves, a violation of the Sherman Act. Likewise, it is an illegal agreement that manufacturer A will only sell to retailers C and D and manufacturer B will only sell to retailers E and F.

Territorial and customer vertical market allocations are not per se illegal but are judged by the Rule of Reason. In 1985, the Justice Department announced that it would not challenge any restraints by a company that has less than 10 percent of the relevant market or whose vertical price index, a measure of the relevant market share, indicates that collusion and exclusion are not possible for that company in that market.

Boycotts

A boycott, or a concerted refusal to deal, occurs when two or more companies agree not to deal with a third party. These agreements may be clearly anticompetitive and may violate the Sherman Act because they can result in the elimination of competition or the reduction in the number of participants entering the market to compete with existing participants. Boycotts that are created by groups with market power and that are designed to eliminate a competitor or to force that competitor to agree to a group standard are per se illegal. Boycotts that are more cooperative in nature, designed to increase economic efficiency or make markets more competitive, are subject to the Rule of Reason. Generally, most courts have found that horizontal boycotts, but not vertical boycotts, are per se illegal.

Tying Arrangements

When a seller conditions the sale of one product on the purchase of another product, the seller has set up a TYING ARRANGEMENT, which calls for close legal scrutiny. This situation generally occurs with related products, such as a printer and paper. In that example, the seller only sells a certain printer (the tying product) to consumers if they agree to buy all their printer paper (the tied product) from that seller.

Tying arrangements are closely scrutinized because they exploit market power in one product to expand market power in another product. The result of tying arrangements is to reduce the choices for the buyer and exclude competitors. Such arrangements are per se illegal if the seller has considerable economic power in the tying product and affects a substantial amount of interstate commerce in the tied product. If the seller does not have economic power in the tying product market, the tying arrangement is judged by the Rule of Reason. A seller is considered to have economic power if it occupies a dominant position in the market, its product is advantaged over other competing products as a result of the tying, or a substantial number of consumers has accepted the tying arrangement (evidencing the seller's economic power in the market).

Monopolies

Section two of the Sherman Act prohibits monopolies, attempts to monopolize, or conspiracies to monopolize. A monopoly is a form of market structure where only one or very few companies dominate the total sales of a particular product or service. Economic theories show that monopolists will use their power to restrict production of goods and raise prices. The public suffers under a monopolistic market because it does not have the quantity of goods or the low prices that a competitive market could offer.

Although the language of the Sherman Act forbids all monopolies, the courts have held that the act only applies to those monopolies

attained through abused or unfair power. Monopolies that have been created through efficient, competitive behavior are not illegal under the Sherman Act, as long as honest methods have been employed. In determining whether a particular situation that involves more than one company is a monopoly, the courts must determine whether the presence of monopoly power exists in the market. Monopoly power is defined as the ability to control price or to exclude competitors from the marketplace. The courts look to several criteria in determining market power but primarily focus on market share (the company's fractional share of the total relevant product and geographic market). A market share greater than 75 percent indicates monopoly power, a share less than 50 percent does not, and shares between 50 and 75 percent are inconclusive in and of themselves.

In focusing on market shares, courts will include not only products that are exactly the same but also those that may be substituted for the company's product based on price, quality, and adaptability for other purposes. For example, an oat-based, round-shaped breakfast cereal may be considered a substitutable product for a rice-based, square-shaped breakfast cereal, or possibly even a granola breakfast bar.

In addition to the product market, the geographic market is also important in determining market share. The relevant geographic market, the territory in which the firm sells its products or services, may be national, regional, or local in nature. Geographic market may be limited by transportation costs, the types of product or service, and the location of competitors.

Once sufficient monopoly power has been proved, the Sherman Act requires a showing that the company in question engaged in unfair conduct. The courts have differing opinions as to what constitutes unfair conduct. Some courts require the company to prove that it acquired its monopoly power passively or that the power was thrust upon them. Other courts consider it an unfair power if the monopoly power is used in conjunction with conduct designed to exclude competitors. Still other courts find an unfair power if the monopoly power is combined with some predatory practice, such as pricing below marginal costs.

Attempts to Monopolize Section two of the Sherman Act also prohibits attempts to monopolize. As with other behavior prohibited under the Sherman Act, courts have had a difficult time developing a standard that distinguishes unlawful attempts to monopolize from normal competitive behavior. The standard that the courts have developed requires a showing of SPECIFIC INTENT to monopolize along with a dangerous probability of success. However, the courts have no uniform definition for the terms *intent* or *success.* Cases suggest that the more market power a company has acquired, the less flagrant its attempt to monopolize must be.

Conspiracies to Monopolize Conspiracies to monopolize are unlawful under section two of the Sherman Act. This offense is rarely charged alone, because a conspiracy to monopolize is also a combination in restraint of trade, which violates section one of the Sherman Act.

In accordance with traditional conspiracy law, conspirators to monopolize are liable for the acts of each co-conspirator, even their superiors and employees, if they are aware of and participate in the overall mission of the conspiracy. Conspirators who join in the conspiracy after it has already started are liable for every act during the course of the conspiracy, even those events that occurred before they joined.

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CROSS-REFERENCES

Antitrust Law; Mergers and Acquisitions; Unfair Competition; Vertical Merger.

SHERMAN COMPROMISE

The Philadelphia Convention convened in 1787 to discuss the establishment of a new federal government to replace the unsatisfactory system that existed under the ARTICLES OF CONFEDERATION.

Representatives from twelve of the thirteen states attended the meeting; Rhode Island feared changes in the existing monetary system and refused to send delegates. One of the most pressing issues was the formation of a legislative body that would fairly represent the interests of the states.

ROGER SHERMAN of Connecticut proposed a plan known as the Sherman Compromise, or Connecticut Compromise. Sherman advocated a bicameral legislature with the two houses of Congress composed of members from all the states; the number of delegates to the House of Representatives would be determined by the population of each state, but each state would be equally represented in the Senate. The plan was accepted and is the basis for the congressional representation of today.

CROSS-REFERENCES

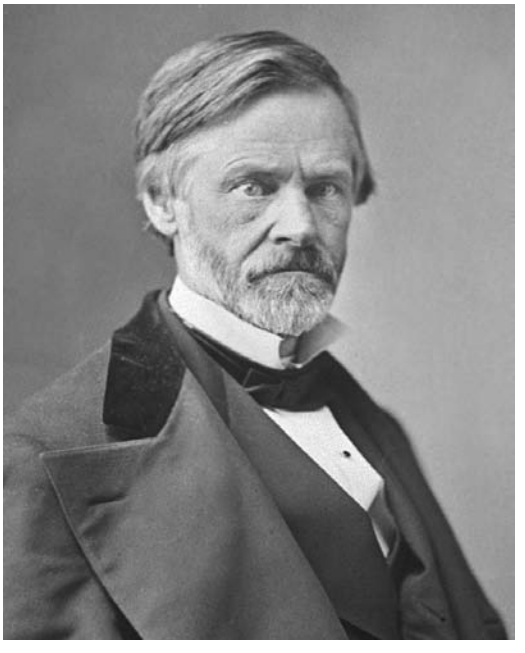
Constitution of the United States.

♦ SHERMAN, JOHN

John Sherman was an attorney who devoted most of his professional life to public service. He served in the U.S. House of Representatives, the U.S. Senate, and the cabinets of Presidents RUTHERFORD B. HAYES and WILLIAM MCKINLEY. An unsuccessful candidate for president, Sherman is best known for sponsoring the SHERMAN ANTI-TRUST ACT OF 1890 (15 U.S.C.A. § 1 et seq.), the landmark federal legislation that sought to prevent industrial monopolies.

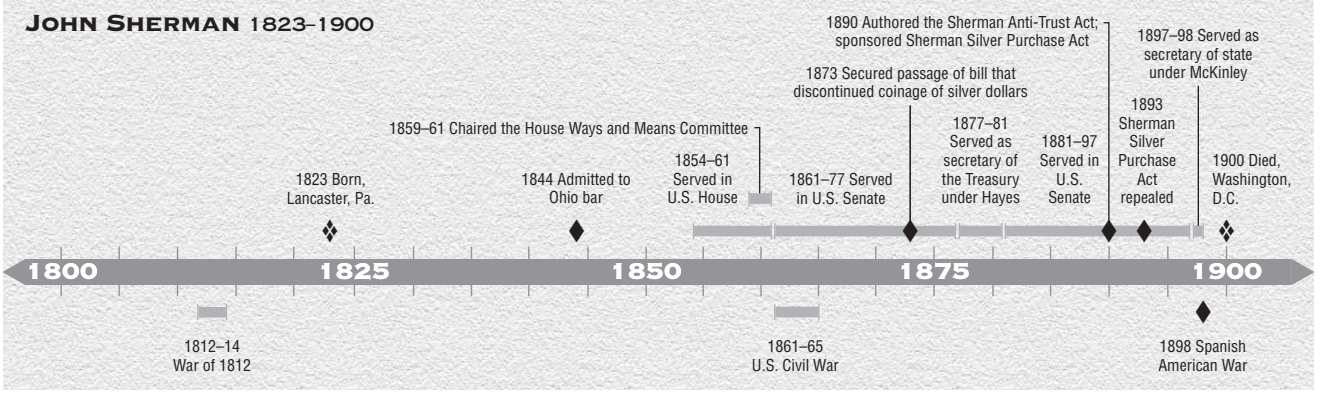
Sherman was born on May 10, 1823, in Lancaster, Pennsylvania. His father was a judge and his older brother, William Tecumseh Sherman, became a renowned Union general during the Civil War. Sherman was admitted to the Ohio bar in 1844 and established a successful law practice in Mansfield, Ohio. Soon, however, his interests turned to politics.

Elected to the U.S. House of Representatives as a Republican in 1854, Sherman soon gained a reputation as an expert on government finance. He served as chair of the House Ways and Means Committee, the chief budgetary body, from 1859 to 1861. Sherman was then elected to the Senate, where he served from 1861 to 1877. From 1867 to 1877, he chaired the Senate Finance Committee.



John Sherman. LIBRARY OF CONGRESS

During the 1870s Sherman's fiscal policies drew national attention. As a senator, he helped establish a national banking system, but he aroused the wrath of farmers in 1873 when he secured the passage of a bill that discontinued the coinage of silver dollars. As secretary of the treasury during the Hayes administration (1877–1881), he placed the United States on the gold standard. Ultimately, however, he was forced to compromise and support legislation that restored the silver dollar as legal tender.



Although Sherman was a conservative, he was a master of political compromise, always willing to grant small concessions to his opponents. This skill, however, proved fatal to his higher political ambitions. He lost the Republican presidential nomination in 1880, 1884, and 1888.

Sherman was reelected to the Senate in 1880, serving until 1897. During the late 1880s, public concern mounted about the increasing concentration of economic power in monopolistic businesses. Sherman's 1888 presidential bid had focused on this problem, and in 1890 he became the author of the antitrust act that bears his name. The Sherman Anti-Trust Act deliberately contained general language that required the Supreme Court to define its scope. Though not always an effective tool, the act remains a central part of federal antitrust enforcement.

Sherman continued to be a force in government currency policy. In 1890 he sponsored the Sherman Silver Purchase Act (28 Stat. 4), which required the federal government to increase its purchase of silver by 50 percent. The act was designed as a subsidy for silver miners, but was repealed in 1893 in the aftermath of a financial panic.

President McKinley appointed Sherman SECRETARY OF STATE in 1897, but Sherman soon realized that leaving the Senate had been a mistake. An opponent of U.S. imperial ambitions, he resigned on April 25, 1898, the day Congress declared war against Spain. Two years later, on October 22, 1900, Sherman died in Washington, D.C.

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CROSS-REFERENCES

Antitrust Law; Monopoly; Sherman Anti-Trust Act.

♦ SHERMAN, ROGER

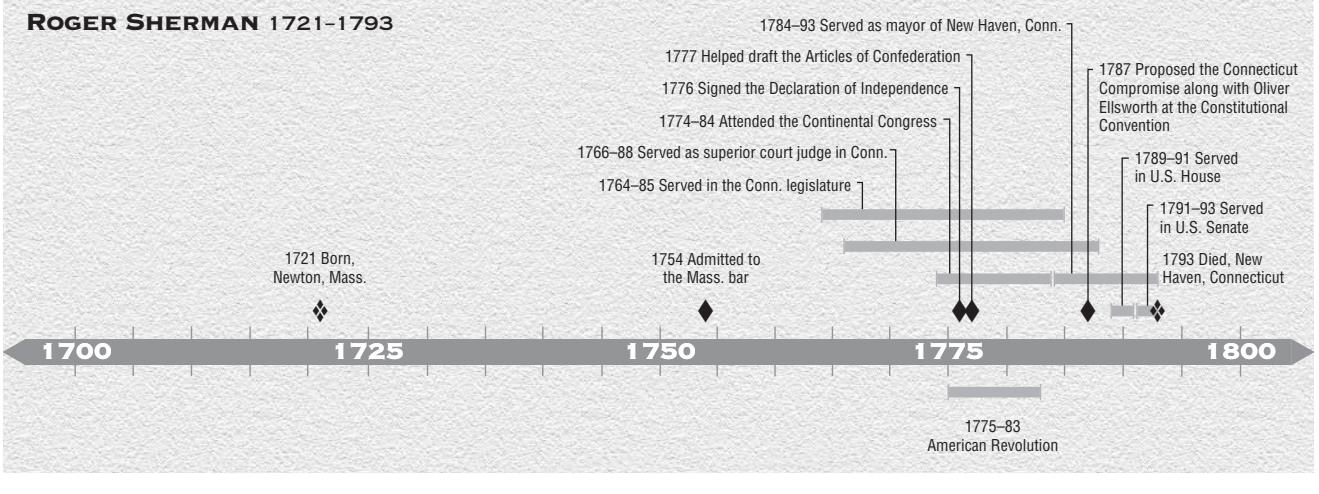
Roger Sherman was a colonial and U.S. politician and judge who played a critical role at the Constitutional Convention of 1787, devising a plan for legislative representation that was accepted by large and small states. His actions at the convention in Philadelphia came near the end of a distinguished life in public service.

Sherman was born on April 19, 1721, in Newton, Massachusetts. He was admitted to the Massachusetts bar in 1754 and later served as a JUSTICE OF THE PEACE. In 1761 Sherman moved to New Haven, Connecticut, where he established a business as a merchant. From 1764 to 1785 he served in the Connecticut legislature and was a superior court judge from 1766 to 1788. During these years Sherman became recognized as a national political leader. Though conservative, he was an early supporter of American independence from Great Britain.

Sherman's belief in independence led him to serve as a delegate to the CONTINENTAL CONGRESS from 1774 to 1784. He was instrumental in the creation of the Declaration of Independence in 1776 and signed the declaration. He also helped draft the ARTICLES OF CONFEDERATION.

After America won its independence, Sherman devoted himself to Connecticut politics, serving as the first mayor of New Haven from

"[THE EXECUTIVE BRANCH] IS NOTHING MORE THAN AN INSTITUTION FOR CARRYING THE WILL OF THE LEGISLATURE INTO EFFECT."
—ROGER SHERMAN



Roger Sherman. PRINT BY JOHN F. WEIR AFTER A MINIATURE PAINTING BY JOHN TRUMBULL. LIBRARY OF CONGRESS

1784 to 1793. He also helped revise Connecticut statutes, eliminating material related to the state's former colonial status.

In 1787 Sherman was a member of the Constitutional Convention in Philadelphia. He recognized that the Articles of Confederation had not provided a stable and secure method of national government. The convention, however, was soon divided over the issue of legislative representation. The small states feared a federal Congress apportioned by population, in which a few large states would control most of the seats. Therefore, WILLIAM PATERSON of New Jersey proposed a plan that provided for equal representation in Congress. EDMUND RANDOLPH of Virginia, speaking for the interests of the large states, proposed a plan for a bicameral legislature, with representation in both houses based on population or wealth.

Neither side would yield on the issue of representation. Sherman, along with OLIVER ELLSWORTH, proposed the Connecticut Compromise, or Great Compromise. This plan created a bicameral legislature, with proportional representation in the lower house and equal representation in the upper house. All revenue measures would originate in the lower house. The compromise was accepted, and the convention soon approved the Constitution.

Sherman served in the U.S. House of Representatives from 1789 to 1791 and in the U.S. Senate from 1791 to 1793. He strongly supported the establishment of a national bank and the enactment of a tariff.

Sherman died on July 23, 1793, in New Haven, Connecticut.

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CROSS-REFERENCES

Congress of the United States; Constitution of the United States.

SHIELD LAWS

Statutes affording a privilege to journalists not to disclose in legal proceedings confidential information or sources of information obtained in their professional capacities. They restrict or prohibit the use of certain evidence in sexual offense cases, such as evidence regarding the lack of chastity of the victim.

Journalist Shield Laws

Journalist shield laws, which afford news reporters the privilege to protect their sources, are controversial because the privilege must be balanced against a variety of competing government interests such as the right of the government to apprehend criminals and to prevent the impairment of GRAND JURY investigations. Still, most states have enacted such laws, based on the FIRST AMENDMENT guarantee of FREEDOM OF THE PRESS. There is no federal journalist shield law, however, because the U.S. Supreme Court has refused to interpret the First Amendment as mandating a news reporter's privilege.

There is a long history behind the current state statutes that provide a privilege for journalists to protect the sources of their information. BENJAMIN FRANKLIN's older brother James was jailed for refusing to reveal the source of a story he published in his newspaper. The first reported case, however, was not until 1848 when a reporter was jailed for CONTEMPT of the Senate for refusing to disclose who had given him a copy of the secret proposed treaty to end the Mexican-American War (*Ex Parte Nugent,* 18 F. Cas. 471 [Cir. Ct. D.C.]). Similar conflicts between a reporter's desire to keep sources confidential and the demands of the courts or legislatures for disclosure continued throughout the nineteenth century. During the early 1900s,

journalists repeatedly were brought to the witness stand to reveal their sources in the growing number of news stories about labor unrest and municipal corruption.

These early conflicts led to the advancement of several legal theories that justified the reporter's refusal to disclose. For example, reporters maintained that they were acting pursuant to a journalistic code of ethics, that their employers would not let them reveal their sources, that they were relying on the PRIVILEGE AGAINST SELF-INCRIMINATION, and that the forced disclosure of sources amounted to the taking of proprietary information. However, the courts did not widely accept any of these theories because the COMMON LAW did not recognize reporters' privilege.

Legislatures were more receptive to the journalists' plight, and the states began to enact privilege statutes, albeit slowly. In 1898, Maryland became the first state to enact such a privilege, and 33 years later, New Jersey was the second state to do so. By 1973, half of the states had followed suit. Legislatures enacted their statutes under various theories, such as the claim that the public interest in the free flow of information is useless without a journalist's right of access to information, and that journalists must rely on confidential informants to gain access to information. Legislatures also accepted the argument that journalists are entitled to privilege rights in their professions, similar to those of doctors, lawyers, or clergy. Critics point out that the professional privilege of doctors, lawyers, or clergy belongs to the client, not the professional; it is the client's right to assert the privilege and withhold information. Critics also contend that journalists are not in a service business like other professionals who are afforded privileges.

The states that did enact journalist shield laws generally enacted them in a hasty manner, resulting in many different types of laws that often did not provide adequate protection. As a result, journalists began to rely instead on the theory that the First Amendment freedom of the press supports the journalist privilege.

In the late 1960s, with the trial of the CHICAGO EIGHT, a group of antiwar activists, the reporters' privilege entered a new era of heightened public awareness and controversy. A large number of press subpoenas were issued in that case, perhaps as a result of the growing adversarial stance taken by journalists who, during the VIETNAM WAR, had become increasingly skeptical of government officials.

In 1972, the U.S. Supreme Court rejected the argument of reporters' privilege. In *Branzburg v. Hayes,* 408 U.S. 665, 92 S. Ct. 2646, 33 L. Ed. 2d 626, the Court held that news reporters do not have a right under the First Amendment to refuse to appear or testify before a grand jury. The Court stated that the burden on newsgathering in not allowing reporters' privilege was not sufficient to override the compelling public interest in law enforcement and effective grand jury proceedings. Lower courts that interpreted this decision did so narrowly. For example, they tended to limit the scope of the privilege to investigations before grand juries.

Following the Supreme Court decision, Congress, in 1975, passed Federal Rule of Evidence 501 concerning privileges. Under this rule, privilege as outlined in state law is to be applied in all civil actions and proceedings. LEGISLATIVE HISTORY behind the enactment of Federal Rule of Evidence 501 indicates that Congress intended it to provide qualified reporters' privilege. A number of problems have arisen, however, concerning the scope and application of this privilege.

One such dilemma is determining to whom the privilege applies. Unlike other privileged professionals, journalists are not licensed or certified in any manner. Many state statutes attempt to define a journalist as one who communicates via newspaper, is employed by a newspaper, or whose communication is classified as "news." The question then becomes whether books, magazine articles, or pamphlets are encompassed in the definition of a newspaper. Some of the broader state statutes do cover these media. Most state statutes also protect television and radio broadcasts, although some limit protection to "news" programs. In addition, some courts have held that documentary films should be included in the scope of the privilege protection.

Another question is how the term *news* should be defined. Statutes seldom define the term, and some commentators are not convinced that an adequate definition can be devised. Presumably poetry or works of fiction are not news, but it is a more difficult question when considering sensationalism or gossip. Some legal scholars advocate avoiding consideration of the supposed worth of the communication and making the privilege available to those

who generally acquire information for public dissemination.

Another important issue that arises under state statutes that protect only the journalist's sources is whether a "source" can only be a human informant or whether it can include a book, document, tape recording, or photograph. These and many other issues have led to varying court decisions based on the particular state statute and facts before the court.

Rape Shield Laws

In the context of criminal SEX OFFENSES, rape shield laws forbid certain evidence in the trial that is believed to be prejudicial and harassing. These statutes are called rape shield laws because they first originated in the context of rape cases.

Up until the 1970s, under the common law in England and the United States, evidence of a rape victim's past sexual conduct was broadly admissible and accepted in every rape case. It was believed that if a rape victim consented to sex in the past, she was more likely to have consented to the sexual acts that she claimed amounted to rape. This evidence was also admitted under the theory that a woman's past sexual history could be important in assessing her credibility as a witness. The common-law rules discouraged women from bringing rape charges for fear they would be embarrassed and humiliated at trial.

Great strides were made to reform such rules in the 1970s. These efforts were very successful, and within little over a decade every jurisdiction in the United States had reformed its laws to prohibit using a woman's past sexual history in rape cases. Special evidentiary rules were enacted on the state and federal level to protect the privacy of the victim, and to encourage rape victims to report offenses and to participate in the prosecution of offenses.

Typical rape shield laws provide that in a prosecution for rape, attempted rape, or conspiracy to commit rape, reputation or opinion evidence of the alleged victim's prior sexual conduct is not admissible. Evidence of specific instances of the victim's prior sexual conduct is also inadmissible except in the following circumstances: (1) the evidence regards the sexual conduct between the victim and the defendant and is introduced to show consent; (2) the evidence is introduced to prove an alternate source or origin of semen, disease, or pregnancy; (3) the evidence regards the immediate surrounding circumstances of the alleged crime; or (4) the evidence of previously chaste character is necessary to the successful prosecution of the particular criminal charge.

The procedure involved in introducing evidence covered by rape shield laws is also fairly typical. Generally the defendant must make a motion supported by an offer of proof in which the defendant details what evidence he wishes to introduce and why. The court will generally require that a hearing be held out of the presence of the jury to review the motion and hear arguments in support of and against the motion. If the court finds some of the evidence admissible pursuant to one of the exceptions under the applicable laws, an order must be issued stating the scope of the evidence that may be admitted.

Rape shield laws have expanded to include other evidence that legislatures deem prejudicial, such as clothing of the victim that the defendant tries to introduce to show that the victim consented to or asked for the sexual contact. Those state statutes that do restrict the admissibility of clothing, however, make exceptions where it is introduced to show a struggle (or lack thereof) or proof of the presence (or absence) of bodily fluid such as semen or blood. Rape shield laws have also been expanded in most states to protect victims of all different sexual offenses, regardless of the victim's age or sex.

Defendants have challenged the constitutionality of rape shield laws on many occasions, generally arguing that the laws violate their right to DUE PROCESS and their right to confront their accuser. However, the constitutionality of these laws has consistently been upheld. Specifically, courts have held that the state's interest in protecting sexual assault victims from harassment and humiliation at trial, as well as the highly prejudicial effect such evidence may have on a jury, outweighs the rights of the defendant that may be implicated.

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SHIFTING THE BURDEN OF PROOF

The process of transferring the obligation to affirmatively prove a fact in controversy or an issue brought during a lawsuit from one party in a legal controversy to the other party.

When the individual upon whom the BURDEN OF PROOF initially rested has brought evidence that tends to prove a particular fact or issue, the other party then takes on the duty to rebut such fact or issue through the use of defensive or contradictory evidence.

CROSS-REFERENCES

Burden of Proof.

SHIPPING LAW

The area of maritime law that is concerned with ships and the individuals employed in or around them, as well as the shipment of goods by merchant vessels.

U.S. shipping law is a complex body of customs, legislation, international treaties, and court decisions dealing with the rights and responsibilities of ownership and operation of vessels that travel on the high seas. Much of the COMMERCIAL LAW surrounding transportation of goods by ship involves contractual agreements between the shipowner and the party wishing to ship the goods. However, these agreements generally are based on long-standing customs and business practices peculiar to the shipping industry.

Registration and Ownership

A sovereign nation has the authority to regulate all vessels that fly its flag on the high seas. Congress, accordingly, is empowered to enact legislation controlling domestic merchant ships that sail the high seas. Title 46 of the United States Code Annotated, entitled Shipping, contains most of the pertinent federal laws regarding U.S. shipping.

All the ships in the U.S. merchant fleet are registered in the United States and completely staffed by U.S. citizens. Because of the higher labor costs associated with employing U.S. personnel, many ships are registered in other countries to avoid this labor requirement.

Ships can be owned by either one person or co-owners. Because of the enormous cost of merchant vessels, the majority are held by more than one owner. A bill of sale is the ordinary evidence of title to, and ownership of, a vessel. Between co-owners, the right to control and use the vessel is generally reserved for the majority interest. In the event that co-owners absolutely cannot come to an agreement on how to use the vessel, one or more of them may obtain a court decree for sale of it. In general, however, a part owner shares in the profits and expenses from use of the ship in proportion to her interest.

Agents

The owners of merchant vessels are bound by the acts of their agents and must pay for all services, supplies, and repairs that they order. A ship's husband is the general agent of the owner for affairs conducted in the home port of the vessel. Generally known as the managing owner, he determines that the ship is prepared for navigation and commercial use. In the absence of express authority, a ship's husband usually is powerless to bind the co-owners for money borrowed on the account of the vessel. He is entitled to be reimbursed for services rendered and to be paid for expenditures incurred.

Shipping Contracts

The great majority of contracts governing the transportation of goods by ships are made either by bills of lading or charter parties. The term *charter party* is a corruption of the Latin *carta partita,* or "divided charter." It is used to describe three types of contracts dealing with the use of ships owned or controlled by others. Under a demise charter, the shipowner gives possession of the vessel to the charterer, who engages the ship's master and crew, arranges for repairs and supplies, takes on the cargo, and acts much like the owner during the term of the charter.

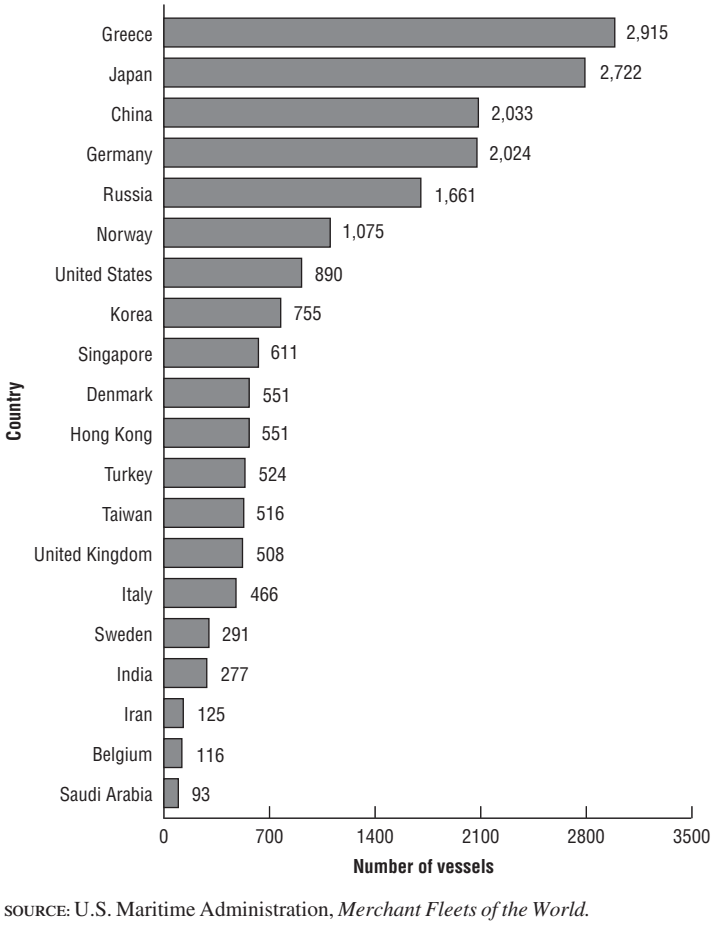
A more common arrangement is the time charter. In this arrangement, the shipowner employs the master and crew, and the charterer only acquires the right, within contractual limits, to direct the movements of the ship and decide what cargoes are to be transported during the charter period. Under both demise and time charters, the charterer pays "charter hire" for the use of the ship at a specified daily or monthly rate.

The third type is the voyage charter, which is a contract of affreightment, or carriage. Essentially, a voyage charter is a contract to rent all or part of the cargo space of a merchant vessel on one voyage or a series of voyages. When a charterer contracts for only a portion of the cargo space, the governing contract is called a space charter. Under a voyage charter, it is customary for the master or her agent to issue a bill of lading to the shipper, who is usually the charterer. However, the voyage charter remains the governing contract.

A bill of lading is an ACKNOWLEDGMENT, by the master or owner, that serves as confirmation of the receipt of the goods specified to be taken aboard the vessel. Each charterer is entitled to receive a bill of lading from the shipowner or an agent of the owner. In ordinary transactions, a bill of lading, signed by the master, is binding upon the owner of a vessel. It can circumvent disputes that might otherwise arise over whether goods were ever received and their condition when placed upon the vessel.

Twenty Largest Merchant Fleets in the World, in 2002

Vessels of 1,000 gross tons and over. As of January 1, 2003.



SOURCE: U.S. Maritime Administration, *Merchant Fleets of the World.*

Ocean bills of lading are usually in order form, calling for delivery of the order to the shipper or some other designated party. This type of bill of lading may be negotiated similarly to a check, draft, or negotiable instrument, which means that a bona fide purchaser of the bill of lading takes it free and clear of any defects not appearing on its face. A bona fide purchaser is one who has purchased property for value without any notice of any defects in the title of the seller. Therefore, if cargo is externally damaged on shipment but the damage is not recorded on the bill of lading, the carrier will be barred from establishing that the cargo was damaged before it came into the carrier's custody. Once a bill of lading issued under a voyage charter is negotiated to a bona fide purchaser, it becomes the governing contract between the carrier and the holder of the bill.

Under the Carriage of Goods by Sea Act (46 U.S.C.A. §§ 1300 et seq. [2000]), a "clause paramount" must be included in any bill of lading involving a contract for transportation of goods by sea from U.S. ports in foreign trade. This clause states that the bill of lading is subject to the act, which governs the rights, obligations, and liabilities of the issuer to the holder of the bill of lading in regard to the loss or damage of goods.

When a ship strands or collides with another vessel, cargo loss or damage may occur. If the damage was caused by a sea peril or an error in navigation, the carrier will not be liable if the goods were being carried under a statutory or contractual provision based on the 1923 Brussels Convention on Limitation on Liability. If, however, the damage was caused by the carrier's failure to exercise due diligence to make the ship seaworthy and to ensure that it was properly staffed, equipped, and supplied, the carrier will be held responsible.

Maritime Liens

When a ship is charged with a maritime TORT, or when services have been rendered to it to facilitate its use in navigation and the shipowner has not paid for the services, a maritime lien can be placed on the ship. A maritime

lien is a special property right in a ship given to a creditor by law as security for a debt or claim. The ship may be sold and the debt paid out of the proceeds.

The Maritime Lien Act (46 U.S.C.A. §§ 971–975 [2000]) provides that an action can be brought in rem, against the vessel, cargo, or freight itself. Under the act, the ship is personified to the extent that it may sometimes be held responsible under circumstances in which the shipowner would not be liable. For example, where a state law requires that a local pilot guide the ship in and out of the harbor, the pilot's NEGLIGENCE is not imputed to the shipowner. In rem proceedings allow the ship itself to be charged with the pilot's fault and make it subject to a maritime lien enforceable in court.

In an in rem proceeding, the vessel, cargo, or freight can be arrested and kept in the custody of the court unless the owner posts a bond or some other security. Usually the owner posts security to avoid an arrest, and the property is never taken into custody. Where the owner fails to post security and the plaintiff is awarded a judgment against the vessel, the court will order that the property be sold or the freight released to satisfy the judgment.

Marine Insurance

Marine insurance plays an important role in the shipping industry and in shipping law. Most shipowners carry hull insurance on their ships and protect themselves against claims by third parties by purchasing "protection and indemnity" insurance. Cargo is usually insured against the perils of the sea, which are defined as natural accidents peculiar to the sea. For example, storms, waves, and all types of actions caused by wind and water are classified as perils of the sea. If a shipowner or cargo owner wishes to be protected against losses incurred from war, the owner must purchase separate war-risk insurance or pay an additional premium to include war risk in the basic policy.

Salvage

In shipping law, salvage is the compensation allowed to persons who voluntarily assist in saving a vessel or its cargo from impending or actual peril from the sea. Generally salvage is limited to vessels and their cargoes, or to property lost in the sea or other NAVIGABLE WATERS, that have been subsequently found and rescued. Except for salvage performed under contract, the rescuer, known as the salvor, must act voluntarily without being under any legal duty to do so. As long as the owner or the owner's agent remains on the ship, unwanted offers of salvage may be refused. Typical acts of salvage include releasing ships that have run aground or on reefs, raising sunken ships or their cargo, or putting out fires.

The salvor has a maritime lien on the salvaged property, in an amount determined by a court based on the facts and circumstances of the case. The salvor may retain the property until the claim is satisfied or until security to meet an award is given. The owner may elect to pay salvage money to the salvor or to not reclaim the property.

General Average

Under the law of general average, if cargo is jettisoned in a successful effort to refloat a grounded vessel, the owners of the vessel and the cargo saved are required to absorb a proportionate share of the loss to compensate the owner of the cargo that has been singled out for sacrifice. All participants in the maritime venture contribute to offset the losses incurred. The law of general average became an early form of marine insurance.

The YORK-ANTWERP RULES of General Average establish the rights and obligations of the parties when cargo must be jettisoned from a ship. These uniform rules on the law of general average are included in private shipping agreements and depend on voluntary acceptance by the maritime community. The rules are incorporated by reference into most bills of lading, contracts of affreightment, and marine insurance policies.

The rules provide for the shipowner to recover the costs of repair, loading and unloading cargo, and maintaining the crew, if these expenses are necessary for the safe completion of the voyage. Claims are generally made against the insurer of the cargo and the shipowner's insurance underwriters.

Personal Tort Liability

Until 1920, U.S. seapersons who were injured or killed as a result of negligence by a shipowner, master, or a fellow seaperson had a difficult time obtaining compensation through a tort action. Shipowners often defeated such actions by claiming contributory negligence on the injured

seaperson's part. In addition, under federal law the seaperson did not have a right to a jury trial.

Congress enacted the JONES ACT of 1920 (46 U.S.C.A. § 688) to correct these problems. It granted the seaperson a right to a jury trial and abolished the contributory negligence defense. Under the act, an injured seaperson or a PERSONAL REPRESENTATIVE in the event of the seaperson's death can sue the shipowner if the injury or death occurred in the course of the seaperson's employment on, or in connection with, a vessel.

In addition, Congress granted rights to those persons who work near ships in the Longshoremen's and Harbor Workers' Compensation Act of 1927 (33 U.S.C.A. §§ 901–910). This act established a federal system to compensate maritime workers for work-related injuries.

"... TO DECLARE UNLAWFUL RESIDENCE WITHIN THE COUNTRY TO BE AN INFAMOUS CRIME, PUNISHABLE BY DEPRIVATION OF LIBERTY AND PROPERTY ... [WITHOUT] A JUDICIAL TRIAL ... IS NOT CONSISTENT WITH THE THEORY OF OUR GOVERNMENT."
—GEORGE SHIRAS JR.

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Admiralty and Maritime Law; Carriers; Collision; Common Carrier.

♦ SHIRAS, GEORGE, JR.

George Shiras Jr. served on the U.S. Supreme Court as an associate justice from 1892 to 1903. Plucked by political necessity at the age of sixty from his highly successful law practice, Shiras, who had never been a judge or politician, brought a lawyerly, pragmatic perspective to the Court. He wrote some opinions in favor of civil liberties, occasionally blocked the Court's full embrace of laissez-faire economics, and became notorious as the justice whose vote in 1895 torpedoed the new federal INCOME TAX. This last decision, for which Shiras was incorrectly blamed, ultimately led to the ratification of the SIXTEENTH AMENDMENT in 1913.

Shiras was born in Pittsburgh, Pennsylvania, on January 26, 1832, to a wealthy brewing family. He attended Yale Law School in 1853. Two years later he completed his training at a law office in Allegheny County, Pennsylvania, before starting a legal practice with his brother. The practice specialized in representing the railroads

George Shiras Jr. LIBRARY OF CONGRESS

and other big industries during the boom era of Pittsburgh. So successful was Shiras that, by the late 1880s, he was earning the then-phenomenal income of $75,000 annually. He developed no national reputation, steering clear of partisan politics even when the state legislature nominated him for a senate seat. Independent in nature, he sometimes represented interests opposed to his business clients.

In 1892 President BENJAMIN HARRISON nominated Shiras to fill the vacancy on the Supreme Court left by the death of Justice JOSEPH P. BRADLEY. Like Bradley, Shiras was a Pennsylvania Republican, and convention dictated that Bradley's replacement be of similar political and geographic origin. Thus for political reasons Shiras was a good choice, even though he had no judicial or political experience. Strong opposition to the nomination came from the president's enemies. But support from powerful, private figures, including Andrew Carnegie, was ultimately persuasive.

When Shiras joined the Court, the chief issue of the day was regulation of business. The Court was conservative, believing in the hands-off policy of laissez-faire economics. Shiras usually joined his fellow justices in voting to restrict antitrust and labor legislation. But he occasionally stood apart, as in *Brass v. North Dakota,* 153

U.S. 391, 14 S. Ct. 857, 38 L. Ed. 757 (1894), where he upheld state power to regulate. Moreover, he was committed to civil liberties. In *Wong Wing v. United States,* 163 U.S. 228, 16 S. Ct. 977, 41 L. Ed. 140 (1896), he wrote a landmark opinion extending basic rights to Chinese immigrants; it held that Congress had unconstitutionally allowed federal authorities to summarily sentence illegal Chinese ALIENS to twelve months of hard labor without indictment or a jury trial.

In his lifetime, Shiras became notorious for having cast the swing vote to kill the first peacetime federal income tax. The tax, passed in 1894, was a popular response to the growing disparity in income levels caused by industrial growth. The case was POLLOCK V. FARMERS' LOAN & TRUST, 158 U.S. 601, 15 S. Ct. 912, 39 L. Ed. 1108, decided in three parts in 1895. The final vote, on May 20, was 5–4 against. Critics vilified Shiras for apparently changing his mind from an earlier vote. For nearly three decades, his reputation suffered until, after his death, it was persuasively argued that another justice had provided the swing vote. *Pollock* led directly to the ratification of the Sixteenth Amendment in 1913, allowing Congress to levy a federal income tax.

Shiras stepped down from the Court in 1903 at age seventy. He died on August 2, 1924, in Pittsburgh.

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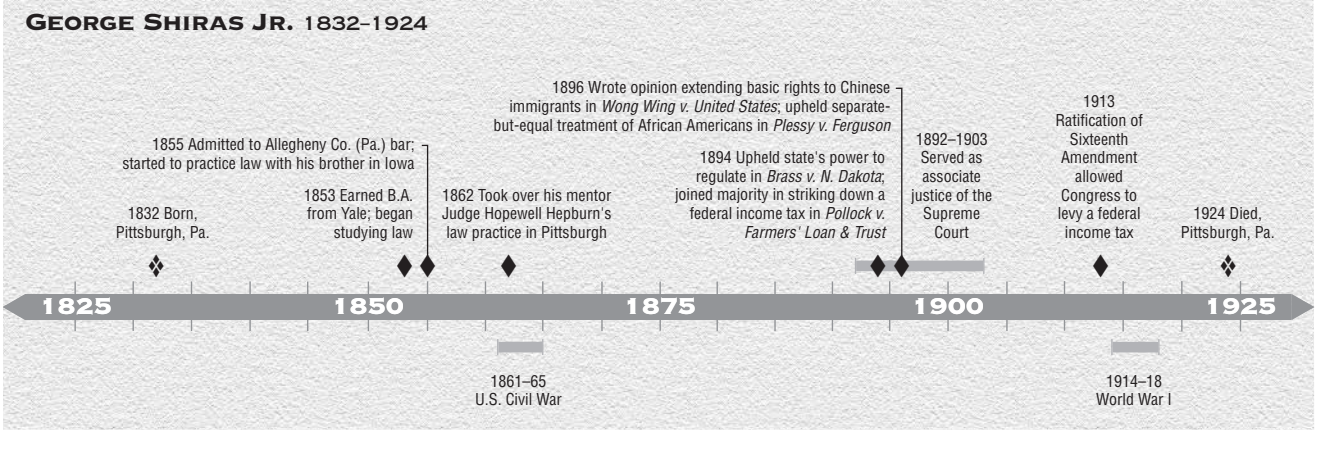
SHOCK-THE-CONSCIENCE TEST

A determination of whether a state agent's actions fall outside the standards of civilized decency.

The U.S. Supreme Court established the "shock-the-conscience test" in ROCHIN V. CALIFORNIA, 342 U.S. 165, 72 S. Ct. 205, 96 L. Ed. 183 (1952). Based on the Fourteenth Amendment's prohibition against states depriving any person of "life, liberty, or property without due process of law," the test prohibits conduct by state agents that falls outside the standards of civilized decency. Little used since the 1960s, the test has been criticized for permitting judges to assert their subjective views on what constitutes "shocking."

The *Rochin* decision was made during an era when the Supreme Court still adhered to the precedent that the BILL OF RIGHTS applied only to actions by the federal government. Thus, all the rights afforded federal criminal defendants in the Fourth, Fifth, and Sixth amendments were not available to state criminal defendants. This reading made the DUE PROCESS CLAUSE of the FOURTEENTH AMENDMENT difficult to apply to state actions.

The Supreme Court, in *Twining v. New Jersey,* 211 U.S. 78, 29 S. Ct. 14, 53 L. Ed. 97 (1908), concluded that some of the rights contained in the Bill of Rights "are of such a nature that they are included [with]in the conception of due process of law" and are applicable to the states. But succeeding generations of justices had difficulty defining a test that would reveal which rights were important enough to apply to state and local government. In 1937 the Court considered whether a right was "of the very essence of a scheme of ordered liberty" or "implicit in the concept of ordered liberty"



(*Palko v. Connecticut,* 302 U.S. 319, 58 S. Ct. 149, 82 L. Ed. 288). Only those rights that were found "fundamental" or "implicit in the concept of ordered liberty" were made applicable to prevent STATE ACTION.

In *Rochin* three state law enforcement officers, acting on information that Antonio Rochin was selling narcotics, illegally entered Rochin's room. When the officers noticed two capsules on a bedside table, Rochin grabbed the capsules and put them in his mouth. The three officers then wrestled with Rochin and sought to open his mouth so they could extract the pills. When this failed, the officers handcuffed Rochin and took him to a hospital, where at their direction a doctor forced an emetic solution through a tube into Rochin's stomach. The solution induced vomiting, and in the vomited matter the deputies found two morphine capsules. Rochin was convicted of narcotics possession. The conviction was based solely on the morphine capsules, which Rochin had vainly sought to have suppressed as evidence.

Justice FELIX FRANKFURTER, writing for the Court, held that such conduct by state agents, although not specifically prohibited by explicit language in the Constitution, "shocks the conscience" in that it offends "those canons of decency and fairness which express the notions of justice of English-speaking peoples." Due process of law requires the state to observe those principles that are "so rooted in the traditions and conscience of our people as to be ranked as fundamental."

The Court reasoned that to permit the use of such capsules as evidence under the circumstances would "afford brutality the cloak of law." The officers' conduct "shocks the conscience," offending even those with "hardened sensibilities. They are methods too close to the rack and screw to permit of constitutional differentiation." Therefore, the Court reversed Rochin's conviction because the stomach pumping violated the Due Process Clause.

Since *Rochin,* the Supreme Court has made most of the rights enumerated in the first eight amendments also applicable to state action by selectively incorporating them, one by one, into the scope of the Fourteenth Amendment's Due Process Clause. Justices HUGO L. BLACK and WILLIAM O. DOUGLAS, who, in their concurring opinions in *Rochin,* had argued for incorporation of the FOURTH AMENDMENT, were instrumental in diminishing the importance of the shock-the-conscience test. They believed that the test was too general and that its vagueness allowed judges to apply their subjective judgment as to what was shocking and what offended the Due Process Clause.

Nevertheless, *Rochin* remains important because it stands for the proposition that the Due Process Clause provides a protection for persons separate from, and independent of, the Bill of Rights provisions that have now been applied to the states.

SHOP-BOOK RULE

A doctrine that allows the admission into evidence of books that consist of original entries made in the normal course of a business, which are introduced to the court from proper custody upon general authentication.

In the law of evidence, the shop-book rule is one of several exceptions to the rule against HEARSAY.

SHOP STEWARD

A LABOR UNION *official elected to represent members in a plant or particular department. The shop steward's duties include collection of dues, recruitment of new members, and initial negotiations for settlement of grievances.*

CROSS-REFERENCES

Labor Union.

SHOPLIFTING

Theft of merchandise from a store or business establishment.

Although the crime of shoplifting may be prosecuted under general LARCENY statutes, most jurisdictions have established a specific category for shoplifting. Statutes vary widely, but generally the elements of shoplifting are (1) willfully taking possession of or concealing unpurchased goods that are offered for sale (2) with the intention of converting the merchandise to the taker's personal use without paying the purchase price. Possession or concealment of goods typically encompasses actions both on and outside the premises.

Concealment is generally understood in terms of common usage. Therefore, covering an object to keep it from sight constitutes concealment, as would other methods of hiding an object from a shop owner. A shopper's actions

and demeanor in the store, her lack of money to pay for merchandise, and the placement of an object out of a retailer's direct view are all examples of CIRCUMSTANTIAL EVIDENCE that may establish intent.

Shoplifting costs businesses billions of dollars every year. To enable store owners to recoup some of their losses, most states have enacted civil recovery or civil demand statutes. These laws enable retailers to seek restitution from shoplifters. Criminal prosecution is not a prerequisite to a civil demand request. Typically, a representative of or attorney for a victimized business demands a statutorily set compensation in a letter to the offender. If an offender does not respond favorably to the civil demand letter, the retailer may bring an action in SMALL CLAIMS COURT or another appropriate forum.

To forestall any allegations of coercion, many companies initiate civil recovery proceedings only after the shoplifter has been released from the store's custody. It is a criminal offense to threaten prosecution if a civil demand is not paid. Moreover, if a store accuses a customer of shoplifting and the individual is acquitted or if a store makes an erroneous detention, the store may face claims of FALSE IMPRISONMENT, EXTORTION, DEFAMATION, or intentional or negligent infliction of emotional distress.

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SHORT CAUSE

A legal matter that will not take up a significant amount of the time of the court and may be entered on the list of short causes upon application of one of the parties, where it will be dealt with more expediently than it would be in its regular order.

The time permitted for a short cause, which is also known as a short calendar, varies from one court to another.

SHORT SALE

A method of gaining profit from an anticipated decline in the price of a stock.

An individual who sells short sells either stock or SECURITIES that he or she does not own and that are not immediately ready for delivery. Generally the seller borrows the shares needed to cover the sale from a BROKER and then delivers these shares to the buyer. The seller deposits an amount that is equal to the value of the borrowed shares with the broker. This amount stays on deposit with the broker until the stock is returned. The seller must ultimately return the same number of shares of the same stock to the broker, and the transaction is not fully executed until the stock is returned. The broker lending the stock is entitled to all the benefits he or she would have received if the stock had not been lent. When a dividend is paid, then the seller-borrower is required to pay the broker-lender an amount equal to the dividend.

SHOW CAUSE

An order by a court that requires a party to appear and to provide reasons why a particular thing should not be performed or allowed and mandates such party to meet the PRIMA FACIE *case set forth in the complaint or* AFFIDAVIT *of the applicant.*

A SHOW CAUSE ORDER mandates that an individual or corporation make a court appearance to explain why the court should not take a proposed action. In the event that such individual or corporation does not appear or provide adequate reasons why the court should take no action, action will be taken by the court.

SHOW CAUSE ORDER

A court order, made upon the motion of an applicant, that requires a party to appear and provide reasons why the court should not perform or not allow a particular action and mandates this party to meet the PRIMA FACIE *case set forth in the complaint or* AFFIDAVIT *of the applicant.*

A show cause order, also called an order to show cause, mandates that an individual or corporation make a court appearance to explain why the court should not take a proposed action. A court issues this type of order upon the application of a party requesting specific relief and providing the court with an affidavit or declaration (a sworn or affirmed statement alleging certain facts). A show cause order is generally used in CONTEMPT actions, cases involving injunctive relief, and situations where time is of the essence.

A show cause order can be viewed as an accelerated motion. A motion is an application to the court for an order that seeks answers to questions that are collateral to the main object of the action. For example, in a civil lawsuit the plaintiff generally requests from the defendant

A sample show cause order

Show Cause Order

982(a)(30)

NAME OF PARTY OR ATTORNEY (*and state bar number if attorney*): ADDRESS WHERE YOU WANT MAIL SENT: TELEPHONE NO.: FAX NO. (*Optional*): E-MAIL ADDRESS (*Optional*): ATTORNEY FOR (*Name*): **SUPERIOR COURT OF CALIFORNIA, COUNTY OF** STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME: PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	*FOR COURT USE ONLY*
APPLICATION AND ORDER FOR REISSUANCE OF ORDER TO SHOW CAUSE AND TEMPORARY RESTRAINING ORDER	CASE NUMBER:

1. ☐ Plaintiff ☐ Petitioner (*name*):
   requests the court to reissue the *Order to Show Cause and Temporary Restraining Order ("Order to Show Cause")* originally issued as follows:
   a. *Order to Show Cause* was issued on (*date*):
   b. *Order to Show Cause* was last set for hearing on (*date*):
   c. *Order to Show Cause* has been reissued previously (*number of times*):
2. ☐ Plaintiff ☐ Petitioner requests reissuance of the Order to Show Cause because
   a. ☐ defendant ☐ respondent was unable to be served as required before the hearing date.
   b. ☐ other (*specify*):

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
Date:

(TYPE OR PRINT NAME) (SIGNATURE OF DECLARANT)

ORDER

3. THE COURT ORDERS that the *Order to Show Cause* issued as shown in item 1 above is reissued and reset for hearing in this court as follows:

   a. Date: Time: Dept.: Room:

   at the street address of the court shown above.

   b. ☐ By the close of business on the date of this order, a copy of this order and any proof of service must be given to the law enforcement agencies named in the Order to Show Cause as follows:
      (1) ☐ Plaintiff ☐ Petitioner must deliver.
      (2) ☐ Plaintiff's ☐ Petitioner's attorney must deliver.
      (3) ☐ The clerk of the court must deliver.
   c. A copy of this order must be attached to documents to be served on defendant, as directed in the Order to Show Cause, and must be served on defendant with the Order to Show Cause.
   d. **ALL OTHER ORDERS CONTAINED IN THE ORDER TO SHOW CAUSE REMAIN IN FULL FORCE AND EFFECT UNLESS MODIFIED BY THIS ORDER**. The Order to Show Cause and this Order expire on the date and time of the hearing shown in the box above unless extended by the court.

Date:

JUDICIAL OFFICER

Form Approved for Optional Use
Judicial Council of California
982(a)(30) [New January 1, 2002]

APPLICATION AND ORDER FOR REISSUANCE OF ORDER TO SHOW CAUSE AND TEMPORARY RESTRAINING ORDER

Code Civ. Proc., § 527(d)(5)

documents pertinent to the case. If the defendant refuses to provide the documents or does not make a timely response to the request, the plaintiff may file a motion with the court asking that it issue an order to compel the defendant to produce the documents.

A show cause order is similar to a motion but it can produce a court order on the requested relief much more quickly than a motion can. For example, after a motion is served on the opposing party, that party has a certain number of days under the jurisdiction's rules of CIVIL PROCEDURE to prepare a response. A show cause order is submitted to a judge, who reads the applicant's papers and decides the deadline for the responding party's submission of papers. The judge may order an opposing party to appear "forthwith" in urgent cases. The judge may hear arguments on the matter at some place other than the courthouse, if necessary, and may allow papers to be served on opposing parties by a method not ordinarily permitted.

A judge may include in the show cause order a TEMPORARY RESTRAINING ORDER or stay that maintains the status quo as long as the matter is pending before the court. At the hearing on the show cause order, if the responding party fails to rebut the prima facie case (evidence sufficient to establish a fact if uncontradicted) made by the applicant, the court will grant the relief sought by the applicant.

SHOW-UP

The live presentation of a criminal suspect to a victim or witness of a crime.

A show-up usually occurs immediately or shortly after a crime has occurred. If law enforcement personnel see a person who they suspect is the perpetrator of a very recent crime, the officers may apprehend the suspect and bring him back to the scene of the crime and show him to witnesses, or the officers may take the suspect to a police station and bring the witnesses to the station. This method of identification of a criminal suspect is a legitimate tool of law enforcement and is encumbered by few judicial restraints.

The U.S. Supreme Court has ruled that an unnecessarily suggestive identification procedure is a violation of DUE PROCESS (*Stovall v. Denno,* 388 U.S. 293, 87 S. Ct. 1967, 18 L. Ed. 2d 1199 [1967]). Evidence from such an identification should be excluded from a trial of the suspect. A show-up is inherently suggestive because police generally do not present to a witness a person who they believe is innocent of wrongdoing. Nevertheless, show-ups do not violate due process if they are conducted near the scene of the crime and shortly after the crime was committed.

Show-ups are a valuable and practical tool in apprehending criminals. If a witness affirmatively identifies a suspect as the perpetrator of a crime, police can detain the suspect without delay to serve the interests of public safety. If a witness fails to identify the subject of a show-up as the perpetrator, the show-up will result in the quick release of the innocent suspect and allow police to redirect their efforts.

A show-up should be conducted shortly after a crime has been committed. If police do not apprehend a suspect until the next day, or several days or weeks afterward, they will have time to conduct a traditional, in-person lineup. One exception is when a traditional lineup is impractical. For example, if the sole witness to a crime is bedridden and approaching death, police may bring the suspect to the victim even if the crime occurred several days before the show-up (*Stovall*).

A show-up should not be performed for a witness unless the witness has displayed an ability to make a clear identification of the perpetrator of the crime. A show-up for a witness who cannot cite any identifying characteristics of the perpetrator may be unnecessarily suggestive and may be excluded from a subsequent trial of the suspect.

Because a show-up generally involves detention of a criminal suspect, police must have a reasonable suspicion that the suspect committed a crime before subjecting the suspect to a show-up. This is a low level of certainty and need only be supported by enough articulable facts to lead a reasonable officer to believe that the suspect may have committed a crime.

CROSS-REFERENCES

Criminal Law; Criminal Procedure.

SIC

Latin, In such manner; so; thus.

A misspelled or incorrect word in a quotation followed by "[sic]" indicates that the error appeared in the original source.

SICK CHICKEN CASE

See SCHECHTER POULTRY CORP. V. UNITED STATES.

SIERRA CLUB

The Sierra Club is a nonprofit, member-supported public interest organization that promotes conservation of the natural environment by influencing public policy decisions. In addition, the Sierra Club organizes participation in wilderness activities for its members, including mountain climbing, backpacking, and camping. It is the oldest and largest nonprofit, grassroots environmental organization in the world, with more than 700,000 members. In mid-2003, the Sierra Club consisted of the national organization, located in San Francisco, California, 65 chapters, and approximately 365 local groups.

The organization was founded on June 4, 1892, by a group of 162 California residents. The Sierra Club's first president was John Muir, a pioneer in the promotion of national parks and the protection of the environment. Muir involved the club in political action, leading a successful fight to preserve Yosemite as a national park. Muir and the club also lobbied for the creation of national parks at the Grand Canyon and Mt. Rainier in the late nineteenth century. The Sierra Club drew national attention during the administration of President THEODORE ROOSEVELT, when Muir got the president interested in creating more national parks.

The Sierra Club did not seek members outside of California until 1950, when membership stood at 10,000. Membership has increased dramatically since that time, due in large part to the club's intense interest in protecting the environment. Since 1970 the club has played a major role in gaining legislative support for many federal environmental protection measures, including the establishment of the ENVIRONMENTAL PROTECTION AGENCY and the Arctic National Wildlife Refuge and the passage of the ENDANGERED SPECIES ACT, the Clean Air Act, the Clean Water Act, the National Forest Management Act, and the Alaska National Interest Lands Conservation Act. The Sierra Club has also campaigned for similar state legislation.

During the 1990s, the Sierra Club filed lawsuits seeking to require the federal government to enforce provisions of the Endangered Species Act and the Clean Air Act. The organization also protested global trade that did not include adequate environmental protection controls. In the early 2000s the Sierra Club also advocated for the cleanup of toxic wastes, resolving the problems of solid waste disposal, promoting sustainable population and family planning, and fighting to reverse ozone depletion and global warming. In 2003 the Sierra Club highlighted the evasion of state and local POLLUTION controls by many of the nation's "animal factories," sprawling establishments where thousands of animals are produced and housed in strict confinement before being transported to slaughterhouses.

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CROSS-REFERENCES

Environmental Law; Environmental Protection Agency.

SIGHT DRAFT

A COMMERCIAL PAPER *that is payable upon presentment.*

When a draft or bill of exchange is payable at sight, money may be immediately collected upon presentment to the drawee named in the instrument.

SIGNATURE

A mark or sign made by an individual on an instrument or document to signify knowledge, approval, acceptance, or obligation.

The term *signature* is generally understood to mean the signing of a written document with one's own hand. However, it is not critical that a signature actually be written by hand for it to be legally valid. It may, for example, be typewritten, engraved, or stamped. The purpose of a signature is to authenticate a writing, or provide notice of its source, and to bind the individual signing the writing by the provisions contained in the document.

Because a signature can obligate a party to terms of a contract or verify that the person

intended to make a last will and testament, the law has developed rules that govern what constitutes a legally valid signature. The INTERNET and other forms of telecommunication have created the need to transact legally binding agreements electronically. Almost all states have passed laws that recognize the validity of "digital signatures."

Requisites and Validity

When an instrument must be signed, it is ordinarily adequate if the signature is made in any commonly used manner. Variations between the signature and the name appearing in the body of the instrument do not automatically invalidate the instrument.

In the absence of a statutory prohibition, an individual can use any character, symbol, figure, or designation he wishes to adopt as a signature, and if he uses it as a substitute for his name, he is bound by it. For example, if a contract refers to "William Jones" but Jones signs his name "Bill Jones," the contract is still enforceable against him. An individual can also use a fictitious name or the name of a business firm. A signature might also be adequate to validate an instrument even if it is virtually illegible. The entire name does not have to be written, and the inclusion of a middle name is not significant.

An individual satisfies the signing requirement when someone who has been duly authorized to sign for him does so. In the event a statute mandates an instrument be signed in person, the signature must be made in the signer's own hand or at his request and in his presence by another individual.

In a situation where an individual intends to sign as a witness but instead inadvertently signs the instrument in the place where the principal is to sign, the fact that he should have signed as a witness can be shown. Conversely when a signer intends to sign as a principal but instead signs in the place for a witness, that fact can also be shown.

Abbreviations, Initials, or Mark

In situations that do not require a more complete signature, an instrument can be properly signed when the initial letter or letters of the given name or names are used together with the surname (J. Doe), when only the full surname is used (Doe), when only the given name is used (John), or even when only the initials are used (J. D.).

A mark is ordinarily a cross or *X* made in substitution for the signature of an individual who is unable to write. In the absence of contrary statutory provision, a mark can be used by an individual who knows how to write but is unable to do so because of a physical illness or disability. A mark has the same binding effect upon the individual making it as does a signature. In some statutes a signature is defined as including a mark made by an individual who is infirm or illiterate.

Generally the name of the person who makes his mark can be written by anyone, and the mark is not necessarily invalidated because the individual writing the name accompanying the mark misspells the name. In the absence of a statute that requires a name to accompany the mark, the validity of the mark as a signature is not affected by the fact that a name does not accompany it.

When a mark is used as a signature, it can be put wherever the signature can appear. When there is a requirement that the name must accompany the mark, the fact that the mark and the name are not in immediate proximity does not invalidate the mark.

Certain statutes mandate that a witness must attest to a signature made by a mark. Under such statutes, if the mark is not properly witnessed, the instrument is not signed and is legally ineffective. These laws were enacted to prevent FRAUD, because it is difficult, if not impossible, to later determine if the alleged signer actually made the mark.

Hand of Party or Another

A signature can be written by the hand of the purported signer, either through the signer's unaided efforts or with the aid of another individual who guides the signer's pen or pencil. In cases when the maker's hand is guided or steadied, the signature is the maker's act, not the act of the assisting individual.

A signature can generally be made by one individual for another in his presence and at his direction, or with his assent, unless prohibited by statute. A signature that is made in this manner is valid, and the individual writing the name is regarded merely as an instrument through which the party whose signature is written exercises personal discretion and acts for himself.

Method

Ordinarily a signature can be affixed in a number of different ways. It can be hand writ-

ten, printed, stamped, typewritten, engraved, or photographed. This allows, for example, a business to issue its payroll checks with the signature of its financial officer stamped rather than handwritten.

Digital Signatures

The computer and TELECOMMUNICATIONS have changed how work is done and how it is exchanged. Both business and the legal system have begun to explore ways of using the Internet and other forms of electronic communication to transact work. Court systems cannot permit the electronic filing of legal documents, however, unless the documents have been authenticated as coming from the sender. Similarly, businesses will not enter into contracts using the Internet or E-MAIL unless they can authenticate that the other contracting party actually made the agreement. Computers and digital scanners can reproduce handwritten signatures, but they are susceptible to forgery.

A solution has been the legal recognition of "digital signatures." The majority of states have enacted statutes that allow digital signatures in intrastate transactions. In 2000, President BILL CLINTON signed into law the Electronic Signatures in Global and National Commerce Act, Pub. L. No. 106-229, 114 Stat. 464, also called the E-Sign Act, which essentially validates electronic contracts in interstate and foreign commerce. The act does not apply to certain types of documents, including wills, DIVORCE notices, and documents that are associated with court proceedings.

A digital signature is based on cryptography, which uses mathematical formulas, or algorithms, to scramble messages. Using encryption and decryption software, the sender can scramble the message and the recipient can unscramble it. To affix a digital signature to an electronic document, a signer must obtain electronic "keys." The keys are assigned in pairs: a private key and a public key.

A person creates his keys using a software program. The digital signature is affixed to the electronic document using the private key. The "signer" types in a password, similar to a personal identification number for an automatic teller machine. The private key then generates a long string of numbers and letters that represent the digital signature, or public key. The recipient of the message runs a software program using this public key to authenticate that the document was signed by the private key and that the document has not been altered during transmission.

It is mathematically infeasible for a person to derive another person's private key. The only way to compromise a digital signature is to give another person access to the signature software and the password to the private key.

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CROSS-REFERENCES

Authentication.

SIMPLE

Unmixed; not aggravated or compounded.

A simple assault, for example, is one that is not accompanied by any circumstances of aggravation, such as assault with a deadly weapon.

Simple interest is a fixed amount paid in exchange for a sum of money lent. The interest generated on the amount borrowed does not itself earn interest, unlike interest earned where parties agree to compound interest.

♦ SIMPSON, O. J.

The criminal and civil trials of Orenthal James ("O. J.") Simpson, a former football star, actor, and television personality, regarding the murders of his former wife, Nicole Brown Simpson, and Ronald Goldman, a local restaurant waiter, were two of the most controversial and highly publicized proceedings in U.S. legal history. The lengthy criminal trial, which ended in Simpson's acquittal for the two murders in October

1995, was nationally televised. In the civil trial, in which the estates of the two murder victims sued Simpson for damages for the victims' WRONGFUL DEATHS, a jury in February 1997 awarded the heirs of the victims a total of $33.5 million. In both proceedings, but especially in the criminal trial, the issue of race played a dominant role. Simpson, an African American, was portrayed by his attorneys as another victim of the racist beliefs and behavior of members of the Los Angeles Police Department (LAPD).

In the early hours of June 13, 1994, the bodies of Nicole Brown Simpson and Ronald Goldman were found lying in a pool of blood outside Nicole Simpson's Brentwood, California, condominium. Both victims had been brutally stabbed to death on the evening of June 12, but there were no eyewitnesses. After the slayings, Nicole Simpson's dog was found wandering around the upscale neighborhood with bloody paws.

Simpson voluntarily gave an interview to LAPD detectives the day after the murder. Five days after the murders, LAPD charged Simpson with the deaths, citing a trail of evidence they said linked the celebrity to the crime scene, including a bloody glove found outside the condominium that allegedly matched one found at Simpson's estate. On the day Simpson was to surrender to police, he and a friend, Al C. Cowlings, disappeared. Simpson left behind a note professing his love for Nicole, claiming his innocence, and implying that he would commit suicide. Police traced calls from Simpson's cellular phone, locating him in a vehicle traveling on a Los Angeles freeway. The ensuing slow-speed chase, which was nationally televised from helicopter cameras, ended back at Simpson's Brentwood home, where he was arrested.

Simpson's criminal trial began on January 25, 1995. He had assembled a team of lawyers that included ROBERT L. SHAPIRO, JOHNNIE L. COCHRAN JR., a leading Los Angeles defense attorney, F. LEE BAILEY, a nationally known criminal defense attorney, ALAN M. DERSHOWITZ, a Harvard law professor, Gerald F. Uelman, the dean of Stanford University Law School, and Barry Scheck and Peter J. Neufeld, New York attorneys skilled in handling DNA EVIDENCE. The group of prosecutors from the Los Angeles county attorney's office was led by MARCIA R. CLARK and Christopher A. Darden. Presiding at the trial was Superior Court Judge Lance A. Ito.

In its opening statements the prosecution argued that Simpson's history of DOMESTIC VIOLENCE against Nicole Brown Simpson showed a link to her murder. His pattern of abuse and his need to control his former wife culminated, according to Clark, in her murder, "the final and ultimate act of control." Goldman was murdered, continued Clark, because he got in the way, arriving at the Brentwood condominium to return a pair of misplaced eyeglasses at the same time that Simpson was attacking Nicole Brown Simpson.

The defense team, which Cochran dominated, asserted that the LAPD fabricated the physical evidence and that Simpson had been on his way to a golf outing in Chicago when the crimes were committed.

The prosecution presented the testimony of neighbors in the vicinity of the murder scene and of a limousine driver who arrived early at Simpson's home that night to establish that Simpson had time to commit the murders and return home shortly after the driver arrived. It also introduced the "bloody glove" found behind Simpson's guest house, a glove that matched one found at the crime scene. The prosecution called DNA experts to testify that blood found at the crime scene matched Simpson's blood and that blood from both of the victims was found in Simpson's vehicle and on socks found in his bedroom. In addition, a bloody shoe print found at the crime scene appeared to match an expensive brand of shoes that Simpson had owned, but which could not be found.

The defense team aggressively challenged almost every prosecution witness but leveled its harshest attacks on the credibility of the LAPD. Scheck attacked the way the blood and fiber evidence was collected and suggested that the police had used blood from a sample given by the defendant to concoct false evidence. Scheck and Neufeld also challenged the credibility of the prosecution's DNA experts, subjecting the jury to weeks of highly technical discussion of DNA analysis.

The defense also argued that the police had rushed to judgment that Simpson was the prime suspect. Cochran and Bailey cross-examined the police officers who had gone to Simpson's home early on the morning after the murders. These officers had not sought a SEARCH WARRANT but went into the residence based on the belief that Simpson himself might have been the target of

The criminal trial of former football great O.J. Simpson was among the most highly publicized trials in U.S. history. Simpson was acquitted of murder, but found guilty of wrongful death in a later civil trial. AP/WIDE WORLD PHOTOS

the murderer. The defense challenged this justification and attempted to show that one of the officers, Mark Fuhrman, was a racist who planted the bloody glove that morning. Events in the trial confirmed that Fuhrman had lied under oath when he said he had not said the word "nigger" in the past ten years. As the prosecution case proceeded, the defense used every opportunity to demonstrate to the predominantly African American jury that the police had engaged in a conspiracy to frame Simpson.

The dramatic point of the trial was the prosecution's request that Simpson try on the bloody gloves. Simpson, wearing thin plastic gloves, strained to pull on the leather gloves and announced that they were too small and did not fit. This proved to be a damaging incident for the prosecution. In his closing argument, Cochran repeatedly stated, "If the gloves don't fit, you must acquit."

In October 1995, after 266 days of trial, the jury found Simpson not guilty of the murders. Cochran, in his closing argument, had implored the jury to acquit Simpson and send a message to the LAPD and white America that African Americans should not be the victims of a racist police and justice system. According to opinion polls, his argument sounded a strong chord in African Americans, because a majority of them believed that Simpson was innocent. Polls also showed that, in contrast, most whites believed that Simpson was guilty.

Despite the acquittal, Simpson had to defend himself in a civil lawsuit filed by the parents of Nicole Brown Simpson and Ronald Goldman. In contrast to the criminal trial, the civil case was not televised, thereby reducing the intensity of the press coverage. In addition, the plaintiffs had the opportunity to depose many witnesses before trial, including Simpson, who did not testify at the criminal trial.

The plaintiffs' lead attorney, Daniel M. Petrocelli, fiercely examined Simpson at the deposition and again at the trial, pointing out the inconsistencies in his various accounts. Petrocelli mocked Simpson's contention that he had never beaten Nicole Brown Simpson, despite police reports, photographs, and testimony of other witnesses. The most crucial piece of evidence became the bloody shoe print at the crime scene. At his deposition Simpson said he had never owned a pair of the "ugly-assed shoes" that had made the shoe print. Simpson repeated this claim at trial, but Petrocelli produced thirty-one photographs of Simpson at public events showing that he had indeed worn the exact model of shoes prior to the murders. Finally Petrocelli argued that Simpson committed the murders because he could not control his temper: when Nicole Brown Simpson rejected him for good in the spring of 1994, he erupted in the same uncontrollable rage that had caused him to lash out at her in the past, only this time he used a knife.

In February 1997 the jury awarded the plaintiffs $8.5 million in COMPENSATORY DAMAGES and $25 million in PUNITIVE DAMAGES. The jury awarded the punitive damages based on an expert's testimony that Simpson could earn $25 million over the rest of his life by trading on his notoriety with book deals, movie contracts, speaking tours, and memorabilia sales. The jury did not want Simpson to profit from the crimes. Superior Court Judge Hiroshi Fujisaki, who had conducted the trial, upheld the damages award. Simpson announced that he planned to appeal the case.

The plaintiffs obtained a court order permitting the seizure of many of Simpson's assets to pay the multimillion-dollar judgment. Simpson, who had regained custody of his two children that he had with Nicole Brown Simpson, claimed he was near financial insolvency. Never-

theless, the plaintiffs' attorneys returned to court numerous times in 1997 seeking disclosure of Simpson's assets, contending that he was attempting to hide them.

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CROSS-REFERENCES

Cameras in Court; DNA Evidence.

SIMULTANEOUS DEATH

Loss of life by two or more individuals concurrently or pursuant to circumstances that render it impossible to ascertain who predeceased whom.

The issue of who died first frequently arises in cases determining the inheritance of property from spouses who die simultaneously. Generally the answer must be derived from all the surrounding circumstances. At COMMON LAW, the law would not intervene and make the assumption that one individual or another had died first but would await proof, no matter how slight that might be. Since this created a problem when no satisfactory proof existed, various states enacted statutes allowing judges to presume that one individual survived another under certain circumstances.

Because those state statutes that created presumptions proved inadequate, a majority of the states enacted the Uniform Simultaneous Death Act. Although some slight variations exist from one state to another, the law essentially provides that property will be inherited or distributed as if each person had outlived the other. This prevents the property from passing into the estate of a second person who is already deceased only to be distributed immediately from that estate, a wasteful procedure that precipitates additional legal proceedings, costs, and estate taxes.

The Simultaneous Death Act cannot be applied if evidence exists that one individual outlived the other. The act only applies when it cannot be determined who died first. Ordinarily the persons involved need not have died in a common disaster but might have died in different places and under different circumstances, and it still might be impossible to prove that one survived the other. A 1985 Illinois case provides an example of where Simultaneous Death Act was held inapplicable because the court found it possible to ascertain who died first.

Janus v. Tarasewicz, 135 Ill.App.3d 936, 482 N.E.2d 418, 90 Ill.Dec. 599 (Ill.App. 1 Dist. 1985) arose out of a freakish series of events that began in the Chicago area in 1982. Adam Janus unluckily purchased a bottle of Tylenol capsules that had been laced with cyanide by an unknown perpetrator prior to its sale at retail. On the evening of September 29, 1982, the day of Adam's death, his brother, Stanley Janus, and Stanley's wife, Theresa Janus, having just returned from their honeymoon, gathered in mourning at Adam's home with other family members. Not yet knowing how Adam died, Stanley and Theresa innocently compounded the tragedy by taking some of the contaminated capsules themselves. Upon their arrival at the intensive care unit of a hospital emergency room, neither showed visible vital signs. Hospital personnel never succeeded in establishing any spontaneous blood pressure, pulse, or signs of respiration in Stanley and pronounced him dead. Hospital personnel did succeed in establishing a measurable, though unsatisfactory, blood pressure in Theresa. Although she had very unstable vital signs, remained in a coma, and had fixed and dilated pupils, she was placed on a mechanical respirator and remained on the respirator for two days before she was pronounced dead on October 1, 1982.

Stanley had a $100,000 life-insurance policy that named Theresa as primary beneficiary and his mother, Alojza Janus, as contingent beneficiary. The 1953 version of the Uniform Simultaneous Death Act, in force in Illinois, provides that if there is no sufficient evidence that the insured and beneficiary have died otherwise than simultaneously, the proceeds of the policy shall be distributed as if the insured had survived the beneficiary. The Illinois Court of Appeals held the act to be inapplicable because a PREPONDERANCE OF THE EVIDENCE established that Theresa survived Stanley, albeit by only a couple of days. The result: the proceeds of Stanley's $100,000 policy did not go to his mother,

Alojza, as contingent beneficiary, but to Theresa's father, Jan Tarasewicz, as administrator of her estate.

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CROSS-REFERENCES

Death and Dying; Estate and Gift Taxes.

♦ SINCLAIR, UPTON BEALL

Upton Beall Sinclair was a famous American writer and essayist whose book *The Jungle*, an exposé of Chicago's meatpacking industry, shocked the nation and led to the passage of the Pure Food and Drug Act in 1906.

Sinclair was born September 20, 1878, to a prominent but financially troubled family in Baltimore, Maryland. Sinclair's father was a liquor salesman who was also an alcoholic. His mother, a teetotaler, came from a wealthy background. In 1888, the Sinclair family moved to New York. Sinclair's father sold hats but spent his earnings on alcohol. Sinclair, who became a teetotaler like his mother, moved between two different financial worlds—the relative life of poverty with his father and mother and the affluence he experienced when visiting his mother's well-to-do parents. He later stated that experiencing the two extremes helped make him a socialist.

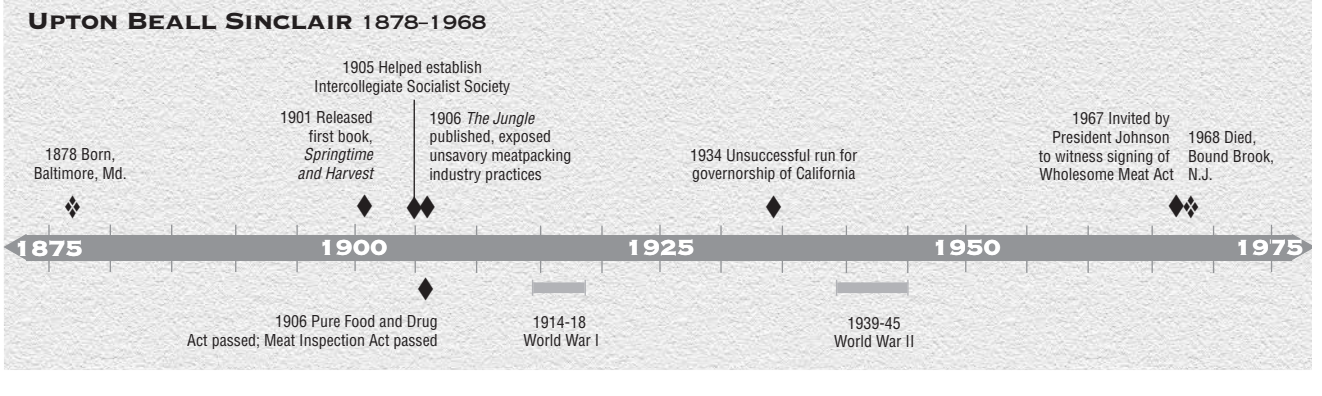
"I AIMED AT THE PUBLIC'S HEART, AND BY ACCIDENT I HIT IT IN THE STOMACH."
—UPTON SINCLAIR

Sinclair began to write "dime novels" (books of pulp fiction that sold for 10 cents) when he was a teenager. At age 14, he attended New York City College, financing his education by writing for newspapers and magazines. In 1897, Sinclair enrolled at Columbia University. He continued to write prodigiously, a habit that became lifelong. By the time he died, Sinclair had published close to one hundred books.

In 1901, Sinclair released his first book, *Springtime and Harvest*, later republished as *King Midas*. Around the same time, he became involved in the socialist movement. He was an avid reader of socialist classics and *Appeal to Reason,* a socialist-populist journal. Socialists maintain that inequalities in the distribution of wealth are best solved by either direct state ownership of key industries or through regulation of private business. In 1905, Sinclair joined with authors Jack London and Florence Kelley and labor attorney CLARENCE DARROW to establish the Intercollegiate Socialist Society.

During this period Sinclair also became interested in the works of such investigative journalists as Lincoln Steffens and Ida Tarbell, who publicly exposed corruption in U.S. government and industry. This type of investigative reporting came to be known as "muckraking," thanks in part to Sinclair. In 1904, the editor of *Appeal to Reason* commissioned him to write a novel about the immigrants who worked in the meat packing industry. After seven weeks of research, Sinclair produced his sixth book, *The Jungle*, a novel about a young Lithuanian immigrant who finds work in the stockyards of Chicago. Sinclair's frank portrayal of the unsanitary and miserable working conditions of those who labored in the meat packing industry, was serialized in 1905 where it began to create a furor.

Unable to find a publisher for his book, Sinclair, after six rejections, published the novel himself. He took out an ad in *Appeal to Reason,* and received 972 advance orders. When the publisher Doubleday heard the numbers, the company took on the book. *The Jungle* was published



in 1906 and immediately sold over 150,000 copies. Over the next few years the book was translated into 17 languages and became an international best-seller.

Horrified at the description of the filthy conditions in which the meat packers worked, and even more dismayed at the offal and other repellant ingredients that were part of the meats they were consuming, the American public demanded immediate and widespread reform. President THEODORE ROOSEVELT met with Sinclair at the White House and launched an investigation into the practices of the meat packing industry. Although the beef industry and other producers of consumable products, including pharmaceutical companies, had vigorously fought federal regulation of their industries, Sinclair's revelations helped turn the tide.

Bowing to the swelling chorus of public indignation, Congress passed the PURE FOOD AND DRUG ACT OF 1906, which prohibited foreign and interstate commerce in adulterated or fraudulently labeled food and drugs. Under the new law, such products could be seized and destroyed and offenders faced fines and prison sentences. Congress also passed the Meat Inspection Act of 1906, which attempted to regulate the inspection of the slaughtering and processing of animals sold for human consumption.

Sinclair put his newfound wealth into a cooperative living experiment he established in Englewood, New Jersey. When a fire destroyed the commune in 1907, Sinclair was financially unable to rebuild it. He followed *The Jungle* with a number of other muckraking novels, including *King Coal* (1917), *Oil!* (1927), and *Boston* (1928). None, however, achieved the same popularity.

Sinclair eventually moved to California where he became actively involved in politics. He ran unsuccessfully for public office on the Socialist ticket and organized a socialist reform movement known as End Poverty in California (EPIC). In 1934, he ran for governor of California on the Democratic ticket, but was defeated by Republican incumbent Frank Merriam.

Sinclair returned to writing in the 1940s, producing his famous Lanny Budd series, which is composed of 11 novels that deal with American politics from about 1913 until 1953. The third book in the series, *Dragon's Teeth* (1942), recounts the rise of Nazism. It received the Pulitzer Prize for fiction in 1943, the only major literary award given to Sinclair.

In the 1950s, Sinclair moved to Arizona with his second wife, Mary Craig Kimbrough, for health reasons. When Craig died in 1961, the two had been married almost 50 years. Sinclair remarried at the age of 83. He spent his later years writing and occasionally lecturing. In 1962, he released his autobiography. In 1967, a year before his death, Sinclair was invited to the White House by President LYNDON JOHNSON to witness the signing of the Wholesome Meat Act of 1967, which expanded the earlier meat inspection act of 1906. In 1968, the socialist crusader, who proved that one man can bring about reform, died in his sleep on November 25, 1968, in Bound Brook, New Jersey.

FURTHER READINGS

Ivan, Scott. 1996. *Upton Sinclair: The Forgotten Socialist.* Lanham, Md.: Univ. Press of America.

Mitchell, Greg. 1991.*Campaign of the Century: Upton Sinclair's E.P.I.C. Race for Governor of California.* New York: Random House.

SINE DIE

*[*Latin, Without day.*] Without day; without assigning a day for a further meeting or hearing.*

A legislative body adjourns sine die when it adjourns without appointing a day on which to appear or assemble again.

SINE QUA NON

*[*Latin, Without which not.*] A description of a requisite or condition that is indispensable.*

In the law of TORTS, a causal connection exists between a particular act and an injury when the injury would not have arisen but for the act. This is known as the but for rule or *sine qua non* rule.

SINGLE NAME PAPER

A type of COMMERCIAL PAPER, *such as a check or promissory note that has only one original signer or more than one maker signing for the exact same purpose.*

A single name paper is distinguishable from a *suretyship* where, for a certain sum, one individual cosigns to support another individual's debt.

SINGLE NAME PARTNERSHIP

A business arrangement whereby two or more individuals, the partners, unite their skill, capital,

Partnership Fictitious Name

PARTNERSHIP FICTITIOUS NAME CERTIFICATE
SECRETARY OF STATE
SFN 7006 (4-99)

FOR OFFICE USE ONLY

ID #

WO #

Filed By

Expiration Date

1. FILING FEES

A. For new certificate for first two partners $25.00
For each additional partner (not to exceed $250) 3.00
B. For fictitious name used by a limited partnership or limited liability partnership 25.00
C. For amended certificate 25.00

2. This certificate is a
☐ New registration with a five year duration.
☐ Amended registration with a continuing duration.

SEE REVERSE SIDE FOR FEES, FILING AND MAILING INSTRUCTIONS

TYPE OR PRINT LEGIBLY For reference, see North Dakota Century Code, Chapter 45-11.

3. Fictitious name

4. Fictitious name is used by
☐ General partnership ☐ Limited partnership
☐ Limited liability partnership

5. If a fictitious name is used by a limited partnership or a limited liability partnership, the name of the limited partnership or limited liability partnership is

6. Federal ID #

7. Address of principal place of business (Street/RR, and PO Box if applicable, city, state, zip+4

8. State of origin

9. Telephone #

10. Toll-free telephone #

11. The general partners, their Social Security/Federal ID #, and the addresses of their principal places of business **(this section may be left blank when number 5 indicates the fictitious name is used by a limited partnership)**

NAME	SOCIAL SECURITY/ FEDERAL ID #	COMPLETE ADDRESS Street/RR	PO Box	City	State	Zip + 4

12. A brief description of the nature of business to be transacted in North Dakota

13. "I (we), and (the) above named general partner(s) have read the foregoing certificate, know the contents, and believe(s) the information provided is correct."

Signature / Date

Signature / Date

Signature / Date

Signature / Date

Signature / Date

Signature / Date

Signature / Date

Signature / Date

14. Name of person to contact about this application Daytime telephone #

A sample form for a single (or fictitious) name partnership or business

Partnership Fictitious Name

INSTRUCTIONS FOR PARTNERSHIP FICTITIOUS NAME CERTIFICATE

Every partnership transacting business in North Dakota under a fictitious name, or a name not showing the names of all the partners, must file a Fictitious Name Certificate with the Secretary of State. Whenever there is a **change** in the general partners who are **members** of a partnership transacting business in North Dakota under a fictitious name, **an amended certificate must be filed**. **When the fictitious name itself changes, the certificate on file must be canceled and a new Fictitious Name Certificate must be filed.**

Every limited partnership and every limited liability partnership transacting business in North Dakota under a name other than the legal name as registered with the Secretary of State, must file a Fictitious Name Certificate with the Secretary of State.

The following numbers correspond to the numbered sections on the front of this form.

1. (a) The fictitious name certificate filing fee is **$25** if there are two partners. If there are more than two partners, an additional fee of $3 per additional partner must be paid. However, the fee shall not exceed a total fee of $250.
   (Checks must be payable to "Secretary of State" and must be for U.S. negotiable funds. Payment may also be made by credit card using VISA, Master Card, or Discover.)
   (b) The fictitious name certificate filing fee is $25 when the fictitious name is used by a limited partnership or a limited liability partnership.
   (c) The fee for an amended fictitious name certificate is $25.
2. Check whether this certificate is a new registration with the Secretary of State, or a certificate amending a previous registration.
   A new registration has a duration of five years. The duration of an amended registration is five years from the date of the original registration.
3. The fictitious name:
   (a) May not contain the word "corporation", "company", "incorporated", "limited liability company", or "limited", or an abbreviation of one of such words. This does not preclude the word "limited" from being used in conjunction with the word "partnership".
   (b) Must include the words "limited partnership" or the abbreviation "L.P." or "LP" if fictitious name is filed to be used by a limited partnership, or must include the words "limited liability partnership" or either of the abbreviations "L.L.P." or "LLP" if used by a limited liability partnership. If the fictitious name is to be used by a North Dakota professional limited liability partnership, it may contain either the words "professional limited liability partnership" or "limited liability partnership" or one of the following abbreviations: "P.L.L.P", "PLLP", "L.L.P.", or LLP". A foreign professional limited liability partnership may use a name required or authorized in the state of origin.
   (c) May not be the same as, or deceptively similar to, any corporate name, limited liability company name, trade name, limited partnership name, foreign limited partnership name, or partnership fictitious name certificate on file with the secretary of state. (See North Dakota Century Code, Section 45-11-01)
   If the fictitious name is the same as, or similar to a name registered, the partnership must obtain consent to use of name from the previously registered entity. An original consent to use of name signed by a principal of the previously registered name must be filed with the fictitious name certificate and the fee of $10. A form for consent to use of name is not prescribed by the Secretary of State.
   The name on an amended fictitious name certificate must be identical to that originally filed. The name does not need to be researched for availability since the right to the name was secured with the original registration.
4. Distinguish whether the partnership using the fictitious name is a general or limited partnership, or limited liability partnership.
5. If the fictitious name is being used by a limited partnership or a limited liability partnership, give the correct name as registered with the North Dakota Secretary of State.
6. To properly maintain partnership records, the partnership's Federal ID number is required.
7. A complete address of the principal place of business is required. **In this section, as well as all other sections requiring addresses on this certificate, an address must include a street or rural address, a postal box number if applicable, and the city, state, and zip code plus 4.**
8. Provide the state of organization if fictitious name is used by a limited partnership or a limited liability partnership.
9. The telephone number of the partnership's principal place of business is requested in order to provide better service to a filing partnership.
10. Provide a toll-free telephone number if the partnership has one. A toll-free number will expedite services to the partnership for the duration of the filing.
11. Provide the full names of all the **current** general partners, their social security or Federal ID numbers, and complete mailing addresses of their principal places of business.. (See definition of "complete address" in number 7.) If adequate space is not provided to list all general partners, attach an additional schedule listing all other general partners.
    If a general partner is either a corporation, a limited liability company, a limited partnership, a limited liability partnership, or another general partnership using a fictitious name, **the general partner must be registered separately with the Secretary of State before this fictitious name certificate will be effected.**
    The name and principal place of business of a general partner on this fictitious name certificate must be **exactly** as separately registered with the Secretary of State. Any name change or change of principal address required for the separate registration of the general partner will require a simultaneous change to the fictitious name certificate.
    Section 11 **does not need to be completed if number 5** indicates that the fictitious name is used by **a limited partnership.**
12. Provide a brief and specific description of the nature of the business to be transacted in North Dakota. "General business purposes" will not be accepted.
13. The certificate must bear original signatures of **one or more** of the general partners and the date on which each signed.
14. Provide the name and daytime telephone number of the person to contact for any issues related to this application.

EXPEDITING PROCESS: Be sure to complete number 14. If the fictitious name certificate is being submitted by someone other than the partnership, provide a cover letter with the name and telephone number of the responsible individual so that any deficiencies on the form can be remedied by telephone.

MAILING INSTRUCTIONS:
Send an **original** certificate AND **filing fees** to:

Secretary of State
State of North Dakota
600 E Boulevard Ave Dept 108
Bismarck ND 58505-0500

Telephone: 701-328-4284
ND Toll Free: 800-352-0867 (Option 1)
Fax: 701-328-2992
Home Page: http://www.state.nd.us/sec

RENEWALS: Every fictitious name certificate filed with the Secretary of State must be renewed every five years from the date of the initial filing. Forms for renewal are prescribed by the Secretary of State and are sent to the address of the principal place of business at least sixty days before the deadline for renewal. Therefore, it is imperative that the principal place of business address is always current with the Secretary of State.

SFN 7006 (4-99)

A sample form for a single (or fictitious) name partnership or business (continued)

and work in exchange for a proportional allocation of the profits and losses incurred but who engage in business under one name rather than the names of all the partners.

Although technically not a legal term, the phrase *single name partnership* describes the situation when a traditional partnership arrangement deviates from the custom of using the surnames of all its partners (except for silent partners) to conduct its activities. The partners select one name, whether it be the name of one partner, an acronym of their names, or a fictitious name. This assumed name must be set out under the provision for the name in the partnership agreement. A single name partnership is also known as an assumed or fictitious name partnership.

Almost all states require by statute that such a partnership file an assumed or fictitious name certificate with the SECRETARY OF STATE or other appropriate official. In addition to the assumed name, the certificate sets out the full names and addresses of the individuals doing business under that name. Some jurisdictions also mandate that a notice to file the certificate appear under the legal notice column in designated newspapers.

The registration requirement is designed to provide the public with information about the persons with whom they choose to do business or extend credit.

Failure to file an assumed or fictitious name partnership agreement might constitute a misdemeanor under state penal laws, resulting in a fine upon conviction.

SINGLE PROPRIETORSHIP

See SOLE PROPRIETORSHIP.

SIT

To hold court or perform an act that is judicial in nature; to hold a session, such as of a court, GRAND JURY, *or legislative body.*

SITUS

*[*Latin, Situation; location.*] The place where a particular event occurs.*

For example, the situs of a crime is the place where it was committed; the situs of a trust is the location where the trustee performs his or her duties of managing the trust.

SIXTEENTH AMENDMENT

The Sixteenth Amendment to the U.S. Constitution reads:

> 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.

Congress passed the Sixteenth Amendment to the U.S. Constitution in 1909, and the states ratified it in 1913. The ratification of the amendment overturned an 1895 U.S. Supreme Court decision that had ruled a 2 percent federal flat tax on incomes over $4,000 unconstitutional (POLLOCK V. FARMER'S LOAN & TRUST CO., 157 U.S. 429, 15 S. Ct. 673, 39 L. Ed. 759). Article I of the Constitution states that "direct taxes shall be apportioned among the several states . . . according to their respective numbers." By a 5–4 vote, the Court in *Pollock* held that the new INCOME TAX was a direct tax insofar as it was based on incomes derived from land and, as such, had to be apportioned among the states. Because the law did not provide for APPORTIONMENT, it was unconstitutional.

The decision was unpopular and took the public by surprise because a federal income tax levied during the U.S. CIVIL WAR had not been struck down. Critics contended that the conservative majority on the *Pollock* Court was seeking to protect the economic elite. Industrialization had led to the creation of enormous corporate profits and personal fortunes, which could not be taxed to help pay for escalating federal government services. The DEMOCRATIC PARTY made the enactment of a constitutional amendment a plank in its platform beginning in 1896.

The language of the Sixteenth Amendment addressed the issue in *Pollock* concerning apportionment, repealing the limitation imposed by article I. Soon after the amendment was ratified, Congress established a new personal income tax with rates ranging from 1 to 7 percent on income in excess of $3,000 for a single individual.

FURTHER READINGS

Jensen, Erik M. 2001. "The Taxing Power, the Sixteenth Amendment, and the Meaning of 'Incomes'." *Arizona State Law Journal* 33 (winter).

Oring, Mark, and Steve Hampton. 1994. "*Cheek v. United States* and the Tax Protest Movement: An Historical Reassessment of the Sixteenth Amendment." *University of West Los Angeles Law Review* 25 (annual).

CROSS-REFERENCES

Apportionment; Income Tax.

SIXTH AMENDMENT

The Sixth Amendment to the U.S. Constitution reads:

> 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.

The Sixth Amendment to the U.S. Constitution affords criminal defendants seven discrete personal liberties: (1) the right to a SPEEDY TRIAL; (2) the right to a public trial; (3) the right to an impartial jury; (4) the right to be informed of pending charges; (5) the right to confront and to cross-examine adverse witnesses; (6) the right to compel favorable witnesses to testify at trial through the subpoena power of the judiciary; and (7) the right to legal counsel. Ratified in 1791, the Sixth Amendment originally applied only to criminal actions brought by the federal government.

Over the past century, all of the protections guaranteed by the Sixth Amendment have been made applicable to the state governments through the doctrine of selective incorporation. Under this doctrine, the Due Process and EQUAL PROTECTION Clauses of the FOURTEENTH AMENDMENT require each state to recognize certain fundamental liberties that are enumerated in the BILL OF RIGHTS because such liberties are deemed essential to the concepts of freedom and equality. Together with the SUPREMACY CLAUSE of Article VI, the Fourteenth Amendment prohibits any state from providing less protection for a right conferred by the Sixth Amendment than is provided under the federal Constitution.

Speedy Trial

The right to a speedy trial traces its roots to twelfth-century England, when the Assize of Clarendon declared that justice must be provided to robbers, murderers, and thieves "speedily enough." The Speedy Trial Clause was designed by the Founding Fathers to prevent defendants from languishing in jail for an indefinite period before trial, to minimize the time in which a defendant's life is disrupted and burdened by the anxiety and scrutiny accompanying public criminal proceedings, and to reduce the chances that a prolonged delay before trial will impair the ability of the accused to prepare a defense. The longer the commencement of a trial is postponed, courts have observed, the more likely it is that witnesses will disappear, that evidence will be lost or destroyed, and that memories will fade.

A person's right to a speedy trial arises only after the government has arrested, indicted, or otherwise formally accused the person of a crime. Before the point of formal accusation, the government is under no Sixth Amendment obligation to discover, investigate, accuse, or prosecute a particular defendant within a certain amount of time. The Speedy Trial Clause is not implicated in post-trial criminal proceedings such as PROBATION and PAROLE hearings. Nor may a person raise a speedy-trial claim after the government has dropped criminal charges, even if the government refiles those charges at a much later date. However, the government must comply with the fairness requirements of the Due Process Clause during each juncture of a criminal proceeding.

The U.S. Supreme Court has declined to draw a bright line separating permissible pretrial delays from delays that are impermissibly excessive. Instead, the Court has developed a BALANCING test in which length of delay is just one factor to consider when evaluating the merits of a speedy-trial claim. The other three factors that a court must consider are the reason for delay, the severity of prejudice, or injury, suffered by the defendant from delay, and the stage during the criminal proceedings in which the defendant asserted the right to a speedy trial. Defendants who fail to assert this right early in a criminal proceeding, or who acquiesce in the face of protracted pretrial delays, typically lose their speedy-trial claims.

Defendants whose own actions lengthen the pretrial phase normally forfeit their rights under the Speedy Trial Clause as well. For example, defendants who frivolously inundate a court with pretrial motions are treated as having waived their rights to a speedy trial (*United States v. Lindsey,* 47 F.3d 440 [D.C. Cir. 1995]). In such situations, defendants are not allowed to benefit from their own misconduct. On the

other hand, delays that are attributable to the government, such as those due to prosecutorial NEGLIGENCE in misplacing a defendant's file, will violate the Speedy Trial Clause (*United States v. Shell,* 974 F.2d 1035 [9th Cir. 1992]).

A delay of at least one year in bringing a defendant to trial following arrest will trigger a presumption that the Sixth Amendment has been violated, with the level of judicial scrutiny increasing in direct proportion to the length of delay (*United States v. Gutierrez,* 891 F. Supp. 97 [E.D.N.Y. 1995]). The government may overcome this presumption by offering a "plausible reason" for the delay (*United States v. Thomas,* 55 F.3d 144 [4th Cir. 1995]). Courts generally will condone longer delays when the prosecution has requested additional time to prepare for a complex or difficult case. When prosecutors have offered only implausible reasons for delay, courts traditionally have dismissed the indictment, overturned the conviction, or vacated the sentence, depending on the remedy requested by the defendant.

Public Trial

The right to a public trial is another ancient liberty that Americans have inherited from Anglo-Saxon jurisprudence. During the seventeenth century, when the English Court of Oyer and Terminer attempted to exclude members of the public from a criminal proceeding that the Crown had deemed to be sensitive, defendant John Lilburn successfully argued that immemorial usage and British COMMON LAW entitled him to a trial in open court where spectators are admitted. The Founding Fathers believed that public criminal proceedings would operate as a check against malevolent prosecutions, corrupt or malleable judges, and perjurious witnesses. The public nature of criminal proceedings also aids the fact-finding mission of the judiciary by encouraging citizens to come forward with relevant information, whether inculpatory or exculpatory.

Under the Public Trial Clause, friends and relatives of a defendant must be initially permitted to attend trial. However, the right to a public trial is not absolute, and parents, spouses, and children will be excluded if they disrupt the proceedings (*Cosentino v. Kelly,* 926 F. Supp. 391 [S.D.N.Y. 1996]). Toddlers and infants, ranging from one month to two years in age, may be summarily excluded from a courtroom consistent with the Sixth Amendment, even if the judge fails to articulate a reason for doing so (*United States v. Short,* 36 M.J. 802 [A.C.M.R. 1993]). Children in this age group are too young to understand legal proceedings, are easily agitated, and present a substantial risk of hindering a trial with distractions.

The Sixth Amendment right to a public trial is personal to the defendant and may not be asserted by the media or the public in general. However, both the public and media have a qualified FIRST AMENDMENT right to attend criminal proceedings. The First Amendment does not accommodate everyone who wants to attend a particular proceeding. Nor does the First Amendment require courts to televise any given legal proceeding. Oral arguments before the U.S. Supreme Court, for example, have never been televised.

Courtrooms are areas of finite space and limited seating in which judges diligently attempt to maintain decorum. In cases that generate tremendous public interest, courts sometimes create lottery systems that randomly assign citizens a seat in the courtroom for each day of trial. A separate lottery may be established for the purpose of determining which members of the media are permitted access to the courtroom on a given day, although local and national newspapers and television stations may be given a permanent courtroom seat. Members of the media and public who are excluded from attending trial on a given day are sometimes provided admission to an audio room where they can listen to the proceedings.

In rare cases, criminal proceedings will be closed to all members of the media and the public. However, a compelling reason must be offered before a court will follow this course. For example, when the First Amendment rights of the media to attend a criminal trial collide with a defendant's Sixth Amendment right to a fair trial, the defendant's Sixth Amendment right takes precedence, and the legal proceeding may be closed (*In re Globe Newspaper,* 729 F.2d 47 [1st Cir. 1984]).

Criminal proceedings also have been conducted in private when the complaining witness is a child who is young and immature and is being asked to testify about an emotionally charged issue such as SEXUAL ABUSE (*Fayerweather v. Moran,* 749 F. Supp. 43 [D.R.I. 1990]). If the court determines that only one stage of a legal proceeding will be jeopardized by the presence of the public or the media, then only that

stage should be conducted in private (*Waller v. Georgia,* 467 U.S. 39, 104 S. Ct. 2210, 81 L. Ed. 2d 31 [1984]). For example, if a witness is expected to testify about classified government information or confidential trade secrets, the court may clear the courtroom for the duration of such testimony, but no longer.

The right to a public trial extends to pretrial proceedings that are integral to the trial phase, such as jury selection and evidentiary hearings (*Rovinsky v. McKaskle,* 722 F.2d 197 [5th Cir. 1984]). Despite the strong constitutional preference for public criminal trials, both courts-martial and juvenile delinquency hearings typically are held in a closed session, even when they involve criminal wrongdoing. In all other proceedings, the defendant may waive his right to a public trial, in which case the entire criminal proceeding can be conducted in private.

Right to Trial by an Impartial Jury

In both England and the American colonies, the Crown retained the prerogative to interfere with jury deliberations and to overturn verdicts that embarrassed, harmed, or otherwise challenged the authority of the royal government. Finding such interference unjust, the Founding Fathers created a constitutional right to trial by an impartial jury. This Sixth Amendment right, which can be traced back to the MAGNA CHARTA in 1215, does not apply to juvenile delinquency proceedings (*McKeiver v. Pennsylvania,* 403 U.S. 528, 91 S. Ct. 1976, 29 L. Ed. 2d 647 [1971]), or to petty criminal offenses, which consist of crimes punishable by imprisonment of six months or less (*Baldwin v. New York,* 399 U.S. 66, 90 S. Ct. 1886, 26 L. Ed. 2d 437 [1970]).

The Sixth Amendment entitles defendants to a jury pool that represents a fair cross section of the community. From the jury pool, also known as a venire, a panel of jurors is selected to hear the case through a process called VOIR DIRE. During voir dire, the presiding judge, the prosecution, and attorneys for the defense are allowed to ask members of the jury pool a variety of questions intended to reveal any latent biases, prejudices, or other influences that might affect their impartiality. The jurors who are ultimately impaneled for trial need not represent a cross section of the community as long as each juror maintains impartiality throughout the proceedings. The presence of even one biased juror is not permitted under the Sixth Amendment (*United States v. Aguon,* 813 F.2d 1413 [9th Cir. 1987]).

A juror's impartiality may be compromised by sources outside the courtroom, such as the media. Jurors may not consider newspaper, television, and radio coverage before or during trial when evaluating the guilt or innocence of the defendant. Before trial, judges will take special care to filter out those jurors whose neutrality has been compromised by extensive media coverage. During trial, judges will instruct jurors to avoid exposing themselves to such extraneous sources. Exposure to information about the trial from an extraneous source, whether it be the media, a friend, or a family member, creates a presumption of prejudice to the defendant that can only be overcome by persuasive evidence that the juror can still render an impartial verdict (*United States v. Rowley,* 975 F.2d 1357 [8th Cir. 1992]). Failure to overcome this presumption will result in the reversal of any conviction.

The Sixth Amendment requires a trial judge to inquire as to the possible racial biases of prospective jurors when defendants request such an inquiry and there are substantial indications that racial prejudice could play a decisive role in the outcome of the case (*United States v. Kyles,* 40 F.3d 519 [2d Cir. 1994]). But an all-white jury does not, by itself, infringe on a black defendant's right to an impartial jury despite her contention that white jurors are incapable of acting impartially due to their perceived ignorance of inner-city life and its problems (*United States v. Nururdin,* 8 F.3d 1187 [7th Cir. 1993]). However, if a white juror is biased by an indelible prejudice against a black defendant, he will be stricken from the jury panel or venire.

For similar reasons, jurors are not permitted to begin deliberations until all of the evidence has been offered, the attorneys have made their closing arguments, and the judge has read the instructions. Federal courts have found that premature deliberations are more likely to occur after the prosecution has concluded its case in chief and before the defense has begun its presentation (*United States v. Bertoli,* 40 F.3d 1384 [3d Cir. 1994]). Federal courts have also determined that once a juror has expressed a view, he is more likely to view the evidence in a light most favorable to that initial opinion. If premature deliberations were constitutionally permitted, then the government would obtain an unfair advantage over defendants because many jurors would enter the final deliberations with a

prosecutorial slant (*United States v. Resko,* 3 F.3d 684 [3d Cir. 1993]).

Although a jury must be impartial, there is no Sixth Amendment right to a jury of 12 persons. In *Williams v. Florida,* 399 U.S. 78, 90 S. Ct. 1893, 26 L. Ed. 2d 446 (1970), the U.S. Supreme Court ruled that a jury of at least six persons is "large enough to promote group deliberation, free from outside attempts at intimidation, and to provide a fair possibility for obtaining a cross-section of the community." Conversely, the Court has declared that a jury of only five members is unconstitutionally small (*Ballew v. Georgia,* 435 U.S. 223, 98 S. Ct. 1029, 55 L. Ed. 2d 234 [1978]).

Similarly, there is no Sixth Amendment right to a unanimous jury (*Apodaca v. Oregon,* 406 U.S. 404, 92 S. Ct. 1628, 32 L. Ed. 2d 184 [1972]). The "essential feature of a jury lies in the interposition between the accused and the accuser of the common sense judgment of a group of laymen," the Court wrote in *Apodaca.* "A requirement of unanimity," the Court continued, "does not materially contribute to the exercise of that judgment." If a defendant is tried by a six-person jury, however, the verdict must be unanimous (*Burch v. Louisiana,* 441 U.S. 130, 99 S. Ct. 1623, 60 L. Ed. 2d 96 [1979]).

Notice of Pending Criminal Charges

The Sixth Amendment guarantees defendants the right to be informed of the nature and cause of the accusation against them. Courts have interpreted this provision to have two elements. First, defendants must receive notice of any criminal accusations that the government has lodged against them through an indictment, information, complaint, or other formal charge. Second, defendants may not be tried, convicted, or sentenced for a crime that materially varies from the crime set forth in the formal charge. If a defendant suffers prejudice or injury, such as a conviction, from a material variance between the formal charge and the proof offered at trial, the court will vacate the verdict and sentence.

The Sixth Amendment notice requirement reflects the efforts of the Founding Fathers to constitutionalize the common law concept of fundamental fairness that pervaded civil and criminal proceedings in England and the American colonies. Receiving notice of pending criminal charges in advance of trial permits defendants to prepare a defense in accordance with the specific nature of the accusation. Defendants who are incarcerated by totalitarian governments are frequently not apprised of pending charges until the trial begins. By requiring substantial conformity between the criminal charges and the incriminating proof at trial, the Sixth Amendment eliminates any confusion as to the basis of a particular verdict, thereby decreasing the chances that a defendant will be tried later for the same offense in violation of DOUBLE JEOPARDY protections.

Many appeals have focused on the issue of what constitutes a material variance. In *Stirone v. United States,* 361 U.S. 212, 80 S. Ct. 270, 4 L. Ed. 2d 252 (1960), the U.S. Supreme Court found a material variance between an indictment charging the defendant with illegal importing activities, and the trial evidence showing that the defendant had engaged in illegal exporting activities. In *United States v. Ford,* 88 F.3d 1350 (4th Cir. 1996), the U.S. Court of Appeals for the Fourth Circuit found a material variance between an indictment charging the defendant with a single conspiracy, and the trial evidence demonstrating the existence of multiple conspiracies.

However, no material variance was found between an indictment that charged a defendant with committing a crime in Little Rock, Arkansas, and trial evidence showing that the crime was actually committed in North Little Rock, because both cities were within the jurisdiction of the court hearing the case (*Moore v. United States,* 337 F.2d 350 [8th Cir. 1964]). Nor was a material variance found in a check forgery case where the indictment listed the middle name of the defendant and the forged instrument included only a middle initial (*Helms v. United States,* 310 F.2d 236 [5th Cir. 1962]).

Confrontation of Adverse Witnesses

The Sixth Amendment guarantees defendants the right to be confronted by witnesses who offer testimony or evidence against them. The Confrontation Clause has two prongs. The first prong assures defendants the right to be present during all critical stages of trial, allowing them to hear the evidence offered by the prosecution, to consult with their attorneys, and otherwise to participate in their defense. However, the Sixth Amendment permits courts to remove defendants who are disorderly, disrespectful, and abusive (*Illinois v. Allen,* 397 U.S. 337, 90 S. Ct. 1057, 25 L. Ed. 2d 353 [1970]). If an unruly defendant insists on remaining in the court-

room, the Sixth Amendment authorizes courts to take appropriate measures to restrain him. In some instances, courts have shackled and gagged recalcitrant defendants in the presence of the jury (*Stewart v. Corbin,* 850 F.2d 492 [9th Cir. 1988]). In other instances, defiant defendants have been removed from court and forced to watch the remainder of trial from a prison cell, through closed-circuit television.

The second prong of the Confrontation Clause guarantees defendants the right to face adverse witnesses in person and to subject them to cross-examination. Through cross-examination, defendants may test the credibility and reliability of witnesses by probing their recollection and exposing any underlying prejudices, biases, or motives to distort the truth or lie. Confrontation and cross-examination are vital components of the U.S. adversarial system.

Although defendants are usually given wide latitude in exercising their rights under the Confrontation Clause, courts retain broad discretion to impose reasonable restrictions on particular avenues of cross-examination. Defendants may be forbidden from delving into areas that are irrelevant, collateral, confusing, repetitive, or prejudicial. Similarly, defendants may not pursue a line of questioning solely for the purpose of harassment. For example, courts have prohibited defendants from cross-examining alleged rape victims about their sexual histories because such questioning is frequently demeaning and is unlikely to elicit answers that bear more than a remote relationship to the issue of consent (*Bell v. Harrison,* 670 F.2d 656 [6th Cir. 1982]).

In exceptional circumstances, defendants may be prevented from confronting their accusers face-to-face. If a judge determines that a fragile child would be traumatized by testifying in front of a defendant, the Sixth Amendment authorizes the court to videotape the child's testimony outside the presence of the defendant and later replay the tape during trial (*Spigarolo v. Meachum,* 934 F.2d 19 [2d Cir. 1991]). However, counsel for both the prosecution and defense must be present during the videotaped testimony. If neither the defendant nor her attorney are permitted the opportunity to confront a witness, even if the witness is a small child whose welfare might be harmed by rigorous cross-examination, the Sixth Amendment has been violated (*Tennessee v. Deuter,* 839 S.W.2d 391 [Tenn. 1992]).

Occasionally, defendants are denied the opportunity to confront and cross-examine their accusers under the controversial rules of HEARSAY evidence. Hearsay is a written or verbal statement made out of court by one person, and that is later repeated in court by another person who heard or read the statement, and presented for the truth of the matter asserted. Because such out-of-court statements are not typically made under oath or subject to cross-examination, the law treats them as untrustworthy when introduced into evidence by a person other than the original declarant. When hearsay statements are offered for their truth, they generally are deemed inadmissible by state and federal law.

However, certain hearsay statements, such as dying declarations, excited utterances, and officially kept records, are deemed admissible when made under reliable circumstances. Dying declarations are considered reliable when made by persons who have been informed of their impending death because such persons are supposedly more inclined to tell the truth. Excited utterances are considered reliable when made spontaneously and without time for premeditation. Business and public records are considered reliable when kept in the ordinary and official course of corporate or government activities. The prosecution may introduce all four types of evidence, as well as other "firmly rooted" exceptions to the hearsay rule, without violating the Sixth Amendment, even though the defendant is not afforded the opportunity to confront or to cross-examine the out-of-court declarant (*United States v. Jackson,* 88 F.3d 845 [10th Cir. 1996]).

Compulsory Process for Favorable Witnesses

As a corollary to the right of confrontation, the Sixth Amendment guarantees defendants the right to use the compulsory process of the judiciary to subpoena witnesses who could provide exculpatory testimony or who have other information that is favorable to the defense. The Sixth Amendment guarantees this right even if an indigent defendant cannot afford to pay the expenses that accompany the use of judicial resources to subpoena a witness (*United States v. Webster,* 750 F.2d 307 [5th Cir. 1984]). Courts may not take actions to undermine the testimony of a witness who has been subpoenaed by the defense. For example, a trial

judge who discourages a witness from testifying by issuing unnecessarily stern warnings against perjury has violated the precepts of the Sixth Amendment (*Webb v. Texas,* 409 U.S. 95, 93 S. Ct. 351, 34 L. Ed. 2d 330 [1972]).

A statute that makes particular persons incompetent to testify on behalf of a defendant is similarly unconstitutional. At issue in *Washington v. Texas,* 388 U.S. 14, 87 S. Ct. 1920, 18 L. Ed. 2d 1019 (1967), was a state statute prohibiting accomplices from testifying for one another. Overturning the statute as a violation of the Sixth Amendment Compulsory Process Clause, the U.S. Supreme Court wrote that the defendant was denied the right to subpoena favorable witnesses "because the state arbitrarily denied him the right to put on the stand a witness who was physically present and mentally capable of testifying to events that he had personally observed and whose testimony was relevant and material to the defense."

Under certain circumstances, the prosecution may be required to assist the defendant in locating potential witnesses. In *Roviaro v. United States,* 353 U.S. 53, 77 S. Ct. 623, 1 L. Ed. 2d 639 (1957), the defendant was charged with the illegal sale of heroin to "John Doe." When the prosecution refused to disclose the identity of John Doe, the U.S. Supreme Court concluded that the Sixth Amendment had been abridged because the disclosure of Doe's identity may have produced "testimony that was highly relevant and . . . helpful to the defense."

Defendants also have a Sixth Amendment right to testify on their own behalf. Before the American Revolution, defendants were not permitted to take the witness stand in Great Britain and in many of the colonies. The common law presumed all defendants to be incompetent to give reliable or credible testimony on their own behalf because of their vested interest in the outcome of the trial. Each defendant, regardless of his innocence or guilt, was declared incapable of offering truthful testimony when his life, liberty, or property was at stake. The Sixth Amendment laid this common law rule to rest in the United States. The amendment permits, but does not require, a defendant to testify on his own behalf.

Right to Counsel

Because of the law's complexity and the often substantial deprivations that a criminal conviction can produce, the Sixth Amendment provides criminal defendants with a RIGHT TO COUNSEL. A defendant's Sixth Amendment right to counsel attaches when the government initiates adversarial criminal proceedings, whether by way of formal charge, PRELIMINARY HEARING, indictment, information, or ARRAIGNMENT (*United States v. Larkin,* 978 F.2d 964 [7th Cir. 1992]). Unlike the right to a speedy trial, this Sixth Amendment right does not arise at the moment of arrest unless the government has already filed formal charges (*Kirby v. Illinois,* 406 U.S. 682, 92 S. Ct. 1877, 32 L. Ed. 2d 411 [1972]). However, defendants may assert a FIFTH AMENDMENT right to consult with an attorney during CUSTODIAL INTERROGATION by the police, even though no formal charges have been brought and no arrest has been made (MIRANDA V. ARIZONA, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 [1966]).

Defendants do not enjoy a Sixth Amendment right to be represented by counsel during every phase of litigation that follows the initiation of formal adversarial proceedings by the state. Instead, defendants may only assert this right during "critical stages" of the proceedings (*Maine v. Moulton,* 474 U.S. 159, 106 S. Ct. 477, 88 L. Ed. 2d 481 [1985]). A critical stage of prosecution includes every instance in which the advice of counsel is necessary to ensure a defendant's right to a fair trial or in which the absence of counsel might impair the preparation or presentation of a defense (*United States v. Hidalgo,* 7 F.3d 1566 [11th Cir. 1993]).

Obviously, the trial is a critical stage in any criminal proceeding, as are jury selection, sentencing, and nearly every effort by the government to elicit information from the accused, including interrogation. However, courts are divided on the issue of whether the state may perform a consensual search of a defendant's premises without the advice or presence of counsel. At the same time, courts generally agree that pretrial hearings involving issues related to bail, the suppression of evidence, or the viability of the prosecution's case all qualify as critical stages of criminal proceedings (*Smith v. Lockhart,* 923 F.2d 1314 [8th Cir. 1991]). The U.S. Supreme Court has ruled that the denial of counsel during a critical stage amounts to an unconstitutional deprivation of a fair trial, warranting the reversal of conviction (*United States v. Cronic,* 466 U.S. 648, 104 S. Ct. 2039, 80 L. Ed. 2d 657 [1984]).

Courts also generally agree on a number of instances that do not constitute critical stages.

For example, pretrial scientific analysis of fingerprints, blood samples, clothing, hair, handwriting, and voice samples have all been ruled to be noncritical stages (*United States v. Wade,* 388 U.S. 218, 87 S. Ct. 1926, 18 L. Ed. 2d 1149 [1967]). Nor is a **PROBABLE CAUSE** hearing sufficiently critical to trigger the right to counsel (*Gerstein v. Pugh,* 420 U.S. 103, 95 S. Ct. 854, 43 L. Ed. 2d 54 [1975]). Each of these noncritical stages has been described as a preliminary facet of criminal prosecution that is largely unassociated with the more adversarial phases invoking the right to counsel.

If a defendant cannot afford to hire an attorney, the Sixth Amendment requires that the trial judge appoint one on her behalf (**GIDEON V. WAINWRIGHT,** 372 U.S. 335, 83 S. Ct. 792, 9 L. Ed. 2d 799 [1963]). In instances where an indigent defendant has some financial resources, she may be required to reimburse the government for a portion of the fees paid to the court-appointed lawyer. The Sixth Amendment right of indigent criminal defendants to receive a court-appointed lawyer applies to every case involving a felony offense and to all other cases in which the defendant is actually incarcerated for any length of time, regardless of whether the crime is categorized as a misdemeanor or petty offense (*Argersinger v. Hamlin,* 407 U.S. 25, 92 S. Ct. 2006, 32 L. Ed. 2d 530 [1972]).

Persons who have been convicted of crimes may not compel a court-appointed attorney to file an appeal that the attorney believes is frivolous. In *Anders v. California*, 368 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), the U.S. Supreme Court set out a procedure that an attorney must follow to request either withdrawal from the case or to have the court dispose of the case without a full legal review. However, in *Smith v. Robbins,* 528 U.S. 259, 120 S.Ct. 746, 145 L. Ed. 2d 756 (2000) the Court ruled that its precedent was not a "straitjacket" and that states were free to come up with procedures that protected both the criminal client and his attorney.

However, if an indigent defendant is prosecuted for a non-felony offense that is punishable by a potential jail or prison sentence, the Sixth Amendment is not violated if he is denied a court-appointed attorney as long as no penalty of incarceration is actually imposed (*Scott v. Illinois,* 440 U.S. 367, 99 S. Ct. 1158, 59 L. Ed. 2d 383 [1979]). In other words, an indigent defendant has no Sixth Amendment right to a court-appointed lawyer in a non-felony case when the only punishment he receives is a fine, the **FORFEITURE** of property, or some other penalty not involving incarceration. Thus, in a forfeiture proceeding where the government seized almost $300,000 from an arrested drug smuggler, the Sixth Amendment right to counsel was not infringed when the court denied the smuggler's request for a court-appointed attorney because no jail or prison sentence was ultimately imposed (*United States v. $292,888.04 in U.S. Currency,* 54 F.3d 564 [9th Cir. 1995]).

Nor is the Sixth Amendment right to counsel infringed when an indigent defendant is denied a court-appointed lawyer of her choice (*Ford v. Israel,* 701 F.2d 689 [7th Cir. 1983]). The selection of counsel to represent an indigent defendant is within the discretion of the trial court. The attorney selected need not be a great litigator, a savvy negotiator, or the best attorney available. Rather, the court-appointed lawyer must be a member in good standing of the bar who gives the client his complete and undivided loyalty, as well as a zealous and **GOOD FAITH** defense (*United States v. Cariola,* 323 F.2d 180 [3rd Cir. 1963]). The quality of representation need not be perfect but only effective and competent enough to assure the defendant due process of law (*Pineda v. Bailey,* 340 F.2d 162 [5th Cir. 1965]). If the attorney representing a defendant is incompetent, whether the attorney has been appointed by the court or privately retained, the Sixth Amendment right to the effective assistance of counsel has been violated.

The U.S. Supreme Court has reviewed numerous ineffective counsel claims. In *Glover v. United States,* 531 U.S. 198, 121 S.Ct. 696, 148 L.Ed.2d 604 (2001), the Court allowed review based on ineffective counsel at the sentencing stage. In *Roe v. Flores-Ortega,* 528 U.S. 470, 120 S. Ct. 1029, 145 L. Ed. 2d 985 (2000), the Court considered whether a defense lawyer must always consult with a defendant regarding an appeal of the conviction. The Court rejected a bright-line rule that would have mandated such a consultation, ruling that each case must be analyzed using a set of standards. In death-penalty cases, the Court had been more willing to vacate convictions based on ineffective counsel. However, in *Mickens v. Taylor,*, 535 U.S. 162, 122 S. Ct. 1237, 152 L. Ed. 2d 291 (2002), the Court departed from what has come to be known as the "death is different" standard. This standard requires less hard evidence of prejudice because of ineffective counsel. The Court ruled

that the convicted murderer's ineffective counsel claim must be analyzed by the "but for" test. The general rule mandates that the defendant show that "but for" the lawyer's conduct the result of the trial would have been different.

The court may replace any attorney, publicly appointed or privately retained, if that is in the best interests of the defendant. A court will normally replace an attorney who has a conflict of interest that prevents her from faithfully discharging her obligation of loyalty to the client. Courts also retain the prerogative to deny a defendant's request to substitute attorneys if the request comes too late in the proceedings, is made solely to delay the trial, or is not for a good reason. However, if a defendant demonstrates a good reason for the substitution of attorneys, such as a complete breakdown in communication between lawyer and client, the court must honor the request for substitution unless a compelling reason exists for denying it. The efficient administration of justice is one reason that has been deemed sufficiently compelling to deny such requests (*United States v. D'Amore,* 56 F.3d 1202 [9th Cir. 1995]).

Finally, all defendants have a Sixth Amendment right to decline the representation of counsel and proceed on their own behalf. Defendants who represent themselves are said to be proceeding pro se. However, defendants who wish to represent themselves must first make a knowing and intelligent waiver of the Sixth Amendment right to counsel before a court will allow them to do so. (*Faretta v. California,* 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562 [1975]). Courts must ensure that the defendant appreciates the disadvantages of appearing *pro se* and that he understands the potential consequences. The defendant must be informed that the presentation of a defense in a criminal case is not a simple matter of telling a story, but that it requires skills in examining a witness, knowledge of the RULES OF EVIDENCE and procedure, and persuasive oratory abilities. However, the U.S. Supreme Court has declined to apply this rule *pro se* appeals. In *Martinez v. Court of Appeal of California, Fourth Appellate District,* 528 U.S. 152, 120 S.Ct. 684, 145 L. Ed. 2d 597 (2000), the Court held that *Faretta* did not apply and that the state appeals court could require that an attorney be appointed to conduct the criminal appeal. In so ruling, the Court made clear that the Sixth Amendment does not apply to appellate proceedings.

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CROSS-REFERENCES

Cameras in Court; Clarendon, Constitutions of; Courtroom Television Network; Criminal Law; Criminal Procedure; Freedom of the Press; Incorporation Doctrine; Juvenile Law; Peremptory Challenge; Pretrial Publicity; Sequestration; Sexual Abuse; Shield Laws.

S.J.D.

An abbreviation for doctor of judicial science, a degree awarded to highly qualified individuals who have successfully completed a prescribed course of legal doctorate study after having earned J.D. and LL.M. degrees.

S.J.D. is more commonly abbreviated J.S.D.

SLANDER

See LIBEL AND SLANDER.

SLATING

The procedure by which law enforcement officials record on the blotter information about an individual's arrest and charges, together with identification and facts about his or her background.

The term *slating* is used synonymously with booking.

SLAUGHTER-HOUSE CASES

The U.S. Supreme Court ruling in the *Slaughter-House* cases, 83 U.S. (16 Wall.) 36, 21 L. Ed. 394 (1873), was the first High Court decision to interpret the FOURTEENTH AMENDMENT, which had been ratified in 1870. In a controversial decision, the Court, on a 5–4 vote, interpreted the PRIVILEGES AND IMMUNITIES CLAUSE of the amendment as protecting only rights of national citizenship from the actions of the state government. This restrictive reading robbed the Privileges and Immunities Clause of any constitutional significance.

The case involved three lawsuits filed by Louisiana meat-packing companies, challenging a Louisiana state law that allowed one meat company the exclusive right to slaughter livestock in New Orleans. Other packing companies were required to pay a fee for using the slaughterhouses. The state justified this MONOPOLY as a way to prevent health risks to people who lived near slaughterhouses, at a time when there was no refrigeration and no way to control insects. The company that was awarded the monopoly and accompanying financial windfall was politically connected to state legislators, inviting charges of corruption.

The three companies filed suit, claiming that the law violated the Privileges and Immunities Clause of the Fourteenth Amendment. They argued that this clause protected the right to labor freely. The Louisiana law restricted their freedom to butcher meat. Their challenge was unsuccessful in state court, after which they appealed to the U.S. Supreme Court.

The Supreme Court affirmed the state court. Justice SAMUEL F. MILLER, writing for the majority, ruled that the Privileges and Immunities Clause had limited effect because it only reached privileges and immunities guaranteed by U.S. citizenship, not state citizenship. The clause was meant only to prohibit a state from restricting the rights of noncitizens within its borders if it did not similarly limit the rights of its citizens. Miller noted that because the action challenged privileges of state citizenship, the Privileges and Immunities Clause did not apply.

Some of the rights of national citizenship enumerated by Miller included the right to travel from state to state, the right to vote for federal officeholders, the right to petition Congress to redress grievances, and the right to use the writ of HABEAS CORPUS. Any restriction on these national rights of citizenship by a state would be unconstitutional under the Privileges and Immunities Clause. In the case of the meat packers, however, the Court concluded that no national citizenship right was at stake.

Miller also expressed concern that an expansive reading of the Privileges and Immunities Clause would shift too much power to the federal courts and Congress. In his view the Fourteenth Amendment was designed to grant former slaves legal equality, not to grant expanded rights to the general population. The concept of FEDERALISM, which grants the states a large measure of power and autonomy, played a role in the majority's decision. The Court reasoned that Congress and the states could not have contemplated the expansion of federal power as argued by the meat packers.

The four dissenting justices thought otherwise, believing that the Fourteenth Amendment was intended to do more than just protect the newly freed slaves. Justice STEPHEN J. FIELD, in a dissent joined by the other justices, maintained, "The privileges and immunities designated are those which of right belong to the citizens of all free governments." He saw the clause as a powerful tool to keep state government out of the affairs of business and the economy.

The Privileges and Immunities Clause no longer had any constitutional impact. The Supreme Court came to rely on the DUE PROCESS and EQUAL PROTECTION CLAUSES of the Fourteenth Amendment to protect persons from unconstitutional actions by state government.

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CROSS-REFERENCES

Due Process of Law; Equal Protection.

SLAVERY

A civil relationship in which one person has absolute power over the life, fortune, and liberty of another.

History

At some point in history, slavery has plagued nearly every part of the world. From ancient Greece to the modern Americas, innumerable governments have sanctioned the complete control of certain persons for the benefit of other persons, usually under the guise of social, mercantile, and technological progress.

The U.S. legacy of slavery began in the early seventeenth century. However, the stage for U.S. slavery was set as early as the fourteenth century, when the rich nations of Spain and Portugal began to capture Africans for enslavement in Europe. When Spain, Portugal, and other European countries conquered and laid claim to the

Amistad: Mutiny on a Slave Ship

African slaves occasionally revolted against their masters, and the result was usually severe punishment for the slaves. The mutiny of fifty-four slaves on the Spanish ship *Amistad* in 1839 proved an exception, however, as the U.S. Supreme Court granted the slaves their freedom and allowed them to return to Africa.

The fifty-four Africans were **KIDNAPPED** in West Africa, near modern-day Sierra Leone, and illegally sold into the Spanish slave trade. They were transported to Cuba, fraudulently classified as native Cuban slaves, and sold to two Spaniards. The slaves were then loaded on the schooner *Amistad,* which set sail for Haiti.

Three days into the journey, the slaves mutinied. Led by Sengbe Pieh, known to the Spanish crew as Cinque, the slaves unshackled themselves, killed the captain and the cook, and forced all but two of the crew to leave the ship. The Africans demanded to be returned to their homeland, but the crew tricked them and sailed toward the United States. In August 1839 the ship was towed into Montauk Point, Long Island, in New York.

Cinque and the others were charged with murder and **PIRACY**. A group of abolitionists formed the Amistad Committee, which organized a legal defense that sought the slaves' freedom. U.S. President **MARTIN VAN BUREN**, pressed by Spain to return the slaves without trial, hoped the court would find the slaves guilty and order them returned to Cuba. The federal circuit court dismissed the murder and piracy charges because the acts had occurred outside the jurisdiction of the United States. It referred the case to the federal district court for trial to determine if the slaves must be returned to Cuba.

At the trial the slaves argued that there was no legal basis for returning them to Cuba because the importation of slaves from Africa was illegal under Spanish law. The district court agreed, ruling that the Africans were free and should be transported home. Van Buren ordered an immediate appeal to the Supreme Court.

Former president **JOHN QUINCY ADAMS** represented the slaves before the Supreme Court, making an impassioned argument for their freedom. The Court, in *United States v. Libellants of Schooner Amistad,* 40 U.S. 518 (15 Pet. 518), 10 L. Ed. 826, affirmed the district court and agreed that the Africans were free persons. By the end of 1841, thirty-five of the *Amistad* survivors had sailed for Sierra Leone; the rest remained in the United States.

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New World of the Caribbean and West Indies in the late sixteenth century, they brought along the practice of slavery. Eventually, slavery expanded to the north, to colonial America.

The first Africans in colonial America were brought to Jamestown by a Dutch ship in 1619. These 20 Africans were indentured servants, which meant that they were to work for a certain period of time in exchange for transportation and room and board. They were assigned land after their service and were considered free Negroes. Nonetheless, their settlement was involuntary.

The status of Africans in colonial America underwent a rapid evolution after 1619. One early judicial decision signaled the change in European attitudes toward Africans. In 1640, three Virginia servants—two Europeans and one African—escaped from their masters. Upon recapture, a Virginia court ordered the European servants to serve their master for one more year and the African servant to serve his master, or his master's assigns, for the rest of his life.

As early as 1641, colonial Massachusetts recognized slavery as a legal institution, announcing in its Body of Liberties that "[t]here shall never be any bond slaverie . . . unless it be lawful Captives taken in just warres, and such strangers as willingly sell themselves or are sold to us." Twenty years later, just two generations after the arrival of the first Africans in colonial America,

the first statute recognizing African slavery was passed in Virginia.

In the mid-1600s, Virginia colonists began to take note of the phenomenal agricultural production occurring in the Caribbean and West Indies. The extreme labor demands and savage punishments of European colonists there had depleted the population of productive Amerindian slaves, but those same colonists were continuing to prosper. By purchasing masses of able-bodied pubescent and adult Africans, the colonists avoided waiting for a slave population to increase by native birth, and in the scramble for quick, easy, and substantial profits in the New World, this strategy gave them an edge. Virginia colonists, eager to achieve the same prosperity, endeavored to sanction African slavery.

In 1661, Virginia colonists enacted a law that legitimized African slavery and provided that the status of an African child would be determined by the status of its mother. If the mother of a child was a slave, then her child was doomed to slavery. In the following years, colonial Virginia passed more laws that severely restricted the rights of African slaves and expanded the rights of owners of African slaves. Each of the original colonies eventually followed Virginia's lead by enacting similar laws that promoted or recognized the enslavement of Africans.

Most of the first African slaves were captured in Africa by the Dutch or by fellow Africans. They were then manacled and delivered in crowded, brutal conditions across the Atlantic Ocean by the Dutch West India Company, an organization formed in Holland for the sole purpose of trafficking in slaves. English companies such as the East India Company and the Royal African Company also contributed to the seventeenth-century American slave trade. Although untold numbers of Africans died en route, the profitable slave trade so increased the African slave population in America that by the late 1600s, European colonists were already beginning to anticipate insurrections and slave revolts. By 1750, populations of displaced Africans would range from an estimated 550 in New Hampshire to over 101,000 in Virginia.

From the beginning, African slaves resisted their servitude by running away, fighting back, poisoning food, and plotting revolts. The first Europeans to openly denounce slavery and work for its ABOLITION were Quakers, or members of the Society of Friends, who were concentrated in Pennsylvania. As early as 1688, the Quakers publicly declared that slavery was at odds with Christianity. Along with other European abolitionists, they actively worked to help African slaves escape their owners.

The legal treatment of African slaves varied slightly from colony to colony according to the area's economic structure. Northern colonies such as Massachusetts, Connecticut, and Rhode Island relied on the export of various local commodities such as fish, liquor, and dairy products, so their involvement with African slavery was in large part limited to slave trading. Nonetheless, the New England colonies sanctioned the use of slave labor, and they enacted codes that prevented African slaves from exercising such basic rights as FREEDOM OF ASSOCIATION and movement. Though generally regarded as less harsh than those of such southern colonies as Virginia and the Carolinas, the New England slave codes nevertheless legalized the enslavement of Africans.

The middle colonies—New York, Pennsylvania, Delaware, and New Jersey—also had codes that promoted the slave industry and deprived African slaves of most basic rights. Laws were often tailored especially for African slaves. In New York, for example, any slave found 40 miles north of Albany was presumed to be escaping to Canada and could be executed upon the oath of two witnesses. In New York City, slaves could not appear on the street after dark without a lighted lantern. From 1700 to 1740, growth of the African slave population in New York outdistanced growth of the European population and gave the city the largest slave population in the region. Many of these slaves provided domestic service to wealthy families. Except in New York, slavery in the middle colonies was not widespread, because the commercial economies and small-scale agriculture practiced by the Germans, Swedes, and Danes in this region did not require it. Further, many settlers in the rural areas of the middle colonies were morally opposed to slavery. Neither of these conditions prevailed in the southern colonies.

Georgia was originally established as a slavery-free English colony in 1733, but the prohibition against slavery was repealed in 1750 after repeated entreaties from European settlers. The economies of colonial Virginia, Maryland, and North and South Carolina centered on large-scale agricultural production. The vast majority of the South's colonial agrarians profited at first from the sale of

Reparations

The U. S. government enacted the **THIRTEENTH AMENDMENT** to abolish slavery, but it has never formally apologized to African Americans for their enslavement nor offered financial reparations to compensate them for their peonage. Since the end of the **U.S. CIVIL WAR** there have been occasional calls by African Americans for reparations, but political and legal efforts have always failed. However, in the 1990s a new movement for slavery reparations began to coalesce, led by a group of scholars and lawyers. This group has been encouraged by the payment of reparations to Jewish Holocaust victims by German corporations that employed slave labor and by the U.S. government's payment of $60,000 to every Japanese American person held in detention camps during **WORLD WAR II**. Nevertheless, the slavery reparations issue arouses strong emotions in those opposed to the idea. In addition, legal doctrines make the prospect of court victories unlikely.

The idea of reparations is rooted in the field order issued by Union General William Tecumseh Sherman as he conquered several Southern states during the last months of the Civil War. Sherman's order authorized the distribution of 40 acres of Southern land to each freed slave and the loan of a government mule to work the land. The promise of "40 acres and a mule" proved illusory, however, as Congress failed to ratify such a program. In short order Southern whites reclaimed their land and Southern blacks became sharecroppers, renting out land in return for a meager financial return.

A reparations lawsuit against the U.S. **TREASURY DEPARTMENT** was dismissed in 1915, but in the 1920s **MARCUS GARVEY** made reparations part of his Black Nationalist program. In the 1950s and 1960s Elijah Muhammad, leader of the **NATION OF ISLAM**, preached black separatism and called on the government to give blacks land as reparations for slavery. During the **CIVIL RIGHTS MOVEMENT** of the 1960s reparations were ignored, with leaders focusing on political and civil equality. However, by the late 1960s a new, more radical form of Black nationalism started to emphasize the need for economic justice. In 1969 James Forman issued a "Black Manifesto" that demanded $500 million as reparations "due us as people who have been exploited and degraded, brutalized, killed, and persecuted." Again, reparations were ignored and the issue appeared dead. It was resurrected, however, in 1989 when Representative John Conyers (D-Mich.) introduced a resolution that sought to establish a commission that would study reparations for African Americans. The resolution went nowhere, but Conyers has continued to introduce it every year, to no avail.

The modern debate over reparations began in earnest with the publication of Randall M. Robinson's bestseller, *The Debt: What America Owes Blacks*. Robinson argued that the value of slave labor over the course of 246 years of American slavery easily reached into the trillions of dollars. He noted that slaves picked and processed cotton, which fueled commerce and industry throughout the United States. Robinson called on the government to establish independent community trust funds that would distribute money into the community to fund black-owned businesses and to fund education and training programs. He disavowed the direct payment of reparations to individuals. Harvard Law School Professor Charles Ogletree and other lawyers and scholars joined Robinson to form the Reparations Coordinating Committee. The committee has explored suing the U.S. government, and in 2002 it filed suit against several U.S. corporations that allegedly profited from slavery during the nineteenth century. A 2001 California law has aided the group's efforts, for it requires all insurance com-

tobacco, rice, and indigo. These products were planted, cultivated, and harvested exclusively by African slaves on vast farms known as plantations. Plantation production relied on manual labor and in order to be successful required huge numbers of workers, and thus the southern colonies found their needs met by the widespread enslavement of Africans.

Because of the importance of slavery to the plantation-based economies, slave codes in the southern colonies were made quite elaborate. For example, South Carolina prevented slave owners from working their slaves for more than 15 hours a day in spring and summer and more than 14 hours a day in fall and winter. Slave owners were also warned against undue cruelty to slaves. At the same time, Europeans were not allowed to teach African slaves to read or write; freedom of movement was severely restricted for slaves; liquor could not be sold to slaves; and whippings, mutilations, and other forms of punishment for slaves were explicitly authorized by law.

The laws regarding slaves reflected the **TERRORISM** and paternalism of slavery. A slave had a nebulous right to **SELF-DEFENSE**, but a slave owner was allowed to restrain and punish a slave with impunity. A slave owner could not beat a slave publicly, but a slave could not avoid pun-

panies doing business in California to report on any policies issued to slaveholders prior to 1865. A number of prominent companies revealed in their 2002 filings that they had issued slave insurance and thereby profited from slavery.

The debate over reparations has divided along racial lines. A 2002 opinion poll found that 80 percent of African Americans endorsed a formal apology for slavery from the U.S. government and 67 percent were in favor of monetary reparations. This contrasted sharply with white respondents; 30 percent of whites supported an apology while only 4 percent thought that monetary compensation was appropriate. Opposition to reparations falls into three main arguments. First, opponents note that all former slaves are dead and that living descendants do not deserve payments for their ancestors' losses. This is quite different from the U.S. government's payments to living Japanese Americans for their detention during World War II. A second objection is more practical: who would get the money and how much would each person receive? Critics point out that some African Americans were not slaves before the Civil War and that other blacks immigrated to the United States since the **ABOLITION** of slavery. It would be exceedingly difficult to sort out the descendants of slaves. A third objection centers on making current white Americans liable for the sins of the past. Critics note that millions of people entered the United States from Europe, Asia, and South American between 1865 and today. These individuals, as well as the descendants of non-slaveholding Americans, should not be forced to pay their tax dollars to compensate for a reprehensible system they had nothing to do with. In addition, some African-American scholars have voiced concerns about the symbolic consequences of seeking reparations. They contend that this cause reinforces the role of blacks as victims and looks to the past rather than the future.

Proponents of reparations respond by arguing that financial compensation will not go to individuals, thus eliminating the practical difficulties of identifying claimants. They also contend that slavery, along with the 100 years of repression and discrimination following the Civil War, have directly injured African Americans living today. They point out that the U.S. government is an ongoing organization that is responsible for its actions, whether or not individuals were present at the time of the actions in question. Finally, they believe that while the money is important, the demand for restitution will encourage the healing of old wounds.

Most commentators believe that reparations will not be achieved through the legal system, due to many substantive and procedural doctrines. In *Cato v. United States,* 70 F.3d 1103 (9th Cir. 1995), a federal appeals court dismissed a lawsuit that sought reparations and an apology from the U.S. government. The court found that it had no jurisdiction to consider the case. First, private citizens cannot sue the federal government under the doctrine of **SOVEREIGN IMMUNITY**. Second, the plaintiffs did not have standing to bring the suit because they could not show they were personally injured by slavery. The court made clear that generalized class-based grievances cannot be heard in a court of law. The court concluded that the plaintiffs should press their claims with Congress. Based on this ruling, many commentators have expressed skepticism that the 2002 lawsuit against several corporations would succeed. The companies will also be able to demonstrate that prior to the Civil War slavery was legal.

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CROSS-REFERENCES

Civil Rights Movement; Emancipation Proclamation; Reconstruction.

ishment for a crime committed at an owner's command. A free Negro could not voluntarily submit to slavery for a price, and Europeans were not allowed to subject a free African to slavery by treating one as a slave for any length of time. Every African was presumed to be a slave, however, until she or he could prove otherwise. This presumption was abolished in the northern states shortly after the United States won its independence from England, but it remained unchanged in the southern states until the end of the **U.S. CIVIL WAR**.

Not all Africans were slaves. Some free Africans had bought their freedom, some were the descendants of Jamestown's first free African servants, some had escaped their owner, and some had been freed, or manumitted, by their owner. A slave owner could not free a slave if doing so left the slave unable to pay his or her debts. Some statutes allowed a slave owner to free only slaves who could work and support themselves, and other statutes required a slave owner to provide continuing financial support to freed slaves.

In some areas in the South, manumission of a slave was illegal, but the law did not prevent a slave owner from sending or taking slaves to another state to set them free. In states where

manumission was legal, an owner could free a slave by executing a deed declaring the slave's liberty. Generally, the deed had to be filed in a county clerk's office or authorized or proved in court. Some states allowed for the manumission of slaves in the slave owner's will. A gift of land to a slave by a slave owner was often held to be a manumission of the slave, since only a free individual could own land. A manumitted slave was entitled to work for wages and to own land and PERSONAL PROPERTY through acquisition or inheritance.

After the United States won the WAR OF INDEPENDENCE, Vermont, Pennsylvania, New Hampshire, Connecticut, Rhode Island, New York, and New Jersey all passed legislation that gradually abolished slavery. These northern states, inspired mostly by the revolutionary, liberal philosophies of the period, began advocating expanding notions of freedom that were being rejected in Delaware, Maryland, Virginia, the Carolinas, and Georgia.

In May 1787, delegations from each of the 13 colonies began to meet in Philadelphia to devise a federal constitution. The Constitutional Convention was to begin on May 14, but few representatives had arrived by then, and it was postponed. On May 25, seven states were represented, and the convention began. Delegates from the various colonies continued to arrive through June, with the last ones coming from New Hampshire on July 22, four days before the convention was adjourned. Slavery was just one topic on a very long agenda.

The abolition of the U.S. enslavement of Africans was not seriously entertained at the convention. Virginia's GEORGE MASON and many delegates from the northern states argued against any recognition of slavery in the Constitution, but the overriding concern at the convention was to unify the states under a system of government that left substantial control of social and POLITICAL QUESTIONS to the individual states. It seemed clear to the majority of the representatives that a country founded on individual freedoms could not participate in slave trading, but it was equally clear that if the widespread enslavement of Africans by the southern states were prohibited by the new federal government, there would be no United States.

North Carolina, South Carolina, and Georgia insisted that a state's right to import slaves be left untouched. Delegates from other states argued for the abolition of slavery, and still other delegates wanted no hint of the practice included in the Constitution. A committee comprising one delegate from each state was dispatched to settle the issue. The committee returned with a constitutional clause, couched in the negative, that made slave trade vulnerable to prohibition after the year 1800. The strange set of bedfellows produced by this issue—New Jersey, Pennsylvania, Delaware, and Virginia were against the clause—illustrated the variety of considerations at play.

After further debate and modification by the entire convention, the Slave Trade Clause was inserted into Section 9 of Article I: "The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight." Attached to this language was another clause that allowed for the imposition of a tax or duty on such importation, not to exceed $10 for "each Person" (read, "each Slave").

The one other opaque reference to slavery in the Constitution was the so-called Three-fifths Compromise. In Article I, Section 2, the Framers wrote that the population of a state, for purposes of determining taxation and representation in the House of Representatives, would be measured by counting the "Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons." This language struggled mightily to avoid the mention of African slavery but was understood as allowing the southern states to count each slave as three-fifths of a person in a government census.

This method of population measurement, three-fifths, was actually developed by Congress in 1783, during debate over state representation in the federal government. The northern states opposed the inclusion of African slaves in the determination of population because the southern states contained thousands of African slaves who played no part in the political process. The southern states argued that a state's African slave population reflected its true power and wealth, which should in turn be reflected in its federal representation. The northern states eventually compromised with the southern states to allow five African slaves to equal three free men for

purposes of population determinations and federal representation.

At the Constitutional Convention, standing alone, the three-fifths proviso did not immediately satisfy the majority of states. Opposition to the measure was not organized: no single cause unified the dissatisfied states, and no split occurred between slave states and free states. Opposition also was not based on the morality of counting slaves as less than full citizens: very little wrangling took place over this concern, and an amendment to count slaves as whole persons was rejected by a vote of 8–2. Eventually, the three-fifths ratio was adopted for the Constitution, but only after direct taxation of the states was also tied to state population. Thus, the only compromise regarding the recognition of African slaves grew from struggles over money and political power, not a concern over morality. A showdown between the slave states and the free states over African slavery never occurred. Although the United States was to cease the purchase and sale of slaves, the practice of slavery in the southern states survived the Constitutional Convention.

While all this politicking was taking place, the land in the southern states was fast becoming infertile. Farmers and plantation owners realized they needed to diversify their crops to save the soil. Shortly after the Constitution was ratified in 1789, the southern states sought the development of a cotton gin in order to convert agricultural production from rice, tobacco, and indigo to cotton. The cotton gin, which mechanically extracted cotton seeds, was eventually designed by Eli Whitney and Phineas Miller in 1792. The production of cotton did not require large start-up funds, and with the cotton gin for seed removal, African slaves had more time for cultivation. These changes all added up to large profits for southern plantation owners. With the help of New England slave traders, the plantation owners imported African slaves by the tens of thousands in the years following the Constitutional Convention. Nevertheless, in March 1807, Congress passed a law prohibiting the importation of African slaves. Effective January 1, 1808, in fulfillment of the suggestion contained in Article I, Section 2, of the Constitution, the U.S. slave trade officially ended. But a state's right to sanction slavery did not.

In the early 1800s, the United States was expanding, and the question of slavery began to consume the country. In 1819, leaders in the U.S. House of Representatives proposed a bill that would allow the Missouri Territory to enter the Union as a slave state. Although northern legislators outnumbered southern legislators at the time, House Speaker HENRY CLAY, of Kentucky, arranged an accord between enough congressional members to pass a version of the bill that admitted Missouri as a slave state. In exchange for legal slavery in Missouri, the southern legislators agreed to limit the northern boundaries of slavery to the same latitude as the southern boundary of Missouri. Thus were the terms of the MISSOURI COMPROMISE OF 1820, which became a watershed in the U.S. experience with slavery.

In its constitution, Missouri declared it would not allow slaves to be emancipated without their owner's consent. Furthermore, free African Americans were not allowed to enter the state. Antislavery congress members objected to the latter clause on the ground that it violated the federal Constitution's mandate that "the Citizens of each State shall be entitled to all PRIVILEGES AND IMMUNITIES of Citizens in the several States" (art. IV, § 2). African Americans had, after all, gained citizenship in the northern states.

Again Clay maneuvered votes in Congress. Missouri agreed not to discriminate against citizens from other states, but did so in a resolution that was abstract and unclear and left unsettled the question of precisely who was a citizen of the several states. In 1821, Missouri's constitution was approved, and Missouri was officially a slave state.

Once Missouri was admitted to the Union as a slave state, Maine was admitted as a free state; the Senate had refused to accept Maine until the House altered its position on Missouri. As a result, in 1821, the Union consisted of 12 free states, 12 slaves states, and a deepening divide between the two.

European settlements pressed westward. After the United States acquired the Southwest by force in the Mexican War, it again faced the question of slavery. In 1850, Congress altered the geographic limits on slavery established by the Missouri Compromise. California was admitted as a free state, but the Utah and New Mexico Territories were opened to slavery. The KANSAS-NEBRASKA ACT of 1854 further eroded the dictates of the Missouri Compromise by admitting slavery in those territories.

One particular case brought by a slave came to a head in the 1850s and caught the attention of the Republican presidential candidate for the 1860 election, former Illinois congressman ABRAHAM LINCOLN. In DRED SCOTT V. SANDFORD, 60 U.S. (19 How.) 393, 15 L. Ed. 691 (1857), Dred Scott sued the widow of his deceased owner in Missouri state court, asking for his freedom. The dispute began in 1834 and ended with an 1857 Supreme Court decision confirming Scott's slave status. The decision galvanized abolitionists in the north, and Lincoln railed against the decision in his campaign for the presidency. The decision also strengthened the resolve of pro-slavery forces in the South. As the struggle for power between slavers and emancipators intensified, the geographic lines proscribing slavery, drawn and redrawn, were fast becoming battle lines.

In 1860, Republican Abraham Lincoln won the presidency on an anti-slavery platform, and like-minded Republicans gained a majority in Congress. In February 1861, with the abolition of slavery imminent, South Carolina seceded from the Union, and Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Texas, Arkansas, and Tennessee soon followed suit. Before Lincoln's inauguration in March, the Confederacy was in place. On April 12, the Confederates attacked South Carolina's Fort Sumter, and the U.S. internal war over the issue of slavery had begun.

Many early American colonists had believed they were justified in enslaving Africans because Africans were not Christians. After the American Revolution, as the country became polarized over the issue of slavery, slavery supporters in the South worked to clear the southern states of anti-slavery leaders and their forces. One abolitionist, for example, was beaten, tarred and feathered, set afire, doused in water, and whipped. As late as the 1820s, more than one hundred abolitionist groups operated in the slave states, but by the 1840s, virtually none was left. Slavers in the southern states also began to cultivate more ambitious rationales for African slavery. Slavery supporters cited essays written by the ancient Greek philosopher ARISTOTLE that declared that slavery was the natural order of things.

Aristotle had claimed that slaves were slaves because they had allowed themselves to become enslaved. This was just and right, his theory continued, because if those with strong bodies (Africans, to U.S. slavers) performed the labor, those with upright bodies (European colonists and their descendants) would have the time and energy for technological and economic advancement. U.S. slavery enthusiasts expanded on the theories of Aristotle and other philosophers to explain that it was the Africans' lot in life to be slaves because it was inherent in their nature to be servile and hardworking. Other southern slavers forwent any philosophy of slavery and simply enjoyed the luxuries realized through the enslavement of Africans.

Throughout the Civil War, President Lincoln and the U.S. Congress were busy passing federal legislation on the subject of slavery. On August 6, 1861, Congress passed the Confiscation Act, which allowed the United States to lay claim to any property used in insurrection against it. Under this act, slaves who served in the Confederate army were to be set free upon capture by Union forces. In June 1862, Lincoln signed a bill passed by Congress that abolished slavery in all territories owned by the federal government. On January 1, 1863, Lincoln issued the EMANCIPATION PROCLAMATION, which declared that all slaves in the United States were free persons and that they were to remain free persons.

In April 1865, the Confederate army surrendered to the Union forces. This event touched off a flurry of constitutional amendments. The THIRTEENTH AMENDMENT, which abolished slavery, was ratified by Congress on December 6, 1865. The FOURTEENTH AMENDMENT, ratified July 9, 1868, was designed to, in part, establish former slaves as full citizens and ensure that no African American would be deprived of any of the privileges and immunities that come with citizenship. The Fourteenth Amendment also deleted the offensive three-fifths ratio from the measurement of populations in Section 2 of Article I, and declared that debts relating to the loss or emancipation of slaves were illegal and void. The FIFTEENTH AMENDMENT, ratified February 3, 1870, gave male African Americans and male former slaves the right to vote.

African slavery in the United States continued to haunt the country long after its abolition. In the North, SEGREGATION of African Americans from the European populations was a reality, if not sanctioned by law. Beginning in the 1880s, many southern states enacted BLACK CODES, or JIM CROW LAWS, which restricted the freedom of movement and expression of African

Americans and enforced their segregation from the rest of society.

Contemporary Issues Surrounding Slavery

Notions of slavery in the United States have expanded to include any situation in which one person controls the life, liberty, and fortune of another person. All forms of slavery are now widely recognized as inherently immoral and thoroughly evil. Slavery still occurs in various forms, but when it does, accused offenders are aggressively prosecuted. Federal statutes punish by fine or imprisonment the enticement of persons into slavery (18 U.S.C.A. § 1583), and the holding to or selling of persons into INVOLUNTARY SERVITUDE (§ 1584). In addition, whosoever builds a ship for slave carriage, serves on a ship carrying slaves, or owns a slave-carrying ship will be fined or imprisoned under 18 U.S.C.A. §§ 1582, 1586, and 1587, respectively.

The statute 18 U.S.C.A. § 1581 prohibits peonage, which is involuntary servitude for the payment of a debt. Labor camps are perhaps the most common violators of the law against peonage. The operators of some labor camps keep victims for work in fields through impoverished conditions, threats, acts of violence, and alcohol consumption. Offenders often provide rudimentary shelter to migrant workers and demand work in return, which can constitute involuntary servitude. An individual can also be convicted of sale into involuntary servitude for delivering victims under FALSE PRETENSES to such labor camps.

In the late 1990s and early 2000s, much of the debate surrounding slavery related to movements urging the U.S. government to pay reparations to descendants of slaves. Supporters of this movement suggest that cash payments made to these descendants is justified to compensate the victims of slavery for years of hardship, harm, and indignities. Local governments in such cities as Dallas, Chicago, Detroit, and Cleveland have urged Congress to consider this form of payment. Opponents of reparations note that the costs of reparations, if given to the extent that some supporters urge, would cost the federal government trillions of dollars. Moreover, many critics question how these cash payments would be made and how recipients would be identified for receiving them.

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Celia, a Slave; Civil Rights; Civil Rights Acts; Constitution of the United States; Douglass, Frederick; Fugitive Slave Act of 1850; Indenture; Ku Klux Klan; Ku Klux Klan Act; *Prigg v. Pennsylvania*; Republican Party; States' Rights; Taney, Roger Brooke. See also primary documents in "Slavery" section of Appendix.

SLIP DECISION

A copy of a judgment by the U.S. Supreme Court or other tribunal that is printed and distributed almost immediately subsequent to the time that it is handed down by the court.

SLIP LAW

A copy of a bill that is passed by a state legislature and endorsed by the governor, or passed by Congress and signed by the president, and is printed and distributed almost immediately.

SMALL BUSINESS

A type of enterprise that is independently owned and operated, has few employees, does a small amount of business, and is not predominant in its area of operation.

CROSS-REFERENCES

Sole Proprietorship.

SMALL BUSINESS ADMINISTRATION

The Small Business Administration (SBA) is a federal agency that seeks to aid, counsel, assist, and protect the interests of small business. The

SBA ensures that small business concerns receive a fair portion of federal government purchases, contracts, and subcontracts, as well as of the sales of government property. The agency is best known for its loans to small business concerns, state and local development companies, and the victims of floods or other catastrophes.

The SBA was created by the Small Business Act of 1953 (67 Stat. 232 [15 U.S.C.A. § 631 et seq.]) and derives its present authority from this act and the Small Business Investment Act of 1958 (15 U.S.C.A. § 661).

Financial Assistance

The SBA provides guaranteed loans to small businesses to help them finance plant construction, conversion, or expansion and acquire equipment, facilities, machinery, supplies, or materials. It also provides them with working capital. Since 1976 farms have been considered to be small business concerns.

The SBA also provides loan guarantees to finance residential or commercial construction. The administration may finance small firms that manufacture, sell, install, service, or develop specific energy measures. In an effort to reach more businesses, the SBA provides loans and grants to private, nonprofit organizations that, in turn, make small loans and provide technical assistance to small businesses.

Through its Surety Bond Guarantee Program, the SBA helps to make the contract bonding process accessible to small and emerging contractors who find bonding unavailable. A bond is posted as a guarantee that the contracted work will be performed. If the work is not performed, the money pledged in the bond will be used to cover the contractor's default. The SBA program guarantees to reimburse the issuer of the bond up to 90 percent of losses incurred under bid, payment, or performance bonds issued to small contractors on contracts valued up to $1.25 million.

Disaster Assistance

The SBA lends money to help the victims of floods, riots, or other catastrophes repair or replace most disaster-damaged property. Direct loans with subsidized interest rates are made to assist individuals, homeowners, businesses, and small agricultural cooperatives without credit elsewhere that have sustained substantial economic injury resulting from natural disasters.

Investment Assistance

The administration licenses, regulates, and provides financial assistance to small business investment companies and section 301(d) licensees (formerly minority enterprise small business investment companies). The sole function of these investment companies is to provide venture capital in the form of EQUITY financing, long-term loan funds, and management services to small business concerns.

Government Contracting

The SBA works closely with the purchasing agencies of the federal government and with the leading U.S. contractors in developing policies and procedures that will increase the number of contracts awarded to small businesses.

The administration has a number of services that help small firms obtain and fulfill government contracts. It sets aside suitable government purchases for competitive award to small business concerns and provides an appeal procedure for a low-bidding small firm whose ability to perform a contract is questioned by the contracting officer. The SBA maintains close ties with prime contractors and refers qualified small firms to them. In addition, it works with federal agencies in setting goals for procuring prime contracts and subcontracts for small businesses, especially those owned by women and members of disadvantaged groups.

Business Initiatives

The SBA is recognized for its longtime effort to provide education, counseling, and information to small business owners and prospective owners. It has increasingly relied on forging partnerships with nongovernmental groups to deliver business education and training programs at low cost. For example, the Service Corps of Retired Executives (SCORE) provides one-on-one counseling free of charge.

The Business Information Center (BIC) program is an innovative approach to providing a one-stop location for information, education, and training. Components of BIC include the latest computer hardware and software, an extensive small business reference library, and a collection of current management videotapes.

The SBA also produces many pamphlets and publications about a variety of business and management topics. It has also established SBA Online, a toll-free electronic bulletin board for small businesses.

Minority Enterprise Development

Sections 7(j) and 8(a) of the Small Business Act provide for the Minority Enterprise Development Program, designed to promote business ownership by socially and economically disadvantaged persons. Participation is available to small businesses that are at least 51 percent unconditionally owned, controlled, and managed by one or more individuals determined by the SBA to be socially and economically disadvantaged. Program participants receive a wide variety of services, including management and technical assistance, loans, and federal contracts.

Advocacy

The Office of Advocacy serves as a leading advocate within public policy councils for the more than 22 million small businesses in the United States. The office, which is headed by the chief counsel for advocacy, lobbies Congress, the EXECUTIVE BRANCH, and state agencies concerning the interests and needs of small business. The office also is a leading source of information about the state of small business and the issues that affect small business success and growth.

Women's Business Ownership

The Office of Women's Business Ownership (OWBO) provides assistance to the increasing number of women business owners and acts as their advocate in the public and private sector. It is the only office in the federal government specifically targeted to women business owners, assisting them through technical, financial, and management information and business training, skills counseling, and research.

The OWBO has established 54 training centers in 28 states and the District of Columbia, which provide community-based training for women at every stage of their entrepreneurial careers. In addition, the office created the Women's Network for Entrepreneurial Training, a one-year mentoring program linking experienced entrepreneurs with women whose businesses are poised for growth. This program is designed to help women avoid the common mistakes of new business owners.

Small Business Development Centers

Small Business Development Centers provide counseling and training to existing and prospective small business owners. The 950 centers operate in every state, as well as in Puerto Rico, the U.S. Virgin Islands, and Guam. Each center is a partner with state government in economic development activities to support and assist small businesses.

Administration

Between 1953 and 2002 SBA programs assisted almost 20 million small businesses. Between 1991 and 2000 the SBA aided almost 435,000 small businesses in receiving more than $94.6 billion in loans. The SBA continues to increase participation by minority-owned businesses by means of its minority small business program and publication of informational materials in Spanish.

The SBA has its headquarters in Washington, D.C. It maintains ten regional offices and has field offices in most major U.S. cities.

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CROSS-REFERENCES

License; Small Business.

SMALL CLAIMS COURT

A special court, sometimes called conciliation court, that provides expeditious, informal, and inexpensive adjudication of small claims.

Every state has established a small claims or conciliation court to resolve legal disputes involving an amount of money that is less than a set dollar amount. At one time, $1,000 was the limit. However, many courts have raised the limit to $3,000, and a few will hear disputes involving amounts of up to $5,000 or more. Small claims courts and the rules that govern them emphasize informality and timely resolution of disputes. Most parties represent themselves in small claims court, in part because the facts of the dispute are simple but also because it makes little economic sense to pay attorneys' fees.

The first small claims court was created in Cleveland in 1913. Within a few years every state had such a court of limited jurisdiction. Small claims courts are attractive for consumers who want to collect a small debt or recover damages

A sample application to file a small claims (commercial) complaint

Application to File a Small Claim

APPLICATION TO FILE SMALL CLAIM/COMMERCIAL CLAIM

_____ **CITY COURT:** **COUNTY OF** _____

FILING FEE - Money Order, Certified Bank Checks or Cash only (No **Personal or Business Checks accepted)**

Type of Claim:	**Filing Fee:**	**(Check one)**
Small Claim	$10.00 - Claim of $1,000 or less	_____
(Individual suing individual or company)	$15.00 - Claim exceeding $1,000	_____
Commercial Claim	$20.00 + $4.79 postage	_____
(Company suing company or individual - see reverse for limitation on number of filings and required Certificate of Authority)(An additional $4.79 is required for each additional defendant)		
Consumer Transaction	$20.00 + $4.79 postage	_____
(Company suing individual - see reverse for definition of Consumer Transaction, limitation on number of filings, Certificate of Authority and Demand Letter Certification)(An additional $4.79 is required for each additional defendant if you are suing multiple defendants)		
Counterclaim	$3.00 + $ .37 postage	_____

Date: _____

Name of Claimant (list all necessary parties): _____

_____
Address (if commercial claim, give Principal Office Address)

Telephone no.: _____
(Work) (Home)

against

Name of Defendant (list all necessary parties): _____
(if a business - provide business name AND name of individual who owns/operates/manages business)

_____
Address (Home or Bus./Place of Employment must be in County - except for counterclaims) (Telephone no.)

Amount of Claim $ _____ (Do not include filing fee)

Name of Claim to include all pertient information including descriptions, dates, addresses, etc.

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____ _____
Date Signature of Person Filing Claim

for a faulty product or for shoddy service. However, small claims courts are used heavily by businesses and PUBLIC UTILITIES that want to collect payments from customers for unpaid bills. In a single court session, a department store, utility company, or hospital may obtain judgments against a long list of debtors, making the process very economical.

To bring an action in small claims court, a person must complete a form that is available from the local court administrator. The person must provide the correct names and addresses of

all defendants, make a simple statement of the dispute, and state a claim for the amount of money involved. As plaintiff in the action, the person must pay a small filing fee, usually less than $100, to the court administrator. If the plaintiff is successful in the lawsuit, he can recover the filing fee from the defendant, together with any money awarded.

A copy of the plaintiff's statement must be properly served upon the defendant or the action will be dismissed. In some states a deputy sheriff or a process server must personally serve a small claims court summons and complaint for a small fee. In many states, however, service can be accomplished by mailing a copy of the complaint to the defendant. In these jurisdictions it is essential to have an accurate name and address for the defendant.

When the defendant is a corporation, a plaintiff can check with the office of the SECRETARY OF STATE or corporate registration department to obtain the correct address because a corporation must register the name and address where it can be served with legal process. No restriction ordinarily exists on the type of individual or business that can be sued in small claims court, but a defendant must live, work, or have an office within the area served by the court.

Once the defendant is served with the statement, she will be on notice that a hearing has been scheduled on the matter. A defendant may file a counterclaim growing out of the same dispute against the plaintiff. For example, a plaintiff sues a landscape contractor for planting diseased and dying trees. The plaintiff asks for money to pay to have the trees removed and for a refund of money already paid to the contractor. The contractor could file a counterclaim, disputing the plaintiff's allegations and demanding payment still owed by the plaintiff.

Hearings may be conducted by a judge or by a judicial officer who is not a judge but is usually an attorney. Some sessions of small claims court may be held in the evening so that people need not miss work to attend court. Generally there is no jury, and the judge or judicial officer will make a decision at the end of the presentation of the evidence.

The informality of small claims court extends to courtroom procedure. The rules of CIVIL PROCEDURE and evidence, which in other courts must be rigorously followed, are generally relaxed in small claims court. Nevertheless, HEARSAY testimony (where one witness attempts to tell what another person said) is not admitted. Most small claims courts also will not allow affidavits or notarized statements into evidence because the other side cannot cross-examine the witness. Therefore, a party must bring witnesses to testify to events that they have observed.

Once the court makes a decision, the losing party has a period of time to file an appeal. The appealing party must pay a filing fee to initiate the new review, which in most states results in a new trial before a court of general jurisdiction. The new trial will be conducted with more formality.

If the losing party does not appeal the case, judgment will be entered for the winning party. Once judgment is entered, the losing party can voluntarily pay the amount awarded. If the losing party refuses to pay, the party holding the judgment can take steps to make the judgment collectible. A court can enter an order authorizing the sheriff to serve a writ of execution on the losing party. This writ permits the sheriff to seize and sell assets to pay the judgment.

Though small claims court is an attractive option for many persons, it is not designed to handle complicated litigation or areas of the law that deal with human relationships. Thus, small claims courts do not hear DIVORCE, CHILD SUPPORT, or other FAMILY LAW cases.

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SMART MONEY

Vindictive, punitive, or exemplary damages given by way of punishment and example, in cases of gross misconduct of a defendant.

SMITH ACT

The Smith Act (54 Stat. 670) of 1940 proscribed, among other things, the advocacy of the forcible or violent overthrow of the government. The act became the analogue of the New York Criminal Anarchy Act sustained in GITLOW V. NEW YORK, 268 U.S. 652, 45 S. Ct. 625, 69 L. Ed. 1138 (1925).

New York had passed that law in 1902, shortly after the assassination of President WILLIAM MCKINLEY. Between the occupation of Czechoslovakia and the Ribbentrop-Molotov pact of 1939, the House of Representatives drafted the Smith Act because of a fear that there might be a repetition of the anarchist agitation that had occurred in 1900 or the antipathy toward alien radicalism that had surfaced in 1919. Congress was also worried about Nazi or Communist subversion after war broke out in Europe.

Under a 1956 amendment to the Smith Act, if two or more persons conspire to commit any offense described in the statute, each is subject to a maximum fine of $20,000 or a maximum term of imprisonment of twenty years, or both, and is ineligible for employment by the United States or its agencies for five years after conviction. The Smith Act, as enacted in 1940, contained a conspiracy provision, but effective September 1, 1948, the Smith Act was repealed and substantially reenacted as part of the 1948 recodification, minus the conspiracy provision. On June 25, 1948, the Federal general conspiracy statute was passed, effective September 1, 1948, which contained the same provisions as the deleted conspiracy section of the original Smith Act except that the showing of overt acts was required and the maximum penalty became five years' imprisonment instead of ten (18 U.S.C.A. § 2385). The general conspiracy statute became operative, with respect to conspiracies to violate the Smith Act, substantially in the same manner and to the same extent as previously.

The conspiracy provisions of the Smith Act and its provisions defining the substantive offenses have been upheld. An intent to cause the overthrow of the government by force and violence is an essential element of the offenses. The advocacy of peaceful change in U.S. social, economic, or political institutions, irrespective of how fundamental or expansive or drastic such proposals might be, is not forbidden.

A conspiracy can exist even though the activities of the defendants do not culminate in an attempt to overthrow the government by force and violence. A conspiracy to advocate overthrow of the government by force or violence, as distinguished from the advocacy itself, can be constitutionally restrained even though it consists of mere preparation because the existence of the conspiracy creates the peril.

An agreement to advocate forcible overthrow of the government is not an unlawful conspiracy under the Smith Act if the agreement does not call for advocacy of action; the act covers only advocacy of action for the overthrow of the government by force and violence rather than advocacy or teaching of theoretical concepts. Those to whom the advocacy is directed must be urged to do something, immediately or in the future, rather than merely to believe in a doctrine. A Smith Act conspiracy requires an agreement to teach people to engage in tangible action toward the violent overthrow of the existing government as soon as possible.

An individual defendant cannot be convicted of willful adherence to a Smith Act conspiracy unless something said by the defendant or communicated to another person manifests her understanding that, beyond supporting the idea and objective of violent overthrow of the existing government, particular action to that end is to be advocated. Advocacy of immediate action is not necessary; advocacy of action at a crucial time in the future when the time for action would seem ripe and success would seem achievable is sufficient. There must be a plan to use language reasonably calculated to incite the audience to employ violence against the government. The use of lawful speech, an agreement to share abstract revolutionary doctrine, and an agreement to use force against the government in the future do not constitute a conspiracy to use illegal language. Cooperative action on the part of a number of persons comprising a political party having as its goal the overthrow of the government by force and violence violates the conspiracy provision.

The "membership clause" of the Smith Act has also been the subject of controversy. Although the Smith Act does not proscribe mere membership in an organization that advocates the forcible overthrow of the government as a theoretical matter, it does cover active members who, with a culpable knowledge and intent, engage in significant action to achieve this objective or commit themselves to undertake such action. Present advocacy of future action for violent overthrow violates the Smith Act, but an expression of sympathy with the purported illegal conduct is not within the ambit of the statute. Guilt cannot be imputed to a person solely on the basis of his associations.

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CROSS-REFERENCES

Anarchism; Communism; *Dennis v. United States*; Red Scare.

♦ SMITH, MARY LOUISE

Mary Louise Smith was a **REPUBLICAN PARTY** activist who became the first woman to serve as head of the party's national committee. Though she was a political moderate, Smith's advocacy of **ABORTION** rights and the **EQUAL RIGHTS AMENDMENT** (ERA) during the 1970s ran counter to the ideology of the party's conservative majority. Her outspoken manner disturbed the Republican Party leadership, which sought to bar her from the 1996 Republican National Convention.

Smith was born on October 16, 1914, in Eddyville, Iowa. She attended Iowa State University, graduating with a degree in social work in 1935. She married Elmer M. Smith, a physician, and moved with him to Eagle Grove, Iowa. Smith raised three children and soon became active in local politics, winning a seat on the Eagle Grove school board.

Smith's life changed when she began to work in the local Republican Party organization. Soon she was working at the county and state levels, becoming the leader of the Iowa Federation of Republican Women. In 1964 Smith became the alternate delegate to the Republican National Convention and vice-chair of the Iowa presidential campaign of the party's nominee, Senator **BARRY M. GOLDWATER** of Arizona. In that same year, Smith was elected to the Republican National Committee, the party's most powerful leadership organization.

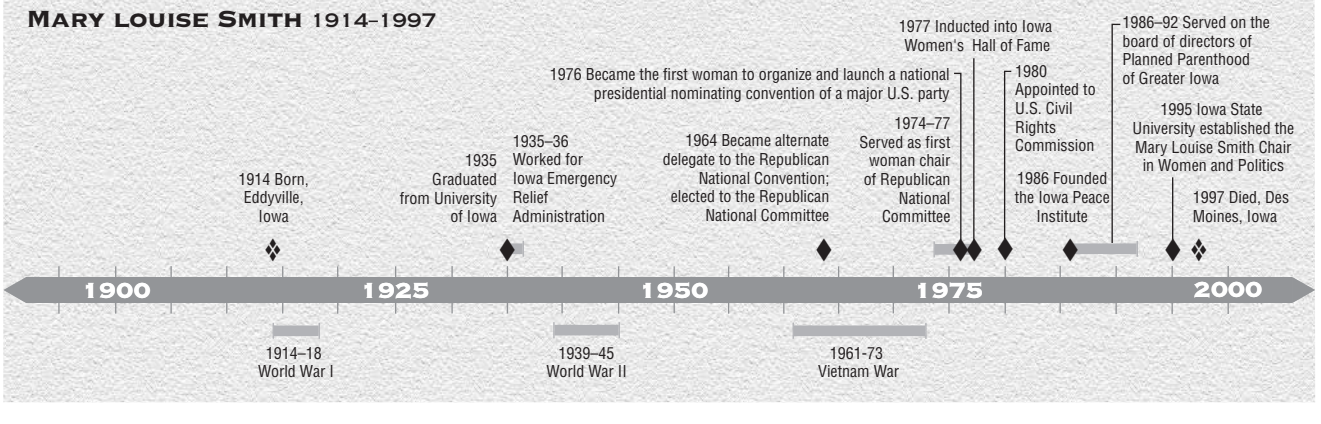
Smith remained a member of the Republican National Committee during the 1960s and early 1970s. After President **RICHARD M. NIXON** resigned from the presidency in 1974 because of his involvement in the **WATERGATE** scandals, President **GERALD R. FORD** sought to restore the credibility of the Republican Party and separate it from the scandals of the Nixon administration. One step he took to accomplish these objectives was to appoint Smith as chair of the Republican National Committee in 1974. As the first woman to head a major U.S. political party, Smith drew national attention for her commitment to abortion rights and the ratification of the Equal Rights Amendment.

In 1976 Smith was the first woman to organize and call to order a national presidential nominating convention of a major political party. President Ford won the Republican nomination, turning back an attempt by conservatives to nominate **RONALD REAGAN**, then governor of California. **JIMMY CARTER** defeated Ford in the November election, though, and in 1977 Smith resigned as chair of the party. She remained on the national committee until 1984.

President Reagan appointed Smith to the U.S. **CIVIL RIGHTS COMMISSION** in 1980 but soon regretted his action. Smith publicly criticized Reagan for his policies on **CIVIL RIGHTS** and the lack of women in his administration. Because of her criticisms, Smith was not reappointed to the commission in 1983.

Smith returned to Iowa and continued to seek a more moderate course for Republican politics, which was dominated by political and social conservatives. Though the ERA failed to be ratified by its 1982 deadline, Smith continued to advocate equal rights for women. She also became an outspoken proponent for **GAY AND LESBIAN RIGHTS**.

By 1996 Smith had been pushed to the margins of the Republican Party. Party leaders sought to exclude her from the 1996 Republican



National Convention because delegates feared she might make public statements that were out of step with party ideology. At the last minute, a party leader secured her entrance to the convention floor by giving her a ticket as a member of the convention's security personnel.

Though outspoken, Smith was an admired figure in Iowa politics. As founder of the Iowa Women's Political Caucus, she was inducted into the Iowa Women's Hall of Fame in 1977. In 1991 Smith created the Women's Archives project at Iowa State University, and in 1995 the university honored her by creating the Mary Louise Smith endowed chair in women and politics.

Smith died on August 22, 1997, in Des Moines, Iowa.

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CROSS-REFERENCES

Abortion; Equal Rights Amendment; Women's Rights.

♦ SMITH, ROBERT

Robert Smith was a lawyer and statesman who served as attorney general of the United States under President THOMAS JEFFERSON and as SECRETARY OF STATE under President JAMES MADISON.

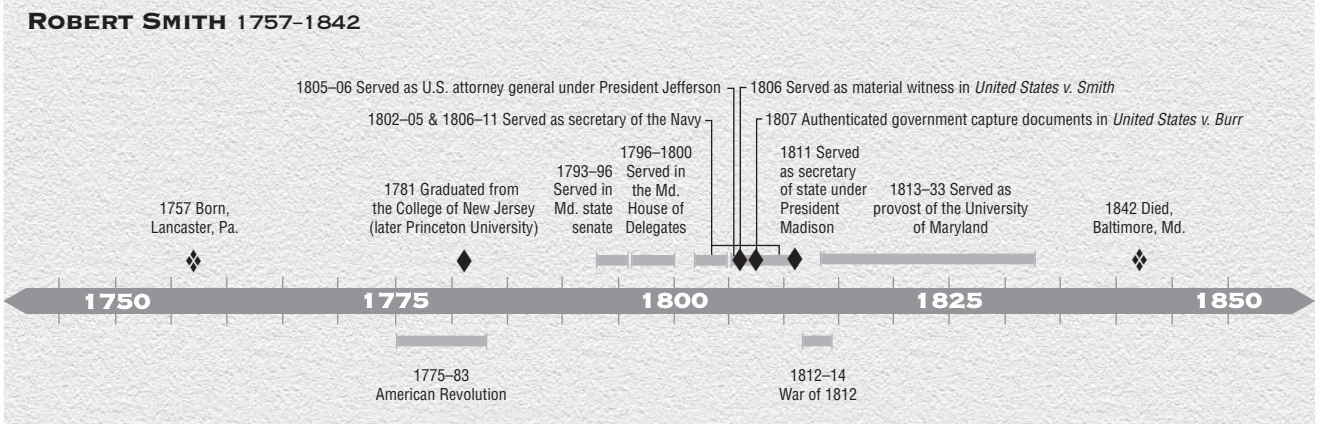
Smith's father, John Smith, a native of Strabane, Ireland, immigrated to the American colonies in the 1740s. By 1759, he was living in Baltimore and had established himself as a merchant and shipping agent. In 1766, he financed the building of Baltimore's first market house and the development of the city's first residential neighborhood. He was an advocate of independence for the American colonies and active in politics and the military.

Smith was born in November 1757 in Lancaster, Pennsylvania. He came of age at the height of the American Revolution and, like his father and his brother, Samuel Smith, volunteered to serve. He distinguished himself at the Battle of Brandywine, but his experience convinced him that he was not suited to a military career.

After the war, Smith attended the College of New Jersey (later Princeton University). He graduated in 1781 and went on to study law. Following his ADMISSION TO THE BAR, he established a practice in Baltimore, and looked after family business interests while his father served the first of two terms in the Maryland state senate.

By 1793, Smith had followed his father into the political arena. He served in the Maryland state senate from 1793 to 1796 and in the Maryland House of Delegates from 1796 to 1800. While in the house of delegates, he served a concurrent term on Baltimore's city council.

In 1801, Smith was appointed secretary of the Navy when his brother stepped down from that post following an appropriations dispute with Congress. Up to that time, military appropriations had not been monitored or controlled as closely as other government expenditures—and President Jefferson and members of his cabinet had become increasingly concerned about moneys drawn from the Treasury by the Secre-



taries of War and the Navy. When the cabinet curtailed lump-sum payments and demanded an itemized accounting of how funds were spent, Smith's brother considered the demands to be a personal attack, and he resigned. Smith, who had a far better understanding of business and accounting practices, was less inclined to view the increased scrutiny as an attack on his character.

Most historians record that Smith served as secretary of the Navy from January 1802 to March 1805, but there are indications that he continued to act as secretary during his appointment as attorney general of the United States from March 1805 to the end of the year. Though his was an official appointment as attorney general, he argued no cases before the U.S. Supreme Court and wrote no opinions.

There are reasons to believe that Smith's cabinet service as secretary of the Navy and official duties as attorney general were curtailed for personal as well as political reasons. By 1805, his family had been involved in a number of incidents that caused embarrassment in Washington, D.C. One celebrated event covered by Washington papers was a party given by Smith and his wife for a niece who married Napoléon Bonaparte's brother. Elizabeth Patterson Bonaparte scandalized Washington with her transparent ball gown, and offended the British ambassador with her suggestive dancing.

In January 1806, Smith was asked by the president to consider an appointment as chancellor of Maryland and chief judge of the District of Baltimore. (*Chancellor* is the name given to the presiding judge of a court of chancery.) Smith declined the opportunity and remained in Washington.

By July 1806, Smith was once again acting as the secretary of the Navy. In *United States v. Smith,* 27 F. Cas. 1192 (D.N.Y. July 15, 1806), he was called to testify in this capacity as a material witness in a New York trial. And in *United States v. Burr,* 25 F. Cas. 55 (D. Va. Aug. 31, 1807), Smith, as secretary of the Navy, was asked to verify the authenticity of government documents ordering Aaron Burr's capture.

Smith was named secretary of state on March 6, 1811, by President Madison. He served until November 25, when Madison called for his resignation. Madison intimates regarded Smith as an "ornamental" secretary of state because Madison, who had been secretary of state in the Jefferson administration, continued to discharge the duties of his previous office while serving as president. Before calling for Smith's resignation, Madison attempted to ease him out of office by offering him an embassy post in Russia. Smith declined the offer and decided to return to Baltimore.

In 1813, Smith was appointed provost of the University of Maryland. For the next twenty years, he devoted his time to building the university's prestige and securing its financial future.

Smith died in Baltimore on November 26, 1842.

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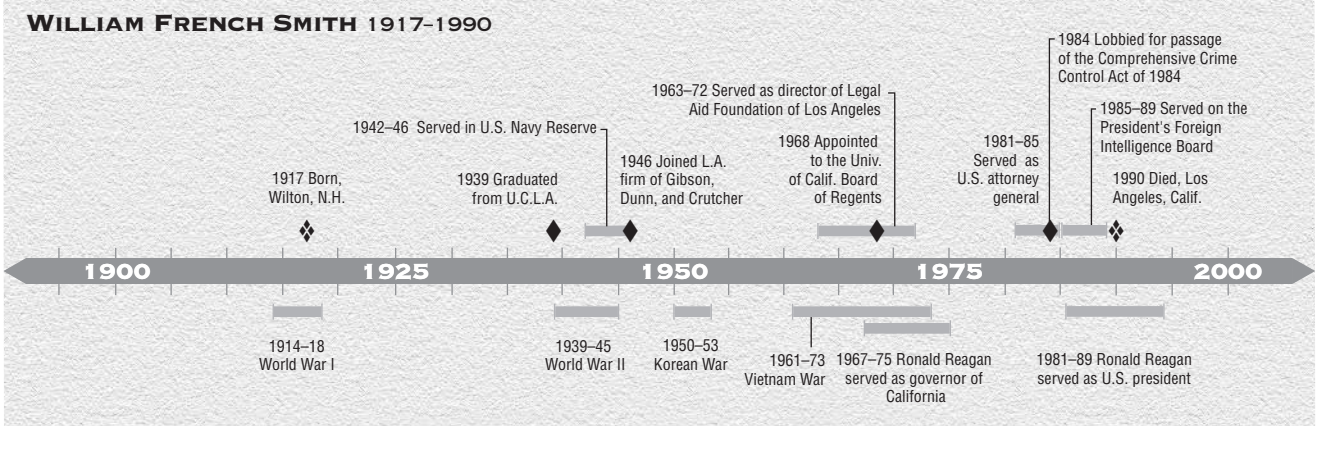
❖ SMITH, WILLIAM FRENCH

William French Smith served as U.S. attorney general from 1981 to 1985. A longtime friend



and confidant of President RONALD REAGAN, Smith helped formulate the conservative policies that came to be identified with the Reagan administration.

Smith was born on August 26, 1917, in Wilton, New Hampshire. He graduated from the University of California at Los Angeles in 1939 and from the Harvard Law School in 1942. From 1942 to 1946, Smith served in the U.S. Navy Reserve, reaching the rank of lieutenant.

In 1946 Smith joined the Los Angeles law firm of Gibson, Dunn, and Crutcher, one of the largest and most prominent corporate firms in California. He specialized in LABOR LAW, eventually becoming a senior partner and head of the firm's labor department. He enjoyed a reputation as a tough but flexible negotiator. He served as a director of the Legal Aid Foundation of Los Angeles from 1963 to 1972.

"WE HAVE LOST CONTROL OF OUR BORDERS. WE HAVE PURSUED UNREALISTIC POLICIES. WE HAVE FAILED TO ENFORCE OUR LAWS EFFECTIVELY."
—WILLIAM FRENCH SMITH

During the 1960s Smith became active in conservative REPUBLICAN PARTY politics. During Arizona Senator BARRY M. GOLDWATER's 1964 presidential campaign, Smith met Ronald Reagan, who was working for Goldwater. Smith was impressed by Reagan's views and his political potential and was a member of a small group of southern California business leaders who urged Reagan to run for governor in 1966. After Reagan was elected governor, Smith became his personal adviser. In 1968 Reagan appointed him to the University of California Board of Regents. Smith later served three terms as chairman of the board.

Smith remained a close adviser to Reagan after he left the governorship and began his quest for the presidency. When Reagan was elected president in 1980, one of his first appointments was the naming of Smith as his attorney general.

During Smith's tenure, the JUSTICE DEPARTMENT shifted its position on a number of issues, including ABORTION, CIVIL RIGHTS, and ANTITRUST LAWS. Adhering to his conservative political views, Smith urged the U.S. Supreme Court to reassess its rulings in earlier abortion cases and to accord greater deference to states that wished to restrict abortions. The Justice Department also placed less emphasis on AFFIRMATIVE ACTION as a means of addressing past RACIAL DISCRIMINATION and on mandatory busing as a means of creating integrated public school systems. Although Smith maintained that he vigorously enforced civil rights laws, his critics argued that the department filed fewer cases in the areas of housing and educational discrimination than it did under previous administrations.

In creating antitrust policy, Smith contended that bigness in business is not necessarily bad and that the government should be concerned only with grossly anticompetitive behavior. He was instrumental in developing a more tolerant policy toward mergers. This shift in the federal government's antitrust position has been credited with contributing to the wave of MERGERS AND ACQUISITIONS that occurred during the 1980s.

Smith also pursued a strong anticrime initiative, increasing the resources used to fight the distribution and sale of illegal narcotics by 100 percent. He also successfully lobbied for the passage of the Comprehensive CRIME CONTROL ACT of 1984 (Pub. L. No. 98-473, 98 Stat. 1838), a sweeping measure that included revised federal rules on bail and the establishment of a commission to create new federal sentencing guidelines.

In January 1984 Smith announced his resignation, saying that he wished to work on President Reagan's reelection campaign and to return to private life. He did not leave office, however, until February 1985. This delay was caused by the difficulties that his eventual successor, EDWIN MEESE III, encountered in obtaining Senate confirmation.

Smith died on October 29, 1990, in Los Angeles. His memoirs were published the following year.

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CROSS-REFERENCES

Affirmative Action.

SMUGGLING

The criminal offense of bringing into, or removing from, a country those items that are prohibited or upon which customs or excise duties have not been paid.

Smuggling is the secret movement of goods across national borders to avoid CUSTOMS DUTIES or import or export restrictions. It typically occurs when either the customs duties are high enough to allow a smuggler to make a large profit on the clandestine goods or when there is a strong demand for prohibited goods, such as narcotics or weapons. The United States polices

smuggling through various federal agencies, including the U.S. Customs Service, the U.S. Border Patrol, the U.S. Coast Guard, and the **DRUG ENFORCEMENT ADMINISTRATION** (DEA).

Federal law prohibits the importation of a number of items that are injurious to public health or welfare, including diseased plants or animals, obscene films and magazines, and illegal narcotics. Importation of certain items is prohibited for economic or political purposes. For example, the United States bans trade with Cuba, which means that Cuban cigars may not be legally imported. This restriction inevitably results in the smuggling of Cuban cigars into the United States. Federal law also bans the export of military weapons or items related to the national defense without an export permit.

In addition, federal law prohibits the importation of goods on which required customs or excise duties have not been paid. Such duties are fixed by federal law to raise revenue and to influence commerce.

Travelers at international borders can properly be stopped by customs agents, required to identify themselves, and asked to submit to a search. To combat smuggling, customs agents have the authority to search an individual and his baggage or any packages or containers sent into the country. Within the United States, police cannot conduct searches unless they have a warrant, **PROBABLE CAUSE** to suspect unlawful activity, or the consent of the individual being searched. Such requirements do not apply to border searches. Customs agents have a right to search anyone at a border for no reason at all, although they ordinarily only conduct extensive and thorough searches of individuals who arouse suspicion. By the late 1990s, new technology, including x-ray machines that examine commercial vehicles, had been installed by the Border Patrol at border stations in the Southwest. The DEA has also enhanced its technology for combating smuggling in the Southwest through **WIRETAPPING** of drug cartel members. In addition, law enforcement agencies have developed "drug courier profiles" that help customs agents identify and question individuals who are likely to be carriers of narcotics.

Smugglers use two methods to move goods. One is to move cargoes undetected across borders. Smugglers move illegal narcotics from Mexico into remote areas of the Southwest United States using airplanes, trucks, and human "mules." These "mules" walk across an isolated region of the Mexico-U.S. border with backpacks full of illegal narcotics.

One method of smuggling is concealment. A U.S. Customs official at the Miami International Airport displays a package of heroin found inside a suspect's shoes.

AP/WIDE WORLD PHOTOS

The other method is one of concealment. For example, a smuggler may hide illegal narcotics in unlikely places on ships or cars, in baggage or cargo, or on a person. Some drug couriers swallow containers of narcotics to avoid detection of the drugs if searched.

In the event that a traveler possesses anything that he or she did not declare to customs inspectors, or any prohibited items, the traveler can be compelled to pay the required duties, plus penalties, and can also be arrested. Customs agents can seize the illegal goods.

Federal law imposes harsh sanctions for the offense of smuggling. An individual can be convicted merely for having illegal goods in his or her possession if she or he fails to adequately explain their presence. Anyone who is guilty of knowingly smuggling any goods that are prohibited by law or that should have come through customs, or who receives, buys, sells, transports, or aids in the commission of one of these acts can be charged with a felony and can also be assessed civil penalties. The merchandise itself, as well as any vessel or vehicle used to transport it, can be forfeited to the United States under **FORFEITURE** proceedings.

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CROSS-REFERENCES

Drugs and Narcotics; Search and Seizure.

SOCIAL SECURITY

A federal program designed to provide benefits to employees and their dependants through income for retirement, disability, and other purposes. The social security program is funded through a federal tax levied on employers and employees equally.

The Social Security Program was created by the SOCIAL SECURITY ACT OF 1935 (42 U.S.C.A. § 301 et seq.) to provide OLD AGE, SURVIVORS, AND DISABILITY INSURANCE benefits to the workers of the United States and their families. The program, which is administered by the Social Security Administration (SSA), an independent federal agency, was expanded in 1965 to include HEALTH INSURANCE benefits under the MEDICARE program and to assist the states in establishing UNEMPLOYMENT COMPENSATION programs. Unlike WELFARE, which is financial assistance given to persons who qualify on the basis of need, Social Security benefits are paid to an individual or his family on the basis of that person's employment record and prior contributions to the system.

History

As a general term, *social security* refers to any plan designed to protect society from the instability that is caused by individual catastrophes, such as unemployment or the death of a wage earner. It is impossible to predict which families will have to endure these burdens in a given year, but disaster can be expected to strike a certain number of households each year. A government-sponsored plan of social insurance spreads the risk among all members of society so that no single family is completely ruined by an interruption of, or end to, incoming wages.

Germany was the first industrial nation to adopt a program of social security. In the 1880s Chancellor Otto von Bismarck instituted a plan of compulsory sickness and old age insurance to protect wage earners and their dependents. Over the next 30 years, other European and Latin American countries created similar plans with various features to benefit different categories of workers.

In the United States, the federal government accepted the responsibility of providing pensions to disabled veterans of the Revolutionary War. Pensions were later paid to disabled and elderly veterans of the Civil War. The first federal old age pension bill was not introduced until 1909, however. To fill this void, many workers joined together to form beneficial associations, which offered sickness, old age, and funeral benefit insurance. The federal government encouraged people to set aside money for future emergencies with a popular postal savings plan. People who could not manage were helped, if at all, by private charity because it was generally believed that those who wanted to help themselves would.

Congress enacted the Social Security Act of 1935 as part of the economic and social reforms that made up President FRANKLIN D. ROOSEVELT'S NEW DEAL. The act provided for the payment of monthly benefits to qualified wage earners who were at least 65 years old or payment of a lump-sum death benefit to the estate of a wage earner who died before reaching age 65.

In 1939 Congress created a separate benefit for secondary beneficiaries—the dependent spouses, children, widows, widowers, and parents of wage earners—to soften the economic hardship created when they lost a wage earner's support. Such beneficiaries are entitled to benefits because the wage earner made contributions to the plan. Beneficiaries can receive their payments directly upon the retirement or death of the worker.

Social Security originally protected only workers in industry and commerce. It excluded many classes of workers because collecting their contributions was considered too expensive or inconvenient. Congress exempted household workers, farmers, and workers in family businesses, for example, because it believed that they were unlikely to maintain adequate employment records. In the 1950s, however, Congress extended Social Security protection to most self-employed individuals, most state and local government employees, household and farm workers, members of the armed forces, and members of the clergy. Federal employees, who previously had their own retirement and benefit system, were given Social Security coverage in 1983.

Old Age, Survivors, and Disability Insurance

Federal Old Age, Survivors, and Disability Insurance (OASDI) benefits are monthly payments made to retired people, to families whose wage earner has died, and to workers who are unemployed because of sickness or accident. Workers qualify for such protection by having been employed for the mandatory minimum amount of time and by having made contribu-

The First Payments of Social Security

After the enactment of the Social Security Act of 1935 (42 U.S.C.A. § 301 et seq.) and the creation of the Social Security Administration (SSA), the federal government had a short time to establish the program before beginning to pay benefits. Monthly benefits were to begin in 1940. The period from 1937 to 1940 was to be used both to build up the trust funds and to provide a minimum period for participation for persons to qualify for monthly benefits.

From 1937 until 1940, however, Social Security paid benefits in the form of a single, lump-sum payment. The purpose of these one-time payments was to provide some compensation to people who contributed to the program but would not participate long enough to be vested for monthly benefits.

The first applicant for a lump-sum benefit was Ernest Ackerman, a Cleveland motorman who retired one day after the Social Security Program began. During his one day of participation in the program, five cents was withheld from Ackerman's pay for Social Security, and upon retiring, he received a lump-sum payment of seventeen cents.

Payments of monthly benefits began in January 1940. On January 31, 1940, the first monthly retirement check was issued to Ida May Fuller of Ludlow, Vermont, in the amount of $22.54. Fuller died in January 1975 at the age of one hundred. During her thirty-five years as a beneficiary, she received more than $20,000 in benefits.

tions to Social Security. There is no financial need requirement to be satisfied. Once a worker qualifies for protection, his family is also entitled to protection. The entire program is geared toward helping families as a matter of social policy.

Two large funds of money are held in trust to pay benefits earned by people under OASDI: the Old Age and Survivors Trust Fund and the Disability Insurance Trust Fund. As workers and employers make payroll contributions to these funds, money is paid out in benefits to people currently qualified to receive monthly checks.

The OASDI program is funded by payroll taxes levied on employees and their employers and on the self-employed. The tax is imposed upon the employee's taxable income, up to a maximum taxable amount, with the employer contributing an equal amount. The self-employed person contributes twice the amount levied on an employee. In 2003 the rate was 6.2 percent, levied on earned income up to a maximum of $87,000.

Old Age Benefits A person becomes eligible for Social Security old age benefits by working a minimum number of calendar quarters. The number of quarters required for full insurance increases with the worker's age. Forty quarters is the maximum requirement. The individual is credited for income up to the maximum amount of money covered by Social Security for those years. This amount is adjusted to reflect the impact of inflation on normal earnings and ensure that a worker who pays increasing Social Security contributions during his or her work life will receive retirement benefits that keep pace with inflation.

Persons born before 1950 can retire at age 65 with full benefits based on their average income during their working years. For those born between 1950 and 1960, the retirement age for full benefits has increased to age 66. Persons born in 1960 or later will not receive full retirement benefits until age 67. Any person, however, may retire at age 62 and receive less than full benefits. At age 65, a worker's spouse who has not contributed to Social Security receives 50 percent of the amount paid to the worker.

Since 1975 Social Security benefits have increased annually to offset the corrosive effects of inflation on fixed incomes. These increases, known as cost of living allowances (COLAs), are based on the annual increase in consumer prices. Allowing benefits to increase automatically ended the need for special acts of Congress, but it has also steadily increased the cost of the Social Security Program.

The Future of Social Security

The payment of **OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE** (OASDI) benefits has been a cornerstone of U.S. social welfare policy since the establishment of the **SOCIAL SECURITY ADMINISTRATION** in 1935. At the same time, the long-term financial stability of OASDI has been a constant worry. In the early years of the twenty-first century, concerns about Social Security mounted as policy makers assessed the impact of the retirement of the "Baby Boom" generation. Many younger people raised the issue of "generation equity." They express doubt that Social Security benefits will be available when they retire, and anger that they will be forced to pay, through payroll taxes, for the baby boomers' retirement benefits.

Reform of the Social Security system has always been a political hot potato. Retirees and those approaching retirement form a strong **LOBBYING** force, and they zealously protect their benefits. Employers and employees are equally vocal in their opposition to higher payroll taxes to fund OASDI. Thus, changes in Social Security required bipartisan support, which materialized in the face of an impending Social Security crisis. The 1982–83 National Commission on Social Security Reform successfully secured from Congress the short-term financing of OASDI. As a result, Congress passed a series of laws meant to accumulate surpluses as a hedge against future burdens. The Social Security surplus is the amount by which revenue from the federal payroll tax exceeds the amount of Social Security benefits paid out.

Shortly after these new laws went into effect, Social Security began running a surplus. Surplus Social Security revenue can be used to fund other government programs and to help retire the national debt. During the favorable economic climate of the late 1990s, Congress began to use the surplus to pay down the federal debt, hoping to better position the government to meet its obligations to future retirees. And, in 2000, the federal government generated enough revenue so that the entire Social Security surplus was available for paying off debt.

The state of Social Security became a major campaign issue in the 2000 elections, with both Republicans and Democrats attempting to appear as though they were guardians of Social Security assets. Candidates from both parties promised to create a "lockbox," meaning that the Social Security surplus would be spent entirely on debt retirement. With the advent of fiscally lean years in the early 2000s, the lockbox approach was largely disregarded by politicians who advanced other ideas about what to do with Social Security surpluses. These ideas included using the surplus to help offset decreases in revenues brought about by tax cuts and using the surplus to fund new or expanded spending initiatives.

Analysts argue that the real issue often is clouded. It is not how to spend the surplus now, but how to maintain the long-term solvency of the Social Security trust fund. Planners estimate that the income from the trust fund will exceed expenses each year until 2020. The trust fund balances will then start to decline as investments are redeemed to meet the increased expenses from a swelling retired workforce. Although it is estimated that 75 percent of the costs would continue to be met from current payroll and income taxes, in the absence of any changes, full benefits could not be paid beginning in 2030.

In its 1996 report, the Social Security Administration's Advisory Council looked at various long-term financing options for OASDI. The council could not reach consensus on a specific long-term plan, but it did suggest several types of financing that represent a marked departure from previous efforts to fund Social Security. The council noted that past efforts have generally featured cutting benefits and raising tax rates on a "pay-as-you-go" basis. The council agreed that this approach must be changed and offered three ways of restoring financial solvency.

One approach, called Maintenance of Benefits (MB), calls for an increase in income taxes on OASDI benefits, a redirection of some revenue from other trust funds, and, most importantly, the adoption of a plan allowing the federal government to invest a portion of the trust fund assets directly in common stocks. Rates of returns on stocks have historically exceeded those on federal government bonds, where all Social Security

A person who continues to work past the retirement age may lose some benefits because Social Security is designed to replace lost earnings. If earnings from employment do not exceed the amount specified by law, the person receives the full benefits. If earnings are greater than that amount, one dollar of benefit is withheld for every two dollars in wages earned above the exempt amount. Once a person reaches age 70, however, he does not have to report earnings to the SSA, and the benefit is not reduced.

Survivors' Benefits Survivors' benefits are paid to family members when a worker dies. Survivors can receive benefits if the deceased worker was employed and contributed to Social

funds are now invested. If the returns were to continue, the MB plan would maintain Social Security benefits for all income groups of workers and reassure younger workers that they will get their money's worth when they retire.

A second approach, labeled the Individual Accounts (IA) plan, would create individual accounts that would work alongside Social Security. The IA plan would increase the income taxation of benefits, accelerate the scheduled increase in retirement age, reduce the growth of future benefits to middle- and upper-income workers, and increase employees' mandatory contributions to Social Security by 1.6 percent. This increase would be allocated to individual investment accounts held by the government and controlled by the worker, but with a limited set of investment options available. It is estimated that the combined income from both funds would yield essentially the same benefits as promised under the current system for all groups.

A third approach, labeled the Personal Security Accounts (PSA) plan, would create larger, fully funded individual accounts that would replace a portion of Social Security. Under this plan, five percent of an individual's current payroll tax would be invested in his PSA, which he then could use to invest in a range of financial instruments. The rest of his payroll tax would be used to fund a modified OASDI program. It would provide a flat dollar amount (the equivalent of $410 monthly in 1996), in addition to the proceeds of the individual's PSA. This approach would also change the taxation of benefits and move eligibility for early retirement benefits from age 62 to 65. The combination of the flat benefit payment and the income from the PSA would exceed, on average, the benefits promised under the current system.

In 2001, the concept of individual accounts was once again proposed, this time by the **GEORGE W. BUSH** administration's Commission to Strengthen Social Security (CSSS). The CSSS introduced the idea of Social Security individual accounts, also called Personal Retirement Accounts (PRAs). PRAs would earn a market return over the workers' lives and replace some of the retirement benefits promised by Social Security. These plans are also known as "carve-outs" because they *carve out* or redirect some portion of a worker's 12.4 percent Social Security payroll tax into a personal retirement account that can be invested in stocks and bonds. The accounts would be owned and presumably managed by individual workers.

Any type of personal retirement account privatizes a portion of Social Security, which means a significant shift in the way Social Security is funded. Proponents claim that they will generate more advance funding for Social Security's long-term obligations. They would also result in a higher level of national saving for retirement. In addition, advocates point to the fact that individuals gain more control over their future because they are allowed to invest as much or as little in Social Security plans and private retirement plans as they choose.

The PRA system, however, raises several concerns:

- Would the government be permitted to manipulate the **STOCK MARKET** or make politically motivated investment decisions with PRA funds?
- Would inexperienced investors make poor investment choices and be left to suffer the consequences?
- Would a precipitous stock market decline cause workers to lose their retirement funds?

According to the CSSS, the answer to all these questions is "no." Under the current system, retirees receive only a one to two percent return on government bond investments. Even under the worst stock market conditions, an individual historically has been guaranteed a lifetime real return (based on 63 years) of 6.3 percent. The CSSS also promises that all retirees will be paid out a guaranteed minimal "safety net," regardless of stock market performance.

The debate on both sides continues, and will not likely be resolved until legislation is passed by Congress that would allow PRAs. One thing remains clear, however, some type of reform has to be enacted to protect a system that is predicted to evaporate in the coming years.

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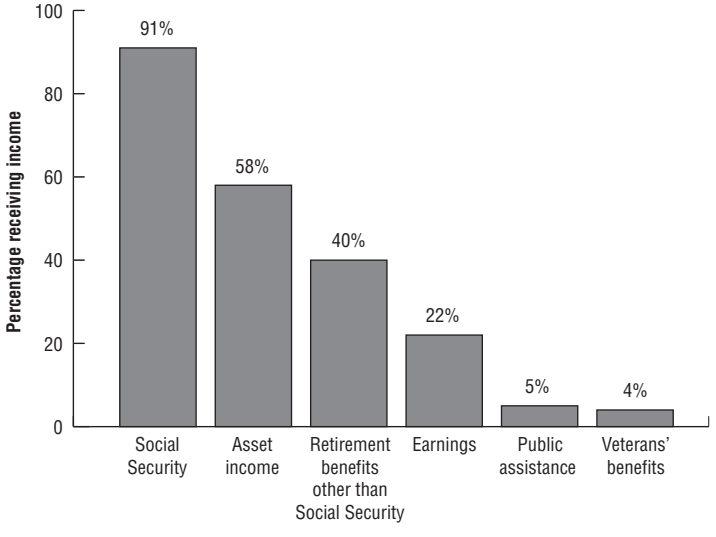
Security long enough for someone his or her age to qualify for Social Security.

Both mothers and fathers earn protection for their families by working and contributing to Social Security. If a wage earner dies, his unmarried children are entitled to receive benefits. If the child of a wage earner becomes permanently disabled before age 22, he or she can continue to receive survivors' benefits at any age unless she becomes self-supporting or marries.

Survivors' benefits can also go to a surviving spouse when the worker dies. A surviving spouse who retires can begin collecting survivors' benefits as early as age 60. If a worker dies leaving a divorced spouse who was married to the worker for at least ten years, the ex-spouse

Sources of Income for the Aged, in 2001



SOURCE: Social Security Administration, *Income of the Aged Chartbook*, 2001.

can receive survivors' benefits at age 60 if she retires. In addition to monthly checks, the worker's widow or widower, or if there is none, another eligible person, may receive a lump-sum payment of $255 on the worker's death.

Disability Benefits In the 1970s, the SSA became responsible for a new program, Supplemental Security Income (SSI). The original 1935 Social Security Act had included programs for needy aged and blind individuals, and in 1950 programs for needy disabled individuals were added. These three programs were known as the "adult categories" and were administered by state and local governments with partial federal funding. Over the years the state programs became more complex and inconsistent until as many as 1,350 administrative agencies were involved and payments varied more than 300 percent from state to state. In 1969 President RICHARD M. NIXON identified a need to reform these and related welfare programs. In 1972 Congress federalized the "adult categories" by creating the SSI program and assigned responsibility for it to the SSA.

A person who becomes unable to work and expects to be disabled for at least 12 months or who will probably die from the condition can receive SSI payments before reaching retirement age. Workers are eligible for disability benefits if they have worked enough years under Social Security prior to the onset of the disability. The amount of work credit needed depends on the worker's age at the time of the disability. That time can be as little as one and one-half years of work in the three years before the onset of the disability for a worker under 24 years of age, but it is never more than a total of ten years.

A waiting period of five months after the onset of the disability is imposed before SSI payments begin. A disabled worker who fails to apply for benefits when eligible can sometimes collect back payments. No more than 12 months of back payments may be collected, however. Even if workers recover from a disability that lasted more than 12 months, they can apply for back benefits within 14 months of recovery. If workers die after a long period of disability without having applied for SSI, their family may apply for disability benefits within three months of the date of the worker's death. The family members are also eligible for survivors' benefits.

A disability is any physical or mental condition that prevents the worker from doing substantial work. Examples of disabilities that meet the Social Security criteria include brain damage, heart disease, kidney failure, severe arthritis, and serious mental illness.

The SSA uses a sequential evaluation process to decide whether a person's disability is serious enough to justify the awarding of benefits. If the impairment is so severe that it significantly affects "basic work activity," the worker's medical data are compared with a set of guidelines known as the Listing of Impairments. A claimant found to suffer from a condition in this listing will receive benefits. If the condition is less severe, the SSA determines whether the impairment prevents the worker from doing his former work. If not, the application will be denied. If so, the SSA proceeds to the final step, determining whether the impairment prevents the applicant from doing other work available in the economy.

At this point, the SSA uses a series of medical-vocational guidelines that consider the applicant's residual functional capacity as well as his age, education, and experience. The guidelines look at three types of work: one type is for persons whose residual physical capacity enables them to perform only "sedentary" work on a sustained basis, another for those able to do "light" work, and a third for those able to do "medium" work.

If the SSA determines that an applicant can perform one of these types of work, benefits will be denied. A claimant may appeal this decision and ask for a hearing in which to present further evidence, including personal testimony. If the recommendation of the ADMINISTRATIVE LAW judge conducting the hearing is adverse, the claimant may appeal to the SSA Appeals Council. If the claimant loses his appeal, he may file a civil action in federal district court seeking review of the agency's adverse determination.

Persons who meet the OASDI disability eligibility requirements may receive three types of benefits: monthly cash payments, vocational rehabilitation, and medical insurance. Provided proper application has been made, cash payments begin with the sixth month of disability. The amount of the monthly payment depends upon the amount of earnings on which the worker has paid Social Security taxes and the number of his eligible dependents. The maximum for a family is usually roughly equal to the amount to which the disabled worker is entitled as an individual plus allowances for two dependents.

Vocational rehabilitation services are provided through a joint federal-state program. A person receiving cash payments for disability may continue to receive them for a limited time after beginning to work at or near the end of a program of vocational rehabilitation. Called the "trial work period," this period may last as long as nine months.

Medical services are available through the Medicare Program (a federally sponsored program of hospital and medical insurance). A recipient of OASDI disability benefits begins to participate in Medicare 25 months after the onset of disability.

In 1980 Congress made many changes in the disability program. Most of these changes focused on various work incentive provisions for both Social Security and SSI disability benefits. The SSA was directed to review current disability beneficiaries periodically to certify their continuing eligibility. This produced a massive workload for the SSA and one that was highly controversial, as persons with apparently legitimate disabilities were removed from SSI. By 1983 the reviews had been halted.

The Contract with America Advancement Act of 1996 (Pub. L. No. 104-121) changed the basic philosophy of the disability program. New applicants for Social Security or SSI disability benefits are no longer eligible for benefits if drug addiction or alcoholism is a material factor in their disability. Unless they can qualify on some other medical basis, they cannot receive disability benefits. Individuals in this category already receiving benefits had their benefits terminated as of January 1, 1997.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. No. 104-193), which concerns welfare reform, terminated SSI eligibility for most noncitizens. Previously, lawfully admitted ALIENS could receive SSI if they met the other requirements. All existing noncitizen beneficiaries were to be removed from the rolls unless they met one of the exceptions in the law.

Medicare

The Medicare Program provides basic HEALTHCARE benefits to recipients of Social Security and is funded through the Social Security Trust Fund. President HARRY S. TRUMAN first proposed a medical care program for the aged in the late 1940s, but it was not enacted until 1965, when Medicare was established as one of President Lyndon B. Johnson's GREAT SOCIETY programs (42 U.S.C.A. § 1395 et seq.).

The Medicare Program is administered by the Health Care Financing Administration (HCFA). The federal government enters into contracts with private insurance companies for the processing of Medicare claims. To qualify for Medicare payments for their services, healthcare providers must meet state and local licensing laws and standards set by the HCFA.

Medicare is divided into a hospital insurance program and a supplementary medical insurance program. The Medicare hospital insurance plan is funded through Social Security payroll taxes. It covers reasonable and medically necessary treatment in a hospital or skilled nursing home, meals, regular nursing care services, and the cost of necessary special care.

Medicare's supplementary medical insurance program is financed by a combination of monthly insurance premiums paid by people who sign up for coverage and money contributed by the federal government. The government contributes the major portion of the cost of the program, which is funded out of general tax revenues. Persons who enroll pay a small annual deductible fee for any medical costs incurred above that amount during the year and also a regular monthly premium. Once the deductible has been paid, Medicare pays 80 per-

cent of all bills incurred for physicians' and surgeons' services, diagnostic and laboratory tests, and other services, but does not pay for routine physical checkups, drugs, and medicines, eyeglasses, hearing aids, dentures, and orthopedic shoes. Doctors are not required to accept Medicare patients, but almost all do.

Medicare's hospital insurance is financed by a payroll tax of 2.9 percent, divided equally between employers and employees. The money is placed in a trust fund and invested in U.S. Treasury SECURITIES. The fund accumulated a surplus during the 1980s and early 1990s. It was projected that the fund would run out of money by the early 2000s as outlays arose more rapidly than future payroll tax revenues, but this proved not to be the case.

The Future of Social Security

From its modest beginnings, Social Security has grown to become an essential facet of modern life. In 1940 slightly more than 222,000 people received monthly Social Security benefits. In 2002, 39.2 million people received Old Age and Survivors Insurance, 7.2 million received disability insurance, and 41.1 million were covered by Medicare. One in seven individuals received a Social Security benefit, and more than 90 percent of all workers were covered by Social Security. As of 2003, the SSI program had nearly doubled in size since its inception in 1974.

By the 1980s the Social Security Program faced a serious long-term financing crisis. President RONALD REAGAN appointed a blue-ribbon panel, known as the Greenspan Commission, to study the issues and recommend legislative changes. The final bill, signed into law in 1983 (Pub. L. 98-21, 97 Stat. 65), made numerous changes in the Social Security and Medicare Programs; these changes included taxing Social Security benefits, extending Social Security coverage to federal employees, and increasing the retirement age in the twenty-first century.

By the 1990s, however, concerns were again raised about the long-term financial viability of Social Security and Medicare. Various ideas and plans to ensure the financial stability of these programs were put forward. The budget committees in both the House of Representatives and the Senate established task forces to investigate proposals for Social Security reform. Other task forces, such as one established by the National Conference of State Legislatures, investigated the impact of Social Security reform on interests at the state and local levels. By the end of the 1990s, the federal government had achieved a budget surplus, and President BILL CLINTON and some members of Congress advocated use of the surplus to save Social Security. However, no political consensus as to what changes should be made had emerged by the end of the 1990s.

The issue of Social Security was at the center of a major debate between GEORGE W. BUSH and AL GORE during the 2000 presidential election debates. Bush advocated then, as he did after assuming the presidency, that employees who pay into the Social Security system should be allowed to pay the funds into personal retirement accounts. Under this proposal, employees would have the option of converting these funds into other investments, such as stock. However, during the first three years of his presidency, Bush did not successfully establish this initiative.

As of December 2002, the annual cost of Social Security represented 4.4 percent of the gross domestic product. The Social Security Administration predicted that the OASDI tax income would fall short of outlays by 2018, and the OASDI trust fund was predicted to be exhausted by 2042, though some commentators refuted this finding. The total combined OASDI assets in 2002 amounted to $1.378 trillion.

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CROSS-REFERENCES

Disability Discrimination; Elder Law; Health Care Law; Senior Citizens.

SOCIAL SECURITY ACT OF 1935

The Social Security Act (42 U.S.C.A. § 301 et seq.), designed to assist in the maintenance of

the financial well-being of eligible persons, was enacted in 1935 as part of President FRANKLIN D. ROOSEVELT'S NEW DEAL.

In the United States, SOCIAL SECURITY did not exist on the federal level until the passage of the Social Security Act of 1935. This statute provided for a federal program of old-age retirement benefits and a joint federal-state venture of UNEMPLOYMENT COMPENSATION. In addition, it dispensed federal funds to aid the development at the state level of such programs as vocational rehabilitation, public health services, and child welfare services, along with assistance to the elderly and the handicapped. The act instituted a system of mandatory old-age insurance, issuing benefits in proportion to the previous earnings of persons over sixty-five and establishing a reserve fund financed through the imposition of payroll taxes on employers and employees. The original levy was 1 percent, but the rate has increased over the years. Only employees in industrial and commercial occupations were eligible for protection under the Social Security Act of 1935, but numerous important amendments have expanded the categories of coverage.

CROSS-REFERENCES

Medicare.

SOCIALISM

An economic and social theory that seeks to maximize wealth and opportunity for all people through public ownership and control of industries and social services.

The general goal of socialism is to maximize wealth and opportunity, or to minimize human suffering, through public control of industry and social services. Socialism is an alternative to capitalism, where the means and profits of production are privately held. Socialism became a strong international movement in the early nineteenth century as the Industrial Revolution brought great changes to production methods and capacities and led to a decline in working conditions. Socialist writers and agitators in the United States helped fuel the labor movement but were often branded as radicals and jailed under a variety of laws that punished attempts to overthrow the government. Although government programs such as SOCIAL SECURITY and WELFARE incorporate some socialist tenets, socialism has never posed a serious challenge to capitalism in the United States.

One of the early forms of socialism was the communitarian movement, popularized by the brothers George and Frederick Evans, who came to New York from England in 1820. Communitarianism, which was based on the ideals of the French theorists JEAN-JACQUES ROUSSEAU and François-Noël Babeuf, involved the pursuit of utopian living in small cooperative communities. Cooperative living gained greater popularity under the utopian socialists, such as the Welsh industrialist Robert Owen and the French philosopher Charles Fourier. Owen's followers established a self-sufficient utopian community in New Harmony, Indiana, in 1825 and Fourier's followers did the same in the 1830s and 1840s on the east coast. Both of these efforts failed, however.

In 1848, the German philosophers KARL MARX and Friedrich Engels introduced scientific socialism with their extremely influential work, the *Communist Manifesto.* Scientific socialism became the definitive ideology of a second, more powerful phase of socialism. Scientific socialism applied the dialectic method of the German philosopher GEORG HEGEL to the political and social spheres. Using discussion and reasoning as a form of intellectual investigation, Marx and Engels identified a historical progression in human society from SLAVERY to FEUDALISM and finally to capitalism.

Under capitalism—defined as a global system based on technology transcending national boundaries— society was divided into two components: the bourgeoisie, who owned the methods of production, and the proletariat, the laborers who operated the production facilities to produce goods. Marx and Engels predicted the disappearance of the middle class and ultimately a revolution as the vast proletariat wrested the methods of production from the control of the small bourgeoisie elite. This revolution would usher in an era when resources were owned by the people as a whole and markets were subject to cooperative administration.

The *Communist Manifesto* made less of an impact in the United States than in Europe, in part because the nation's attention was focused on the issue of slavery and the growing division between the North and South. When these tensions escalated into the Civil War, a great increase in industrialization led to the emergence of socialist labor organizations. At the same time, political REFUGEES from Europe contributed socialist theories to labor and

political movements. In 1866, socialists who had been heavily influenced by German immigrants helped create the National Labor Union. Their efforts led to an 1868 statute (15 Stat. 77) establishing the eight-hour day for federal government workers; however, it went ignored and unenforced. The National Labor Union disappeared a few years after the death of its founder, William Sylvis, in 1869, but the ties between labor and socialism remained.

As socialists across Europe and the United States debated and extrapolated on Marx's initial definitions and their application under widely varying conditions, socialism gradually divided into three major philosophies: revisionism, ANARCHISM, and bolshevism. Revisionist socialism promoted gradual reform, compromise, and nonviolence. Initially, "reform" meant the nationalization of state and local public works and large-scale industries. Dedicated to democratic ideals, revisionists believed they could achieve civilized progress and higher consciousness through economic justice and complete equality.

Anarchic socialism, best exemplified by the Russian Mikhail Bakunin (1814–1876), sought the ABOLITION of both property and the state. Under anarchic socialism society would be composed of small collectives of producers, distributors, and consumers. Anarchism reflected the desire of the dispossessed to eliminate bourgeois institutions altogether. Like its contemporary syndicalism in France, anarchic socialism sought the immediate implementation of the dictatorship of the proletariat.

Bolshevism advocated the use of a select revolutionary cadre to seize control of the state. Bolshevists asserted that this cadre was needed to raise the consciousness of the proletariat and move toward a socialist future through absolute dictatorship. Their preferred method of redistributing wealth and resources was authoritarian collectivism, commonly known as COMMUNISM. Under authoritarian collectivism the state would own and distribute all goods and services. In envisioning this role for the state, the Bolshevists rejected both classical and theoretical socialism. Their only tie to classical socialism, besides the rhetorical one, was their view of the state as having a role in ameliorating the suffering brought about by industrial capitalism.

The Knights of Labor, which was formed in 1871 in Philadelphia, became the first truly national and broadly inclusive union in the United States. Revisionists worked within this union and other labor and third-party groups, often in leadership roles, to achieve definable goals that would culminate in a socialist state. Preaching reform, education, and cooperation, the union grew in numbers until 1886. In May of that year, during a strike sanctioned by the Knights against the McCormick Harvester plant in Chicago, an unknown person threw a bomb into the ranks of police sent to disperse a public gathering organized by anarchist socialists. The HAYMARKET RIOT, as it became known, set the stage for the first RED SCARE in U.S. history. Eight anarchist leaders were charged with murder on the basis of speech defined as conspiracy. The use of a judge-selected jury and his instructions to them led to the conviction of the anarchists, four of whom were sentenced to death and hanged. The U.S. Supreme Court could find no principle of federal law to review the case.

The reaction that followed the riot signaled the end of anarchism as a force in U.S. politics. It was also the end of the first phase of inclusive, or industrial unionism, as opposed to trade unions. Under the pressure of economic downturns, factionalization, and the stigma of being affiliated with anarchists, the Knights of Labor declined into a negligible force.

Throughout the 1880s and 1890s, the revisionists attempted to unionize various companies, including Andrew Carnegie's Homestead Steel in 1892. Private armies and the Pennsylvania state militia were used to break up the strike. In 1894, EUGENE V. DEBS (1855–1926), head of the American Railway Union (ARU), organized a strike against the Pullman Palace Car Company. The SHERMAN ANTI-TRUST ACT OF 1890, ostensibly passed to curb the accelerating trend of monopolization, was used to stop the ARU strike. When the ARU ignored the INJUNCTION granted under authority of the act, Debs was sentenced to six months in prison for CONTEMPT of court. On appeal the sentence was upheld by the U.S. Supreme Court in *In re Debs,* 158 U.S. 564, 15 S. Ct. 900, 39 L. Ed. 1092 (1895).

Despite this setback, Debs had proven himself to be a significant leader and orator. As such, he took a key role in the U.S. socialist movement. In 1897, he formed the Social Democratic Party. In 1905, Debs moved more to the left, and with WILLIAM D. "BIG BILL" HAYWOOD and Mary Harris "Mother" Jones he co-founded the INDUSTRIAL WORKERS OF THE WORLD. The "Wobblies," as they were called, represented the

legacy of direct action advocated by the earlier anarchists.

In the early twentieth century, socialists called for changes to currency and taxation, an eight-hour day, an end to adulteration of food, more attention to product safety, improved working conditions, urban sanitation, and relief for the poor and homeless. Congress took notice of these demands and passed various laws granting the government the authority to regulate industry. Socialism peaked in 1912, when Debs garnered six percent of the popular vote in the presidential election.

The Supreme Court, however, was slow to recognize workers' rights and government regulation of industry. The Court repeatedly struck down state laws restricting the number of hours that women and children could work on the ground that the laws violated the doctrine of liberty of contract. In 1910, the first real antitrust victory came when the Court forced Standard Oil to divest itself of some of its operations. The ruling, however, was limited in scope (*Standard Oil v. United States,* 221 U.S. 1, 31 S. Ct. 502).

During WORLD WAR I (1914–1918) socialism faced new setbacks in the United States as federal legislation was passed outlawing any acts of disloyalty toward U.S. war efforts. The ESPIONAGE ACT OF 1917 (codified in scattered sections of 22 and 50 U.S.C.A.) imposed sentences of up to 20 years in prison for anyone found guilty of aiding the enemy, interfering with the recruitment of soldiers, or in any way encouraging disloyalty. The act was also used to prevent socialist literature from being sent through the mail. Many socialists were imprisoned for antiwar activities and the Wobblies, in particular, were main targets. Debs was jailed again, this time for interfering with military recruitment in violation of the Espionage Act. Again the Supreme Court upheld the conviction (*Debs v. United States,* 249 U.S. 211, 39 S. Ct. 252, 63 L. Ed. 566 [1919]).

After World War I democratic socialists came into power, alone or as part of coalition governments, in Germany, France, Great Britain, and Sweden. They all faced the problem of how to make socialist principles viable within a capitalist system. Only in Sweden, and only after a lengthy conflict, were labor and capital able to cooperate to establish a socialist system without abandoning socialism's philosophic foundation.

In the United States, socialists faced another wave of repression during the strikes that erupted after the war. The Russian Revolution of 1917 had aroused new fears of Bolshevism, which led to greater intolerance. Under the auspices of the JUSTICE DEPARTMENT, Attorney General A. MITCHELL PALMER conducted raids against individuals and organizations considered a threat to U.S. institutions. The nationwide arrest of dissidents ultimately prompted the Supreme Court to reconsider federal protection of individual rights. Justices OLIVER WENDELL HOLMES JR. and LOUIS D. BRANDEIS argued for greater protection of the right to voice unpopular ideas.

The Great Depression marked another turning point for socialism. Overproduction, underconsumption, and speculation led to an implosion of markets, a result predicted by Marx. One response was powerful centralized governments in the form of totalitarian regimes such as those of ADOLF HITLER in Germany and JOSEPH STALIN in the Soviet Union. Socialism was revived by the British economist John Maynard Keynes who advocated that the government stimulate consumption and investment during economic downturns. Previously used only on a limited scale, deficit financing, as it came to be called, was now used by socialists in Europe and liberals in the United States to revive capitalism. Many countries still use Keynesian economics to provide a bridge between capitalism and socialism.

As the Depression deepened from 1929 to 1933, U.S. socialism attracted more adherents, but its influence was still relatively slight. In the 1932 presidential elections, Socialist Party candidate Norman M. Thomas won only 267,000 votes. Increasingly made up of middle-class intellectuals, socialists became isolated from the needs and demands of workers. Socialism's greatest achievement during this period was President FRANKLIN D. ROOSEVELT'S NEW DEAL program, which expanded government services to help the poor and stimulate economic growth. The Supreme Court, however, struck down much of the New Deal legislation, most notably, the NATIONAL INDUSTRIAL RECOVERY ACT (48 Stat. 195) in 1935 (SCHECHTER POULTRY CORP. V. UNITED STATES, 295 U.S. 495, 55 S. Ct. 837, 79 L. Ed. 1570). Only when Roosevelt threatened to enlarge the Court to include justices with his perspective did the Court begin to uphold New Deal legislation.

The year 1935 was marked by success, however, with the passage of the WAGNER ACT, also

known as the National Labor Relations Act of 1935 (29 U.S.C.A. §§ 151 et seq.). The act, which was the first national recognition of labor's right to organize, was the culmination of 80 years of socialist-labor efforts. Ironically, the socialists' message lost its urgency with the broadening of workers' rights and regulatory reform.

Following WORLD WAR II, and with the coming of the COLD WAR, politicians and the public began to equate socialism with communism. People with socialist backgrounds, who had been part of the Roosevelt administration, were denied employment, fired, and blacklisted during the late 1940s and 1950s. In 1951, in *Dennis v. United States* (341 U.S. 494, 71 S. Ct. 857, 95 L. Ed. 1137), the Supreme Court upheld the SMITH ACT (18 U.S.C.A. § 2385), which had been passed in 1940. The decision established the legality of anti-subversive legislation under the theory that a vast underground horde of communists was working for the violent overthrow of the government.

At the helm of the anti-communist movement was Senator JOSEPH R. MCCARTHY of Wisconsin, who proclaimed that communists had infiltrated U.S. politics on a broad scale. Meanwhile the House Un-American Activities Committee tried suspects in the popular media, destroying numerous careers in the arts, entertainment, and politics. Only when McCarthy charged that the U.S. Army had been infiltrated by communists and then failed to prove his allegations did his power decline.

By the time the CIVIL RIGHTS ACT OF 1964 (42 U.S.C.A. §§ 2000a et seq.) was passed, socialist precepts had again become acceptable topics of conversation. The remedies that politicians and scholars proposed for urban blight, poverty, and inequitable distribution of wealth drew heavily on the traditional socialist tenet that the state should play a role in alleviating suffering and directing society toward desirable ends. The socialist perspective on the treatment of third-world nations in the transnational capitalist system also influenced protests against the VIETNAM WAR.

After the McCarthy era, however, the organized socialist movement in the United States was in disarray, with membership down and leaders splintering off into various factions. The two major socialist groups to emerge were the right wing Socialist Party USA and the more left-leaning Democratic Socialists of America (DSA). In 1976, the Socialist Party USA ran a candidate in the presidential elections for the first time in 20 years. The party has included a candidate in almost every presidential election since then.

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Kunstler, William Moses; Labor Law; Labor Union; Socialist Party of the United States of America.

SOCIALIST PARTY OF THE UNITED STATES OF AMERICA

The Socialist Party of the United States of America (SP-USA) is one of several parties claiming to be the heir to the country's original organized Socialist movement, the Socialist Labor Party (SLP). Support for the party has fluctuated over the years, but it remains a vigorous advocate of radical change of economic and social policy in the United States.

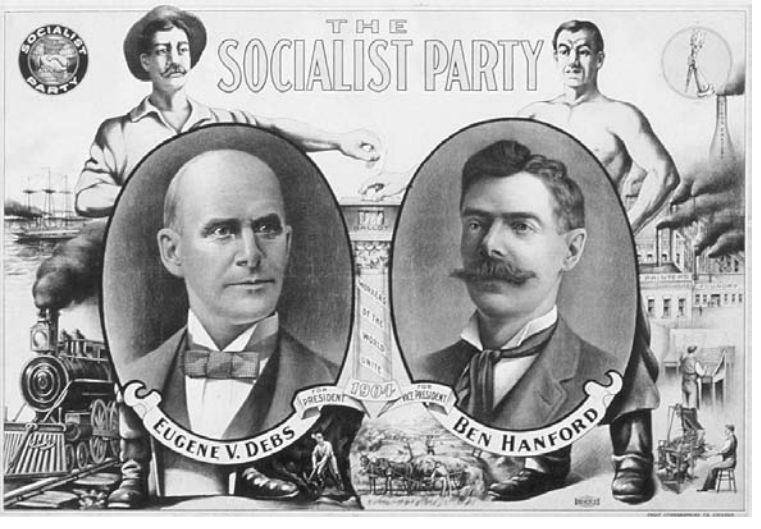
Originally called the Workingmen's party when it was organized in 1876, the party was renamed in 1877. Most of its members were immigrants from the large industrial U.S. cities. In 1890 Marxist Daniel De Leon joined the SLP and became editor of its newspaper, *The People.* Under De Leon's leadership the SLP adopted a Marxist view that advocated revolution in order to free workers from the bonds of capitalism. In 1892 the SLP ran Simon Wing as a presidential candidate. The SLP continued to run presiden-

tial candidates for many years; however, electoral strength for the party reached a peak in 1898 when the SLP candidate fielded 82,204 votes.

In 1898 EUGENE DEBS and other veterans of the American Railway Union's national strike against the Pullman Company organized the Socialist DEMOCRATIC PARTY (SDP). The majority of SDP members were laborers who had been born in the United States. In 1901 one wing of the SLP merged with Eugene Debs' Social Democratic Party (SDP) at a unity convention in Indianapolis, Indiana. The newly merged Socialist Party of the United States of America was a mix of people harboring moderate to radical views including Marxists, Christians, pro-Zion and anti-Zion Jewish reformers, pacifists, populists, anarchists, and others. The continuing reform versus revolution debate was blunted by the adoption of platforms that envisioned revolution as the ultimate goal, while advocating immediate reform measures, but the party faced continuous internal conflict due to the variety of opinions held by its members.

The Socialist party sought to become a major component of the American political system. Debs ran as the party's presidential candidate in 1908, 1912, and 1920, polling over 915,000 votes in 1920. In 1919 a major ideological divide within the party caused a number of members to split off and form what eventually became the Communist Party of the United States. In 1924 the Socialist party did not field a presidential candidate, but instead it supported the campaign of Senator ROBERT LA FOLLETTE of Wisconsin who ran on the PROGRESSIVE PARTY ticket. La Follette polled 5 million popular votes but carried only his home state. The Great Depression of the early 1930s increased support for the Socialist party; its 1932 presidential candidate, Norman Thomas, received 896,000 votes.

After that election the membership and political impact of the Socialist party began to decline. The heterogeneity of views led to conflicts among various party factions, and over the years these factions were subject to numerous splits and mergers. Some members left to join the Communist party because they felt the Socialist agenda was not sufficiently radical. Others became Democrats, theorizing that working with a major political party was the most viable means of achieving reform.



Eugene V. Debs and Ben Hanford were the Socialist Party candidates for president and vice president in 1904. CORBIS

In 1976 the Socialist party ran a presidential candidate for the first time in 20 years. Since then the party has fielded presidential candidates in 1988, 1992, 1996, and 2000. In 2000 the presidential candidate, David McReynolds, a peace activist and former party chair, earned ballot status in seven states. Since 1973, the Socialist party has concentrated on grassroots organizing and having an impact on local politics.

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CROSS-REFERENCES

Marx, Karl Heinrich; Socialism.

SOCRATIC METHOD

See LANGDELL, CHRISTOPHER COLUMBUS.

SODOMY

Anal or oral intercourse between human beings, or any sexual relations between a human being and an animal, the act of which may be punishable as a criminal offense.

The word *sodomy* acquired different meanings over time. Under the COMMON LAW,

sodomy consisted of anal intercourse. Traditionally courts and statutes referred to it as a "crime against nature" or as copulation "against the order of nature." In the United States, the term eventually encompassed oral sex as well as anal sex. The crime of sodomy was classified as a felony.

Because homosexual activity involves anal and oral sex, gay men were the primary target of sodomy laws. Culturally and historically, homosexual activity was seen as unnatural or perverse. The term *sodomy* refers to the homosexual activities of men in the story of the city of Sodom in the Bible. The destruction of Sodom and Gomorrah because of their residents' immorality became a central part of Western attitudes toward forms of non-procreative sexual activity and same-sex relations.

Beginning with Illinois in 1961, state legislatures reexamined their sodomy statutes. Twenty-seven states repealed these laws, usually as a part of a general revision of the criminal code and with the recognition that heterosexuals engage in oral and anal sex. In addition, state courts in 10 states applied state constitutional provisions to invalidate sodomy laws. As of early 2003, eight states had laws that barred heterosexual and homosexual sodomy. Three other states barred sodomy between homosexuals.

In *Bowers v. Hardwick,* 478 U.S. 186, 106 S. Ct. 2841, 92 L. Ed. 2d 140 (1986), the U.S. Supreme Court upheld the Georgia sodomy statute. Michael Hardwick was arrested and charged with sodomy for engaging in oral sex with a consenting male adult in his home. A police officer was let into Hardwick's home to serve a warrant and saw the sexual act. Although the state prosecutor declined to prosecute the case, Hardwick brought suit in federal court asking that the statute be declared unconstitutional.

On a 5–4 vote, the Court upheld the law. Writing for the majority, Justice BYRON R. WHITE rejected the argument that previous decisions such as the Court's rulings on ABORTION and contraception had created a right of privacy that extended to homosexual sodomy. Instead, the Court drew a sharp distinction between the previous cases, which involved "family, marriage, or procreation," and homosexual activity.

The Court also rejected the argument that there is a fundamental right to engage in homosexual activity. Prohibitions against sodomy were in the laws of most states since the nation's founding. To the argument that homosexual activity should be protected when it occurs in the privacy of a home, White stated that "otherwise illegal conduct is not always immunized whenever it occurs in the home." Because the claim in the case involved only homosexual sodomy, the Court expressed no opinion about the constitutionality of the statute as applied to acts of heterosexual sodomy.

The *Bowers* decision was severly criticized. Justice LEWIS POWELL, who voted with the majority, later stated that he had made a mistake in voting to affirm the law. In July 2003 the Supreme Court reversed itself on the issue of sodomy. In LAWRENCE V. TEXAS, 539 U.S. ___, 123 S. Ct. 2472, 156 L. Ed. 2d 508, in a 6–3 decision, the Court invalidated a Texas anti-homosexual sodomy law by invoking the constitutional rights to privacy.

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Gay and Lesbian Rights; Sex Offenses.

SOFTWARE

Intangible PERSONAL PROPERTY *consisting of mathematical codes, programs, routines, and other functions that controls the functioning and operation of a computer's hardware.*

Software instructs a computer what to do. (The computer's physical components are called hardware.) *Computer software* is the general

term for a variety of procedures and routines that harness the computational power of a computer to produce, for example, a general operating system that coordinates the basic workings of the computer or specific applications that produce a database, a financial spreadsheet, a written document, or a game. Computer programmers use different types of programming languages to create the intricate sets of instructions that make computing possible.

Until the personal computer revolution began in the 1980s, software was written mainly for business, government, and the military, which employed large mainframe computers as hardware. With the introduction of personal computers, which have rapidly increased in power and performance, software has emerged as an important commercial product that can be marketed to individuals and small business as well as big business and the government.

Software is, under the law, **INTELLECTUAL PROPERTY** and therefore entitled to protection from persons who seek to exploit it illegally. Software can be protected through the use of trade secrets, **COPYRIGHT**, **PATENTS**, and **TRADEMARKS**.

TRADE SECRET protection may apply to unpublished works and the basic software instructions called source code. Typically trade secrets will be effective if a company develops software and wishes to prevent others from finding out about it. A person who works on developing the software will be required to sign a nondisclosure agreement, which is a contract that obligates the person signing it to keep the project a secret.

Once software is developed and is ready to be sold, it can be copyrighted. Copyright protects the expression of an idea, not the idea itself. For example, a person could not copyright the idea of a computer database management system but could copyright the structure and content of a database software program that expresses the idea of a database system.

Court decisions appear to have limited copyright protection for some features of software. In *Apple Computer v. Microsoft Corporation,* 35 F.3d 1435 (9th Cir. 1994), the court held that Apple Computer could not copyright the graphical user interface (GUI) it had developed for its Macintosh computer. Microsoft Corporation's Windows software program contained a GUI nearly identical to Apple's. The court stated that Microsoft and other software developers were free to copy the "functional" elements of Apple's GUI because there are only a limited number of ways that the basic GUI can be expressed differently.

In *Lotus Development Corp. v. Borland International,* 49 F.3d 807 (1st Cir. 1995), Lotus alleged that Borland had copied the hierarchical menu system of the Lotus 1-2-3 spreadsheet program, which contained 469 commands, in its Quattro spreadsheet program. The court of appeals ruled that Borland had not infringed on Lotus's copyright because the menu command hierarchy was a "method of operation," which is not copyrightable under federal copyright law (17 U.S.C.A. § 102(b)).

Patent law supplies another avenue of protection for software companies. A patent protects the idea itself. It is often an unattractive option, however, because it takes a significant amount of time, usually two years, and money to obtain a patent from the U.S. **PATENT AND TRADEMARK OFFICE**. The patent process is complicated and technical, with the applicant required to prove to the Patent and Trademark Office that a patent is deserved. Because the shelf life of a software program is often short, seeking a patent for the program is often impractical.

Trademark law protects the name of the software, not the software itself. Protecting a name from being used by others can be more valuable than other forms of protection.

When software is leased or sold, the purchaser usually must agree to accept a software license. When a business negotiates with a software company, it will sign a license agreement that details how the software is to be used and limits its distribution. A software license is an effective tool in preventing **PIRACY**.

When consumers buy software from a software company or through a third-party business, they find in the packaging a software license. The license is typically on the sealed envelope that contains the software media, which itself is sealed in plastic wrapping. These "shrink-wrap licenses" describe contractual conditions regarding the purchaser's use of the software. The opening of the shrink-wrap, according to the license, constitutes acceptance of all of the terms contained in the license agreement.

The purchaser is informed that the software is licensed and not sold to the purchaser. By retaining title to the software, the computer software company seeks to impose conditions upon

the purchaser, or licensee, that are not otherwise permissible under federal copyright law. The principal terms of the shrink-wrap license include prohibiting the unauthorized copying and renting of the software, prohibiting reverse engineering (figuring out how the software works) and modifications of the software, limiting the use of the software to one computer, disclaiming warranties, and limiting liabilities.

The enforceability of shrink-wrap licenses has been challenged in the courts. The prevailing view is that when mass-market prepackaged software is sold, the transaction is a sale of goods and not a true license agreement. The key issue is whether the license document is part of an enforceable contract. Defenders of shrink-wrap licenses argue that the purchaser agrees to the conditions of the license after breaking the packaging seal and therefore contract law must uphold the written terms of the contract. Opponents argue that the sequence of events in the typical software purchase transaction is skewed. The purchaser is not aware of the license agreement until after the sale is consummated. The purchaser's acceptance of the license agreement is inferred when he or she opens the package or uses the software. However, the purchaser does not sign the license agreement. She may not even read the terms of the license agreement and, in any case, does not expressly agree to them.

In *Step-Saver Data Systems v. Wyse Technology,* 939 F.2d 91 (1991), the Third Circuit Court of Appeals held that the shrink-wrap license did not become part of the contract and therefore was not a valid modification to a previously existing contractual relationship for the sale of prepackaged computer software. The court concluded that, under the UNIFORM COMMERCIAL CODE § 2-207, a contract had existed prior to the opening of the package, the license contained new terms that materially altered the contract, and the purchaser did not expressly accept these terms. Because of these conclusions, the license agreement was invalid and unenforceable.

Lawsuits involving the software industry have not been limited to intellectual property disputes. In 1998, the U.S. Justice Department brought an antitrust lawsuit against Microsoft Corporation, alleging that the company had illegally taken advantage of its software MONOPOLY to stifle competitors in the software market. A federal district judge in 1999 found Microsoft guilty of violating ANTITRUST LAWS and in 2000 ordered that the company be divided into two separate companies, *U.S. v. Microsoft*, 253 F.3d 34 (D.C. Cir. 2001). However, a federal appellate court in 2001 overruled the district court's ruling, though it upheld the finding that Microsoft had violated antitrust laws. In 2002, Microsoft and the JUSTICE DEPARTMENT reached a settlement whereby Microsoft agreed to disclose sensitive technology to its competitors and to allow manufacturers and customers to remove Microsoft icons from some of the features in the company's system software.

Software developers have legitimate concerns about software piracy. Counterfeiting is an international problem that results in the sale of millions of dollars of pirated software. The Software Publisher's Association (SPA) and the Business Software Alliance (BSA) are major organizations that combat software piracy. The SPA is the leading international trade association for the personal computer software industry. Both SPA and BSA have collected millions of dollars worldwide from companies that have used pirated software. Most companies using pirated software are reported by former employees.

Piracy can take a number of forms. Computer users can commit piracy by using a single copy of licensed software to install on multiple computers. Similarly, copying disks and swapping disks inside and outside of the workplace can constitute forms of software piracy. The INTERNET has likewise become a major source for illegally pirated software. A number of websites offer full, pirated programs that can be downloaded for free or exchanged with other users. Although the BSA, SPA and other organizations have sought to track these providers and take them offline, such sites still exist.

A number of programs are available to protect software against piracy. Many companies require users to enter special pass codes that correspond to the specific copies purchased by the users. Other software must be registered directly with the company over the Internet. Although piracy still exists at a significant rate, the BSA estimated that software piracy during 2001 cost companies $10.97 billion. Nonetheless, statistics indicate that piracy has been on the decline since the mid-1990s. Among the reasons noted by the BSA for this reduction are the employment of more effective means of distributing legal copies of software and a reduction in the price of software over the previous decade.

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CROSS-REFERENCES

Computer-Assisted Legal Research; Computer Crime; E-Mail; Internet; Sales Law.

SOFTWARE PUBLISHERS ASSOCIATION

See CONSUMER SOFTWARE PIRACY "Software Publisher's Association" (Sidebar).

SOLDIERS' AND SAILORS' CIVIL RELIEF ACT OF 1918

Congress passed the first Soldiers' and Sailors' Civil Relief Act in 1918 (50 App. U.S.C.A. § 501 et seq.). This act was designed to protect the CIVIL RIGHTS and legal interests of individuals in the ARMED SERVICES during WORLD WAR I and ensure that they would not be distracted by legal obligations at home. The act did not prevent persons from suing service members. Rather, it allowed a court to stay civil proceedings against them. The act authorized a court to suspend legal actions against a member of the armed forces during his time of service if the court determined that he was unable to defend himself in court because of active duty.

Congress passed a revised version of the act in 1940. The major difference between it and the original was that the 1940 act authorized courts to postpone proceedings against service members beyond the time of active duty and until they were capable of protecting their interests. The 1940 act had three objectives concerning service members: to suspend civil judicial actions until they could appear in court, to provide them peace of mind during their fighting in WORLD WAR II, and to give them time to return home after service to protect their endangered interests. Congress has amended the act several times since 1940, usually to keep courts from interpreting the act too narrowly against service members. In addition, Congress has expanded coverage of the act to include all members of the armed forces including reservists. In 2002 Congress brought members of the NATIONAL GUARD under the provisions of the law when "under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days . . . for purposes of responding to a national emergency declared by the President and supported by Federal funds."

The act provides service members with three types of relief from judicial proceedings. They may request a stay of proceedings, a reopening of a default judgment, or a stay of execution against a judgment. To obtain any relief, a court first must find that the service members' ability to defend their cases was affected by their service.

Service members may postpone proceedings during service or within 60 days after service. Service members or acquaintances of service members may apply for a stay of proceedings with the court, or the court may decide on its own to issue a stay. If a stay is issued, the case remains postponed until the court determines that the service member's ability to defend against the suit is no longer affected by his or her military service.

If service members fail to obtain a stay of the proceedings and the trial court issues a default judgment, service members may reopen the case. To reopen a default judgment, service members must apply with the trial court while still on active duty or within 90 days of discharge. Congress has allowed service members to reopen only those default judgments that were rendered during the service members' terms of service or within 30 days after discharge. Reopening a default judgment gives a service member an opportunity to present his or her defense to the lawsuit.

If a service member is unable to obtain a stay or reopen a default judgment, he or she may stay the execution of the judgment. This does not eliminate the default judgment; rather, it gives the service member time to appeal the judgment and prevents authorities from taking the property of the service member in satisfaction of the judgment during the appeal process.

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CROSS-REFERENCES

Military Law; National Guard.

SOLE PROPRIETORSHIP

A form of business in which one person owns all the assets of the business, in contrast to a partnership or a corporation.

A person who does business for himself is engaged in the operation of a sole proprietorship. Anyone who does business without formally creating a business organization is a sole proprietor. Many small businesses operate as sole proprietorships. Professionals, consultants, and other service businesses that require minimum amounts of capital often operate this way.

A sole proprietorship is not a separate legal entity, like a partnership or a corporation. No legal formalities are necessary to create a sole proprietorship, other than appropriate licensing to conduct business and registration of a business name if it differs from that of the sole proprietor. Because a sole proprietorship is not a separate legal entity, it is not itself a taxable entity. The sole proprietor must report income and expenses from the business on Schedule C of her or his personal federal income tax return.

A major concern for persons organizing a business enterprise is limiting the extent to which their personal assets, unrelated to the business itself, are subject to claims of business creditors. A sole proprietorship gives the least protection because the personal liability of the sole proprietor is generally unlimited. Both the business assets and the personal assets of the sole proprietor are subject to claims of the sole proprietorship's creditors. In addition, existing liabilities of the sole proprietor will not be extinguished upon the dissolution or sale of the sole proprietorship.

Unlike the managers of a corporation or a partnership, a sole proprietor has total flexibility in managing and controlling the business. The organizational expenses and level of formality in a sole proprietorship are minimal as compared with those of other business organizations. However, because a sole proprietorship is not a separate legal entity, it terminates when the sole proprietor becomes disabled, retires, or dies. As a result, a sole proprietorship lacks business continuity and does not have a perpetual existence as does a corporation.

For working capital, a sole proprietorship is generally limited to the individual funds of the sole proprietor, along with any loans from outsiders willing to provide extra capital. During her lifetime, a sole proprietor can sell or give away any asset because the business is not legally separate from the sole proprietor. At the death of the sole proprietor, the business is usually dissolved. The proprietor's estate, however, can sell the assets or continue the business.

CROSS-REFERENCES

S Corporation.

SOLICITATION

Urgent request, plea, or entreaty; enticing, asking. The criminal offense of urging someone to commit an unlawful act.

The term *solicitation* is used in a variety of legal contexts. A person who asks someone to commit an illegal act has committed the criminal act of solicitation. An employee who agrees in an employment contract not to solicit business after leaving her employer and then mails a letter to customers asking for business may be sued by the former employer for violating the non-solicitation clause of the contract. The letter constitutes a solicitation. However, if the person had placed a newspaper advertisement, this would not have been a solicitation because a solicitation must be addressed to a particular individual.

Many solicitations in everyday life appear to be legal. For example, a telemarketer who tries to sell a legitimate product by calling potential customers is making a solicitation. It may or may not be legal, however, depending on the laws of the states where the telemarketer and the caller reside. If either of the states requires that telemarketers register with the state government, then the legality of the solicitation will depend on whether the telemarketer met this registration requirement. Failure to register may make the telemarketing company liable for civil fines or criminal penalties.

Solicitation laws and regulations govern specific types of organizations and economic activities. For example, charitable organizations must

register with state agencies before legally soliciting money. The federal SECURITIES AND EXCHANGE COMMISSION has rigid rules concerning the solicitation of shareholders for votes involving changes in corporate structure or leadership.

Criminal solicitation commonly involves crimes such as prostitution and drug dealing, though politicians have been convicted for solicitation of a bribe. The crime of solicitation is completed if one person intentionally entices, advises, incites, orders, or otherwise encourages another to commit a crime. The crime solicited need not actually be committed for solicitation to occur.

When law enforcement agencies seek to curtail prostitution, they use decoy operations. A person who offers to perform a sex act with an undercover officer for money can be arrested for solicitation of prostitution. Police decoys are also used to nab customers. When a person looking to pay for sex approaches a decoy officer and makes, by words or gestures, this request, the person can be arrested for solicitation of prostitution. Similar operations are used to reduce the sale of narcotics.

SOLICITOR

A type of practicing lawyer in England who handles primarily office work.

The title of the chief law officer of a government body or department, such as a city, town, or MUNICIPAL CORPORATION.

England has two types of practicing lawyers: solicitors and barristers. Unlike the United States, where a lawyer is allowed to handle office and trial work, England has developed a division of labor for lawyers. Solicitors generally handle office work, whereas barristers plead cases in court. However, there is some overlap. Solicitors may appear as legal counsel in the lower courts, and barristers often prepare trial briefs and other written documents. Barristers depend on solicitors to provide them with trial work because they are not allowed to accept work on their own.

The distinction between solicitors and barristers was originally based on their roles in the English court system. Solicitors were lawyers who were admitted to practice in EQUITY courts, whereas barristers were lawyers who practiced in common-law courts. The modern English judicial system has abolished this distinction. Barristers may appear in legal and equitable court proceedings, and solicitors handle out-of-court lawyering.

The role of the solicitor is similar to that of a lawyer in the United States who does not appear in court. The solicitor meets prospective clients, hears the client's problems, gives legal advice, drafts letters and documents, negotiates on the client's behalf, and prepares the client's case for trial. When a court appearance appears inevitable, the solicitor retains a barrister on the client's behalf. The solicitor instructs the barrister on how the client wishes to proceed in court.

There are more solicitors than barristers because most legal work is done outside the courtroom. Solicitors are required to take a law school course, but they must serve an apprenticeship with a practicing solicitor for five years (three years for a college graduate) before becoming fully accredited.

The regulation and administration of solicitors is managed by the Law Society, a voluntary group incorporated by Parliament. The Law Society is similar to U.S. bar associations, setting standards of professional conduct, disciplining solicitors for ethical violations, and maintaining a client compensation fund to repay losses that result from dishonesty by solicitors.

In the United States, the term *solicitor* generally has not been applied to attorneys. Some towns and cities in the Northeast have called their chief law enforcement officer a solicitor, rather than a chief of police.

Also, the officer in the JUSTICE DEPARTMENT who represents the government in cases before the U.S. Supreme Court is called the SOLICITOR GENERAL.

SOLICITOR GENERAL

An officer of the U.S. JUSTICE DEPARTMENT *who represents the federal government in cases before the U.S. Supreme Court.*

The solicitor general is charged with representing the EXECUTIVE BRANCH of the U.S. government in cases before the U.S. Supreme Court. This means that the solicitor and the solicitor's staff are the chief courtroom lawyers for the government, preparing legal briefs and making oral arguments in the Supreme Court. The solicitor general also decides which cases the United States should appeal from adverse lower-court decisions.

Congress established the office of solicitor general in 1870 as part of the legislation creating the Department of Justice. Although early solicitors occasionally handled federal trials, for the most part the solicitor general has concentrated on appeals to the Supreme Court. In this role the solicitor has come to serve the interests of both the executive branch and the Supreme Court.

The federal government litigates thousands of cases each year. When a government agency loses in the federal district court and the federal court of appeals, it usually seeks to file a petition for a writ of certiorari to the Supreme Court. The Court uses this writ procedure as a tool for discretionary review. The solicitor general reviews these agency requests and typically will reject most of them. This screening function reduces the workload of the Supreme Court in processing petitions, and it enhances the credibility of the solicitor general when he or she requests certiorari. The Court grants review in approximately 80 percent of the certiorari petitions filed by the solicitor general, compared with only 3 percent filed by other attorneys.

The solicitor general occasionally files AMICUS CURIAE (friend of the court) briefs in cases where the U.S. government is not a party but important government interests are at stake. Sometimes the Court itself will request that the solicitor file a brief where the government is not a party. The Court also allows the solicitor general to participate in oral arguments as an amicus.

Four former solicitors general later served on the Supreme Court: WILLIAM HOWARD TAFT, STANLEY F. REED, ROBERT H. JACKSON, and THURGOOD MARSHALL.

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SOLID WASTES, HAZARDOUS SUBSTANCES, AND TOXIC POLLUTANTS

Millions of homes and residential neighborhoods contain hidden killers such as lead, mercury, and cyanide. These harmful substances can cause cancer, neurological damage, and even death. They can also hurt various aspects of the environment, including the wilderness, wildlife, and aquatic life.

In many instances, these harmful substances cause environmental and residential damage by migrating through the soil from nearby landfills. Both state and federal governments regulate landfills and the pollutants deposited there. Federal regulation comes in the form of legislation; state regulation comes through state and local legislation as well as common-law principles.

Legislation

Solid Wastes Solid waste is useless, unwanted, and discarded material lacking sufficient liquid content to be free-flowing. More than 10 billion tons of solid waste is generated each year in the United States, most of it from agricultural activities. This waste is primarily produced by farm animals, slaughterhouses, and crop harvesting. The mining industry is another major producer of solid waste, generating over 2 billion tons a year. Its solid waste comes from the extraction, beneficiation (preparation for smelting), and processing of ores and minerals. But residential and commercial wastes are probably more familiar to the average person. These include everything from plastic bottles, aluminum cans, and rubber tires to yard trimmings, food wastes, and discarded appliances.

Solid waste management, which involves the storage, collection, transportation, processing, recovery, and disposal of solid waste, has been a daunting task. The United States spends more than $6 billion a year on it, most of which goes to collection and transportation. Most solid waste is transported to dumps and landfills; the rest is incinerated. In 1970, when Congress began studying solid waste, as many as 90 percent of the dumps and 75 percent of the municipal incinerators were considered inadequate, and were major polluters of air, land, and water.

Disposal sites pose two chronic problems for communities. First, they are an aesthetic NUISANCE, or an "eyesore." The federal Highway Beautification Act of 1965 (23 U.S.C.A. §§ 131 et seq.) targeted this problem with some success. The second, more vexatious problem is created by disease-carrying agents that transmit bacteria from landfills to nearby human populations. Such agents include water, wind, soil, birds, insects, and rodents.

In the late 1980s and early 1990s, state and federal attention turned to productive uses for landfills, such as resource recovery. Resource recovery, sometimes called reclamation or salvage, is the process by which energy and other resources are extracted from solid waste for recycling or reuse. Aluminum cans and plastic bottles are two forms of solid waste that can be both recycled and reused. Energy extracted from solid waste has been used to generate steam, electricity, and fuel.

Federal regulation of solid waste is governed by the Resource Conservation and Recovery Act (RCRA), 42 U.S.C.A. §§ 690 et seq., sometimes called the Solid Waste Disposal Act. When enacting the RCRA, Congress stated that "land is too valuable a national resource to be needlessly polluted by discarded materials, [yet] most solid wastes are disposed of on land in open dumps and sanitary landfills." At the same time, Congress determined that millions of tons of solid waste were being buried each year that could have been treated and salvaged. Better technology must be developed, Congress concluded, to recover useful resources from solid wastes.

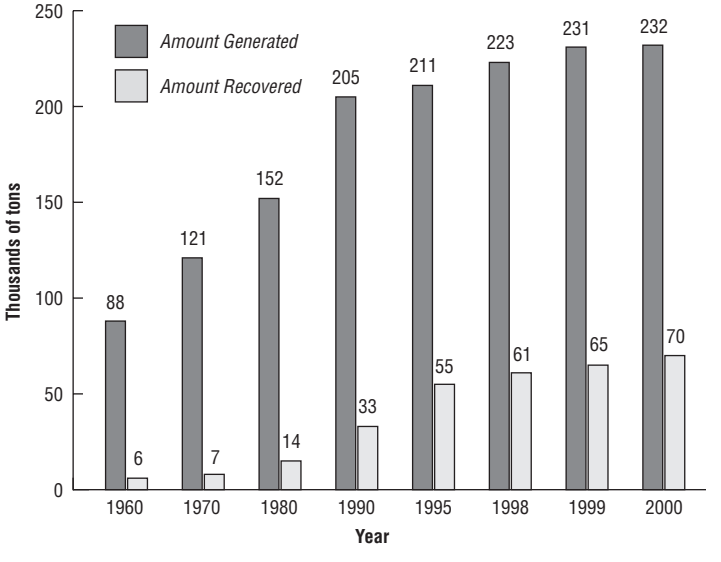
The RCRA defines solid waste as garbage, refuse, and sludge generated by treatment plants and AIR POLLUTION control facilities. Other discarded materials, such as semisolid and some liquid materials, are also included within the RCRA's broad definition of solid waste. Excluded from this definition are solid and dissolved materials from domestic sewage and irrigation systems, both of which are regulated at the state and local levels.

Under the RCRA, the administrator of the ENVIRONMENTAL PROTECTION AGENCY (EPA) is required to publish guidelines for the collection, storage, transportation, treatment, and disposal of solid waste. During the first several years after the RCRA's enactment, particularly during President Ronald Reagan's administration, the EPA was slow to enact any guidelines whatsoever. In 1987, four environmental groups sued the EPA in an effort to compel the agency to fulfill its responsibilities under the RCRA. After that case was settled, the EPA began promulgating a number of guidelines concerning solid waste management, three of which govern the management of paper products, oil lubricants, and retread tires.

Paper is the largest single component, by both weight and volume, of municipal solid waste. More than 50 million tons of such waste are discarded each year, primarily in solid waste landfills. Oil lubricants are also discarded in massive amounts. Of the more than 1.2 billion gallons of oil generated each year, 30 percent is discharged into sewers and land. The numbers of discarded tires is equally staggering. Over 4 billion tires have been dumped into landfills and stockpiles around the country, and that number grows by 200 million each year. Because tires do not biodegrade, they provide enduring shelter for many rodents and insects, both carriers of disease.

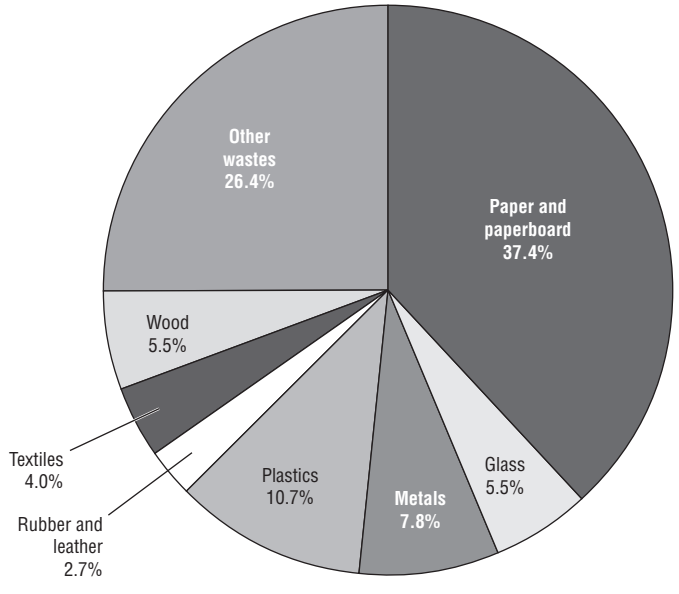
The guidelines drafted by the EPA were designed to diminish the magnitude of these problems by encouraging technological innovation, recycling, and reuse. In particular, the guidelines require that such waste be treated through new or available technology so that valuable resources can be identified and separated from materials that are truly waste. These guidelines may be enforced by the state or federal governments, as well as by private individuals through so-called citizen suits. Criminal and civil penalties are imposed on offenders who fail to comply with the guidelines. Violators may also face additional penalties imposed by state and local governments that have enacted solid waste regulations of their own.

Generation and Recovery of Municipal Waste in the United States, 1960 to 2000



SOURCE: U.S. Environmental Protection Agency, *Municipal Solid Waste in the United States: 2000 Facts and Figures.*

Materials Generated in Municipal Solid Waste, in 2000



SOURCE: U.S. Environmental Protection Agency, *Municipal Solid Waste in the United States: 2000 Facts and Figures.*

Hazardous Substances and Toxic Pollutants

The alarming dangers posed by hazardous substances and toxic pollutants were brought to the fore in Niagara Falls, New York, where the infamous Love Canal incident took place. The canal was originally excavated in the 1890s as part of an unsuccessful scheme to divert the Niagara River for hydroelectric power. Between 1942 and 1953, Hooker Chemical Corporation filled the canal with drums containing 21,800 tons of hazardous and toxic chemicals. Later, Hooker sold the dump site to the Niagara Falls School Board for $1, with a deed containing a provision that relieved the chemical company of liability for any harm resulting from hazardous and toxic materials deposited at the canal.

A school was built near the site, and a residential neighborhood grew up surrounding the canal. But as the drums holding the chemicals gradually corroded, their contents migrated from the canal through the neighboring residential soil. In the late 1970s, following several years of heavy rainfall, the presence of the chemicals became more apparent as sludge seeped into basements and emitted toxic fumes. Numerous lawsuits soon followed.

Regulation of hazardous and toxic materials is marked by its nomenclature. Hazardous substances are defined by federal law as "solid wastes" that "cause, or significantly contribute to an increase in mortality or illness" or "pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported or disposed" (42 U.S.C.A. § 6903). Toxic pollutants, a subset of hazardous substances, include pollutants that "after discharge and upon exposure, ingestion or inhalation . . . [by] any organism" will "cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions, . . . or physical deformations in such organisms or their offspring" (33 U.S.C.A. § 1362).

Because toxic pollutants are a subset of hazardous materials, a pollutant may be hazardous without being toxic, but not vice versa. The EPA has published a list of pollutants it deems toxic, including arsenic, asbestos, benzene, cyanide, DDT, lead, mercury, nickel, and silver. Pollutants not included on this list, such as acetic acid, ammonia, and cobalt, may still be considered hazardous if they pose a substantial threat to human health or the environment.

Myriad federal and state regulations govern the management of hazardous and toxic materials. The manufacturing of hazardous chemicals is governed at the federal level by the Toxic Substance Control Act (TSCA), 42 U.S.C.A. § 9604. The purpose of the TSCA is to identify potentially harmful substances before they are manufactured and placed in the market, in order to protect the public from any "unreasonable risk." Pursuant to the TSCA, the EPA has adopted rules requiring manufacturers to test chemicals that "enter the environment in substantial quantities" or present a likelihood of "substantial human exposure." The TSCA also requires manufacturers to give the EPA notice 90 days before they begin manufacturing any new chemicals.

Facilities that transport, store, and dispose of hazardous and toxic substances, also called TSDs, are governed by the RCRA. The RCRA provides "cradle-to-grave" regulation of toxic and hazardous substances based partly on their persistence, degradability, corrosiveness, and flammability. TSDs must obtain a permit under the RCRA before they are allowed to manage toxic or hazardous materials. To obtain a permit, the applicant must demonstrate the ability to manage such materials in compliance with strin-

gent standards. One of these standards requires TSDs to take corrective action immediately after any improper release of toxic chemicals.

The RCRA makes landfills the last alternative for the disposal of hazardous and toxic materials. Before land disposal is permitted under the RCRA, TSDs must comply with treatment standards that mandate the use of certain technology to minimize the harmfulness of particular substances. When land disposal is authorized, new landfills must use double liners and groundwater monitoring systems unless the EPA finds that an alternative design or practice would be equally effective in preventing hazardous and toxic materials from migrating through the soil. The EPA has broad powers under the RCRA to inspect TSDs for violations.

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C.A. § 9622, is the third major piece of federal legislation governing hazardous and toxic materials. Congress established CERCLA in 1980 to deal with thousands of inactive and abandoned hazardous waste sites in the United States. CERCLA directs the EPA to identify sites at which hazardous or toxic substances may have been released, and ascertain the parties potentially responsible for cleaning up these sites. Potentially responsible parties (PRPs) include the owners and operators of sites where hazardous material has been discharged, as well as the dischargers themselves.

CERCLA imposes joint and several liability on responsible parties, which means that once liability is established among a group of owners, operators, and dischargers, any one of them could be held liable for the entire cost of cleanup. Although responsible parties can seek reimbursement from each other, the wealthiest defendants are usually stuck with the CERCLA cleanup bills.

Some responsible parties escape liability because they cannot be identified or located. Others have become insolvent or bankrupt. In such situations, CERCLA's Superfund provisions are triggered. The Superfund creates a multibillion-dollar hazardous substance trust fund for cleaning up seriously contaminated sites in which the responsible parties avoid liability. Revenue for the Superfund is raised through federal appropriation and taxes paid by some TSDs.

The sale and distribution of pesticides is governed at the national level by a separate piece of legislation known as the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C.A. §§ 136 et seq. Under FIFRA, no pesticide may be introduced into the stream of commerce without approval by the administrator of the EPA. A pesticide will not be approved if the administrator finds it is likely to "cause unreasonable adverse effects on the environment." The reasonableness of an adverse environmental effect is measured by taking into account the economic, social, and environmental costs and benefits of the pesticide.

Common Law

In addition to the remedies provided under federal and state legislation for injuries caused by solid waste, hazardous substances, and toxic pollutants, common-law principles of nuisance, TRESPASS, and NEGLIGENCE provide alternative avenues of recourse against landfill owners. The common-law doctrine of nuisance gives injured landowners a CAUSE OF ACTION when "substantial" injuries result from an "unreasonable" use of a particular landfill. The gravity of the injury and the reasonableness of the use are measured by a cost-benefit analysis in which the utility and appropriateness of the landfill's activities are balanced against the value of the landowner's interests.

Under the COMMON LAW of trespass, landowners can recover for *any* unlawful interference with their rights or interests. Trespass requires proof that the landfill owner intentionally or knowingly interfered with the landowner's rights or interests. Mere accidental or inadvertent interferences will not suffice.

Landowners suffering injuries from accidents and inadvertence can turn to the common law of negligence, which allows recovery for injuries caused by a landfill owner's failure to act with reasonable care.

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CROSS-REFERENCES

Air Pollution; Environmental Law; Land-Use Control; Pollution; Water Pollution.

SOLOMON AMENDMENT

The Solomon Amendment, 50 U.S.C.A. App. § 462(f), is federal legislation that denies male college students between the ages of 18 and 26 who fail to register for the military draft (under the Selective Service Act, 50 U.S.C.A. App. § 451 et seq.) eligibility to receive financial aid provided by the Basic Educational Opportunity Grant Program.

Registration for the draft, which had been suspended on July 1, 1973, resumed in 1980. To compel compliance with the registration requirement, Congress enacted the Solomon Amendment, sponsored by Gerald B. H. Solomon (R-N.Y.). The amendment provides that applicants for financial aid under the Basic Educational Opportunity Grant Program certify that they have satisfied the registration requirement relating to the draft. In 1984 the U.S. Supreme Court upheld the constitutionality of the Solomon Amendment in *Selective Service System v. Minnesota Public Interest Research Group,* 468 U.S. 841, 104 S. Ct. 3348, 82 L. Ed. 2d 632.

CROSS-REFERENCES

Armed Services; Selective Service System.

SOLVENCY

The ability of an individual to pay his or her debts as they mature in the normal and ordinary course of business, or the financial condition of owning property of sufficient value to discharge all of one's debts.

SON OF SAM LAWS

Laws that enable a state to use the proceeds a criminal earns from recounting his or her crime in a book, movie, television show, or other depiction. The laws are named after David Berkowitz, a New York serial killer who left a note signed "Son of Sam" at the scene of one of his crimes.

Since 1977 forty-two states and the federal government have enacted various types of Son of Sam laws that take any proceeds a criminal earns for selling the story of his crime and give them to the victims of the crime or to a victims' compensation fund. Since a 1991 U.S. Supreme Court ruling struck down the New York law as unconstitutional, states have sought ways to modify their laws to avoid similar decisions. Despite the apparent virtue of denying criminals the ability to profit from their crimes, serious FIRST AMENDMENT issues have been raised about Son of Sam laws.

The New York legislature enacted the first Son of Sam law (N.Y. Exec. Law § 632-a) in 1977 after it learned that David Berkowitz was planning to sell his story of serial killing. The statute affected an accused or convicted person who contracted to speak or write about her crime. It required the person contracting with the criminal to turn over the criminal's proceeds to the state's Crime Victims Compensation Board, which established an escrow account for the benefit of the crime's victims and publicized the existence of the account. To obtain funds, a victim had to bring a civil action and obtain a judgment against the criminal within three years (originally five years) of the establishment of the account. At the end of this time period, the criminal received any funds in the account upon showing that no actions were pending against her.

Forty-one other states adopted similar laws, and the federal government established such a process in the VICTIMS OF CRIME ACT OF 1984 (18 U.S.C.A. §§ 3681–3682). In a few states, victims may apply directly to a victims' compensation program rather than sue the criminal directly. Some states seek to prevent criminals from ever profiting from their crimes by retaining any money remaining in the escrow account at the end of the statutory period. Under the federal statute, a court directs the disposition of the remaining funds and may require that part or all of the money be turned over to the Federal Crime Victims Fund.

The constitutionality of the New York Son of Sam law was challenged in *Simon and Schuster, Inc. v. New York Victims Crime Board,* 502 U.S. 105, 112 S. Ct. 501, 116 L. Ed. 2d 476 (1991). This case involved profits from the book *Wiseguy: A Life in a Mafia Family,* a nonfiction work about ORGANIZED CRIME in New York City, published by Simon and Schuster. Nicholas Pileggi wrote the book with the paid cooperation of Henry

Hill, a career criminal who agreed in 1980 to testify against organized crime figures. The book told Hill's life story from 1955, when he first became involved with crime, until 1980.

Simon and Schuster argued that the law was based on the content of a publication and therefore violated the First Amendment. The Court agreed. Writing for a unanimous Court, Justice SANDRA DAY O'CONNOR struck down the law, concluding, "A statute is presumptively inconsistent with the First Amendment if it imposes a financial burden on speakers because of the content of their speech."

The Son of Sam law singled out income derived from expressive activity and was directed only at works having a specified content. Because of the financial disincentive to publication that the act created, and its differential treatment among authors, the Court applied the strictest form of review to the New York law. The Court acknowledged that the state had a compelling interest in compensating victims from the fruits of crime but concluded that the law was not narrowly tailored to achieve that interest. The New York law was over-inclusive, applying to works on any subject as long as the work expressed the author's thoughts or recollections about the crime, however tangentially or incidentally. If the author admitted to committing the crime, it did not matter whether she was ever actually accused or convicted. Under this standard, works by St. Augustine, HENRY DAVID THOREAU, and MALCOLM X would be covered because their writings discussed crimes that they committed.

The *Simon and Schuster* decision has put the validity of all Son of Sam laws in doubt. New York quickly amended its law to apply to any economic benefit to the criminal derived from the crime, not just the proceeds from the sale of the offender's story. This redefinition was intended to eliminate the unconstitutional regulation of expressive activity and reconceptualize the law as a regulation of economic proceeds from crime.

The Supreme Court did not strike down all Son of Sam laws as unconstitutional, yet states have followed New York in modifying their statutes to designate that all profits of the offender be subject to attachment, not just those derived from selling his crime story. It remains unclear, however, whether these other laws will withstand a First Amendment challenge.

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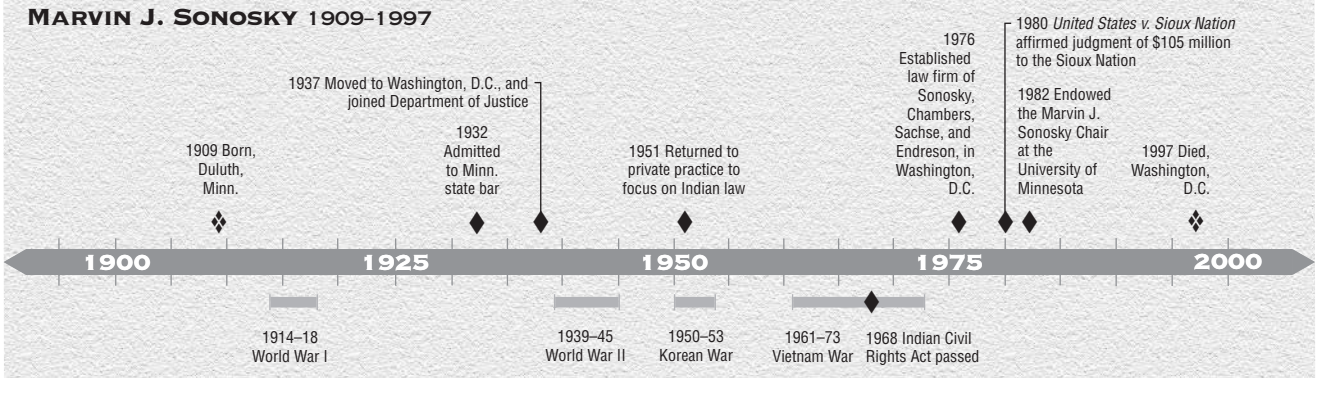
CROSS-REFERENCES

Freedom of Speech; Publishing Law; Victims of Crime.

♦ SONOSKY, MARVIN J.

Marvin J. Sonosky's legal work on behalf of Native Americans resulted in victories in Con-



gress and the courts. Sonosky championed Indian causes during his long career as an attorney, representing several tribes. His single greatest accomplishment was winning the *Black Hills* case, a 24-year legal odyssey in which the Sioux nation asserted its claim to sacred ground taken by the federal government a century earlier.

Born on February 20, 1909, in Duluth, Minnesota, Sonosky completed his undergraduate and law studies at the University of Minnesota and was admitted to the state bar in 1932. He practiced briefly in Duluth before moving to Washington, D.C., in 1937 to join the JUSTICE DEPARTMENT. He spent more than a decade as a special assistant to the attorney general in the Justice Department's Lands Division.

In 1951 Sonosky returned to private practice with a focus on Indian law. Over the next three decades, he would successfully represent the Assiniboin, Shoshone, and Sioux tribes in a number of cases involving land claims against the federal government. His work went beyond trial practice; his clients were often stymied by discriminatory federal laws, especially in the area of court jurisdiction, and Sonosky's efforts helped to remove barriers that prevented their full use of the federal courts.

Sonosky played a leading role in the effort by the Sioux to reclaim the Black Hills of South Dakota. The case had a long history: the Sioux had temporarily ceded title to the land to the federal government in 1876 under controversial circumstances. They began attempting to reclaim the land in the 1920s, but legal mismanagement stalled their claim until the late 1950s, when the Sioux turned to Sonosky and his colleague Arthur Lazarus.

Sonosky and Lazarus spent 24 years fighting the case in various courts, Congress, and even the White House. Legislative reform was necessary for their victory, and they helped change the Indian Claims Commission Act of 1946 (Ch. 959, § 1, Pub. L. No. 79-726 [omitted from 25 U.S.C.A. § 70 on termination of the commission on September 30, 1978, pursuant to Pub. L. No. 94-465, sec. 2, 90 Stat. 1990 (1976)]) as well as bring about passage of the Indian CIVIL RIGHTS ACT of 1968 (Pub. L. No. 90-284, tit. II, 82 Stat. 77 [codified at 25 U.S.C.A. §§ 1301–1303 (1988)]).

Their success was mixed. In 1980 the U.S. Supreme Court affirmed a judgment for the Sioux in the amount of $105 million (*Sioux Nation v. United States,* 602 F.2d 1157 [Ct. Cl. 1979], *aff'd.,* 448 U.S. 371, 100 S. Ct. 2716, 65 L. Ed. 2d 844 [1980]). Although the amount represented the largest judgment ever won by Native Americans against the federal government, the Sioux refused it, preferring return of the land to a monetary award. The attorneys, who had accepted the case on a contingency fee basis, received a $10 million legal fee from the federal Court of Claims.

In 1976 Sonosky established the firm of Sonosky, Chambers, Sachse, and Endreson in Washington, D.C. As one of the leading firms specializing in Indian law, its work includes LOBBYING, general tribal practice, mineral and natural resources issues, and representation of tribes before federal agencies. In 1982 Sonosky endowed the Marvin J. Sonosky Chair at the University of Minnesota. He remained active at his firm until his death on July 16, 1997, in Washington, D.C.

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SONY CORP. OF AMERICA V. UNIVERSAL CITY STUDIOS

In *Sony Corp. of America v. Universal City Studios,* 464 U.S. 417, 104 S. Ct. 774, 78 L. Ed. 2d 574 (1984), also known as the *Betamax* case, the U.S. Supreme Court determined that Sony, a manufacturer of videocassette recorders (VCRs) did not infringe on copyrights owned by Universal City Studios and Walt Disney Productions by manufacturing and marketing Betamax VCRs. (The Court's opinion uses the terms *videotape recorders* and *VTRs* in referring to VCRs.) Universal and Disney, which owned copyrights on many popular television programs in the late 1970s, sued Sony after Sony introduced its Betamax VCR in 1976. Universal and Disney claimed that the Copyright Revision Act (17 U.S.C.A. § 101 et seq. [1976]) did not permit home viewers to record their television

programs without their permission. The studios argued that Sony contributed to the copyright infringement by enabling and encouraging Betamax owners to record the copyrighted television programs.

The Supreme Court, in a 5–4 vote, determined that Sony did not infringe on the studios' copyrights by manufacturing and marketing Betamax VCRs. The decision, which analyzed difficult questions of copyright law, turned on two important legal concepts. First, the Court held that home recording of copyrighted television programs is a "fair use" of the copyrighted material and, thus, does not violate the Copyright Act. The Court's discussion of the "fair use doctrine" makes the *Betamax* case a landmark decision in copyright law. The Court also held that Sony was not liable for "contributory infringement" of the studios' copyrights. In other words, Sony was not liable to Universal and Disney for supplying television viewers with the means to record copyrighted television programs.

In 1976 Sony introduced the Betamax videocassette recorder. The Betamax was the first compact, affordable VCR available to consumers. Sony encouraged potential Betamax buyers to engage in "time-shift viewing" by recording television programs and viewing them later. Universal and Disney believed that the unauthorized recording of television programs by home viewers infringed on the copyrights they held on those programs. The studios filed suit in federal district court against Sony, Sony's U.S. subsidiary, Sony's advertising agency, four retailers of Betamax VCRs, and one individual Betamax owner.

The district court ruled against Universal and Disney, finding an implied exemption for home video recording in the 1976 Copyright Revision Act (*Universal City Studios, Inc. v. Sony Corp. of America,* 480 F. Supp. 429 [C.D. Calif. 1979]). The district court also held that Sony was not a contributory infringer of the studios' copyrights because it did not know that home video recording was an infringement when it manufactured and sold the VCRs. Most importantly, the district court held that home video recording was a fair use of the copyrighted television programs. Universal and Disney believed that the district court was the first court to hold that copying copyrighted material for mere entertainment or convenience could be a fair use, and they immediately appealed.

The Ninth Circuit Court of Appeals reversed the district court, holding that private home videotaping infringed on the studios' copyrights (*Universal City Studios, Inc. v. Sony Corp. of America,* 659 F. 2d 963 [1981]). The appeals court also determined that Sony was liable to the studios for contributory infringement because it knew that Betamax VCRs would be used to reproduce copyrighted programs. The Supreme Court agreed to hear Sony's appeal.

On January 17, 1984, the Supreme Court announced its decision reversing the Ninth Circuit court, holding that Sony had not infringed on copyrights held by Universal and Disney by manufacturing and marketing Betamax VCRs. The Court was sharply divided, and both Justice JOHN PAUL STEVENS, who wrote for the majority, and Justice HARRY A. BLACKMUN, who wrote for the dissent, issued lengthy opinions. As noted earlier, the *Betamax* case focused on two main issues: (1) whether home recording of copyrighted television programs constitutes a "fair use" of the copyrighted material, and (2) whether Sony committed "contributory infringement" by selling VCRs, thereby enabling VCR owners to copy the copyrighted television programs.

Article I of the U.S. Constitution grants Congress the power to pass laws to protect the works of "Authors and Inventors" from copying by others. Pursuant to this power, Congress created copyrights and PATENTS. To encourage creativity, Congress gave copyright holders the exclusive right to their creative works. The courts, however, have permitted reproduction of copyrighted works without the copyright holder's permission for a "fair use"; the copyright owner does not possess the exclusive right to a fair use. For example, a teacher may reproduce limited portions of a copyrighted book for the purpose of teaching without the permission of the author. This concept is referred to as the "fair use doctrine," which was codified by Congress in the Copyright Revision Act of 1976 (17 U.S.C.A. § 107). The *Betamax* decision is one of the most important cases interpreting this doctrine.

In determining that home recording of copyrighted television programs was a fair use under the copyright laws, the Supreme Court focused on the noncommercial nature of home recording. The Court stated that noncommercial use of copyrighted material is presumptively fair. The majority of the Court agreed

with the district court that home recording of copyrighted television programs simply does not harm the owners of the copyrights. The Court noted that television programs are broadcast free of charge and that Betamax VCRs enable viewers to watch programs they might otherwise miss. The Court also pointed out that copyright owners besides Universal and Disney had testified at trial that they did not object to the home recording of their television programs. Based on all of these factors, the Court held that home recording of copyrighted television programs constitutes a fair use of the copyrighted material.

Clearly, Sony was not itself infringing on the copyrights owned by Universal and Disney, regardless of whether home recording of television programs could be considered a fair use. Thus, the studios argued instead that Sony was liable for *contributory* infringement of their copyrights. The studios' theory was that Sony supplied the means for the copyright infringement and actively encouraged infringement through advertising. The Supreme Court rejected the studios' argument. The Court agreed that contributory infringement of a copyright could occur in certain circumstances; however, manufacturing and marketing the Betamax could not constitute contributory infringement because the Betamax was capable of a number of uses that did not infringe on any copyrights. As examples of non-infringing uses, the Court noted that many copyright owners did not object to having their television programs recorded. Also, the Betamax could be used to play rented or purchased tapes of copyrighted programs, thereby compensating the copyright holders for the right to view their works.

Justices Blackmun, THURGOOD MARSHALL, LEWIS F. POWELL JR., and WILLIAM H. REHNQUIST dissented in an opinion by Blackmun. First, the dissent found that home recording of copyrighted television programs was not a fair use of the copyrighted material. Blackmun stated that "when a user reproduces an entire work and uses it for its original purpose, with no added benefit to the public, the doctrine of fair use usually does not apply." Although the majority found no harm in allowing VCR owners to record copyrighted television programs, the dissent claimed that these recordings could harm the owners of the copyrights. The dissent pointed out, for example, that persons who tape television programs for later viewing are much more likely to skip through the commercials that ultimately pay for the television program, thereby potentially reducing advertising revenue. Also, the television ratings system, on which advertising prices are based, is unable to account for taped programs. The dissent further believed that Sony could be liable to the studios for contributory infringement of their copyrights, stating that "if virtually all of the product's use . . . is to infringe, contributory liability may be imposed." The dissent would have remanded the case to determine whether the Betamax VCRs were used primarily for infringing or non-infringing uses.

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CROSS-REFERENCES

Broadcasting; Intellectual Property.

♦ SOUTER, DAVID HACKETT

David Hackett Souter was appointed to the U.S. Supreme Court on July 25, 1990, by President GEORGE H. W. BUSH. Chosen by the Bush administration because of his conservative judicial style, Souter has proven to be a moderate justice whose personality and temperament have enabled him to build a centrist coalition that has garnered support from the Court's ideological extremes.

Souter was born on September 17, 1939, in Melrose, Massachusetts, six miles north of Boston. The only son of Joseph Souter, a bank manager, and Helen Souter, a gift store clerk, the future associate justice was remembered by his childhood friends as an intense, intelligent, and family-oriented person who was endowed with a sharp wit, but no athletic ability. At age eleven Souter and his parents moved to a ten-acre farm in the rural community of East Weare, New Hampshire.

In 1957 Souter graduated second in a class of two hundred at Concord High School where his classmates named him the most literary, most sophisticated, and most likely to succeed. During high school Souter was named president of the National Honor Society and coeditor of the yearbook. According to legend, the only time Souter got into trouble as a teenager was when he stayed past closing time at the local historical society.

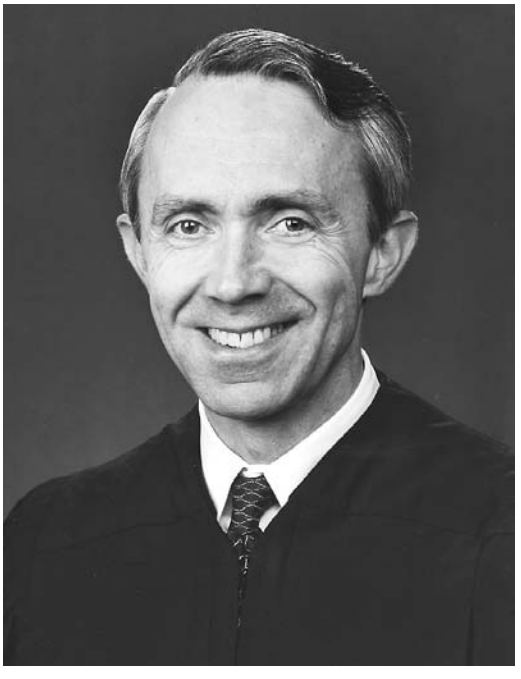
After high school Souter attended Harvard University. Graduating magna cum laude with a philosophy major in 1961, Souter was inducted into Harvard's prestigious chapter of Phi Beta Kappa, considered by many to be the nation's highest undergraduate academic award. Souter wrote his senior thesis on Supreme Court Justice **OLIVER WENDELL HOLMES JR.**, which helped him earn a Rhodes Scholarship to study at Oxford University, where he received a bachelor's degree in **JURISPRUDENCE** in 1963.

Upon returning to the United States, Souter entered Harvard Law School, quickly developing a reputation as a serious student and an independent thinker. However, Souter was not prone to debate issues with his peers or volunteer in class. Although Souter was a solid law student, he graduated without academic honors and was not chosen for a place on the *Harvard Law Review,* Harvard's esteemed legal journal, which was a highly coveted position among the students.

In 1966 Souter joined Orr and Reno, a leading New Hampshire firm that handled corporate, probate, tax, and **FAMILY LAW** cases. Not feeling sufficiently challenged or stimulated by private practice, Souter went to work for the New Hampshire attorney general, ascending from assistant attorney general in 1968 to deputy attorney general in 1971 to attorney general in 1976. Souter did very little prosecuting during his tenure with the attorney general's office, directly handling only nine cases in ten years.

In 1978 Souter was appointed to the bench as a superior court judge in New Hampshire. Attorneys who appeared before Souter described him as an even-handed trial judge with a penchant for detail. Five years later Souter was elevated to the New Hampshire Supreme Court, where he authored more than two hundred opinions and established himself as an assertive judge who often questioned lawyers during oral arguments.

In February 1990 President Bush appointed Souter to the U.S. Court of Appeals for the First Circuit. Five months later, before Souter had written his first opinion as a federal judge, Bush appointed Souter to the U.S. Supreme Court. Subsequently confirmed by a Senate vote of 90–9, Souter became the 105th jurist to serve on the nation's highest court.



David H. Souter.
SUPREME COURT HISTORICAL SOCIETY

Souter disappointed those in the Bush administration who hoped he would provide the decisive fifth vote for the conservative wing of the Court, comprised of Chief Justice **WILLIAM H. REHNQUIST** and Associate Justices **ANTONIN SCALIA, CLARENCE THOMAS,** and **SANDRA DAY O'CONNOR**. Instead, Souter proved to be a temperate justice, with a mainstream judicial philosophy. He took some positions that upset conservatives and other positions that upset liberals.

Souter offended liberals when he voted to uphold federal regulations that prohibited doctors from providing **ABORTION** counseling at federally funded clinics, despite objections that such regulations violated the **FIRST AMENDMENT** (*Rust v. Sullivan,* 500 U.S. 173, 111 S. Ct. 1759, 114 L. Ed. 2d 233 [1991]). Some liberals were again dismayed when Souter voted to affirm a state ban on nude dancing in *Barnes v. Glen Theatre,* 501 U.S. 560, 111 S. Ct. 2456, 115 L. Ed. 2d 504 (1991), even though four dissenting justices said the ban violated freedom of expression. Souter also regularly votes in favor of **CAPITAL PUNISHMENT**.

"[I]N THE FIELD OF STATE CONSTITUTIONAL LAW . . . IF WE PLACE TOO MUCH RELIANCE ON FEDERAL PRECEDENT WE WILL RENDER THE STATE RULES A MERE ROW OF SHADOWS; IF WE PLACE TOO LITTLE, WE WILL RENDER STATE PRACTICE INCOHERENT."
—DAVID H. SOUTER

On the other hand, many conservatives were distraught by Souter's concurring opinion in LEE V. WEISMAN, 505 U.S. 577, 112 S. Ct. 2649, 120 L. Ed. 2d 467 (1992), which relied on the Establishment Clause of the First Amendment to declare unconstitutional a nonsectarian prayer delivered by a clergyman at a public high school graduation ceremony. In ROMER V. EVANS, 517 U.S. 620, 116 S. Ct. 1620, 134 L. Ed. 2d 855 (1996), Souter joined the Court's majority opinion that relied on the EQUAL PROTECTION CLAUSE of the FOURTEENTH AMENDMENT to strike down a Colorado constitutional provision prohibiting all legislative, executive, and judicial action designed to protect homosexuals from discrimination. Many conservatives were also upset when Souter voted to invalidate the male-only admissions policy at the University of Virginia Military Institute because it discriminated against women who sought entrance to the school's citizen-soldier program (UNITED STATES V. VIRGINIA, 518 U.S. 515, 116 S. Ct. 2264, 135 L. Ed. 2d 735 [1996]).

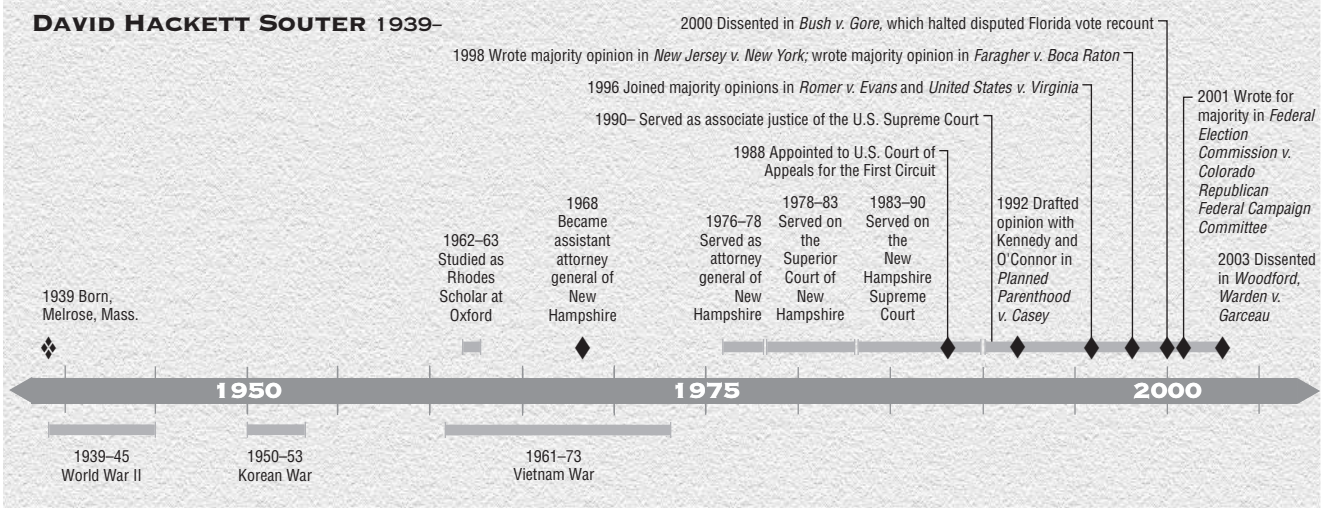
Observers increasingly recognized Souter as the intellectual leader of the emerging moderate core of the Supreme Court. In a number of important decisions, Souter allied himself with Justices ANTHONY M. KENNEDY and O'Connor to forge an influential coalition that has been joined by members of the Court's ideological extremes. In this regard Souter has played a critical role in building a consensus of judicial philosophy among the Supreme Court justices.

In *Planned Parenthood v. Casey,* 505 U.S. 833, 112 S. Ct. 2791, 120 L. Ed. 2d 674 (1992), for example, the state of Pennsylvania asked the Supreme Court to overturn ROE V. WADE, 410 U.S. 113, 93 S. Ct. 705, 35 L. Ed. 2d 147 (1973), the decision guaranteeing women the right to terminate their pregnancies under certain circumstances. After oral arguments, five justices—Rehnquist, Scalia, O'Connor, Kennedy, and BYRON R. WHITE—expressed serious reservations about the holding in *Roe.* Based on these reservations, Rehnquist was prepared to draft a majority opinion that would have gutted virtually every tenet in the 1973 precedent.

Before Rehnquist finished writing the opinion, however, Souter, O'Connor, and Kennedy met outside the presence of the other justices to discuss the case. Following this meeting, the three justices presented a joint opinion that affirmed the central holding of *Roe.* Neither the state nor federal governments, the joint opinion in *Casey* stressed, may pass laws that place an "undue burden" on a woman's right to have an abortion. Souter, O'Connor, and Kennedy drew support from the traditionally liberal JOHN PAUL STEVENS and HARRY A. BLACKMUN, who concurred in principle with the joint opinion, and from the traditionally conservative Rehnquist, who concurred in judgment.

Opinions in the Early 2000s

As of mid-2003 Souter continued to occupy a pivotal seat on the Supreme Court, using his polite and friendly personality, his patient and contemplative temperament, and his diligent work ethic to earn respect and win support across the ideological spectrum. However, many



of his more noteworthy decisions between 1995 and 2003 came in a dissenting role.

For example, Souter dissented from a Supreme Court decision holding that a sentence of two consecutive terms of 25 years to life in prison under California's Career Criminal Punishment Act, also known as the Three Strikes Law, on a conviction of two counts of petty theft with a prior conviction, was neither contrary to, nor an unreasonable application of, clearly established federal law. *Lockyer v. Andrade*, 123 S.Ct. 1166, 155 L.Ed.2d 144 (U.S. 2003). The defendant had been convicted of stealing videotapes worth $154. The defendant "did not somehow become twice as dangerous to society when he stole the second handful of videotapes," Souter said. "His dangerousness may justify treating one minor felony as serious and warranting long incapacitation, but a second such felony does not disclose greater danger warranting substantially longer incapacitation," Justice Souter argued. If the defendant's sentence is not grossly disproportionate to his crime under the Eighth Amendment's proportionality analysis for determining whether a punishment is cruel and unusual, Souter concluded, the principle would have "no meaning" in any other case to which it might apply.

Souter also dissented from a majority ruling that officers may conduct a routine, suspicionless drug interdiction without informing bus passengers that they have the right not to cooperate and to refuse consent to searches. *United States v. Drayton*, 536 U.S. 194, 122 S.Ct. 2105, 153 L.Ed.2d 242 (U.S. 2002). The Court's decision expanded upon an earlier case holding that the **FOURTH AMENDMENT** permits police officers to approach bus passengers at random to ask questions and to request their consent to searches, provided a reasonable person would understand that he or she is free to leave. Souter conceded that "[a]nyone who travels by air today submits to searches of the person and luggage as a condition of boarding the aircraft," and that "is universally accepted that such intrusions are necessary to hedge against risks that . . . even small children understand." However, "the commonplace precautions of air travel have not, thus far, been justified for ground transportation . . . and no such conditions have been placed on passengers getting on trains or buses." There is therefore an air of unreality about the Court's explanation that bus passengers consent to searches of their luggage to "enhanc[e] their own safety and the safety of those around them," Souter wrote.

Many of Souter's recent dissenting opinions have earned him a growing reputation as a liberal-leaning justice who broadly interprets the constitutional rights of criminal defendants. However, Souter sided against the defendant in *Atwater v. City of Lago Vista*, 532 U.S. 318, 121 S.Ct. 1536, 149 L.Ed.2d 549 (U.S. 2001), where he wrote the majority opinion in a 5–4 decision holding that the Fourth Amendment does not forbid a warrantless arrest for a minor criminal offense, such as a misdemeanor seatbelt violation punishable only by a fine.

The case arose when a Texas police officer observed that a motorist driving a pickup truck, as well as her two children, were not wearing seatbelts. Souter rejected the motorist's contention that "founding-era common-law rules" forbade peace officers from making warrantless misdemeanor arrests except in cases of "breach of the peace," a category the motorist claimed was then understood narrowly as covering only those non-felony-level offenses "involving or tending toward violence." In the years leading up to American independence, Souter observed, Parliament repeatedly extended express warrantless search authority to cover misdemeanor-level offenses not amounting to or involving any violent breach of the peace. Souter refused to mint a new rule of **CONSTITUTIONAL LAW** forbidding custodial arrest, even upon **PROBABLE CAUSE**, when conviction could not ultimately carry any jail time and the government could show no compelling need for immediate detention.

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SOUTHEAST ASIA TREATY ORGANIZATION

The Southeast Asia Treaty Organization (SEATO) was an alliance organized pursuant to

the Southeast Asia Defense Treaty to oppose the growing communist influence in Southeast Asia. The United States, the United Kingdom, France, Australia, New Zealand, Thailand, the Philippines, and Pakistan signed the treaty and accompanying Pacific Charter in Manila on September 8, 1954. The treaty became operative in February 1955 and bound the signatories to mutual aid to resist armed attack or subversion; an armed attack on one signatory was interpreted as a danger to all.

Headquartered in Bangkok, SEATO relied on the military forces of member nations rather than commanding its own standing forces, as did the NORTH ATLANTIC TREATY ORGANIZATION. In its first few years of operation, SEATO's effectiveness was not tested, but at the beginning of the 1960s, conflicts in South Vietnam and Laos challenged the strength of the alliance and ultimately found it lacking. France withdrew from military cooperation in SEATO in 1967, and Great Britain refused active military cooperation in the Vietnam conflict. Moreover, a 1960s dispute between Pakistan and India further undermined the efficacy of the alliance: Pakistan drew closer to communist China, while the United States provided aid to India.

In 1972 Pakistan completely withdrew from the alliance; in 1974 France suspended its membership payments. In September 1975 the signatories decided to phase out the operations, and SEATO was formally dissolved on June 30, 1977. The collective defense treaty remains in effect, however.

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SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE

As a principal organization of the CIVIL RIGHTS MOVEMENT, the Southern Christian Leadership Conference (SCLC) championed the use of nonviolent direct action to end legal and social discrimination against African Americans. Identified strongly with its original leader, the Reverend MARTIN LUTHER KING JR., the SCLC organized and sponsored many protest marches and demonstrations during the late 1950s and the 1960s. Although the group's influence declined after King's assassination in 1968, the SCLC continues to work for the betterment of the lives of African Americans.

The SCLC emerged in the wake of a successful boycott of buses in Montgomery, Alabama, by the city's black citizens in 1955, which had led to a December 1956 Supreme Court ruling upholding the desegregation of those buses (*Gayle v. Browder,* 352 U.S. 903, 77 S. Ct. 145, 1 L. Ed. 2d 114). Prodded by African American social activist Bayard Rustin, who hoped to carry the Montgomery victory to the rest of the South, King and other clerics formed the Southern Negro Leaders Conference, forerunner of the SCLC, during a meeting in Atlanta in January 1957. King—who had gained national renown through his role as head of the Montgomery Improvement Association, the organizer of the bus boycott—was a natural choice to lead the group. Other early SCLC leaders included the Reverends Ralph D. Abernathy and Fred Shuttlesworth. Later in 1957, the group changed its name to the Southern Christian Leadership Conference.

The SCLC hoped to initiate Gandhian, nonviolent direct action throughout the South. It hoped that such action would secure racial desegregation, voting rights, and other gains for African Americans. Through this approach, the SCLC sought to take the CIVIL RIGHTS cause out of the courtroom and into the community, hoping to negotiate directly with whites for social change. As one of its first actions, the group led the 1957 Prayer Pilgrimage to Washington, D.C., which drew an estimated twenty-five thousand people. In 1959, it organized a youth march on Washington, D.C., that attracted forty thousand people.

Despite these successful marches, the SCLC was hampered by disorganization during its early years. It experienced difficulty in meeting many of its major goals during the late 1950s, particularly in voter registration. It charted a new course in the early 1960s, when it recruited leaders such as the Reverends Wyatt T. Walker and Andrew J. Young. Between 1960 and 1964, the number of full-time SCLC staff members grew from five to sixty, and the organization's effect on the civil rights movement reached its zenith.

The SCLC's growth allowed it to coordinate historic demonstrations that played a vital role

in the civil rights movement. In April 1963, the SCLC led protests and boycotts in Birmingham, Alabama, that prompted violent police repression. Television viewers around the United States were shocked at the violence they saw directed at the clearly peaceful demonstrators. The SCLC won the sympathy of the nation again in a difficult 1965 civil rights campaign in Selma, Alabama, which also drew a violent response from whites. These protests are widely credited with hastening the passage of the **CIVIL RIGHTS ACT OF 1964** (42 U.S.C.A. § 2000a et seq.) and the **VOTING RIGHTS ACT OF 1965** (42 U.S.C.A. § 1973 et seq.), laws that granted African Americans many of the gains they had been seeking.

By the mid-1960s, other African Americans began to question whether nonviolent direct action could achieve significant changes for their communities. More radical civil rights groups, notably the **STUDENT NONVIOLENT COORDINATING COMMITTEE** and the **CONGRESS OF RACIAL EQUALITY**, publicly renounced the nonviolent approach of the SCLC. They pointed to the poverty and de facto (actual) **SEGREGATION** experienced by African Americans in the northern cities, and argued that the SCLC's tactics were ineffective in the urban ghetto.

King and the SCLC were sensitive to such criticism, and increasingly began to focus their attention on the North. By 1967, the SCLC launched several new operations there: the Chicago Freedom Movement, Operation Breadbasket, and the Poor People's Campaign. It brought in young, new leaders, including a divinity student named **JESSE JACKSON**, to lead these efforts.

The SCLC suffered a staggering setback when King was assassinated in April 1968. The group had always been closely identified with the charismatic preacher, and his death cost it the vital leadership, publicity, and fund-raising he had provided. Abernathy became president of the organization. By 1972, the staff had declined to twenty and leaders such as Young and Jackson had moved on to other pursuits.

Joseph E. Lowery succeeded Abernathy as president of the SCLC in 1977. The Atlanta-based group has continued to work for the improvement of the lives of African Americans through leadership training and citizen education. It has also created campaigns to battle drug abuse and crime.

Early leaders of the Southern Christian Leadership Conference, Revs. Martin Luther King Jr., Fred Shuttlesworth, and Ralph D. Abernathy speak at a press conference in Birmingham, Alabama, in May 1963.

AP/WIDE WORLD PHOTOS

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Integration; Jim Crow Laws; NAACP; Parks, Rosa Louise McCauley.

SOUTHERN POVERTY LAW CENTER

The Southern Poverty Law Center (SPLC) is an internationally known nonprofit organization that files **CLASS ACTION** lawsuits to fight discrimination and unequal treatment; it also tracks hate groups and runs a program to educate Americans about racism, anti-Semitism, and other forms of intolerance. The organization has received numerous awards and accolades for its work. It has also been the subject of vociferous attacks by racist and anti-Semitic groups as well as "white power" advocates.

Based in Montgomery, Alabama, the SPLC was founded in 1971 by attorneys Morris Dees and Joseph J. Levin Jr. along with CIVIL RIGHTS leader JULIAN BOND. Dees graduated from the University of Alabama Law School in 1960 and started a private law practice in the state's capitol city Montgomery. In 1967 Dees began to gain notoriety for being willing to handle unpopular civil rights cases. Levin, who had returned home from army service to join his father's law practice, indicated his interest in the type of cases Dees was handling. The two attorneys started a law practice that specialized in civil rights cases. Their practice eventually developed into the Southern Poverty Law Center. Levin functioned as legal director of the Center from 1971 to 1976. During that period Levin worked on more than 50 significant civil rights cases. Levin left the center in 1976 but continued his involvement with the Center serving as president and board chair. In 1996 Levin returned to Montgomery to become the center's chief executive officer. Julian Bond, a civil rights activist who co-founded the STUDENT NONVIOLENT COORDINATING COMMITTEE (SNCC) in 1960 and later served four terms on the board of the National Association for the Advancement of Colored People (NAACP), became the first president of the center. In 2003 he continued to serve as president emeritus.

The center has specialized in class action lawsuits that challenge SEGREGATION in numerous spheres. One case from the 1970s resulted in the election of 17 African American legislators to the Alabama General Assembly. Until 1972 there were no African Americans among the Alabama State Troopers. A lawsuit filed by the center that year resulted in a decision requiring the state to hire one qualified African American trooper for each Caucasian trooper hired until the former comprised 25 percent of the force. State officials fought the order and the case was litigated all the way to the U.S. Supreme Court. In 1987 the Court decided in favor of the plaintiffs. By 1995 opposition had ended and in 2003, the Alabama State Troopers had the highest percentage of minority officers of any state in the nation.

In 1976 the center challenged the inhumane conditions of Alabama prisons. Since prevailing in that case, the center has worked with state officials to reform the prison system. In 1995 the state reestablished a practice whereby prison inmates were shackled together as they worked along the state highways. The center sued the state and eventually obtained an agreement prohibiting the use of "chain gangs" in Alabama.

The center has also challenged Georgia state officials and their eligibility guidelines for providing services to children with learning disabilities as well as advocating for the provision of adequate care and health services for persons with mental retardation. In addition to LOBBYING for better care for emotionally disturbed children in foster care, the center has sought more assistance for adults with mental illness. The center also challenged Alabama's failure to provide MEDICAID recipients with medically necessary transportation. A federal court upheld the center's action, and in 1996 the state began operating a program that helped provide affordable transportation to more than 40,000 Medicaid recipients. Although this ruling was overturned on appeal, the state continued to provide non-emergency Medicaid transportation.

The center has also successfully fought for safer working conditions for employees of the Alabama's cotton mills, for fair housing treatment for African Americans in Alabama who faced RACIAL DISCRIMINATION when trying to lease apartments, for tax EQUITY in Kentucky, and for the removal of the Confederate battle flag from the dome of Alabama's state capitol building. Additionally, the center has waged and won major battles over the convictions of a number of cases where inmates in southern states have faced CAPITAL PUNISHMENT.

In response to the resurgence of the KU KLUX KLAN (KKK) in 1981, the center began to monitor hate activity. In the early 2000s the center's Intelligence Project was tracking the activities of more than 600 active hate groups including the KKK, Neo-Nazis, Black separatists, and other racist and extremist organizations. The center's quarterly periodical, *Intelligence Report*, provides comprehensive information on these groups to law enforcement agencies as well as the media and the general public. Center staff conduct training sessions regarding these groups for law enforcement agencies, schools, and community groups. In addition the center offers online hate-crime training on its Web site in conjunction with the Federal Law Enforcement Training Center and Auburn University Montgomery.

In addition to being the subject of continuous vitriolic attacks by extremist organizations,

whose activity it monitors, the center was the subject of strong criticism by Washington, D.C.-based writer Ken Silverstein. Writing in the November 2000 issue of *Harper's Magazine*, Silverstein accused the center of raising millions of dollars from fund-raising and investments but spending only a portion of the money raised on its civil rights programs. In 2003 the center continued to promote its "Teach Tolerance" campaign throughout the United States.

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Civil Rights; Civil Rights Acts; Discrimination; Ku Klux Klan.

SOVEREIGN IMMUNITY

The legal protection that prevents a sovereign state or person from being sued without consent.

Sovereign immunity is a judicial doctrine that prevents the government or its political subdivisions, departments, and agencies from being sued without its consent. The doctrine stems from the ancient English principle that the monarch can do no wrong.

Suits against the United States

In early American history, the courts supported the traditional view that the United States could not be sued without congressional authorization (**CHISHOLM V. GEORGIA**, 2 U.S. [2 Dall.] 419, 478, 1 L. Ed. 440 [1793]; *Cohens v. Virginia,* 19 U.S. [6 Wheat.] 264, 412, 5 L. Ed. 257 [1821]). This **IMMUNITY** applied to suits filed by states as well as individuals (*Kansas v. United States,* 204 U.S. 331, 27 S. Ct. 388, 51 L. Ed. 510 [1906]). Thus, for many years, those who had contract and **TORT** claims against the government had no legal recourse except through the difficult, inconvenient, and often tardy means of convincing Congress to pass a special bill awarding compensation to the injured party on a case by case basis.

The federal government first began to waive its sovereign immunity in areas of law other than torts. In 1855 Congress established the U.S. Court of Claims, a special court created to hear cases against the United States involving contracts based upon the Constitution, federal statutes, and federal regulations. In 1887 Congress passed the **TUCKER ACT** (28 U.S.C.A. §§ 1346 (a) (2), 1491) to authorize federal district courts to hear contractual claims not exceeding $10,000 against the United States. Other **SPECIAL COURTS** were later created for particular types of nontort claims against the federal government. The U.S. Board of General Appraisers was created in 1890 and was replaced in 1926 by the U.S. Customs Court, and the U.S. Court of Customs Appeals was created in 1909 and then replaced in 1926 by the U.S. Court of Customs and Patent Appeals. These courts handled complaints about duties levied on imports. The Board of Tax Appeals, created in 1924 to handle internal revenue complaints, was replaced in 1942 by the Tax Court of the United States.

Not until 1946, however, did Congress address the issue of liability for torts committed by the government's agencies, officers, or employees. Until 1946 civil servants could be individually liable for torts, but they were protected by sovereign immunity from liability for tortious acts committed while carrying out their official duties. But the courts were not always consistent in making that distinction.

Finally, in 1946 Congress passed the Tort Claims Act (28 U.S.C.A. §§ 1346(b), 2671–2678), which authorized U.S. district courts to hold the United States liable for torts committed by its agencies, officers, and employees just as the courts would hold individual defendants liable under similar circumstances. This general waiver of immunity had a number of exceptions, however, including the torts of **BATTERY**, **FALSE IMPRISONMENT**, false arrest, **MALICIOUS PROSECUTION**, **ABUSE OF PROCESS**, **LIBEL**, slander, **MISREPRESENTATION**, deceit, interference with contractual rights, tort in the fiscal operations of the Treasury, tort in the regulation of the monetary system, and tort in combatant activities of the armed forces in wartime.

By 1953 the U.S. Supreme Court had drawn distinctions under the Tort Claims Act between tortious acts committed by the government at the planning or policy-making stage and those

committed at the operational level. In *Dalehite v. United States,* 346 U.S. 15, 73 S. Ct. 956, 97 L. Ed. 1427 (1953), the Supreme Court held that the Tort Claims Act did not waive sovereign immunity as to tortious acts committed at the planning stage; immunity applied only to torts committed at the operational stage.

Congress also waived sovereign immunity in cases seeking injunctive or other nonmonetary relief against the United States in a 1976 amendment to the Administrative Procedure Act (5 U.S.C.A. §§ 702–703).

Suits against the States

The doctrine of sovereign immunity applies to state governments within their own states, but it was not initially clear whether states had immunity as to suits involving other states or citizens of other states. In the 1793 case of *Chisholm v. Georgia,* the U.S. Supreme Court permitted a North Carolina citizen to sue Georgia for property that Georgia had seized during the American Revolution. The states' strong disapproval of the Court's decision in *Chisholm* led to the prompt adoption of the ELEVENTH AMENDMENT to the U.S. Constitution in 1795. The Eleventh Amendment specifically grants immunity to the states as to lawsuits by citizens of other states, foreign countries, or citizens of foreign countries in the federal courts. This limitation was judicially extended to include suits by a state's own citizens in *Hans v. Louisiana,* 134 U.S. 1, 10 S. Ct. 504, 33 L. Ed. 842 (1890).

The U.S. Supreme Court still has jurisdiction to hear suits by one state against another. In addition, the courts have construed the Eleventh Amendment as permitting appellate proceedings in cases originally instituted by a state if the defendant asserted rights under the U.S. Constitution, statutes, or treaties (*Cohens v. Virginia*), or in cases against state officials alleged to have violated such rights (*Osborn v. Bank of the United States,* 22 U.S. [9 Wheat.] 738, 6 L. Ed. 204 [1824]). The latter category has resulted in extensive litigation in federal courts against state and local officers alleged to have violated the CIVIL RIGHTS ACT of 1871 (42 U.S.C.A. SECTION 1983). Claims brought under the act are not subject to sovereign immunity.

However, the FOURTEENTH AMENDMENT does allow Congress to abrogate state sovereign immunity. Section 5 grants Congress the enforcement power to advance the goals of the amendment, which include the guarantees of DUE PROCESS and EQUAL PROTECTION of the laws. Congress has used this power to apply modern CIVIL RIGHTS laws as well as patent and TRADEMARK LAWS to state governments. This power was not questioned until the mid-1990s, when the Supreme Court began to issue decisions that strike down the application of federal statutes to the state governments. In *Seminole Tribe v. Florida*, 517 U.S. 44, 116 S.Ct. 1114, 134 L.Ed.2d 252 (1996), the Court established a two-part test for determining whether Congress abrogated the states' immunity when enacting a particular statute. It ruled that absent a state's waiver, states retain their sovereign immunity unless (1) Congress unequivocally expressed its intent to abrogate the immunity, and (2) Congress acted pursuant to a valid exercise of its enforcement power under Section 5 of the Fourteenth Amendment. The Court held that, in order to satisfy the first prong of the test, Congress must make its intent to abrogate the States' immunity unmistakably clear.

The Court proceeded to apply this two-part test in a series of cases. In *Florida Prepaid Postsecondary Education Expense Board v. College Savings Bank,* 527 U.S. 627, 119 S.Ct. 2199, 144 L.Ed.2d 575 (1999), the Court ruled that the state of Florida could invoke its sovereign immunity to block federal lawsuits against it by a bank charging it with patent and trademark law violations. The Court found that Congress had clearly intended to abrogate state sovereign immunity but had failed to satisfy the second part of the test. The Court stated that "Congress must identify conduct transgressing the Fourteenth Amendment's substantive provisions, and must tailor its legislative scheme to remedying or preventing such conduct." Because Congress had failed to identify a pattern of patent infringement by the states or a pattern of constitutional violations, the Eleventh Amendment barred the laws' application to the states.

The Supreme Court, in *Alden v. Maine,* 527 U.S 706, 119 S.Ct. 2240, 144 L.Ed.2d 636 (1999), ruled that a group of state employees could not sue their state employer using the provisions of the FAIR LABOR STANDARDS ACT (29 U.S.C.A. 201 et seq.). In *Kimel v. Florida Board of Regents*, 528 U.S. 62, 120 S.Ct. 631, 145 L.Ed.2d 522 (2000), the Court found that the Age Discrimination in Employment Act of 1967 (ADEA), 29 U.S.C.A. §§621-634, did not apply to state governments. The ADEA could not be applied because under the second part of the *Seminole*

Tribe test, there must be a "congruence and proportionality between the injury to be prevented or remedied and the means adopted to that end." Using this standard, the Court found that the ADEA was not "appropriate legislation." The Court noted that age is not a SUSPECT CLASSIFICATION under the Equal Protection Clause of the Fourteenth Amendment. Therefore, states may "discriminate on the basis of age without offending the Fourteenth Amendment if the age classification is rationally related to a legitimate state interest." The ADEA prohibited "substantially more state employment decisions and practices than would likely be held unconstitutional" under the equal protection, rational basis standard.

The Supreme Court also invalidated the application of part of the Americans with Disabilities Act (ADA), Pub. L. 101-336 (1990), to state government. In *University of Alabama v. Garrett,* 531 U.S. 356, 121 S.Ct. 955, 148 L.Ed.2d 866 (2001), the Court struck down ADA applicability to damage lawsuits involving alleged disability employment discrimination by state governments. Congress could only be authorized to include the states within ADA reach if it identified a history and pattern of unconstitutional employment discrimination against DISABLED PERSONS. However, the Court concluded that the legislative record "simply fails to show that Congress did in fact identify a pattern of irrational state discrimination in employment against the disabled." The Court asserted that Congress had published only a handful of incidents to support this conclusion. Absent a compelling historical pattern of discrimination, such as the RACIAL DISCRIMINATION against African Americans that justified the VOTING RIGHTS ACT OF 1965, the Court saw no merit in stripping states of their immunity from citizen lawsuits for money.

The Court continued its promotion of states' rights in *Federal Maritime Commission v. South Carolina State Ports Authority,* 535 U.S. 743, 122 S.Ct. 1864, 152 L.Ed.2d 962 (2002). In this case the Court demonstrated its continuing commitment to FEDERALISM by extending a state's sovereign immunity to federal ADMINISTRATIVE LAW proceedings. Though the case involved a fairly obscure federal commission, the Court's precedent could be extended to the many federal agencies and commissions that oversee the environmental and natural resources.

The Supreme Court did restrict Eleventh Amendment immunity, on procedural grounds, in *Lapides v. Board of Regents of the University System of Georgia,* 535 U.S. 613, 122 S.Ct. 1640, 152 L.Ed.2d 806 (2002). In this action the Court ruled that states could not claim Eleventh Amendment immunity when they voluntarily remove a case to federal court. By doing so the Court concluded that the state had voluntarily waived its immunity, thereby giving a plaintiff the chance to argue the merits of the case. The decision was likely to encourage states to litigate actions in state court if state law waives sovereign immunity.

In state court actions, immunity continues to be allowed in the absence of consent to be sued. Depending on the type of case, however, different levels of immunity may apply. Absolute immunity is generally allowed for judges and QUASI-JUDICIAL officers, such as prosecuting attorneys and PAROLE board members. For executive officers, immunity is a function of the amount of discretion they possess to make decisions and the circumstances in which they act (*Scheuer v. Rhodes,* 416 U.S. 232, 94 S. Ct. 1683, 40 L. Ed. 2d 90 [1974]). But immunity has been denied to officials acting in excess of statutory authority (*Greene v. Louisville and Interurban Railroad Co.,* 244 U.S. 499, 37 S. Ct. 673, 61 L. Ed. 1280 [1917]) or under an unconstitutional statute (*Ex parte Young,* 209 U.S. 123, 28 S. Ct. 441, 52 L. Ed. 714 [1908]). Immunity has been allowed when state property is involved or the state is an essential party for granting relief (*Cunningham v. Macon and Brunswick Railroad Co.,* 109 U.S. 446, 3 S. Ct. 292, 27 L. Ed. 992 [1883]).

Until a Supreme Court decision in 1979, it was generally assumed, and decided by a court in at least one case (*Paulus v. South Dakota,* 52 N.D. 84, 201 N.W. 867 [1924]), that a state's immunity must be recognized not only in its own courts but also in the courts of other states throughout the country. The U.S. Supreme Court addressed the issue in *Nevada v. Hall,* 440 U.S. 410, 99 S. Ct. 1182, 59 L. Ed. 2d 416 (1979). That case involved an employee of the University of Nevada who was driving in California on official business and injured a California resident in an automobile accident. The Supreme Court held that the common-law doctrine of sovereign immunity had not passed to the states when the United States was created; therefore, it is up to the states to decide whether to recognize

and respect the immunity of other states. Thus, the Supreme Court held in *Hall* that California could properly refuse to respect Nevada's sovereign immunity in the California courts.

Like the federal government, the states often relied on private laws to provide relief to specific individuals who would otherwise be unable to sue due to sovereign immunity doctrines. Recognizing that this arrangement was an inefficient and nonuniform way to provide relief from immunity doctrines, the states began to waive all or parts of their immunity from lawsuits. Many states created administrative bodies with limited capacity to settle claims against the state. Several states authorized suits against municipal corporations, counties, and school districts whose officers or employees injured individuals while performing proprietary, but not government, services. The distinction between proprietary and government services proved impossible to apply uniformly. Under modern law government services are widely considered to include police services, fire department services, and public education. Depending on the state involved, streets, sidewalks, bridges, parks, recreational facilities, electricity suppliers, gas suppliers, and airport functions can be considered either government or proprietary services.

As of 2003, most states had waived their immunity in various degrees at both the state and local government levels. Generally, state supreme courts first abolished immunity via judicial decisions; later, legislative measures were enacted at the state and local level to accept liability for torts committed by civil servants in the performance of government functions. The law varied by state and locality, however.

Suits against Foreign Governments

Until the twentieth century, mutual respect for the independence, legal equality, and dignity of all nations was thought to entitle each nation to a broad immunity from the judicial process of other states. This immunity was extended to heads of state, in both their personal and official capacities, and to foreign property. In the 1812 case of *The Schooner Exchange v. M'Faddon,* 11 U.S. (7 Cranch.) 116, 3 L. Ed. 287, a ship privately owned by a U.S. citizen was seized in French waters by Napoleon's government and converted into a French warship. When the ship entered the port of Philadelphia, the original owner sought to regain title, but the Supreme Court respected the confiscation of the ship because it occurred in accordance with French law in French waters.

With the emergence of socialist and Communist countries after WORLD WAR I, the traditional rules of sovereignty placed the private companies of free enterprise nations at a competitive disadvantage compared to state-owned companies from socialist and Communist countries, which would plead immunity from lawsuits. European and U.S. businesses that engaged in transactions with such companies began to insist that all contracts waive the sovereign immunity of the state companies. This situation led courts to reconsider the broad immunity and adopt instead a doctrine of restrictive immunity that excluded commercial activity and property.

Western European countries began waiving immunity for state commercial enterprises through bilateral or multilateral treaties. In 1952 the U.S. STATE DEPARTMENT decided that, in considering future requests for immunity, it would follow the shift from absolute immunity to restrictive immunity. In 1976 Congress passed the Foreign Sovereign Immunities Act (28 U.S.C.A. § 1601 et seq.) to provide foreign nations with immunity from the jurisdiction of U.S. federal and state courts in certain circumstances. This act, which strives to conform to INTERNATIONAL LAW, prohibits sovereign immunity with regard to commercial activities of foreign states or their agencies or with regard to property taken by a foreign sovereign in violation of international law. Customary international law has continued to move toward a restrictive doctrine.

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CROSS-REFERENCES

Federal Tort Claims Act; Feres Doctrine; Immunity; Judicial Immunity; Section 1983; Tort Law.

SOVEREIGNTY

The supreme, absolute, and uncontrollable power by which an independent state is governed and from which all specific political powers are

derived; the intentional independence of a state, combined with the right and power of regulating its internal affairs without foreign interference.

Sovereignty is the power of a state to do everything necessary to govern itself, such as making, executing, and applying laws; imposing and collecting taxes; making war and peace; and forming treaties or engaging in commerce with foreign nations.

The individual states of the United States do not possess the powers of external sovereignty, such as the right to deport undesirable persons, but each does have certain attributes of internal sovereignty, such as the power to regulate the acquisition and transfer of property within its borders. The sovereignty of a state is determined with reference to the U.S. Constitution, which is the supreme law of the land.

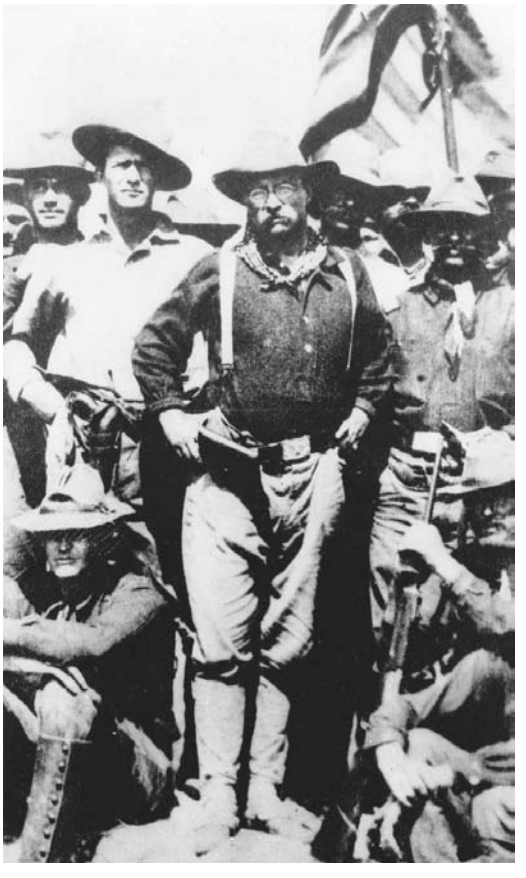
SPANISH-AMERICAN WAR

The Spanish-American War of 1898 lasted only a few months. It resulted in a U.S. victory that not only ended Spain's colonial rule in the Western Hemisphere but also marked the emergence of the United States as a world power, as it acquired Puerto Rico, the Philippines, and Guam. THEODORE ROOSEVELT'S military exploits in Cuba catapulted him onto the national stage and led to the vice presidency and, ultimately, the presidency.

The conflict had its origins in Spain's determined effort in the 1890s to destroy the Cuban independence movement. As the brutality of the Spanish authorities was graphically reported in U.S. newspapers, especially Joseph Pulitzer's *New York World* and William Randolph Hearst's *New York Journal,* the U.S. public began to support an independent Cuba.

In 1897 Spain proposed to resolve the conflict by granting partial autonomy to the Cubans, but the Cuban leaders continued to call for complete independence. In December 1897, the U.S. battleship *Maine* was sent to Havana to protect U.S. citizens and property. On the evening of February 15, 1898, the ship was sunk by a tremendous explosion, the cause of which was never determined. U.S. outrage at the loss of 266 sailors and the sensationalism of the New York press led to cries of "Remember the *Maine*" and demands that the United States intervene militarily in Cuba.

President WILLIAM MCKINLEY, who had originally opposed intervention, approved an April 20 congressional resolution calling for immediate Spanish withdrawal from Cuba. This resolution precipitated a Spanish declaration of war against the United States on April 24. Congress immediately reciprocated and declared war on Spain on April 25, stating that the United States sought Cuban independence but not a foreign empire.



Teddy Roosevelt emerged as one of the Spanish-American War's great heroes. He was photographed along with members of the First Volunteer Cavalry, the "Rough Riders," atop San Juan hill in 1898.

AP/WIDE WORLD PHOTOS

The war itself was brief due to the inferiority of the Spanish forces. On May 1, 1898, the Spanish fleet in Manila Bay in the Philippines was destroyed by the U.S. Navy under the command of Commodore George Dewey. On July 3, U.S. troops began a battle for the city of Santiago, Cuba. Roosevelt and his First Volunteer Cavalry, the "Rough Riders," led the charge up San Juan Hill; he emerged as one of the war's great heroes. With the sinking of the Spanish fleet off the coast of Cuba on July 3 and the capture of Santiago on July 17, the war was effectively over.

An ARMISTICE was signed on August 12, ending hostilities and directing that a peace conference be held in Paris by October. The parties signed the TREATY OF PARIS on December 12, 1898. Cuba was granted independence, and

Spain agreed to pay the Cuban debt, which was estimated at $400 million. Spain gave the United States possession of the Philippines and also ceded Puerto Rico and Guam to the United States. Many members of the U.S. Senate opposed the treaty, however. They were concerned that the possession of the Philippines had made the United States an imperial power, claiming colonies just like European nations. This status as an imperial power, they argued, was contrary to traditional U.S. foreign policy, which was to refrain from external entanglements. The Treaty of Paris was ratified by only one vote on February 6, 1899.

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SPECIAL APPEARANCE

The act of presenting oneself in a court and thereby submitting to the court's jurisdiction, but only for a specific purpose and not for all the purposes for which a lawsuit is brought.

A party makes a special appearance before a state court for the sole purpose of objecting to the court's jurisdiction over that party. If the party makes a general appearance to respond to the lawsuit, instead of a special appearance, then COMMON LAW dictates that the party thereby waives any objection to the court's jurisdiction over her. A party may object to the court's jurisdiction for a number of reasons, such as when SERVICE OF PROCESS was insufficient or defective, there is a variance between the complaint and the summons, or the lawsuit was brought in the wrong court. When a party wants to make a jurisdictional objection, she has the right to appear for the special purpose of making that objection, but according to common law, the party must clearly and specifically state to the court that she is specially appearing.

Rule 12(b) of the Federal Rules of Civil Procedure has abolished the distinction between general and special appearances for federal courts. Therefore, parties can raise a jurisdictional objection along with other defenses in a responsive pleading in federal court. However, if a party wishes to make the jurisdictional objection initially without having to prepare a full responsive PLEADING, the federal courts will permit that party to do so if he specially appears.

Some states have followed the Federal Rules of Civil Procedure and have eliminated for state court matters the distinction between general and special appearances. Many states still acknowledge the distinction, however, and some specifically provide for the distinction by statute.

SPECIAL ASSESSMENT

A real property tax proportionately levied on homeowners and landowners to cover the costs of improvements that will be for the benefit of all upon whom it is imposed.

For example, a special assessment might be made to pay for sidewalks or sewer connections.

SPECIAL COURTS

Bodies within the judicial branch of government that generally address only one area of law or have specifically defined powers.

The best-known courts are courts of general jurisdiction, which have unlimited trial jurisdiction, both civil and criminal, within their jurisdictional area. At the federal level, these are called district courts. At the state level, these courts have many different titles, including district court, trial court, county court, circuit court, municipal court, and superior court. Appellate courts of general jurisdiction review the decisions of inferior courts and are typically called either courts of appeal or supreme courts.

The bulk of U.S. courts, however, are special courts, which include all courts of limited and specialized jurisdiction that are not courts of general jurisdiction or appellate courts. A special court generally addresses only one or a few areas of law or has only specifically defined powers.

Special courts in the United States developed out of the English custom of handling different kinds of cases by establishing many different special courts. Many of the special courts established in the United States during colonial times and shortly after the Constitution was adopted have been abolished, but new special courts continue to be created, especially at the state and local level. Special courts now handle the vast majority of all cases brought in the United

States. The majority of all cases brought in any particular state jurisdiction go to special courts.

Special courts exist for both civil and criminal disputes. Cases tried in special, limited-jurisdiction criminal courts, such as traffic court or misdemeanor court, may be reheard in a general-jurisdiction trial court without an appeal upon the request of the parties.

Special courts do not include the many ADMINISTRATIVE LAW courts that exist at both the federal and state government level; administrative courts are considered part of the EXECUTIVE BRANCH, rather than the judicial branch. However, a general-jurisdiction court that hears only specific kinds of cases, such as a landlord-tenant branch of a general-jurisdiction trial court, is usually considered a special court.

Special courts differ from general-jurisdiction courts in several other respects besides having a more limited jurisdiction. Cases are more likely to be disposed of without trial in special courts, and if there is a trial or hearing, it is usually heard more rapidly than in a court of general jurisdiction. Special courts usually do not follow the same procedural rules that general-jurisdiction courts follow; often special courts proceed without the benefit or expense of attorneys or even law-trained judges.

The judges who serve in special courts are as varied as the special courts themselves. Most special court judges obtain their positions through election, rather than through the merit selection system common in general-jurisdiction courts. In addition, the majority of special court judges are not lawyers. In *North v. Russell*, 427 U.S. 328, 96 S. Ct. 2709, 49 L. Ed. 2d 534 (1976), the U.S. Supreme Court upheld the use of nonlawyer judges in special courts as constitutional as long as a trial de novo (a new trial) in a court of general jurisdiction with a lawyer-judge is given upon the request of the parties.

State and Local Special Courts

The states and localities have created many special courts. Juvenile courts are special courts that have jurisdiction over delinquent, dependent, and neglected children. Juvenile courts have special rules to protect the privacy of the juveniles before them, such as requiring that only the initials and not the full names of juveniles be used in court paperwork so that their identities are not revealed to the public. Juvenile court proceedings are closed to the public, and generally the records are sealed.

Probate courts are special courts of limited jurisdiction that generally have powers over the probate of wills and the administration of estates. In some states probate courts are empowered to appoint guardians or approve the ADOPTION of minors.

Small-claims courts, called conciliation courts in some states, provide expeditious, informal, and inexpensive adjudication of small claims. The jurisdiction of small-claims courts is usually limited to the collection of small debts and accounts. In most states parties are allowed to represent themselves in small-claims court, and some states prohibit lawyers from representing the parties.

Many states have also established family courts that typically have jurisdiction over several types of cases, including CHILD ABUSE and neglect proceedings, child and spousal support proceedings, PATERNITY determinations, CHILD CUSTODY proceedings, juvenile delinquency proceedings, and marital dissolutions.

Several states have established tax courts that have jurisdiction to hear appeals in all tax cases and have the power to modify or change any valuation, assessment, classification, tax, or final order. Massachusetts is unique in that it has a land court with exclusive jurisdiction over all applications for registration of title to land within the commonwealth, writs of entry and various petitions for clearing title to real estate, petitions for determining the validity and extent of municipal ZONING ordinances and regulations, and all proceedings for foreclosure.

Some states still have justice's courts, inferior tribunals of limited jurisdiction presided over by justices of the peace. These courts are the primary legacy of the special courts of colonial times. Most states, however, have abolished justice's courts and transferred their powers and duties to courts of general jurisdiction.

Some cities have established mayor's courts in which the mayor sits with the powers of a police judge or magistrate with respect to offenses committed within the city, such as traffic or ordinance violations. In other states these courts are called police courts and are not presided over by the mayor.

Federal Special Courts

Congress has established several special courts to adjudicate federal matters. ADMIRALTY courts are federal district courts that have jurisdiction over admiralty and maritime actions

pursuant to federal statute (28 U.S.C.A. § 1333). BANKRUPTCY courts are federal courts that are concerned exclusively with the administration of bankruptcy proceedings; they were also created pursuant to federal statute (28 U.S.C.A. § 1334). The U.S. TAX COURT tries and adjudicates controversies involving deficiencies or overpayments in income, estate, and gift taxes. U.S. magistrates try misdemeanor cases and conduct preliminary proceedings in civil and criminal proceedings.

The U.S. COURT OF APPEALS FOR VETERANS CLAIMS was created in 1988 to review decisions of the Board of Veterans' Appeals, which hears cases involving benefit programs for veterans and their dependents. Cases appealed from the Court of Veterans Appeals are heard by the U.S. court of appeals for the applicable federal circuit.

The U.S. Court of Federal Claims was created in 1982 to replace the former Court of Claims. Its powers are mandated by federal statute (28 U.S.C.A. §§ 1491 et seq.). The Claims Court has jurisdiction to render money judgments upon any claim against the United States based on the Constitution, a federal statute, or a federal regulation; any claim based on an express or implied contract with the United States; or any claim for liquidated or unliquidated damages in cases not sounding in TORT (not involving torts).

The Court of International Trade has jurisdiction over any civil action against the United States arising from federal laws governing import transactions. It also has jurisdiction to review determinations as to the eligibility of workers, firms, and communities for adjustment assistance under the Trade Act of 1974 (19 U.S.C.A. §§ 2101 et seq.). Insular courts are special courts created by Congress with jurisdiction over insular possessions (island territories) of the United States, such as Puerto Rico.

Military courts include courts-martial, courts of military review, the U.S. Court of Appeals for the Armed Forces, and the Military Court of Inquiry, These courts are designed to deal exclusively with issues arising under MILITARY LAW, which governs the armed forces. Courts-martial are ad hoc military courts, convened under authority of the UNIFORM CODE OF MILITARY JUSTICE (10 U.S.C.A. §§ 801 et seq.) to try and punish violations of military law committed by persons subject to that law. The courts of military review are intermediate appellate criminal courts, established by the Military Justice Act of 1968 (10 U.S.C.A. § 866) to review COURT-MARTIAL convictions of members of their respective ARMED SERVICES in which the punishment imposed extends to death, dismissal or punitive discharge, or confinement for one year or more. The U.S. Court of Appeals for the Armed Forces (USCAAF), formerly known as the Court of Military Appeals, which was created by Congress in 1950 (10 U.S.C.A. § 867), functions as the primary civilian appellate tribunal responsible for reviewing court-martial convictions of all the services. Cases heard by the Courts of Military Review may be appealed to the USCAAF; any appeals from that court are heard by the U.S. Supreme Court. The Military Court of Inquiry is a court of special and limited jurisdiction, convened to investigate specific matters and advise whether further proceedings should be pursued.

A Court for the Trial of Impeachments is a tribunal empowered to try any officer of government or other person brought to its bar by the process of IMPEACHMENT. At the national level, the Senate is the Court for the Trial of Impeachments of federal officers, and in most states the upper house of the legislature is the Court for the Trial of Impeachments of state officers.

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CROSS-REFERENCES

Federal Courts; Jurisdiction; Judiciary; Juvenile Law; Military Law; State Courts.

SPECIAL DAMAGES

Pecuniary compensation for injuries that follow the initial injury for which compensation is sought.

The terminology and classification of types of damages is varied, at times contradictory, and

often confusing. The term "special damages" is one such term that can produce uncertainty, depending on the jurisdiction and context in which it is invoked.

Special damages are sought in lawsuits based on contract and TORT. They are asked for in addition to "general damages." These two types are classified as COMPENSATORY DAMAGES and are both designed to return persons to the position they were in prior to the alleged injury. For example, if a person was injured in an automobile accident, the victim could seek damages that would cover medical expenses, damage to the motor vehicle, and the loss of earnings now and in the future. Each of these would be classified as special damages. If the victim sought a money award for pain and suffering, mental anguish, and loss of consortium, these would be classified as general damages. Thus, special damages are based on measurable dollar amounts of actual loss, while general damages are for intangible losses that can be inferred from special damages as well as other facts surrounding the case. In this description special damages are damages that are reduced to a "sum certain" before trial. This description is typically used in tort actions.

However, the definitions of special and general damages are reversed in contractual disputes. Thus, general damages in contract would include the difference between contract and market prices, the difference between the value of the goods as delivered and as warranted, and interest on money that has been wrongfully withheld. In contrast, special damages would include all other damages. In contract special damages and "consequential" damages are virtually interchangeable. In this context the losses flowing out of the breached contract could be compensated for as special damages. For example, the lost profits that resulted from the failure of the seller to deliver the goods could be claimed as special damages. However, it is commonplace for sellers to require buyers to sign a contract excluding the recovery of special or consequential damages.

In addition, special damages are sometimes described in statutes when the legislature seeks to identify specific types of awards that are available when the state or a private person violates a person's rights. For example, a statute may list the special damages plaintiffs are entitled to if their real property is improperly taken through EMINENT DOMAIN.

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CROSS-REFERENCES

Lawsuit; Restitution.

SPECIAL MASTER

A representative of the court appointed to hear a case involving difficult or specialized issues.

Special masters are officers of the court who serve in a QUASI-JUDICIAL role at the pleasure of the appointing court. Special masters are employed in complex civil actions where their expertise would assist the court in developing the record. In addition, special masters may be established by Congress to assist in the administration of claims against the government.

Rule 53 of the Federal Rules of Civil Procedure (FRCP) provides the authority for the appointment of special masters by U.S. District Courts. Because state civil procedure rules are modeled on the FRCP, similar authority is granted to state trial courts. Rule 53 defines the word *master* to include referees, auditors, examiners, and assessors. Special masters are compensated for their work. The court sets the rate of compensation, and the parties must pay these costs. However, when a federal magistrate judge serves as a master, no additional compensation is paid.

Reference of a case to a master "shall be the exception and not the rule" according to Rule 53. When a matter is to be tried before a jury, a referral to a special master is appropriate only if the issues are complicated. If a case is not to be tried before a jury, a special master is appropriate only when "some exceptional condition requires it." The Supreme Court, in *La Buy v. Howes Leather Company,* 352 U.S. 249, 77 S. Ct. 309, 1 L. Ed. 2d 290 (1957), ruled that court congestion that delayed cases for long periods did not, by itself, become an exceptional condition that justified the appointment of a special master. In addition, the complexity of the case must be extreme, as many fields of CIVIL LAW are complex. To rule otherwise would deprive parties of their right to a jury trial. Though the Court made the appointment of special masters

more difficult, lower courts have used masters when they could justify the complexity and exceptional nature of the case.

The appointing court may specify or limit the powers of the master and may also limit the issues the master considers. However, once given this appointing order the special master has the authority to regulate all proceedings and to compel the production of documents and other evidence. In addition, the master may put witnesses and parties under oath and may examine them. Once the evidence has been taken, the special master files a report with the appointing court. This report may contain findings of fact and conclusions of law. Once a master's report has been filed in a non-jury case, the court must accept the findings of fact unless they are clearly erroneous. In a jury action the master's findings are admissible as evidence of the matters found and may be read to the jury.

Special masters have been called upon to review and administer agreements made by parties through consent orders. Masters have helped federal courts run school districts and oversee prison systems that had been found to violate the rights of inmates. Environmental lawsuits have also been an area in which the courts have used special masters. In some lawsuits masters have been called upon to review a defendant's internal documents to see whether they may remain confidential because they are attorney-client work product.

Congress established the September 11 Victim Compensation Fund of 2001 to compensate the victims of the terrorist attacks and their families. Congress created the position of special master to administer the claims process. Attorney General JOHN ASHCROFT appointed Kenneth R. Feinberg to serve in that capacity. Feinberg has sole authority to determine what each claimant will receive. His rulings are not appealable to a court of law because claimants must waive this right when they apply to the fund for compensation. If they do not agree to this condition they must file a civil lawsuit against private parties they believe were negligent for the SEPTEMBER 11TH ATTACKS of 2001.

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CROSS-REFERENCES

Judge; Judiciary; Litigation.

SPECIAL PROSECUTOR

See INDEPENDENT COUNSEL.

SPECIAL TERM

In court practice in some jurisdictions, a branch of the court system held by a single judge for hearing and deciding motions and equitable actions in the first instance.

This type of term is called special to distinguish it from a general term, which is ordinarily held by three judges sitting en banc to hear appeals or to hear and determine cases brought during the regular session of the court.

SPECIAL WARRANTY DEED

A written instrument that conveys real property in which the grantor (original owner) only covenants to warrant and defend the title against claims and demands by him or her and all persons claiming by, through, and under him or her.

In the special warranty deed, the grantor warrants that neither he nor anyone claiming under him has encumbered the property and that he will defend the title against defects arising under and through him, but no others.

A general warranty deed, in contrast, warrants and defends the title against all claims whatsoever by anyone. In some jurisdictions the special warranty deed is called a quitclaim deed, but in other jurisdictions they are different types of instruments.

SPECIALIZATION

A career option pursued by some attorneys that entails the acquisition of detailed knowledge of, and proficiency in, a particular area of law.

As the law in the United States becomes increasingly complex and covers a greater number of subjects, more and more attorneys are

narrowing their practice to a limited field or fields. Even small-town general practitioners limit the range of matters they handle to some degree, if only out of practical necessity. Although specialization has become commonplace, the formal recognition and regulation of specialties are still controversial issues in the legal profession.

In the 1950s, the AMERICAN BAR ASSOCIATION (ABA) considered whether it should identify, recognize, and regulate legal specialists. In 1969, the ABA decided not to promulgate a national plan to regulate legal specialization until some initial specialization plans could be studied at the state level. In 1971, California became the first state to adopt a pilot specialization program. Florida adopted a designation plan in 1976, and Texas adopted a full certification plan in 1980. Several other states followed suit in the 1980s.

In the late 1970s, the ABA adopted several ethical and disciplinary rules in the *Moral Code of Professional Responsibility* that addressed some of the issues presented by attorney specialization. Disciplinary rule 2-102(5) restricted the headings that attorneys could list themselves under in telephone books or other directories. Disciplinary rule 2-102(6) allowed lawyers to list the areas of law in which they practiced but did not allow them to state that they specialized in those fields. Disciplinary rule 2-105 prohibited lawyers from holding themselves out as specialists in certain areas of law, except for patent and TRADEMARK lawyers in states that authorized and approved of those fields of specialization. Ethical consideration 2-14 also suggested that with the exception of ADMIRALTY, trademark, and patent lawyers, lawyers should not represent to the public that they are specialists with special training or ability.

Also in the late 1970s, the ABA House of Delegates adopted a resolution that recommended that several elements be included in any state specialization program. The ABA Standing Committee on Specialization began assisting states in defining and identifying specialty fields and in establishing basic regulatory guidelines.

In 1979, the ABA adopted the Model Plan of Specialization, which incorporated the earlier principles and guidelines developed by the Standing Committee on Specialization. The ABA reached a compromise between two popular types of specialization plans that had developed in the states: designation and certification plans. Designation plans established basic requisites for specialist recognition, such as a minimum number of years in practice and a minimum number of CONTINUING LEGAL EDUCATION classes, but did not review the expertise of the applicants through an examination. Under the designation plans, lawyers had to apply to designate themselves as specialists in a certain field, and that application had to be approved by the state. However, the standards were not very stringent.

In contract, certification plans required a prior review of the applicant's credentials, such as through a written examination, and also required certain minimum standards. Most certifying mechanisms required that applicants be licensed to practice law, be substantially involved in a particular area of law (such as devoting 25 percent of their practice to their specialty), and be involved in continuing LEGAL EDUCATION and peer review.

The growth of state specialization plans was boosted considerably after the U.S. Supreme Court's decision in *Bates v. State Bar of Arizona,* 433 U.S. 350, 97 S. Ct. 2691, 53 L. Ed. 2d 810 (1977), in which the Court held that states cannot prevent lawyers from advertising. Court decisions since *Bates* have held that states may regulate attorney advertising to protect the public from false, misleading, or deceptive advertising. Many state specialization plans, therefore, were developed to regulate how lawyers portrayed themselves and their practice areas to the public through advertising and other communications.

In 1983, the ABA adopted the Model Rules of Professional Conduct, some of which addressed the issues presented by attorney specialization. Model rule 7.4, for example, provided that a lawyer could not state or imply that he was a specialist in any area, except admiralty, patent, or trademark law, unless he was specially certified or recognized under a formal state specialization plan. By that time attorneys were being certified by several national organizations, such as the National Board of Trial Advocacy (NBTA), which certified trial specialists. Because the states were not overseeing the specialization process, the issue arose as to whether attorneys certified by such organizations could call themselves specialists. The courts addressed this issue by suggesting that states either screen the certifying organizations or require them to issue disclaimers indicating that they were not authorized by the state.

In 1993, the ABA adopted a voluntary set of national standards for specialization, and established a process for accrediting private organizations that certify lawyers as specialists. National organizations authorized to certify specialists include the NBTA, the American Board of Certification, and the National Elder Law Foundation.

By the early 2000s, 18 states had formal plans for the recognition and regulation of legal specialties. That number continues to grow, as states adopt designation or certification plans, or some variation of the two. These plans recognize a number of specialty areas, including civil trial practice, criminal trial practice, FAMILY LAW, tax law, and real estate law. The ABA has drafted model standards for specialization in several other areas as well; these standards include the administrative procedures necessary to implement the plans.

Certification rules vary from state to state, but each lawyer must fulfill four major requirements to be deemed a certified specialist. He must provide evidence of substantial involvement in the specialty area and references from lawyers and judges. He must have completed 36 credit hours of specialty continuing legal education in the three years preceding the application. He must have been admitted to practice and be a member in good standing in one or more states. And, finally, he must be recertified at least every five years and be subject to revocation of the certification for failure to meet the program's requirements.

Despite the growing trend toward lawyer specialization, there is widespread opposition to formal specialization plans. Many lawyers feel that the state's interest in regulating claims of expertise is not as important as the individual's FIRST AMENDMENT right to advertise. Other lawyers, especially general practitioners, feel that the formal recognition of specialization detracts from the presumption that any lawyer licensed to practice law is competent to handle any legal problem. They also fear that formal specialization programs will lead to a class system, with general practitioners or nonspecialists relegated to a second-class status. Attorneys who practice in rural or isolated areas make the practical objection that due to their locations, they do not have access to enough continuing legal education opportunities to qualify as specialists.

Attorneys who support specialization plans argue that the plans lead to more competent lawyers by requiring specialists to attend many continuing legal education courses and to provide evidence of their expertise before being recognized as specialists. Some also argue that specialization plans lead to improved delivery of legal services to the public by providing more accurate information about lawyers and their specialties.

As lawyers advertise in increasing numbers, they are also finding more formats in which to advertise such as telephone books, radio, television, newspapers, journals, magazines, the INTERNET, direct mail, and billboards. Although advertising makes it easier for the public to find a lawyer and learn more about that lawyer, it can lead to MISREPRESENTATION or misunderstanding. Thus, in dealing with the issue of legal specialization, the legal profession is striving to reach a compromise between the need to protect the public from false or misleading advertisement and the First Amendment right of lawyers to advertise with minimal state regulation.

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CROSS-REFERENCES

Ethics, Legal; Legal Advertising.

SPECIALTY

A contract under seal.

A specialty is a written document that has been sealed and delivered and is given as security for the payment of a specifically indicated debt. The term *specialty debt* is used in reference to a debt that is acknowledged to be due by an instrument under seal.

SPECIFIC INTENT

The mental purpose, aim, or design to accomplish a specific harm or result by acting in a manner prohibited by law.

The term *specific intent* is commonly used in criminal and TORT LAW to designate a special state of mind that is required, along with a phys-

ical act, to constitute certain crimes or torts. Specific intent is usually interpreted to mean intentionally or knowingly. Common-law LARCENY, for example, requires both the physical act of taking and carrying away the property of another and the mental element of intent to steal the property. Similarly, common-law BURGLARY requires breaking and entering into the dwelling of another with an intent to commit a felony therein. These crimes and others that require a specific-intent element are called *specific-intent crimes* and are distinguished from *general-intent crimes.* General-intent crimes require only a showing that the defendant intended to do the act prohibited by law, not that the defendant intended the precise harm or the precise result that occurred.

Courts have defined specific intent as the subjective desire or knowledge that the prohibited result will occur (*People v. Owens,* 131 Mich. App. 76, 345 N.W.2d 904 [1983]). Intent and motive are commonly confused, but they are distinct principles and differentiated in the law. Motive is the cause or reason that prompts a person to act or fail to act. Intent refers only to the state of mind with which the act is done or omitted. Because intent is a state of mind, it can rarely be proved with direct evidence and ordinarily must be inferred from the facts of the case. Evidence of intent is always admissible to prove a specific-intent crime, but evidence of motive is only admissible if it tends to help prove or negate the element of intent.

Courts generally allow a wide range of direct and CIRCUMSTANTIAL EVIDENCE to be introduced at trial in order to prove the difficult element of criminal or tortious intent. In addition, the doctrine of presumed intent may be helpful in proving specific intent because it holds individuals accountable for all the NATURAL AND PROBABLE CONSEQUENCES of their acts.

A defendant may testify at trial as to his intent. Whether the defendant intended to break the law does not matter, however; rather, the issue is whether he intended to do that which is unlawful. For example, a defendant may maintain that he took money without permission in order to buy food for his hungry children and that he intended to repay the money. In such a case, the defendant's intent to repay the money does not negate the fact that he intentionally took money that did not belong to him without permission. In addition, it does not matter that he planned to feed his children with the money, because that is his motive in acting, not his intent.

An individual will be guilty or liable for a crime or tort if she had the intent to commit the crime or tort, even though the intended injury occurred in an unexpected way. For example, suppose that an assassin tries to shoot a person but misses and hits an automobile gasoline tank. If the tank explodes and kills the intended victim, the assassin is still guilty of murder even though the victim's death did not occur in the manner intended.

A defendant still possessed the element of intent even though his intended act could not possibly have succeeded as planned. Suppose, for example, that a burglar intended to break into a house and steal an original painting. Once he broke in, however, he discovered that the painting had been removed or that it was just a print and not an original painting at all. The burglar still had the necessary intent for burglary.

Because specific intent is an essential element in proving many torts and crimes, defendants often argue that they did not possess the specific intent required and therefore are not guilty or liable for the crime or tort committed. In fact, most jurisdictions recognize by statute or case law certain defenses to the formation of specific intent. For example, a defendant may argue that at the time a crime was committed she was intoxicated and that her mental impairment kept her from formulating the specific intent to commit the crime. Voluntary intoxication is not a defense to the commission of general-intent crimes, but in many jurisdictions it is a defense to specific-intent crimes. In other jurisdictions voluntary intoxication is never a defense to the commission of a crime. Most jurisdictions permit the defense of involuntary intoxication even if they do not recognize voluntary intoxication. Courts generally permit expert witness testimony on the issue of whether the defendant had the ability to form specific intent.

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CROSS-REFERENCES

Criminal Law; Tort Law.

SPECIFIC LEGACY

A gift by will of designated PERSONAL PROPERTY.

A specific legacy is revoked if the testator—the maker of the will—no longer owned the property at the time of his or her death or the property no longer existed. In some jurisdictions, a court will continue a provision for a specific legacy as one for a demonstrative legacy if it is clear that the testator intended the heir to receive the gift in any event.

SPECIFIC PERFORMANCE

An extraordinary equitable remedy that compels a party to execute a contract according to the precise terms agreed upon or to execute it substantially so that, under the circumstances, justice will be done between the parties.

Specific performance grants the plaintiff what he actually bargained for in the contract rather than damages (pecuniary compensation for loss or injury incurred through the unlawful conduct of another) for not receiving it; thus specific performance is an equitable rather than legal remedy. By compelling the parties to perform exactly what they had agreed to perform, more complete and perfect justice is achieved than by awarding damages for a breach of contract.

Specific performance can be granted only by a court in the exercise of its EQUITY powers, subsequent to a determination of whether a valid contract that can be enforced exists and an evaluation of the relief sought. As a general rule, specific performance is applied in breach of contract actions where monetary damages are inadequate, primarily where the contract involves land or a unique chattel (PERSONAL PROPERTY). Damages for the breach of a contract for the sale of ordinary personal property are, in most cases, readily ascertainable and recoverable so that specific performance will not be granted.

An important advantage to this remedy is that, since it is an order of an equity court, it is supported by the enforcement power of that court. If the defendant refuses to obey that order, she can be cited for criminal CONTEMPT and even imprisoned. The defendant can also be cited for civil contempt for continuing to refuse to obey the order and can be incarcerated until she agrees to obey it. In such a situation, it is said that "she has the keys to freedom in her pocket," which signifies that the defendant can release herself by complying with the court order. These enforcement powers are one of the principal reasons why plaintiffs seek specific performance of contracts.

Right to Specific Performance

Specific performance is ordered only on equitable grounds in view of all the conditions surrounding the particular case. The determining factor is whether, in equity and good conscience, the court should specifically enforce the contract because the legal remedy of monetary damages would inadequately compensate the plaintiff for the loss.

Valid Contract

The remedy of specific performance presupposes the existence of a valid contract between the parties to the controversy. The terms of the contract must be definite and certain. This is significant because equity cannot be expected to enforce either an invalid contract or one that is so vague in its terms that equity cannot determine exactly what it must order each party to perform. It would be unjust for a court to compel the performance of a contract according to ambiguous terms interpreted by the court, since the court might erroneously order what the parties never intended or contemplated.

Plaintiff's Conduct

A plaintiff seeking specific performance of a contract must have contracted in GOOD FAITH. If the plaintiff has acted fraudulently or has taken unfair advantage of superior bargaining power in drafting extremely harsh contract terms with respect to the defendant, the plaintiff has thereby contravened the doctrine of clean hands. Under that doctrine, the court will deny relief to a party who has acted unjustly in regard to a transaction for which that party is seeking the assistance of the court.

A classic example of the clean hands doctrine involved Charles Flowers, an outstanding college football player who was drafted by the New York Giants and Los Angeles Chargers. In

November 1959, he signed to play football with the Giants. According to the college rules, however, any player who signed a contract to play for a professional team was ineligible for further intercollegiate games. Because Flowers wanted to play in the Sugar Bowl on January 1, 1960, he and the Giants agreed to keep his signing of the contract confidential, deceiving his college, the opposing team, and the football public in general. One of the terms of the contract provided that it was binding only when approved by the commissioner of football. Part of the plan was that the contract would not be submitted for approval until after January 1. Flowers subsequently attempted to withdraw from the contract, but the Giants promptly filed it with the commissioner, who approved it on December 15. Public announcement was withheld until after January 1.

On December 29, Flowers negotiated a better contract with the Chargers and signed it after the Sugar Bowl game. He notified the Giants on December 29 that he was withdrawing from his contract with them and returned his uncashed bonus checks. The Giants sought specific performance of their contract with Flowers. The court denied relief because the Giants did not come into equity with clean hands (*New York Football Giants, Inc. v. Los Angeles Chargers Football Club, Inc.,* 291 F.2d 471 [5th Cir. 1961]).

Equitable relief will be denied to anyone who has acted unjustly or with bad faith in the matter in which she seeks relief, irrespective of any impropriety in the behavior of the defendant. The misconduct does not necessarily have to be of such nature as to be punishable as a crime or to justify any legal proceedings. Any intentional act concerning the CAUSE OF ACTION that violates the standards of fairness and justice is sufficient to prohibit the granting of equitable relief. The Giants club accepted from Flowers what it claimed to be a binding contract, but it agreed that it would represent to the public that there was no contract in order to deceive others who had a material interest in the matter. If there had been a straightforward execution of the contract, followed by its filing with the commissioner, none of these legal problems would have existed. The Giants created the situation by their devious conduct and, therefore, had no right to obtain relief from a court of equity. The court refused to specifically enforce the contract.

At all times, a plaintiff must be willing to "do equity," which means that the plaintiff must fulfill whatever equitable obligations the court imposes upon her in order to do what is just and fair to the defendant. A person will be granted specific performance only if that person has done, has offered to do, or is ready and willing to do all acts that were required of her to execute the contract according to its terms.

Inadequate Legal Remedy

Specific performance will be denied where money would adequately compensate the plaintiff for the loss. The court determines whether money would be adequate after examining the subject matter of the contract itself. If it is land, money is inadequate because land is traditionally viewed as being unique, in that no two parcels of land are exactly alike. An award of damages will not enable the plaintiff to acquire the same parcel of land anywhere else.

If the contract involves the sale of ordinary chattels—such as furniture, appliances, or machinery—rather than land, the general measure of damages for breach of contract is the difference between the market price and the contract price. Damages are adequate since the item could be easily repurchased on the open market and the buyer would be compensated for the amount he was compelled to spend in excess of the original contract price. The UNIFORM COMMERCIAL CODE (UCC) (a body of law adopted by the states that governs commercial transactions) permits specific performance for the breach of a sales contract for goods under limited circumstances.

Specific performance will be granted where the contract involves a unique chattel; the court determines whether a chattel is unique. A rare stamp collection is a unique chattel for purposes of specific performance, whereas stock listed on the New York or American Stock Exchange is not unique. Antiques, heirlooms, or one-of-a-kind items are considered unique because money cannot replace their value to the plaintiff. The claim that an object has sentimental value to the plaintiff is not, in and of itself, sufficient to justify specific performance. When the sentiment or personal desire for the object is based upon facts and circumstances that endow the item with a special value so that it becomes a family heirloom, specific performance will be granted.

Damages are inadequate if the estimate is difficult to make, such as in a requirements contract—a written agreement whereby one party

assents to purchase from the other all the merchandise of a designated type that he might require for his business. The same principle applies where the chattel is scarce and cannot be readily repurchased on the open market even though it is not unique. Where the same contract combines unique and ordinary items, the entire contract will be specifically enforced.

As a general rule, breaches of personal service contracts are compensated at law by damages unless the services are unique. In such a case, the contract usually contains a negative covenant that prohibits a person from practicing her profession or performing those unique services for anyone else within a certain distance from a former employer for a specified period of time. The employer would seek to specifically enforce this negative COVENANT against the person who violates it. These provisions, sometimes called covenants not to compete, are enforced only if they are reasonable in scope; otherwise monetary damages are awarded. A court will never specifically enforce an employment contract by ordering an employee to work for an employer because the THIRTEENTH AMENDMENT to the Constitution prohibits SLAVERY.

Insolvency of the defendant, which prevents the plaintiff from collecting damages, does not determine whether specific performance will be granted. The court ascertains only whether an adequate legal remedy exists, not whether the defendant has the financial resources to pay the judgment.

Supervision of Performance

As a general rule, equity will not order acts that it cannot supervise. In many instances, specific performance is denied where courts would be unduly burdened with the task of supervising the performance. Supervision is a particular problem in building or repair contracts because the court lacks the technical expertise, means, or agencies to learn exactly what tasks the contractor is performing or whether she is performing them properly.

There are, however, certain exceptions to this rule. If the plans for the building are clearly defined, or if there has been sufficient partial performance so that supervision of the remainder is not difficult, the court might grant specific performance for its completion. An attempt to enforce a building repair contract is more problematic for the court. It must initially determine what repairs are to be made and the time within which they are to be performed; then it must decide whether there has been substantial performance and, if not, whether the defendant had any excuse. Usually an adequate remedy at law exists in the form of damages that represent the excess of the construction cost paid over the original contract price. Where damages are inadequate, however, the court can order specific performance.

Defenses

A contract that is unenforceable because it has not complied with the STATUTE OF FRAUDS (an old ENGLISH LAW, adopted in the United States, that requires certain contracts to be in writing) cannot be enforced through specific performance.

LACHES is an equitable defense (matter asserted to diminish a plaintiff's cause of action or to defeat recovery) that prevents the enforcement of a contract by specific performance. Laches is an unreasonable delay in asserting a right with the result that its enforcement would cause injury, prejudice, or disadvantage to others. Laches is applied only where enforcement of a right will cause injustice.

The doctrine of clean hands is a defense in an action for specific performance. As explained in the discussion of the case of Charles Flowers, a court will deny specific performance if the plaintiff has acted in bad faith or fraudulently in the same transaction for which he is seeking relief.

A contract might not be specifically enforced if, as a result of superior bargaining power, the plaintiff takes unfair advantage of the defendant who is in a debilitated position. This situation transpires when the consideration (the inducement to enter into a contract) is so inadequate as to "shock the conscience," or when "sharp dealings" are involved, such as where the defendant is ill. Failure to disclose material facts to the defendant that, if revealed, would have prevented a contract from being made is a ground to deny specific performance.

Mistakes and misrepresentations in the terms of a contract might constitute a defense against specific performance. If such mistakes are sufficient to justify RESCISSION of a contract, they are sufficient to prevent the enforcement of the contract. A court will enforce only a contract with definite and certain terms.

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SPECULATIVE DAMAGES

Alleged injuries or losses that are uncertain or contingent and cannot be used as a basis of recovery for TORT *or contract actions.*

An individual cannot be compensated for mere speculative probability of future loss unless he can prove that such negative consequences can reasonably be expected to occur. The amount of damages sought in a lawsuit need not be established with absolute certainty provided they are anticipated with reasonable certainty. Where the plaintiff cannot establish with reasonable certainty that any injury resulted from the act of omission complained of, he might be entitled to recover nominal damages. Mere uncertainty concerning the measure or extent of damages does not preclude their recovery in either tort or contract cases.

When an individual seeks to recover COMPENSATORY DAMAGES, she must establish evidence of their nature and extent as well as some data from which they can be calculated. No extensive recovery can be founded upon guesswork alone. Recovery must be backed with evidence that justifies an inference that the damage award is a fair and reasonable form of compensation for the injury incurred. In addition, when compensatory damages can be proved with approximate accuracy and determined with some degree of certainty, it is essential that they be so proved. If evidence of damage from various causes exists, but no evidence is available as to the portion of damage that the defendant caused, the proof is too uncertain to allow the jury to award damages against the defendant.

SPEECH, FREEDOM OF

See FREEDOM OF SPEECH.

SPEECH OR DEBATE CLAUSE

Article I, Section 6, Clause 1, of the U.S. Constitution states in part,

> for any Speech or Debate in either House, [senators and representatives] shall not be questioned in any other place.

The purpose of the clause is to prevent the arrest and prosecution of unpopular legislators based on their political views.

The U.S. Supreme Court has gradually defined and redefined the Speech or Debate Clause in several cases over the years. The first case concerning the Speech and Debate Clause was *Kilbourn v. Thompson,* 103 U.S. (13 Otto) 168, 26 L. Ed. 377 (1880). The Court has interpreted the Speech or Debate Clause to mean that members of Congress and their aides are immune from prosecution for their "legislative acts." This does not mean that members of Congress and their aides may not be prosecuted. Rather, evidence of legislative acts may not be used in a prosecution against a member of Congress or a congressional aide.

The main controversy surrounding the Speech or Debate Clause concerns the scope of the phrase "legislative acts." The phrase obviously encompasses speeches and debates on the floor of the Senate or the House of Representatives. According to the Supreme Court, voting, preparing committee reports, and conducting committee hearings also are legislative acts, but republishing legislative materials for distribution to constituents and accepting a bribe to influence a vote are not.

Legislators and their aides have invoked the Speech or Debate Clause with varying results. In May 1994 former Illinois congressman Daniel Rostenkowski was indicted for allegedly devising schemes to defraud the federal government of money and Rostenkowski's fair and honest services. Rostenkowski argued in part that he could not be prosecuted for misappropriating a Clerk Hire Allowance by using it to pay employees for personal services rather than for official work because the allowance was connected with hiring a clerk, which is a legislative activity. In *United States v. Rostenkowski,* 59 F.3d 1291 (D.C. Cir. 1995), the U.S. Court of Appeals for the District of Columbia rejected this argument, noting that the indictment had not charged that the persons who performed the personal services had any relationship whatsoever to the legislative process.

In contrast, the clerk of the House of Representatives and other House personnel have been shielded from an employment discrimination suit by the Speech or Debate Clause. In *Browning*

v. Clerk, U.S. House of Representatives, 789 F.2d 923 (D.C. Cir. 1986), the U.S. Court of Appeals for the District of Columbia Circuit held that the clerk and other House personnel did not have to answer to charges of employment discrimination brought by an official House reporter because the employee's duties were directly related to the legislative process.

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CROSS-REFERENCES

Congress of the United States.

SPEECH PLUS

A form of expression in which behavior is used by itself or in coordination with written or spoken words to convey an idea or message.

Speech plus, which is known as SYMBOLIC SPEECH, involves the communication of ideas through the combination of language and action—such as the burning of a draft card while stating opposition to the military—as opposed to pure speech, which involves the use of written or oral words alone. Like any other mode of expression, speech plus may be entitled to protection from interference by the government pursuant to the guarantee of the FIRST AMENDMENT to the Constitution, depending upon the nature of the expression, the circumstances in which it is expressed, and the danger it poses to society. Speech plus is often called *speech plus conduct.*

CROSS-REFERENCES

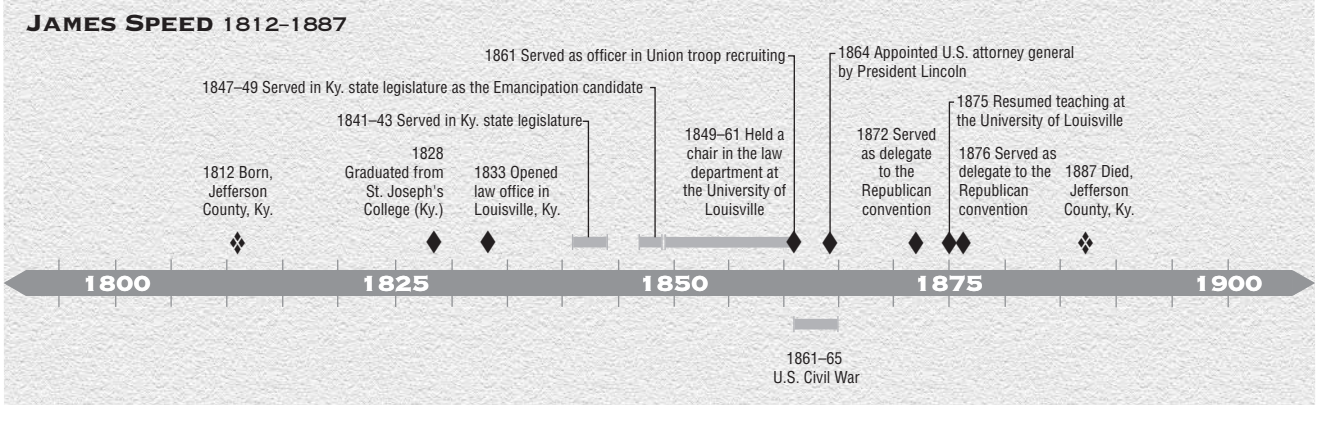
Freedom of Speech.

SPEED, JAMES

James Speed served as U.S. attorney general under President ABRAHAM LINCOLN.

Speed was born March 11, 1812, in Jefferson County, Kentucky. He was the son of Kentucky pioneers John Speed and Lucy Gilmer Fry Speed and counted among his ancestors a Revolutionary War hero (Captain James Speed) and an English historian (John Speed). Speed attended local schools and then St. Joseph's College, Bardstown, Kentucky. After graduating from St. Joseph's in 1828, he was employed for several years as a clerk in the local circuit and county courts. Finding he had an interest in the law, in 1831, he enrolled at Transylvania University, in Lexington, Kentucky, for further study.

In 1833 he moved to Louisville, Kentucky, and opened a law office. He was also offered—and accepted—a teaching position at Louisville University. While living in Louisville, Speed met and married Jane Cochran, the daughter of a local wholesale merchant. With her encouragement, he ran for a seat in the state legislature and was elected in 1841. However, his antislavery opinions proved to be unpopular with many of his constituents, and he left the legislature after one term to resume teaching.



Speed entered politics again in 1847. He was elected to the state legislature as the Emancipation candidate, then lost his seat in 1849 to a pro-slavery rival. Speed's early political fortunes in his home state were closely tied to Kentucky's internal pre–Civil War struggle over SLAVERY. As a border state, it experienced frequent shifts in the balance of power and popular opinion, between antislavery and pro-slavery forces.

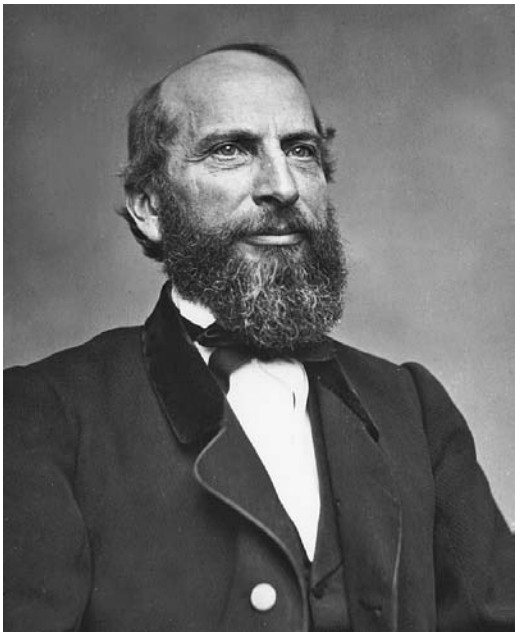
In the years between his 1849 defeat and the beginning of the Civil War, Speed held a chair in the law department at the University of Louisville. There, he developed a reputation as a man of integrity and ability—even among those who disagreed with his antislavery views. When President Lincoln needed help to hold Kentucky in the Union at the outbreak of the war, he called on Speed.

Lincoln and Speed had met as young men and maintained a close friendship throughout the years. Speed's younger brother, Joshua Fry Speed, was also a confidant of Lincoln's and acted as the president's emissary with the Southern states on a number of occasions before and during the war. Kentucky's refusal to join the Confederacy can be largely attributed to the efforts of the Speed brothers.

When the Civil War began, Speed honored President Lincoln's request to recruit Union troops from Kentucky. He acted as the mustering officer in 1861 for the first call for Kentucky volunteers. Throughout the war, Speed worked tirelessly for the Union cause. In 1864 he was rewarded for his loyalty when Lincoln named him U.S. attorney general.

At the close of the war, Speed initially held a moderate view of how the Union should deal with the secessionists. But the assassination of President Lincoln caused him to develop a less forgiving stance, a tougher, Radical Republican position. After the assassination, Speed maintained that "the rebel officers who surrendered to General Grant have no homes within the loyal states and have no right to come to places which were their homes prior to going into rebellion." And in an 1865 opinion, Speed concluded that in killing Lincoln, John Wilkes Booth had acted as a public enemy on behalf of the Confederacy. He recommended that Booth and his accomplices be tried for their offenses by a military tribunal rather than a civil court.

Speed resigned his cabinet post in 1866 when he found himself opposed to the policies of President ANDREW JOHNSON. Afterward, he toured the United States speaking about his friendship and professional association with the late president Lincoln.



James Speed.
LIBRARY OF CONGRESS

Speed resumed his teaching duties at the University of Louisville in 1875. He continued to play a role in state and national politics, acting as a delegate to the Republican conventions of 1872 and 1876. His last public appearance was on May 4, 1887, when he delivered to the Loyal League of Cincinnati a speech on his association with Lincoln and his lifelong efforts to preserve the Union. Speed died at his home in Jefferson County, Kentucky, on June 25, 1887.

"PEACE IS THE NORMAL CONDITION OF A COUNTRY, AND WAR ABNORMAL, NEITHER BEING WITHOUT LAW, BUT EACH HAVING LAWS APPROPRIATE TO THE CONDITION OF SOCIETY."
—JAMES SPEED

SPEEDY TRIAL

The SIXTH AMENDMENT to the U.S. Constitution guarantees all persons accused of criminal wrongdoing the right to a speedy trial. Although this right is derived from the federal Constitution, it has been made applicable to state criminal proceedings through the U.S. Supreme Court's interpretation of the DUE PROCESS and EQUAL PROTECTION Clauses of the FOURTEENTH AMENDMENT.

The right to a speedy trial is an ancient liberty. During the reign of HENRY II (1154–1189), the English Crown promulgated the Assize of Clarendon, a legal code comprised of 22 articles, one of which promised speedy justice to all litigants. In 1215 the MAGNA CHARTA prohibited the king from delaying justice to any person in the realm. Several of the charters of the Ameri-

can colonies protected the right to a speedy trial, as did most of the constitutions of the original 13 states.

The Founding Fathers intended the Speedy Trial Clause to serve two purposes. First, they sought to prevent defendants from languishing in jail for an indefinite period before trial. Pretrial incarceration is a deprivation of liberty no less serious than post-conviction imprisonment. In some cases pretrial incarceration may be more serious because public scrutiny is often heightened, employment is commonly interrupted, financial resources are diminished, family relations are strained, and innocent persons are forced to suffer prolonged injury to reputation.

Second, the Founding Fathers sought to ensure a defendant's right to a fair trial. The longer the commencement of trial is postponed, the more likely it is that witnesses will disappear, memories will fade, and evidence will be lost or destroyed. Of course, both the prosecution and the defense are threatened by these dangers, but only the defendant's life, liberty, and property are at stake in a criminal proceeding.

The right to a speedy trial does not apply to every stage of a criminal case. It arises only after a person has been arrested, indicted, or otherwise formally accused of a crime by the government. Before the point of formal accusation, the government is under no Sixth Amendment obligation to investigate, accuse, or prosecute a defendant within a specific amount of time.

Nor does the Speedy Trial Clause apply to post-trial criminal proceedings, such as PROBATION and PAROLE hearings. If the government drops criminal charges during the middle of a case, the Speedy Trial Clause does not apply unless the government later refiles the charges, at which point the length of delay is measured only from the time of refiling. However, the fairness requirements of the Due Process Clause apply during each juncture of a criminal case, and an unreasonably excessive delay can be challenged under this constitutional provision even if the delay occurs before formal accusation or after conviction.

The U.S. Supreme Court has declined to draw a bright line separating permissible pretrial delays from delays that are impermissibly excessive. Instead, the Court has developed a BALANCING test in which the length of delay is just one factor to be considered when evaluating the merits of a speedy trial claim. The other factors to be considered by a court include the reason for the delay, the severity of prejudice suffered by the defendant from the delay, and the stage during the criminal proceedings at which the defendant asserted the right to a speedy trial.

A delay of at least one year in bringing a defendant to trial following arrest will trigger a presumption that the Sixth Amendment has been violated, with the level of judicial scrutiny increasing in direct proportion to the length of delay. A longer delay may be deemed constitutional, however, and a shorter delay may be deemed unconstitutional, depending on the circumstances.

Longer delays will be permitted to accommodate the schedules of important witnesses, and to allow the prosecution to prepare for a complex case. Longer delays will also be tolerated when a defendant is dilatory in asserting the right to a speedy trial. In general, defendants must assert their Sixth Amendment right in a timely motion before the trial court. If the defendant fails to assert the right in this manner or acquiesces in the face of protracted pretrial delays, she or he may not raise the issue for the first time on appeal, unless the defendant's failure to raise the issue earlier was due to her or his attorney's NEGLIGENCE. Defendants who delay prosecution by inundating the trial court with frivolous pretrial motions are also treated as having forfeited their rights to a speedy trial. The law does not allow defendants to profit from their own wrong under these circumstances.

Delays shorter than a year will be ruled unconstitutional if the reason for delay offered by the prosecution is unpersuasive or inappropriate. Delays attributable to prosecutorial misconduct, such as the deliberate attempt by the government to delay a proceeding and hamper the defense, will run afoul of the Speedy Trial Clause. Prosecutorial negligence, such as misplacing a defendant's file or losing incriminating evidence, is also considered an inappropriate reason for delay. Additionally, delays shorter than a year will be deemed unconstitutional when the delay has severely limited the opportunity for the accused to defend himself. For example, the death of an alibi witness who would have been available for a timely trial is considered PRIMA FACIE evidence of prejudice under the Speedy Trial Clause.

Despite the strictures of the Speedy Trial Clause, criminal justice has not always moved

swiftly in the United States. During the 1970s federal courts had backlogs of thousands of cases on their dockets. Lengthy pretrial delays clogged local jails at great expense to taxpayers. Increasing numbers of defendants were jumping bail while free during extended pretrial release. In 1974 Congress enacted the Speedy Trial Act (18 U.S.C.A. §§ 3161 et seq.) to ameliorate the situation.

Unlike the balancing test created by the Supreme Court to evaluate a claim under the Speedy Trial Clause, the Speedy Trial Act establishes specific time limits between various stages of federal criminal proceedings. The act requires federal authorities to file an information or indictment within 30 days of a defendant's arrest. A prosecutor who knows that an accused is incarcerated at the time of indictment must take immediate steps to initiate prosecution. If a defendant enters a plea of not guilty, trial must commence within 70 days from the filing of the information or indictment or 70 days from the first appearance of the accused in court, whichever is later.

Certain types of delays are exempted from the act's time limitations. For example, the act exempts delays caused by the absence of the defendant, the unavailability of an essential witness, or the conduct of a codefendant. Delays resulting from a defendant's involvement in other legal proceedings are typically exempted as well. Additionally, the act gives courts discretion to grant the prosecution a CONTINUANCE in the interests of justice. Courts are also given discretion to dismiss charges when a defendant suffers prejudice from a pretrial delay that is of a kind not exempted under the act.

The Speedy Trial Act has been held to apply to both citizens and non-citizens alike. See *United States v. Restrepo*, 59 F. Supp. 2d 133 (D. Mass. 1999). However, since the SEPTEMBER 11TH ATTACKS in 2001, the United States has sought to enhance the abilities of immigration officials and other law enforcement officers to prevent further terrorist attacks. Under the USA PATRIOT ACT OF 2001, Pub. L. No. 107-56, 115 Stat. 272, the attorney general may certify a non-citizen as a terrorist if reasonable grounds exist to believe that the non-citizen has been engaged in terrorist activities. If the attorney general certifies the non-citizen as a terrorist, the act mandates the detention of the non-citizen. If the terrorist is deemed to be a threat to national security, or if emergency or other extraordinary circumstances are present, the federal government may detain the person for six months or longer. Accordingly, a suspected terrorist could be detained for a significant period of time without criminal charges or deportation proceedings brought against the suspect.

Many state jurisdictions have passed legislation similar to the Speedy Trial Act. Like the federal act, most state legislation permits courts to provide prosecutors with additional time upon a showing of exceptional circumstances. Most state laws also authorize courts to dismiss charges that have not been brought within a reasonable amount of time following arrest or indictment. Thus, these defendants faced with an unreasonable pretrial delay have a number of constitutional and statutory provisions that may provide them with effective relief.

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CROSS-REFERENCES

Criminal Law; Criminal Procedure; Due Process of Law; Incorporation Doctrine.

SPENDING POWER

The power of legislatures to tax and spend.

Spending power is conferred to state and federal legislatures through their constitution. JUDICIAL REVIEW of legislative spending varies from state to state, but the law of federal spending informs courts in all states.

The power of the U.S. Congress to tax and spend for the GENERAL WELFARE is granted under Article I, Section 8, Clause 1, of the U.S. Constitution: "The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States." This clause is known as the Spending Power Clause or the General Welfare Clause. The Spending Power Clause does not grant to Congress the power to pass all laws for

the general welfare; that is a power reserved to the states under the TENTH AMENDMENT. Rather, it gives Congress the power to control federal taxation and spending.

Before 1913, federal spending was relatively minuscule and was generally reserved for military support in time of war. Federal revenues were generated through tariffs on imports, excise taxes on certain activities and professions, and state and local property taxes. In 1913, the States ratified the SIXTEENTH AMENDMENT to the Constitution, which guaranteed to Congress the power to lay and collect income taxes on individuals. The federal INCOME TAX, hailed for its uniformity and fairness, paved the way for a massive expansion in the scope of the federal government.

Federal spending increased dramatically in the 1930s. Congress created new federal agencies and spending programs to manage the economic effects of the Great Depression, and the U.S. Supreme Court was forced to decide a spate of challenges to federal spending programs.

In 1936, the Court construed the Spending Power Clause as giving Congress broad power to spend for the general welfare (*United States v. Butler,* 297 U.S. 1, 56 S. Ct. 312, 80 L. Ed. 477). According to the *Butler* decision, under the Spending Power Clause Congress was not limited to spending money to carry out the direct grants of legislative power found elsewhere in the Constitution; rather, it could tax and spend for what it determined to be the general welfare of the country. Because Congress has discretion to determine what is the general welfare, no court since *Butler* has ever invalidated a federal spending program on the ground that the general welfare of the country was not being promoted.

There are circumstances, however, when congressional spending power receives serious scrutiny. One example is when Congress seeks to withhold federal funds from states that refuse to enact laws consistent with federal mandates. Incident to the Spending Power Clause, Congress may condition a state's receipt of federal revenues on the fulfillment of certain criteria. For example, assume Congress wants all schoolteachers to obtain a master's degree. The Constitution does not grant Congress the power to pass a law to that effect. However, Congress may appropriate federal money that states can obtain if they enact legislation requiring a master's degree.

When Congress allocates conditional funding, it must do so unambiguously, so that states and other affected parties are adequately advised of their choices and are aware of the consequences of noncompliance. Conditional federal spending must relate to a national interest, as opposed to state, local, or individual interests. Finally, conditional spending may be invalidated if it is excessively coercive. For example, withholding of an excessively high percentage of federal funds may be invalidated by a court.

According to many constitutional scholars, conditional federal spending is a violation of state sovereignty over matters reserved to the states. Without a meaningful check on conditional federal spending, Congress can withhold federal benefits from states under the Spending Power Clause on any rational condition it desires. This has the effect of creating one central government, a system that was repugnant to the Framers of the Constitution when not properly balanced with the rights of state governments. Indeed, THOMAS JEFFERSON predicted that the Spending Power Clause would reduce the Constitution "to a single phrase, that of instituting a Congress, with power to do . . . whatever evil they pleased." Proponents of conditional federal funding argue that it does not force states to change their laws, and that states are free to forgo the receipt of some federal funds in order to retain their autonomy.

Nevertheless, conditional federal spending has been used in a number of ways to persuade states to change their laws. For example, Congress frequently uses highway funds to encourage changes in traffic-safety related statutes. In *South Dakota v. Dole,* 483 U.S. 203, 107 S. Ct. 2793, 97 L. Ed. 2d 171 (1987), the U.S. Supreme Court reviewed a federal statute authorizing the U.S. secretary of transportation to withhold a percentage of federal highway funds from states that refused to raise the legal drinking age to 21. According to the Court, the federal government's interest in a uniform drinking age related to highway safety because, in part, young persons in states with higher drinking ages were driving to border states with lower drinking ages. The conditional spending was upheld because it had a federal purpose (improving interstate highway safety) and the condition (establishing a uniform legal drinking age) was related to the spending purpose.

Congress has also enacted spending schemes favorable to minority small-business owners, in

an effort to combat the effects of RACIAL DISCRIMINATION. In *Adarand Constructors v. Peña,* 515 U.S. 200, 115 S. Ct. 2097, 132 L. Ed. 2d 158 (1995), the U.S. Supreme Court reviewed a federal spending program designed to provide federal highway construction contracts to disadvantaged business enterprises. Under the Surface Transportation and Uniform Relocation Assistance Act of 1987 (STURAA) (Pub. L. No. 100-17, 101 Stat. 132), Congress appropriated certain funds to the TRANSPORTATION DEPARTMENT (DOT). The DOT was obliged to spend not less than 10 percent of those funds on businesses certified as "owned and operated by socially and economically disadvantaged individuals" (§ 106(c)(1)). These individuals were defined by STURAA as members of racial minorities and women.

Despite submitting the lowest bid for a subcontract to build guardrails for the Central Federal Lands Highway Division (part of the DOT), Adarand Constructors lost the contract to a business certified as disadvantaged. Adarand brought suit against Frederico F. Peña, secretary of transportation, arguing that the spending scheme violated the EQUAL PROTECTION component of the FIFTH AMENDMENT DUE PROCESS CLAUSE. The district court granted SUMMARY JUDGMENT to the secretary, and the court of appeals affirmed, but the Supreme Court vacated the judgment. According to the Court, federal spending based on racial classifications should be subject to STRICT SCRUTINY to determine whether the means employed by the spending scheme were narrowly tailored to achieve a compelling federal interest. This decision overruled precedent, and signaled a greater willingness of the Court to examine the way in which Congress and states exercise their spending power.

Some constitutional provisions expressly prohibit certain federal spending. Under the FIRST AMENDMENT, Congress may not spend federal money in the aid of religion. Under Article II, Section 1, Clause 7, Congress may not increase or decrease the salary of a president during his or her term. Under the FOURTEENTH AMENDMENT, Congress may not spend money on "any debt or obligation incurred in aid of insurrection or rebellion against the United States."

Congressional spending limits also may be found in the Constitution. If, for example, Congress allocates federal funding for libraries on the condition that all libraries ban certain literature, the spending scheme may run afoul of the First Amendment guarantee of free speech.

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CROSS-REFERENCES

Congress of the United States; Federal Budget; Federalism; New Deal.

SPENDTHRIFT

One who spends money profusely and improvidently, thereby wasting his or her estate.

Under various statutes, a spendthrift is a person who wastes or reduces her estate through excessive drinking, gambling, idleness, or debauchery in a manner that exposes that individual or her family to indigence or suffering or who exposes the government to expense for the support of that person or her family.

When authorized by law, a guardian can manage a spendthrift's property. The purpose of the guardianship is to protect the ward and her property from her wasteful habits. Statutes that provide for the guardianship of spendthrifts are based on the right of the government to protect the property of its citizens for the benefit of themselves and their families and the community.

CROSS-REFERENCES

Spendthrift Trust.

SPENDTHRIFT TRUST

An arrangement whereby one person sets aside property for the benefit of another in which, either because of a direction of the settlor (one who creates a trust) or because of statute, the beneficiary (one who profits from the act of another) is unable to transfer his or her right to future payments of income or capital, and his or her creditors are unable to subject the beneficiary's interest to the payment of his or her debts.

Spendthrift trusts are usually established with the object of providing a fund for the maintenance of another person, known as the spendthrift, while also protecting the trust against the beneficiary's imprudence, extravagance, and inability to manage financial affairs. For example, a settlor establishes a spendthrift trust for his son, a compulsive gambler, who spends money injudiciously with no concern for the future. Under the terms of the $400,000 trust, which is to be administered by the family's lawyer, the son is to receive $15,000 a year. Any words that indicate the settlor's intention to impose a direct restraint on the transferability of the beneficiary's interest can be used to create a spendthrift trust.

Such trusts do not limit the rights of the spendthrift's creditors to the property after it is received by the beneficiary from the trustee (one appointed or required by law to execute a trust). The creditors cannot compel the trustee to pay them directly. This means that any of the spendthrift's creditors can seek to have the money the spendthrift has already received applied to satisfy their claims. A creditor's claims to future payments under the trust, however, are restrained. The spendthrift's creditors cannot reach the $15,000 that he is to be paid in a subsequent year until it is actually paid out to him. If such a person could dispose of his right to receive income from the trust, his incompetence or carelessness might lead him to anticipate his income and transfer to monetary lenders and creditors the right to receive future income as it became due. By restricting the spendthrift so that he can do nothing with the income until it is paid into his hands by the trustee, he is more likely to be protected, at least to some extent, against impoverishment.

A spendthrift trust can continue for the life of the beneficiary or be limited to a period of years.

A settlor cannot create a spendthrift trust for herself. If the settlor attempts to do so, the trust is valid but the spendthrift clause is legally ineffective as to the present and future creditors of the property owner. To allow otherwise would be to provide unscrupulous people with the opportunity to shelter their property before engaging in speculative business enterprises and to mislead creditors into believing that the settlor still owned the property because she appeared to be receiving its income, thereby fraudulently deceiving creditors who might rely on the former financial property of the debtor.

In some states, under the doctrine of "surplus income," creditors can reach any trust income that exceeds what is necessary to support and educate the beneficiary. The court hears evidence as to the amount necessary to support the beneficiary in the manner to which he has been accustomed. Any excess of trust income over the sum will be awarded to the creditor and paid directly to her by the trustee. A few states have enacted statutes fixing the percentage of trust income that is exempt from creditor's claims that have been legally determined in a court action.

Certain classes are permitted to reach the beneficiary's interest in a spendthrift trust on the ground of public policy in many states. These include persons whom the beneficiary is legally bound to support, such as a spouse and children; persons who render necessary personal services to the beneficiary, such as a physician; and persons whose services preserve the beneficiary's interest in the trust. TORT claims against the beneficiary as well as claims by a state or the United States, such as for INCOME TAX, are not subject to spendthrift provisions.

In some states, when a beneficiary and spouse are divorced and the spouse has been awarded ALIMONY, the trustee of the trust cannot be compelled to pay the full amount of alimony until the court that has jurisdiction over the administration of the trust deems it to be fair.

The majority of states authorize spendthrift trusts; those that do not will void such provisions so that the beneficiary can transfer his or her rights and the creditors can attach the right to future income.

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SPIN-OFF

The situation that arises when a parent corporation organizes a subsidiary corporation, to which it transfers a portion of its assets in exchange for all of the subsidiary's capital stock, which is subsequently transferred to the parent corporation's shareholders.

When a spin-off occurs, the shareholders of the parent corporation are not required to surrender any of their parent corporation stock in exchange for the subsidiary's stock.

In the event that the distribution of stock to the parent corporation's shareholders amounts to a dividend, the distribution can be taxed pursuant to provisions of INCOME TAX statutes.

SPLIT DECISION

A decision by an appellate court that is not unanimous.

When the members of an appellate court cannot reach full agreement, a split decision occurs. A split decision is distinct from a unanimous decision in which all the judges join in agreement. In a split decision, the will of the majority of the judges is binding, and one member of the majority delivers the opinion of the court itself. One or more members of the minority can also write a dissent, which is a critical explanation of the minority's reasons for not joining in the majority decision. A court that reaches a split decision is called a divided court. Split decisions cannot occur at the trial level because there only one judge presides. Instead, split decisions occur in state and federal appellate courts, including state supreme courts and the U.S. Supreme Court. Split decisions also occur in regulatory boards, government commissions, and juries (where a split decision can result in a hung or deadlocked jury).

Although split decisions carry the same legal authority as unanimous decisions, they have a problematic place in U.S. JURISPRUDENCE. Most important, they can reflect significant disagreement among the members of a court: for example, the judges may not fully agree on a constitutional question, the application of precedents in case law, or the interpretation of a statute. Occasionally, a split decision indicates sharp divisions over an issue that has not yet been settled in the law. In appealing such a case to a higher court, appellees often note that the lower court has rendered a split decision in order to impress upon the higher court that the decision in question is less than wholly convincing. A split decision may be seen as less stable than a unanimous one, allowing more room for a change in the law as society and the court's composition change.

Split decisions by the U.S. Supreme Court attract special attention, particularly when the vote is 5–4. At such times, and especially in the face of controversial cases that are accompanied by sharply worded dissents, the Court is described as "deeply divided." Not surprisingly, since the Court is the final arbiter of U.S. law, a split decision is often seen as an indication of the justices' divergent legal and political ideologies. Legal scholars and reporters, who traditionally assess the justices' political leanings, frequently pay special attention to split decisions when analyzing the Court's decisions for a given term.

Some commentators have argued that a deeply divided Supreme Court fails in its duty to provide guidance to lower courts and also loses legitimacy in the eyes of the public. Justice FELIX FRANKFURTER feared such a possibility in 1955, when the Court was preparing to consider the question of miscegenation laws which prohibited interracial marriage. Frankfurter urged the Court not to hear the case because he feared that a split decision would plunge the Court into "the vortex of the present disquietude . . . [and] embarrass the carrying-out of the Court's decree." Nevertheless, unanimous agreement by the Court is not the rule. Many of the twentieth century's most controversial cases have produced split decisions, including the decisions to uphold AFFIRMATIVE ACTION (REGENTS OF THE UNIVERSITY OF CALIFORNIA V. BAKKE, 438 U.S. 265, 98 S. Ct. 2733, 57 L. Ed. 2d 750 [1978]) and to uphold a woman's right to an ABORTION (ROE V. WADE, 410 U.S. 113, 93 S. Ct. 705, 35 L. Ed. 2d 147 [1973]).

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CROSS-REFERENCES

Court Opinion.

SPLIT-OFF

The process whereby a parent corporation organizes a subsidiary corporation to which it transfers part of its assets in exchange for all of the subsidiary's capital stock, which is subsequently transferred to the shareholders of the parent corporation in exchange for a portion of their parent stock.

A split-off differs from a spin-off in that the shareholders in a split-off must relinquish their shares of stock in the parent corporation in order to receive shares of the subsidiary corporation whereas the shareholders in a spin-off need not do so.

SPLIT-UP

An arrangement whereby a parent corporation transfers all of its assets to two or more corporations and then winds up its affairs.

When a split-up occurs, the shareholders of the parent corporation surrender the total amount of their stock in exchange for stock in the transferee corporation.

SPOILS SYSTEM

See PATRONAGE.

SPOLIATION

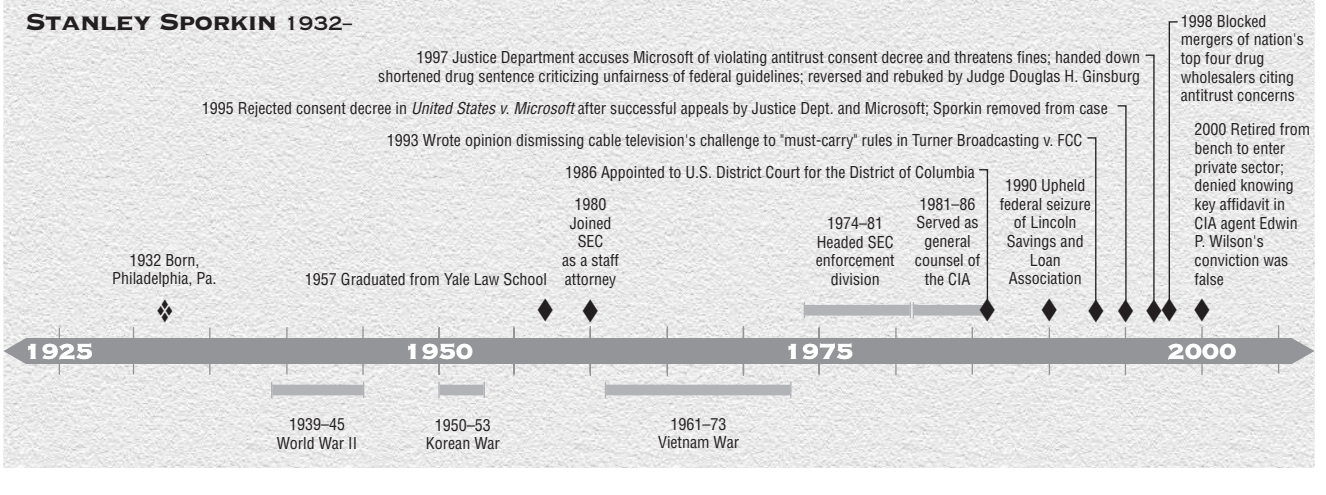
Any erasure, interlineation, or other alteration made to COMMERCIAL PAPER*, such as a check or promissory note, by an individual who is not acting pursuant to the consent of the parties who have an interest in such instrument.*

A spoliator of evidence in a legal action is an individual who neglects to produce evidence that is in her possession or control. In such a situation, any inferences that might be drawn against the party are permitted, and the withholding of the evidence is attributed to the person's presumed knowledge that it would have served to operate against her.

♦ SPORKIN, STANLEY

As an attorney, regulator, and outspoken federal judge, Stanley Sporkin often embraced controversy in his 30 years of federal service. Sporkin first earned national recognition in the 1970s for his criminal investigations into corporate misbehavior as the director of enforcement at the SECURITIES AND EXCHANGE COMMISSION (SEC). From 1981 to 1986, he was general counsel of the CENTRAL INTELLIGENCE AGENCY (CIA). In 1986, President RONALD REAGAN appointed him to the U.S. District Court for the District of Columbia. Throughout the 1980s and 1990s, Sporkin attracted widespread comment for his passionate and idiosyncratic rulings on major cases involving business regulation and antitrust. Frequently, he found himself in conflict with the U.S. Court of Appeals for the District of Columbia, which often overruled him. A writer and speechmaker, Sporkin is widely known in law circles for his reformist views on legal ethics, sentencing guidelines, and the federal judiciary.

Sporkin was born in Philadelphia, Pennsylvania, in 1932. He earned his law degree from



Yale University in 1957, and worked in private practice before joining the SEC as a staff attorney in 1960.

The SEC, which was created in 1934 to oversee the SECURITIES laws that protect shareholders, had a quiet, even moribund reputation. This began to change in 1972, when an enforcement division was added. When Sporkin took charge of enforcement in 1974, the division vigorously pursued criminal cases against U.S. corporations. In particular, Sporkin prosecuted a series of cases involving the use of corporate funds for political contributions that had come to the surface during the WATERGATE scandal; his investigations uncovered illegal domestic and foreign expenditures. Critics thought he had gone too far and exceeded the SEC's jurisdiction. Nevertheless, his eight-year tenure survived federal oversight review and helped set the stage for even tougher compliance practices in later years.

Sporkin left the SEC, in 1981, to serve as general counsel to the CIA. After five years, Reagan appointed him to the U.S. District Court for the District of Columbia, which hears major federal cases involving regulation. There he showed the same zeal he displayed at the SEC. In upholding the federal seizure of the Lincoln Savings and Loan Association in 1990, he criticized the attorneys and accountants for the savings and loan with a widely quoted comment on their failure to blow the whistle on violations: "Where were the professionals . . . while these clearly improper transactions were being consummated?" In 1993, as part of a three-judge panel, he wrote the opinion dismissing the FIRST AMENDMENT challenge of CABLE TELEVISION companies to the constitutionality of federal rules requiring that they carry broadcast stations (*Turner Broadcasting v. FCC,* 819 F. Supp. 32 [D.D.C. 1993]).

Sporkin's most controversial decision came in 1995 in one of the most widely followed antitrust cases of the decade. Following a four-year investigation, the JUSTICE DEPARTMENT had entered an agreement with computer software giant Microsoft, Inc., to reform licensing practices that the department said were monopolistic. Under provisions in the Tunney Act (15 U.S.C.A. § 16(e) [1988]), Sporkin had the authority to review the CONSENT DECREE to determine if it was in the public interest. In addition to criticizing Microsoft during the hearings, he took the rare step of allowing its competitors to file FRIEND-OF-THE-COURT (AMICUS CURIAE) briefs anonymously in order to protect them from retaliation by Microsoft. Ultimately, Sporkin rejected the consent decree as being insufficient and ordered the Justice Department to expand its investigation (*United States v. Microsoft Corp.,* 159 F.R.D. 318 [D.D.C. 1995]).

In a surprising move, both the Justice Department and Microsoft filed separate appeals. Not only did both parties win, but Sporkin was removed from the case by the U.S. Court of Appeals for the District of Columbia Circuit for apparent bias; the court then remanded the case to another judge with orders to approve the consent decree (*United States v. Microsoft Corp.,* 56 F.3d 1448 [D.C. Cir. 1995]).

In 1999, Sporkin assumed senior (semiretired) status, but retired as a federal judge in January 2000. He then became a partner at the Washington, D.C., office of Weil, Gotshal & Manges, one of the world's largest law firms. Sporkin focused on issues concerning the SEC and corporate governance; he also acted as an arbitrator and a mediator.

In addition to his uncompromising work as a lawyer and judge, Sporkin distinguished himself as a legal critic. He has written on the need for separate codes of ethical conduct for various disciplines within the law, urged for the adoption of multimedia presentations of evidence in courtrooms, and argued against what he sees as unfairness in the federal sentencing guidelines for drug offenses.

"PLAINTIFFS HAVE COME BEFORE THIS COURT, NOT BECAUSE THEIR FREEDOM OF SPEECH IS SERIOUSLY THREATENED, BUT BECAUSE THEIR PROFITS ARE; TO DRESS UP THEIR COMPLAINT IN FIRST AMENDMENT GARB DEMEANS THE PRINCIPLES FOR WHICH THE FIRST AMENDMENT STANDS AND THE PROTECTION IT WAS DESIGNED TO AFFORD."
—STANLEY SPORKIN

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SPORTS LAW

The laws, regulations, and judicial decisions that govern sports and athletes.

Sports law is an amalgam of laws that apply to athletes and the sports they play. It is not a single legal topic with generally applicable principles. Sports law touches on a variety of matters, including contract, TORT, agency, antitrust, constitutional, labor, TRADEMARK, SEX DISCRIMINATION, criminal, and tax issues. Some laws depend on the status of the athlete, some laws differ according to the sport, and some laws vary for other reasons.

Come Back, Shane: The Movement of Professional Sports Teams

One of the most controversial issues in modern professional sports is the mobility of professional sports franchises. Teams in the four major sports leagues—the National Basketball Association (NBA), Major League Baseball (MLB), the National Hockey League (NHL), and the National Football League (NFL)—have long been capable of moving their franchises from one city to another, with the requisite approval of the other teams in the league. Nevertheless, the practice did not become common until the late twentieth century. The incidence of franchise movement became a plague in the 1990s, as owners of sports franchises sought to offset rising player salaries and maximize the values of their teams.

Many people perceive professional sports teams as beneficial for the local economy and essential to an area's civic identity. Professional sports teams have been credited with providing jobs and injecting millions of dollars into local economies. The presence of a professional sports franchise from one of the four major sports is often regarded as a prerequisite to becoming a "big league" city or state. As Wisconsin state representative Marlin Schneider joked in 1995, "Without the Milwaukee Brewers, Milwaukee Bucks, and Green Bay Packers, [Wisconsin] ain't nothing but another Nebraska." With so much money and status on the line, professional sports teams have become highly sought after, and their movements from city to city have led to public outrage, lawsuits, and legislative proposals.

The owners of professional sports teams have been able to obtain generous deals from city and state officials by threatening to move their franchises. If the owners do not receive the support they seek, they move their team to a more accommodating city. Typical benefits include the use of sports facilities at below-market rents and taxpayer funding for the construction and maintenance of new facilities. Most of the funding comes from the team's home state, but some funding comes from the federal government.

At times, owners have moved their teams even after receiving what they demanded. Harris County, Texas, incurred $67.5 million in bond indebtedness in 1987 to finance stadium improvements to keep the Houston Oilers football team from moving to Jacksonville, Florida. The Oilers began playing in Nashville, Tennessee in 1998 as the Tennessee Oilers, and in February 1999 the team changed its name to the Tennessee Titans. Fortunately for Harris County, Houston was awarded an expansion team in October 1999, which became known as the Houston Texans.

Owners have been able to achieve their powerful bargaining positions largely through the judicial construction of **ANTITRUST LAWS**. Courts have given each major league the power to restrain trade by limiting the number of franchises within the league. At the same time, courts have limited the ability of the leagues to prevent team relocations by finding that such restrictions are unreasonable restraints of trade. For example, a federal court found that the NFL rule requiring the approval of three-fourths of the teams in the league before a team could move was an unreasonable restraint of trade (*Los Angeles Memorial Coliseum Commission v. NFL,* 726 F.2d 1381 [9th Cir. 1984]).

The judicial holdings have emboldened the owners of professional sports teams. The owners' willingness to move their teams has led to frenzied bidding wars between cities and the relocation of many franchises.

The idea of building a new stadium outside Los Angeles to bring a franchise back to the area after nearly a decade was discussed at a meeting of NFL officials in Philadelphia, Pennsylvania in May 2003. Los Angeles had two teams, the Rams and the Raiders, both of which left after the end of the 1994 season. (The Rams headed to St. Louis, Missouri, while the Raiders returned to their former home of Oakland, just outside San Francisco.) Although one option for giving Los Angeles a franchise would be to expand the NFL, another is to find a team that would be willing to relocate. Among the teams that expressed an interest in relocating to Los Angeles (the nation's number two television market) were the Indianapolis Colts and the Minnesota Vikings. Interestingly, Los Angeles almost got an expansion team in 1999, after well-known entertainment **BROKER** Michael Ovitz promised to head up a proposal to build a new stadium. The NFL determined that there were too many questions at the time about financing, which was why Houston got the expansion franchise instead.

The owners' laissez-faire attitude has been roundly criticized by fans, but owners have simply followed their best business instincts. Owning a professional

Amateur Athletes

A common misconception about amateurs and professionals is that professionals are paid to play sports whereas amateur athletes are not. Amateur athletes often receive some compensation for their efforts. In ancient Greece, for example, victorious athletes in the Olympics were handsomely rewarded for their efforts. As of the early 2000s many college athletes receive academic scholarships for playing on a college team. Remuneration for amateur athletes is even promoted with federal legislation. The Amateur

sports team is a risky, speculative endeavor, and owners must act to protect their interests and maximize the values of their franchises. Owners are split on the issue of franchise relocation. Most owners understand that much of the value of their franchises depends on fan loyalty and that loyalty decreases as teams move. At the same time, the antitrust decisions have created a seller's market for owners, allowing them to seek the best deal possible. If another city is more willing to provide support for a team, there is little reason for the owner to stay put.

The most important bargaining chip for many owners is the team's stadium or arena. Typically, owners lease a stadium or arena for a certain number of years. When the lease is up, or sometimes before it has expired, an owner may demand public funding for a new stadium or improvements to the old stadium. If the city or state does not ante up for a new stadium or improvements, the owner threatens to move the team. Sometimes the community reluctantly foots the bill. When this happens, persons who object to the public financing of an essentially private business may attempt to stop the funding through the judiciary, but they usually fail. Most courts hold that the use of public funds to build or improve sports stadiums is a legal expenditure for a legitimate public purpose. Sometimes a community refuses to bow to an owner's demands and the team leaves. Other times the city or state attempts to prevent the relocation of a team by taking legal action.

The city of Baltimore, Maryland, tried to keep its NFL team, the Colts, through the exercise of **EMINENT DOMAIN**. Eminent domain is the power of a government to take private property for public use, with compensation to the party deprived of the property. In early 1984 the Baltimore Colts were having difficulty obtaining a satisfactory lease for Baltimore's Memorial Stadium. Owner Robert Irsay began to receive solicitations from the city of Indianapolis, Indiana, for the Colts to play in the city's Hoosier Dome. In February 1984 the Maryland Senate entertained a bill that would give the city of Baltimore the authority to condemn and take over professional sports franchises, but it postponed a vote on the bill.

On February 28, 1984, the U.S. Court of Appeals for the Ninth Circuit announced its decision in the *Los Angeles Memorial Coliseum* case, which affirmed the right of Oakland Raiders' owner Al Davis to move the team to Los Angeles. The NFL told Irsay in a private meeting that, in light of the decision in the Raiders' case, it would not oppose any move by the Colts. Irsay continued to negotiate for a financial package that would keep the Colts in Baltimore until he learned that the Maryland Senate had passed the eminent domain legislation.

Irsay decided to move the Colts to Indianapolis immediately. That day, vice president and general manager Michael Chernoff arranged for a moving company to come to the Colts' training facility and load the team equipment into vans. The Colts left Baltimore, their home city for thirty years, during the night of March 28–29, 1984.

On March 30, 1984, the Maryland Senate passed an emergency bill that gave the city of Baltimore the power of eminent domain over the team. The city immediately passed an ordinance that authorized the condemnation and then filed a petition in court, seeking to acquire the Colts by eminent domain and to prevent the team from doing anything to further the movement of the franchise, but it was too late. A federal court eventually held in December 1985 that Baltimore did not have the power of eminent domain over the Colts because it had not attempted to compensate the franchise and because the franchise had relocated to another state (*Indianapolis Colts v. Mayor of Baltimore,* 741 F.2d 954 [7th Cir. 1984], *cert. denied,* 470 U.S. 1052, 105 S. Ct. 1753, 84 L. Ed. 2d 817 [1985]).

Sports fans in Baltimore grew even more beleaguered after the Colts' departure. Their last remaining major professional sports team, the Baltimore Orioles, threatened to move if it did not get a new stadium. In 1990 the state of Maryland was forced to spend millions in taxpayer funds to build a new stadium to keep the Orioles. In 1996 Baltimore regained an NFL franchise at the expense of Cleveland, which lost its beloved Browns after fifty years in part because Baltimore offered the Browns free rent at a new football stadium. The city of Baltimore enjoyed the new Baltimore Ravens' inaugural season in 1996 as dedicated Browns fans suffered through the same nightmare that Colts fans endured in 1984.

Lawmakers on the federal, state, and local levels have proposed legislation that would help communities hang on to their professional sports teams. In 1995 and 1996, several legislators in the U.S. Congress proposed laws that would allow leagues to make their own rules restricting the movement of franchises. For all the activity, no legislation changing the application of antitrust laws to professional sports teams has been passed.

The Minnesota Twins have been threatening to leave the state unless they get a new ballpark paid for by the state, and even had a contract signed by at least one prospective out of state buyer. When that deal fell through and Minnesota refused to build them a new stadium, Major League baseball almost contracted (eliminated) their franchise.

CROSS-REFERENCES

Antitrust Law; Eminent Domain; Franchise; Restraint of Trade.

Sports Act of 1978 (36 U.S.C.A. § 391) created the Athletic Congress, a national governing body for amateur athletes, which administers a trust fund that allows amateur athletes to receive funds and sponsorship payments without losing their amateur status.

The most basic difference between amateur athletic events and professional events lies in their rewards for participation. Amateur events, by definition, do not reward victors with a prize of great value. Professional events, by contrast, reward participants and victors with money

1919 Black Sox Scandal

The 1919 Black Sox scandal is the most famous example of athletes conspiring with gamblers to fix the outcome of a sporting event. Eight members of the Chicago White Sox were charged with taking bribes to lose the 1919 World Series to the Cincinnati Reds. The most prominent player charged was "Shoeless" Joe Jackson, the star outfielder for the White Sox. It was alleged that the players received $70,000 to $100,000 for losing the World Series five games to three.

During the World Series, a number of sportswriters suspected that White Sox players were throwing the games. The writers published their charges after the series ended, but by the beginning of the 1920 **BASEBALL** season, it appeared nothing would come of the allegations. However, a federal **GRAND JURY**, presided by Judge **KENESAW MOUNTAIN LANDIS**, was impaneled in September 1920. Within days, four of the players, including Jackson, admitted that they had taken bribes to lose games in the 1919 series. The eight players were indicted.

The team suspended the players, and they went on trial in the summer of 1921. They were acquitted on insufficient evidence, under suspicious circumstances. Key pieces of evidence were missing from the grand jury files, including the players' confessions. No gamblers were ever brought to trial for **BRIBERY**, though it was alleged that New York **RACKETEER** Arnold Rothstein was behind the plan to fix the World Series.

Major league baseball had named Landis commissioner of baseball in 1921, in an attempt to restore the integrity of the game. The day after the eight White Sox players were acquitted, Landis banned them from baseball for life.

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CROSS-REFERENCES

Landis, Kenesaw Mountain.

and/or other prizes. An accomplished athlete may choose to compete as an amateur if her sport does not have a thriving professional organization. Some athletes can make a living in amateur sports because victories in high-profile amateur events can lead to advertising deals and other business opportunities.

Amateur sports can be divided into two categories: restricted and unrestricted competition. Restricted competition includes elementary school, high school, and college athletics. Sports on these levels are controlled by athletic conferences, associations, and leagues connected to schools and colleges. Athletes in restricted competition must be eligible to play. Eligibility is determined by conferences, associations, and leagues formed by the schools.

Unrestricted competition is open to all amateur athletes, with some qualifications. The Olympics is an example of unrestricted competition. Although only a select few amateur athletes are chosen to represent the United States, any person may seek entry into this elite group by entering recognized contests in the years before the Olympiad and qualifying for tryouts.

Whether an athlete is eligible to compete in amateur events depends on the rules of the governing conference, league, or association. Many events formerly reserved for amateurs, such as the Olympics, were opened to professionals in the 1980s and 1990s. Gymnasts, figure skaters, soccer players, track stars, and other athletes once concerned with maintaining amateur status now may enjoy the fruits of professional competitions without losing access to prestigious amateur events. Often difficult eligibility issues for amateur athletes do not concern professional status. Qualification requirements for particular events and rules prohibiting drug use are among the more challenging roadblocks.

Eligibility requirements for amateur athletes are many and varied. Generally, amateur athletes

do not have an absolute right to participate in sports events. In analyzing whether an athlete is eligible to participate, a court must first decide whether the individual has a right to play, as opposed to a mere privilege to play. Privileges can be revoked by the grantor of the privilege. If the individual has a right to participate, the court examines the individual's relationship with the institution denying access. If the institution is private, the dispute generally is decided according to contract or tort principles. If the institution is a public school or university, or any other publicly funded organization, courts change their analysis.

When public funds are involved, the institution is deemed a state actor, and the institution's action is subject to the DUE PROCESS and EQUAL PROTECTION Clauses of the Fourteenth Amendment. Due process usually consists of notice to the person affected by the STATE ACTION and an opportunity for the aggrieved person to argue against the action. Courts also strike down vague, overbroad, and overly restrictive regulations by state institutions on due process grounds.

The Fourteenth Amendment's Equal Protection Clause, as interpreted by courts, requires that similarly situated persons receive equal treatment under the law. If a classification touches on a fundamental right, such as freedom of religion or the right to marry, or if it is based on a suspect criterion, such as race or national origin, a court will strictly scrutinize the classification to see whether it promotes a compelling interest of the institution. Because participation of amateurs in sports is not a fundamental right, ordinarily the exclusion of amateurs from participation is not subjected to STRICT SCRUTINY.

If a regulation of amateur sports does not infringe on a fundamental right or burden a suspect class, courts determine whether the regulation bears a rational relationship to a legitimate STATE INTEREST. This is a lower level of inquiry than strict scrutiny, but it does not give public institutions the unlimited freedom to act unreasonably in the absence of fundamental rights or suspect class concerns. In 1981 the Texas Supreme Court struck down the state high school athletic association's non-transfer rule, which declared all non-seniors ineligible for varsity football and basketball competition for one year following their transfer to a new school. The purpose of the act was to discourage the recruiting of student athletes. According to the court, the rule was over-inclusive because it presumed that a student athlete who had switched schools had been recruited and did not give the student the opportunity to rebut the presumption (*Sullivan v. University Interscholastic League,* 616 S.W.2d 170 [1981]).

The rights of student athletes can be infringed by reasonable measures that are implemented for sound public policy reasons. Eligibility criteria can vary from school to school, and even from sport to sport. No pass-no play rules, or rules that keep flunking students off school teams, are permissible in light of the government's overriding interest in educating children. Schools may artificially control the number of student athletes, allowing students to be cut from popular sports to keep athlete-to-coach ratios at manageable levels.

Schools may enact other limitations, such as rules limiting the number of sports a student can play at one time and rules authorizing students to be suspended or expelled from athletics for consuming alcohol or using other drugs. Discovery of student-athlete drug use was made easier under a 1995 U.S. Supreme Court decision. In *Vernonia School District 47J v. Acton,* 515 U.S. 646, 115 S. Ct. 2386, 132 L. Ed. 2d 564 (1995), the Court held that random drug testing of student athletes does not violate the constitutional right to be free from unreasonable SEARCHES AND SEIZURES.

The National Collegiate Athletic Association (NCAA) is the most important administrative body governing sports on the college level. Many COLLEGES AND UNIVERSITIES are members of the NCAA, and they give the association the authority to exercise control over their student-athletes, coaches, and other athletic operatives. The NCAA, headquartered in Shawnee, Kansas, arranges for television and radio contracts and performs other functions to promote the well-being of college sports.

The NCAA exerts a tremendous amount of control over its members. Under NCAA rules, college athletes must meet and maintain a certain grade-point average before playing, may not hire an agent while playing for a college, and may not participate in an annual professional draft of college athletes without losing their eligibility. The NCAA may discipline coaches and scouts for violating restrictions on the recruiting of high school athletes. Athletes may be suspended or banned from a team for alcohol and

other drug use. Each team has its own set of rules that complement the NCAA rules.

Most courts hold that participation in intercollegiate athletics is not a constitutionally protected interest. However, one federal district court has recognized a student athlete's limited property interest in college athletics. In *Hall v. University of Minnesota,* 530 F. Supp. 104 (1982), University of Minnesota basketball guard Mark Hall, who had a satisfactory grade-point average, was kept off the basketball team when he failed to earn enough credits for a particular academic program. Hall appealed the decision, arguing that his application to a different college within the university had been rejected in bad faith and without due process. U.S. District Court Judge Miles W. Lord held that Hall had a sufficient property interest in playing basketball because the competition would affect his ability to be drafted by a professional team, and Lord ordered the school to let Hall play.

College athletic scholarships are unusual agreements that can pose problems for schools, athletes, and courts. A typical athletic scholarship requires the athlete to maintain certain grade levels and to perform as an athlete for the school in exchange for tuition, books, and other educational expenses. Most courts treat scholarships as contracts, with obligations and rights assigned to both parties. One party may be liable to the other if a breach of the contract occurs. For instance, a college may revoke the scholarship of an athlete who fails to maintain good grades or violates any other condition of the scholarship. A school, for its part, may violate its obligations by failing to provide an education to a student athlete. At least one court has held that a school violates its duties under an athletic scholarship if it fails to provide a student athlete meaningful access to its academic curriculum (*Ross v. Creighton University,* 957 F.2d 410 [7th Cir. 1992]).

The revenues produced by some college sports have made college athletics a multimillion-dollar entertainment industry. Although student-athletes are an integral part of the entertainment, most contemporary courts do not view them as employees of their schools. Thus, a school is not liable under workers' compensation statutes to a student-athlete if the student-athlete is injured in an accident related to the student's sport. For tax purposes, most courts examine the scholarship agreements of most students to determine whether they bargained for the scholarship money. If the students bargained for the scholarship money in return for services, the money can be taxed. Under INTERNAL REVENUE SERVICE regulations and revenue rulings, scholarship funds for student-athletes are exempt from federal tax if the college does not require the student to participate in a particular sport, requires no particular activity in lieu of participation, and does not cancel the scholarship if the student cannot participate. Funds for such athletic scholarships may be taxed if they exceed the expenses for tuition, fees, room, board, and necessary supplies. As of 1996, the Internal Revenue Service had never challenged the tax-exempt status of student-athletes on scholarship.

Sex Discrimination

Women and girls have long been excluded from many sports. In the 1970s Congress passed Title IX of the 1972 Education Amendments (20 U.S.C.A. §§ 1681–1688 [1994]) to ban sex discrimination in publicly funded educational programs. After a round of litigation, followed by legislative amendments, a presidential VETO, and a congressional override of the veto, Title IX was modified to give women and girls equal access to sports programs in schools that receive any measure of federal funding.

Under Title IX schools must provide athletic opportunities to females that are proportionate to those provided to males. Courts do not require that complete equality occur overnight. Most courts engage in a three-pronged analysis to determine whether a school is fulfilling its obligations. First, the court examines whether athletic participation opportunities are provided to each sex in numbers substantially proportionate to their enrollment. If a school does not provide substantially proportionate participation opportunities, the court then determines whether the school can demonstrate a history of expanding the athletic programs for the underrepresented sex. If the school cannot so demonstrate, the court then asks whether the interests and abilities of the underrepresented sex have been accommodated by the school. If the court finds that the school has not accommodated student-athletes of the underrepresented sex, it may rule that the school is in violation of Title IX and order the school to take affirmative steps toward more equal treatment between the sexes.

Traditionally, courts have differentiated between contact and noncontact sports in determining a female's right to participation. A

school may refrain from offering a contact sport for females if the reasoning is not based on an archaic, paternalistic, overbroad view of women. Courts are hesitant to mandate the creation of new teams, but most have no problem ordering that qualified females be allowed to play on exclusively male teams.

Title IX was passed in 1972. Since that time, the number of female athletes in intercollegiate sports has increased from 30,000 to about 150,000 in 2003. However, the law has not been universally applauded. Several schools have cut minor men's programs, such as wrestling, swimming, and track, in order to comport with the ratios required under Title IX. Although advocates of Title IX dispute that the law is the sole reason for these programs being cut, coaches and other supporters of the minor men's programs have protested that Title IX is unfair to the male athletes involved in these sports.

In 2003, the Commission on Opportunity in Athletics, which was assembled by Secretary of Education Rod Paige, submitted a report to Paige suggesting that Title IX needed reform. The report suggested that the reform was necessary to save some men's sports in order to preserve men's opportunities to participate in athletics. The report was met with vocal opposition. Two women on the commission filed a minority report with Paige, and the president of the NCAA voiced his disapproval of the suggestions in the commission's report.

In addition to claims based on Title IX, sex-based classifications by publicly funded entities are also subject to equal protection claims. Courts review such claims under an intermediate standard of review. Specifically, a sex-based classification must serve an important government interest and must be substantially related to the achievement of that interest. High school girls in Arkansas used the Equal Protection Clause of the FOURTEENTH AMENDMENT to abolish a school rule that limited the girls' basketball games to half-court play. In *Dodson v. Arkansas Activities Association,* 468 F. Supp. 394 (1979), a federal district court in Arkansas ruled that the half-court rule deprived the girls of their equal protection rights because it was based solely on tradition and not on any supportable sex-based reason.

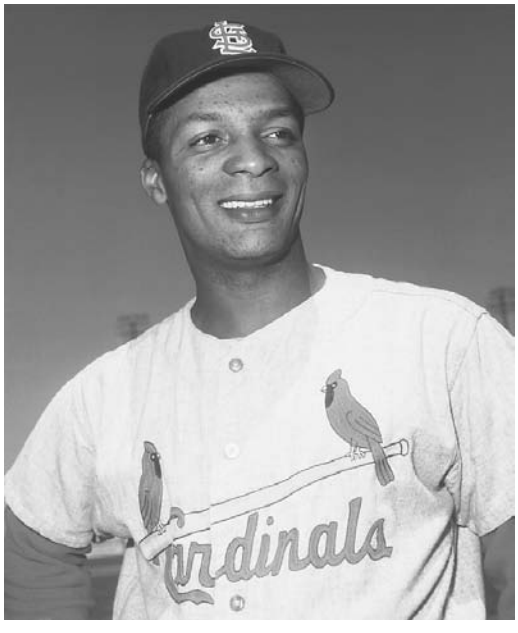
Professional Athletes

Professional athletes are paid for their services. Professional sports organizations use many relationships and a similarly high number of agreements and contracts to support their industries. The parties involved include team owners, promoters, athletes, agents, lawyers, accountants, advertisers, builders, carriers, journalists, media outlets, politicians, courts, and the governing body of the particular sport.

For the professional athlete, the most immediate concern is the employment contract. The contract between the athlete and the employer determines the rights and duties of both parties. These contracts are bargained agreements, and the bargaining power of the respective parties is reflected in the terms. Unproven or average athletes generally obtain contracts for a salary and benefits that are less than those received by athletes of proven skill. Most professional leagues that have a players' union negotiate with management or promoters to draft a standard player's contract. A standard player's contract is a document that establishes basic rights and privileges for the athletes. Owners, managers, and promoters may violate agreements with unions if they tender contracts that offer fewer rights and privileges than are contained in the standard player's contract.

Because their sport enjoyed widespread popularity before any other sport, BASEBALL players led other professional athletes in the reform of laws on professional sports contracts. The earliest and most infamous of the contract issues addressed by baseball players was the reserve clause. This clause, placed into contracts by the owners of professional baseball teams, prevented a player from playing for another team for at least one year following the expiration of his contract. Owners of teams could trade or sell players to other teams, but players had no say in the decision about what team they would play on. The intent of the clause was to keep players on the same team to build the team's identity and increase fan loyalty. Players objected to the clause because it restricted their right to freely market their skills and their right to choose where they would live and play baseball.

The reserve clause was used in the first professional baseball league, the National League, in the late nineteenth century, and it survived until 1975. For years, the Supreme Court and other federal courts held that professional baseball was not subject to ANTITRUST LAWS because the game held a special place in American society. Antitrust laws prevent businesses from engaging



From 1970 to 1972, outfielder Curt Flood challenged Major League Baseball's antitrust exemption in court and lost. His challenge set the stage for a later challenge to baseball's "reserve clause."

BETTMANN/CORBIS

in acts that restrain free trade if the commercial activity affects interstate commerce. Applying antitrust laws to professional baseball would have made it illegal for owners of professional baseball teams to restrain trade with the reserve clause. Players challenged the clause but lost in court.

In 1966 the Major League Baseball Players Association (MLBPA) hired Marvin Miller as its first executive director. Miller was instrumental in winning concessions from the owners of the major league teams. In 1970, after threats of strikes and hours of **COLLECTIVE BARGAINING**, the Major League Baseball Players Relations Committee, representing the major league teams, agreed with the MLBPA to the neutral **ARBITRATION** of their disputes. Arbitration is a process whereby two disputing parties agree to have their dispute settled by a third party.

The players' movement for market freedom suffered a temporary setback when St. Louis Cardinals star center fielder Curt challenged baseball's antitrust exemption and lost. Flood was traded in 1969 to the Philadelphia Phillies when he was at the peak of his career. Flood refused to play for the Phillies, and he sat out the entire 1970 season. That year, Flood filed suit in federal court against Bowie Kuhn, then the commissioner of Major League Baseball. Flood argued that the actions of major league baseball club owners violated the federal antitrust laws, **CIVIL RIGHTS** laws, laws prohibiting peonage, and laws on **SLAVERY**, including the **THIRTEENTH AMENDMENT** to the Constitution. The Supreme Court disagreed, holding that major league baseball maintained a special exemption from antitrust laws under Supreme Court precedent and that any changes in the law should come from Congress. Major league baseball remains the only professional sport to which courts have not applied antitrust laws.

In 1974 pitchers Andy Messersmith of the Los Angeles Dodgers and Dave McNally of the Baltimore Orioles played the entire season without new contracts. Both pitchers were paid their previous year's salary (Messersmith received a slight raise), but both had refused to sign their contracts. At the end of the season they declared that they were free agents because the reserve clause in the last contract they had signed lasted for only one year. The club owners argued that the clause could be renewed unilaterally (by one party, here, the owners), year after year. Messersmith and McNally brought their cases to a panel of arbitrators, and the panel held that the reserve clause was actually an option clause: it gave the teams an additional option year to sign a player to a new contract. Without a new contract, the player was a free agent and could market his service to other professional teams.

After almost a century of attempts to shake the reserve clause through the court system, major league baseball players finally gained their freedom through collective bargaining and arbitration. The decision was upheld on appeal, and baseball players instantly gained bargaining power. In 1976 the players relations committee agreed to remove the reserve clause from standard contracts and install a system of **FREE AGENCY** that gave free-agent status after six years of service to players who did not otherwise qualify through the option clause. By 2003 the average salary for major league baseball players was $2.3 million, compared to an average salary of $19,000 in 1967.

As of 2003, baseball players are free to negotiate contracts with any number of clauses. A player may sign a contract that guarantees a salary for a certain number of years, negotiate clauses that limit the club's right to trade the player, and enjoy the benefits of incentive clauses, or clauses in the contract that grant extra compensation in the event the player achieves certain goals. A last vestige of the reserve clause remains in some contracts as the option clause. This clause states that in the event the player and the team cannot come to terms on a new con-

tract upon the expiration of a contract, the club may retain the player for another year at a percentage of his previous year's salary, usually 90 percent. Players with bargaining power do not sign contracts with such option clauses.

Another product of Miller's collective bargaining for the MLBPA was arbitration of salary disputes. The MLBPA was concerned about a perceived tendency of club owners to collude against demanding players. Specifically, players who played out their options were finding that no teams were interested in hiring them for their fair market value. In 1976, the year after the Messersmith-McNally case, the MLBPA and the club owners agreed that any player with at least two years of experience who was ineligible for free agency could renegotiate his salary through a neutral arbitrator.

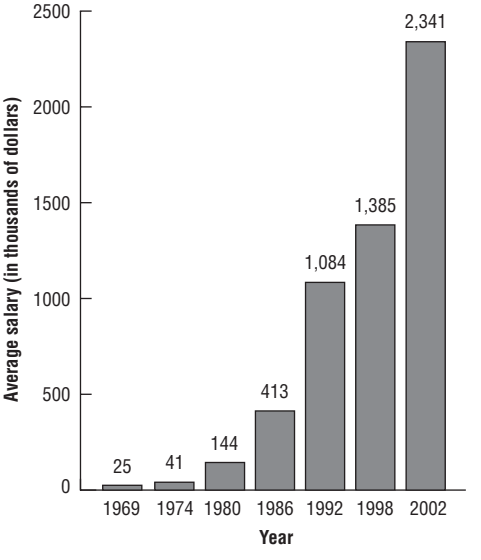
The spirit of cooperation over salaries was short lived. In 1986 the MLBPA alleged that the club owners had colluded against free agents by agreeing amongst themselves to offer relatively low salaries to free agents. The MLBPA filed a grievance in 1986, and in 1988 an arbitration panel ordered the teams to pay more than $10 million to 139 players who had been harmed by the collusion. In 1988 another arbitration panel found that the club owners had continued to collude over the 1987 and 1988 seasons to keep player salaries low or keep players out of the game, and in 1990 the owners were forced to pay players more than $100 million in lost salaries. The arbitration process is applied to a number of disputes between players and management, including disputes about fines, suspensions, and other punitive measures taken by a club or by the league.

Labor issues are another chief concern of professional athletes. In major sporting leagues, players' unions and management enter into collective bargaining agreements that establish standards and cover the basic rights and duties of all major league players and club owners. Collective bargaining agreements address such issues as club discipline, injury grievances, noninjury grievances, discipline by the commissioner of Major League Baseball, standard player's contract, college drafts, option clauses, terminations of contracts, base salaries, access to personnel files, medical rights, retirement and insurance benefits, and the duration of the existing collective bargaining agreement.

Collective bargaining agreements last only for specified periods of time, so occasionally they need to be renewed. If the players are collectively unable to come to an agreement with the club owners, players may go on strike to gain what they feel they deserve or prevent the owners from enforcing detrimental regulations, such as a salary cap on the amount a club can spend on its payroll. The 1994–95 professional hockey season was shortened by a players' strike. The MLBPA also conducted a strike that began on August 12, 1994, lasted through the end of the 1994 season, and ended in March 1995. The players conducted the strike to thwart a proposed salary cap, and it ended without a new collective bargaining agreement or a final resolution of the salary cap issue.

The four most popular team sports in the United States—baseball, football, basketball, and hockey—have created leagues that exercise monopolistic powers. Owners of the professional teams in Major League Baseball, the National Football League (NFL), the National Basketball Association, and the National Hockey League have been able to keep the number of franchises lower than they would be in a free market. This artificially created scarcity gives owners of these teams leverage to force fans and taxpayers in cities across the country to provide billions of dollars in subsidies or risk losing pro-

Major League Baseball Players' Average Salaries, 1969 to 2002



SOURCE: Major League Baseball web page.

fessional sports entertainment. The scarcity also ensures a high level of talent in the league, making the creation of new leagues difficult.

Courts and legislators have been successful in removing some elements of antitrust activity, such as limits on the freedom of movement of players. One court has held that the National Football League violated antitrust laws by unreasonably restricting the right of owners to move their franchises (*Los Angeles Memorial Coliseum Commission v. National Football League,* 726 F.2d 1381 [9th Cir. 1984]). However, by and large, courts and legislators have been unable or unwilling to strike down or repeal other monopolistic activities. Legislators have even taken steps to give certain leagues special privileges. Under federal law the NFL may enter into agreements with television networks to pool and sell a unitary video package (15 U.S.C.A. § 1291 [1966]). Another federal law allows blackouts of nonlocal NFL games televised into home territories when the home team is playing and blackouts of home games in the home team's territory (15 U.S.C.A. § 1292 [1966]).

A professional sport is a complex business for the average athlete, and many athletes require the services of an agent. Agents negotiate personal service contracts with teams or individual promoters, and they manage the personal affairs of their clients. Agents may handle such concerns as taxes, financial planning, money management, investments, INCOME TAX preparation, incorporation, estate planning, endorsements, medical treatment, counseling, development of a career after sports, insurance, and legal matters. The agent is a fiduciary of the client-athlete, which means that the agent has a responsibility to act with the utmost care and GOOD FAITH and to act in the athlete's best interests. Agents must avoid activities that conflict with the interests of the client-athlete, and they must inform the athlete of any circumstances that might affect the athlete's rights or interests. Many states require that agents obtain a license and post a security bond before they may work in the state.

Torts in Sports

Many sports pose serious dangers to participants. Generally, a person who suffers a sports-related injury may recover for medical expenses and other losses if the injury was caused by the NEGLIGENCE of another party. Injuries and damages resulting from intentional torts, such as BATTERY or assault, likewise are recoverable.

Courts generally decide suits involving injuries to athletes, spectators, and other parties involved in sports according to basic tort laws. If a party owes a duty of care toward another party and that duty is breached, the party owing the duty is liable for any injuries suffered by the party to whom the duty is owed that result from the breach. The level of care that must be exercised depends on the situation: dangerous situations require a high degree of care, whereas less dangerous situations require less care. Expectations may also play a part. For example, a spectator who is hit by a foul ball while sitting in the stands at a baseball game cannot recover for injuries because most fans know that stray balls in the stands are an inescapable by-product of baseball. However, a patron who is standing in the interior walkway of a stadium concourse may recover for injuries resulting from a foul ball. A spectator in the unfamiliar environs of a stadium is not aware of the dangers and thus is owed a greater duty of care by the baseball organization.

Athletes may recover for injuries resulting from another party's negligence or intentional acts. In both professional and amateur contact sports, athletes consent to some physical contact, but courts do not find that participants consent to contact that goes outside the bounds of the game.

In some cases schools may be held liable for injuries to athletes. If an employee of the school, such as a coach, teacher, or referee, fails to properly supervise a student and the student suffers an injury as a result of the failure to supervise, the school may be held liable for its employee's negligence. Generally, coaches, teachers, and referees must exercise reasonable care to prevent foreseeable injuries.

Defendants in sports-related personal injury suits may possess any number of defenses. One of the most successful of these defenses is that the party assumed the risk of being injured by playing in or watching the sporting event. Defendants also may argue that the plaintiff was negligent and therefore should recover only a portion of his damages or nothing at all. For example, a plaintiff may have ignored warnings or signed a document that waived the defendant's liability for any injury suffered by the plaintiff. Finally, public institutions may argue that they are immune from suit under the doc-

trine of SOVEREIGN IMMUNITY, a judicial doctrine that prohibits suits against government entities unless such suits have been explicitly authorized by the government. Legislators have made many public institutions open to lawsuits, and in cases in which a public institution still enjoys IMMUNITY, courts often find ways to circumvent immunity and attach liability.

Criminal Liability for On-the-Field Conduct

On rare occasions, some athletes have been subjected to criminal actions against them for their conduct during an athletic contest. Regarding hockey, many teams of which are located in Canada, a few players have been convicted of such crimes as assault in Canadian tribunals. Such was the case with Martin James McSorley, commonly known as Marty, who was convicted of assault with a weapon by a Provincial Court in British Columbia, Canada, in 2000. McSorley, a member of the Boston Bruins, engaged in a series of altercations on the ice with Donald Brashear, a member of the Vancouver Canucks. In the waning seconds of the game, McSorley swung his stick at Brashear, hitting him on the right temple. When Brasher fell, he hit his head on the ice and began having a seizure. Brasher missed more than a month of the season. McSorley, who was eventually suspended for one year by the National Hockey League, received an 18-month conditional discharge by the Canadian court in lieu of a prison sentence. However, he was ordered not to play in any game in which Brashear was also a participant.

McSorley's case is a rather rare example of an athlete being convicted of a crime for on-the-field activities. Even some of the more infamous instances of violence during sporting events—such as one involving heavyweight boxer Mike Tyson who bit the ear of opponent Evander Holyfield in 1997—have resulted in fines and suspensions by the sport's governing bodies, rather than criminal actions.

Exposure of Athletes' Off-the-Field Legal Problems

When athletes run afoul of the law outside of sporting events, the stories often garner national attention. During the 1990s and early 2000s, a number of athletes were involved in high-profile criminal trials, some of whom were convicted for their crimes. Two of the more well-known examples were Mike Tyson's conviction for rape in 1992, leading to a six-year sentence, and Hall-of-Fame football player O. J. Simpson's trial for the double murder of Nicole Brown Simpson and Ronald Goldman in 1995, in which Simpson was acquitted.

Sociologists disagree as to the primary cause of some athletes' legal problems. Some say the reason is athletes are pampered throughout their childhood and early adulthood because of their athletic prowess. Given that these athletes have been shielded from rules that apply to everyone else, they have difficulty adjusting when they turn professional and earn a great deal of money, sometimes in the tens of millions of dollars. Other sociologists note that many athletes involved in these off-the-field incidents endured a rough childhood. Moreover, statistics show that the crime rate of professional athletes is no higher than the general population. Some argue that the public perceives athletes' legal problems in a different light because of the intense media scrutiny that accompanies these problems.

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CROSS-REFERENCES

Drugs and Narcotics; Employment Law; Entertainment Law; Monopoly; Rational Basis Test.

SPOT ZONING

The granting to a particular parcel of land a classification concerning its use that differs from the classification of other land in the immediate area.

Spot zoning is invalid because it amounts to an ARBITRARY, capricious, and unreasonable treatment of a limited area within a particular district and is, therefore, a deviation from the comprehensive plan.

CROSS-REFERENCES

Land-Use Control; Zoning.

SPOUSAL ABUSE

See DOMESTIC VIOLENCE.

SQUATTER

An individual who settles on the land of another person without any legal authority to do so, or without acquiring a legal title.

In the past, the term *squatter* specifically applied to an individual who settled on public land. Currently it is used interchangeably with *intruder* and *trespasser.*

SS

An abbreviation used in the portion of an AFFIDAVIT, PLEADING, *or record known as the statement of venue.*

The abbreviation is read as "to wit" and is intended to be a contraction of the Latin term *scilicet.*

STALE CHECK

A document that is a promise to pay money that is held for too long a period of time before being presented for payment.

A check is considered to be stale when it is outstanding for a period of six months or more. A bank is not obligated to pay a stale check.

CROSS-REFERENCES

Commercial Paper.

STALIN, JOSEPH

Joseph Stalin was the leader of the Soviet Union and the Communist party from 1929 to 1953. He used ruthless methods to consolidate his power and ruled the Soviet Union by terror. His actions shaped the relationship between the United States and the Soviet Union, leading to the COLD WAR after WORLD WAR II.

Stalin was born Iosif Vissarionovich Dzhugashvili on December 21, 1879, in Gori, now in the Republic of Georgia. He adopted the name Stalin, meaning "man of steel," in 1910. The son of peasants, his academic prowess led to a scholarship at a theological seminary. While studying for the priesthood, he began reading the works of KARL MARX. He soon left the seminary and joined the Social-Democratic party in 1899. His revolutionary activities led to his arrest and exile to Siberia seven times between 1902 and 1913. He escaped six times.

He aligned himself with the Bolshevik faction of the party, which was under the leadership of VLADIMIR ILYICH LENIN. Lenin named Stalin to the Bolshevik's Central Committee in 1912 and in 1913 named him editor of the party newspaper, *Pravda.* He spent from 1913 until early 1917 in Siberian exile, returning to St. Petersburg to aid the Bolsheviks in overthrowing first the monarchy and then the provisional government. The November 1917 Bolshevik revolution put Lenin in charge. Stalin became a top aide to Lenin and helped the regime in winning a civil war against those who opposed the Bolsheviks.

In the early 1920s, Stalin began plotting to gain power. Before Lenin died in 1924, he expressed misgivings about Stalin's use of power. Nevertheless, Stalin joined in a three-man leadership group, called a troika, to govern the Soviet Union after Lenin's death. He quickly pushed aside all his rivals, including Leon Trotsky, and became the supreme ruler by 1929.

During the 1930s Stalin collectivized all private farms in the Soviet Union and in the process sent a million farmers into exile. He embarked on a process of "russification," which put minority nationalities under strict control of the national government. In 1939, in concert with the Nazi government of ADOLF HITLER, Stalin invaded eastern Poland. In 1940 he conquered the Baltic countries of Estonia, Latvia, and Lithuania.

Stalin also encouraged the growth of COMMUNISM throughout the world. The Communist

party of the United States grew rapidly during the Great Depression of the 1930s, in the process raising questions whether the party was a mere tool of Stalin and the international Communist movement. As a result of concerns about Communist subversion, Congress enacted the **SMITH ACT** (54 Stat. 670) in 1940. The legislation required **ALIENS** to register and be fingerprinted by the federal government. More importantly, the act made it illegal not only to conspire to overthrow the government but to advocate or conspire to advocate its overthrow. The U.S. Supreme Court upheld the constitutionality of the act in *Dennis v. United States,* 341 U.S. 494, 71 S. Ct. 857, 95 L. Ed. 1137 (1951).

Stalin's 1939 nonaggression pact with Hitler proved futile: Hitler invaded the Soviet Union in 1941. Stalin then aligned the Soviet Union with the United States and Great Britain in World War II. When the war in Europe ended in 1945, the Soviet Army occupied Eastern Europe and a large part of Germany. Stalin ignored agreements between the Allies and proceeded to impose Communist rule on these occupied countries.

The United States and Great Britain perceived Stalin's actions as attempts to force Communism on the world. In the late 1940s, the Soviet Union was captioned by the United States as the Red Menace, seeking to subvert democracy and capitalism. Stalin pushed the United States to the brink of a third world war when he ordered the blockade of Berlin in 1948 and 1949.

Fears about Communism were further stirred by the arrest of **JULIUS AND ETHEL ROSENBERG** in 1950 for providing the Soviet Union with secrets about the atomic bomb. To many people, the Rosenbergs were tools of Stalin and the Communist conspiracy. Other people, however, saw them as victims of political hysteria. The Rosenbergs were executed in 1953, yet several generations of historians have argued over their guilt or innocence.

Stalin's hard-line policies were met in kind by the West. In 1949 the United States created the **NORTH ATLANTIC TREATY ORGANIZATION,** which committed U.S. forces to the defense of Europe. The outbreak of the **KOREAN WAR** in 1950, which was started by Communists in North Korea, led to the deployment of U.S. troops to stave off Communist aggression. Stalin's determination to expand Soviet power and influence created the climate for the Cold War. The United States practiced a policy of containment, with the goal of preventing the spread of Communism.

Joseph Stalin expanded the influence of the Soviet Union following World War II by refusing to withdraw Soviet forces from much of Germany and Eastern Europe.

AP/WIDE WORLD PHOTOS

In his later years, Stalin literally rewrote the Soviet history books, turning himself into a heroic, godlike figure. Those who opposed him were exiled to Siberian labor camps or executed. Always suspicious of those around him, in 1953 he prepared to purge more party leaders. His plans were cut short, however, when he suffered a brain hemorrhage and died on March 5, 1953, in Moscow.

Stalin's methods were replicated by later Soviet leaders. The demise of European Communist regimes in the 1980s and the collapse of the Soviet Union in the 1990s signaled an end to Stalinism.

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CROSS-REFERENCES

Communism; Red Scare.

STALKING

Criminal activity consisting of the repeated following and harassing of another person.

How to Stop a Stalker

Although antistalking laws give police and prosecutors the tools to arrest and charge stalkers with serious criminal offenses, victims of stalking have an important role to play in making these laws work. Law enforcement officials, **DOMESTIC VIOLENCE** counselors, and mental health professionals offer the following advice to victims on how to stop a stalker:

- *Know the law.* Because antistalking laws are new, some police officers may not know how the laws work. A stalking victim should visit the public library or a county law library and obtain a copy of the state's antistalking law. Victims should show the police the law when filing the stalking complaint and ask whether they should first seek a protective order against the stalker. In some states a violation of a protective order converts a stalking charge from a misdemeanor to a felony.
- *Cooperate with prosecutors.* Many stalking victims refuse to prosecute the stalker, thereby leaving themselves vulnerable to continued threats and violence. Some victims fear that prosecution will provoke worse behavior from the perpetrator. Nevertheless, victims should use the legal system and break any bond that may exist between themselves and the stalker.
- *Protect yourself.* Persons who are stalked should take steps to protect themselves and those around them. Neighbors and coworkers should be informed about the stalker, be given a photograph of the suspect, and be instructed on what to do if the stalker is sighted. Security officers at the victim's workplace should be provided with this information. Caller ID, which identifies telephone callers, should be installed on the victim's telephone. If the stalker makes repeated phone calls, the victim should ask the police to set up a phone tap.
- *Collect evidence.* A stalking victim should collect and preserve evidence that can be used to prosecute and convict the stalker. Police suggest that the victim keep a diary of stalking and other crimes committed by the perpetrator. It is also a good idea to photograph property destroyed by the stalker and any injuries inflicted by the stalker. The victim should keep all letters or notes written by the stalker and all answering machine tapes that contain messages from the perpetrator.

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Stalking is a distinctive form of criminal activity composed of a series of actions that taken individually might constitute legal behavior. For example, sending flowers, writing love notes, and waiting for someone outside her place of work are actions that, on their own, are not criminal. When these actions are coupled with an intent to instill fear or injury, however, they may constitute a pattern of behavior that is illegal. Though anti-stalking laws are gender neutral, most stalkers are men and most victims are women.

Stalking first attracted widespread public concern when a young actress named Rebecca Shaeffer, who was living in California, was shot to death by an obsessed fan who had stalked her for two years. The case drew extensive media coverage and revealed how widespread a problem stalking was to both celebrity and noncelebrity victims. Until the enactment of anti-stalking laws, police had little power to arrest someone who behaved in a threatening but legal way. Even when the suspect had followed his victim, sent her hate mail, or behaved in a threatening manner, the police were without legal recourse. Law enforcement could not take action until the suspect acted on his threats and assaulted or injured the victim.

In general, stalking victims are women from all walks of life. Some are trying to end a relationship with a man, often one who has been abusive. The persons involved may be married or divorced or may have been sexual partners. In other cases the stalker and the victim may know

one another casually or be associated in an informal or formal way. For example, they may have had one or two dates or talked briefly but were not sexual partners, or they may be coworkers or former coworkers. In a small number of situations, the stalker and the victim do not know one another. Cases involving celebrities and other public figures usually fall into this category.

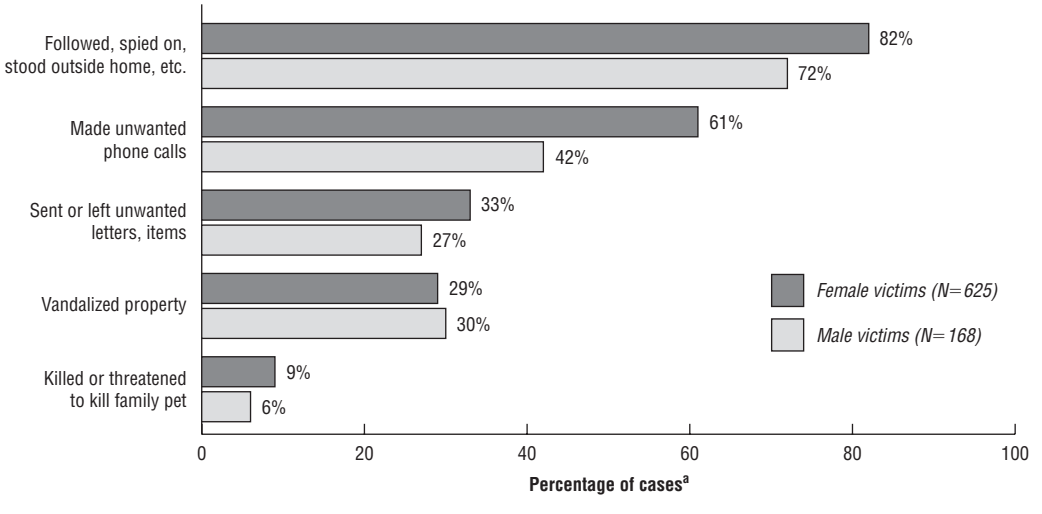
Advocates of battered women have estimated that up to 80 percent of stalking cases occur in a domestic context, though there is little data on how many stalkers and victims are former intimates, how many murdered women were stalked beforehand, or how many stalking incidents overlap with DOMESTIC VIOLENCE. According to estimates provided by the National Violence Against Women Prevention Research Center, over one million women and approximately 350,000 men are victims of stalkers each year.

Research also indicates that teenagers are subjected to stalking and that they have difficulty extricating themselves from such situations. Stalkers may include a high school classmate or an older man with whom a teenager has developed a relationship. When a teenage stalker is involved, the victim may have difficulty convincing law enforcement and school officials that the behavior is more than adolescent "boys will be boys" conduct.

The motivations for stalking are many. They include the desire for contact and control, obsession, jealousy, and anger and stem from the real or imagined relationship between the victim and the stalker. The stalker may feel intense attraction or extreme hatred. Many stalkers stop their activity when confronted by police intervention, but some do not. The more troublesome stalker may exhibit a personality disorder, such as obsessive-compulsive behavior, which leads him to devote an inordinate amount of time to writing notes and letters to the intended target, tracking the victim's movements, or traveling in an attempt to achieve an encounter.

The potentially dangerous consequences and the terrifying helplessness victims experienced led to calls for legislation criminalizing stalking. California enacted the first anti-stalking law in 1990. Eventually, all 50 states and the District of Columbia passed legislation that addresses the problem of stalking. Initially these laws varied widely, containing provisions that made the laws virtually unenforceable due to ambiguities and the dual requirements to show specific criminal intent and a credible threat. Many states have

Stalking Activities Engaged in by Stalkers



[a]Percentages exceed 100% because the question had multiple responses.

SOURCE: U.S. Department of Justice, National Institute of Justice & Centers for Disease Control and Prevention, *Stalkings in America: Findings From the National Violence Against Woman Survey*, 1998.

amended these stalking statutes to broaden definitions, refine wording, stiffen penalties, and emphasize the suspect's pattern of activity.

In most states, to charge and convict a defendant of stalking, several elements must be proved BEYOND A REASONABLE DOUBT. These elements include a course of conduct or behavior, the presence of threats, and the criminal intent to cause fear in the victim.

A course of conduct is a series of acts that, viewed collectively, present a pattern of behavior. Some states stipulate the requisite number of acts, with several requiring the stalker to commit two or more acts. States designate as stalking a variety of acts, ranging from specifically defined actions, such as nonconsensual communication or lying in wait, to more general types of action, such as harassment.

Most states require that the stalker pose a threat or act in a way that causes a reasonable person to feel fearful. The threat does not have to be written or verbal to instill fear. For example, a stalker can convey a threat by sending the victim black roses, forming his hand into a gun and pointing it at her, or delivering a dead animal to her doorstep.

To be convicted of stalking in most states, the stalker must display a criminal intent to cause fear in the victim. Various statutes require the conduct of the stalker to be "willful," "purposeful," "intentional," or "knowing." Many states do not require proof that the defendant intended to cause fear as long as he intended to commit the act that resulted in fear. In these states, if the victim is reasonably frightened by the alleged perpetrator's conduct, the intent element of the crime has been met.

Defendants have challenged the constitutionality of anti-stalking statutes in many states. They alleged that the laws are so vague that they violate DUE PROCESS OF LAW or are so broad that they infringe upon constitutionally protected speech or activity. Generally the courts have rejected these arguments and have upheld the anti-stalking laws.

Once a stalker is arrested, the prosecutor will ask the court to impose strict pretrial release conditions requiring the defendant to stay away from the victim. Violation of these conditions can lead to the revocation of bail and enhanced penalties at sentencing.

Before a stalker is arrested, a victim may obtain a civil protection, or restraining, order that directs the defendant not to contact or come within the vicinity of the victim. If the defendant violates the protection order, a court may hold him in CONTEMPT, impose fines, or incarcerate him, depending on state law. In some states a stalking penalty is enhanced if the stalker violates a protective order.

Protective orders can serve as the first formal means of intervening in a stalking situation. The order puts the stalker on notice that his behavior is unwanted and that if his behavior continues, police can take more severe action. However, enforcement of a protection order has proved difficult, leaving the victim with not much more than a legal document to try to restrain a violent stalker.

Many states have both misdemeanor and felony classifications for stalking. Misdemeanors generally carry a jail sentence of up to one year. Felony sentences range from three to five years, with the ability to enhance the penalty if one or more elements are present. For example, if the defendant brandished a gun, violated a protective order, committed a previous stalking offense, or directed his conduct toward a child, the sentence may be increased. In some states repeat offenses can result in incarceration for as long as ten years.

At the federal level, a number of statutes have been enacted to protect victims of stalkers. These include the Full Faith and Protection provisions of the VIOLENCE AGAINST WOMEN ACT (18 U.S.C.A. § 2265–2266 [2000]), which mandate nationwide enforcement of orders of protection, including harassment and stalking, and the Interstate Stalking Act (18 U.S.C.A. § 2261A [1996]), which makes it a criminal offense to travel across state lines to stalk another person. The act also makes it a crime to stalk a person across state lines using mail, E-MAIL, or the INTERNET. Such crimes are punishable from five years to life in prison.

Despite the nationwide awareness of stalking and the response of the criminal justice system, many women do not report these crimes to police. Failure to report stalking may be based on the private nature of the events and the belief that no purpose would be served by reporting the crime. Police departments and prosecutors have been criticized for continuing to minimize the seriousness of stalking and failing to provide adequate protection for victims. In addition, critics have claimed that courts are too lenient in sentencing stalkers.

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Colonists protest the Stamp Act of 1765 by burning Stamp Act papers in Boston.
LIBRARY OF CONGRESS

STAMP ACT

The Stamp Act was the English act of 1765 requiring that revenue stamps be affixed to all official documents in the American colonies. In 1765 the British Parliament, under the leadership of Prime Minister George Grenville, passed the Stamp Act, the first direct tax on the American colonies. The revenue measure was intended to help pay the debt incurred by the British in fighting the French and Indian War (1754–63) and to pay for the continuing defense of the colonies. Unexpectedly and to Parliament's great surprise, the Stamp Act ignited colonial opposition and outrage, leading to the first concerted effort by the colonists to resist Parliament and British authority. Though the act was repealed the following year, the events surrounding the tax protest became the first steps towards revolution and independence from England.

By the mid-eighteenth century, the economies of the American colonies had matured. The colonies chafed under the rules of British mercantilism, which sought to exploit the colonies as a source of raw materials and a market for the mother country. During the French and Indian War, the colonies asserted their economic independence by trading with the enemy, flagrantly defying customs laws, and evading trade regulations. These actions convinced the British government to bring the colonies into proper subordination and to use them as a source of revenue.

The colonists had become accustomed to a limited degree of British regulation of trade. The Navigation Acts of 1660, for example, stipulated that no goods or commodities could be imported into or exported out of any British colony except in British ships. Later legislation stipulated that rice, molasses, beaver skins, furs, and naval stores could be shipped only to England. Duties were also imposed on the shipment of certain articles, such as rum and spirits. However, the Stamp Act was the first direct tax, a tax on domestically produced and consumed items, that Parliament ever levied upon the colonists.

The Stamp Act was designed to raise almost one-third of the revenue to support the military establishment permanently stationed in the colonies at the end of the French and Indian War. The act placed a tax on newspapers, almanacs, pamphlets and broadsides, legal documents of all kinds, insurance policies, ship's papers, licenses, and even playing cards and dice. These documents and objects had to carry a tax stamp. The act was to be enforced by stamp agents, with penalties for violating the act to be imposed by vice-admiralty courts, which sat without juries.

Parliament passed the act without debate. Similar stamp acts had become an accepted part of raising revenues in England, leading parliamentary leaders to mistakenly believe that the measure would generate some grumbling but

not defiance. The colonies thought otherwise, interpreting the Stamp Act as a deliberate attempt to undercut their commercial strength and independence. They were also concerned about the implicit assault on their rights to trial by jury, the unprecedented use of a direct tax as a means of raising imperial revenue, and the all-inclusive character of the law that applied to all thirteen colonies.

The colonists raised the issue of taxation without representation. Some colonists drew a distinction between the English regulation of trade, which was viewed as legal, and the English imposition of internal taxes on the colonies, which was perceived to be illegal. Theories and arguments against the Stamp Act were distributed from assembly to assembly in the form of "circulars." PATRICK HENRY introduced seven resolutions against the Stamp Act in the Virginia House of Burgesses, five of which were passed. All seven resolutions were reprinted in newspapers such as the *Virginia Resolves.* These and other pamphlets pressed Parliament to repeal the act.

In October 1765 nine of the thirteen colonies sent delegates to New York to attend the Stamp Act Congress. The congress issued a "Declaration of Rights and Grievances," declaring that English subjects in the colonies had the same "rights and liberties" as the king's subjects in England. The congress, noting that the colonies were not represented in Parliament, concluded that no taxes could be constitutionally imposed on them except by their own legislatures. Petitions embracing these resolutions were prepared for submission to the king, the House of Commons, and the House of Lords.

The Stamp Act also led to the formation of formal opposition groups in the colonies. The Sons of Liberty, which remained active until the American Revolution, grew directly out of the Stamp Act controversy. Often organized by men of wealth and standing in the community, Sons of Liberty groups were active in towns throughout the colonies, and their members often engaged in violent acts. In Boston, for example, an angry mob forced the stamp agent to resign.

Colonial merchants also organized an effective economic boycott, with merchants in New York, Boston, and Philadelphia entering into nonimportation agreements. The drop in trade was dramatic, leading to the BANKRUPTCY of some London merchants. In addition, businesses flouted the act by carrying on their trade without purchasing the required stamps.

The virulence of the opposition to the Stamp Act surprised the colonists as much as the British government. The costs of simply maintaining order in the colonies threatened to negate any economic advantages of the legislation. BENJAMIN FRANKLIN, as the colonial agent for Pennsylvania, testified before the House of Commons in early 1766 that any attempt to enforce the Stamp Act by the use of troops might bring on rebellion. His call for repeal was joined by a committee of English merchants, which cited the dire economic consequences the act was producing. When Grenville's government fell from power, the new prime minister, Marquis of Rockingham, moved quickly to resolve the issue. In February 1766 the repeal of the Stamp Act was approved by the House of Commons. The House of Lords, under pressure from the king, approved the repeal as well, which became effective in May 1766. Nevertheless, in the Declaratory Act of March 1766, Parliament ominously asserted that it had full authority to make laws that were legally binding on the colonies.

England's need for revenue and Parliament's conviction that it alone, in the empire, was sovereign did not end with the repeal of the Stamp Act. New and harsher laws were enacted in succeeding years, producing a predictable reaction from the colonies. The full significance of the Stamp Act crisis is that it served as the initial event unifying all the colonies in their resistance to parliamentary authority. The opponents to the act laid a theoretical foundation for later revolutionary thought in their elaboration of the doctrine of consent by the governed. The act led to the creation of enduring resistance groups, such as the Sons of Liberty, which were capable of springing into action at the least provocation. And it established precedents for later resistance, including the use of a congress, the issuance of circulars, the resort to legislative resolves, and the adoption of economic sanctions. Most importantly, the Stamp Act crisis made the colonists more aware of the identity of their interests, which would ultimately lead them to think of themselves as "Americans."

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STAMP TAX

A pecuniary charge imposed upon certain transactions.

A stamp tax is, for example, levied when ownership of real property is transferred. The tax is paid either by purchasing stamps that are then glued to the deed or by the use of metering machines that imprint the stamps on the deed.

◆ STANBERY, HENRY

Henry Stanbery served as attorney general of the United States from 1866 to 1868 under President ANDREW JOHNSON.

Stanbery, the son of Jonas Stanbery, a physician, was born February 20, 1803, in New York. He moved with his family from New York to Zanesville, Ohio, in 1814. An excellent student, Stanbery required greater academic challenge than early Zanesville schools could provide. Recognizing his scholastic aptitude, his father made arrangements for him to attend Washington College, in Pennsylvania. He graduated in 1819 at the age of sixteen.

Stanbery studied law, and he was admitted to the bar in 1824 when he came of age. The same year, he entered into practice with Thomas Ewing, an attorney from Lancaster County, Ohio. They worked together for more than twenty years and handled a wide variety of cases.

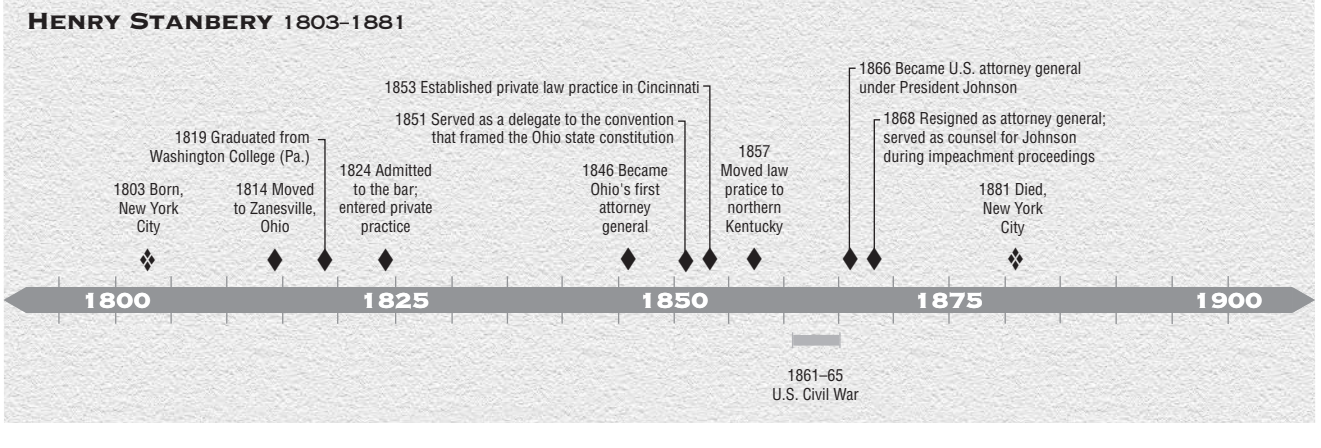
Stanbery's growing prominence in the Ohio courts made him a natural candidate for public office. He dissolved his longtime partnership with Ewing in 1846 and moved to Columbus to serve as Ohio's first attorney general. He also served as a delegate to the convention that framed the Ohio state constitution in 1851. After the constitutional convention, Stanbery reestablished his private practice—first in Cincinnati (1853) and later in northern Kentucky (1857). He maintained an active law practice throughout the U.S. CIVIL WAR.

After the Civil War, Stanbery became embroiled in the conflict and controversy surrounding Johnson's presidency. Johnson supported the policies of reconstruction and reconciliation favored by the late president ABRAHAM LINCOLN, but his efforts were met with strong opposition from Radical Republicans in the Senate. Johnson's first attorney general, JAMES SPEED, resigned in 1866 when he could no longer support presidential initiatives.

Amid this turmoil, Stanbery was asked to step in, and accepted the post of attorney general. Almost immediately, he was nominated by Johnson to fill a U.S. Supreme Court vacancy left by the death of Justice JOHN CATRON. Most senators liked the new attorney general and recognized him to be an able lawyer, but Radical Republicans were determined to prevent the confirmation of *any* nominee put forth by Johnson. To ensure that Johnson would not be able to fill the vacancy, the Senate enacted legislation to reduce the number of High Court justices from ten to seven as vacancies occurred. Accordingly, the seat for which Stanbery had been considered in April 1866 was abolished, and his nomination was never considered.

Although sixty-three years old and in failing health, Stanbery served Johnson as a loyal and active attorney general. Prior to Stanbery's

"THE CONSTITUTION IS NOT SILENT. IT PROVIDES FOR INSURRECTION, WHETHER SMALL OR GREAT; . . . WHETHER IN ONE STATE OR MANY."
—HENRY STANBERY



appointment, the president had vetoed early CIVIL RIGHTS legislation and was eager to restore full jurisdiction to Southern state courts. As attorney general, Stanbery supported Johnson by refusing to encourage enforcement of the CIVIL RIGHTS ACTS or providing any guidance to U.S. attorneys seeking to implement them.

When Johnson faced IMPEACHMENT by the Senate in March 1868, Stanbery resigned his office to serve as the president's counsel. So poor was Stanbery's physical health during Johnson's impeachment trial that he submitted most of his arguments in writing. Upon termination of the trial, Johnson sought to reappoint his friend and counsel as attorney general, but the Senate rejected Stanbery's reinstatement.

Stanbery remained in Washington, D.C., for the next few years and continued to participate in high-profile cases of the Reconstruction Era—including a number of cases that tested the constitutionality of the government's criminal prosecutions of the KU KLUX KLAN.

In the mid-1870s, Stanbery returned to Ohio and served a short term as president of the Cincinnati Bar Association. In retirement, he wrote occasionally on political and legal topics, but he devoted most of his time to the management of his vast property holdings. The year before his death, a newspaper account identified him as the largest property owner in Campbell County, Kentucky. Stanbery died in New York on June 26, 1881.

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STAND

The location in a courtroom where the parties and witnesses offer their testimony. To appear in court; to submit to the jurisdiction of the court.

To stand trial, for example, means to try, or be tried on, a particular issue in a particular court.

STAND MUTE

The state of affairs that arises when a defendant in a criminal action refuses to plead either guilty or not guilty.

When a defendant stands mute, the court will generally order a not guilty plea to be entered.

STANDARD DEDUCTION

The name given to a fixed amount of money that may be subtracted from the adjusted gross income of a taxpayer who does not itemize certain living expenses for INCOME TAX *purposes.*

STANDING

The legally protectible stake or interest that an individual has in a dispute that entitles him to bring the controversy before the court to obtain judicial relief.

Standing, sometimes referred to as standing to sue, is the name of the federal law doctrine that focuses on whether a prospective plaintiff can show that some personal legal interest has been invaded by the defendant. It is not enough that a person is merely interested as a member of the general public in the resolution of the dispute. The person must have a personal stake in the outcome of the controversy.

The standing doctrine is derived from the U.S. Constitution's Article III provision that federal courts have the power to hear "cases" arising under federal law and "controversies" involving certain types of parties. In the most fundamental application of the philosophy of judicial restraint, the U.S. Supreme Court has interpreted this language to forbid the rendering of ADVISORY OPINIONS.

Once a federal court determines that a real case or controversy exists, it must then ascertain whether the parties to the litigation have standing. The Supreme Court has developed an elaborate body of principles defining the nature and scope of standing. Basically, a plaintiff must have suffered some direct or substantial injury or be likely to suffer such an injury if a particular wrong is not redressed. A defendant must be the party responsible for perpetrating the alleged legal wrong.

Most standing issues arise over the enforcement of an allegedly unconstitutional statute, ordinance, or policy. One may challenge a law or policy on constitutional grounds if he can show that enforcement of the law or implementation of the policy infringes on an individual constitutional right, such as FREEDOM OF SPEECH. For example, in TINKER V. DES MOINES INDEPENDENT COMMUNITY SCHOOL DISTRICT, 393 U.S.

503, 89 S. Ct. 733, 21 L. Ed. 2d 731 (1969), high school officials in Des Moines, Iowa, had suspended students for wearing black armbands to school to protest U.S. involvement in the VIETNAM WAR. There was no question that the parents of the students had standing to challenge the restrictions on the wearing of armbands. Mere ideological opposition to a particular government policy, such as the Vietnam War, however, is not sufficient grounds to challenge that policy in court.

A significant economic injury or burden is sufficient to provide standing to sue, but in most situations a taxpayer does not have standing to challenge policies or programs that she is forced to support. In *Frothingham v. Mellon,* 288 F. 252 (C.A.D.C. 1923), the Supreme Court denied a federal taxpayer the right to challenge a federal program that she claimed violated the TENTH AMENDMENT, which reserves certain powers to the states. The Court said that a party must show some "direct injury as the result of the statute's enforcement, and not merely that he suffers in some indefinite way common with people generally."

Although the Supreme Court made a narrow exception to this prohibition on taxpayer suits in *Flast v. Cohen,* 392 U.S. 83, 88 S. Ct. 1942, 20 L. Ed. 2d 947 (1968), granting standing to a taxpayer to challenge federal spending that would benefit parochial schools, the Court has never gone beyond that. In fact, there is some doubt as to the vitality of the *Flast* decision. In 1974 the Court denied standing to a taxpayer who sought to challenge Congress's exempting the CENTRAL INTELLIGENCE AGENCY from the constitutional requirement under Article I, Section 9, Clause 7, that government expenditures be publicly reported (*United States v. Richardson,* 418 U.S. 166, 94 S. Ct. 2940, 41 L. Ed. 2d 678). Since *Richardson* the Court has continued to maintain the traditional barrier against taxpayer lawsuits.

The issue of standing has played a crucial role in CLASS ACTION lawsuits, especially those filed by environmental groups. In *Sierra Club v. Morton,* 405 U.S. 727, 92 S. Ct. 1361, 31 L. Ed. 2d 636 (1972), the Court denied standing to an environmental group that was challenging a decision by the secretary of the interior. The Court ruled that the SIERRA CLUB had not demonstrated that its members would be substantially adversely affected by the secretary's decision. Later environmental class actions have overcome the standing hurdle by including specific harms that group members would suffer, thus avoiding the Court's rule against generalized concerns.

The issue of standing is more than a technical aspect of the judicial process. A grant or denial of standing determines who may challenge government policies and what types of policies may be challenged. Those who believe that the federal courts should not increase their power generally believe standing should be used to limit access to the courts by persons or groups seeking to change public policy. They believe the legislative branch should deal with these types of issues. Opponents of a strict standing test complain that plaintiffs never get a chance to prove their case in court. They believe that justice should not be denied by the application of judicially created doctrines such as standing.

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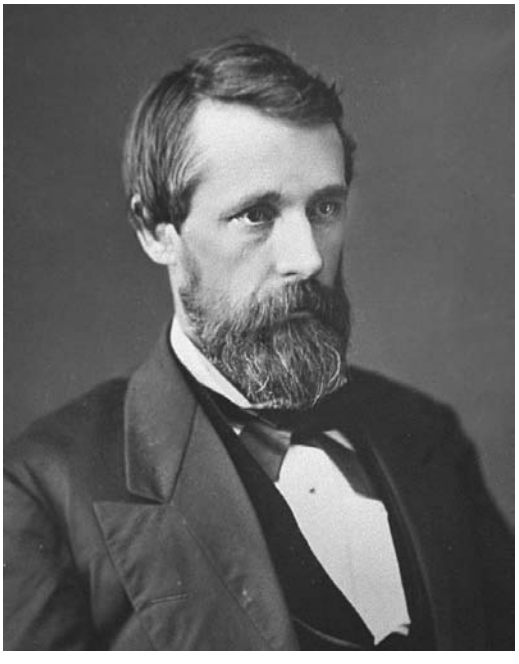
♦ STANFORD, AMASA LELAND

"A MAN WILL NEVER CONSTRUCT ANYTHING HE CANNOT IMAGINE." —LELAND STANFORD

Amasa Leland Stanford, known as Leland Stanford, along with partners Charles Crocker, Mark Hopkins, and Collis P. Huntington (the Big Four), founded the Central Pacific and Southern Pacific Rail Roads, and laid the tracks that would eventually link a nation. In the course of building the first transcontinental railroad, Stanford dominated California business, politics, and social life for almost fifty years.

Stanford was born on March 9, 1824, in Watervliet, New York. He was one of eight children born to Josiah Stanford and Elizabeth Phillips Stanford. His father was a prominent farmer and a prosperous merchant, who supplied building materials for the town's public works projects. Growing up, Stanford worked on the family farm and helped his father with local road and bridge construction. His boyhood work on the local transportation infrastructure sparked an interest that would fuel his life's work.

Stanford's early education included attendance at the local public school and some home schooling. At eighteen, he enrolled at the Clinton Liberal Institute, in Clinton, New York. He completed his education at New York's Cazenovia Seminary. At twenty-one, he began clerking with the law firm of Wheaton, Doolittle, and Hadley, in Albany, New York. Three years later, in 1845, Stanford was admitted to the bar.



Leland Stanford.
LIBRARY OF CONGRESS

Like many young men of his era, Stanford saw tremendous opportunity for those who moved west. In 1848 he settled in Port Washington, Wisconsin, to establish a law practice. While Stanford was establishing his professional career in Wisconsin, several of his brothers headed to California, eager to apply their skills as merchants in its mining camps and growing towns.

In the spring of 1852, Stanford sent his wife, Jane Elizabeth Lathrop Stanford, to stay with her family in Albany, and he followed his brothers to the Pacific Coast. By all accounts, Stanford arrived in California with little or no money. His brothers provided him with a stock of miners' supplies and set him up as a merchant in a mining town. His business there was very successful. Popular with the miners and trained in the law, Stanford was often called upon to mediate claim disputes and other problems.

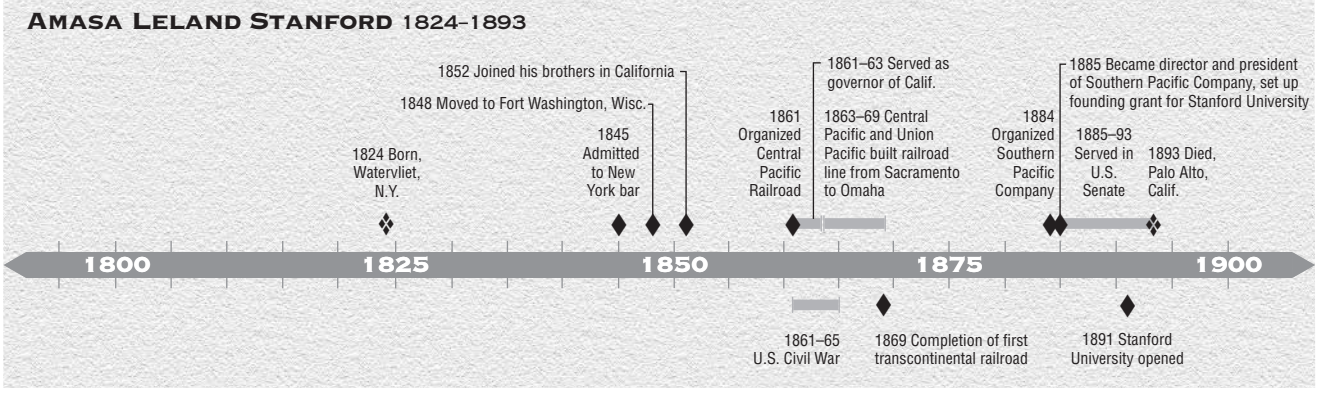
Convinced that his future was in California, Stanford persuaded his wife to join him there. In 1856 they established a home in Sacramento. Stanford continued to be involved with his brothers and their business interests, but he devoted most of his time—unsuccessfully—to politics.

He ran as a Republican candidate for state treasurer in 1857 and for governor in 1859. He was defeated in both races, but the campaigns made him a well-known political figure throughout the state. Finally, in 1861, when the outbreak of the U.S. CIVIL WAR split the state DEMOCRATIC PARTY, Stanford was successful in a bid for the governor's seat.

As the state's first Republican governor, he faced two immediate challenges: the possibility that California would split from the Union, and a serious flooding of the Sacramento River (which was so extensive that Stanford had to crawl out the window of his home and row himself to his inauguration). Stanford held California safely in the Union, and he coped with the damage caused by the flood. After providing for flood victims, and promoting minor administrative and legislative reforms, Stanford spent much of his time as governor pursuing his interest in railroads as a growing industry.

Just before the Civil War, President ABRAHAM LINCOLN signed the PACIFIC RAILROAD ACT, authorizing the construction of a transcontinental railroad from Omaha to Sacramento. Despite the coming war, investors and entrepreneurs across the United States looked for ways to participate in, and profit from, the new venture.

Prior to his election as governor, Stanford and three other Sacramento merchants—



Crocker, Hopkins, and Huntington—had financed railroad feasibility surveys and had organized the Central Pacific Rail Road Company on June 28, 1861. Stanford was named president.

During his two-year term as governor, Stanford committed a substantial amount of public money to the construction of the Central Pacific Rail Road. Any apprehensions Stanford may have had about mingling his official actions with his private interests were overshadowed by his conviction that a rail connection with the East would benefit all citizens of California.

When his term as governor expired, Stanford left government to construct his railroad. On January 8, 1863, workers from the Central Pacific Rail Road Company began laying track at Front and K Streets in Sacramento—one year before the Union Pacific started work in the East. Six years later, on May 10, 1869, Stanford drove a gold spike in the final section of track at Promontory Point, Utah. The Central Pacific Rail Road united the West with the rest of the country, and secured Stanford's place in railroad history.

After completion of the East-West link, Stanford continued to work with his partners. The four devoted their time to strengthening and expanding their railroad properties. In 1884, they organized the Southern Pacific Company as a holding company. In 1885, the Southern Pacific Company leased the Southern Pacific Rail Road, the Central Pacific Rail Road, and other system properties, and became the dominant unit of the organization. Stanford served as president and director of the Central Pacific Rail Road Company from its inception until his death in 1893. He was director of the Southern Pacific Company from 1885 to 1893, and president from 1885 to 1890. He was director of the Southern Pacific Rail Road from 1889 to 1890.

Though no public accounting has ever been made of the profits Stanford and his partners drew from the construction of the Central Pacific and Southern Pacific Rail Roads, it is known that the enterprise made them all enormously wealthy. Stanford lived in grand style in Sacramento, and later in San Francisco. He also owned Palo Alto, a ranch in Tehama County, where he cultivated vineyards and bred racing stock. Stanford's horse-training methods were widely adopted, and his interest in how horses moved at high speeds prompted him to sponsor early experiments in motion picture photography.

Today, the Palo Alto ranch is the site of Stanford University, a memorial to Stanford's only child. Leland Stanford Jr. died in 1884, at the age of fifteen, while touring in Italy. He had been his father's pride and joy. Stanford had placed him on an elaborate silver tray and presented him to guests at a party shortly after his birth in 1869. The tray can still be seen at the Leland Stanford House in Sacramento.

Devastated by the death of his son and looking for a new challenge, Stanford allowed himself to be drafted by the REPUBLICAN PARTY as a candidate for the U.S. Senate. He was elected in 1885. It is generally conceded that Stanford was not suited to life as a senator. He was often absent and showed little enthusiasm for the work. His election also caused friction with his long-time business partners, who had supported another candidate. In spite of his poor performance—and poor health—he was reelected in 1891, and served until his death two years later.

The five-foot eleven-inch, 268-pound railroad giant succumbed to heart problems at his Palo Alto ranch on June 21, 1893. Upon his death, the bulk of his estate passed to his wife, who used it to support the university founded by Stanford and named for their son. Stanford is interred with his son and his wife in the family mausoleum on the Stanford University campus.

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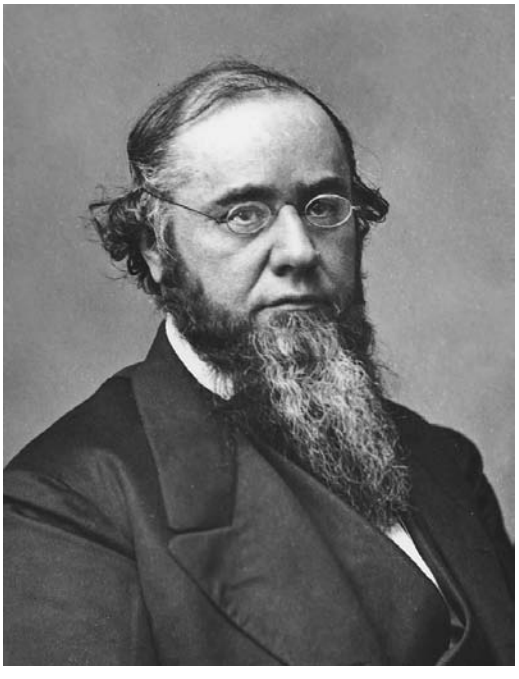
♦ STANTON, EDWIN McMASTERS

Edwin McMasters Stanton served as U.S. attorney general from December 1860 to March 1861, at a time when the southern states were moving toward secession from the Union. He later served as secretary of war during the U.S. CIVIL WAR under President ABRAHAM LINCOLN and was a key figure in the events that led to the IMPEACHMENT of President ANDREW JOHNSON.

Stanton was born on December 19, 1814, in Steubenville, Ohio. He attended Kenyon College and studied law. He was admitted to the Ohio bar in 1836 and began his law practice in Cadiz, Ohio. From 1837 to 1839, Stanton was a county prosecutor. In 1842 he was elected reporter of the decisions of the Ohio Supreme Court. In



Edwin M. Stanton.
LIBRARY OF CONGRESS

1847 Stanton moved to Pittsburgh, Pennsylvania, where he established a successful law practice.

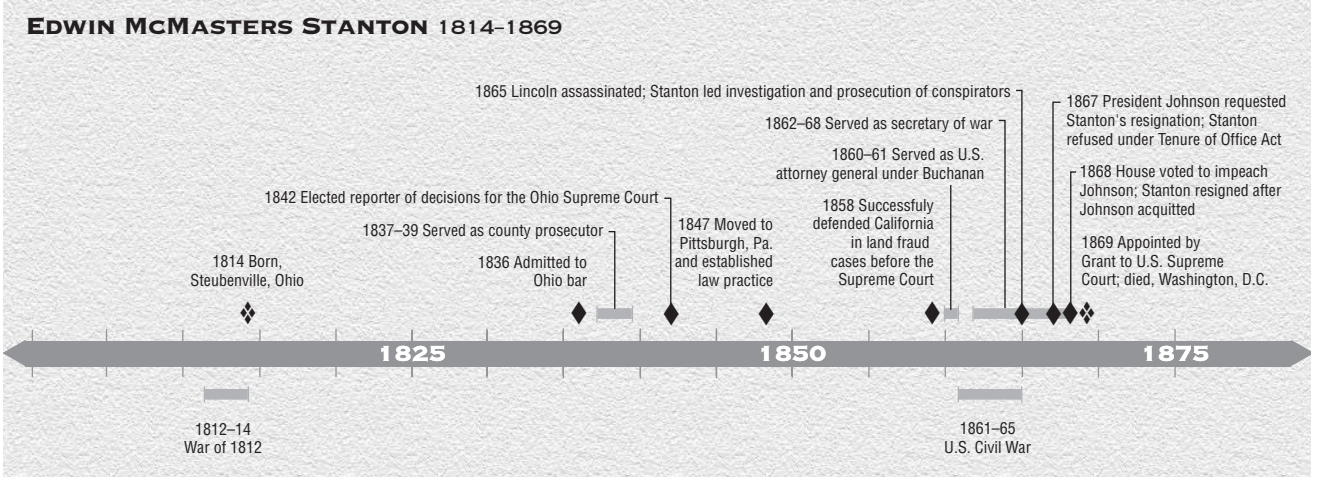
A skilled trial and appellate advocate, Stanton soon established a specialty in litigating federal law issues. In 1856 he relocated to Washington, D.C., where he argued several important cases before the U.S. Supreme Court. In 1858 he successfully defended the state of California in land FRAUD cases involving Mexican land acquired by the United States.

President JAMES BUCHANAN asked Stanton to serve as attorney general in late 1860, as Buchanan's term drew to a close. Southern politicians, worried that the next president, Abraham Lincoln, would implement antislavery measures, discussed secession from the Union. Stanton was a Democrat but he opposed SLAVERY. He counseled Buchanan not to abandon Fort Sumter, a fortification in the harbor of Charleston, South Carolina, that was held by Union forces. Stanton also secretly advised Republican leaders of cabinet discussions involving secession.

In 1862 President Lincoln appointed Stanton secretary of war. During the remainder of the Civil War, Stanton proved to be an effective administrator, minimizing corruption and increasing the efficiency of the military by ensuring that the necessary supplies and troops were available. He continually argued for a more aggressive prosecution of the war, a position that provoked violent quarrels with military commanders.

After the assassination of Lincoln in April 1865, Stanton played a leading role in the investigation and prosecution of the conspirators. Lincoln's successor, Andrew Johnson, retained Stanton as secretary of war, but they soon clashed over Johnson's Reconstruction program for the South. Stanton sought stricter policies against the South and worked with the Radical Republicans in Congress, who were Johnson's bitterest enemies, to achieve his aims.

In 1867 Johnson asked Stanton to resign because of this betrayal, but Stanton refused. He defended his actions under the TENURE OF OFFICE ACT (14 Stat. 430), which prohibited the removal of any federal official without senatorial consent when the official's appointment had originally been approved by the Senate. The



Radical Republicans had passed this act in 1867 over Johnson's VETO as a way of preventing the president from removing officials opposed to his Reconstruction policies.

Johnson ignored the Tenure of Office Act and appointed Lorenzo Thomas secretary of war. Johnson's action led to his impeachment by the House of Representatives, but the Senate acquitted him by one vote in 1868. After the acquittal Stanton finally resigned his cabinet post.

Stanton returned to private practice but his health was failing. In 1869 President ULYSSES S. GRANT appointed Stanton to the U.S. Supreme Court, but he died on December 24, 1869, in Washington, D.C., before he could assume the position.

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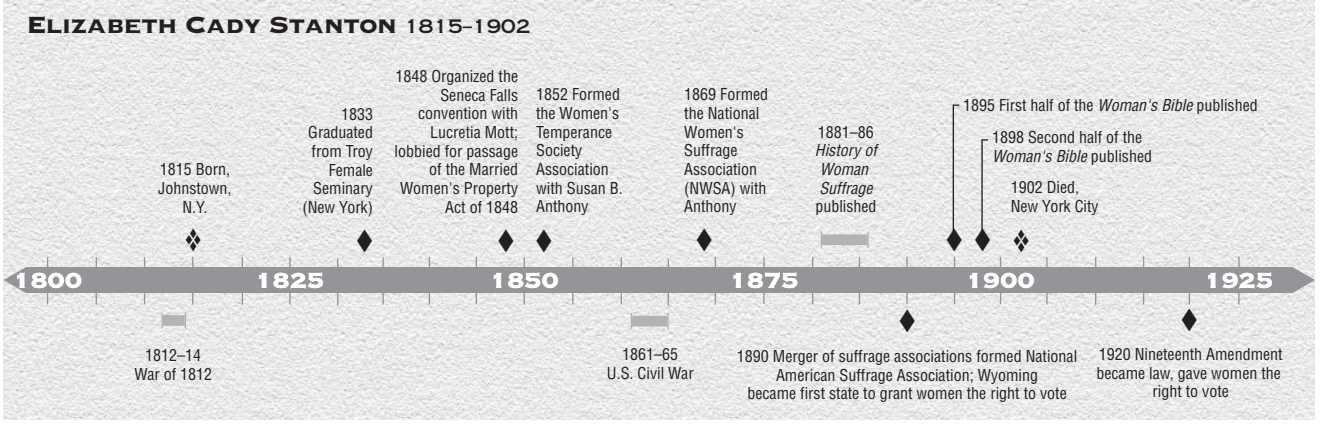
Elizabeth Cady Stanton.
NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

♦ STANTON, ELIZABETH CADY

The opening salvo in the battle for WOMEN'S RIGHTS was fired in 1848 by the grande dame of U.S. feminism, Elizabeth Cady Stanton. When Stanton and colleague Lucretia Mott organized the nation's first women's rights convention in 1848, in Seneca Falls, New York, they sought nothing less than a revolution. They pressed for equal education, better employment opportunities, and the vote for women—radical notions in the mid–nineteenth-century United States. For fifty years, Stanton was a key strategist and standard-bearer for the feminist movement. Along with fellow suffragist SUSAN B. ANTHONY and other activists, she helped elevate the legal, social, and political status of U.S. women.

Stanton was born November 12, 1815, in Johnstown, New York. She was the middle daughter of Daniel Cady and Margaret Livingston Cady, a prominent couple in Johnstown. Elizabeth was one of eleven children, but all five of her brothers and one sister died during childhood. In some ways, Stanton was raised by her parents as a substitute for those deceased brothers. Unlike most girls of her generation, Stanton participated in athletic activities and excelled in courses typically reserved for males, such as

"THE BIBLE AND THE CHURCH HAVE BEEN THE GREATEST STUMBLING BLOCKS IN THE WAY OF WOMEN'S EMANCIPATION."
—ELIZABETH CADY STANTON



Latin, Greek, logic, philosophy, and economics. Stanton's father, a lawyer and a New York Supreme Court judge, even encouraged her to study law with him, although later he regretted his actions: as an adult, Stanton used her legal knowledge to craft well-reasoned arguments for women's rights, a cause he disliked.

After she graduated from Johnstown Academy in 1830 at age fifteen, Stanton's ambition was to attend New York's Union College. Her enrollment was impossible, however, because Union, like every other college in the entire nation, did not admit women as students. (Ohio's Oberlin College was the first U.S. college to accept female students, in 1834.) Instead of Union College, Stanton attended Troy Female Seminary, in Troy, New York. She graduated in 1833.

Stanton returned to Johnstown, where she divided her time between the pleasant diversions of upper-class life and the important social causes of the day. Despite her parents' objections, she married an abolitionist, Henry Brewster Stanton, in 1840. From the beginning of their marriage, Stanton insisted on being addressed in public by her full name. Throughout her long life, only her political enemies called her Mrs. Henry Stanton.

While attending an international antislavery conference in London with her new husband in 1840, Stanton met Mott, a Quaker activist involved in the nascent U.S. women's movement. Stanton and Mott became quick friends and allies. Both were outraged over the refusal of the male antislavery leaders to seat female delegates at the London conference. Back in the United States, the two corresponded and sometimes joined forces in abolitionist activities. They also finalized plans for the nation's first women's rights convention.

In 1848, one hundred women and men gathered in Seneca Falls for the historic convention. The agenda included a speech by renowned African American abolitionist FREDERICK DOUGLASS, and a proposal to adopt Stanton's manifesto, the Declaration of Rights and Sentiments. The Seneca Falls declaration was inspired by the U.S. Declaration of Independence. It boldly proclaimed that all men and women were equal and that women deserved greater protection under the law. The declaration called for the expansion of employment and educational opportunities for women, and the right for women to vote. After lengthy debate, it was adopted in its entirety by the convention.

The SENECA FALLS CONVENTION was derided by the press—prompting Stanton to complain that its participants "were neither sour old maids, childless women, nor divorced wives as the newspapers declared them to be." Nevertheless, the convention succeeded in bringing women's issues to the political forefront.

After Seneca Falls, Stanton was an acknowledged leader of the U.S. women's movement. She soon joined forces with Anthony, the country's most prominent suffragist. For the next fifty years, Anthony was Stanton's staunchest feminist ally.

In addition to women's rights and ABOLITION, Stanton was involved in temperance, the movement to ban the sale and consumption of alcohol in the United States. Combining temperance with women's rights made sense to Stanton, both philosophically and practically. Drunken men destroyed the lives of powerless wives and children. Without laws to protect them, women who were married to chronic drinkers often faced physical abuse and financial ruin. The Married Women's Property Act of 1848 addressed this imbalance in legal power. Stanton helped win passage of the law by conducting an exhaustive petition drive throughout the state of New York.

Although Stanton supported temperance wholeheartedly, she was angered that the movement's male leaders were just as misguided as the abolitionists at the London antislavery conference. When Stanton attempted to participate in a Sons of Temperance meeting, she was summarily removed from the building. She and Anthony formed their own group, the Woman's State Temperance Society, in 1852.

The women's movement stalled around the time of the U.S. CIVIL WAR because many of its supporters focused exclusively on abolition. As president of the National Woman's Loyal League, Stanton helped gather four hundred thousand signatures on petitions in support of the THIRTEENTH AMENDMENT abolishing SLAVERY. After the war, Stanton and Anthony were bitterly disappointed when their abolitionist colleagues refused to support the inclusion of women in either the FOURTEENTH AMENDMENT, which granted African American males citizenship, or the FIFTEENTH AMENDMENT, which gave those males the right to vote. Stanton and Anthony formed the National Woman's Suffrage Association in 1869 with the sole purpose of winning the vote for women.

Because Stanton was busy with her family of seven children, she initially worked at her home on VOTING RIGHTS strategy while Anthony traveled the country delivering lectures. Later, this arrangement changed as Stanton became a sought-after speaker during the 1870s in the lyceum movement, a series of cultural and educational programs for adults.

As Stanton grew older, she became even more radical in her thinking. She shocked people with her pro-divorce, pro-labor, and antireligion opinions. In particular, her book *Woman's Bible,* published partially in 1895 and partially in 1898, drew fire because in it, Stanton lambasted what she viewed as the male bias of the Bible. When Stanton suggested that all organized religion oppressed women and should therefore be abolished, many felt she had gone too far. These unpopular opinions explain why some feminists disassociated themselves from Stanton and looked exclusively to Anthony for leadership.

Stanton also helped compile three of the six volumes of the less controversial *History of Woman Suffrage,* published from 1881 to 1886, with coauthor Matilda Joslyn Gage.

On Stanton's eightieth birthday, she was honored at a gala in New York City's Metropolitan Opera House. Looking back at her life, she told a crowd of six thousand people that she had been warned repeatedly against organizing the Seneca Falls convention. People told her it was a huge mistake because God had set the bounds of a woman's world and she should be satisfied with it. Stanton remarked that it was exactly this type of repressive attitude that led to her embrace of the women's movement.

Stanton died October 26, 1902, in New York City, at the age of eighty-six. Although she did not witness the passage of the NINETEENTH AMENDMENT, which gave nearly 25 million U.S. women the right to vote in 1920, she left her imprint on it.

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Temperance Movement.

STAR CHAMBER

An ancient high court of England, controlled by the monarch, which was abolished in 1641 by Parliament for abuses of power.

The English court of Star Chamber was created by King Henry VII in 1487 and was named for a room with stars painted on the ceiling in the royal palace of Westminster where the court sat. The Star Chamber was an instrument of the monarch and consisted of royal councillors and two royal judges. The jurisdiction of the court was based on the royal prerogative of administering justice in cases not remediable in the regular courts of law.

The Star Chamber originally assisted with some administrative matters, but by the 1530s it had become a pure court, relieving the king of the burden of hearing cases personally. It was a court of EQUITY, granting remedies unavailable in the common-law courts. As such, the court was an informal body that dispensed with "due process" as it was then understood.

During Henry VII's reign (1485–1509), about half the cases involved real property. During the sixteenth and early seventeenth centuries, the Star Chamber became a useful tool in dealing with cases involving members of the aristocracy who often defied the authority of the regular courts. It was during this period, moreover, that the court acquired criminal jurisdiction, hearing cases on issues concerning the security of the realm, such as SEDITION, criminal LIBEL, conspiracy, and forgery. Later, FRAUD and the punishment of judges came within its jurisdiction.

The importance of the Star Chamber increased during the reigns of James I (1603–25) and Charles I (1625–49). Under Archbishop William Laud, the court became a tool of royal oppression, seeking out and punishing religious and political dissidents. In the 1630s Laud used the Star Chamber to persecute a group of Puritan leaders, most of whom came from the gentry, subjecting them to the pillory and CORPORAL PUNISHMENT. Though the Star Chamber could not mete out CAPITAL PUNISHMENT, it inflicted everything short of death upon those found guilty. During this time the court met in secret, extracting evidence by torturing witnesses and handing out punishments that included mutilation, life imprisonment, and enormous fines. It turned equity's traditionally broad discretion into a complete disregard for the law. The Star Chamber sometimes acted

on mere rumors in order to suppress opposition to the king.

The Star Chamber's ARBITRARY use of power and the cruel punishments it inflicted produced a wave of reaction against it from Puritans, advocates of common-law courts, and others opposed to the reign of Charles I. In 1641 the Long Parliament abolished the court and made reparations to some of its victims.

The term *star chamber* has come to mean any lawless and oppressive tribunal, especially one that meets in secret. The constitutional concept of DUE PROCESS OF LAW is in part a reaction to the arbitrary use of judicial power displayed by the Star Chamber.

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STARE DECISIS

[Latin, Let the decision stand.] *The policy of courts to abide by or adhere to principles established by decisions in earlier cases.*

In the United States and England, the COMMON LAW has traditionally adhered to the precedents of earlier cases as sources of law. This principle, known as stare decisis, distinguishes the common law from civil-law systems, which give great weight to codes of laws and the opinions of scholars explaining them. Under stare decisis, once a court has answered a question, the same question in other cases must elicit the same response from the same court or lower courts in that jurisdiction.

The principle of stare decisis was not always applied with uniform strictness. In medieval England, common-law courts looked to earlier cases for guidance, but they could reject those they considered bad law. Courts also placed less than complete reliance on prior decisions because there was a lack of reliable written reports of cases. Official reports of cases heard in various courts began to appear in the United States in the early 1800s, but semiofficial reports were not produced in England until 1865. When published reports became available, lawyers and judges finally had direct access to cases and could more accurately interpret prior decisions.

For stare decisis to be effective, each jurisdiction must have one highest court to declare what the law is in a precedent-setting case. The U.S. Supreme Court and the state supreme courts serve as precedential bodies, resolving conflicting interpretations of law or dealing with issues of first impression. Whatever these courts decide becomes judicial precedent.

In the United States, courts seek to follow precedent whenever possible, seeking to maintain stability and continuity in the law. Devotion to stare decisis is considered a mark of judicial restraint, limiting a judge's ability to determine the outcome of a case in a way that he or she might choose if it were a matter of first impression. Take, for example, the precedent set in ROE V. WADE, 410 U.S. 113, 93 S. Ct. 705, 35 L. Ed. 2d 147, the 1973 decision that defined a woman's right to choose ABORTION as a fundamental constitutional right. Despite the controversy engendered by the decision, and calls for its repudiation, a majority of the justices, including some conservatives who might have decided *Roe* differently, have invoked stare decisis in succeeding abortion cases.

Nevertheless, the principle of stare decisis has always been tempered with a conviction that prior decisions must comport with notions of good reason or they can be overruled by the highest court in the jurisdiction.

The U.S. Supreme Court rarely overturns one of its precedents, but when it does, the ruling usually signifies a new way of looking at an important legal issue. For example, in the landmark case BROWN V. BOARD OF EDUCATION, 347 U.S. 483, 74 S. Ct. 686, 98 L. Ed. 873 (1954), the Supreme Court repudiated the SEPARATE-BUT-EQUAL doctrine it endorsed in PLESSY V. FERGUSON, 163 U.S. 537, 16 S. Ct. 1138, 41 L. Ed. 256 (1896). The Court ignored stare decisis, renouncing a legal precedent that had legitimated racial SEGREGATION for almost sixty years.

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Case Law; Judicial Review.

♦ STARR, KENNETH WINSTON

Kenneth Starr has served as a judge on the court of appeals, as U.S. SOLICITOR GENERAL, and

came to national attention as the **INDEPENDENT COUNSEL** who investigated President **BILL CLINTON** and his administration. Appointed as independent counsel in 1994, Starr garnered both vilification and praise for his investigation into the Arkansas land deal known as **WHITEWATER** and the investigation into the president's affair with Monica Lewinsky, a young White House intern.

Starr was born in Vernon, Texas, on July 21, 1946, to Willie and Vannie Starr. His father was a minister for the Church of Christ in Thalia, Texas; he also barbered and sold milk from the family cow. The children had a strict upbringing commensurate with their father's calling. When Starr was young, the family moved to San Antonio, where he was elected class president of Sam Houston High during his junior and senior years. He first became interested in the political process during the 1960 presidential campaign between **JOHN F. KENNEDY** and **RICHARD M. NIXON**.

After high school graduation, Starr attended Harding College, a school affiliated with the Church of Christ and located in Searcy, Arkansas. To help defray his expenses, he sold Bibles door-to-door. According to one of his roommates, Starr did not deviate from his conservative upbringing. Nevertheless, as an editor of the college newspaper, Starr reportedly defended the rights of **VIETNAM WAR** protesters, although he supported the war.

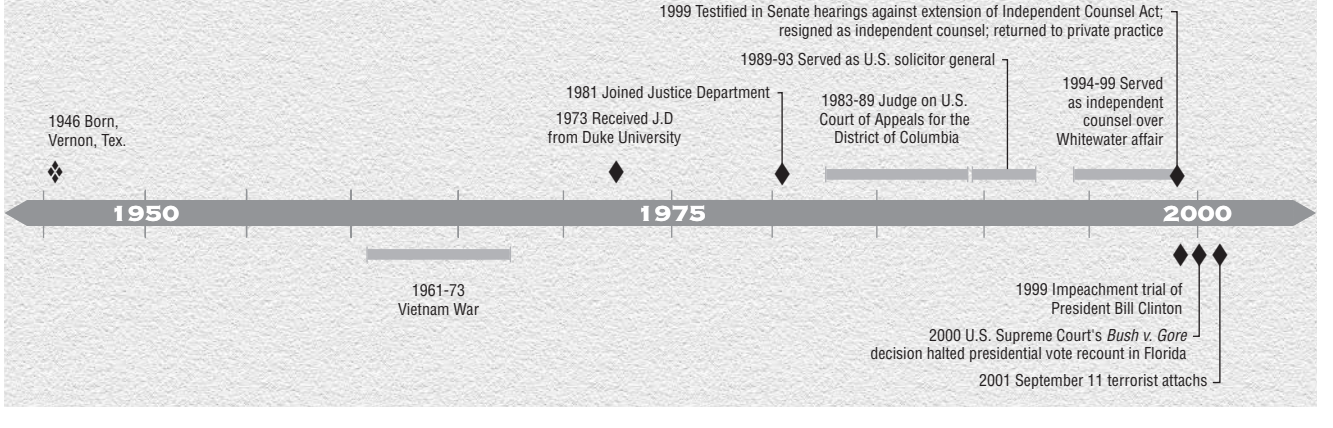
To better pursue his interest in politics, Starr transferred to George Washington University, graduating in 1968. He obtained a master's degree from Brown University, then attended Duke University Law School. At Duke he served as an editor of the *Duke Law Journal*. After graduation in 1973, Starr clerked for a federal appellate judge in the District of Columbia, worked briefly as an associate in a law firm, then was selected to clerk for Supreme Court Chief Justice **WARREN E. BURGER**.

Ken Starr.
AP/WIDE WORLD PHOTOS

In private practice after his clerkship, Starr became acquainted with **WILLIAM FRENCH SMITH**. When **RONALD REAGAN** appointed Smith to be attorney general in 1981, Starr joined the **JUSTICE DEPARTMENT**. Starr's typically conservative opinions generally meshed well with those of the Reagan administration.

"WHAT I FEAR IS AN AGE OF CONSTITUTIONAL ILLITERACY."
—KEN STARR

KENNETH WINSTON STARR 1946–



However, Starr disagreed with the administration when it supported a Christian evangelical college's efforts to retain certain tax benefits after it was disclosed that the institution had discriminated against minorities.

Reagan rewarded Starr with an appointment to the U.S. Court of Appeals for the District of Columbia, which is considered the most prestigious federal appellate court. In 1983, at age 37, Starr was the youngest person ever to be appointed to the court of appeals. During his six-year tenure, Starr consistently displayed his conservative ideology, but inspired respect from both conservatives and liberals for his judicial integrity.

Starr accepted the position of solicitor general offered him by President GEORGE H.W. BUSH in 1989. His duties as solicitor general included arguing cases on behalf of the United States in the Supreme Court and deciding which government cases merited appeal. He returned to private practice when President Clinton took office. On August 5, 1994, a three-judge panel selected Starr to replace Robert B. Fiske Jr. as independent counsel for the inquiry into the Whitewater affair clouding the Clinton administration.

Although Fiske had already done so, Starr investigated Bill and Hillary Clinton's connection to the failure of the Madison Guaranty Savings & Loan, a bank in Little Rock, Arkansas, owned by James and Susan McDougal, business partners of the Clintons. Susan McDougal refused to testify before Starr's GRAND JURY, and consequently served about 18 months in prison on CONTEMPT charges. Starr also reopened an investigation into the 1993 death of White House counsel Vincent W. Foster Jr. Fiske had concluded that Foster had committed suicide, but conspiracy theories abounded that Foster had been murdered. Starr's July 1997 report concluded that the death was a suicide. At the request of Attorney General JANET RENO, Starr also investigated the 1993 firing of White House travel employees at a time when friends of the Clintons were getting into the travel business, and the misappropriation of FBI files on Republicans by White House staffers.

Starr took an unprecedented step when he called HILLARY CLINTON to testify before a grand jury in 1996. Starr had earlier subpoenaed from Hillary Clinton's Little Rock law firm billing records relating to her work for the failed Madison Guaranty. Some of the records were missing until early 1996, when they were discovered in the Clintons' private living quarters of the White House. Starr sought the First Lady's testimony to determine whether the Clintons or others in the administration had hidden evidence or otherwise tried to obstruct justice.

Starr faced significant criticism from the beginning of his tenure for the perceived partisan nature of his investigation, as well as for the cost of the investigation, estimated at $40 million through 1998. Starr was also criticized for a paucity of results. Former Arkansas governor Jim Guy Tucker was convicted of conspiracy for actions in a real estate scheme from his days as a lawyer in public practice, and Susan and Jim McDougal were found guilty of criminal charges. Webster Hubbell, Hillary Clinton's former law partner and high-ranking Justice Department official, pleaded guilty in 1994 to two counts of TAX EVASION and MAIL FRAUD. David Hale, a former municipal judge and businessman, was convicted on FRAUD and conspiracy charges and has claimed that he was pressured by Clinton to make an illegal loan, but these charges are unsubstantiated. Starr failed to obtain convictions in a 1996 trial involving bank officers accused of misappropriating funds, which he tried to link to Clinton's 1986 campaign for governor.

In early 1998, revelations involving President Clinton and White House intern Monica Lewinsky began to surface, and Starr's office was immediately in the midst of controversy. Starr sanctioned the wiring of Pentagon employee Linda R. Tripp, a confidant of Lewinsky, in order to learn more about the alleged affair between the president and Lewinsky, and to discover any attempts to conceal the affair. Despite significant criticism that he had gone too far, Starr continued with his investigation, claiming there was a need to determine whether President Clinton had committed perjury or obstructed justice in connection with a SEXUAL HARASSMENT case brought against Clinton by former Arkansas state employee, Paula Corbin Jones.

In early January 1998, Lewinsky offered an AFFIDAVIT in the Jones case denying that she had had a sexual relationship with the president. On January 17, 1998, Clinton made the same denial in a deposition in the *Jones* case. Starr's investigation was further complicated in April 1998 when Federal District Judge SUSAN WEBBER WRIGHT dismissed the Jones lawsuit before trial. Dismissal of the lawsuit engendered further criticism for Starr when he refused to drop

his perjury and OBSTRUCTION OF JUSTICE investigation.

In July 1998, Starr subpoenaed President Clinton to testify before the grand jury. The subpoena was later withdrawn when Clinton agreed to testify voluntarily. Clinton also voluntarily provided to the office of independent counsel a vial of blood to determine whether a dress of Lewinsky's was stained with his semen. The president testified via videotape to the grand jury on August 17, 1998.

Later that day, he admitted in a televised speech that he had had an "inappropriate" relationship with Lewinsky, but he steadfastly maintained that he had not committed perjury or obstructed justice. In the speech, Clinton severely castigated Starr's investigation, a move that angered many of the president's supporters. However, the investigator became the investigated on October 30, 1998, when a federal judge approved a special inquiry into whether Starr's office had leaked secret grand jury information.

In September 1998, Starr delivered his report and 36 boxes of accompanying evidence to Capitol Hill, detailing the president's sexual conduct and setting out possible grounds for IMPEACHMENT. Although Clinton continued to enjoy significant support from the public, the Starr Report prompted the House Judiciary Committee to open an investigation into Clinton's actions in October 1998. Starr testified before the House Judiciary Committee for 12 hours in November 1998, and the next month the committee sent four ARTICLES OF IMPEACHMENT to the full House. The four articles were pared to two by the full House in December—one article for perjury before a grand jury, and another for obstruction of justice in the Jones lawsuit. Clinton was acquitted in February 1999.

Prosecutions by the office of independent counsel continued in the first half of 1999, but showed signs of slowing down. Susan McDougal was acquitted in late April on an obstruction of justice charge, and the jury failed to reach a verdict on two counts of criminal contempt. In May 1999, a mistrial was declared when the jury failed to reach a verdict in the case of Julie Hiatt Steele, whom Starr charged had obstructed justice and made false statements regarding the investigation of alleged misconduct by the president toward Kathleen Willey, a former White House volunteer. Starr later announced that he would not retry either McDougal or Steele.

On June 30, 1999, Webster Hubbell plead guilty to charges that he lied to bank regulators to conceal work by himself and Hillary Clinton on an Arkansas land development project when they were partners in Little Rock. Hubbell was sentenced to a year of PROBATION. Finally, Starr scored a victory when federal judge Susan Webber Wright held President Clinton in civil contempt for lying in his deposition in the Jones sexual harassment lawsuit.

Senate hearings began in February 1999 to determine whether the Independent Counsel Act, enacted in 1974 in the wake of the WATERGATE scandal, should be allowed to expire. Kenneth Starr testified against extension of the law. Congress allowed the Independent Counsel Act to expire in June 1999. Starr resigned his post in October 1999 and was succeeded by senior litigation counsel Robert W. Ray. In September 2000 Ray announced that he was closing the Whitewater inquiry based on insufficient evidence. The total cost of the investigation was estimated to be $70 million dollars in public funds.

After he resigned, Starr returned to private practice at the Washington, D.C.-based firm of Kirkland & Ellis. In the 2000s, he continued to practice law, lecture, and write. He also served as an adjunct professor at New York University, and a distinguished visiting professor at George Mason University School of Law in Virginia. In 2002, Starr published *First Among Equals: The Supreme Court in American Life.*

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START TREATIES

The Strategic Arms Reduction Talks (START) Treaties, START I (1991) and START II (1993), provided for large cuts in the nuclear arms possessed by the United States and the Soviet Union (later the Russian Federation). START I was the first arms-control treaty to reduce, rather than merely limit, the strategic offensive nuclear arsenals of the United States and the

Soviet Union. The United States and Russia have also negotiated additional treaties, including START II (1993), START III (1997), and the Strategic Offensive Reduction Treaty (SORT) (2002).

START I

The Soviet Union and the United States began the START negotiations in 1982, following the disappointing results of the Strategic Arms Limitation Talks (SALT), which had not led to significant reductions in the number of nuclear arms possessed by the superpowers. Nine years later, on July 31, 1991, presidents GEORGE H. W. BUSH of the United States and Mikhail Gorbachev of the Soviet Union signed the 700-page START Treaty (START I), formally designated as the Treaty Between the United States of America and the Union of Soviet Socialist Republics on the Reduction and Limitation of Strategic Offensive Arms.

START I provided for the reduction of U.S. nuclear capacity by roughly 15 percent and Soviet capacity by 25 percent within seven years after ratification. The treaty contained a number of verification procedures, including on-site inspections with spot checks, monitoring of missile-production plants, and the exchange of data tapes from missile tests.

Although START I reductions appeared formidable, critics noted that they simply returned both countries to the levels of nuclear arms that they had possessed in 1982, when negotiations had begun. Both superpowers still maintained the capacity to destroy each other several times over. Others claimed that because START I allowed for the modernization and expansion of certain weapon categories by both parties, it would lead to a continuation of the arms race.

START II

Changes in the political climate between the superpowers, particularly the dissolution of the Soviet Union in the summer of 1991, inspired further START negotiations. In September 1991, President Bush declared that the superpowers had an historic opportunity to negotiate significant reductions in NUCLEAR WEAPONS. He made a significant gesture toward this goal by calling U.S. long-range bombers off 24-hour alert and discontinuing development of the MX missile.

New Russian president Boris Yeltsin reciprocated Bush's conciliatory gestures when he announced on January 25, 1992, that Russia "no longer consider[ed] the United States our potential adversary" and declared that his country would no longer target U.S. cities with nuclear missiles. Four days later, President Bush announced further arms cuts in his State of the Union address, including cancellation of the B-2 bomber, the mobile Midgetman missile, and advanced cruise missiles. Yeltsin later responded with an even more ambitious proposal to reduce nuclear arsenals to an amount between 2,000 and 2,500 warheads each and to eliminate strategic nuclear weapons entirely by the year 2000. Although the latter goal proved too radical to implement, the former would be nearly achieved.

Yeltsin and Bush fulfilled their historic announcements in June 1992 by signing an accord, the Joint Understanding on the Elimination of MIRVed ICBMs (multiple warhead intercontinental ballistic missiles) and Further Reductions in Strategic Offensive Arms, that promised to reduce their combined nuclear arsenals from about 15,000 warheads to 6,000 or 7,000 by the year 2003. According to Bush, "With this agreement, the nuclear nightmare recedes more and more for ourselves, for our children, and for our grandchildren."

The June 1992 accord led to the development of START II, formally called the Treaty Between the United States of America and the Russian Federation on the Further Reduction and Limitation of Strategic Offensive Arms. It was signed by Bush and Yeltsin on January 3, 1993. Under its provisions, the United States and Russia would each have between 3,000 and 3,500 warheads by 2003, an amount roughly two-thirds that of pre-START levels. Warheads on submarine-launched ballistic missiles would be limited to no more than 1,750 for each country. The treaty also required the elimination of all land-based heavy ICBMs and multiple warhead missiles. As a result, ICBMs may carry only one nuclear warhead, a development that many agreed would lead to improved strategic stability.

In December 1994, President BILL CLINTON of the United States and the leaders of the nations of Belarus, Kazakhstan, Russia, and the Ukraine—the former Soviet republics still possessing nuclear arms—formally ratified the START I treaty into force, clearing the way for

further consideration of START II by the U.S. Senate. On January 26, 1996, the U.S. Senate ratified the START II Treaty on a vote of 87-4.

The START II treaty was originally scheduled to be implemented by January 2003. However, a 1997 protocol extended the deadline until December 2007 due to concerns by Russian leaders about their ability to meet the earlier date. Because the U.S. Senate has failed to ratify the 1997 protocol, START II has not yet entered into force.

START III and SORT

Clinton and Yeltsin negotiated for a START III treaty, which would have reduced the number of deployed strategic warheads to between 2,000 and 2,500. The two leaders agreed to a framework in March 1997, and the negotiations were scheduled to begin after the START II treaty entered into force. However, because START II never became effective, the START III treaty was never negotiated. The most significant aspects of the START III treaty were proposed provisions regarding the destruction of warheads.

Five years after the START III negotiations stalled, President GEORGE W. BUSH and Russian President Vladimir Putin signed the SORT treaty, in which the United States and Russia agreed to reduce their strategic nuclear arsenals to an amount between 1,700 and 2,200 warheads each. These limitations are similar to the proposed START III treaty, but the new SORT treaty does not contain provisions regarding the destruction of warheads or the destruction of delivery vehicles for nuclear weapons. As of May 2003, neither the U.S. Senate nor the Russian Duma had ratified the treaty. The proposed implementation and expiration dates for the treaty occur in 2012.

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CROSS-REFERENCES

Arms Control and Disarmament.

STATE

As a noun, a people permanently occupying a fixed territory bound together by common habits and custom into one body politic exercising, through the medium of an organized government, independent sovereignty and control over all persons and things within its boundaries, capable of making war and peace and of entering into international relations with other states. The section of territory occupied by one of the United States. The people of a state, in their collective capacity, considered as the party wronged by a criminal deed; the public; as in the title of a case, "The State v. A. B." The circumstances or condition of a being or thing at a given time.

As a verb, to express the particulars of a thing in writing or in words; to set down or set forth in detail; to aver, allege, or declare. To set down in gross; to mention in general terms, or by way of reference; to refer.

STATE ACTION

A requirement for claims that arise under the DUE PROCESS CLAUSE *of the* FOURTEENTH AMENDMENT *and* CIVIL RIGHTS *legislation, for which a private citizen seeks relief in the form of damages or redress based on an improper intrusion by the government into his or her private life.*

The U.S. Supreme Court has established that the protections offered by the Fourteenth and Fifteenth Amendments to the U.S. Constitution apply only to actions authorized or sanctioned by state law. The "state-action" requirement means that private acts of RACIAL DISCRIMINATION cannot be addressed under these amendments or the federal civil rights laws authorized by the amendments.

The Fourteenth Amendment prohibits a state from denying any person due process of law and the EQUAL PROTECTION of the law. The FIFTEENTH AMENDMENT prohibits a state from infringing on a person's right to vote. Both amendments were passed after the Civil War to guarantee these constitutional rights to newly freed slaves. During Reconstruction, Congress enacted many laws that it claimed were based on these amendments. Armed with this constitutional authority, Congress, in the CIVIL RIGHTS ACT of 1875, sought to prohibit racial discrimination by private parties in the provision of public accommodations, such as hotels, restaurants, theaters, and public transportation.

The Supreme Court struck down the 1875 act in the *Civil Rights* cases, 109 U.S. 3, 3 S. Ct. 18, 27 L. Ed. 835 (1883). It held that under the Fourteenth Amendment, "it is state action of a particular character that is prohibited. Individual invasion of individual rights is not the subject-matter of the amendment." The Court relied on language of the amendment that provides that "no state" shall engage in certain specified conduct.

This restrictive reading of the state-action requirement permitted racial discrimination to flourish in the South. For example, the Supreme Court upheld the "white primary," a device used to circumvent the Fifteenth Amendment, in *Grovey v. Townsend,* 295 U.S. 45, 55 S. Ct. 622, 79 L. Ed. 1292 (1935). The Court reasoned that because political parties were private organizations, their primary elections did not constitute state action.

The Supreme Court began to move away from a strict state-action requirement in the 1940s. In *Smith v. Allwright,* 321 U.S. 649, 64 S. Ct. 757, 88 L. Ed. 987 (1944), the Court struck down the WHITE PRIMARY as violative of the Fifteenth Amendment, thus overruling *Grovey.* The Court now found that primary elections played an important part in the democratic process and must be considered as officially sanctioned by the state.

The Court extended this type of analysis in *Shelley v. Kraemer,* 334 U.S. 1, 68 S. Ct. 836, 92 L. Ed. 1161 (1948), ruling that racially discriminatory restrictive covenants affecting real estate were unenforceable in state courts, because any such enforcement would amount to state action in contravention of the Fourteenth Amendment. Groups of homeowners used restrictive covenants to prevent the sale or rental of their homes to African Americans, Jews, and other minorities. A restriction was included in their real estate deeds forbidding such sale or rental. Until 1948 this form of private discrimination was thought to be legal because the state was not involved.

By the 1960s the Supreme Court was applying a more sophisticated analysis to determine if the state-action requirement had been met. In *Burton v. Wilmington Parking Authority,* 365 U.S. 715, 81 S. Ct. 856, 6 L. Ed. 2d 45 (1961), the Court found state action when a state agency leased property to a restaurant that refused to serve African Americans. It stated that state action in support of discrimination exists when there is a "close nexus" between the functions of the state and the private discrimination.

Nevertheless, the Court has not abandoned the state-action requirement. In *Moose Lodge v. Irvis,* 407 U.S. 163, 92 S. Ct. 1965, 32 L. Ed. 2d 627 (1972), a racially restrictive private club refused to serve the African American guest of a white member. The Court determined that the mere grant of a liquor license did not convert the private club's discriminatory policy into state action under the Fourteenth Amendment.

CROSS-REFERENCES

Civil Rights Cases; Integration.

STATE COURTS

Judicial tribunals established by each of the fifty states.

Each of the fifty state court systems in the United States operates independently under the constitution and the laws of the particular state. The character and names of the courts vary from state to state, but they have common structural elements.

State governments create state courts through the enactment of statutes or by constitutional provisions for the purpose of enforcing state law. Like the federal court system, the judicial branch of each state is an independent entity, often called "the third branch" of government (the other two being the executive and legislative branches). Though independent, state courts are dependent on the state legislatures for the appropriation of money to run the judicial system. Legislatures also authorize court systems to establish rules of procedure and sometimes direct the courts to investigate problems in the legal system.

Most states have a multilevel court structure, including a trial court, an intermediate court of appeals, and a supreme court. Only eight states have a two-tiered system consisting of a trial court and a supreme court. Apart from this general structure, the organization of state courts and their personnel are determined by the laws that created the court system and by the court's own rules.

State courts are designed to adjudicate civil and criminal cases. At the trial level, there are courts of limited and general jurisdiction. Limited jurisdiction courts, sometimes called inferior courts, handle minor civil cases, such as small claims or conciliation matters, and lesser crimes that are classified as misdemeanors. The persons who judge these cases may be part-time

judges, and some states still allow persons not trained in the law to hear these cases. A JUSTICE OF THE PEACE falls within this category and handles typically minor matters such as traffic violations. Courts of general jurisdiction, also known as superior courts, handle major civil matters and more serious crimes, called felonies.

Some states have a large number of trial courts. They can include small claims, municipal, county, and district courts. Since the 1980s, some states have simplified their systems, creating a unified trial court that hears all matters of limited and general jurisdiction.

Intermediate courts of appeal consider routine appeals brought by losing parties in the trial courts below. These are "error correcting" courts, which review the trial court proceedings to determine if the trial made errors in procedure or law that resulted in an incorrect decision. If the court determines that an error was made (and it was not a HARMLESS ERROR), it reverses the decision and sends it back to the trial court for another proceeding. Intermediate courts of appeal are supposed to interpret the precedents of the state's supreme court. However, in every state there are many areas of law in which its supreme court has not ruled, leaving the appellate courts free to make decisions on what the law should be. These courts process thousands of cases a year, and losing parties generally have a right to appeal to these courts, no matter how dubious the merits of the appeal.

The supreme court of a state fulfills a role similar to the U.S. Supreme Court. A state supreme court interprets the state constitution, the statutes enacted by the state legislature, and the body of state COMMON LAW. A supreme court is a precedential court: its rulings govern the interpretation of the law by the trial and appellate courts. A supreme court also administers the entire state court system, and the chief justice of the court is the spokesperson for the judiciary. In New York and Maryland, the highest court is called the court of appeals. In New York, the trial court is called the supreme court. These and other names for courts are based on historical circumstances but do not alter the substance of the work these courts perform.

The supreme court also establishes rules of procedure for all state courts. These rules govern civil, criminal, and juvenile court procedure, as well as the admission of evidence. State supreme courts also promulgate codes of professional responsibility for lawyers.

State courts have become highly organized systems. Beginning in the late 1960s, federal money helped states rethink how they deliver services. All states have a professional state court administrator, who administers and supervises all facets of the state court system, in consultation with the trial, appellate, and supreme courts. Research and planning functions are now common, and state courts rely heavily on computers for record keeping and statistical analysis.

At the county level, court administrators, previously known as clerks of court, oversee the operations of the trial courts. Court clerks, officers, bailiffs, and other personnel are called upon to make the system work. Judges have court reporters, who record trial proceedings either stenographically or electronically, using audio or video recording devices.

State court judges, unlike federal judges, are not appointed for life. Most states require judges to stand for election every six to ten years. An election may be a contest between rival candidates, or it may be a "retention election," which asks the voters whether or not a judge should be retained.

STATE DEPARTMENT

The U.S. Department of State is part of the EXECUTIVE BRANCH of government and is principally responsible for foreign affairs and foreign trade. It advises the president on the formulation and execution of foreign policy. As chief executive, the president has overall responsibility for the foreign policy of the United States. The Department of State's primary objective in the conduct of foreign relations is to promote the long-range security and well-being of the United States. The department determines and analyzes facts relating to U.S. overseas interests, makes recommendations on policy and future action, and takes the necessary steps to carry out established policy. In so doing, the department engages in continuous consultations with the Congress, other U.S. departments and agencies, and foreign governments; negotiates treaties and agreements with foreign nations; speaks for the United States in the UNITED NATIONS and in more than 50 major international organizations in which the United States participates; and represents the United States at more than 800 international conferences annually.

The Department of State, the senior executive department of the U.S. government, was

The State Department's Country Reports on Human Rights Practices

One of the U.S. State Department's most important tasks is to submit to Congress annual reports on the state of **HUMAN RIGHTS** in countries throughout the world. The *Country Reports on Human Rights Practices,* as the book containing these reports is titled, contains extensive and detailed information that allows Congress and the State Department to make better decisions regarding U.S. policy toward foreign nations.

The State Department has submitted country reports to Congress each year since 1977. In the first year, the reports covered 82 countries, and by 1995 that number had grown to 194.

U.S. embassy staff members in each country write the preliminary report about the country. They obtain information from government and military officials, journalists, academics, and human rights activists. Embassy staff members often put themselves at great risk in collecting human rights information in countries with extensive rights violations. State Department staff members then edit the reports. They attempt to gather still more evidence from international human rights groups, international bodies such as the **UNITED NATIONS**, and other sources.

The country reports are prefaced by an overview of human rights developments around the world, written by the assistant secretary of the Democracy, Human Rights, and Labor Division of the State Department. This overview summarizes the international human rights situation, identifies those nations with serious rights violations, and comments on the state of democracy around the world.

Each report begins with basic information regarding the government and economy of a nation, followed by detailed information on the status of human rights in the country.

The 1995 report about Brazil serves as an example of the extensive detail in the country reports. The Brazil report chronicles significant human rights abuses in that country, including killings by police and military death squads, the murder of street children in Rio de Janeiro, and numerous instances of torture. The report also describes the social, political, and legal factors in Brazil that contribute to human rights violations. These include overloaded courts and prisons, corruption of public officials and police, widespread poverty, and ineffective investigation into police and military brutality.

Each report also analyzes the human rights situation for women, racial and ethnic minorities, and workers in the country. The report about Brazil indicates a high incidence of physical abuse of women, while noting that the country has increased the number of special police stations assigned the task of preventing crimes against women. Serious violations against the rights of indigenous peoples are also recorded, including atrocities committed by the military and private parties during land disputes. On the subject of workers' rights, the Brazil report details unsafe working conditions, use of child labor in sugar and charcoal production, and use of forced labor in mining and agriculture.

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CROSS-REFERENCES

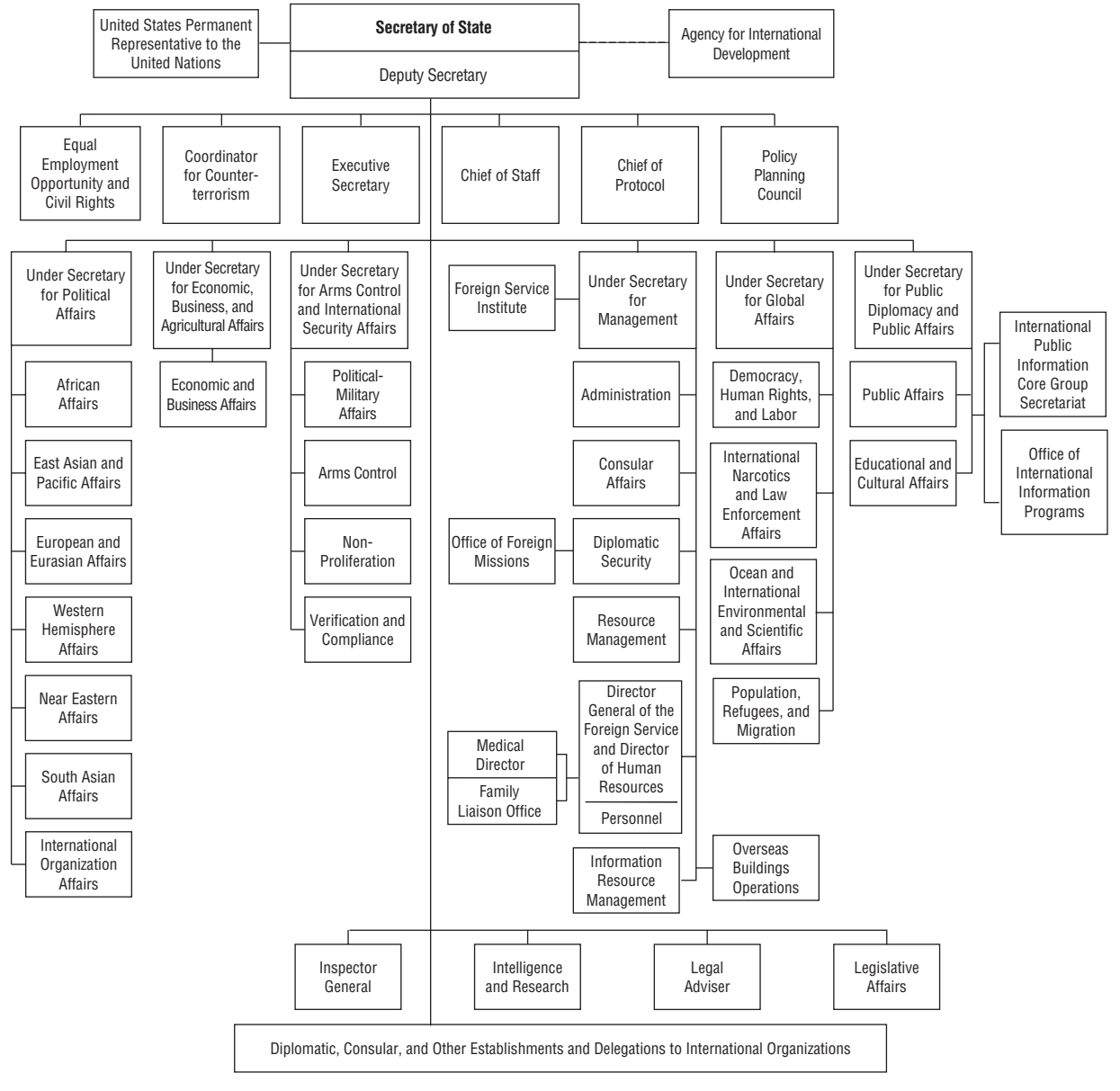
Genocide; Human Rights.

established by an act of July 27, 1789, as the Department of Foreign Affairs and was renamed Department of State by an act of September 15, 1789.

Office of the Secretary

Secretary of State The SECRETARY OF STATE, the principal foreign policy adviser to the president, is responsible for the overall direction, coordination, and supervision of U.S. foreign relations and for the interdepartmental activities of the U.S. government overseas. The secretary is the first-ranking member of the cabinet, is a member of the NATIONAL SECURITY COUNCIL, and is in charge of the operations of the department, including the Foreign Service.

Department of State



The office of the secretary includes the offices of the deputy secretary, under secretaries, assistant secretaries, counselor, legal adviser, and inspector general.

Economic and Agricultural Affairs The under secretary for economic and agricultural affairs is principal adviser to the secretary and deputy secretary of state on the formulation and conduct of foreign economic policy. Specific areas for which the under secretary is responsible include international trade, agriculture, energy, finance, transportation, and relations with developing countries.

International Security Affairs The under secretary for international security affairs is responsible for ensuring the integration of all elements of the Foreign Assistance Program as an effective instrument of U.S. foreign policy and serves as chair of the Arms Transfer Management Group. Other areas of responsibility

include international scientific and technological issues, communications and information policy, and technology transfers.

Regional Bureaus Six geographic bureaus, each directed by an assistant secretary, are responsible for U.S. foreign affairs activities throughout the world. These bureaus are organized by region as the bureaus of African Affairs, European and Canadian Affairs, East Asian and Pacific Affairs, Inter-American Affairs, Near Eastern Affairs, and South Asian Affairs. The regional assistant secretaries also serve as chairs of interdepartmental groups in the National Security Council system. These groups discuss and decide issues that can be settled at the assistant secretary level, including those arising out of the implementation of National Security Council decisions. They prepare policy papers for consideration by the council and contingency papers on potential crisis areas for council review.

Functional Areas

Diplomatic Security The Bureau of Diplomatic Security, established under the Omnibus Diplomatic Security and Antiterrorism Act of 1986, as amended (22 U.S.C.A. § 4803 et seq.), provides a secure environment for conducting U.S. diplomacy and promoting U.S. interests worldwide. The assistant secretary of state for diplomatic security is responsible for security and protective operations abroad and in the United States, counter-terrorism planning and coordination, security technology development, foreign government security training, and personnel training.

The Security Awareness Staff directs the development and execution of bureau-wide security and information awareness policies and programs, press and media relations, and public awareness. The Security Awareness Program provides information on diplomatic security concerns and is a focal point for responding to public inquiries and maintaining media relations on diplomatic security issues and events. The Training Support Division provides publications and training videotapes on diplomatic security concerns.

The Private Sector Liaison Staff maintains daily contact with and actively supports the U.S. private sector by disseminating timely, unclassified security information concerning the safety of U.S. private-sector personnel, facilities, and operations abroad. The staff operates the Electronic Bulletin Board, a computerized, unclassified security information database accessible to U.S. private-sector enterprises. It also provides direct consultation services to the private sector concerning security threats abroad.

The Overseas Security Advisory Council promotes cooperation on security-related issues between U.S. private-sector interests worldwide and the Department of State, as provided in 22 U.S.C.A. § 2656 and the Federal Advisory Committee Act, as amended (5 U.S.C.A. app.). The council serves as a continuing liaison and provides for operational security cooperation between department security functions and the private sector. The council also provides for regular and timely exchange of information between the private sector and the department concerning developments in protective security. Additionally, it recommends methods and provides material for coordinating security planning and implementation of security programs.

Economic and Business Affairs The Bureau of Economic and Business Affairs has overall responsibility for formulating and implementing policy regarding foreign economic matters, including resource and food policy, international energy issues, trade, economic sanctions, international finance and development, and aviation and maritime affairs.

Intelligence and Research The Bureau of Intelligence and Research coordinates programs of intelligence, analysis, and research for the department and other federal agencies and produces intelligence studies and current intelligence analyses essential to the determination and execution of foreign policy. Through its Office of Research, the bureau maintains liaisons with cultural and educational institutions and oversees contract research and conferences on foreign affairs subjects.

International Communications and Information Policy The Bureau of International Communications and Information Policy is the principal adviser to the secretary of state on international TELECOMMUNICATIONS policy issues affecting U.S. foreign policy and national security. The bureau acts as a coordinator with other U.S. government agencies and the private sector in the formulation and implementation of international policies relating to a wide range of rapidly evolving communications and information technologies. The bureau promotes U.S. telecommunications interests bilaterally and multilaterally.

International Narcotics and Law Enforcement Affairs The Bureau of International Narcotics and Law Enforcement Affairs is responsible for developing, coordinating, and implementing international narcotics control assistance activities of the Department of State as authorized under sections 481 and 482 of the Foreign Assistance Act of 1961, as amended (22 U.S.C.A. §§ 2291, 2292). It is the principal point of contact with and provides advice on international narcotics control matters for the OFFICE OF MANAGEMENT AND BUDGET, the National Security Council, and the White House OFFICE OF NATIONAL DRUG CONTROL POLICY in ensuring implementation of U.S. policy in international narcotics matters. The bureau provides guidance on narcotics control matters to chiefs of missions and directs narcotics control coordinators at posts abroad. It also communicates or authorizes communication as appropriate with foreign governments on drug control matters including negotiating, concluding, and terminating agreements relating to international narcotics control programs.

International Organization Affairs The Bureau of International Organization Affairs provides guidance and support for U.S. participation in international organizations and conferences. It leads in the development, coordination, and implementation of U.S. multilateral policy. The bureau formulates and implements U.S. policy toward international organizations, with particular emphasis on those organizations that make up the United Nations system.

Legal Advisor The legal advisor advises the secretary and, through the secretary, the president, on all matters of INTERNATIONAL LAW arising in the conduct of U.S. foreign relations. The legal advisor also provides general legal advice and services to the secretary and other officials of the department on matters with which the department and overseas posts are concerned.

Consular Affairs The Bureau of Consular Affairs, under the direction of the assistant secretary, is responsible for the administration and enforcement of the provisions of the immigration and nationality laws, insofar as they concern the department and the Foreign Service, for the issuance of passports and visas and related services, and for the protection and welfare of U.S. citizens and interests abroad.

Approximately 5 million passports are issued each year by the Passport Office of the bureau, which has agencies in Boston, Chicago, Honolulu, Houston, Los Angeles, Miami, New Orleans, New York, Philadelphia, San Francisco, Seattle, Stamford, and Washington, D.C.

Political-Military Affairs The Bureau of Political-Military Affairs provides guidance and coordinates policy formulation on national security issues, including nonproliferation of weapons of mass destruction and missile technology, nuclear and conventional ARMS CONTROL, defense relations and security assistance, and export controls. It acts as the department's primary liaison with the DEFENSE DEPARTMENT. The bureau also participates in all major arms control, nonproliferation, and other security-related negotiations.

The bureau's major activities are designed to further U.S. national security objectives by stabilizing regional military balances through negotiations and security assistance, negotiating reductions in global inventories of weapons of mass destruction and curbing their proliferation, maintaining global access for U.S. military forces, inhibiting adversaries' access to militarily significant technologies, and promoting responsible U.S. defense trade.

Protocol The Chief of Protocol is the principal adviser to the U.S. government, the president, the vice president, and the secretary of state on matters of diplomatic procedure governed by law or international custom and practice. The office is responsible for visits of foreign chiefs of state, heads of government, and other high officials to the United States, operation of the president's guest house, Blair House, and conduct of official ceremonial functions and public events. It also is charged with the accreditation of more than 100,000 embassy, consular, international organization, and other foreign government personnel and members of their families throughout the United States. In addition, the office determines entitlement to diplomatic or consular IMMUNITY.

Office of International Information Programs In 1999 Congress dissolved the U.S. INFORMATION AGENCY and transferred its functions to the Office of International Information Programs. This office designs for and distributes INTERNET and print publications to media, government officials, and the general public in 140 countries. It emphasizes the electronic

distribution of information through various Web sites and CD-ROMS.

Foreign Service

Foreign relations are conducted principally by the U.S. Foreign Service. In 1996 representatives at 164 embassies, 12 missions, 1 U.S. liaison office, 1 U.S. interests section, 66 consulates general, 14 consulates, 3 branch offices, and 45 consular agencies throughout the world reported to the Department of State on the foreign developments that had a bearing on the welfare and security of the United States. These trained representatives provided the president and the secretary of state with much of the raw material from which foreign policy is made and with the recommendations that help shape it.

Ambassadors are the personal representatives of the president and report to the president through the secretary of state. Ambassadors have full responsibility for implementation of U.S. foreign policy by any and all U.S. government personnel within their country of assignment, except those under military commands. Their responsibilities include negotiating agreements between the United States and the host country, explaining and disseminating official U.S. policy, and maintaining cordial relations with that country's government and people.

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CROSS-REFERENCES

Ambassadors and Consuls; Arms Control and Disarmament; International Law; Treaty.

STATE INTEREST

A broad term for any matter of public concern that is addressed by a government in law or policy.

State legislatures pass laws to address matters of public interest and concern. A law that sets speed limits on public highways expresses an interest in protecting public safety. A statute that requires high school students to pass competency examinations before being allowed to graduate advances the state's interest in having an educated citizenry.

Although the state may have a legitimate interest in public safety, public health, or an array of other issues, a law that advances a state interest may also intrude on important constitutional rights. The U.S. Supreme Court has devised standards of review that govern how a state interest will be constitutionally evaluated.

When a law affects a constitutionally protected interest, the law must meet the RATIONAL BASIS TEST. This test requires that the law be rationally related to a legitimate state interest. For example, a state law that prohibits a person from selling insurance without a license deprives people of their right to make contracts freely. Yet the law will be upheld because it is a rational means of advancing the state interest in protecting persons from fraudulent or unscrupulous insurance agents. Most laws that are challenged on this basis are upheld, as there is usually some type of reasonable relation between the state interest and the way the law seeks to advance that interest.

When a law or policy affects a fundamental constitutional right, such as the right to vote or the right to privacy, the STRICT SCRUTINY test will be applied. This test requires the state to advance a compelling state interest to justify the law or policy. Strict scrutiny places a heavy burden on the state. For example, in ROE V. WADE, 410 U.S. 113, 93 S. Ct. 705, 35 L. Ed. 2d 147 (1973), the state interest in protecting unborn children was not compelling enough to overcome a woman's right to privacy. When the state interest is not sufficiently compelling, the law is struck down as unconstitutional.

STATE LOTTERY

A game of chance operated by a state government.

Generally a lottery offers a person the chance to win a prize in exchange for something of lesser value. Most lotteries offer a large cash prize, and the chance to win the cash prize is typically available for one dollar. Because the number of people playing the game usually exceeds the number of dollars paid out, the lottery ensures a profit for the sponsoring state.

Lotteries can come in a variety of forms, but there are three basic versions: instant lotteries, general lotteries, and lotto. Instant lotteries offer immediate prizes and consist of such games as

Go West, Young Lottery Player

Lotteries are ancient games, long predating the founding of the United States. Their popularity in Europe, and especially in England, helps explain why the first lotteries were held in the American colonies in 1612. The colonies were under the command of the British Crown, which did not permit them to levy taxes. But the British did authorize the Virginia Company of London to hold games for its benefit—at least until the scheme backfired. The lotteries drained the Crown's pockets and helped the upstart colonies, and within a decade, the colonists' own domestic lotteries had replaced them. A century later, the colonists held lotteries to raise funds for the **WAR OF INDEPENDENCE**.

During the eighteenth and nineteenth centuries, lotteries played an important role in building the new nation. Its banking and taxation systems were still in their infancy, necessitating ways to raise capital quickly for public projects. Lotteries helped build everything from roads to jails, hospitals, and industries and provided needed funds for hundreds of schools and colleges. Famous American leaders like **THOMAS JEFFERSON** and **BENJAMIN FRANKLIN** saw great usefulness in them: Jefferson wanted to hold a lottery to retire his debts, and Franklin to buy cannons for Philadelphia. Lotteries expanded in the 1800s, prompting Congress in 1812 to authorize them in the District of Columbia. By midcentury, eastern states alone raised over $66 million annually, and lotteries were starting up in the West.

Despite their significance to early U.S. history, lotteries fell out of favor in the late 1800s. Corruption, moral uneasiness, and the rise of bond sales and standardized taxation proved their downfall. Only Louisiana, with a notorious lottery known as The Serpent, still held a state-run game at the end of the century. Congress put a stop to it with the Anti-Lottery Act of 1890 (Act of September 19, 1890, ch. 908, 26 Stat. 465), a federal ban on the use of the mails for conducting lotteries that effectively ended the games for the next seventy years.

New Hampshire swept in the modern era of state-sponsored lotteries in 1964. In 1974 Congress relaxed regulations for the benefit of the growing number of states holding the games (Pub. L. No. 93-583, 88 Stat. 1916 [1975]; H.R. Rep. No. 1517, 93d Cong., 2d Sess. [1974]).

scratch-off tickets and pull tabs. A general lottery is a drawing with a payout based on a percentage of the amount in the aggregate wagering pot; because all numbers bet for the particular game are included in the drawing, a winner is guaranteed. Lotto is similar to a general lottery in that the winning number is chosen in a drawing. However, the winning number in a lotto game is chosen by a computer, and the computer may not pick a number or sequence of numbers that is held by a player. If no player has a number that matches the number chosen by the computer, the cash prize rolls over into the next game's drawing. Lotto usually generates more money than other lotteries. A player must match a long sequence of numbers, and this raises the odds against the players, which in turn makes it more likely that the cash prize will increase. Most of the other forms of lotteries are spin-offs of these three basic forms.

More than thirty states have state-run lotteries. These lotteries are administered by state agents and agencies, such as a director of the state lottery and a state lottery board. State legislatures create lotteries and lottery agencies in statutes. These statutes specify details of the game, such as the length of time a winner has to claim a prize after the relevant drawing, the documentation a winner must present to claim a prize, the manner of payment of the prize, and procedures in case a prize is won by a corporation or other legal entity.

State statutes also specify just how the money generated by the lotteries will be used. Many states direct that the profits should go into the state's general revenue fund, whereas other states earmark the profits for a particular endeavor, such as public school education, care of SENIOR CITIZENS, or economic development.

States Gamble on Gambling

As the ultimate high-odds game, a lottery produces very few winners. Since the rush to legalize government lotteries began in the 1970s, states have capitalized tremendously on the game's drastic odds. Thirty-nine states and the District of Columbia reaped over $42 billion in 2002, more than double the revenues reported just seven years earlier. Supporters tout the game as an easy revenue-raiser and a painless alternative to higher taxes. Opponents attack it as dishonest, unseemly, and undependable. They argue that the social and administrative costs do not actually skirt taxation but instead put the state in the role of con artist. It is also criticized as a regressive tax on the poor.

The case for lotteries is largely about funding state government. Lotteries are frequently publicized as an alternative to raising taxes. Seldom is there much enthusiasm for cutting back on cherished state programs and services, even as federal subsidies to states shrink. Better, say lottery supporters, to offer citizens a choice: play or pay. Unlike paying mandatory income, property, or sales tax, buying lottery tickets is a personal decision. Funding government by lottery is quite different from funding it by taxation: under taxation, states can depend on a set amount of revenue each year from a captive base of taxpayers; under a lottery, revenue projections assume that enough tickets will be sold so that those who choose not to play are free to do so.

Besides casting lotteries as an alternative to taxes, supporters put forth other arguments in favor of lotteries, from the public's love to gamble to the desire to siphon money away from illegal gambling to simply keeping up with the Joneses—i.e., other states that draw residents and dollars across state boundaries.

The U.S. gambling industry may generate as much as $600 billion annually. (The American Gaming Association claims that this figure is high because it measures money wagered rather than actually spent; the organization claims that gambling is a $63 billion a year industry.) The **FEDERAL BUREAU OF INVESTIGATION** estimates that illegal gambling brings in as much as another $100 billion annually. Supporters argue that both of these figures support the benefit of lotteries—to respond to the public's demand for gambling and to diminish the profits of illegal gambling.

The public demand for gambling is so great, say supporters, that states that do not offer lotteries lose potential revenues to neighboring states that do. When New Hampshire instituted its state lottery in 1964, it was the only legal lottery in the country. It sold more tickets outside the state than in New Hampshire. The pattern has been repeated ever since. States without lotteries see gambling money disappear into neighboring states, which fund their programs with it, necessitating a local lottery as a defensive mechanism.

Critics of lotteries attack the notion of lotteries substituting for taxation. Operating the games can require relatively high administrative overhead. In the early 1990s, the national average was 6 percent of revenues, and the highest rate was 29 percent in Montana. Costs result chiefly from the need to advertise constantly. Fickle players can always stray into competing states for tickets, satisfy gambling urges at casinos, or lose interest. For this reason, lottery revenues are far less dependable than tax revenues, and states can easily find themselves spending more and earning less than projected.

Some states have learned this lesson the hard way. Maryland, for example, faced a budget crisis in the early 1990s after heavily promoting a lottery game called El Gordo, anticipating $8 million to $10 million in revenues. When players failed to buy enough tickets, the state's profit after expenses was only $73,626.

States must be careful to observe the dictates of the statute that creates the lottery or lotteries. Other kinds of **GAMING** that are not strictly limited to chance are not allowed under state lottery statutes. Indeed, most states make gambling a criminal offense and provide exceptions only for state lotteries and gaming by Native American tribes. A state may not, for example, sponsor a game that involves wagering against a house, such as a dice game, blackjack, or shell games. In *Western Telcon, Inc. v. California State Lottery,* 13 Cal. 4th 475, 917 P.2d 651, 53 Cal. Rptr. 2d 812 (1996), the Supreme Court of California ruled that a keno game offered by the California State Lottery (CSL) was not authorized under proposition 37, the 1984 initiative measure that created the state lottery. In keno, players try to match between one and ten numbers to a set of twenty numbers that are selected at random. Players pay a nominal fee for the opportunity to receive a large payoff. Keno, according to the court, did not meet the statutory definition of lottery because it was a game that persons played against the CSL, which, as banker, bet against each participant that the participant would not correctly guess the numbers to be drawn. This

California experienced another kind of problem in fiscal year 1991–92, as drooping lottery sales forced it to exceed the 16 percent limit on administrative expenses specified by law. The shortfall led to a dispute over what to do with the interest earned on the state lottery fund, and reformers had to act to ensure that it would be used as intended. They passed Chapter 1236, which requires that all interest be used to benefit public education.

Such problems lead critics to another complaint: states exaggerate the benefits of lotteries. In education, lottery proceeds may provide little help. The Educational Research Service (ERS), a think tank, has argued that lotteries are actually insignificant. Because lottery revenues are occasionally substituted for regular funding, ERS maintains, this unstable source of revenue yields no more for schools than they would have received otherwise, with an additional drawback—taxpayers, reassured that ticket sales are footing the bill, balk at the idea of raising taxes when shortfalls occur. Critics also scoff at claims that lotteries hurt illegal gambling. Most studies have found only inconclusive evidence that they have any effect at all on crime syndicates, and law enforcement agencies report that illegal gambling remains as healthy as it was before states reenacted lotteries.

Two popular moral arguments are advanced against lotteries. The first attacks the notion of voluntary taxation. Far from being the boon that the word *voluntary* suggests, critics say, the lottery is a form of regressive taxation that hurts those least able to afford it. (Taxes are considered regressive when they put a disproportionate burden on different taxpayers; a sales tax, which everyone pays at the same rate regardless of their personal wealth, is one example.) The evidence shows that the poor and working classes play lotteries the most. Some people say that preying on the illusory hopes of the poor is an unseemly way to avoid taxing the more affluent.

The second moral objection is to the hidden social costs. Opponents of gambling have long held that players run the proven risk of addiction. In general, governments legislate against and spend money, warning citizens about high-risk behaviors. But in the case of lotteries, they do the reverse: lottery advertising encourages playing often, and games are frequently redesigned to bring players back for more. No state blatantly tells its citizens to spend more than they should; yet no state stops anyone from going overboard, and it is doubtful that any could do so. The scope of the problem of compulsive lottery playing is difficult to measure, but commonly cited estimates in the 1990s indicated lottery players accounted for 9 percent of all compulsive gamblers nationwide. A few states, such as New Jersey, have run hotlines for addicts. Others have considered doing so. A spate of crimes associated with compulsive lottery playing—from **EMBEZZLEMENT** to bank holdups—captured newspaper headlines in the mid-1990s and prompted further hand-wringing by state officials, but little action.

Although the debate would go on, state lotteries were expected to continue. Their sheer profitability makes them alluring to legislators who would rather not propose higher taxes, and the chance of winning big keeps players hooked. In all likelihood, the success of most states ensures that the rest will eventually join the bandwagon. Critics continue to fault lawmakers for relying on high-risk gambling, conning hapless players, plowing huge sums back into the games, and ignoring the resulting social costs. Yet, unlike arguments against lotteries a century ago, these complaints have mostly fallen on deaf ears, and lotteries have been skillfully transformed in the public eye from a vice into a form of entertainment. Jackpots, as every lottery player knows, speak louder than words.

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CROSS-REFERENCES

Gaming; Taxation.

kind of game did not offer a prize by chance. Instead, the CSL could win all the bets and never have to pay a prize, or it could lose all the bets and pay a prize to each participant. This kind of gaming was too similar to a banking game, and the court noted that "the voters, in Proposition 37, did not establish a state gambling house, but a state lottery."

State lotteries often are planned to augment or even supplant other sources of state revenues, such as taxes. Whether they can actually achieve this objective depends on the lotteries' ability to attract players.

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A billboard advertises the South Carolina Education Lottery. State statutes specify how the money generated by lotteries will be used.

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STATEMENT OF AFFAIRS

A document that must be filed in BANKRUPTCY, *which sets forth answers to questions concerning the debtor's past and present financial situation.*

The term *statement of affairs* is also used to describe a type of balance sheet that shows immediate liquidation amounts, as opposed to acquisition or original costs, and is generally prepared when insolvency or bankruptcy is about to take effect.

STATE'S EVIDENCE

A colloquial term for testimony given by an ACCOMPLICE *or joint participant in the commission of a crime, subject to an agreement that the person will be granted* IMMUNITY *from prosecution if she voluntarily, completely, and fairly discloses her own guilt as well as that of the other participants.*

State's evidence is slang for testimony given by criminal defendants to prosecutors about other alleged criminals. A criminal defendant may agree to provide assistance to prosecutors in exchange for an agreement from the prosecutor that he will not be prosecuted. This agreement is commonly called turning state's evidence.

A criminal defendant who turns state's evidence may be offered a plea bargain or may have all criminal charges against him dismissed, depending on the nature of the case against the testifying defendant and the largesse of the prosecutor. A prosecutor may give a testifying defendant full immunity, which means the defendant cannot be charged with any crime related to the testimony he provides. A lesser form of immunity is called use immunity. Use immunity means that the prosecutor agrees only that she will not use any of the testimony given by the testifying defendant in any subsequent prosecution of that defendant.

Turning state's evidence plays an important role in the criminal justice system, in large part because the system is overwhelmed by criminal prosecutions. To ease the caseload, prosecutors regularly exercise their power to offer to drop or decrease charges in exchange for a plea of guilty. Another by-product of the backlog of cases is that prosecutors are most concerned with successfully prosecuting the most dangerous criminals. For these reasons, prosecutors commonly ask petty criminal defendants who have access to other alleged criminals to obtain evidence from the criminals.

For instance, assume that a person who has been arrested for possession of marijuana is willing to work with law enforcement to obtain inculpatory evidence from the dealer of the marijuana. To do so, the defendant would return to the dealer after the arrest, purchase marijuana in a transaction monitored by law enforcement, and then give the marijuana to the authorities as evidence.

A prosecutor may drop charges against a petty criminal in exchange for substantial assis-

tance to law enforcement authorities in the prosecution of more dangerous criminals. Alternatively, a prosecutor may offer a plea bargain and ask the court to impose a sentence that is less severe than the sentence normally imposed for the crime.

State and federal sentencing statutes govern the effect of providing substantial assistance. Courts usually follow the recommendations of the prosecutor, but they are not obliged to do so. On the federal level, for example, section 5K1.1 of the Federal Sentencing Guidelines states that a court may evaluate the significance and usefulness of the assistance rendered by the defendant, the truthfulness and reliability of the defendant, the nature of the defendant's assistance, and other factors in determining whether to impose a relatively light sentence.

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CROSS-REFERENCES

Criminal Law; Criminal Procedure; Plea Bargaining.

STATES' RIGHTS

A doctrine and strategy in which the rights of the individual states are protected by the U.S. Constitution from interference by the federal government.

The history of the United States has been marked by conflict over the proper allocation of power between the states and the federal government. The federal system of government established by the U.S. Constitution recognized the sovereignty of both the state governments and the federal government by giving them mutually exclusive powers as well as concurrent powers. In the first half of the nineteenth century, arguments over states' rights arose in the context of SLAVERY. From the 1870s to the 1930s, economic issues shaped the debate. In the 1950s racial SEGREGATION and the CIVIL RIGHTS MOVEMENT renewed the issue of state power. By the 1970s economic and political conservatives had begun to call for a reduction in the power and control of the federal government and for the redistribution of responsibilities to the states.

At the Constitutional Convention in 1787, delegates represented state governments that had become autonomous centers of power. The Constitution avoided a precise definition of the locus of sovereignty, leaving people to infer that the new charter created a divided structure in which powers were allocated between the central government and the states in such a way that each would be supreme in certain areas.

Nevertheless, defenders of states' rights were concerned that a powerful, consolidated national government would run roughshod over the states. With ratification of the Constitution in doubt, the Framers promised to add protection for the states. Accordingly, the TENTH AMENDMENT was added to the Constitution as part of the BILL OF RIGHTS. The amendment stipulates that "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." This amendment became the constitutional foundation for those who wish to promote the rights and powers of the states vis-à-vis the federal government.

In the early years of the Republic, states' rights were vigorously protected. An early argument involved whether or not states were subject to the jurisdiction of the Supreme Court and the federal government. In CHISHOLM V. GEORGIA, 2 U.S. (2 Dall.) 419, 1 L. Ed. 440 (1793), a South Carolina businessman sued the state of Georgia in order to collect for payment of supplies. The state of Georgia maintained that it was a sovereign body, and so could not be sued since it was not subject to the authority of federal courts. The Supreme Court dismissed this argument and ruled that the conduct of the states was subject to JUDICIAL REVIEW. In response, states' rights advocates pushed for passage of the ELEVENTH AMENDMENT, which limits the rights of persons to sue a state in federal court.

In 1798, THOMAS JEFFERSON and JAMES MADISON proposed the VIRGINIA AND KENTUCKY RESOLVES to clarify the role of states in checking the powers of the federal government. The resolutions were in response to passage of the ALIEN ENEMIES AND SEDITION ACTS of 1798 (1 Stat. 570, 1 Stat. 596), which restricted a number of personal liberties. In proposing the Virginia and Kentucky Resolves of 1798, Jefferson argued that the "sovereign and independent states" had the right to "interpose" themselves between their citizens and improper national legislative actions and to "nullify" acts of Congress they deemed unconstitutional. The resolutions started the seed of the doctrines of nullification and interposition, later employed

by New England states during the WAR OF 1812, and by South Carolina in opposing federal tariff legislation in 1832.

From the early 1800s until the end of the Civil War in 1865, states' rights played a major role in the U.S. political process. The doctrine was most fully articulated in the writings of South Carolina statesman and political theorist JOHN C. CALHOUN. Calhoun contended that if acts of the federal government ran contrary to state or local interests, then states had the right to nullify said acts. Calhoun further proposed that states had the right to dissolve their contractual relationship with the federal government rather than submit to policies they saw as destructive to their local self-interests. Followers of Calhoun linked states' rights to slavery, and thus, protecting slavery became the equivalent of protecting regional Southern interests. In 1860, seven Southern states seceded from the Union to form the Confederate States of America. The constitution of the Confederacy began, "We, the people of the Confederate States, each State acting in its own sovereign and independent character . . . ."

Northern leaders were also prepared to manipulate the concept of states' rights. As early as the 1820s, Northern legislatures enacted personal liberty laws as devices to block the enforcement of the federal fugitive slave law. Such laws were struck down by the Supreme Court in PRIGG V. PENNSYLVANIA, 41 U.S. (16 Pet.) 539, 10 L. Ed. 1060 (1842). However, when Congress enacted the more stringent FUGITIVE SLAVE ACT OF 1850, Northerners responded by again creating personal liberty laws in general defiance of federal fugitive slave policy.

The defeat of the South in the Civil War ended the dispute, and Congress enacted the Fourteenth and Fifteenth Amendments, in part, to prevent states from denying certain basic rights to U.S. citizens. Although the Supreme Court substantially restricted the power of these amendments during the late nineteenth century, it did so indirectly, relying on states' rights arguments to justify its actions. The judicial philosophy of the times was also marked by laissez-faire capitalism. Thus, the Court would invoke the Tenth Amendment to strike down federal laws that were characterized as hostile to state interests and then use the FOURTEENTH AMENDMENT to strike down state legislation that sought to regulate business, labor, and the economy.

This trend continued into the twentieth century. Until the 1930s, the Court frequently used the Tenth Amendment as a device for striking down federal measures, from CHILD LABOR LAWS to major pieces of President FRANKLIN D. ROOSEVELT's NEW DEAL legislation. Hundreds of state regulatory statutes were also overturned. Only when the states sought to restrict unions or control dissenters did the Court sustain these efforts.

By the late 1930s, however, New Deal policies had dramatically increased the size and power of the federal government. Proponents of states' rights argued against extensive use of the COMMERCE CLAUSE, which gave the federal government the power to regulate interstate commerce, and the federal government's power to tax for the GENERAL WELFARE. Given the desperate economic situation, such arguments fell on deaf ears. By the end of WORLD WAR II, centralized authority rested with the federal government.

States' rights were revived in the late 1940s over the matter of race. In the 1948 election, Democrat HARRY S. TRUMAN pushed for a more aggressive CIVIL RIGHTS policy. Southern opponents, known as the "Dixiecrats," bolted the DEMOCRATIC PARTY and ran their own candidate, J. STROM THURMOND. Their "states' rights" platform called for continued racial segregation and denounced proposals for national action on behalf of civil rights.

Desegregation efforts of the 1950s and 1960s, including the Supreme Court's decision in BROWN V. BOARD OF EDUCATION OF TOPEKA, KANSAS, 347 U.S. 483, 74 S. Ct. 686, 98 L. Ed. 873 (1954), which ruled that racially segregated public schools were unconstitutional, also met with Southern resistance. Segregationists again argued for state sovereignty, and developed programs of massive resistance to racial INTEGRATION in public education, public facilities, housing, and access to jobs.

Beginning in the 1960s, other states' rights proponents started stressing the need for local control of government. One reason was the introduction of federal WELFARE and subsidy programs. The concern was that along with federal money would come federal control.

By the end of the twentieth century, a number of efforts were being made to curtail the broad power of the federal government. For example, in *National League of Cities v. Usery,* 426 U.S. 833, 96 S. Ct. 2465, 49 L. Ed. 2d 245

(1976), the U.S. Supreme Court ruled that Congress had exceeded its power to regulate interstate commerce when it extended federal MINIMUM WAGE and overtime standards to state and local governments. Determination of state government employees' wages and hours is one of the "attributes of sovereignty attaching to every state government," attributes that "may not be impaired by Congress." Less than ten years later, however, the Court overruled *National League* in *Garcia v. San Antonio Metropolitan Transit Authority,* 469 U.S. 528, 105 S. Ct. 1005, 83 L. Ed. 2d 1016 (1985). Nevertheless, the 5–4 majority in *Garcia* and the Court's difficulty in articulating a coherent Tenth Amendment JURISPRUDENCE have left this area of states' rights muddled.

The 1980s saw a major shift in government policy. President RONALD REAGAN agreed with the public that the federal government was becoming too involved in state government affairs. As a result, a major focus of his administration was to reduce the size and power of the federal government. States were given more authority to experiment with policy initiatives, especially social programs, which had previously been directed from Washington. Subsequent administrations followed suit. In the early 2000s, however, political analysts commented that a new trend was afoot: both Republicans and Democrats were pushing for federal laws that would PREEMPT state laws, especially state laws that attempted to regulate financial corporations and other types of business.

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CROSS-REFERENCES

Federalism; Fifteenth Amendment; Fourteenth Amendment; Kentucky Resolutions.

STATES' RIGHTS PARTY

The States' Rights Party, also known as the Dixiecrat Party, was a short-lived political entity founded by Democrats in the South as an alternative to the DEMOCRATIC PARTY and its 1948 presidential platform. In 2003, remarks expressing a nostalgic view of the States' Rights Party ignited a firestorm of controversy that led to the resignation of Republican TRENT LOTT as Senate majority leader.

The issue of states' rights has been paramount in southern politics and culture since the former British colonies evolved into the United States of America. Advocates of states' rights held that the states retained all the rights that had not been specifically delegated to the federal government. Any attempt by the federal government to exercise powers not specifically enunciated in the Constitution, was seen as an illegal usurpation of powers that rightfully belonged to the individual states. This view was one of the motivating factors of the Civil War and did not diminish with the defeat of the Confederate Army in 1865. In the period immediately after that war, the REPUBLICAN PARTY was seen as the party of ABRAHAM LINCOLN and the abolitionist forces that had not only vanquished the South but also had presided over the period known as Reconstruction. As a result, white southerners chose to join the Democratic Party and to elect only Democratic candidates to local and state office. So one-sided was this electoral system that for a number of years, the former Confederate states were known as the "solid South".

In the decades that followed Reconstruction the Democratic Party experienced change and evolution regarding its official views on a number of issues including CIVIL RIGHTS and INTEGRATION. Southern Democrats had begun to feel extremely uncomfortable in the party that they viewed as having become far too liberal. In 1947 President HARRY S. TRUMAN gave a speech to the National Association for the Advancement of Colored People (NAACP) that called for the federal government to be the vigilant protector of the civil rights of all Americans. Truman repeated the phrase "all Americans" leaving no doubt that he meant African Americans should be among those who were guaranteed equality of opportunity. This speech was anathema to the southern Democrats who were staunch supporters of SEGREGATION and the preservation of "white power".

Strom Thurmond, then governor of South Carolina, was nominated as the presidential candidate by delegates to the States' Rights Party Convention held in July 1948.

AP/WIDE WORLD PHOTOS

In 1948 the Republicans, for the second time, chose New York governor **THOMAS E. DEWEY** to be their presidential candidate. In July 1948 the Democrats held a convention in which they nominated Harry S. Truman, the former vice-president who had succeeded **FRANKLIN D. ROOSEVELT** when the latter died on April 12, 1945. The linchpin of the 1948 Democratic Party platform became its support for civil rights legislation. Many Democrats were wary of supporting the platform because they feared that the party would splinter over the opposing views of civil rights. The delegates from the southern states were vocal in their opposition, and other delegates began to waver. Then **HUBERT H. HUMPHREY**, the delegate from Minnesota and mayor of Minneapolis, gave a speech in which he urged his fellow delegates to "get out of the shadow of states' rights and walk forthrightly into the bright sunshine of human rights!" Humphrey's passionate words were the catalyst for the majority of the Democratic Party delegates to vote for the platform planks that called for a federal anti-lynching law, the **ABOLITION** of **POLL TAXES** in federal elections, desegregation of the armed forces, and creation of a permanent Fair Employment Practices Committee that would prevent **RACIAL DISCRIMINATION** in federal jobs.

As many had feared, a majority of southern delegates, including all 22 members of the Mississippi delegation and 13 from Alabama, walked out of the convention and formed their own party—the States' Rights Democratic Party. The Dixiecrats, as they were also known, held a one-day convention on July 17, 1948, in Birmingham, Alabama, in which they nominated South Carolina governor **STROM THURMOND** for president and chose Mississippi governor Fielding L. Wright as their vice-presidential candidate.

The States' Rights Party sought to take votes from both the Democratic and Republican parties by emphasizing the sovereignty of the states and by denouncing Truman and the Democratic Party's proposed civil rights legislation as an immense threat to the states. In Alabama the Dixiecrats succeeded in preventing President Truman's name from being placed on the election ballot.

The Democratic Party was greatly weakened by the defection of the conservative Dixiecrats and also by the liberals who had left to join the **PROGRESSIVE PARTY** that nominated former vice president and secretary of agriculture Henry A. Wallace to be its presidential candidate. Nevertheless, President Harry S. Truman won reelection. Although Truman was reelected over Dewey by a very narrow margin, that vote resulted in the biggest upset in the history of United States presidential campaigns.

The States' Rights Party carried South Carolina, Mississippi, Louisiana, and Alabama. Thurmond and Wright received approximately 1.2 million votes and 39 electoral votes. In 1954 Thurmond was elected as a Democratic senator. Thurmond joined with other conservative Democrats and used the filibuster and other political strategies to oppose civil rights legislation. Thurmond was reelected in 1956 and 1960. In 1964 Thurmond led a number of conservative southern national and state elected officials who switched from the Democratic to the Republican Party. Thurmond was reelected in 1966, 1972, 1978, 1984, 1990, and 1996. After being reelected in 1996 the 94-year-old Thurmond, announced that he would finish out his term but would no longer run for reelection.

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CROSS-REFERENCES

Democratic Party.

STATUS

The standing, state, or condition of an individual; the rights, obligations, capacities, and incapacities that assign an individual to a given class.

For example, the term *status* is used in reference to the legal state of being an infant, a ward, or a prisoner, as well as in reference to a person's social standing in the community.

STATUS OFFENSE

A type of crime that is not based upon prohibited action or inaction but rests on the fact that the offender has a certain personal condition or is of a specified character.

Vagrancy—the act of traveling from place to place with no visible means of support—is an example of a status offense.

STATUS QUO

*[*Latin, The existing state of things at any given date.*]* Status quo ante bellum *means the state of things before the war. The* status quo *to be preserved by a preliminary injunction is the last actual, peaceable, uncontested status which preceded the pending controversy.*

STATUTE

An act of a legislature that declares, proscribes, or commands something; a specific law, expressed in writing.

A statute is a written law passed by a legislature on the state or federal level. Statutes set forth general propositions of law that courts apply to specific situations. A statute may forbid a certain act, direct a certain act, make a declaration, or set forth governmental mechanisms to aid society.

A statute begins as a bill proposed or sponsored by a legislator. If the bill survives the legislative committee process and is approved by both houses of the legislature, the bill becomes law when it is signed by the executive officer (the president on the federal level or the governor on the state level). When a bill becomes law, the various provisions in the bill are called statutes. The term *statute* signifies the elevation of a bill from legislative proposal to law. State and federal statutes are compiled in statutory codes that group the statutes by subject. These codes are published in book form and are available at law libraries.

Lawmaking powers are vested chiefly in elected officials in the legislative branch. The vesting of the chief lawmaking power in elected lawmakers is the foundation of a representative democracy. Aside from the federal and state constitutions, statutes passed by elected lawmakers are the first laws to consult in finding the law that applies to a case.

The power of statutes over other forms of laws is not complete, however. Under the U.S. Constitution and state constitutions, federal and state governments are comprised of a system of checks and balances among the legislative, executive, and judicial branches. As the system of checks and balances plays out, the executive and judicial branches have the opportunity to fashion laws within certain limits. The EXECUTIVE BRANCH may possess certain lawmaking powers under the federal or state constitutions, and the judiciary has the power to review statutes to determine whether they are valid under those constitutions. When a court strikes down a statute, it in effect creates a law of its own that applies to the general public.

Laws created through judicial opinion stand in contradistinction to laws created in statutes. Case law has the same legally binding effect as statutory law, but there are important distinctions between statutes and case law. Case law is written by judges, not by elected lawmakers, and it is written in response to a specific case before the court. A judicial opinion may be used as precedent for similar cases, however. This means that the judicial opinion in the case will guide the result in similar cases. In this sense a judicial opinion can constitute the law on certain issues within a particular jurisdiction. Courts can establish law in this way when no statute exists to govern a case, or when the court interprets a statute.

For example, if an appeals court holds that witness testimony on memory recovered through therapy is not admissible at trial, that decision will become the rule for similar cases within the appeals court's jurisdiction. The decision will remain law until the court reverses itself or is reversed by a higher court, or until the state or federal legislature passes a statute that overrides the judicial decision. If the courts strike down a statute and the legislature passes a similar statute, the courts may have an opportunity to declare the new statute unconstitutional.

This cycle can be repeated over and over if legislatures continually test the constitutional limits on their lawmaking powers.

Judicial opinions also provide legal authority in cases that are not covered by statute. Legislatures have not passed statutes that govern every conceivable dispute. Furthermore, the language contained in statutes does not cover every possible situation. Statutes may be written in broad terms, and judicial opinions must interpret the language of relevant statutes according to the facts of the case at hand. Regulations passed by administrative agencies also fill in statutory gaps, and courts occasionally are called on to interpret regulations as well as statutes.

Courts tend to follow a few general rules in determining the meaning or scope of a statute. If a statute does not provide satisfactory definitions of ambiguous terms, courts must interpret the words or phrases according to ordinary rules of grammar and dictionary definitions. If a word or phrase is technical or legal, it is interpreted within the context of the statute. For example, the term *interest* can refer to a monetary charge or ownership of property. If the term *interest* appears in the context of a statute on real estate ownership, a court will construe the word to mean property ownership. Previous interpretations of similar statutes are also helpful in determining a statute's meaning.

Statutes are not static and irreversible. A statute may be changed or repealed by the lawmaking body that enacted it, or it may be overturned by a court. A statute may lapse, or terminate, under the terms of the statute itself or under legislative rules that automatically terminate statutes unless they are reapproved before a certain amount of time has passed.

Although most legal disputes are covered at least in part by statutes, TORT and contract disputes are exceptions, in that they are largely governed by case law. CRIMINAL LAW, patent law, tax law, PROPERTY LAW, and BANKRUPTCY law are among the areas of law that are covered first and foremost by statute.

CROSS-REFERENCES

Judicial Review; Legislation; Legislative History; Statutory Construction.

STATUTE OF FRAUDS

A type of state law, modeled after an old ENGLISH LAW*, that requires certain types of contracts to be in writing.*

U.S. law has adopted a 1677 English law, called the Statute of Frauds, which is a device employed as a defense in a breach of contract lawsuit. Every state has some type of statute of frauds; the law's purpose is to prevent the possibility of a nonexistent agreement between two parties being "proved" by perjury or FRAUD. This objective is accomplished by prescribing that particular contracts not be enforced unless a written note or memorandum of agreement exists that is signed by the persons bound by the contract's terms or their authorized representatives.

The statute of frauds is invoked by a defendant in a breach of contract action. If the defendant can establish that the contract he has failed to perform is legally unenforceable because it has not satisfied the requirement of the statute, then the defendant cannot be liable for its breach. For example, suppose that a plaintiff claims that a defendant agreed to pay her a commission for selling his building. If the defendant can demonstrate that no commission contract was signed, the statute of frauds will prevent the plaintiff from recovering the commission.

The English Statute of Frauds, which was enacted by Parliament in 1677, applied to only specific types of contracts. These included promises to a creditor of another to pay that individual's debts when they became due, a marriage contract or promise to marry, other than the mutual promises of a man and woman to wed, a contract for the sale of real estate, and a contract that cannot be performed within one year of its formation and has not been completely performed by one side.

States have expanded the application of the statute to other categories of contracts, such as a life insurance contract that is not to be performed within the lifetime of the person making the promise. It also applies to a contract to bequeath or devise property by will and to a contract that authorizes an agent to sell real property for a commission.

A strict application of the statute of frauds can produce an unjust result. A party, who in GOOD FAITH believes a contract exists and therefore spends time and money to perform the contract, would be unable to force the other party to perform because the agreement was not in writing. Therefore, courts often employ the term *part performance* to determine whether a plaintiff's conduct based on her belief that a contract exists justifies enforcement of the contract even

though it has failed to comply with the statute of frauds. Part performance refers to acts performed by the plaintiff in reliance on the performance of the duties imposed on the defendant by the terms of the contract. The plaintiff's actions must be substantial in order to demonstrate that he actually has relied on the terms of the contract.

When the alleged contract involves real property, the acts of taking possession and making part payment—when performed in reliance upon an oral contract under circumstances that clearly show a buyer-seller relationship—are usually sufficient to remove a contract from the requirements of the statute of frauds. The oral contract, therefore, would be enforced. However, payment or possession alone generally will not suffice to overcome the statute of frauds.

Where services have been performed based upon a contract that is unenforceable because of the statute of frauds, the value of those services can nevertheless be recovered on the basis of *quantum meruit,* or the reasonable value of those services. If a person performs services in reliance on an oral promise that he will inherit certain property and that promise is not fulfilled, that individual can sue the decedent's estate on a QUANTUM MERUIT basis for the reasonable value of his services.

If a contract is unenforceable, a person can recover expenses incurred at the other party's request even though they pertain to the unenforceable contract. The recovery of expenses is not affected because the law implies a promise by the defendant to pay for expenses incurred at her request, and liability is not based upon breach of contract.

If one party has performed in reliance on an oral contract and will be irreparably harmed if the contract is not enforced, some courts apply the theory of EQUITABLE ESTOPPEL to prevent the statute of frauds from being employed as a defense. Equitable estoppel holds that if a person has so altered his position that justice demands the enforcement of the contract, the court will enforce the contract even though it fails to comply with the statute.

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CROSS-REFERENCES

Quasi Contract.

STATUTE OF LIMITATIONS

A type of federal or state law that restricts the time within which legal proceedings may be brought.

Statutes of limitations, which date back to early ROMAN LAW, are a fundamental part of European and U.S. law. These statutes, which apply to both civil and criminal actions, are designed to prevent fraudulent and stale claims from arising after all evidence has been lost or after the facts have become obscure through the passage of time or the defective memory, death, or disappearance of witnesses.

The statute of limitations is a defense that is ordinarily asserted by the defendant to defeat an action brought against him after the appropriate time has elapsed. Therefore, the defendant must plead the defense before the court upon answering the plaintiff's complaint. If the defendant does not do so, he is regarded as having waived the defense and will not be permitted to use it in any subsequent proceedings.

Statutes of limitations are enacted by the legislature, which may either extend or reduce the time limits, subject to certain restrictions. A court cannot extend the time period unless the statute provides such authority. With respect to civil lawsuits, a statute must afford a reasonable period in which an action can be brought. A statute of limitations is unconstitutional if it immediately curtails an existing remedy or provides so little time that it deprives an individual of a reasonable opportunity to start a lawsuit. Depending upon the state statute, the parties themselves may either shorten or extend the prescribed time period by agreement, such as a provision in a contract.

Criminal Actions

A majority of states have a statute of limitations for all crimes except murder. Once the statute has expired, the court lacks jurisdiction to try or punish a defendant.

Criminal statutes of limitations apply to different crimes on the basis of their general classification as either felonies or misdemeanors. Generally, the time limit starts to run on the date the offense was committed, not from the time

Recovered Memory: Stopping the Clock

Statutes of limitations are intended to encourage the resolution of legal claims within a reasonable amount of time. Courts and legislatures have had to reconsider the purpose of time limits in dealing with the controversial issue of **RECOVERED MEMORY** by child **SEXUAL ABUSE** victims. For the most part, the clock has been stopped until a victim remembers the abuse.

In the 1980s some mental health therapists began exploring the nature of child sexual abuse. They contended that memories of childhood trauma are so disturbing that the child represses them. Many years later, while in therapy or by happenstance, the person remembers the traumatic events. Therapists built on this concept, working with patients to fully recover these memories.

Victims of child sexual abuse who sought to sue their abusers for damages faced a statute of limitations question: Had the time expired to file a civil lawsuit because the memory of abuse was not recovered until many years after the actual abuse? Courts that faced this issue for the first time sought ways to circumvent the time barrier. One method was to apply the "discovery rule" found in **TORT LAW**. The discovery rule applies if the injury is one that is not readily perceptible as having an external source. Thus, a person who has serious mental health problems but does not know the cause will be allowed to toll (suspend the running of) the statute of limitations until he or she discovers that the injury was caused by the defendant's tortious conduct.

Legislatures have been urged to amend their statutes of limitations to permit recovered memory plaintiffs to sue their abusers. Between 1989 and 1995 24 states had amended their laws. By 2003, 42 states had codified some form of a recovered-memory law on their books, while one state admitted recovered-memory evidence pursuant to its **COMMON LAW** rules. Typically recovered-memory laws provide that the action must be filed within a certain number of years after the plaintiff either reaches the age of majority or knew or had reason to know that sexual abuse caused the injury. Because of these judicial and legislative changes, many lawsuits have been filed alleging child sexual abuse that occurred many years before, sometimes as long as 20 years earlier.

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CROSS-REFERENCES

Child Abuse; Sexual Abuse; Sex Offenses.

the crime was discovered or the accused was identified. The running of the statute may be suspended for any period the accused is absent from the state or, in certain states, while any other indictment for the same crime is pending. This suspension occurs so that the state will be able to obtain a new indictment in the event the first one is declared invalid.

Civil Actions

In determining which statute of limitations will control in a civil action, the type of CAUSE OF ACTION that the claim will be pursued under is critical. States establish different deadlines depending on whether the cause of action involves a contract, personal injury, LIBEL, FRAUD, or other claim.

Once the cause of action is determined, the date of the injury must be fixed. A cause of action ordinarily arises when the party has a right to apply to the proper court for relief. Some states, for example, require a person to bring a lawsuit for breach of contract within six years from the date the contract was breached. The action cannot be started until the contract has actually been violated, even though serious disagreements between the parties might have occurred earlier. Conversely, the time limit

within which to bring an action for fraud does not begin until the fraud has been discovered.

Waiving the Defense

A court cannot force a defendant to use a statute of limitations defense, but it is usually in the person's best legal interests to do so. Nevertheless, defendants do sometimes waive the defense. The defense may be waived by an agreement of the parties to the controversy, provided that the agreement is supported by adequate consideration. For example, a debtor's agreement to waive the statute of limitations in exchange for a creditor's agreement not to sue is valuable consideration that prevents the debtor from using the defense.

A defendant may be unable to use the limitations defense due to her agreement, conduct, or representations. To be estopped, or prevented, from using this defense, a defendant need not have signed a written statement, unless required by statute. The defendant must, however, have done something that amounted to an affirmative inducement to the plaintiff to delay bringing the action. Statements that only attempt to discourage a person from bringing a suit or mere negotiations looking toward an amicable settlement will not estop a defendant from invoking the statute of limitations.

Tolling the Statute

Statutes of limitations are designed to aid defendants. A plaintiff, however, can prevent the dismissal of his action for untimeliness by seeking to *toll* the statute. When the statute is tolled, the running of the time period is suspended until some event specified by law takes place. Tolling provisions benefit a plaintiff by extending the time period in which he is permitted to bring suit.

Various events or circumstances will toll a statute of limitations. It is tolled when one of the parties is under a legal disability—the lack of legal capacity to do an act—at the time the cause of action accrues. A child or a person with a mental illness is regarded as being incapable of initiating a legal action on her own behalf. Therefore, the time limit will be tolled until some fixed time after the disability has been removed. For example, once a child reaches the age of majority, the counting of time will be resumed. A personal disability that postpones the operation of the statute against an individual may be asserted only by that individual. If a party is under more than one disability, the statute of limitations does not begin to run until all the disabilities are removed. Once the statute begins to run, it will not be suspended by the subsequent disability of any of the parties unless specified by statute.

Mere ignorance of the existence of a cause of action generally does not toll the statute of limitations, particularly when the facts could have been learned by inquiry or diligence. In cases where a cause of action has been fraudulently concealed, the statute of limitations is tolled until the action is, or could have been, discovered through the exercise of due diligence. Ordinarily, silence or failure to disclose the existence of a cause of action does not toll the statute. The absence of the plaintiff or defendant from the jurisdiction does not suspend the running of the statute of limitations, unless the statute so provides.

The statute of limitations for a debt or obligation may be tolled by either an unconditional promise to pay the debt or an acknowledgement of the debt. The time limitation on bringing a lawsuit to enforce payment of the debt is suspended until the time for payment established under the promise or ACKNOWLEDGMENT has arrived. Upon that due date, the period of limitations will start again.

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STATUTE OF USES

An ENGLISH LAW *enacted in 1535 to end the practice of creating uses in real property by changing the purely equitable title of those entitled to a use into absolute ownership with the right of possession.*

The Statute of Uses was a radical statute forced through a recalcitrant English Parliament in 1535 by a willful King Henry VIII. Essentially, the statute eliminated a sleight of hand that had been fashioned by landholders to avoid paying royal fees associated with land. These royal fees,

called feudal incidents, had been slipping away from the Crown for a century or so before the statute was passed.

Landholders in sixteenth-century England were supposed to hold their land at the will of a lord, who worked in the service of the king or queen. In exchange for the land, landholders were obliged to pay certain fees to the lord, who kept some and turned the rest over to the Crown. Many of the royal incidents associated with real property were exacted by the Crown when the landholder died. However, the Crown could collect incidents only if the legal title passed from the landholder to an heir.

In the fourteenth and fifteenth centuries, landholders had devised a way to both profit from their land and avoid feudal incidents. The landholders would place their property in the name of one person for the benefit of a third party. This third party, called the cestui que use, the beneficiary of the use, was either the original landholder or a person of the landholder's choosing. The arrangement created a form of land ownership, or estate in land, called a use.

Soon courts began to recognize the right of a landholder, as feoffor, to give possession of his land to a peasant tenant while giving legal title to a third party, or feoffee. They also enforced agreements between a feoffor and feoffee in which the feoffee held title to the land only for the benefit of the cestui que use.

Under the COMMON LAW, when legal title to land was held by more than one feoffee, partial title did not pass to the deceased feoffee's heirs upon the death of a feoffee. Instead, the deceased feoffee's portion of the title passed to the other feoffees. A landholder, as a feoffor, could give legal title to several feoffees and add a new feoffee to the legal title upon the death of any feoffee. Under this system, the death of a title-holding feoffee did not give rise to an inheritance incident. Thus, a landholder could avoid feudal incidents while he himself or a person of his choosing continued to reap profits from the land.

By giving legal title to two or more feoffees, a feoffor also was able to avoid other royal incidents, such as marriage fees and other fees associated with the death of a landholder. If the property was held in other persons' names, a landholder could also avoid losing the property due to debt or felony conviction. By the end of the fifteenth century, almost all of the land in England was owned in use. Because most of the land was owned by a relatively small number of wealthy landowners, in most cases the actual title owners did not actually live on their parcels of land. Another consequence was that the Crown had lost substantial revenues due to the avoidance of the land-based feudal incidents.

King Henry VIII attempted to reclaim these lost revenues with the passage of the Statute of Uses. Under the act, the full title to land was automatically given to the person for whom the property was being used, the cestui que use. The act also reinstated the old feudal rule of primogeniture, which held that land should go to the oldest son upon the death of the landowner.

Landholders strenuously objected to the statute. Over the next four years they conducted a Pilgrimage of Grace to London in an effort to convince the king and Parliament to eliminate primogeniture and reverse the ABOLITION of the use estate.

The campaign caused Henry VIII to loosen the royal grip on land ownership. In 1540 Parliament passed the Statute of Wills, which abolished primogeniture and gave landholders the right to devise their property to whomever they pleased in a written will and testament. However, Parliament did not abolish the Statute of Uses.

Immediately after the act was passed, landholders set about creating loopholes. The courts also were hostile to the legislation. They accommodated landholders by giving the statute a strict technical construction and by expanding other methods for landholders to put their property in the name of another person while keeping it for their own use or profit or for the use or profit of another person. In particular, the English courts expanded the concept of the trust to fill the void. A land trust is an arrangement whereby one person holds full title to property for the benefit of another person, who may direct the management and use of the property.

Courts focused on the difference between a trust and a use to achieve essentially the same result for landowners. In a trust the title owner plays some active role in connection with the use of the property. In contrast, with a bare use, the feoffee performed no work in connection with the property and served only as a strawperson. If a feoffee was performing duties in connection with the property, the land was not in use, courts reasoned, but in trust. Many of the rules on land trusts that developed in response to the Statute of Uses were adopted in the United States and continue in effect today.

In 1660 Parliament abolished all remaining feudal incidents associated with land in the Statute of Tenure. This obviated the need for a Statute of Uses because there no longer was any need to evade feudal incidents. The Statute of Uses was finally repealed by Parliament in 1925 by the Law of Property Act (12 & 13 Geo. 5, ch. 16, sec. 1(7)).

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CROSS-REFERENCES

Feudalism.

STATUTE OF WILLS

An early ENGLISH LAW *that provided that all individuals who owned land were permitted to leave or devise two-thirds of their property to anyone by written will and testament, effective upon their death.*

The Statute of Wills (32 Hen. 8, c. 1) gave to landowners in England the right to dispose of land through a written will. Before the Statute of Wills was enacted by the English Parliament in 1540, landowners did not have the right to determine who would become the new owner of the land upon their death. The inheritance of land was dependent on whether the deceased landowner was survived by a competent relative or descendant. Generally, if a landowner died with no relatives, the land reverted into the possession of the Crown. This reversion was called ESCHEAT.

The Statute of Wills made it possible for a landholder to decide who would inherit the land upon his death. The statute was passed a mere four years after the STATUTE OF USES banned the practice of splitting the title to land to avoid paying royal fees associated with the property. The Statute of Wills was seen as a policy retreat by King Henry VIII, who faced tremendous opposition from landowners seeking relief from royal control of land.

Some of the procedures created by the Statute of Wills remain effective in modern law. The statute required that wills be in writing, that they be signed by the person making the will, or testator, and that they be properly witnessed by other persons. If any of these requirements was not met, the will could not be enforced in court. These requirements exist today in state law and are intended to ensure that wills are not fabricated and that the testator's intent is fulfilled.

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STATUTE OF YORK

An ENGLISH LAW *enacted in 1318 that required the consent of Parliament in all legislative matters.*

The Statute of York was an important step toward the development of a constitutional monarchy in England. The law was enacted in the city of York in 1318, at a time when King Edward II was attempting to reassert his control over the kingdom.

Historians generally regard Edward II as an unqualified failure as king. Seven years before the Statute of York, the nobility had forced him to accept the Ordinances of 1311, which required baronial consent for foreign war, restricted the Crown's power to interfere with the judicial system, and required the king to obtain the advice and consent of the barons in Parliament for a long list of officials he wished to appoint.

Edward II regained political strength in 1318 and managed to have the Ordinances repealed. The Statute of York, however, specified that the "consent of the prelates, earls, and barons, and of the community of the realm" was required for legislation. Though some historians believe the statute restored baronial control over English government, many historians see the phrase "community of the realm" as signifying a shift of power to those outside the noble class. In addition, the powers of the king were constrained.

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STATUTES AT LARGE

An official compilation of the acts and resolutions of each session of Congress published by the Office of the Federal Register in the National Archives and Record Service.

The Statutes at Large are divided into two parts: the first is composed of public acts and joint resolutions; the second includes private acts and joint resolutions, concurrent resolutions, treaties, proposed and ratified amendments to the Constitution, and presidential proclamations. Volumes from 1951 to the present are arranged by public law number; older volumes are arranged by chapter number.

The *Statutes at Large* are considered the official publication of the law for citation purposes when titles of the United States Code have not been enacted as positive law.

STATUTORY

Created, defined, or relating to a statute; required by statute; conforming to a statute.

A statutory penalty, for example, is punishment in the form of a fine, prison sentence, or both, that is imposed against an offender for committing some statutory violation.

STATUTORY CONSTRUCTION

See CANONS OF CONSTRUCTION.

STATUTORY RAPE

Sexual intercourse by an adult with a person below a statutorily designated age.

The criminal offense of statutory rape is committed when an adult sexually penetrates a person who, under the law, is incapable of consenting to sex. Minors and physically and mentally incapacitated persons are deemed incapable of consenting to sex under rape statutes in all states. These persons are considered deserving of special protection because they are especially vulnerable due to their youth or condition.

Most legislatures include statutory rape provisions in statutes that punish a number of different types of sexual assault. Statutory rape is different from other types of rape in that force and lack of consent are not necessary for conviction. A defendant may be convicted of statutory rape even if the complainant explicitly consented to the sexual contact and no force was used by the actor. By contrast, other rape generally occurs when a person overcomes another person by force and without the person's consent.

The actor's age is an important factor in statutory rape where the offense is based on the victim's age. Furthermore, a defendant may not argue that he was mistaken as to the minor's age or incapacity. Most rape statutes specify that a rape occurs when the complainant is under a certain age and the perpetrator is over a certain age. In Minnesota, for example, criminal sexual conduct in the first degree is defined as sexual contact with a person under thirteen years of age by a person who is more than thirty-six months older than the victim. The offense also is committed if the complainant is between thirteen and sixteen years old and the actor is more than forty-eight months older than the complainant (Minn. Stat. Ann. § 609.342 [West 1996]).

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CROSS-REFERENCES

Child Abuse; Sexual Abuse.

STATUTORY REDEMPTION

The right granted by legislation to a mortgagor, one who pledges property as security for a debt, as well as to certain others, to recover the mortgaged property after a foreclosure sale.

Statutory redemption is the right of a mortgagor to regain ownership of property after foreclosure. A mortgagor is a person or party who borrows money from a mortgagee to purchase property. The arrangement between a mortgagor and mortgagee is called a mortgage. Foreclosure is the termination of rights to property bought with a mortgage. Most foreclosures occur when the mortgagor fails to make mortgage payments to the mortgagee. After foreclosing a mortgage, the mortgagee may sell the property at a foreclosure sale. Statutory redemption gives a mortgagor a certain period of time, usually one year, to pay the amount that the property was sold for at the foreclosure sale. If the mortgagor pays all of the foreclosure sale price before the end of one year after the foreclosure sale, or within the statutory redemption period, the mortgagor can keep the property.

A mortgagor in a state that offers statutory redemption may stay on the premises after foreclosure during the statutory redemption period.

If the mortgagor does not redeem the property by the end of the period, the purchaser at the foreclosure sale receives title to, and possession of, the property.

In states that have redemption statutes, an individual mortgagor cannot waive a statutory redemption period. Many states that offer statutory redemption make a special exception for corporations, which may waive the statutory redemption period if it is incompatible with the reorganization or dissolution of the corporation.

Approximately half of all states have passed statutes that allow mortgagors to redeem property after a mortgage foreclosure. The states that allow statutory redemption have done so to drive up foreclosure sale prices for the benefit of both the defaulting mortgagor and creditors of the mortgagor who have obtained an interest in the property. Statutory redemption is designed to prevent extremely low sale prices by giving the mortgagor an opportunity to match the sale price. Some legal commentators have observed, however, that statutory redemption has failed to increase the amount of bids on foreclosed property because title to property that is subject to statutory redemption is so uncertain. Because the mortgagor could redeem the property within a year and creditors of the mortgagor could make claims to the property, potential buyers of foreclosed property adjust their bids to account for these hazards.

Statutory redemption is distinct from equitable redemption. Equitable redemption is the right of a defaulting mortgagor to reclaim property by paying all past due mortgage payments anytime prior to foreclosure. Statutory redemption, by contrast, begins at the point of foreclosure and requires that the defaulting mortgagor pay the full foreclosure sale price. Equitable redemption is a common-law concept, which means it exists as law in the form of judicial opinions. All state courts have recognized a mortgagor's right to equitable redemption.

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STAY

The act of temporarily stopping a judicial proceeding through the order of a court.

A stay is a suspension of a case or a suspension of a particular proceeding within a case. A judge may grant a stay on the motion of a party to the case or issue a stay sua sponte, without the request of a party. Courts will grant a stay in a case when it is necessary to secure the rights of a party.

There are two main types of stays: a stay of execution and a stay of proceedings. A stay of execution postpones the enforcement of a judgment against a litigant who has lost a case, called the JUDGMENT DEBTOR. In other words, if a civil litigant wins money damages or some other form of relief, he may not collect the damages or receive the relief if the court issues a stay. Under rule 62 of the Federal Rules of Civil Procedure, every civil judgment is stayed for ten days after it is rendered. An additional stay of execution lasts only for a limited period. It usually is granted when the judgment debtor appeals the case, but a court may grant a stay of execution in any case in which the court feels the stay is necessary to secure or protect the rights of the judgment debtor.

The term *stay of execution* may also refer to a halt in the execution of a death penalty. This kind of stay of execution normally is granted when a court decides to allow an additional appeal by a condemned prisoner. Such stays of execution may be granted by executives, such as governors or the president of the United States, or by appeals courts.

A stay of proceedings is the stoppage of an entire case or a specific proceeding within a case. This type of stay is issued to postpone a case until a party complies with a court order or procedure. For example, if a party is required to deposit collateral with the court before a case begins, the court may order the proceedings stayed for a certain period of time or until the money or property is delivered to the court. If the party fails to deposit the collateral, the court may cite the party for CONTEMPT of court and impose a fine or order incarceration.

A court may stay a proceeding for a number of reasons. One common reason is that another

action is under way that may affect the case or the rights of the parties in the case. For instance, assume that a defendant faces lawsuits from the same plaintiffs in two separate cases involving closely related facts. One case is filed in federal court, and the other case is filed in state court. In this situation one of the courts may issue a stay in deference to the other court. The stay enables the defendant to concentrate on one case at a time.

The term *stay* may also be used to describe any number of legal measures taken by a legislature to provide temporary relief to debtors. For example, under section 362(a) of the Bankruptcy Code, a debtor who files for bankruptcy receives an automatic stay immediately upon filing a voluntary bankruptcy petition. Used in this sense, the term *stay* refers to the right of the debtor to keep creditors at bay during the resolution of the bankruptcy case.

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CROSS-REFERENCES

Capital Punishment.

STEERING

The process whereby builders, brokers, and rental property managers induce purchasers or lessees of real property to buy land or rent premises in neighborhoods composed of persons of the same race.

Steering is an unlawful practice and includes any words or actions by a real estate sales representative or BROKER that are intended to influence the choice of a prospective buyer or tenant. Steering violates federal fair housing provisions that proscribe discrimination in the sale or rental of housing.

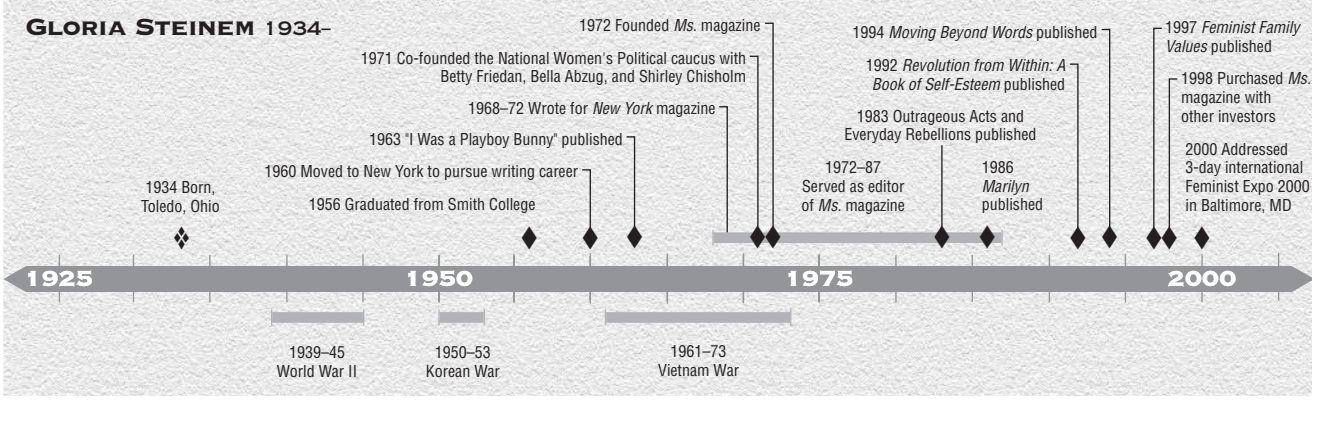
STEINEM, GLORIA

Gloria Steinem is one of the most important feminist writers and organizers of the late twentieth century. Since the 1960s, Steinem has been a political activist and organizer who has urged equal opportunity for women and the breaking down of gender roles. As a writer she has produced influential essays about the need for social and cultural change.

Steinem was born on March 25, 1934, in Toledo, Ohio. Her parents divorced when she was 11 years old. Steinem enrolled at Smith College in 1952 and graduated in 1956. After graduation she went to India to study at the universities of Delhi and Calcutta. It was there that she began publishing freelance articles in newspapers.

In the 1960s, Steinem continued to pursue a writing career, working first for a political satire magazine in New York. Her breakthrough came in 1963 with the publication of her article "I Was a Playboy Bunny," which retold her experiences working in the Manhattan Playboy Club. For the next few years, her articles appeared in many national women's magazines. Steinem also wrote comedy scripts for a weekly political satire television show, *That Was the Week That Was.*

Her attention shifted to politics in 1968 when Steinem began writing a column for *New York* magazine. During the late 1960s, the "women's liberation movement" began and Steinem soon became a leading supporter of the movement. In 1971 she, along with BETTY FRIEDAN, BELLA ABZUG, and SHIRLEY CHISHOLM,



founded the National Women's Political Caucus. The mission of the caucus was to identify and encourage women to run for political office.

In 1972, Steinem founded and served as editor of *Ms.* magazine. *Ms.* addressed feminist issues, including reproductive rights, employment discrimination, sexuality, and gender roles. The magazine presented Steinem with a platform to air her views about the contemporary social scene. That same year Steinem was one of the cofounders of the Ms. Foundation for Women, a nonprofit organization that pioneered the concept of giving money to programs that addressed the specific concerns of women. At that time less than one percent of foundation grants were given to programs that supported women's issues such as DOMESTIC VIOLENCE, female-friendly legislation, and economic disparities.

Since the 1970s, Steinem has been a spokesperson for many feminist causes. She has sought to protect ABORTION rights, establish rape crisis centers, and guarantee work environments free from sexual discrimination. Steinem has distinguished between "erotica" and PORNOGRAPHY, believing that nonviolent sexual material is acceptable but pornography should be banned. More radical feminists have criticized Steinem for these and other positions, arguing that she seeks legal changes that falsely promise equal opportunity and fair treatment.

Despite these criticisms, Steinem has remained a popular public figure, traveling across the United States and worldwide, and lecturing to packed audiences. In addition, she is a prolific writer, regularly contributing articles to magazines and newspapers; she also provides political commentary on television, radio, and the INTERNET. A collection of her articles and essays, *Outrageous Acts and Everyday Rebellions,* was published in 1983. In 1986, she published *Marilyn,* a biography of film star Marilyn Monroe retold from a feminist perspective. In *Revolution from Within: A Book of Self-Esteem* (1992), Steinem looked inward, discussing ways that women could empower themselves. And, in 1994, she wrote *Moving Beyond Words,* a collection of essays on the politics of gender.

In addition to her numerous awards and honorary degrees, in 1993, Steinem was inducted into the National Women's Hall of Fame in Seneca Falls, New York. In 2000, she astonished observers by getting married at the age of 66 to an entrepreneur she had met at a Voters for Choice (VFC) fundraiser in 1999. Steinem is president of VFC, which is a bipartisan POLITICAL ACTION COMMITTEE that supports candidates working for reproductive freedom. In May 2002, Steinem and her supporters celebrated the thirtieth anniversary of the founding of *Ms.* magazine.

Gloria Steinem.
COURTESY OF GLORIA STEINEM

"ECONOMIC SYSTEMS ARE NOT VALUE-FREE COLUMNS OF NUMBERS BASED ON RULES OF REASON, BUT WAYS OF EXPRESSING WHAT VARYING SOCIETIES BELIEVE IS IMPORTANT."
—GLORIA STEINEM

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STENOGRAPHER

An individual who records court proceedings either in shorthand or through the use of a paper-punching device.

A court stenographer is an officer of the court and is generally considered to be a state or public official. Appointment of a court stenographer is

largely governed by statute. A stenographer is ordinarily appointed by the court as an official act, which is a matter of public record. She is an official under the control of the court and is, therefore, generally subject to its direction. She is not under the dominion and control of the attorneys in a case. The term of office of a court stenographer is also regulated by statute in most cases.

The stenographer has the duty to attend court and to be present, or on call, throughout the entire trial, so that the court and the litigants can be protected by a complete record of the proceedings. The stenographer must take notes of what occurs before the court and transcribe and file the notes within the time permitted. The notes must comply with provisions requiring the stenographer to prepare and sign a certificate stating that the proceedings, evidence, and charges levied against the defendant were fully and accurately taken at the trial and that the transcript represents an accurate translation of the notes.

Some statutes provide that a judge who appoints the stenographer also has the power to remove him. Other statutes fix the term of office; in which case a stenographer cannot be removed at a judge's pleasure, even though the judge has the power to appoint him.

The compensation of a court stenographer may be in the form of an annual salary, a per diem allowance, or an allowance for work actually performed. In the absence of a statute fixing the fees, a duly appointed stenographer is entitled to be reasonably compensated. Some statutes require that a stenographer's fees must be paid by the parties.

STERILIZATION

A medical procedure where the reproductive organs are removed or rendered ineffective.

Legally mandated sterilization of criminals, or other members of society deemed "socially undesirable," has for some time been considered a stain on the history of U.S. law. The practice, also known as eugenics, originated early in the twentieth century. In 1914, a Model Eugenical Sterilization Law was published by Harry Laughlin at the Eugenics Records Office. Laughlin proposed the sterilization of "socially inadequate" persons, which translated as anyone "maintained wholly or in part by public expense." This would include the "feebleminded, insane, blind, deaf, orphans, and the homeless." At the time the model law was published, 12 states had enacted sterilization laws. Such laws were seen to benefit society since they presumably reduced the burden on taxpayers of maintaining state-run facilities. Eventually, these laws were challenged in court.

In BUCK V. BELL, 274 U.S. 200 (1927), OLIVER WENDELL HOLMES JR. wrote the infamous opinion that upheld the constitutionality of a Virginia sterilization law, fueling subsequent legislative efforts to enact additional sterilization laws. By 1930, 30 states and Puerto Rico had passed laws mandating sterilization for many criminal or moral offenses. Nearly all of the states with such laws imposed mandatory sterilization of mentally defective citizens. Nineteen states required sterilization for parents of children likely to experience various disorders. Six states encouraged sterilization for individuals whose children might be "socially inadequate."

Finally, the Supreme Court struck down an Oklahoma law mandating involuntary sterilization for repeat criminals in *Skinner v. Oklahoma*, 316 U.S. 535, 62 S. Ct. 1110, 86 L. Ed. 1655 (1942). Justice WILLIAM O. DOUGLAS's opinion broadly defined the right to privacy to include the right to procreate, and concluded that the government's power to sterilize interfered with an individual's basic liberties.

By mid-century, legal attitudes had changed, and many state sterilization laws were held to be unconstitutional under the EIGHTH AMENDMENT prohibiting CRUEL AND UNUSUAL PUNISHMENT.

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❖ STEVENS, JOHN PAUL

A member of the U.S. Supreme Court since 1975, John Paul Stevens has developed a reputation as a judicial centrist on the High Court, although many of his more well-known opinions are marked by a liberal bent.

Born on April 20, 1920, Stevens descended from Nicholas Stevens, who emigrated to America in 1659 after serving as a brigadier general in

Oliver Cromwell's army. Stevens's father was a businessman and lawyer; he designed Chicago's Stevens Hotel and was its original managing director.

A political moderate during his college days at the University of Chicago, Stevens graduated Phi Beta Kappa in 1941. During WORLD WAR II he served with the U.S. Navy and was awarded the Bronze Star. After the war he studied law at Northwestern University School of Law in Chicago, graduating first in his class in 1947.

Stevens began his legal career as a law clerk for U.S. Supreme Court Justice WILEY B. RUTLEDGE. In 1948 he joined the Chicago firm of Poppenhausen, Johnston, Thompson, and Raymond, specializing in litigation and ANTITRUST LAW. In 1951 he served as associate counsel on a study of MONOPOLY power for a subcommittee of the Judiciary Committee of the House of Representatives. Upon returning to Chicago in 1952, Stevens founded the firm of Rothschild, Stevens, Barry, and Meyers. Along with his private practice, he taught antitrust law at the Northwestern University and the University of Chicago law schools throughout much of the 1950s. He also served for a time as a member of the U.S. attorney general's National Committee to Study Antitrust Laws.

In 1970 President RICHARD M. NIXON appointed Stevens as a judge of the U.S. Court of Appeals for the Seventh Circuit. He became known for his scholarly abilities and his carefully written, clear, and succinct opinions. His first opinion on the court of appeals was a dissent in a challenge to the summary incarceration of an antiwar activist who had disrupted a legislative session (*Groppi v. Leslie,* 436 F.2d 331 [1971]). Stevens viewed the incarceration as unconstitutional, and the following year his minority view was vindicated by a unanimous Supreme Court (404 U.S. 496, 92 S. Ct. 582, 30 L. Ed. 2d 632).

The liberal Supreme Court justice WILLIAM O. DOUGLAS retired in 1975, providing President GERALD R. FORD his only opportunity to make a Supreme Court appointment. Stevens received high praise and active support from Ford's attorney general, EDWARD LEVI, and unqualified support from the AMERICAN BAR ASSOCIATION. During the Senate confirmation hearing, Stevens remarked that he believed that litigants should know how judges viewed the arguments and that it was important to make a record to note diverse views for reference in later cases.

John Paul Stevens.
LIBRARY OF CONGRESS

Stevens was unanimously confirmed on December 17, 1975, and took his oath of office two days later.

"IT IS NOT OUR JOB TO APPLY LAWS THAT HAVE NOT YET BEEN WRITTEN."
—JOHN PAUL STEVENS

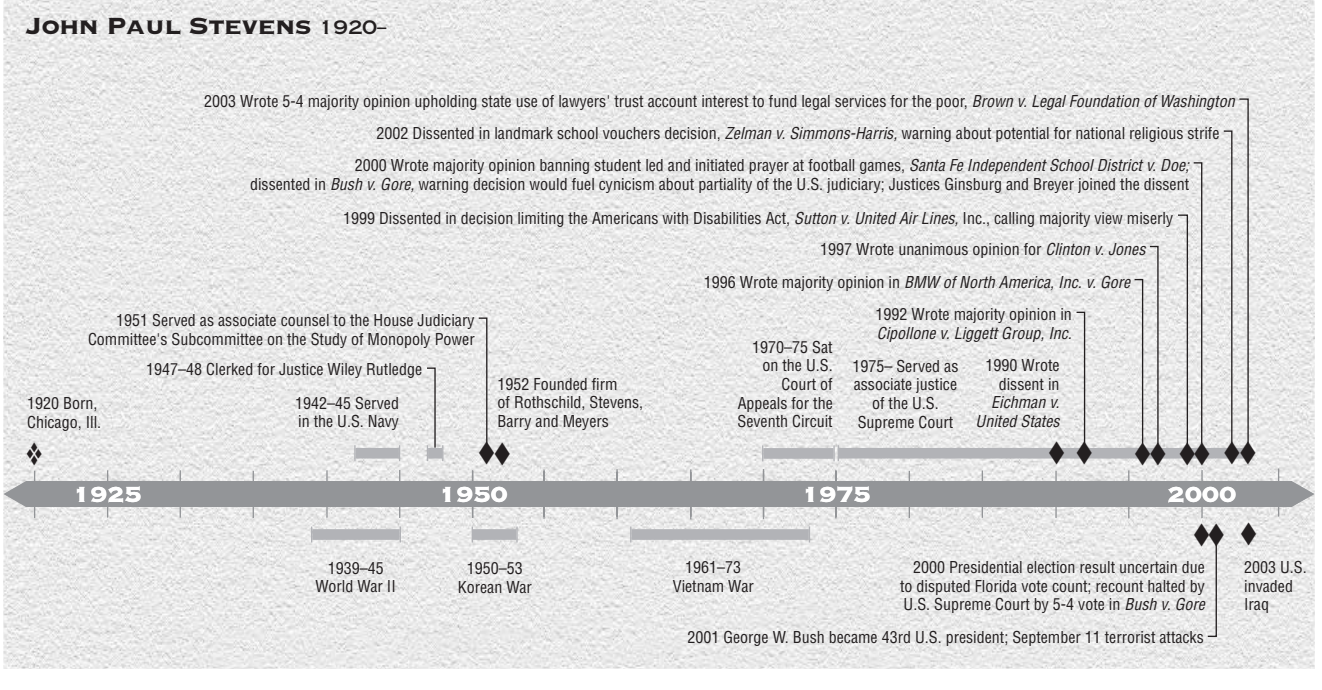
Until Stevens became a justice, new justices were typically seen but not heard. Instead, they usually joined dissents or concurrences without offering their own opinions. Stevens did not fit that pattern. During the 1976–77 term, Stevens had seventeen separate majority concurrences and twenty-seven separate dissents, far more than any other justice.

From the start, Stevens evinced a concern that the legal system give particular care to ensure the rights of the underprivileged, including ALIENS, illegitimate children, and prisoners. However, Stevens cannot easily be classified as either a judicial liberal or a conservative. In a judicial context, a conservative judge generally will not decide issues that he or she believes are within the province of legislatures. Moreover, a conservative typically votes to enhance government power in a conflict between government interests and individual rights. A judicial liberal, on the other hand, tends to favor individual interests and will look beyond the bounds of a statute and past interpretations of the Constitution to decide social policy questions.

For example, although Stevens is generally perceived as being sympathetic to the rights of prisoners, his sympathy has not necessarily translated into leniency for criminal defendants. Stevens wrote the opinion in *United States v. Ross,* 456 U.S. 798, 102 S. Ct. 2157, 72 L. Ed. 2d 572 (1982), wherein the Court held that police may search compartments and containers within a vehicle even though the contents are not in plain view, as long as the search is based on PROBABLE CAUSE. Probable cause, the same standard needed to obtain a SEARCH WARRANT, is typically determined by a magistrate, but this case effectively gave that power to the police in searches of vehicle containers.

Stevens's nomination was opposed by some women's groups that claimed that he was unresponsive in several sexual discrimination cases while on the court of appeals. In 1981 he voted to uphold the all-male draft (ROSTKER V. GOLDBERG, 453 U.S. 57, 101 S. Ct. 2646, 69 L. Ed. 2d 478), and in another case he declined to consider the theory of COMPARABLE WORTH. On the other hand, he has typically voted to uphold ROE V. WADE, 410 U.S. 113, 93 S. Ct. 705, 35 L. Ed. 2d 147 (1973), and limit restrictions to a woman's right to ABORTION (*Planned Parenthood v. Casey,* 510 U.S. 1309, 114 S. Ct. 909, 127 L. Ed. 2d 352 [1994] and *Rust v. Sullivan,* 500 U.S. 173, 111 S. Ct. 1759, 114 L. Ed. 2d 233 [1991]). In *Clinton v. Jones,* 520 U.S. 681, 117 S. Ct. 1636, 137 L. Ed. 2d 945 (1997), Stevens spoke for a unanimous Court in allowing a SEXUAL HARASSMENT lawsuit against President BILL CLINTON to go forward. Stevens ruled that the Constitution does not afford a president temporary immunity—except in the most exceptional circumstances—for civil litigation arising from events that occurred before the president took office. The Court also held that Clinton was not entitled to a stay of proceedings during his term in office.

One of Stevens's earliest opinions was *Young v. American Mini Theatres, Inc.,* 427 U.S. 50, 96 S. Ct. 2440, 49 L. Ed. 2d 310, (1976). He wrote for a plurality of the Court, upholding Detroit ZONING ordinances that prevented the concentration of "adult" establishments. The case was significant because the ordinance in question did not require a finding that the establishment dealt in legally obscene materials as a prerequisite to legal action. Before the ruling in *Young,* sexually-oriented material that was not legally obscene appeared to be entitled to complete FIRST AMENDMENT protection. Stevens wrote that the material in question was so sexually explicit as to be entitled to less protection than other speech, stating that "few of us would march our sons and daughters off to war to preserve the citizen's right to see 'Specified Sexual Activities' exhibited in the theaters of our choice." He reasoned that the zoning restriction



did not totally prohibit the availability of the material and was a reasonable action by the city to further its interest in preserving the quality of urban life. This ruling has been the basis for other restrictions that fall short of an outright prohibition of communication that is sexually explicit but not obscene.

Justice Stevens, along with Justices POTTER STEWART and LEWIS F. POWELL JR., acted as a swing vote in a series of death penalty cases in the mid-1970s. The Court upheld death penalty statutes providing for discretion in imposition but overturned those calling for mandatory death sentences. Stevens voted against the death penalty in cases of rape and dissented from a 1989 decision permitting an execution for someone who committed a murder at age sixteen or seventeen.

In *Eichman v. United States,* 496 U.S. 310, 110 S. Ct. 2404, 110 L. Ed. 2d 287 (1990), the Supreme Court ruled that flag burning was a form of expression protected by the First Amendment and overturned a federal statute that attempted to protect flags. The majority ruled that the statute had to withstand the most exacting scrutiny and could not be upheld under the First Amendment. Stevens wrote a dissent joined by conservative Chief Justice WILLIAM H. REHNQUIST and two other justices, maintaining that the statute was consistent with the First Amendment.

Stevens wrote the opinion in *BMW of North America, Inc. v. Gore,* 517 U.S. 559, 116 S. Ct. 1589, 134 L. Ed. 2d 809 (1996), the first case in which the High Court overturned a jury's PUNITIVE DAMAGES award. A jury awarded an automobile owner $4 million (later reduced to $2 million) when the manufacturer failed to disclose a refinished paint job on a new BMW. Stevens called the award "grossly excessive" and set out criteria to determine the propriety of punitive damage awards. The four dissenting justices in the case argued that the ruling improperly intruded into states' prerogatives.

In 1992 Stevens wrote the opinion for CIPOLLONE V. LIGGETT GROUP, INC., 505 U.S. 504, 112 S. Ct. 2608, 120 L. Ed. 2d 407 (1992), possibly exposing the tobacco industry to huge adverse verdicts for money damages by opening the door to increased litigation for smoking-related deaths. In a 7–2 decision, the Court ruled that cigarette manufacturers that lie about the dangers of smoking or otherwise misrepresent their products can be sued under state laws. Because cigarette labeling is governed by federal law, at issue was whether federal law preempts state common-law liability lawsuits. The Court ruled that federal suits are the only avenue for pursuing failure-to-warn cases or claims of omissions in the manufacturer's advertising or promotions. Litigants may sue in state court, however, for claims of breaches of express warranties, claims that cigarette advertisements are fraudulent, and claims that a company hid the dangers of smoking from state authorities or conspired to mislead smokers.

Stevens also authored WALLACE V. JAFFREE, 472 U.S. 38, 105 S. Ct. 2479, 86 L. Ed. 2d 29 (1985), holding that a state cannot provide a moment of silence at the beginning of the school day for the express purpose of facilitating meditation or prayer. The Court held that the Alabama statute in question did not pass constitutional scrutiny.

Recent Decisions

Over the last eight years, Stevens's opinions have continued to cross the political spectrum, despite the tendency for observers to cast him as one of the "liberal" justices. In *Hope v. Pelzer*, 536 U.S. 730, 122 S. Ct. 2508, 153 L. Ed. 2d 666 (2002), Stevens wrote a 6–3 majority opinion ruling that a prison inmate had been subjected to CRUEL AND UNUSUAL PUNISHMENT in violation of the EIGHTH AMENDMENT when prison guards handcuffed him to a hitching post as punishment for disruptive behavior, even though the inmate had already been subdued. Stevens said that the prison guards knowingly subjected the inmate to a substantial risk of physical harm, to unnecessary pain caused by the handcuffs, to unnecessary exposure to the heat of the sun, to prolonged thirst and taunting, and to a deprivation of bathroom breaks that created a risk of particular discomfort and humiliation.

That same year Stevens also wrote a 6–3 majority opinion ruling that the execution of mentally retarded criminals violates the Eighth Amendment's guarantee against cruel and unusual punishment. ATKINS V. VIRGINIA, 536 U.S. 304, 122 S. Ct. 2242, 153 L. Ed. 2d 335 (2002). Citing "evolving standards of decency," Stevens said that his decision was informed by the consensus reflected in deliberations of the American public, legislators, scholars, and judges that have taken place over the thirteen years since *Penry v. Lynaugh*, 492 U.S. 302, 109

S. Ct. 2934, 106 L. Ed. 2d 256 (1989). In *Penry*, the Supreme Court held that two state statutes prohibiting the execution of the mentally retarded, even when added to the fourteen states that had rejected CAPITAL PUNISHMENT completely, did not provide sufficient evidence of a national consensus. In *Atkins*, though, Stevens emphasized that sixteen additional states had passed laws barring execution of the mentally retarded since the *Penry* decision was handed down.

Stevens surprised many observers with his dissenting opinion in *Kyllo v. United States,* 533 U.S. 27, 121 S. Ct. 2038, 150 L. Ed. 2d 94 (2001), where five justices found that the use of a thermal-imaging device aimed at a private home from a public street to detect relative amounts of heat within the home constituted a "search" within the meaning of the FOURTH AMENDMENT, and thus the use of that device was presumptively unreasonable without a warrant. Justice Stevens argued that thermal imaging did not constitute a Fourth Amendment search because it detected only heat radiating from the external surface of the house.

Stevens surprised no one with his dissenting opinion in BUSH V. GORE, 531 U.S. 98, 121 S. Ct. 525, 148 L. Ed. 2d 388 (2000), however, where seven justices concluded that the process devised by the Florida Supreme Court to recount the popular vote in the 2000 presidential election violated the EQUAL PROTECTION CLAUSE of the FOURTEENTH AMENDMENT. Only five justices agreed that there was insufficient time to fashion a remedy that would fairly and lawfully allow the votes of Florida residents to be accurately counted for either presidential candidate. As a result, the nation's high court effectively ordered the Florida recount to stop, which meant that GEORGE W. BUSH would become the forty-third president of the United States.

In his dissenting opinion, Justice Stevens argued that the Equal Protection Clause does not limit the states' power to design their electoral processes—including substantive standards for determining whether a vote had been legally cast. Consequently, Stevens believed that the U.S. Supreme Court should have deferred to the Florida Supreme Court's interpretation of those standards and allowed the recount to continue. Under the majority's own reasoning, Stevens wrote, the appropriate course of action would have been to remand the case so the Florida high court could establish more specific procedures for implementing the legislature's uniform general standard of "voter intent." But in "the interest of finality," Stevens continued, "the majority effectively orders the disenfranchisement of an unknown number of voters whose ballots reveal their intent—and are therefore legal votes under state law—but were for some reason rejected by ballot-counting machines."

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♦ STEVENSON, ADLAI EWING

Adlai Ewing Stevenson was a lawyer, statesman, and unsuccessful DEMOCRATIC PARTY candidate for the presidency in 1952 and 1956. An eloquent and witty speaker, Stevenson served as chief U.S. delegate to the UNITED NATIONS during the Kennedy administration.

Stevenson was born on February 5, 1900, in Los Angeles, California, and moved with his family to Bloomington, Illinois, in 1906. He graduated from Princeton University in 1922 and studied law at Northwestern University. He was admitted to the Illinois bar in 1926 and established a successful law practice in Chicago.

By the early 1930s Stevenson had set his sights on public service, following the course of his grandfather, Adlai E. Stevenson, who was vice president of the United States during the administration of President GROVER CLEVELAND (1893–1897). Stevenson joined the NEW DEAL administration of President FRANKLIN D. ROOSEVELT in 1933, serving as special legal adviser to the Agricultural Adjustment Administration. In 1934 he became general counsel for the Federal Alcohol Bureau.

Though Stevenson returned to his Chicago law practice in 1934, he remained an active civic leader. He headed the Chicago Bar Association's Civil Rights Committee and became the chair of the Chicago chapter of the Committee to Defend America by Aiding the Allies. This committee, composed of prominent business and civic leaders, worked to overcome U.S. isolationist foreign policy and provide aid to Great

Britain and France at the beginning of WORLD WAR II.

Stevenson rejoined the Roosevelt administration in 1941 as special assistant to the secretary of the Navy, and in 1943 he led a mission to Italy to establish a U.S. relief program. In 1945 Stevenson moved to the STATE DEPARTMENT, where he became a key participant in the establishment of the United Nations (U.N.). He was senior adviser to the U.S. delegation at the first meeting of the U.N. General Assembly in London in 1946 and was a U.S. delegate at meetings of the assembly in New York in 1946 and 1947.

In 1948 Stevenson returned to Illinois and ran as the Democratic candidate for governor. He was elected by the largest majority ever recorded in the state. He proved an effective chief executive, revitalizing the civil service, establishing a merit system for the hiring of state police, improving the care of patients in state mental hospitals, and increasing state aid to public education.

When President HARRY S. TRUMAN announced that he would not seek reelection in 1952, Democratic leaders urged Stevenson to seek the nomination. Although Stevenson declined to campaign for the nomination, the 1952 Democratic National Convention in Chicago drafted him as their presidential candidate. Stevenson ran a vigorous campaign but proved no match for the Republican candidate and popular war hero, General DWIGHT D. EISENHOWER. Eisenhower easily defeated Stevenson in 1952 and again in 1956.

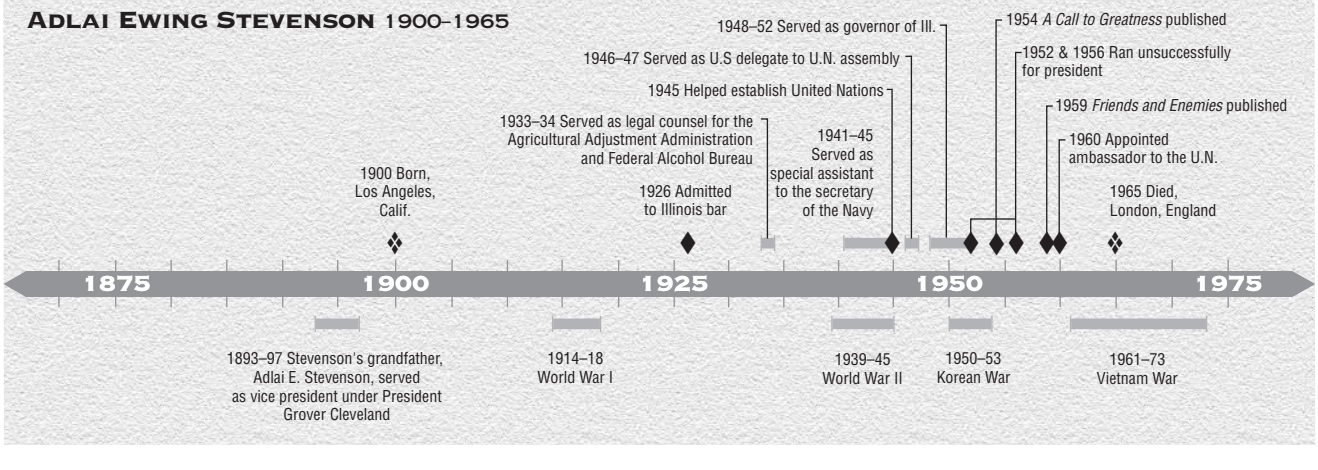
Stevenson spent the 1950s practicing law in Chicago and serving as a spokesperson for the Democratic Party. At the 1960 Democratic National Convention in Los Angeles, a small group of liberals again sought to draft Stevenson for president. The effort failed and Senator JOHN F. KENNEDY of Massachusetts was nominated.

Adlai Stevenson.
LIBRARY OF CONGRESS

"THE ESSENCE OF A REPUBLICAN GOVERNMENT IS NOT COMMAND. IT IS CONSENT."
—ADLAI STEVENSON

Kennedy appointed Stevenson U.S. ambassador to the United Nations and gave him cabinet rank. Stevenson was deeply disappointed, however, believing he was the best-qualified person to serve as SECRETARY OF STATE. Despite his disappointment, Stevenson carried out his role at the United Nations with distinction. During the CUBAN MISSILE CRISIS of October 1962, Stevenson had a dramatic confrontation with the Soviet Union's delegate, telling the delegate he was prepared to wait "until Hell freezes over" for an answer to his question about Soviet missiles in Cuba.

Stevenson died on July 14, 1965, in London, England.



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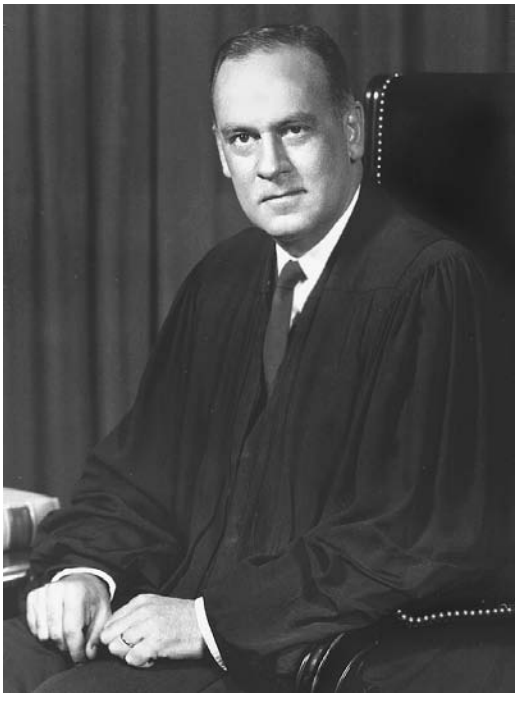
♦ STEWART, POTTER

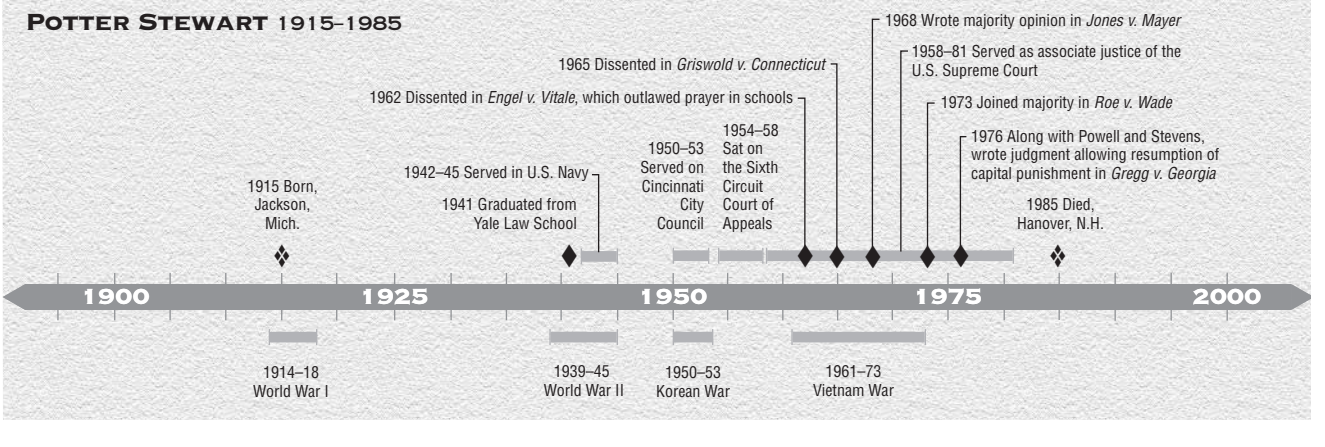
As an associate justice from 1958 to 1981, Potter Stewart charted a middle course during a vigorous era on the U.S. Supreme Court. Before his appointment to the Court by President DWIGHT D. EISENHOWER, Stewart practiced law, served in local government in his native Cincinnati, Ohio, and sat on the Sixth Circuit Court of Appeals from 1954 to 1958. He joined the Supreme Court during a period when the Court was changing the social and political landscape by extending CIVIL RIGHTS and liberties under Chief Justice EARL WARREN, yet Stewart remained a moderate during his twenty-three-year tenure. Pragmatism, unpredictability, and plainspoken opinions were his hallmarks. His penchant for witty phrases made him highly quotable, but his inconsistent voting record left only an ambiguous mark on U.S. law. At age forty-three, he was among the youngest appointees to the Court and, at age sixty-six, also one of the youngest justices to retire from it.

"SWIFT JUSTICE DEMANDS MORE THAN JUST SWIFTNESS."
—POTTER STEWART

Born in Jackson, Michigan, on January 23, 1915, Stewart came from old money and a family steeped in law and politics. Educated at University School, Hotchkiss, as well as at Yale, Cambridge, and Yale Law School, he earned his law degree from Yale in 1941. A stint on Wall Street followed. He served in the U.S. Navy during WORLD WAR II and returned to Ohio after the war. After working for a large law firm in his home state, Stewart briefly followed his father's footsteps into politics. James Garfield. Stewart had been mayor of Cincinnati and a justice of the Ohio Supreme Court. Potter Stewart served on the city council and as vice mayor, but he soon abandoned political life to build his own legal practice.



Potter Stewart. PHOTOGRAPH BY CHASE LTD. COLLECTION OF U.S. SUPREME COURT



In 1954 President Eisenhower appointed Stewart to the federal bench. Stewart's high profile in the Ohio bar made him an attractive candidate for the Sixth Circuit Court of Appeals, where he served for the next four years. He was widely respected for his competence and efficiency as an appellate judge, and Eisenhower returned to him in 1958 when a seat opened on the Supreme Court. Although southern senators who disliked his embrace of SCHOOL DESEGREGATION offered scattered opposition to his appointment, the nomination easily succeeded.

On the Supreme Court, Stewart was a moderate justice. He was criticized for indecision, chiefly because he was often the unpredictable swing vote in cases that pitted the Warren Court's activist and judicial restraint blocs against each other. Stewart, however, followed his instincts on the Court without obvious resort to ideology or doctrine. To the question of whether he was liberal or conservative, he replied, "I am a lawyer," explaining that the labels had little value for him in the political sphere and even less in law. Stewart's approach in his opinions is notable for its plain-edged pragmatism. He blasted a state's anti-contraception laws as "uncommonly silly" in GRISWOLD V. CONNECTICUT (381 U.S. 479, 85 S. Ct. 1678, 14 L. Ed. 2d [1965]), and in another case, he wrote of OBSCENITY, stating, "I know it when I see it" (*Jacobellis v. Ohio,* 378 U.S. 184, 84 S. Ct. 1676, 12 L. Ed. 2d 793 [1964]).

In the arena of civil rights and liberties, Stewart's moderate outlook clearly revealed itself. He sided with claimants in 52 percent of these cases. Among his most notable decisions in favor of civil liberties was *Jones v. Alfred H. Mayer Co.,* 392 U.S. 409, 88 S. Ct. 2186, 20 L. Ed. 2d 1189 (1968), in which the WARREN COURT upheld measures that protected African Americans against discrimination in housing. Stewart's pragmatism did not allow for subjectivity, however. Although he regarded Connecticut's ban on the use of contraceptives as silly, he found the law constitutional and dissented from the majority in *Griswold v. Connecticut.* He maintained his moderate outlook in his later years on the Court. He agreed with the majority's expansion of a right to privacy in the landmark ABORTION case, ROE V. WADE, 410 U.S. 113, 93 S. Ct. 705, 35 L. Ed. 2d 147 (1973), but he also attacked the Court's tendency to invalidate any state law it found unwise.

Stewart's legacy on the Court defies easy categorization. At best he is remembered for his pragmatism and at worst for leaving a less than cohesive body of opinions. He retired from the Court in 1981 and died in Hanover, New Hampshire, on December 7, 1985.

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♦ STIMSON, HENRY LEWIS

Henry Lewis Stimson was a lawyer and a distinguished public servant, occupying key posts in the administrations of five presidents between 1911 and 1945. As SECRETARY OF STATE, he sought disarmament, while as secretary of war he advocated the use of the atomic bomb against Japan in WORLD WAR II.

"THE BOMBS DROPPED ON HIROSHIMA AND NAGASAKI ENDED THE WAR. THEY ALSO MADE IT WHOLLY CLEAR THAT WE MUST NEVER HAVE ANOTHER WAR."
—HENRY L. STIMSON

Stimson was born on September 21, 1867, in New York City. He earned a bachelor's degree from Yale in 1888, a master's degree from Harvard University in 1889, and a bachelor of laws degree from Harvard in 1890. He was admitted to the New York bar in 1891 and joined the law firm headed by Elihu Root, a prominent attorney and influential figure in the REPUBLICAN PARTY.

In 1906 President THEODORE ROOSEVELT appointed Stimson U.S. attorney for the Southern District of New York. He left the post in 1909 to run as the Republican nominee for governor of New York. Although he lost the 1910 election, his stock continued to rise. President WILLIAM HOWARD TAFT named Stimson secretary of war in 1911, a position he held until the end of the Taft administration in 1913. He then returned to his New York law practice.

Stimson did not reenter public service until 1927, when President CALVIN COOLIDGE named him governor of the Philippine Islands. In 1929 President HERBERT HOOVER elevated Stimson to secretary of state, a position that put him on the world stage. As secretary, Stimson sought to continue the policy of military disarmament, participating in the London Naval Conference of 1930.

Henry L. Stimson.
LIBRARY OF CONGRESS

Following the Japanese invasion of Manchuria in 1931, Stimson wrote a diplomatic note to both China and Japan, informing them that the United States would not recognize territorial or other changes made in violation of U.S. treaty rights. The "Stimson Doctrine" was invoked as the rationale for successive economic embargoes against Japan during the 1930s.

With the election of President FRANKLIN D. ROOSEVELT, a Democrat, in 1932, Stimson returned to his law practice and private life. By the end of the 1930s, however, with the growing belligerence of Germany and Japan, Stimson emerged as an opponent of U.S. isolationist policies. When World War II began in 1939, Stimson became a leading member of the Committee to Defend America by Aiding the Allies, urging the U.S. government to provide aid to Great Britain and France.

President Roosevelt, who also sought to help the Allies, appointed Stimson secretary of war in 1940. By appointing a Republican to this key post, Roosevelt strengthened bipartisan support for his foreign policy. Stimson remained secretary of war during World War II and received praise for his quiet but firm administration of the war effort.

In 1945, acting as chief presidential adviser on atomic programs, Stimson directed the Manhattan Project, which resulted in the creation of the atomic bomb. He recommended to President HARRY S. TRUMAN that atomic bombs be dropped on Japanese cities of military importance. Truman followed his advice, ordering the bombing of Hiroshima and Nagasaki that brought a swift end to World War II. Stimson defended his recommendation, arguing that the bombings ended the war quickly and therefore saved more lives than were lost.

Stimson left office in September 1945. He published his autobiography, *On Active Service in Peace and War,* in 1948. He died on October 20, 1950, in Huntington, New York.

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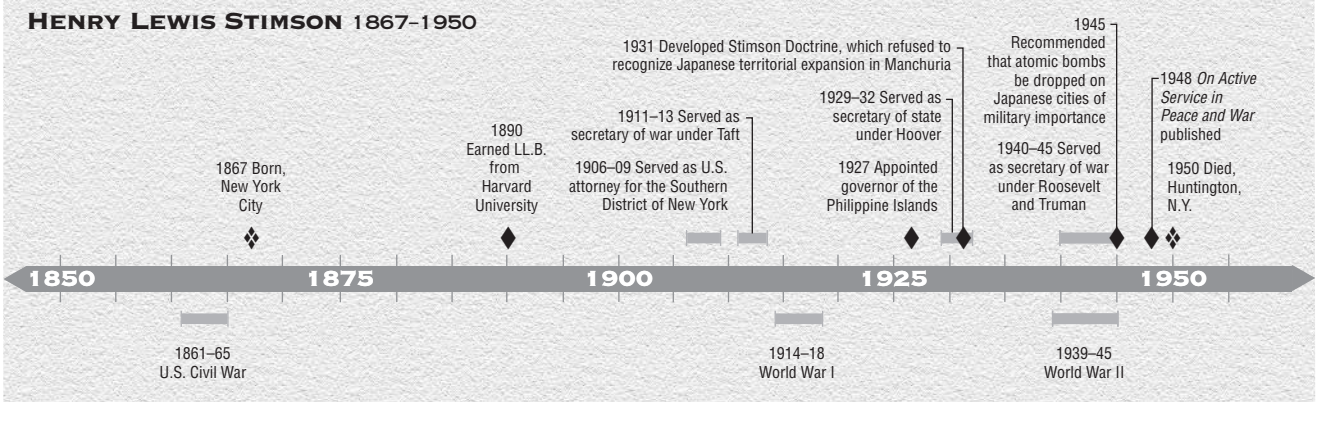
STIPULATION

An agreement between attorneys that concerns business before a court and is designed to simplify or shorten litigation and save costs.



Examples of stipulations stated by counsel in open court

Stipulations Stated by Counsel in Open Court

[*Title of Court and Cause*]

Mr. A _____ : Your Honor, I think we can state for the record the following stipulated matter—and Mr. X _____ can correct me if I'm wrong— that:

Mr. _____ , who is a boat captain and patrols the offshore waters of the State of _____ in the _____ limit, would testify that in the 20____ fishing season, the only season in which he has been employed with the Commission, which would be relevant to this proceeding, that he did not see the _____ fishing vessels operating in State of _____waters for purposes of fishing.

We would have testimony from Mr. _____ , who is a fish spotter for_____ Corporation, who has been a fish spotter for _____ years with _____ Corporation and eight years previously with another company. He would testify that he is fully able to recognize the various boats of different companies and he has during the last three seasons seen no fishing by vessels owned by _____ or _____. He would also testify that in years past, running back for _____ to _____ years, I believe he said, that there has been substantially little or no fishing by _____ or _____.

Mr. _____ , also a fish spotter for _____ Corporation for _____ years, and _____ years previously with another company, would indicate that he has in the past three seasons seen _____ vessels only rarely in State of _____ waters engaged in fishing, but that in years past, perhaps _____ years past, _____ , did engage in some fishing of a substantial nature in State of _____ waters.

Judge _____: Thank you, Mr. _____.

Mr. X _____.

Mr. X _____ : I would like to add to that, your Honor, that both Mr. _____ and Mr._____ are employees of _____ Corporation, which is mentioned in the affidavits and briefs; that Mr. _____ , I believe would testify that the quantity of_____ fish available in State of _____ waters has dropped significantly in the last three or four years and is continuing to drop, and I believe he said that was true generally of the _____ Coast Fisheries, save for the _____ area, which this year experienced some increase. They would—

Judge _____ : Is that quantity, you said, quantity of fish?

Mr. X _____: Quantity, yes, sir, of _____ fish.

I believe that they would also verify, for what it's worth, your Honor, that the men, the Captains and crews of the plaintiffs' boats, are largely residents of the State of _____ in the _____ area, and I believe that two of these gentlemen, Mr. _____ and Mr. _____ , formerly worked for the plaintiffs in the _____ fishery themselves.

May I have just one more moment?

Judge _____ : Yes.

Mr. X _____ : May it please the Court, we have one further stipulation, bearing on the same subject matter, which is that Mr. _____ , if asked, would testify that a full boatload of fish, average boat size, on today's market is worth about $_____ and that even with the refrigerated equipment available on the boats today that _____ fish would begin to deteriorate, begin to spoil, after about a week.

Judge _____ : All right, sir.

Mr. A _____ , do you have any disagreement with that?

Mr. A _____ : We would agree that he would testify to that; yes, sir.

Judge _____ : All right.

Mr. A _____ : We would like, for the purposes of the information of the Court, to clarify that Mr. _____ , the defendant, is Chairman of the _____ , and that weights upon his inability to be here, your Honor.

Judge _____ : There is no question that as much as $10,000, and more is involved in this case, is there?

Mr. X _____ : I don't think so, your Honor.

Mr. A _____ : No, sir.

This is with regard to the appropriateness of an injunctive relief. That's why we intended to introduce this evidence.

During the course of a civil lawsuit, criminal proceeding, or any other type of litigation, the opposing attorneys may come to an agreement about certain facts and issues. Such an agreement is called a stipulation. Courts look with favor on stipulations because they save time and simplify the matters that must be resolved. Stipulations are voluntary, however, and courts may not require litigants to stipulate with the other side. A valid stipulation is binding only on the parties who agree to it. Courts are usually bound by valid stipulations and are required to enforce them.

Parties may stipulate to any matter concerning the rights or obligations of the parties. The litigants cannot, however, stipulate as to the validity or constitutionality of a statute or as to what the law is, because such issues must be determined by the court.

Stipulations may cover a variety of matters. Parties are permitted to make stipulations to dismiss or discontinue an action, to prescribe the issues to be tried, or to admit, exclude, or withdraw evidence. During a court proceeding, attorneys often stipulate to allow copies of papers to be admitted into evidence in lieu of originals or to agree to the qualifications of a witness. The parties can also enter into agreements concerning the testimony an absent witness would give if he were present, and the stipulated facts can be used in evidence. Such evidentiary devices are used to simplify and

expedite trials by dispensing with the need to prove uncontested factual issues.

Generally, parties to an action can stipulate as to an agreed statement of facts on which to submit their case to the court. Stipulations of this nature are encouraged by the courts. A number of other stipulations have been held to be valid, including those that relate to attorneys' fees and costs.

A stipulation does not need to be in a particular form, provided it is definite and certain. A number of statutes and court rules provide that stipulations reached out of court must be in writing to prevent fraudulent claims of oral stipulation, circumvent disputes concerning the terms of the stipulation, and relieve the court of the burden of resolving such disputes. Though an oral stipulation in open court is binding, a stipulation made in the judge's chamber must be in writing.

STOCK

A security issued by a corporation that represents an ownership right in the assets of the corporation and a right to a proportionate share of profits after payment of corporate liabilities and obligations.

Shares of stock are reflected in written instruments known as stock certificates. Each share represents a standard unit of ownership in a corporation. Stock differs from consumer goods in that it is not used or consumed; it does not have any intrinsic value but merely represents a right in something else. Nevertheless, a stockholder is a real owner of a corporation's property, which is held in the name of the corporation for the benefit of all its stockholders. An owner of stock generally has the right to participate in the management of the corporation, usually through regularly scheduled stockholders' (or shareholders') meetings. Stocks differ from other SECURITIES such as notes and bonds, which are corporate obligations that do not represent an ownership interest in the corporation.

The value of a share of stock depends upon the issuing corporation's value, profitability, and future prospects. The market price reflects what purchasers are willing to pay based on their evaluation of the company's prospects.

Two main categories of stock exist: common and preferred. An owner of common stock is typically entitled to participate and vote at stockholders' meetings. In addition to common stock, some corporate bylaws or charters allow for the issuance of preferred stock. If a corporation does not issue preferred stock, all of its stock is common stock, entitling all holders to an equal pro rata division of profits or net earnings, should the corporation choose to distribute the earnings as dividends. Preferred stockholders are usually entitled to priority over holders of common stock should a corporation liquidate.

Preferred stocks receive priority over common stock with respect to the payment of dividends. Holders of preferred stock are entitled to receive dividends at a fixed annual rate before any dividend is paid to the holders of common stock. If the earnings to pay a dividend are more than sufficient to meet the fixed annual dividend for preferred stock, then the remainder of the earnings will be distributed to holders of common stock. If the corporate earnings are insufficient, common stockholders will not receive a dividend. In the alternative, a remainder may be distributed pro rata to both preferred and common classes of the stock. In such a case, the preferred stock is said to "participate" with the common stock.

A preferred stock dividend may be cumulative or noncumulative. In the case of cumulative preferred stock, an unpaid dividend becomes a charge upon the profits of the next and succeeding years. These accumulated and unpaid dividends must be paid to preferred stockholders before common stockholders receive any dividends. Noncumulative preferred stock means that a corporation's failure to earn or pay a dividend in any given year extinguishes the obligation, and no debit is made against the succeeding years' surpluses.

Par value is the face or stated value of a share of stock. In the case of common stocks, par value usually does not correspond to the market value of a stock, and a stated par value is of little significance. Par is important with respect to preferred stock, however, because it often signifies the dollar value upon which dividends are figured. Stocks without an assigned stated value are called no par. Some states have eliminated the concept of par value.

Blue chip stocks are stocks traded on a securities exchange (listed stock) that have minimum risk due to the corporation's financial record. Listed stock means a company has filed an application and registration statement with both the SECURITIES AND EXCHANGE COMMISSION and a securities exchange. The registration

statement contains detailed information about the company to aid the public in evaluating the stock's potential. Floating stock is stock on the open market not yet purchased by the public. Growth stock is stock purchased for its perceived potential to appreciate in value, rather than for its dividend income. Penny stocks are highly speculative stocks that usually cost under a dollar per share.

CROSS-REFERENCES

Securities; Stock Market.

STOCK DIVIDEND

A corporate distribution to shareholders declared out of profits, at the discretion of the directors of the corporation, which is paid in the form of shares of stock, as opposed to money, and increases the number of shares.

When a corporation declares a stock dividend, it adds undivided profits, which cannot be used to pay dividends, to the capital invested in the corporation, to reflect the additional shares it is issuing. The stockholder's increased number of shares represent the same proportion of the value of the company as the stockholder originally held (that is, the stockholder owns the same percentage of the corporation as prior to the declaration of the stock dividend); however, the cash value of an individual share is not reduced.

Shares issued as stock dividends are evidence that additional assets have been added to the capital. The value of the shares of a corporation often, but not always, increases following a stock dividend. A stock dividend is actually a part of corporation bookkeeping.

A stock split is different from a stock dividend in that no adjustment is made to the capital; instead, the number of shares representing the capital increase. The cash value of an individual share, therefore, decreases in proportion to the size of the stock split.

STOCK MARKET

The various organized stock exchanges and over-the-counter markets.

The trading of SECURITIES such as stocks and bonds is conducted in stock exchanges, which are grouped under the general term *stock market.* The stock market is an important institution for capitalist countries because it encourages investment in corporate securities, providing capital for new businesses and income for investors. In the 1990s large numbers of ordinary persons came to own stock through PENSION funds, deferred employee savings plans, investment clubs, or mutual funds.

The trading of stocks on the stock market involves millions of shares per day and has a direct effect on the U.S. economy. As a result, the stock market is closely regulated by the federal government.

AP/WIDE WORLD PHOTOS

The New York Stock Exchange is the oldest (formed in 1792) and largest stock exchange in the United States, but other exchanges operate in many major U.S. cities. The activities of the stock market are closely monitored by the federal SECURITIES AND EXCHANGE COMMISSION to prevent the manipulation of stock prices and other activities that lessen investor confidence.

Stock exchanges are private organizations with a limited number of members. Stock brokerage houses generally cannot purchase seats on an exchange. Instead, a member of the firm holds a seat personally. In some cases several partners of a brokerage house will be members of an exchange. The price of a seat fluctuates depending on the state of the economy, but seats on the New York Stock Exchange have sold for more than $1 million.

Some exchange members are specialists in particular types of securities, while others act as agents for other brokers. A small number of brokers who pay an annual fee but are not members also have access to the trading floor.

A stock exchange is essentially a marketplace for stocks and bonds, with stockbrokers earning

small commissions on each transaction they make. Stocks that are handled by one or more stock exchanges are called listed stocks. For a corporation's stock to be listed on an exchange, the company must meet certain exchange requirements. Each exchange has its own criteria and standards, but in general a company must show that it has sufficient capital and is in sound financial condition. Once a company is listed, trading in its stock will be suspended if the company's financial condition deteriorates to the point that it no longer meets the exchange's minimum requirements.

When individuals wish to purchase a stock, they place an order with a brokerage house. The BROKER gets a quotation or price and sends the order to the firm's representative on the floor of the stock exchange. The representative negotiates the sale and notifies the brokerage house. Transactions happen rapidly, and each one is recorded on a computer system and sent immediately to an electronic ticker that displays stock information on a screen. At one time this information was generally only available at stock brokerage houses, but the daily stock ticker is now available on television and through the INTERNET.

New York Stock Exchange transactions may be made in three ways. A cash transaction requires payment and delivery of the stock on the day of purchase. A regular transaction requires payment and delivery of the stock by noon on the third day following a full business day. Around 95 percent of stock is purchased under these terms. Finally, purchase can be made through a seller's option contract, which requires payment and delivery of the stock within any specified time not exceeding 60 days, though seven days is the most common period.

All transactions not made in the stock exchanges take place in over-the-counter (OTC) trading. An OTC transaction is not an auction on the stock exchange floor but a negotiation between a seller and a buyer. Most sales of bonds occur in OTC trading as do most new issues of securities. In the 1980s discount OTC brokerage firms appeared, offering lower commissions on stock transactions for investors who were willing to do more research on their own. By the 1990s these firms had proliferated.

Dealers in OTC trading are not confined just to large cities, as are stock exchanges, but can be found in many locations throughout the United States. In 1971 these firms were linked to an electronic communications system and became the National Association of Securities Dealers Automated Quotations (NASDAQ). By the 1990s NASDAQ had become the second largest U.S. stock market.

During the late 1990s, a number of investors began engaging in a process called "day trading," whereby investors would purchase stock shares and then attempt to sell them quickly thereafter when the prices rose. The phenomenon corresponded with the development of stock trading over the Internet, which allowed individuals to trade stocks through their computers without the need for a stockbroker. Many individuals who traded over the Internet also engaged in day trading. Although day trading has some potential for success, analysts have warned that investments take time to develop in order to be successful. Sta-

Dow Jones Performance After Major U.S. National Security Events

Event	Date	% Change for Day[a]	6-Months Later	1-Year Later
Terrorist Attack	09/11/01	−7.12%	10.47%	−10.66%
Oklahoma Bombing	04/19/95	0.68%	14.92%	32.46%
WTC Bombing	02/26/93	0.17%	8.41%	14.07%
Operation Desert Storm	01/16/91	4.57%	18.73%	30.14%
Panama & Noriega	12/15/89	−1.53%	7.17%	−5.32%
Reagan Shot	03/30/81	−0.26%	−14.56%	−17.12%
Vietnam Conflict	02/26/65	−0.41%	−0.81%	5.48%
Kennedy Assassination	11/22/63	−2.89%	12.04%	21.58%
Sputnik Launched	10/04/57	−2.01%	−4.59%	15.60%
Korean War	06/25/50	−4.65%	2.36%	9.34%
Pearl Harbor	12/07/41	−3.50%	−9.48%	−1.37%
Lusitania Sinks	05/07/15	−4.54%	36.01%	32.75%

[a]If the event occurred after the U.S. market closed or on a non-trading day, the % change for day reflects the next trading day's activity.

SOURCE: Dow Jones web page.

tistics showed that only 10 percent of day traders maintained profitable results, and by the early 2000s, it had become clear that this type of trading would likely result in losses for investors.

The health of the U.S. economy is typically measured by the stock market. When stock prices rise and there is a "bull market," U.S. business is assumed to be doing well. When stock prices fall and there is a "bear market," a downturn in business and the economy is assumed.

The stock market suffered through the early 2000s as a number of major events caused the U.S. economy to take a sharp downturn. The SEPTEMBER 11TH TERRORIST ATTACKS in 2001 caused the New York Stock Exchange (NYSE) to close for a period of six days, the longest closing since 1933. On Monday, September 17, the Dow Jones Industrial Average suffered its greatest point loss in history after the NYSE reopened following the attacks. The U.S. economy slumped after the attacks, and the stock market continued to struggle through much of 2003.

Scandals involving major U.S. corporations had a similarly crippling effect on the stock market. Several large companies were found to have misstated their earnings through faulty or fraudulent accounting practices. In many of these cases, the companies overstated their profits, misleading their investors. Companies involved in such scandals included Enron Corporation, WorldCom, Adelphia, and Xerox. The scandal involving Enron also led to the conviction of accounting firm Arthur Andersen, L.L.P. for obstructing justice when the firm admitted to destroying thousands of Enron documents.

The scandals have led to widespread mistrust of the U.S. corporate world. The SEC issued new rules during 2002 and 2003 regarding accounting practices and conflicts of interest among corporate officers in response to the scandals. The rules were designed to regain the trust of the public and investors following the scandals, but the stock market continued to fluctuate throughout much of 2003.

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CROSS-REFERENCES

Common Stock; Preferred Stock.

STOCK WARRANT

A certificate issued by a corporation that entitles the person holding it to buy a certain amount of stock in the corporation, usually at a specified time and price.

A stock warrant differs from a stock option only in that an option is offered to employees and a warrant to the general public. A warrant gives the person holding it a right to subscribe to capital stock.

STOCKHOLDER'S DERIVATIVE SUIT

A legal action in which a shareholder of a corporation sues in the name of the corporation to enforce or defend a legal right because the corporation itself refuses to sue.

A stockholder's derivative suit is a type of litigation brought by one or more shareholders to remedy or prevent a wrong to the corporation. In a derivative suit, the plaintiff shareholders do not sue on a CAUSE OF ACTION belonging to themselves as individuals. Instead, they sue in a representative capacity on a cause of action that belongs to the corporation but that for some reason the corporation is unwilling to pursue. The real party in interest is the corporation, and the shareholders are suing on its behalf. Most often, the actions of the corporation's executives are at issue. For example, a shareholder could bring a derivative suit against an executive who allegedly used the corporation's assets for personal gain.

A derivative suit is different from a direct suit brought by a shareholder to enforce a claim based on the shareholder's ownership of shares. These direct suits involve contractual or statutory rights of the shareholders, the shares themselves, or rights relating to the ownership of shares. Such direct suits include actions to recover dividends and to examine corporate books and records.

The principal justification for permitting derivative suits is that they provide a means for shareholders to enforce claims of the corporation against managing officers and directors of the corporation. Officers and directors, who are in control of the corporation, are unlikely to authorize the corporation to bring suit against themselves. A derivative suit permits a shareholder to prosecute these claims in the name of

the corporation. Other justifications for derivative litigation are that it prevents multiple lawsuits, ensures that all injured shareholders will benefit proportionally from the recovery, and protects creditors and preferred shareholders against diversion of corporate assets directly to shareholders.

In a derivative suit, the shareholder is the nominal plaintiff, and the corporation is a nominal defendant, even though the corporation usually recovers if the shareholder prevails. Nevertheless, derivative litigation is essentially three-sided because the defendants include the persons who are alleged to have caused harm to the corporation or who have personally profited from corporate action. The claim of wrongdoing against these defendants is the central issue in a derivative suit, and the interest of the corporation is usually adverse to these defendants. Thus, individual defendants are usually represented by attorneys other than the attorneys for the corporation. The corporation may play different roles in a derivative suit. It may be an active party in the litigation, be entirely passive, or side with the individual defendants and argue that their conduct did not harm the corporation.

Generally, the plaintiff shareholder is not required to have a large financial stake in the litigation. As a result, the plaintiff's attorney is often the principal mover in filing a derivative suit; the attorney locates a possible derivative claim and then finds an eligible shareholder to serve as plaintiff. Consequently the attorney may have a much more direct and substantial financial interest in the case and its outcome than the plaintiff shareholder who is a purely nominal participant in the litigation. Because most derivative suits are taken on a CONTINGENT FEE basis, the plaintiff's attorney will receive compensation only on the successful prosecution of the suit or by its settlement. Such a recovery is justified on the theory that it encourages meritorious shareholder suits.

Most derivative suits are settled and thus do not go to trial and appeal. The lead attorney for the plaintiff usually determines whether a proposed settlement is acceptable. The fee to be paid to the lead attorney is usually negotiated as part of the overall settlement of a derivative suit. All aspects of the settlement are subject to JUDICIAL REVIEW and approval, however.

Derivative suits have proved controversial. Corporations complain that most litigation is brought at the behest of entrepreneurial attorneys who first find a potential violation and then find a shareholder qualified to maintain the derivative suit. Critics charge that the objective of these suits is to obtain a settlement with the principal defendants and the corporation that provides the attorney with a generous fee. In return for the attorney's fee, the plaintiff "goes away."

Derivative suits involve shareholder enforcement of corporate obligations, which may intrude on the traditional management powers of the board of directors. Since the 1980s boards of directors have had considerable success in reasserting control over derivative litigation.

States have enacted laws that put a financial roadblock in the way of derivative actions. A minority of states require that the plaintiff make a demand on the shareholders, which is very expensive, before a derivative suit is filed. The shareholder demand requirement may be excused if the plaintiff can show adequate reasons for not making the effort. Many states require certain plaintiff shareholders in derivative suits to give the corporation security for reasonable expenses, including attorneys' fees, that the corporation or other defendants may incur in connection with the lawsuit. Despite these efforts to restrain derivative actions, they have not prevented the filing of doubtful claims by attorneys seeking a quick settlement.

Almost all states require the plaintiff to allege and prove that he first made a GOOD FAITH effort to obtain action by the corporation before filing a derivative suit. This good faith demand requirement is contained in state corporation laws and rules of court. A typical provision is Rule 23.1 of the Federal Rules of Procedure, which states that the plaintiff's complaint must "allege with particularity the efforts, if any, made by the plaintiff to obtain the action he or she desires from the board of directors or comparable authority and the reasons for his or her failure to obtain the action or for not making the effort."

Plaintiffs have generally not made these demands, however, and have instead sought to convince the court that there were good reasons for not doing so. Much of this reluctance to make a demand can be traced to changes in the corporate law of Delaware in the 1980s. Delaware, which is the principal state of incorporation for the vast majority of publicly held corporations, empowers a corporation to appoint a litigation committee from its board of

directors to review shareholder demands. If the litigation committee finds no merit in a demand, it can decide that the suit should not be pursued, and the court must accept the committee's decision and dismiss the case. The development of the litigation committee has expedited the disposition of many doubtful derivative claims and possibly some meritorious ones as well.

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CROSS-REFERENCES

Derivative Action.

Harlan Fiske Stone.
PHOTOGRAPH BY HARRIS & EWING. COLLECTION OF U.S. SUPREME COURT

STOMACH PUMPING CASE

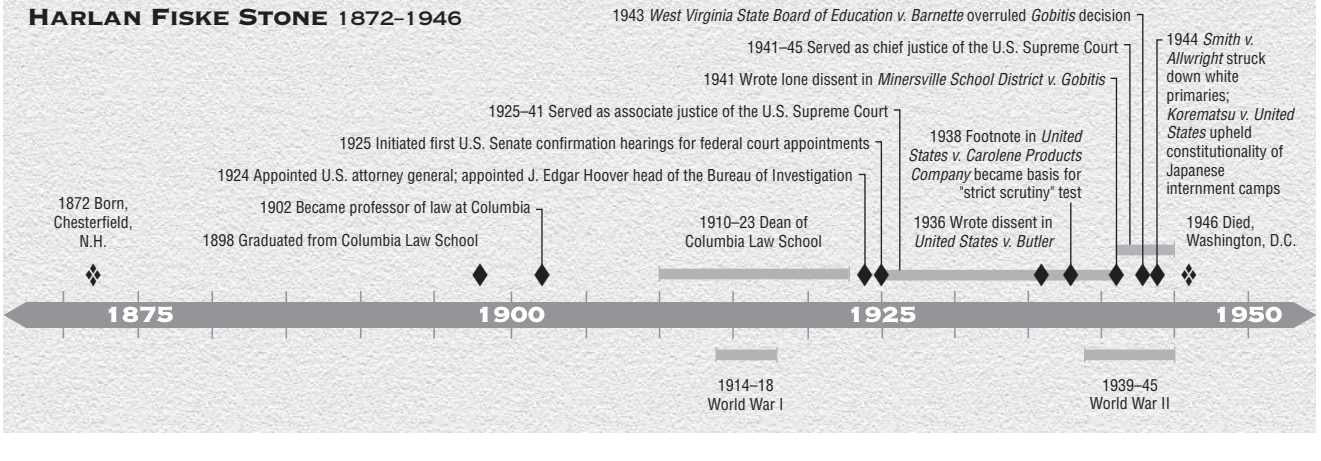
See ROCHIN V. CALIFORNIA.

♦ STONE, HARLAN FISKE

Harlan Fiske Stone served as associate justice of the U.S. Supreme Court from 1925 to 1941 and as chief justice from 1941 to 1946. A believer in judicial restraint, he was also a defender of CIVIL RIGHTS and civil liberties. Stone was often a lone dissenter in the 1920s and 1930s when conservatives, who dominated the Court, struck down state and federal legislation that sought to regulate business and working conditions.

Stone was born on October 11, 1872, in Chesterfield, New Hampshire. He graduated from Amherst College in 1894 and Columbia Law School in 1898. Admitted to the New York bar the year of his graduation, Stone became a member of a prominent New York City law firm. He was also a part-time instructor at Columbia Law School from 1899 to 1902. In 1902 Stone left his law firm to become a professor of law at Columbia. From 1910 to 1923 he was dean of the law school. He resigned in 1924 to join Sullivan and Cromwell, the most prestigious law firm in New York City.

In 1924 President CALVIN COOLIDGE appointed Stone attorney general. The JUSTICE DEPARTMENT had been tarnished by the TEAPOT DOME SCANDAL during the administration of



Coolidge's predecessor, President WARREN G. HARDING. In addition, the Bureau of Investigation (BI), the forerunner of the FEDERAL BUREAU OF INVESTIGATION (FBI), had become a home to political cronyism and corruption. Stone appointed J. EDGAR HOOVER to head the BI and institute wide-ranging reforms. Stone's administration of the Department of Justice drew praise from Congress and President Coolidge.

Coolidge nominated Stone to the Supreme Court in 1925. Some senators were fearful that Stone's Wall Street connections would cause him to favor business interests. Responding to these concerns, Stone proposed that he appear before the SENATE JUDICIARY COMMITTEE to answer questions. The committee accepted, thereby creating the now-traditional confirmation process used for federal court appointments. Stone was easily confirmed.

"THE LAW [SHOULD NOT BE SEEN AS] A HERMETICALLY SEALED COMPARTMENT OF SOCIAL SCIENCE, TO BE EXPLORED AND ITS PRINCIPLES FORMULATED WITHOUT REFERENCE TO THOSE SOCIAL AND ECONOMIC FORCES WHICH CALL LAW INTO EXISTENCE."
—HARLAN FISKE STONE

In the 1920s the Court was dominated by conservative justices who struck down many state and federal laws that sought to regulate labor, business, commerce, and working conditions. Stone dissented from these decisions, arguing that the Court should exercise judicial restraint and allow Congress and state legislatures to craft laws that address pressing social and economic problems.

With the election of President FRANKLIN D. ROOSEVELT in 1932, the Supreme Court's hostility to government regulation drew even greater attention as it declared unconstitutional a host of NEW DEAL economic reforms. Stone wrote a biting dissent in the case of *United States v. Butler,* 297 U.S. 1, 56 S. Ct. 312, 80 L. Ed. 477 (1936), which involved a processing tax paid by farmers to fund subsidies paid to eligible farmers under Roosevelt's Agricultural Adjustment Act. The act was declared unconstitutional because all farmers were taxed but only specific farmers received benefits. Stone argued that the subsidies were valid.

Although Stone was a Republican and President Roosevelt a Democrat, Roosevelt appointed Stone chief justice in 1941. Stone's tenure as chief justice was marked by bitter fighting among the justices, which has been blamed partly on Stone's inability to negotiate and build a consensus.

Stone's commitment to civil liberties was demonstrated in *Minersville School District v. Gobitis,* 310 U.S. 586, 60 S. Ct. 1010, 84 L. Ed. 1375 (1940). He was the lone dissenter when the Court upheld a state law that required Jehovah's Witnesses to salute the flag, even though this conflicted with their religious beliefs. Stone argued that the law infringed on the FIRST AMENDMENT right to the free exercise of religion. Three years later his view was endorsed by the Court in *West Virginia State Board of Education v. Barnette,* 319 U.S. 624, 63 S. Ct. 1178, 87 L. Ed. 1628 (1943), when it overruled *Gobitis.*

In the area of civil rights, Stone helped move the Court from tacit acceptance of the racially discriminatory status quo in the southern states to a more aggressive stance. In *United States v. Classic,* 313 U.S. 299, 61 S. Ct. 1031, 85 L. Ed. 1368 (1941), the Court ruled that the federal government could regulate party primaries to prevent election FRAUD that resulted in the failure to count African American votes. Three years later the Court struck down the WHITE PRIMARY, which excluded African Americans from southern Democratic parties and Democratic primary elections (*Smith v. Allwright,* 321 U.S. 649, 64 S. Ct. 757, 88 L. Ed. 987 [1944]). Stone played a pivotal role in deciding these cases.

Stone contributed to modern constitutional analysis in a famous footnote to his opinion in *United States v. Carolene Products Company,* 304 U.S. 144, 58 S. Ct. 778, 82 L. Ed. 1234 (1938). Known as FOOTNOTE FOUR, it stated that "prejudice against discrete and insular minorities may be a special condition, which tends seriously to curtail the operation of those political processes ordinarily to be relied upon to protect minorities and which may call for a more searching judicial scrutiny." This footnote became the basis for the "strict scrutiny" test, which the Court applies to assess the constitutionality of legislation concerning the rights of racial minorities, religious sects, ALIENS, prisoners, and other "discrete and insular minorities." Under STRICT SCRUTINY the government must demonstrate more than just a rational basis for legislation. It must show a compelling state interest and prove that the legislation is narrowly tailored to meet that interest.

Stone's tenure, however, was not unblemished. In KOREMATSU V. UNITED STATES, 323 U.S. 214, 65 S. Ct. 193, 89 L. Ed. 194 (1944), he upheld the forced relocation of Japanese Americans to detention camps during WORLD WAR II. The decision was based on the wartime powers of the president to take emergency actions for national security reasons.

Stone died on April 22, 1946, in Washington, D.C.

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Footnote 4; Japanese American Evacuation Cases.

♦ STONE, LUCY

Lucy Stone was one of the first leaders of the WOMEN'S RIGHTS movement in the United States. A noted lecturer and writer, Stone spent most of her life working for women's suffrage. She is also believed to be the first married woman in the United States to keep her maiden name.

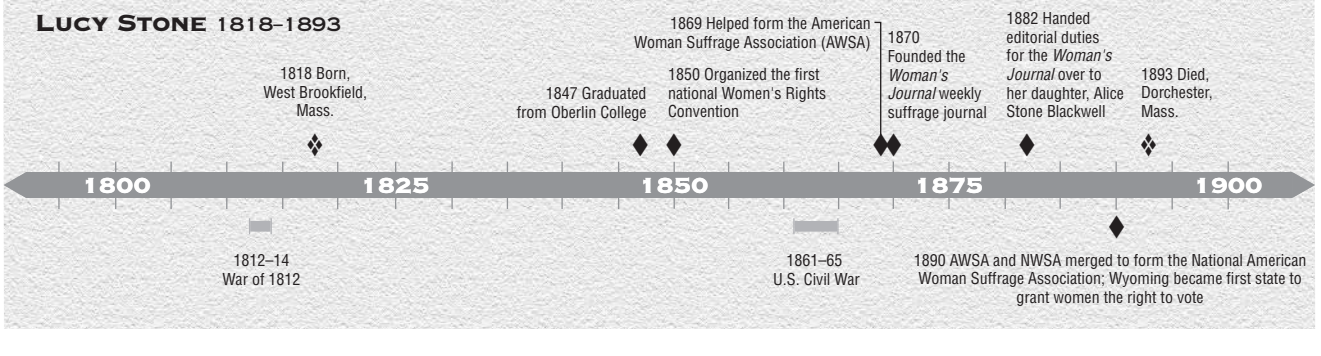
Stone was born on August 13, 1818, in West Brookfield, Massachusetts. Determined to attend college, she went to work as a teacher at the age of sixteen to earn money for the tuition. Nine years later she entered Oberlin College, the first coeducational college in the United States. While at Oberlin she formed the first women's college debating society. Stone was a fiery and forceful orator.

After graduating in 1847, Stone became a lecturer for the Massachusetts Anti-Slavery Society, one of the leading abolitionist organizations of its time. Stone became convinced that parallels existed between the positions of women and slaves. In her view both were expected to be passive, cooperative, and obedient. In addition, the legal status of both slaves and women was inferior to that of white men. Stone persuaded the society to allow her to spend part of her time speaking on the topic of women's rights. In 1850 she organized the first national Women's Rights Convention in Worcester, Massachusetts.

Lucy Stone.
LIBRARY OF CONGRESS

In 1855 Stone married Henry B. Blackwell, an Ohio merchant and abolitionist. The couple entered into the marriage "under protest"; at their wedding they read and signed a document explicitly protesting the legal rights that were given to a husband over his wife. They omitted the word "obey" from the marriage vows and promised to treat each other equally. Stone also announced that she would not take her husband's name and would be addressed instead as Mrs. Stone. This action drew national attention,

"THE FLOUR-MERCHANT . . . AND THE POSTMAN CHARGE US NO LESS ON ACCOUNT OF OUR SEX, BUT WHEN WE ENDEAVOR TO EARN MONEY TO PAY ALL THESE, THEN, INDEED, WE FIND THE DIFFERENCE."
—LUCY STONE



and women who retained their maiden names were soon known as "Lucy Stoners."

After the Civil War Stone and Blackwell shifted their energies to women's suffrage. Although Stone was in agreement with ELIZABETH CADY STANTON and SUSAN B. ANTHONY on the goal of women's suffrage, she differed as to the best way to secure the vote for women. In 1869 Stone helped form the American Woman Suffrage Association (AWSA). The AWSA worked for women's suffrage on a state by state basis, seeking amendments to state constitutions. Stanton and Anthony established a rival organization, the National Woman Suffrage Association (NWSA), that sought an amendment to the U.S. Constitution similar to the FIFTEENTH AMENDMENT that gave nonwhite men the right to vote. Whereas the AWSA concentrated on women's suffrage, the NWSA took a broader approach, LOBBYING for improvements in the legal status of women in areas such as FAMILY LAW as well as for suffrage.

Stone also helped found the *Woman's Journal,* a weekly suffrage journal, in 1870. She edited the journal for many years, eventually turning the task over to her daughter, Alice Stone Blackwell, in 1882. As editor, Stone focused on the AWSA's goal of suffrage.

In 1890 the AWSA and the NWSA merged into the National American Woman Suffrage Association (NAWSA). Stone became the chair of the executive committee, and Stanton served as the first president. In that same year, Wyoming became the first state to meet Stone's goal as it entered the Union with a constitution that gave women the right to vote.

Stone died on October 19, 1893, in Dorchester, Massachusetts.

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CROSS-REFERENCES

Nineteenth Amendment.

STOP AND FRISK

The situation in which a police officer who is suspicious of an individual detains the person and runs his hands lightly over the suspect's outer garments to determine if the person is carrying a concealed weapon.

One of the most controversial police procedures is the *stop and frisk* search. This type of limited search occurs when police confront a suspicious person in an effort to prevent a crime from taking place. The police frisk (pat down) the person for weapons and question the person.

A stop is different from an arrest. An arrest is a lengthy process in which the suspect is taken to the police station and booked, whereas a stop involves only a temporary interference with a person's liberty. If the officer uncovers further evidence during the frisk, the stop may lead to an actual arrest, but if no further evidence is found, the person is released.

Unlike a full search, a frisk is generally limited to a patting down of the outer clothing. If the officer feels what seems to be a weapon, the officer may then reach inside the person's clothing. If no weapon is felt, the search may not intrude further than the outer clothing.

Though police had long followed the practice of stop and frisk, it was not until 1968 that the Supreme Court evaluated it under the Fourth Amendment's protection against unreasonable searches and seizures. Under FOURTH AMENDMENT case law, a constitutional SEARCH AND SEIZURE must be based on PROBABLE CAUSE. A stop and frisk was usually conducted on the basis of reasonable suspicion, a somewhat lower standard than probable cause.

In 1968 the Supreme Court addressed the issue in TERRY V. OHIO, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889. In *Terry* an experienced plainclothes officer observed three men acting suspiciously; they were walking back and forth on a street and peering into a particular store window. The officer concluded that the men were preparing to rob a nearby store and approached them. He identified himself as a police officer and asked for their names. Unsatisfied with their responses, he then subjected one of the men to a frisk, which produced a gun for which the suspect had no permit. In this case the officer did not have a warrant nor did he have probable cause. He did suspect that the men were "casing" the store and planning a ROBBERY. The defendants argued the search was unreasonable under the Fourth Amendment because it was not supported by probable cause.

The Supreme Court rejected the defendants' arguments. The Court noted that stops and frisks are considerably less intrusive than full-blown arrests and searches. It also observed that

the interests in crime prevention and in police safety require that the police have some leeway to act before full probable cause has developed. The Fourth Amendment's reasonableness requirement is sufficiently flexible to permit an officer to investigate the situation.

The Court was also concerned that requiring probable cause for a frisk would put an officer in unwarranted danger during the investigation. The "sole justification" for a frisk, said the Court, is the "protection of the police officer and others nearby." Because of this narrow scope, a frisk must be "reasonably designed to discover guns, knives, clubs, or other hidden instruments for the assault of the police officer." As long as an officer has reasonable suspicion, a stop and frisk is constitutional under the Fourth Amendment.

After *Terry* this type of police encounter became known as a "*Terry* stop" or an "investigatory detention." Police may stop and question suspicious persons, pat them down for weapons, and even subject them to nonintrusive search procedures such as the use of metal detectors and drug-sniffing dogs. While a suspect is detained, a computer search can be performed to see if the suspect is wanted for crimes. If so, he or she may be arrested and searched incident to that arrest.

Investigatory detention became an important law enforcement technique in the 1980s as police sought to curtail the trafficking of illegal drugs. In *United States v. Sokolow,* 490 U.S. 1, 109 S. Ct. 1581, 104 L. Ed. 2d 1 (1989), the Supreme Court ruled that police have the power to detain, question, and investigate suspected drug couriers. The case involved a *Terry* stop at an international airport, during which the defendant aroused suspicion by conforming to a controversial "drug courier profile" developed by the Drug Enforcement Agency (DEA). The Court said that the DEA profile gave the officer reasonable suspicion, "which is more than a mere hunch but less than probable cause."

The Supreme Court has become increasingly permissive regarding what constitutes reasonable suspicion. In *Alabama v. White,* 496 U.S. 325, 110 S. Ct. 2412, 110 L. Ed. 2d 301 (1990), the Court upheld a *Terry* stop of an automobile based solely on an anonymous tip that described a certain car that would be at a specific location. Police went to the site, found the vehicle, and detained the driver. The police then found marijuana and cocaine in the automobile. The Court observed that it was a "close case" but concluded that the tip and its corroboration were sufficiently reliable to justify the investigatory stop that ultimately led to the arrest of the driver and the seizure of the drugs.

However, the Court retreated from this holding in *Florida v. J. L.*, 529 U.S. 266, 120 S.Ct. 1375, 146 L.Ed.2d 254 (U.S. 2000), in which it ruled that an anonymous tip identifying a person who is carrying a gun is not, without more reason, sufficient to justify a police officer's stop and frisk of that person. The U.S. Supreme Court concluded that the tip, stating that a young black male was standing at a particular bus stop, wearing a plaid shirt, and carrying a gun, lacked sufficient reliability to provide reasonable suspicion to make a Terry stop. After announcing its decision in *Florida v. J. L.,* the Court vacated two other state court decisions with similar fact patterns, one from Ohio (*Morrison v. Ohio*, 529 U.S. 1050, 120 S.Ct. 1552, 146 L.Ed.2d 457 [U.S. 2000]) and one from Wisconsin (*Williams v. Wisconsin*, 529 U.S. 1050, 120 S.Ct. 1552, 146 L.Ed.2d 457 U.S. [2000]).

In the Ohio case, the Ohio Court of Appeals upheld a Terry stop that was based on a phone call to the police from an anonymous informant who stated that there were two males walking westward on a particular avenue in a particular area and that one of the males was carrying a weapon in his pocket. According to the Ohio Court of Appeals, the Terry stop was supported by sufficient reasonable suspicion because significant aspects of the anonymous caller's predictions were verified. In the Wisconsin case, the Wisconsin Supreme Court ruled that the police had reasonable suspicion to conduct an investigatory stop based on an anonymous tip that individuals were dealing drugs from a vehicle parked within view of the tipster and their confirmation, within four minutes of the tip, of readily observable information offered by the tipster, even though the officers did not independently observe any suspicious activity. In *Florida v. J. L.*, however, the U.S. Supreme Court stated that an accurate description of a subject's readily observable location and attributes does not show that the tipster had knowledge of concealed criminal activity.

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CROSS-REFERENCES

Automobile Searches; Criminal Law; Drugs and Narcotics.

STOP ORDER

A direction by a customer to a stock BROKER, *directing the broker to wait until a stock reaches a particular price and then to complete the transaction by purchasing or selling shares of that stock.*

STOP PAYMENT ORDER

Revocation of a check; a notice made by a depositor to his or her bank directing the bank to refuse payment on a specific check drawn by the depositor.

An individual who writes a check can revoke it unless it has been certified, accepted, or paid. If a bank pays a check after a timely stop payment order by the depositor, the bank is usually liable to the depositor for the amount paid.

Stop Payment Letter

Send certified mail, with "Restricted Delivery" return receipt requested.

Date:_____(*write date here*)

_____ (*write name of person who wrote the check here*)

_____ (*write address of check writer here*)

Dear _____: (*write name of person who wrote the check here*)

_____ (*write your/payee's name here*) is the payee of a check you wrote for $_____ on _____ (*write amount of check and check date here*).

The check was not paid because you stopped payment, and I demand payment. You may have a good faith dispute about whether you owe the full amount. If you do not have a good faith dispute with me and fail to pay (1) the full amount of the check in cash, (2) a bank service charge of an amount not to exceed $25 for the first check written for which payment was stopped and an amount not to exceed $35 for each subsequent check written and then stopped before payment, and (3) the costs to mail this letter, within 30 days after this letter was mailed, you could be sued and held responsible to pay at least both of the following:

1. The amount of the check; and
2. Damages of at least $100 or, if higher, three times the amount of the check up to $1,500.

If the court determines that you do have a good faith dispute with me, you won't have to pay the service charge, triple damages, or mailing cost. If you stopped payment because you have a good faith dispute with me, you should try to work out your dispute with me. You can contact me at:_____ (*write your name here*)

_____ (*write your street address, city, state, and phone number here*)

You may wish to contact a lawyer to discuss your legal rights and responsibilities.

_____ (*sign your name*)

A sample record of a stop payment request

STOPPAGE IN TRANSIT

The right of a seller to prevent the delivery of goods to a buyer after such goods have been delivered to a common carrier for shipment.

CROSS-REFERENCES

Sales Law.

♦ STORY, JOSEPH

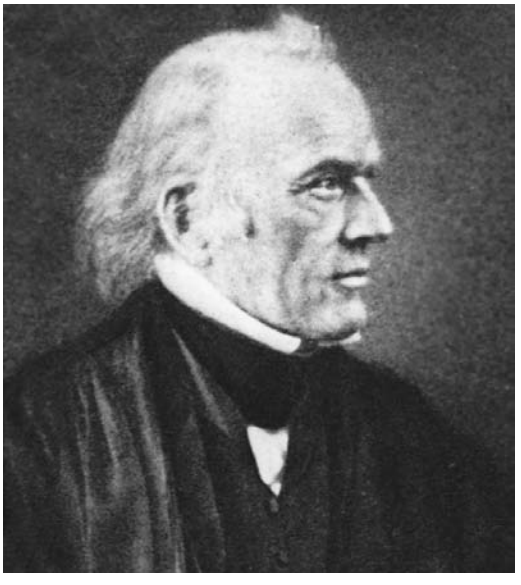
Joseph Story served as associate justice of the U.S. Supreme Court from 1811 to 1845. One of the towering figures in U.S. LEGAL HISTORY, Story shaped U.S. law both as a judge and as the author of a series of legal treatises. Some legal commentators believe Story's treatises were as influential in the development of nineteenth-century U.S. law as the works of the English jurists SIR WILLIAM BLACKSTONE and SIR EDWARD COKE had been earlier.

Story was born on September 18, 1779, in Marblehead, Massachusetts. He graduated from Harvard University in 1798 and read the law with Samuel Sewall. He established a practice in Salem, Massachusetts, in 1801 and quickly

developed an impressive professional career, becoming a director and eventually the president of the Merchant's Bank of Salem. He became a member of the DEMOCRATIC PARTY and was elected to the state legislature in 1805. He served part of a term in the U.S. House of Representatives from 1808 to 1809 and then returned to the state legislature in 1810. The following year he was elected speaker of the house.

In November 1811 President JAMES MADISON appointed Story, at the age of only thirty-two, to the U.S. Supreme Court. Madison hoped that Story would help move the Court in a more democratic direction, correcting the aristocratic tendencies of the federal bench, which had been dominated by the Federalists. In particular, Madison sought to check the influence of Chief Justice JOHN MARSHALL, whose nationalist philosophy led him to construe federal powers broadly. THOMAS JEFFERSON was opposed to the appointment, however, believing that Story did not subscribe to the Democratic party belief in according deference to state governments.

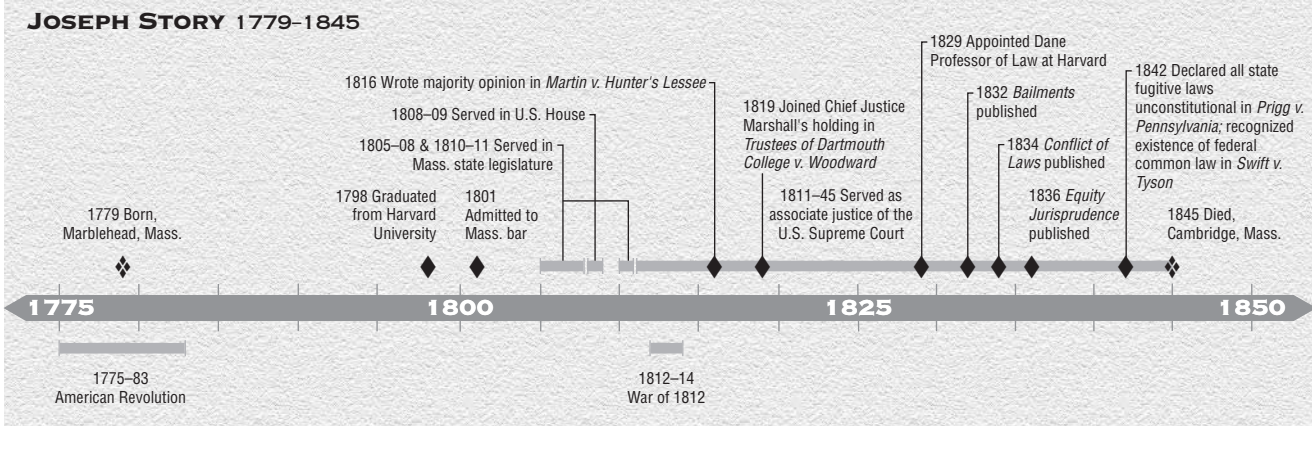
Jefferson proved to be correct as Story quickly revealed an inclination to accept most of Marshall's principles. In MARTIN V. HUNTER'S LESSEE, 14 U.S. 304, 4 L. Ed. 97 (1816), the U.S. Supreme Court reviewed a decision by the Virginia Supreme Court declaring a section of the federal JUDICIARY ACT OF 1789 unconstitutional. In his majority opinion, Story reversed the state supreme court and affirmed the Supreme Court's power to review the highest state courts in all civil cases involving the federal Constitution, statutes, and treaties. This decision was a key component of federal judicial power and antithetical to Jefferson's conception of state-federal relations.



Joseph Story.
LIBRARY OF CONGRESS

In TRUSTEES OF DARTMOUTH COLLEGE V. WOODWARD, 17 U.S. 518, 4 L. Ed. 629 (1819), Story joined in Chief Justice Marshall's holding that the grant of a corporate charter was a contract with the state. As the state had not reserved a power of amendment, the charter grantees were immune from destructive state interference. Story noted that this corporate IMMUNITY should be extended only to private, not public, corporations. In making this distinction, Story articulated for the first time that the public character of a corporation turned not on the services it performed but on the identity of the contributors of its capital. Thus, a corporation that was chartered to serve the public, such as a bank, would be considered a private corporation if it was owned by private individuals, and its charter could not be withdrawn or amended in the

"[THE LAW] IS A JEALOUS MISTRESS AND REQUIRES A LONG AND CONSTANT COURTSHIP. IT IS NOT TO BE WON BY TRIFLING FAVORS, BUT BY LAVISH HOMAGE."
—JOSEPH STORY



absence of a legislative reservation at the time of the original grant. This definition of private corporations by reference to their capitalization was critical to corporate development in the nineteenth century.

Story's most controversial decision came in PRIGG V. PENNSYLVANIA, 41 U.S. 539, 10 L. Ed. 1060 (1842), which involved the federal FUGITIVE SLAVE ACT OF 1793. Many northern states demonstrated their hostility to SLAVERY by enacting laws designed to frustrate southern slave owners who came north in search of runaway slaves. Slave owners were outraged at these laws and argued that the federal act gave them the right to reclaim their property without interference by state governments.

Story, writing for an 8–1 majority, declared unconstitutional all fugitive slave laws enacted by the states because the federal law provided the exclusive remedy for the return of runaway slaves. Story also ruled, however, that states were not compelled to enforce the federal fugitive slave provisions. It would be inconsistent and without legal basis, he reasoned, for the Court to declare the preeminence of federal law and then require state courts to help carry out that law.

Prigg was a crucial decision because it announced that slavery was a national issue that could not be disturbed by STATE ACTION. It angered many opponents of slavery and hurt Story's reputation in the north. Some state judges took Story's opinion to heart and refused to participate in federal fugitive slave proceedings.

Story's other major contribution on the Court was the development of "federal common law," which was first articulated in the 1842 CIVIL PROCEDURE case of SWIFT V. TYSON, 41 U.S. 1, 10 L. Ed. 865. The controversy arose on a technical question involving the negotiability of a commercial bill of exchange. New York and other states were divided over whether the bill was negotiable. Under the federal Judiciary Act of 1789, the federal courts were instructed to follow state laws when deciding cases between parties from two different states.

Story, who believed the negotiability of such bills was crucial to the development of a national commercial community, declared that the decisions of the New York courts—based not on legislative statutes but on interpretations of the common law—were not "laws" binding on federal judges. Common-law decisions were only "evidence" of the appropriate law. Story concluded that it was the duty of federal courts to examine evidence from all relevant state common-law jurisdictions before proclaiming the governing rule.

Story's opinion came to stand for the proposition that a general federal COMMON LAW existed that federal courts were free to apply in virtually all common-law matters of private law. The idea of federal common law promoted national uniformity but also constituted a revolutionary expansion of federal jurisdiction. The Supreme Court overruled this proposition in ERIE RAILROAD CO. V. TOMPKINS, 304 U.S. 64, 58 S. Ct. 817, 82 L. Ed. 1188 (1938), declaring that federal courts must apply the law of the state, whether it is statutory or case law.

Story's influence went beyond his court decisions. In 1829 he was appointed to be the first Dane Professor of Law at Harvard. He remained in this position the rest of his life while simultaneously serving on the Supreme Court and acting as president of the Salem bank.

The endowment that Nathan Dane had given to Harvard Law School also paid for the publication of Story's many legal commentaries and treatises, which summarized and codified various areas of the law. Story's works included *Bailments* (1832), *Bills of Exchange* (1843), *Conflict of Laws* (1834), *Equity Jurisprudence* (1836), *Equity Pleading* (1838), *Federal Constitution* (1833), and *Promissory Notes* (1845). They served as valuable reference works for lawyers, judges, and legislators and had a profound influence on the development of COMMERCIAL LAW in particular. Alexis de Tocqueville, the French author of *Democracy in America* (1835–1840), a classic analysis of U.S. society and government, used Story's constitutional commentaries in writing his work.

Story died on September 10, 1845, in Cambridge, Massachusetts.

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♦ STOUT, JUANITA KIDD

Juanita Kidd Stout was the first African American woman to be elected judge in the United States. Before her election to the Pennsylvania bench, Stout worked in the Philadelphia district

attorney's office. She later was appointed to the Pennsylvania Supreme Court, becoming the first African American woman to serve on that court.

Stout was born on March 7, 1919, in Wewoka, Oklahoma, the daughter of schoolteachers Henry Maynard Kidd and Mary Alice Kidd. She earned a bachelor's degree from the University of Iowa in 1939. At that time no accredited colleges in Oklahoma admitted African Americans. Between 1939 and 1942, Stout taught music in the high schools at Seminole and Sand Springs, Oklahoma. In 1942, she moved to Washington, D.C., and worked in a law office, which led to her decision to become a lawyer.

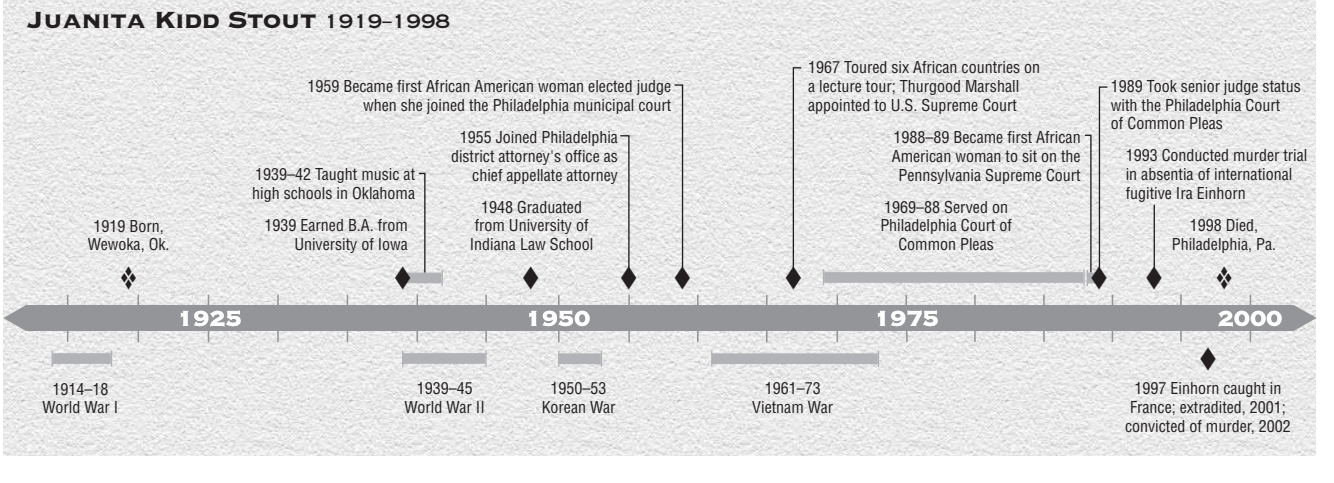
Stout graduated from the University of Indiana Law School in 1948. She taught at Florida A&M University in 1949 and Texas Southern University in 1950. In 1950, she became an administrative assistant to a federal appeals court judge in Philadelphia. She left this position in 1954 and went into private practice. In 1955, she joined the city's district attorney's office, serving as chief appellate attorney.

In September 1959, Governor David L. Lawrence appointed Stout a judge of the Philadelphia municipal court. Stout ran for a full term on the bench in November of that year and was elected, making her the first African American woman to be elected to a judgeship. In 1969, she was elected to the Philadelphia Court of Common Pleas and was reelected in 1979, both times receiving the highest number of votes of the Philadelphia Bar Association with respect to judicial qualifications.

During the 1960s, Stout gained national recognition for her vigorous fight against crime and juvenile delinquency. She wrote numerous articles about race, crime, and justice, and toured six African countries in 1967, lecturing at law schools, colleges, and high schools.

Juanita Kidd Stout.
AP/WIDE WORLD PHOTOS

In 1988, Stout was appointed to the Pennsylvania Supreme Court. Her tenure was brief, however, because an age limit specified by the state constitution forced her to retire one year later at age 70. Stout returned to the Philadelphia Court of Common Pleas to serve as a senior judge, where she continued to speak out on racial and gender bias in the courts. Over the years Stout gave numerous speeches and was the recipient of many awards. In 1988, she was chosen Justice of the Year by the National Association of Women



Judges. Stout died August 21, 1998, in Philadelphia, Pennsylvania.

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STOWE, HARRIET BEECHER

Harriet Beecher Stowe, author of one of America's most famous and popular books, helped to strengthen the ABOLITION movement by bringing white Americans and people around the world to the realization of the cruelties and misery endured by black slaves in the 1850s. Her book, *Uncle Tom's Cabin,* was one of the biggest sellers of the nineteenth century, second only to sales of the Bible. Since its publication, the book has never been out of print.

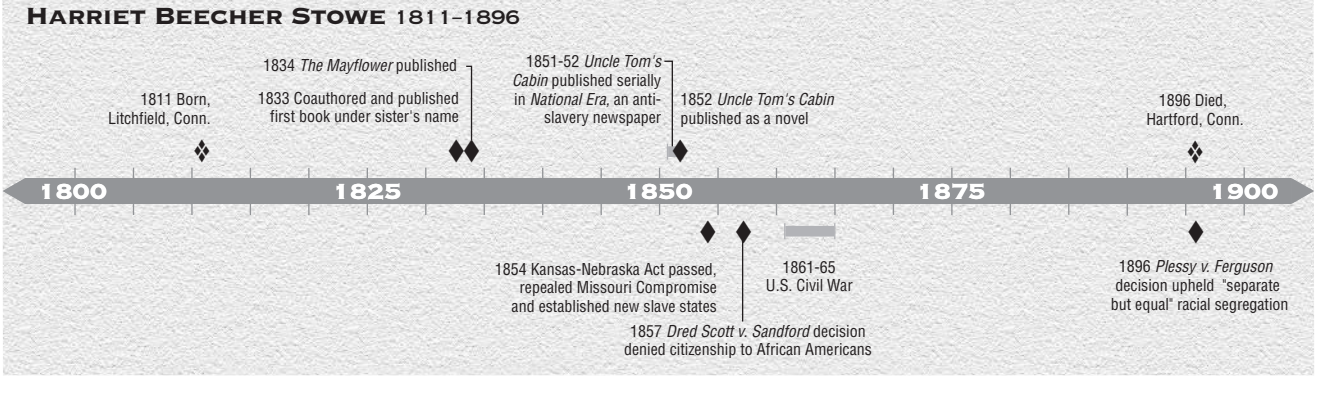
Stowe was born June 14, 1811, in Litchfield, Connecticut. She was the seventh child of prominent Congregationalist minister Lyman Beecher and his wife Roxana Foote Beecher, who died when Harriet was five. The Stowes grew up in an environment steeped in a Protestant tradition that demanded living a pious and moral life. Stowe's younger brother, HENRY WARD BEECHER, eventually became one of the country's most famous preachers and a major leader of the abolition movement. Her sister, Catharine, established several schools for young women throughout the United States.

"WOMEN ARE THE REAL ARCHITECTS OF SOCIETY."
—HARRIET BEECHER STOWE

Stowe attended Catharine's Hartford Female Seminary, one of the only schools open to young women at the time. She received an excellent education, and blossomed as a writer under her sister's tutelage. In 1832, she accompanied her sister and father to Cincinnati, Ohio, where Catharine opened another school and their father became president of Lane Theological Seminary. The following year, in 1833, Stowe coauthored and published her first book—a children's geography—under her sister's name.

Harriet Beecher Stowe. NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

In 1834, Harriet Beecher married widower Calvin Stowe, a poorly paid professor of biblical literature at Lane. During the first seven years of her marriage, Stowe bore five of the seven children they would ultimately have. In order to support their rapidly expanding family, she began writing magazine articles, essays, and other works. In 1843, Stowe published a collection of short stories called *The Mayflower.*



During the 18 years she lived in Cincinnati, Stowe became an observer of the conflicting worlds of abolitionism and SLAVERY. Across the Ohio River was the slave state of Kentucky. Stowe's family helped to hide runaway slaves. Her husband and brother aided one runaway by transporting her to the next station on the Underground Railroad, the name given to the system of guides and safe houses that enabled escaped Southern slaves to reach freedom and safety in Northern states and Canada. Stowe was engrossed by firsthand accounts and newspaper and magazine articles detailing the horrors of the slave trade and the terrifying incidents that took place as slaves tried to escape.

In 1850, Calvin Stowe got a teaching position at Bowdoin College and the Stowe family moved to Brunswick, Maine. It was there that Stowe penned most of her soon-to-be classic. In 1851–1852, *The National Era*, an antislavery paper based in Washington, D.C., published in serial form, Stowe's moving account of several members of a slave family and their desperate attempt to flee from a system that rendered them the property of white owners. Stowe's narrative struck an immediate chord. Despite the newspaper's small circulation, word of mouth and the passing of issues among neighbors immediately gave Stowe's tale a larger audience.

In March 1852, her story was published as *Uncle Tom's Cabin, or, Life Among the Lowly*. The book became an immediate best-seller with sales reaching 500,000 copies by 1857. With its dramatic narrative and heart-rending scenes of the slave Eliza fleeing across a frozen river with her small son in her arms to prevent him from being sold away from her, Stowe's book helped sway much of the public to support, or at least sympathize with, the abolitionist cause. While many Southerners criticized the book, Stowe's harrowing tale gained an increasingly wider audience. Stowe used her newfound renown to speak and write against slavery. In particular, she urged women to become active and to use their powers of persuasion to influence others on the subject.

Although none of her later writings had the impact of *Uncle Tom's Cabin,* Stowe continued to write numerous stories, essays, and articles. Between 1862 and 1884 she published almost one book per year. Stowe died on July 1, 1896, in Hartford, Connecticut.

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CROSS-REFERENCES

Abolition; Slavery.

STRADDLE

In the stock and commodity markets, a strategy in options contracts consisting of an equal number of put options and call options on the same underlying share, index, or commodity future.

A straddle is a type of option contract that gives the holder of the contract the option to either buy or sell or not buy or sell the SECURITIES or commodities specified in the contract. To understand how a straddle works, a basic understanding of options is required. An option is a type of contract used in the stock and commodity markets, in the leasing and sale of real estate, and in other areas where one party wants to acquire the legal right to buy or sell something from another party within a fixed period of time.

In the stock and commodity markets, options come in two primary forms, known as "calls" and "puts." A call gives the holder the option to buy stock or a commodities futures contract at a fixed price for a fixed period of time. A put gives the holder the option to sell stock or a commodities futures contract at a fixed price for a fixed period of time.

An option has four components: the underlying security, the type of option (put or call), the strike price, and the expiration date. Take, for example, a "National Widget November 100 call." National Widget stock is the underlying security, November is the expiration month of the option, 100 is the strike price (sometimes referred to as the exercise price), and the option is a call, giving the holder of the call the right, not the obligation, to buy 100 shares of National Widget at a price of 100 (any number of shares can be involved, but usually options are sold for 100 shares or multiples of 100).

A straddle is the purchase of a call and a put with the same strike price, the same expiration date, and the same underlying security. For example, the purchase of a National Widgets November 95 call and the simultaneous purchase

of a National Widgets November 95 put while the stock price is about 95 would be a straddle.

With highly volatile stocks or commodities that are likely to make big moves, investors may want to hedge because they do not know which way the investment will move. The use of a straddle allows the investor to spread the risk, preventing a total loss but also precluding the maximum profit that comes with a favorable put or call. The investor knows that either the put or the call option will not be exercised in a straddle, so a key factor in assessing potential profit is the cost of purchasing the put versus the cost of the call.

CROSS-REFERENCES

Stock Market.

STRAIGHT-LINE DEPRECIATION

A method employed to calculate the decline in the value of income-producing property for the purposes of federal taxation.

Under this method, the annual depreciation deduction that is used to offset the annual income generated by the property is determined by dividing the cost of the property minus its expected salvage value by the number of years of anticipated useful life.

STRANGER

A third person; anyone who is not a party to a particular legal action or agreement.

For example, all those who are not parties to a particular contract are considered strangers to the contract.

STRATEGIC ARMS LIMITATION TALKS (SALT)

See ARMS CONTROL AND DISARMAMENT.

STRATEGIC ARMS REDUCTION TALKS (START)

See ARMS CONTROL AND DISARMAMENT.

STRATEGIC LAWSUITS AGAINST PUBLIC PARTICIPATION

Retaliatory lawsuits intended to silence, intimidate, or punish those who have used public forums to speak, petition, or otherwise move for government action on an issue.

The term *strategic lawsuits against public participation,* known by the acronym SLAPPs, applies to a variety of different types of lawsuits, including those claiming LIBEL, DEFAMATION, business interference, or conspiracy. The term was coined by Professors George W. Pring and Penelope Canan of the University of Denver, who began to study this form of litigation in 1984. Pring and Canan define SLAPPs using four criteria: "[SLAPPs] (1) involve communications made to influence a government action or outcome, (2) which result in civil lawsuits (complaints, counterclaims, or cross-claims), (3) filed against non-governmental individuals or groups (4) on a substantive issue of some public interest or social significance."

In a typical SLAPP, an individual or citizens' group—the *target* (using Pring and Canan's terminology), or defendant—is sued by the *filer,* or plaintiff, for alleged wrongdoing simply because that individual or group has used constitutionally protected rights to persuade the government to take a particular course of action. SLAPPs have been directed against individuals and groups that have spoken in public forums on a wide variety of issues, particularly against real estate development, the actions of public officials, environmental damage or POLLUTION, and unwanted land use. They have also been used against those who have worked publicly for the rights of consumers, workers, women, minorities, and others. SLAPP defendants have been sued for apparently lawful actions such as circulating a petition, writing to a local newspaper, speaking at a public meeting, reporting violations of the law, or participating in a peaceful demonstration.

For example, a Colorado environmental protection group opposed a commercial development and was eventually sued by the developer for $40 million. The lawsuit claimed that the environmental group was guilty of "conspiracy" and "abuse of process" (*Lockport Corporation v. Protect Our Mountain Environment,* No. 81CV973 [Dist. Ct., Jefferson County, Colo. 1981]). The suit dragged on for several years, cost the environmental group much time and money, and eventually resulted in its demise. Although the development did not go forward, many group members vowed that they would refrain from future community involvement out of fear of legal retribution.

A number of real estate developers have tried to prevent subdivision residents from opposing ZONING changes by attaching restrictive covenants to sales contracts. A typical

COVENANT might stipulate that the purchaser signs the contract on the condition that he or she will not oppose any re-zoning plans for adjacent properties acquired by the developer.

Such a RESTRICTIVE COVENANT was successfully challenged in the case of *Providence Construction Company v. Bauer,* 494 S.E. 2d 527 [Ga. App.1997]. Providence owned a subdivision in Cobb County, Georgia, and its deeds included a restrictive covenant to keep residents from opposing zoning changes. When Providence sought to have land next to the subdivision re-zoned, several residents protested to government officials and circulated petitions. Providence sued for breach of contract and tortuous interference of contractual relations. It later dropped the suit against all but one resident who continued to protest the re-zoning. The resident, Dave Bauer, moved for SUMMARY JUDGMENT at trial and the court granted his request. Providence went to the Georgia Court of Appeals, which upheld the lower court's ruling. Under Georgia's anti-SLAPP law, plaintiffs must show that their suit is not being filed to suppress the right to free speech. The court said that Providence's covenant was too vague in its limitation of speech, because it prohibited residents from opposing actions that could affect the subdivision's character and property values.

Others who have been targeted by SLAPPs include a group of parents who voiced concern over unsafe school buses at a school board meeting, only to become defendants in a $680,000 suit for libel filed by the bus company, and neighbors who protested renewal of a bar's liquor license and were then faced with an $8 million libel suit initiated by the bar owner.

Judges dismiss the majority of SLAPPs as a violation of constitutional rights, generally on the grounds that the defendant's activities are protected by the Petition Clause of the FIRST AMENDMENT to the Constitution. That clause establishes "the right of the people . . . to petition the Government for a redress of grievances." However, in those cases where a SLAPP is not quickly dismissed, the expense of the litigation for SLAPP defendants, both in time and money, often serves as punishment itself and dissuades individuals from speaking out in the future. Individuals who have been hit with a SLAPP—or "SLAPPed"—often report a feeling of having been sued into silence and feel dissuaded from participating in public life again—quite often the very effect intended by the SLAPP filer. Although a SLAPP filer usually loses in court, he or she may achieve the goal of silencing future political opposition.

For these reasons, the legal system has widely viewed SLAPPs as an example of the use of law for the purpose of intimidation and as a threat to citizen involvement and public participation. SLAPPs, critics contend, attempt to privatize public debate and have a chilling effect on public speech and involvement.

Those who defend SLAPPs claim that SLAPP plaintiffs have as much right to fight for their rights as SLAPP defendants. It is equally wrong, they say, to conclude that all SLAPP plaintiffs are malicious as it is to conclude that all SLAPP defendants have honorable intentions. Moreover, the First Amendment protects free speech but not slander or libel. Most SLAPP defenders dislike the term SLAPP because they feel it can unfairly taint legitimate defamation actions.

SLAPPs date back to the earliest years of the United States, when citizens occasionally were sued for speaking out against corruption in government. Courts generally dismissed such lawsuits, however, and SLAPPs fell into general disuse until the 1960s and 1970s. During those decades a wave of political activism concerning many issues—from the environment to minority rights—sparked suits claiming defamation, libel, and business interference from affected parties, particularly corporations and business interests. By the 1980s and 1990s, many observers claimed that SLAPPs were seriously hampering participation in the U.S. political system.

Individuals and governments reacted to the growth of SLAPPs in a number of different ways. Targets of SLAPP cases sometimes have countersued—a process known as a *SLAPPback*—often making many of the same claims as the SLAPP filer: MALICIOUS PROSECUTION, ABUSE OF PROCESS, defamation, and business interference. Those who have filed SLAPPbacks generally have been successful in court and have won large cash settlements from juries. Advocates of SLAPPbacks say that they are a necessary deterrent to SLAPP filers.

Rulings of the U.S. Supreme Court have increasingly supported the rapid JUDICIAL REVIEW and dismissal of SLAPPs. Using standards developed in earlier cases (*Eastern Railroad Presidents' Conference v. Noerr Motor*

Freight, Inc., 365 U.S. 127, 81 S. Ct. 523, 5 L. Ed. 2d 464 [1961], and *United Mine Workers v. Pennington,* 381 U.S. 657, 85 S. Ct. 1585, 14 L. Ed. 2d 626 [1965]), the Court ruled in *City of Columbia v. Omni Outdoor Advertising Inc.,* 499 U.S. 365, 111 S. Ct. 1344, 113 L. Ed. 2d 382 (1991), that the First Amendment's Petition Clause protects "a concerted effort to influence public officials regardless of intent or purpose." The Court held that SLAPPs should be dismissed in all cases except those in which the target's activities are not genuinely directed at gaining favorable government action.

A number of states have passed laws intended to prevent SLAPPs and protect the right to participate in public activism. Washington became the first state to pass an anti-SLAPP law in 1989. By 2002, another 19 states had enacted similar legislation, and still more states were debating anti-SLAPP bills. The Minnesota Citizens Participation Bill of 1994 (Minn. Stat. § 554.01-05), for example, protects public participation by requiring a court to dismiss a SLAPP unless the filer can prove that the target's activities were not directed toward producing government action. The law also shifts the burden of proof to the SLAPP filer and allows the SLAPP target to collect attorneys' fees, costs, and damages if the SLAPP is unsuccessful.

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CROSS-REFERENCES

Environmental Law.

STRAW MAN

An individual who acts as a front for others who actually incur the expense and obtain the profit of a transaction.

In the terminology employed by real estate dealers, a straw man is an individual who acts as a conduit for convenience in holding and transferring title to the property involved. For example, such a person might act as an agent for another in order to take title to real property and execute whatever documents and instruments the principal directs with respect to the transaction.

STREET RAILROAD

A railway that is constructed upon a thoroughfare or highway to aid in the transportation of people or property along the roadway.

Street railroads run at moderate rates of speed and make frequent stops at particular points within a town or city. Subways and elevated railroads that are built above the surface of the roadway are two common examples of street railroads.

Municipal corporations have the authority to regulate the operation of street railroads within their boundaries. This power is generally vested in a board of commission, which sets regulations for the protection of individuals and property. Common requirements mandate street railroads to (1) restrict the speed at which the cars operate; (2) provide the cars with reliable brakes; (3) furnish the cars with signal lights and sound devices; and (4) keep all tracks clear of ice and snow during periods of inclement weather.

STRICT CONSTRUCTION

A close or narrow reading and interpretation of a statute or written document.

Judges are often called upon to make a construction, or interpretation, of an unclear term in cases that involve a dispute over the term's legal significance. The common-law tradition has produced various precepts, maxims, and rules that guide judges in construing statutes or private written agreements such as contracts. Strict construction occurs when ambiguous language is given its exact and technical meaning, and no other equitable considerations or reasonable implications are made.

A judge may make a construction only if the language is ambiguous or unclear. If the language is plain and clear, a judge must apply the PLAIN MEANING of the language and cannot consider other evidence that would change the meaning. If, however, the judge finds that the words produce absurdity, AMBIGUITY, or a literalness never intended, the plain meaning does not apply and a construction may be made.

In CRIMINAL LAW, strict construction must be applied to criminal statutes. This means that a criminal statute may not be enlarged by implication or intent beyond the fair meaning of the language used or the meaning that is reasonably justified by its terms. Criminal statutes, therefore, will not be held to encompass offenses and

Street railroads, such as this elevated transit line in Chicago, provide an alternative to automobile or bus transportation.

BETTMANN/CORBIS

individuals other than those clearly described and provided for in their language. The strict construction of criminal statutes complements the rule of lenity, which holds that ambiguity in a criminal statute should be resolved in favor of the defendant.

Strict construction is the opposite of liberal construction, which permits a term to be reasonably and fairly evaluated so as to implement the object and purpose of the document. An ongoing debate in U.S. law concerns how judges should interpret the law. Advocates of strict construction believe judges must exercise restraint by refusing to expand the law through implication. Critics of strict construction contend that this approach does not always produce a just or reasonable result.

CROSS-REFERENCES

Canons of Construction; Plain-Meaning Rule.

STRICT FORECLOSURE

A decree that orders the payment of a mortgage of real property.

A strict foreclosure decree sets out the amount due under the mortgage, orders it to be paid within a particular time limit, and provides that if payment is not made, the mortgagor's right and equity of redemption are forever barred and foreclosed. If the mortgagor does not pay within the time designated, then title to the property vests in the mortgagee without any sale thereof.

STRICT LIABILITY

Absolute legal responsibility for an injury that can be imposed on the wrongdoer without proof of carelessness or fault.

Strict liability, sometimes called absolute liability, is the legal responsibility for damages, or injury, even if the person found strictly liable was not at fault or negligent. Strict liability has been applied to certain activities in TORT, such as holding an employer absolutely liable for the torts of her employees, but today it is most commonly associated with defectively manufactured products. In addition, for reasons of public policy, certain activities may be conducted only if

the person conducting them is willing to insure others against the harm that results from the risks the activities create.

In PRODUCT LIABILITY cases involving injuries caused by manufactured goods, strict liability has had a major impact on litigation since the 1960s. In 1963, in *Greenman v. Yuba Power Products,* 59 Cal. 2d 57, 377 P.2d 897, the California Supreme Court became the first court to adopt strict tort liability for defective products. Injured plaintiffs have to prove the product caused the harm but do not have to prove exactly how the manufacturer was careless. Purchasers of the product, as well as injured guests, bystanders, and others with no direct relationship with the product, may sue for damages caused by the product.

An injured party must prove that the item was defective, that the defect proximately caused the injury, and that the defect rendered the product unreasonably dangerous. A plaintiff may recover damages even if the seller has exercised all possible care in the preparation and sale of the product.

In tort law strict liability has traditionally been applied for damages caused by animals. Because animals are not governed by a conscience and possess great capacity to do mischief if not restrained, those who keep animals have a duty to restrain them. In most jurisdictions the general rule is that keepers of all animals, including domesticated ones, are strictly liable for damage resulting from the TRESPASS of their animals on the property of another. Owners of dogs and cats, however, are not liable for their pets' trespasses, unless the owners have been negligent or unless strict liability is imposed by statute or ordinance.

For purposes of liability for harm other than trespass, the law distinguishes between domesticated and wild animals. The keeper of domesticated animals, which include dogs, cats, cattle, sheep, and horses, is strictly liable for the harm they cause only if the keeper had actual knowledge that the animal had the particular trait or propensity that caused the harm. The trait must be a potentially harmful one, and the harm must correspond to the knowledge. In the case of dogs, however, some jurisdictions have enacted statutes that impose absolute liability for dog bites without requiring knowledge of the dog's viciousness.

Keepers of species that are normally considered "wild" in that region are strictly liable for the harm these pets cause if they escape, whether or not the animal in question is known to be dangerous. Because such animals are known to revert to their natural tendencies, they are considered to be wild no matter how well trained or domesticated.

Strict liability for harm resulting from abnormally dangerous conditions and activities developed in the late nineteenth century. It will be imposed if the harm results from the miscarriage of an activity that, though lawful, is unusual, extraordinary, exceptional, or inappropriate in light of the place and manner in which the activity is conducted. Common hazardous activities that could result in strict liability include storing explosives or flammable liquids, blasting, accumulating sewage, and emitting toxic fumes. Although these activities may be hazardous, they may be appropriate or normal in one location but not another. For example, storing explosives in quantity will create an unusual and unacceptable risk in the midst of a large city but not in a remote rural area. If an explosion occurs in the remote area, strict liability will be imposed only if the explosives were stored in an unusual or abnormal way.

CROSS-REFERENCES

Negligence; Proximate Cause; *Rylands v. Fletcher.*

STRICT SCRUTINY

A standard of JUDICIAL REVIEW *for a challenged policy in which the court presumes the policy to be invalid unless the government can demonstrate a compelling interest to justify the policy.*

The strict scrutiny standard of judicial review is based on the EQUAL PROTECTION CLAUSE of the Fourteenth Amendment. Federal courts use strict scrutiny to determine whether certain types of government policies are constitutional. The U.S. Supreme Court has applied this standard to laws or policies that impinge on a right explicitly protected by the U.S. Constitution, such as the right to vote. The Court has also identified certain rights that it deems to be fundamental rights, even though they are not enumerated in the Constitution.

The strict scrutiny standard is one of three employed by the courts in reviewing laws and government policies. The *rational basis test* is the lowest form of judicial scrutiny. It is used in cases where a plaintiff alleges that the legislature has made an ARBITRARY or irrational decision. When employed, the RATIONAL BASIS TEST usu-

ally results in a court upholding the constitutionality of the law, because the test gives great deference to the legislative branch. The *heightened scrutiny test* is used in cases involving matters of discrimination based on sex. As articulated in *Craig v. Boren,* 429 U.S. 190, 97 S. Ct. 451, 50 L. Ed. 2d 397 (1976), "classifications by gender must serve *important* governmental objectives and must *be substantially related* to the achievement of those objectives."

Strict scrutiny is the most rigorous form of judicial review. The Supreme Court has identified the right to vote, the right to travel, and the right to privacy as fundamental rights worthy of protection by strict scrutiny. In addition, laws and policies that discriminate on the basis of race are categorized as *suspect classifications* that are presumptively impermissible and subject to strict scrutiny.

Once a court determines that strict scrutiny must be applied, it is presumed that the law or policy is unconstitutional. The government has the burden of proving that its challenged policy is constitutional. To withstand strict scrutiny, the government must show that its policy is necessary to achieve a compelling state interest. If this is proved, the state must then demonstrate that the legislation is narrowly tailored to achieve the intended result.

The case of ROE V. WADE, 410 U.S. 113, 93 S. Ct. 705, 35 L. Ed. 2d 147 (1973), which invalidated state laws that prohibited ABORTION, illustrates the application of strict scrutiny. The Court held that the right to privacy is a fundamental right and that this right "is broad enough to encompass a woman's decision whether or not to terminate her pregnancy." Based on these grounds, the Court applied strict scrutiny. The state of Texas sought to proscribe all abortions and claimed a compelling STATE INTEREST in protecting unborn human life. Though the Court acknowledged that this was a legitimate interest, it held that the interest does not become compelling until that point in pregnancy when the fetus becomes "viable" (capable of "meaningful life outside the mother's womb"). The Court held that a state may prohibit abortion after the point of viability, except in cases where abortion is necessary to preserve the life or health of the mother, but the Texas law was not narrowly tailored to achieve this objective. Therefore, the state did not meet its BURDEN OF PROOF and the law was held unconstitutional.

CROSS-REFERENCES

Civil Rights; Equal Protection; Sex Discrimination; Voting.

STRIKE

A work stoppage; the concerted refusal of employees to perform work that their employer has assigned to them in order to force the employer to grant certain demanded concessions, such as increased wages or improved employment conditions.

A work stoppage is generally the last step in a labor-management dispute over wages and working conditions. Because employees are not paid when they go on strike and employers lose productivity, both sides usually seek to avoid it. When negotiations have reached an impasse, however, a strike may be the only bargaining tool left for employees.

Employees can strike for economic reasons, for improvement of their working conditions, or for the mutual aid and protection of employees in another union. In addition, even if they do not have a union, employees can properly agree to stop working as a group; in that case they are entitled to all the protections that organized strikers are afforded.

LABOR UNIONS do not have the right to use a strike to interfere with management prerogatives or with policies that the employer is entitled to make that do not directly concern the employment relationship. A strike must be conducted in an orderly manner and cannot be used as a shield for violence or crime. Intimidation and coercion during the course of a strike are unlawful.

Federal Labor Law

The development of labor unions in the nineteenth century was met by employer hostility. The concept of COLLECTIVE BARGAINING between employer and employee was viewed as antithetical to the right of individual workers and their employers to negotiate wages and working conditions—a concept known as liberty of contract. When unions did strike, they were left to deal with management without legal protections. Employers fired strikers and obtained injunctions from courts that ordered unions to end the strike or risk CONTEMPT of court.

The unequal bargaining power of unions was remedied in the 1930s with the passage of two important federal LABOR LAWS. In 1932, Congress passed the NORRIS-LAGUARDIA ACT (29 U.S.C.A. §§ 101 et seq.), which severely limited

A Lexicon of Labor Strikes

Over the years different types of labor strikes have acquired distinctive labels. The following are the most common types of strikes, some of which are illegal:

- *Wildcat strike* A strike that is not authorized by the union that represents the employees. Although not illegal under law, wildcat strikes ordinarily constitute a violation of an existing collective bargaining agreement.
- *Walkout* An unannounced refusal to perform work. A walkout may be spontaneous or planned in advance and kept secret. If the employees' conduct is an irresponsible or indefensible method of accomplishing their goals, a walkout is illegal. In other situations courts may rule that the employees have a good reason to strike.
- *Slowdown* An intermittent work stoppage by employees who remain on the job. Slowdowns are illegal because they give the employees an unfair bargaining advantage by making it impossible for the employer to plan for production by the workforce. An employer may discharge an employee for a work slowdown.
- *Sitdown strike* A strike in which employees stop working and refuse to leave the employer's premises. Sitdown strikes helped unions organize workers in the automobile industry in the 1930s but are now rare. They are illegal under most circumstances.
- *Whipsaw strike* A work stoppage against a single member of a bargaining unit composed of several employers. Whipsaw strikes are legal and are used by unions to bring added pressure against the employer who experiences not only the strike but also competition from the employers who have not been struck. Employers may respond by locking out employees of all facilities that belong to members of the bargaining unit. Whipsaw strikes have commonly been used in the automobile industry.
- *Sympathy strike* A work stoppage designed to provide **AID AND COMFORT** to a related union engaged in an employment dispute. Although sympathy strikes are not illegal, unions can relinquish the right to use this tactic in a **COLLECTIVE BARGAINING** agreement.
- *Jurisdictional strike* A strike that arises from a dispute over which **LABOR UNION** is entitled to represent the employees. Jurisdictional strikes are unlawful under federal **LABOR LAWS** because the argument is between unions and not between a union and the employer.

the power of federal courts to issue injunctions in labor disputes. The act imposed strict procedural limitations and safeguards to prevent abuses by the courts. The National Labor Relations Act (Wagner Act) of 1935 (29 U.S.C.A. §§ 151 et seq.) clearly established the right of employees to form, join, or aid labor unions. The act authorized collective bargaining by unions and gave employees the right to participate in "concerted actions" to bargain collectively. The major concerted action was the right to strike.

Federal labor laws require a 60-day waiting period before workers can strike to force termination or modification of an existing collective bargaining agreement. The terms of the agreement remain in full force and effect during this period, and any employee who strikes can be fired. The 60-day "cooling-off period" begins when the union serves notice on the employer or when the existing contract ends. This provision does not affect the right of employees to strike in protest of some UNFAIR LABOR PRACTICE of their employer. It does help to prevent premature strikes, however.

Status

Strikes can be divided into two basic types: economic and unfair labor practice. An economic strike seeks to obtain some type of economic benefit for the workers, such as improved wages and hours, or to force recognition of their union. An unfair labor practice strike is called to protest some act of the employer that the employees regard as unfair.

When employees strike, the employer may continue operating the business and can hire

replacement workers. Upon settlement of an unfair labor practice strike, the strikers must be reinstated as soon as they offer unconditionally to return to work, even if the replacement workers must be fired.

In economic strikes, however, the employer is not required to take back the strikers immediately upon the settlement of the dispute. Economic strikers are still categorized as employees and are entitled to reinstatement in the event vacancies occur, but the employer does not have to reinstate any worker who has found substantially equivalent work elsewhere or who has given the employer a legitimate and substantial reason for not reinstating that worker. The hiring of permanent replacement workers has become an important management weapon against economic strikes, giving the employer the ability to hire a nonunion workforce and to threaten the local union with destruction. U.S. labor unions have been unsuccessful in persuading Congress to amend the National Labor Relations Act to provide immediate job reinstatement to economic strikers.

An employee has no right to be paid while on strike, nor does the employee have a right to claim UNEMPLOYMENT COMPENSATION benefits, unless state law provides the benefit. Employees who refuse to cross a picket line on principle are treated in the same way as strikers, but those who are kept from their jobs through fear of violence are entitled to collect unemployment compensation.

Employees forfeit their right to maintain the employment relationship if their strike is illegal. For example, public employees are generally forbidden to strike. If they do, they risk dismissal. In 1981, President RONALD REAGAN responded to an illegal strike by federal air traffic controllers by dismissing more than ten thousand employees.

Ordinarily, however, a strike is legal if employees are using it to exert economic pressure upon their employer in order to improve the conditions of their employment. A strike is unlawful if it is directed at someone other than the employer or if it is used for some other purpose. Federal law prohibits most boycotts or picketing directed at a party not involved in the primary dispute. These tactics are known as secondary boycotts or secondary picketing, and they are strictly limited so that businesses that are innocent bystanders will not become victims in a labor dispute that they cannot resolve.

Unlawful Tactics

Picketing can be regulated by statute because of the potential for violence inherent in this activity. Mass picketing is unlawful under federal law because large unruly crowds could be used for the purpose of intimidation. Employees are entitled to picket in small numbers outside the employer's facilities, but they cannot block entrances or demonstrate in front of an employer's home. Picketing is lawful when it is used to inform the public, the employer, or other workers about the dispute. However, it cannot be used to threaten people or to provoke violence.

A strike is generally lawful if it is peaceful. A strike is never a legal excuse for violence, and acts of physical violence and damage to property will be viewed as criminal acts. Employers who use violence against strikers are subject to the same penalties.

A union or an employer can be fined or adjudged guilty of an unfair labor practice and ordered to cease and desist when violent actions occur. An INJUNCTION from a state court can stop the strike or picketing. Because no labor disputes can proceed without minor problems, an isolated minor incident, such as name-calling or a shove, does not end the right to strike.

Union Members

Labor unions can fine or expel members who cross picket lines, fail to honor a lawful strike, or indulge in violence during a strike. In addition, they can discipline members for conduct antagonistic to the union, such as spying for the employer or participating in an unauthorized strike. A union member is entitled to a written notice of specific charges against him and a full and fair hearing before he can be expelled.

Settlement

Strikes are ordinarily settled by negotiation between the employer and the employees or the union that represents them. An employer who does not want to engage in negotiations can cease operations entirely. However, an employer cannot avoid bargaining by relocating or by assigning the same work to another plant owned by the company. If the employer and employees bargain in GOOD FAITH, they generally settle their differences and sign a collective bargaining agreement.

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Labor Law.

STRING CITATION

A series of references to cases that establish legal precedents and to other authorities that appear one after another and are printed following a legal assertion or conclusion as supportive authority.

For example, in preparing a brief, an attorney might set forth a particular assertion based upon the facts of the case and applicable law and immediately thereafter make a list of all the cases that lend support to it.

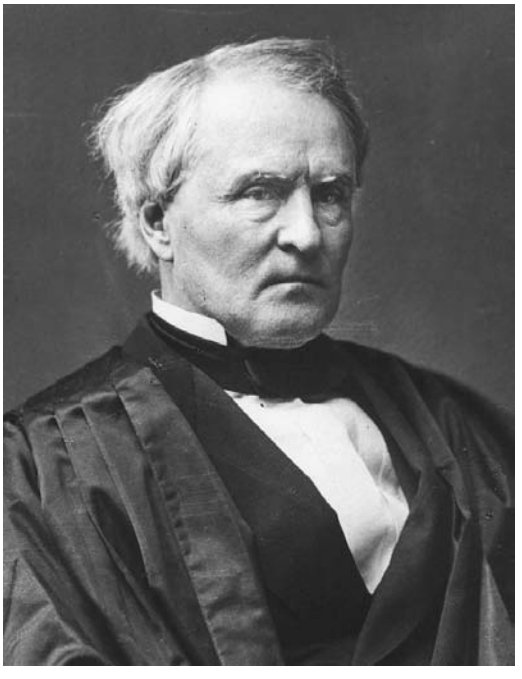
STRONG-ARM PROVISION

The segment of the federal BANKRUPTCY *law that grants the trustee the rights of the most secured creditor, so that he or she is able to seize all of the debtor's property for proper distribution.*

❖ STRONG, WILLIAM

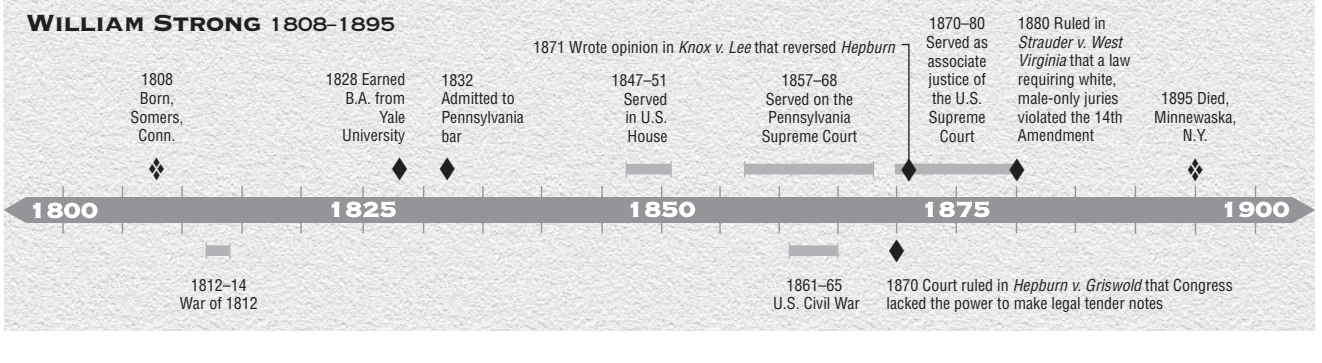
William Strong served as associate justice of the U.S. Supreme Court from 1870 to 1880. He is best remembered for his majority opinion in the controversial case of *Knox v. Lee* (argued concurrently with *Parker v. Davis*), 79 U.S. (12 Wall.) 457, 20 L. Ed. 287 (1871), commonly known as one of the *Legal Tender Cases.*

Strong was born on May 6, 1808, in Somers, Connecticut. He graduated from Yale University in 1828 and received a master's degree from the same institution in 1831. He attended Yale Law School and was admitted to the Pennsylvania bar in 1832. He practiced law in Reading, Pennsylvania, for fifteen years.



William Strong. THE GRANGER COLLECTION, NEW YORK

In 1847, Strong entered politics with his election as a Democratic member of the U.S. House of Representatives. He left Congress in 1851 and re-entered private practice. In 1857, Strong began a term as a justice of the Pennsylvania Supreme Court. He remained on the bench until 1868, when he resumed private law practice, this time in Philadelphia, Pennsylvania. During the Civil War, Strong changed his political affiliation from Democrat to Republican. This move proved auspicious for him, as President ULYSSES S. GRANT, a Republican, appointed Strong to the U.S. Supreme Court in 1870 to replace the retiring Justice ROBERT C. GRIER, a Pennsylvania Democrat.



Strong's appointment and first year on the Court were marked by controversy concerning the *Legal Tender Cases.* On the day he was nominated, the Court announced its decision in *Hepburn v. Griswold,* 75 U.S. (8 Wall.) 603, 19 L. Ed. 513 (1870), which concerned the Legal Tender Act of 1862 (12 Stat. 345). The act, passed during the Civil War to finance the Union war effort, authorized the creation of paper money not redeemable in gold or silver. About $430 million worth of "greenbacks" were put into circulation, and by law this money had to be accepted for all taxes, debts, and other obligations, even those contracted before passage of the act.

The Court in *Hepburn* ruled, by a 4–3 vote, that Congress lacked the power to make the notes legal tender because the law violated the Fifth Amendment's guarantee against deprivation of property without DUE PROCESS OF LAW. Grant's appointment of Strong and JOSEPH P. BRADLEY to the Supreme Court on the same day in 1870 was perceived as a court-packing scheme that was designed to overturn *Hepburn.*

This view proved correct. With Strong and Bradley on the bench, the Court agreed to reconsider the constitutionality of the Legal Tender Act. In 1871, Strong wrote the majority opinion in *Knox v. Lee,* which reversed the *Hepburn* decision. This time, the vote was 5–4, in favor of the act. Strong held that Congress had the authority to pass monetary acts such as the greenbacks law during a time of national emergency.

During the 1870s, numerous CIVIL RIGHTS CASES came before the Court. In *Blyew v. United States,* 80 U.S. (13 Wall.) 581, 20 L. Ed. 638 (1872), Strong ruled that the federal government could not use a CIVIL RIGHTS law to prosecute a white man who was accused of murdering several African-Americans because the victims were not persons "in existence" as required by the act, and because the interests of witnesses were not strong enough to give the federal government exclusive jurisdiction over the crime. The crime had occurred in Kentucky, where black witnesses were prohibited by law from testifying against whites. In *Strauder v. West Virginia,* 100 U.S. (10 Otto) 303, 25 L. Ed. 664 (1880), Strong ruled that a law that allowed only white males to serve as jurors violated the EQUAL PROTECTION CLAUSE of the FOURTEENTH AMENDMENT.

Following his resignation from the Court in 1880, Strong devoted his time to many religious causes and organizations. He led the National Reform Association, which proposed a constitutional amendment that would have proclaimed Jesus Christ as the supreme authority. Although he disclaimed the idea of a national church, Strong believed that Christian principles should govern many facets of U.S. society. Strong died on August 19, 1895, in Minnewaska, New York.

♦ STROSSEN, NADINE M.

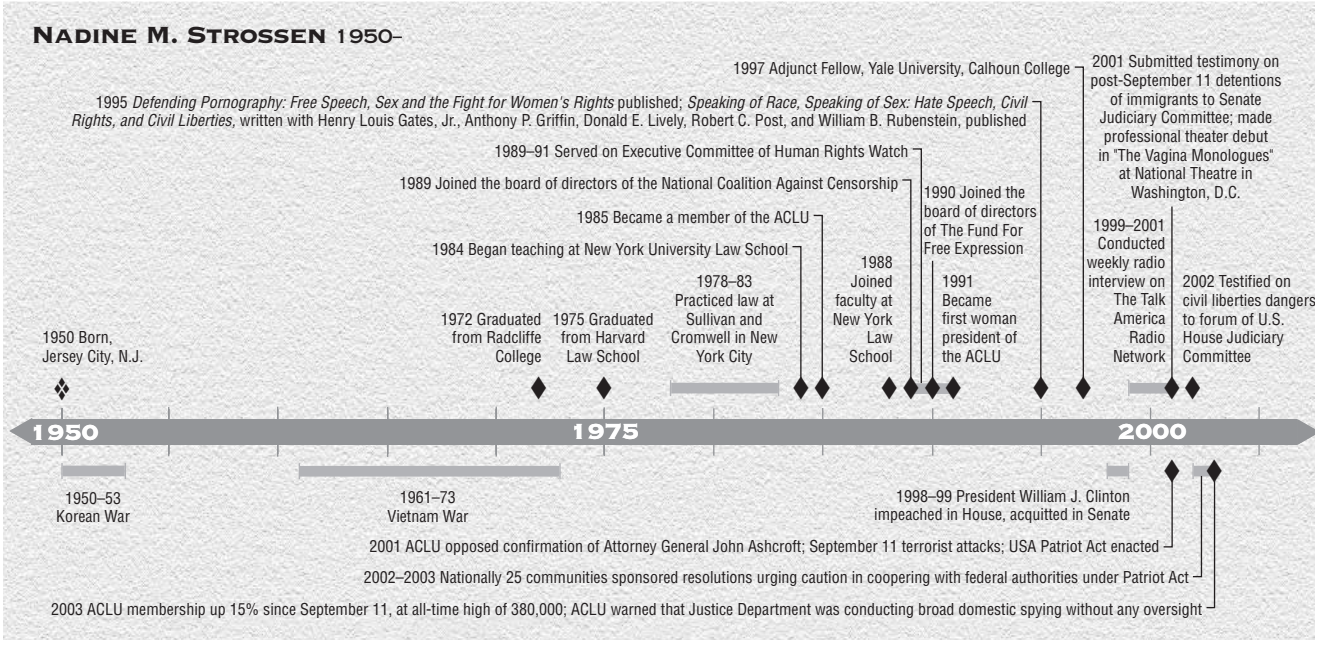
Nadine M. Strossen is a lawyer and law professor who, in 1991, became the first woman president of the AMERICAN CIVIL LIBERTIES UNION (ACLU).

Born August 18, 1950, in Jersey City, New Jersey, Strossen moved with her family to Hopkins, Minnesota, at the age of eight. When she was growing up, she expected to pursue a traditional career, perhaps as a teacher. As an outstanding member of her high school debate team, she was impressed with her teammates' analytical skills and encouraged the boys among them to pursue a legal career. She did not envision a similar path until she became involved in debate and took an interest in feminist causes while at Radcliffe College. After graduating from Radcliffe, she attended Harvard Law School, where she was editor of the law review, and graduated from Harvard magna cum laude in 1975.

After law school, Strossen was awarded a judicial clerkship at the Minnesota Supreme Court, then practiced law in several law firms. In 1984, she left private practice and began teaching at the School of Law of New York University. She joined the faculty at New York Law School in 1988, specializing in CONSTITUTIONAL LAW, federal courts, and HUMAN RIGHTS.

Strossen has been a member of the ACLU since 1985, having served on the organization's executive committee and as its general counsel. The ACLU has adopted controversial, unpopular positions on issues ranging from free speech and ABORTION rights to the rights of accused persons. Strossen has used steady, unrelenting persuasion, rather than confrontation, to educate others about the importance of safeguarding the individual liberties that are the heart of the U.S. Constitution.

In the late 1980s and into the 1990s, Strossen and the ACLU found themselves in an ironic and seemingly contradictory position when new ideas about multiculturalism began to take root on college campuses. Proponents of these ideas



seemed to espouse goals in common with the ACLU: protecting minority groups from discrimination, bias, hatred, or exclusion. However, in an effort to rid institutions of hatred and harassment, some academic groups adopted speech codes that banned the use of certain words or symbols they considered hateful, demeaning, violent, or merely inconsiderate. Such words were sometimes called "politically incorrect," or not "PC." Strossen and the ACLU vehemently opposed these codes because they, they argued, such codes violate the FIRST AMENDMENT and discourage discussion of important but inflammatory subjects such as race and gender.

Strossen believes that the free and open exchange of ideas, even ideas that may be repugnant, is essential in a free society, and may actually defuse the hatred and bigotry that underlie racist or sexist expressions. However, Strossen maintains that laws imposing enhanced penalties for crimes motivated by bias or hatred differ from speech codes and are constitutional.

Similar to the controversy over speech codes is the debate over whether sexually explicit material can be constitutionally banned. During the 1980s, a group of feminists, led by ANDREA DWORKIN and CATHARINE A. MACKINNON, began a movement to outlaw all sexually explicit materials on the ground that they condone conduct that is violent, dangerous, and degrading to women. Strossen and the ACLU argue that such materials are speech rather than conduct, and that even if most U.S. citizens find them offensive, their publication and dissemination are protected by the U.S. Constitution.

Strossen contends that a prohibition on all sexually explicit material is a simplistic solution that only serves to drive the perpetrators underground. She says that CENSORSHIP does not solve the underlying problems of violence and discrimination and may ultimately be used as a means of oppressing the very groups it is intended to protect.

Strossen is committed to defending free speech whenever it is threatened, even if she disagrees with the individual or group being targeted. For example, she is opposed to Supreme Court decisions that limit the activities of antiabortion protesters, even though the ACLU has always defended a woman's right to reproductive freedom. Strossen believes that penalties imposed on antiabortion activists infringe on the activists' exercise of free speech.

In addition to working with the ACLU, Strossen has served on the boards of the Fund for Free Expression, the National Coalition against Censorship, the Coalition to Free Soviet Jews, Middle East Watch, Asia Watch, and HUMAN RIGHTS WATCH. She is a frequent lecturer on college campuses through the United States and abroad; and serves as political commentator on a variety of national news programs. Strossen also has written extensively in

the areas of constitutional law, civil liberties, and international human rights. In 2000, New York University Press republished her 1995 book *Defending Pornography: Free Speech, Sex, and the Fight for Women's Rights* with a new introduction by the author.

In the 2000s, Strossen continued to write and comment extensively on constitutional issues while teaching at New York Law School and functioning as president of the ACLU.

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CROSS-REFERENCES

Hate Crime; Pornography.

STRUCK JURY

A special jury chosen in a manner whereby an appropriate official prepares a panel containing the names of forty-eight potential jurors and the parties strike off names until the number of jurors is reduced to twelve.

STUDENT NON-VIOLENT COORDINATING COMMITTEE

As a focal point for student activism in the 1960s, the Student Nonviolent Coordinating Committee (SNCC, popularly called Snick) spearheaded major initiatives in the CIVIL RIGHTS MOVEMENT. At the forefront of INTEGRATION efforts, SNCC volunteers gained early recognition for their lunch counter sit-ins at whites-only businesses and later for their participation in historic demonstrations that helped pave the way for the passage of landmark federal CIVIL RIGHTS legislation in 1964 and 1965. SNCC made significant gains in voter registration for blacks in the South, where it also ran schools and health clinics. Later adopting a more radical agenda, it ultimately became identified with the BLACK POWER MOVEMENT and distanced itself from traditional civil rights leaders, before disbanding in 1970.

SNCC grew out of the SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE (SCLC), led by MARTIN LUTHER KING JR. On Easter 1960, SCLC executive director, ELLA J. BAKER, organized a meeting at Shaw University, in Raleigh, North Carolina, with the goal of increasing student participation in the civil rights movement. Students were already taking action on their own: in February, they had staged a sit-in at a Woolworth store in Greensboro, North Carolina, refusing to leave the whites-only lunch counter. One hundred and forty students met with Baker and representatives of other civil rights organizations at the Easter conference, where SNCC was conceived and founded. SNCC soon set up offices in Atlanta. Among its earliest members were JOHN LEWIS, a divinity student; Marion S. Barry Jr., a future mayor of Washington, D.C.; and JULIAN BOND, a future Georgia state senator and liberal activist leader.

In its statement of purpose, dated April 1960, SNCC embraced a philosophy of nonviolence:

> We affirm the philosophical or religious ideal of non-violence as the foundation of our purpose, the presupposition of our faith, and the manner of our action. . . . By appealing to conscience and standing on the moral nature of human existence, nonviolence nurtures the atmosphere in which reconciliation and justice become actual possibilities.

One method of non-violent protest adopted by SNCC was the sit-in. Used to integrate businesses in northern and border states as early as 1943, this tactic was a risky undertaking in the segregated South of 1960. What SNCC met at lunch counter sit-ins was far from a spirit of reconciliation: whites taunted the demonstrators, poured ketchup and sugar on their heads, and sometimes hit them. SNCC volunteers persevered, and by late 1961, sit-ins had taken place in over one hundred southern communities.

The pressure brought by these actions soon increased as SNCC rallied white and black students to a number of causes. In 1961, it joined members of the CONGRESS OF RACIAL EQUALITY (CORE) in a series of Freedom Rides—interstate bus trips through the South aimed at integrating bus terminals. Over the next three years, in states such as Georgia and Mississippi, SNCC began a grassroots campaign aimed at registering black voters. It also opened schools in order to teach illiterate farmers, and it established health clinics. In a 1964 project called Freedom Summer, it sent hundreds of white and black volunteers, mostly northern, middle-class students, to Mississippi to test the newly passed CIVIL RIGHTS ACT OF 1964 (42 U.S.C.A. § 2000a et seq.). Throughout these endeavors, volunteers were met with beatings and jailings,

Stokely Carmichael, chairman of the Student Non-violent Coordinating Committee, speaks before a crowd of students on the campus of Florida A&M University in April 1967. Under the leadership of Carmichael, SNCC took a more radical course in an effort to gain political, economic, and legal liberation for African Americans.

AP/WIDE WORLD PHOTOS

and three civil rights workers were slain in Mississippi during Freedom Summer.

By the mid 1960s, tensions had developed within the civil rights movement. Under King, SCLC stayed its course. Frustrated by the pace of civil rights gains and doubtful of traditional methods, SNCC and CORE became increasingly aggressive. In 1965, after the nation watched televised footage of black marchers being beaten in Selma, Alabama, SNCC decided to hold a second march, in which King chose to participate. More assaults and a murder followed. In their wake, President **LYNDON B. JOHNSON** appealed to the nation for stronger civil rights legislation. Consequently, the Selma marches hastened the passage of the **VOTING RIGHTS ACT OF 1965** (42 U.S.C.A. § 1973 et seq.).

SNCC took a more radical course under the leadership of activist **STOKELY CARMICHAEL.** As a dramatically successful SNCC field organizer in Lowndes County, Mississippi, Carmichael had increased the number of registered black voters there from 70 to 2600. He was elected chairman of SNCC in 1966, the year in which he coined the term *black power.* According to the organization's position paper, titled *The Basis of Black Power,* its message of political, economic, and legal liberation, rather than integration, for blacks marked a turning point in the civil rights movement: "In the beginning of the movement, we had fallen into a trap whereby we thought that our problems revolved around the right to eat at certain lunch counters or the right to vote, or to organize our communities. We have seen, however, that the problem is much deeper." SNCC, which now called the National Association for the Advancement of Colored People (**NAACP**) reactionary and white U.S. citizens 180 million racists, was joined in espousing harsher views by CORE and the newly formed **BLACK PANTHER PARTY FOR SELF-DEFENSE.**

Along with the new rhetoric came new policies. SNCC purged white members from its ranks, declaring that they should work to rid their own communities of racism. When SNCC members began carrying guns, Carmichael's explanation drew a line between the old guard and the vanguard: "We are not King or SCLC. They don't do the kind of work we do nor do they live in the same areas we live in" (Johnson 1990, 71). The organization subsequently deepened this division by pulling out of the White House Conference on Civil Rights.

Toward the end of its existence, SNCC was torn apart by troubles. In 1966, clashes with the police in several cities began when 80 police officers raided SNCC's Philadelphia office, charging that dynamite was stored there. The **FEDERAL BUREAU OF INVESTIGATION,** which had been **WIRETAPPING** SNCC since 1960, targeted the group in 1967 for a Counterintelligence Program effort aimed at disrupting it. Critics blamed Carmichael's inflammatory speeches for causing riots, and he left to join the Black Panthers. Amid growing militancy and an expanded vision that included antiwar protest, financial support began to dry up. SNCC disbanded in 1970 shortly after its last chairman, H. Rap Brown, went underground to avoid arrest.

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CROSS-REFERENCES

Carmichael, Stokely; Civil Rights Movement; Integration.

STUMP V. SPARKMAN

See JUDICIAL IMMUNITY "Stump v. Sparkman" (Sidebar).

SUA SPONTE

*[*Latin, Of his or her or its own will; voluntarily.*]*

For example, when a court takes action on its own motion, rather than at the request of one of the parties, it is acting *sua sponte.*

SUB NOMINE

*[*Latin, Under the name; in the name of; under the title of.*]*

SUB SILENTIO

*[*Latin, Under silence; without any notice being taken.*]*

Passing a thing *sub silentio* may be evidence of consent.

SUBCONTRACTOR

One who takes a portion of a contract from the principal contractor or from another subcontractor.

When an individual or a company is involved in a large-scale project, a contractor is often hired to see that the work is done. The contractor, however, rarely does all the work. The work that remains is performed by subcontractors, who are under contract to the contractor, who is usually designated the general or prime contractor. Subcontractors may, in turn, hire their own subcontractors to do part of the work that they have contracted to perform.

Building construction is a common example of how the contractor-subcontractor relationship works. The general contractor takes prime responsibility for seeing that the building is constructed and signs a contract to do so. The cost of the contract is usually a fixed sum and may have been derived from a bid submitted by the contractor. Before offering the bid or before contract negotiations begin, the general contractor normally asks the subcontractors to estimate the price they will charge to do their part of the work. Thus, the general contractor will collect information from electricians, plumbers, dry wall installers, and a host of other subcontractors.

Once construction begins, the general contractor coordinates the construction schedule, making sure the subcontractors are at the building site when needed so that the project remains on schedule. The sequencing of construction and the supervision of the work that the subcontractors perform are key roles for the general contractor.

Subcontractors sign contracts with the general contractor that typically incorporate the agreement between the general contractor and the owner. A subcontractor who fails to complete work on time or whose work is not acceptable under the general contract may be required to pay damages if the project is delayed because of these problems.

A subcontractor's biggest concern is getting paid promptly for the work and materials provided to the project. The general contractor is under an obligation to pay the subcontractors any sums due them unless the contract states otherwise. Some contracts state that the subcontractors will not be paid until the general contractor is paid by the owner. If the owner refuses to pay the general contractor for work a subcontractor has performed, the subcontractor has the right to file a mechanic's lien against the property for the cost of the unpaid work.

When changes are made to the project during construction, subcontractors expect to be paid for the time and materials expended on the change. Subcontractors must receive formal approval to make the change and have a cost attached to the change before doing the work. Otherwise, when they submit a compensation request, it may be denied either because too much time has passed or because the general contractor or the owner believes the work performed was within the scope of the original project.

SUBJECT MATTER JURISDICTION

The power of a court to hear and determine cases of the general class to which the proceedings in question belong.

For a court to have authority to adjudicate a dispute, it must have jurisdiction over the parties and over the type of legal issues in dispute. The first type of jurisdiction is called PERSONAL JURISDICTION; the other is subject matter jurisdiction. Personal jurisdiction will be found if the persons involved in the litigation are present in the state or are legal residents of the state in which the lawsuit has been filed, or if the transaction in question has a substantial connection to the state.

Subject matter jurisdiction refers to the nature of the claim or controversy. The subject matter may be a criminal infringement, MEDICAL MALPRACTICE, or the probating of an estate. Subject matter jurisdiction is the power of a court to hear particular types of cases. In state court systems, statutes that create different courts generally set boundaries on their subject matter jurisdiction. One state court or another has subject matter jurisdiction of any controversy that can be heard in courts of that state. Some courts specialize in a particular area of the law, such as probate law, FAMILY LAW, or JUVENILE LAW. A person who seeks custody of a child, for example, must go to a court that has authority in guardianship matters. A DIVORCE can be granted only in a court designated to hear matrimonial cases. A person charged with a felony cannot be tried in a criminal court authorized to hear only misdemeanor cases.

In addition to the legal issue in dispute, the subject matter jurisdiction of a court may be determined by the monetary value of the dispute—the dollar amount in controversy. Small claims courts, also known as conciliation courts, are limited by state statutes to small amounts of money in controversy, ranging from $1,000 to $5,000 depending upon the state. Therefore, if a plaintiff sues a defendant in SMALL CLAIMS COURT for $50,000, the court will reject the lawsuit because it lacks subject matter jurisdiction based on the amount in controversy. The amount in controversy limitations are designed to regulate the flow of litigation in the various courts of the state, ensuring that complicated disputes over large sums of money will be heard in courts that have the time and resources to hear such cases.

The U.S. Constitution gives jurisdiction over some types of cases to federal courts only. Cases involving AMBASSADORS AND CONSULS or public ministers, ADMIRALTY and maritime cases, and cases in which the United States is a party must be heard in federal courts. Congress has also created subject matter jurisdiction by statute, mandating that antitrust suits, most SECURITIES lawsuits, BANKRUPTCY proceedings, and patent and COPYRIGHT cases be heard in federal courts.

The Constitution also allows federal district courts to hear cases involving any rights or obligations that arise from the Constitution or other federal law. This is called federal question jurisdiction. Federal courts also have diversity jurisdiction, which gives the courts authority to hear cases involving disputes among citizens of different states. If, however, the amount in controversy is less than $10,000, federal question and diversity jurisdiction will not apply, and the case must be brought in state court. Even if the $10,000 amount is satisfied, a plaintiff may start the lawsuit in state court. A defendant, however, may seek to have the case moved to the federal court in that state by filing a transfer request called a removal action.

A defendant who believes that a court lacks subject matter jurisdiction to hear the case may raise this issue before the trial court or in an appeal from the judgment. If a defect in subject matter jurisdiction is found, the judgment will usually be rendered void, having no legal force or binding effect.

SUBLETTING

The leasing of part or all of the property held by a tenant, as opposed to a landlord, during a portion of his or her unexpired balance of the term of occupancy.

A landlord may prohibit a tenant from subletting the leased premises without the landlord's permission by including such a term in the lease. When subletting is permitted, the original tenant becomes, in effect, the landlord of the sublessee. The sublessee pays the rent to the tenant, not the landlord. The original tenant is not, however, relieved of his or her responsibilities under the original lease with the landlord.

A sublease is different from an assignment where a tenant assigns all of his or her rights under a lease to another. The assignee takes the place of the tenant and must deal with the landlord provided the landlord permits it. The original tenant is no longer responsible to the landlord who consents to the termination of their landlord-tenant relationship.

CROSS-REFERENCES

Landlord and Tenant.

SUBMERGED LANDS

Soil lying beneath water or on the oceanside of the tideland.

Minerals found in the soil of tidal and submerged lands belong to the state in its sovereign right. The federal government, however, has full control over all the natural resources discovered

in the soil under the ocean floor beyond the three-mile belt extending from the ordinary low-water mark along the coast.

SUBMISSION OF CONTROVERSY

A procedure by which the parties to a particular dispute place any matter of real controversy existing between them before a court for a final determination.

Some states have enacted laws that authorize parties in a legal dispute to bypass the normal procedures for resolving a civil lawsuit and use a process called submission of controversy. For a court to hear a case under a submission of controversy, the parties must agree to all the facts and present only questions of law for the court to resolve.

A submission of controversy dispenses with the need for the plaintiff to file a summons and complaint and the defendant to file an answer. Instead, the parties must agree to a statement of facts, because the court does not take evidence in such a proceeding. The agreement to the facts must be absolute, without reservations, and unequivocal and must stipulate all of the facts necessary for a complete determination of the controversy. The parties must also describe a CAUSE OF ACTION, explain why the court has jurisdiction over the parties, and propose what relief is being sought from the court.

Once the facts of the controversy are agreed upon, the court cannot dispute them. It must hold a trial or hearing on the questions of law in dispute and then render a decision that determines how the law applies to the stipulated facts. The inability of the court to judge the facts as a jury would distinguishes the submission of controversy from a trial without a jury.

The statutes that grant this right determine the type of controversies that can be submitted. Submission of controversy is not available in cases when the relief cannot be given or when the controversy involves a matter of public policy. A submission can only be granted when the controversy affects the private rights of the parties.

Like any case presented to a court, the controversy must present a QUESTION OF LAW, which must be real, and it must be one that can be followed by an effective judgment. The parties cannot submit abstract or moot questions for the purpose of obtaining the advice of the court. Nor will a court decide a question of law that does not arise from the facts in the case.

Submission of controversy is not used very often because of the difficulty in getting parties to agree to the facts of the case. Without such an agreement, this procedure cannot be used. Some states have repealed their statutes because the process has fallen into disfavor. ARBITRATION and mediation are more commonly used to resolve disputes informally and without filing a lawsuit. Under both of these ALTERNATIVE DISPUTE RESOLUTION mechanisms, the parties may still present their version of the facts, but the process is informal and usually more timely than a submission of controversy.

SUBMIT

To offer for determination; commit to the judgment or discretion of another individual or authority.

To submit evidence means to present or introduce it. Similarly a political issue might be submitted to the voters' judgment.

SUBORDINATION

To put in an inferior class or order; to make subject to, or subservient. A legal status that refers to the establishment of priority between various existing liens or encumbrances on the same parcel of property.

A *subordination agreement* is a contract whereby a creditor agrees that the claims of specified senior creditors must be paid in full before any payment on a subordinate debt can be paid to the subordinate creditor.

A *subordination clause* in a mortgage is a provision that gives a subsequent mortgage priority over one that has been executed at an earlier date.

SUBORNATION OF PERJURY

The criminal offense of procuring another to commit perjury, which is the crime of lying, in a material matter, while under oath.

It is a criminal offense to induce someone to commit perjury. In a majority of states, the offense is defined by statute.

Under federal CRIMINAL LAW (18 U.S.C.A. § 1622), five elements must be proved to convict a person of subornation of perjury. It first must be shown that the defendant made an agreement with a person to testify falsely. There must be proof that perjury has in fact been committed and that the statements of the perjurer were

A sample subordination agreement

Subordination Agreement

SUBORDINATION AGREEMENT (FULL)

FOR VALUABLE CONSIDERATION, receipt of which is acknowledged, _____ (Creditor), the beneficiary of a security interest granted by _____ (Debtor), dated _____(month & day),_____ (year) hereby agrees to fully subordinate to_____ (Senior Creditor) the creditor's security interest against the debtor in the following amount: _____ ($_____).

Signed this _____ day of _____ (month), _____ (year).

Creditor: _____

Agreed to: _____

Debtor: _____

material. The prosecutor must also provide evidence that the perjurer made such statements willfully with knowledge of their falsity. Finally, there must be proof that the procurer had knowledge that the perjurer's statements were false.

When there is a criminal conspiracy to suborn perjury, the conspirators may be prosecuted whether or not perjury has been committed. It is also quite common to join both subornation of perjury and OBSTRUCTION OF JUSTICE counts in a single indictment when they arise from the same activity.

The Federal Sentencing Guidelines recognize two types of circumstances that enhance the criminal sentence for subornation of perjury. An offense causing or threatening to cause physical injury to a person, or property damage, in order to suborn perjury is one circumstance. The other is when subornation of perjury resulted in substantial interference with the administration of justice, which includes a premature or improper termination of a felony investigation, an indictment, a verdict, or any judicial determination based on perjury, false testimony, or other false evidence, or the unnecessary expenditure of substantial government or court resources.

Under 18 U.S.C.A. § 1622, a person convicted of subornation of perjury may be fined $2,000 and sentenced to up to five years in prison.

SUBPOENA

[Latin, Under penalty.] *A formal document that orders a named individual to appear before a duly authorized body at a fixed time to give testimony.*

A court, GRAND JURY, legislative body, or ADMINISTRATIVE AGENCY uses a subpoena to compel an individual to appear before it at a specified time to give testimony. An individual who receives a subpoena but fails to appear may be charged with CONTEMPT of court and subjected to civil or criminal penalties. In addition, a person who has been served with a subpoena and has failed to appear may be brought to the proceedings by a law enforcement officer who serves a second subpoena, called an instanter.

A subpoena must be served on the individual ordered to appear. In some states a law enforcement officer or process server must personally serve it, whereas other states allow service by mail or with a telephone call. It is most often used to compel witnesses to appear at a civil or criminal trial. A trial attorney may

A sample subpoena

Subpoena in a Criminal Case

UNITED STATES DISTRICT COURT

_____ DISTRICT OF _____

V.

SUBPOENA IN A CRIMINAL CASE

Case Number:

TO:

☐ YOU ARE COMMANDED to appear in the United States District Court at the place, date, and time specified below, or any subsequent place, date and time set by the court, to testify in the above referenced case. This subpoena shall remain in effect until you are granted leave to depart by the court or by an officer acting on behalf of the court.

PLACE	COURTROOM
	DATE AND TIME

☐ YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s):

U.S. MAGISTRATE JUDGE OR CLERK OF COURT	DATE
(By) Deputy Clerk	

ATTORNEY'S NAME, ADDRESS AND PHONE NUMBER:

PROOF OF SERVICE

	DATE	PLACE
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ADDITIONAL INFORMATION

AO89 (Rev. 7/95) Subpoena in a Criminal Case

receive an assurance from a person who says that she will appear in court on a certain day to testify, but if a subpoena is not issued and served on the witness, she is not legally required to appear.

It is up to the attorneys in a case to request subpoenas, which are routinely issued by the trial court administrator's office. The subpoena must give the name of the legal proceedings, the name of the person who is being ordered to appear, and the time and place of the court hearing.

Legislative investigating committees also issue subpoenas to compel recalcitrant witnesses to appear. Congressional investigations of political scandal, such as the WATERGATE scandals of the Nixon administration, the IRAN-CONTRA scandal of the Reagan administration, and the WHITEWATER scandal of the Clinton administration, rely on subpoenas to obtain testimony.

A subpoena that commands a person to bring certain evidence, usually documents or papers, is called a SUBPOENA DUCES TECUM, from the Latin "under penalty to bring with you." This type of subpoena is often used in a civil lawsuit where one party resists giving the other party documents through the discovery process. If a court is convinced that the document request is legitimate, it will order the production of documents using a subpoena duces tecum.

A party may resist a subpoena duces tecum by refusing to comply and requesting a court hearing. One of the most famous refusals of a subpoena was RICHARD M. NIXON's reluctance to turn over the tape recordings of his White House office conversations to the Watergate special prosecutor. Nixon fought the subpoena all the way to the Supreme Court in UNITED STATES V. NIXON, 418 U.S. 683, 94 S. Ct. 3090, 41 L. Ed. 2d 1039 (1974). The Court upheld the subpoena, leading Nixon to resign his office a short time later.

SUBPOENA DUCES TECUM

[Latin, Under penalty to bring with you.] *The judicial process used to command the production before a court of papers, documents, or other tangible items of evidence.*

A subpoena duces tecum is used to compel the production of documents that might be admissible before the court. It cannot be used to require oral testimony and ordinarily cannot be used to compel a witness to reiterate, paraphrase, or affirm the truth of the documents produced.

Although frequently employed to obtain discovery during litigation, a subpoena duces tecum may not be used for a "fishing expedition" to enable a party to gain access to massive amounts of documents as a means of gathering evidence. The subpoena should be sufficiently definite so that a respondent can identify the documents sought without a protracted or extensive search. Moreover, a person ordinarily is required to produce only documents in her possession or under her control and supervision. A subpoena duces tecum may be used to compel the production of the papers and books of a business, however.

A subpoena duces tecum is not limited to parties to a lawsuit but may also be used for others who have relevant documents. In the absence of a valid excuse, an individual served with a subpoena duces tecum must produce the items sought, although a subordinate may comply instead. A subpoena duces tecum may be challenged by a motion to quash, modify, or vacate the subpoena or by a motion for a protective order. The subpoena might not be permitted if alternative methods for obtaining the information sought are available. Determining whether a subpoena duces tecum should be enforced is a discretionary matter within the judgment of the court.

SUBROGATION

The substitution of one person in the place of another with reference to a lawful claim, demand, or right, so that he or she who is substituted succeeds to the rights of the other in relation to the debt or claim, and its rights, remedies, or SECURITIES.

There are two types of subrogation: *legal* and *conventional.* Legal subrogation arises by operation of law, whereas conventional subrogation is a result of a contract.

The purpose of subrogation is to compel the ultimate payment of a debt by the party who, in EQUITY and good conscience, should pay it. This subrogation is an equitable device used to avoid injustice.

Legal subrogation takes place as a matter of equity, with or without an agreement. The right of legal subrogation can be either modified or extinguished through a contractual agreement. It cannot be used to displace a contract agreed upon by the parties.

Conventional subrogation arises when one individual satisfies the debt of another as a result of a contractual agreement that provides that any claims or liens that exist as security for the debt be kept alive for the benefit of the party who pays the debt. It is necessary that the agreement be supported by consideration; however, it does not have to be in writing and can be either express or implied.

The facts of each case determine the issue of whether or not subrogation is applicable. In general, the remedy is broad enough to include every instance in which one party, who is not a mere volunteer, pays a debt for which a second party is primarily liable and which, in equity and good conscience, should have been discharged by the second party. Subrogation is a highly favored remedy that the courts are inclined to extend and apply liberally.

The ordinary equity maxims are applicable to subrogation, which is not permitted when there is an adequate legal remedy. The plaintiff must come into court with clean hands, and the person who seeks equity must do equity. The remedy is not available when there are equal or superior equities in other individuals who are in opposition to the party seeking subrogation. The remedy is denied when the person seeking subrogation has interfered with the rights of others, committed FRAUD, or been negligent.

The right to subrogation accrues upon payment of the debt. The subrogee is generally entitled to all the creditor's rights, privileges, priorities, remedies, and judgments and is subject only to whatever limitations and conditions were binding on the creditor. He does not, however, have any more extensive rights than the creditor.

SUBSCRIBE

To write underneath; to put a signature at the end of a printed or written instrument.

A *subscribing witness* is an individual who either sees the execution of a writing or hears its acknowledgment and signs his or her name as a witness upon the request of the executor of the agreement.

In relation to the law of corporations, a subscriber is one who has made an agreement to take a portion of the original issue of corporate stock.

SUBSCRIPTION

The act of writing one's name under a written instrument; the affixing of one's signature to any document, whether for the purpose of authenticating or attesting it, of adopting its terms as one's own expressions, or of binding one's self by an engagement which it contains. A written contract by which one engages to take and pay for capital stock of a corporation, or to contribute a sum of money for a designated purpose, either gratuitously, as in the case of subscribing to a charity, or in consideration of an equivalent to be rendered, as a subscription to a periodical, a forthcoming book, a series of entertainments, or the like.

Subscriptions, such as those made to charities, are also known as pledges and can be either oral or written.

State law determines the enforceability of oral and written subscriptions. Courts have regarded subscriptions that are not supported by some consideration as mere offers that become legally binding when accepted or when the recipient of the promise has acted in reliance on the offers. The promise that forms the subscription need not be to pay money but might be for the performance of other acts, such as to convey land or provide labor for construction.

A subscription contract does not have to be in a particular form, or even in writing, provided the promisor clearly indicates an intention to have such an agreement or contract. Where a state law mandates a writing, the subscriber's name can be signed to the contract by the individual who solicits the contribution for the organization, if that person is authorized to do so by the subscriber.

The offered subscription must be accepted if it is to legally bind the subscriber. It is essential that acceptance occur within a reasonable time, since, as an offer, the subscription can be revoked any time prior to its acceptance. A subscription is also revocable upon notice given by the subscriber if a condition upon which it is based has not been performed. A subscriber may be prevented from claiming revocation in situations where it would be contrary to the interests of justice.

Where the subscriber dies or becomes insane prior to an acceptance of the subscription or the furnishing of consideration for it, the subscription lapses and is legally ineffective.

Courts, as a matter of policy, uphold subscriptions if any consideration can be found. In a situation where the recipient of the subscription has begun work or incurred liability in reliance upon it, such action constitutes a consideration. A benefit to the subscriber, although

it is enjoyed by her in common with others or with the general public, is also deemed sufficient consideration for the promise.

The discovery of any false representations made intentionally for the purpose of deceiving an individual making a charitable subscription justifies the cancellation of the subscription. The FRAUD must bear a relation to the subject matter of the contract. If an individual is told that the subscription will go to finance the development of a recreation center for a student group when, in fact, it will be used to fund an arsenal for a group of political extremists, that individual is entitled to cancel the subscription. A subscription that has for its purpose the accomplishment of ends that are contrary to public policy is invalid.

In situations where the terms of a subscription are vague or ambiguous, the court will interpret its meaning. Factors for evaluation include the subject matter of the agreement, the inducement that influenced the subscription, the circumstances under which it was made, and its language. The contractual rights against a subscriber may be assigned, unless the terms of the subscription expressly proscribe this. Any conditions required by a subscription contract must be satisfied before the contract will be enforced. The conditions of a subscription may include the time of performance or the requirement of a program of matching corporate grants. Where a subscription indicates that any material change in the plan or purpose for which the subscription was made cannot be done without the consent of the subscriber, the subscriber will be released from the obligation if such a change is made without consent.

In the event that an enterprise is abandoned prior to the time that its purpose, which was the basis of the subscription, is accomplished, the courts will not ordinarily enforce the subscription against the subscriber. There is an implied condition at law that an enterprise cannot be abandoned but must be in existence when payment is demanded. In order to relieve the subscriber from his duties, however, it is essential that there be a complete ABANDONMENT or frustration of the project. In cases where the project is partially completed, a cessation of work due to the shortage of funds precipitated by the failure of pledgors to pay the full amount of their pledges is not a complete abandonment relieving the subscriber from liability. This is also true when a project is temporarily suspended because of financial difficulties or because the purpose of the subscription is substantially accomplished, but the enterprise is subsequently stopped.

When the subscriber's liability has become fixed, based upon a fulfillment of all conditions, he must pay the subscription according to its terms. In cases where the promise is to pay as the work progresses, the work need not be completed before payment is due.

A subscription is a type of contract, and, therefore, the remedies for its breach are the same as those for breach of contract and include damages and SPECIFIC PERFORMANCE.

SUBSIDIARY

Auxiliary; aiding or supporting in an inferior capacity or position. In the law of corporations, a corporation or company owned by another corporation that controls at least a majority of the shares.

A subsidiary corporation or company is one in which another, generally larger, corporation, known as the parent corporation, owns all or at least a majority of the shares. As the owner of the subsidiary, the parent corporation may control the activities of the subsidiary. This arrangement differs from a merger, in which a corporation purchases another company and dissolves the purchased company's organizational structure and identity.

Subsidiaries can be formed in different ways and for various reasons. A corporation can form a subsidiary either by purchasing a controlling interest in an existing company or by creating the company itself. When a corporation acquires an existing company, forming a subsidiary can be preferable to a merger because the parent corporation can acquire a controlling interest with a smaller investment than a merger would require. In addition, the approval of the stockholders of the acquired firm is not required as it would be in the case of a merger.

When a company is purchased, the parent corporation may determine that the acquired company's name recognition in the market merits making it a subsidiary rather than merging it with the parent. A subsidiary may also produce goods or services that are completely different from those produced by the parent corporation. In that case it would not make sense to merge the operations.

Corporations that operate in more than one country often find it useful or necessary to create subsidiaries. For example, a multinational corporation may create a subsidiary in a country to obtain favorable tax treatment, or a country may require multinational corporations to establish local subsidiaries in order to do business there.

Corporations also create subsidiaries for the specific purpose of limiting their liability in connection with a risky new business. The parent and subsidiary remain separate legal entities, and the obligations of one are separate from those of the other. Nevertheless, if a subsidiary becomes financially insecure, the parent corporation is often sued by creditors. In some instances courts will hold the parent corporation liable, but generally the separation of corporate identities immunizes the parent corporation from financial responsibility for the subsidiary's liabilities.

One disadvantage of the parent-subsidiary relationship is the possibility of multiple taxation. Another is the duty of the parent corporation to promote the subsidiary's corporate interests, to act in its best interest, and to maintain a separate corporate identity. If the parent fails to meet these requirements, the courts will perceive the subsidiary as merely a business conduit for the parent, and the two corporations will be viewed as one entity for liability purposes.

CROSS-REFERENCES

Mergers and Acquisitions; Parent Company.

SUBSTANCE

Essence; the material or necessary component of something.

A matter of substance, as distinguished from a matter of form, with respect to pleadings, affidavits, indictments, and other legal instruments, entails the essential sufficiency, validity, or merits of the instrument, as opposed to its method or style.

SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION

The Substance Abuse and Mental Health Services Administration (SAMHSA), an operating division of the HEALTH AND HUMAN SERVICES DEPARTMENT (HHS), was established in 1992 by the Alcohol, Drug Abuse, and Mental Health Administration Reorganization Act (Pub. L. No. 102-321). SAMHSA provides national leadership in the prevention and treatment of addictive and mental disorders, through programs and services for individuals who suffer from these disorders. SAMSHA works in partnership with states, communities, and private organizations in order to provide treatment and rehabilitative services to affected persons. In fiscal year 2002 the agency's budget was over three billion dollars. SAMSHA employs about 550 staff members.

Within SAMHSA are several major centers designated to carry out its purposes. The Center for Substance Abuse Prevention (CSAP) develops and implements federal policy for the prevention of alcohol and drug abuse, and analyzes the effect of other federal, state, and local programs also designed to prevent such abuse. CSAP administers and operates grant programs for the prevention of alcohol and drug abuse among specific populations, such as high-risk youth and women with dependent children, and in particular settings, including schools and the workplace. CSAP also supports training for health professionals working in alcohol and drug abuse education and prevention.

The Center for Substance Abuse Treatment (CSAT) provides national leadership in developing and administering programs focusing on the treatment of substance abuse. CSAT works with states, local communities, and HEALTHCARE providers by providing financial assistance to improve and expand programs for treating substance abuse. CSAT, like CSAP, also focuses on specific populations by administering and evaluating grant programs like the Comprehensive Residential Drug Prevention and Treatment Program, which treats women who abuse substances, and their children, and helps to train healthcare providers working in substance abuse prevention.

The Center for Mental Health Services (CMHS) promotes, on the federal level, the prevention and treatment of mental disorders, by identifying national mental health goals and developing strategies to meet them. CMHS works to improve the quality of programs that serve both the individuals suffering from these disorders and their families. Like other component centers carrying out the goals of SAMHSA, CMHS administers grants and programs that help states and local governments provide mental healthcare and services. CMHS also works with the alcohol, drug abuse, and mental health institutes of the National Institutes of Health,

the principal biomedical research agency of the federal government, in researching the effective delivery of mental health services.

The Office of Management, Planning, and Communications (OMPC) is responsible for the financial and administrative management of SAMHSA components, including their personnel management and computer support functions. OMPC also monitors and analyzes pending legislation affecting SAMHSA components and acts as a liaison between SAMHSA and congressional committees. In addition, OMPC oversees the public affairs activities of SAMHSA, including public relations and interaction with the media to facilitate coverage of SAMHSA programs and objectives. Finally, OMPC collects and compiles alcohol and drug abuse prevention and treatment literature and supports the CSAP National Clearinghouse for Alcohol and Drug Information. The clearinghouse then disseminates its materials to state and local governments, healthcare and drug treatment programs, healthcare professionals, and the general public.

Over the years SAMSHA has identified new topics and activities that build on prevention goals and systems of care for persons dealing with mental illness, substance use or abuse. SAMSHA research has provided the basis for numerous initiatives regarding community-based prevention, identification, and treatment programs. Despite these efforts SAMSHA issued a press release in January 2003 indicating that prescription drug abuse by teenagers and young adults was continuing to increase.

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CROSS-REFERENCES

Addict; Drugs and Narcotics.

SUBSTANTIAL

Of real worth and importance; of considerable value; valuable. Belonging to substance; actually existing; real; not seeming or imaginary; not illusive; solid; true; veritable.

The right to FREEDOM OF SPEECH, for example, is a substantial right.

SUBSTANTIATE

To establish the existence or truth of a particular fact through the use of competent evidence; to verify.

For example, an EYEWITNESS might be called by a party to a lawsuit to substantiate that party's testimony.

SUBSTANTIVE DUE PROCESS

The substantive limitations placed on the content or subject matter of state and federal laws by the Due Process Clauses of the Fifth and Fourteenth Amendments to the U.S. Constitution.

In general, substantive due process prohibits the government from infringing on fundamental constitutional liberties. By contrast, procedural due process refers to the procedural limitations placed on the manner in which a law is administered, applied, or enforced. Thus, procedural due process prohibits the government from arbitrarily depriving individuals of legally protected interests without first giving them notice and the opportunity to be heard.

The Due Process Clause provides that no person shall be "deprived of life, liberty, or property without due process of law." When courts face questions concerning procedural due process, the controlling word in this clause is *process.* Courts must determine how much process is due in a particular hearing to satisfy the fairness requirements of the Constitution. When courts face questions concerning substantive due process, the controlling issue is *liberty.* Courts must determine the nature and the scope of the liberty protected by the Constitution before affording litigants a particular freedom.

Historical Development

The concept of DUE PROCESS has its roots in early ENGLISH LAW. In 1215 MAGNA CHARTA provided that no freeman should be imprisoned, disseised, outlawed, exiled, or destroyed, unless by the "law of the land." As early as 1354 the words "due process of law" were used to explain the protections set forth in Magna Charta. By the end of the fourteenth century, "law of the land" and "due process of law" were considered virtually synonymous in England. According to the seventeenth-century English jurist SIR EDWARD COKE, "due process of law"

and "law of the land" possessed both substantive and procedural qualities. Substantively, Coke believed that the liberty to pursue a livelihood, the right to purchase goods, and the right to be free from anti-competitive practices were all protected by the "law of the land" and "due process of law." Procedurally, Coke associated these terms with indictment by GRAND JURY and trial by petit jury.

When the Founding Fathers drafted the FIFTH AMENDMENT, it was unclear whether the Due Process Clause possessed any substantive qualities. Some prominent Americans, including ALEXANDER HAMILTON, understood the Due Process Clause to provide only procedural safeguards. Several states, however, followed the English practice of equating due process with the substantive protections offered by statutes and the COMMON LAW. This divergent understanding of due process continues today. During the first 60 years after the ratification of the Constitution, the Due Process Clause was confined to a procedural meaning. Over the next 140 years, however, due process of law took on a pervasive substantive meaning.

The year 1856 marked the introduction of substantive due process in U.S. JURISPRUDENCE. In that year the U.S. Supreme Court faced a constitutional challenge to the MISSOURI COMPROMISE OF 1820, a federal law that abolished SLAVERY in the territories. Under Missouri law, slaves who entered a free territory remained free for the rest of their lives. When a slave named Dred Scott returned to Missouri after visiting the free territory in what is now Minnesota, he sued for emancipation. Denying his claim, in DRED SCOTT V. SANDFORD, 60 U.S. (19 How.) 393, 15 L. Ed. 691 (1856), the Supreme Court ruled that the Due Process Clause protects the liberty of certain persons to own African American slaves. Because the Missouri Compromise deprived slave owners of this liberty in the territories, the Supreme Court declared it invalid.

After *Dred Scott* the doctrine of substantive due process lay dormant for nearly half a century. In LOCHNER V. NEW YORK, 198 U.S. 45, 25 S. Ct. 539, 49 L. Ed. 937 (1905), the Supreme Court reinvigorated the doctrine by invalidating a state law that regulated the number of hours employees could work each week in the baking industry. Maximum hour laws, the Court ruled, interfere with the liberty of contract guaranteed by the Due Process Clause. The Court said that the liberty of contract allows individuals to determine the terms and conditions of their employment, including the number of hours they work during a given period.

Over the next 32 years, the Supreme Court relied on *Lochner* in striking down several laws that interfered with the liberty of contract. Most of these laws were enacted pursuant to the inherent POLICE POWERS of state and federal governments. Police powers give lawmakers the authority to regulate health, safety, and welfare. For example, in *Adkins v. Children's Hospital,* 261 U.S. 525, 43 S. Ct. 394, 67 L. Ed. 785 (1923), the Supreme Court invalidated a MINIMUM WAGE law that had been enacted by the federal government pursuant to its police powers. Minimum wage laws, the Court said, violate the liberty of contract guaranteed to workers by the Due Process Clause.

By 1936 the doctrine of substantive due process had grown increasingly unpopular. The Court had invoked the doctrine to strike down a series of federal laws enacted as part of President FRANKLIN D. ROOSEVELT'S NEW DEAL, an economic stimulus program aimed at ameliorating the worst conditions of the Great Depression. On February 5, 1937, Roosevelt announced his court-packing plan, a proposal designed to enlarge the Supreme Court by enough justices to give the EXECUTIVE BRANCH control over the federal judiciary. One month later the Supreme Court released its decision in WEST COAST HOTEL CO. V. PARRISH, 300 U.S. 379, 57 S. Ct. 578, 81 L. Ed. 703 (1937).

In *West Coast Hotel* the Supreme Court upheld a Washington State minimum wage law over due process objections. Although the Court did not completely abandon the doctrine of substantive due process, it circumscribed its application. Because liberty of contract is not specifically mentioned in any provision of the federal Constitution, the Court said, this liberty must yield to competing government interests that are pursued through reasonable means. *West Coast Hotel* precipitated the onset of modern substantive due process analysis.

Modern Analysis

Since 1937 the Court has employed a two-tiered analysis of substantive due process claims. Under the first tier, legislation concerning economic affairs, employment relations, and other business matters is subject to minimal judicial scrutiny, meaning that a particular law will be overturned only if it serves no rational govern-

ment purpose. Under the second tier, legislation concerning fundamental liberties is subject to heightened judicial scrutiny, meaning that a law will be invalidated unless it is narrowly tailored to serve a significant government purpose.

The Supreme Court has identified two distinct categories of fundamental liberties. The first category includes most of the liberties expressly enumerated in the BILL OF RIGHTS. Through a process known as "selective incorporation," the Supreme Court has interpreted the Due Process Clause of the FOURTEENTH AMENDMENT to bar states from denying their residents the most important freedoms guaranteed in the first ten amendments to the federal Constitution. Only the SECOND AMENDMENT right to bear arms, the THIRD AMENDMENT right against involuntary quartering of soldiers, and the Fifth Amendment right to be indicted by a grand jury have not been made applicable to the states. Because these rights remain inapplicable to state governments, the Supreme Court is said to have "selectively incorporated" the Bill of Rights into the Due Process Clause of the Fourteenth Amendment.

The second category of fundamental liberties includes those liberties that are not expressly enumerated in the Bill of Rights but which are nonetheless deemed essential to the concepts of freedom and equality in a democratic society. These unenumerated liberties are derived from Supreme Court precedents, common law, moral philosophy, and deeply rooted traditions of U.S. LEGAL HISTORY. The word *liberty* cannot be defined by a definitive list of rights, the Supreme Court has stressed. Instead, it must be viewed as a rational continuum of freedom through which every facet of human behavior is safeguarded from ARBITRARY impositions and purposeless restraints. In this light, the Supreme Court has observed, the Due Process Clause protects abstract liberty interests, including the right to personal autonomy, bodily integrity, self-dignity, and self-determination.

These interests often are grouped to form a general right to privacy, which was first recognized in GRISWOLD V. CONNECTICUT, 381 U.S. 479, 85 S. Ct. 1678, 14 L. Ed. 2d 510 (1965), where the Supreme Court struck down a state statute forbidding married adults from using BIRTH CONTROL on the ground that the law violated the sanctity of the marital relationship. In *Griswold* the Supreme Court held that the First, Fourth, Fifth, and Ninth Amendments create a PENUMBRA of privacy, which serves to insulate certain behavior from governmental coercion or intrusion. According to the Court, this penumbra of privacy, though not expressly mentioned in the Bill of Rights, must be protected to establish a buffer zone or breathing space for those freedoms that are constitutionally enumerated.

Seven years later, in *Eisenstadt v. Baird,* 405 U.S. 438, 92 S. Ct. 1029, 31 L. Ed. 2d 349 (1972), the Supreme Court struck down a Massachusetts statute that made illegal the distribution of contraceptives to unmarried persons. In striking down this law, the Supreme Court enunciated a broader view of privacy, stating that all persons, married or single, enjoy the liberty to make certain intimate decisions free from government restraint, including the decision of whether to bear or beget a child. *Eisenstadt* foreshadowed the decision in ROE V. WADE, 410 U.S. 113, 93 S. Ct. 705, 35 L. Ed. 2d 147 (1973), where the Supreme Court ruled that the Due Process Clause guarantees women the right to have an ABORTION during the first trimester of pregnancy without state interference. *Roe* subsequently was interpreted to prevent state and federal governments from passing laws that unduly burden a woman's right to terminate her pregnancy (WEBSTER V. REPRODUCTIVE HEALTH SERVICES, 492 U.S. 490, 109 S. Ct. 3040, 106 L. Ed. 2d 410 [1989]).

The liberty interest protected by the Due Process Clause places other substantive limitations on legislation regulating intimate decisions. For example, the Supreme Court has recognized a due process right of parents to raise their children as they see fit, including the right to educate their children in private schools (*Pierce v. Society of the Sisters,* 268 U.S. 510, 45 S. Ct. 571, 69 L. Ed. 1070 [1925]). Parents may not be compelled by the government to educate their children at public schools without violating principles of substantive due process. The Supreme Court also has ruled that members of extended families, such as grandparents and grandchildren, enjoy a due process right to live under the same roof, despite housing ordinances that limit occupation of particular dwellings to immediate relatives (*Moore v. City of East Cleveland,* 431 U.S. 494, 97 S. Ct. 1932, 52 L. Ed. 2d 531 [1977]).

During the 1990s the Supreme Court was asked to recognize a general right to die under the doctrine of substantive due process. Although the Court stopped short of establish-

ing such a far-reaching right, certain patients may exercise a constitutional liberty to hasten their deaths under a narrow set of circumstances. In *Cruzan v. Missouri Department of Health,* 497 U.S. 261, 110 S. Ct. 2841, 111 L. Ed. 2d 224 (1990), the Supreme Court ruled that the Due Process Clause guarantees the right of competent adults to make advanced directives for the withdrawal of life-sustaining measures should they become incapacitated by a disability that leaves them in a persistent vegetative state. Once it has been established by clear and convincing evidence that a mentally incompetent and persistently vegetative patient made such a prior directive, a spouse, parent, or other appropriate guardian may seek to terminate any form of artificial hydration or nutrition.

The U.S. Court of Appeals for the Ninth Circuit cited *Cruzan* in support of its decision establishing the right of competent, but terminally ill, patients to hasten their deaths by refusing medical treatment when the final stages of life are tortured by pain and indignity (*Compassion in Dying v. Washington,* 79 F.3d 790 [1996]). In WASHINGTON V. GLUCKSBERG, 521 U.S. 702, 117 S. Ct. 2258, 138 L. Ed. 2d 772 (1997), however, the Supreme Court reversed this decision, holding that there is no due process right to assisted suicide.

The liberty interest recognized by the doctrine of substantive due process permits individuals to lead their lives free from unreasonable and arbitrary governmental impositions. Nevertheless, this liberty interest does not require the absence of all governmental restraint. Economic regulations will be upheld under the Due Process Clause so long as they serve a rational purpose, while noneconomic regulations normally will be sustained if they do not impinge on a fundamental liberty and otherwise are reasonable.

The U.S. Supreme Court continues to revisit the concept of substantive due process. In 2003 the Supreme Court was asked to review the constitutionality of a Texas statute criminalizing homosexual SODOMY. The statute made it a misdemeanor for a person to engage in "deviate sexual intercourse" with another individual of the same sex, but did not prohibit such conduct when undertaken with a person of the opposite sex. The defendant, an adult male, was arrested for violating the statute by engaging in consensual homosexual relations in the privacy of his home. The Court found that Texas Penal Code section 21.06 violated substantive due process by creating this double standard governing the legality of oral and anal sex between heterosexual and homosexual partners. LAWRENCE V. TEXAS, 539 U.S.___, 123 S.Ct. 2472, 156 L.Ed.2d 508 (U.S., Jun 26, 2003). Justice ANTHONY KENNEDY wrote the 6–3 decision.

Overruling a 17-year-old precedent, Kennedy said that history and tradition are the starting point, but not in all cases the ending point, of substantive due process inquiry. In *Bowers v. Hardwick*, 478 U.S. 186, 106 S.Ct. 2841, 92 L.Ed.2d 140 (1986), which rejected a claim advocating recognition for an almost identical substantive due process liberty interest, Kennedy maintained that the Court had failed to appreciate the nature and scope of the liberty interest at stake. "To say that the issue in *Bowers* was simply the right to engage in certain sexual conduct demeans the claim the individual put forward [in that case], just as it would demean a married couple were it to be said marriage is simply about the right to have sexual intercourse," Justice Kennedy explained. Although "[t]he laws involved in *Bowers* and here are . . . statutes that purport to do no more than prohibit a particular sexual act. . . . [t]heir penalties and purposes . . . have more far-reaching consequences, touching upon the most private human conduct, sexual behavior, and in the most private of places, the home," the Court continued. The statutes in question "seek to control a personal relationship that, whether or not entitled to formal recognition in the law, is within the liberty of persons to choose without being punished as criminals."

The deficiencies in *Bowers* became even more apparent in the years following its announcement, Justice Kennedy observed. The 25 states with laws prohibiting sodomy in *Bowers* had been reduced to 13 by 2003, and four of those 13 states applied their laws only against homosexual conduct. But even in the states where homosexual sodomy is proscribed, Kennedy emphasized, there is a pattern of nonenforcement with respect to consenting adults acting in private. Thus, the Court concluded that homosexuals enjoy a constitutionally protected liberty under the Due Process Clause and that liberty gives them a right to engage in private consensual sexual activity without intervention of government.

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CROSS-REFERENCES

Death and Dying; Due Process; Incorporation Doctrine; Labor Law; *Quinlan, In re*; Rational Basis Test; Strict Scrutiny; Unenumerated Rights.

SUBSTANTIVE LAW

The part of the law that creates, defines, and regulates rights, including, for example, the law of contracts, TORTS*, wills, and real property; the essential substance of rights under law.*

Substantive law and procedural law are the two main categories within the law. Substantive law refers to the body of rules that determine the rights and obligations of individuals and collective bodies. Procedural law is the body of legal rules that govern the process for determining the rights of parties.

Substantive law refers to all categories of public and private law, including the law of contracts, real property, torts, and CRIMINAL LAW. For example, criminal law defines certain behavior as illegal and lists the elements the government must prove to convict a person of a crime. In contrast, the rights of an accused person that are guaranteed by the Fourth, Fifth, and Sixth Amendments to the U.S. Constitution are part of a body of criminal procedural law.

U.S. substantive law comes from the COMMON LAW and from legislative statutes. Until the twentieth century, most substantive law was derived from principles found in judicial decisions. The common-law tradition built upon prior decisions and applied legal precedents to cases with similar fact situations. This tradition was essentially conservative, as the substance of law in a particular area changed little over time.

Substantive law has increased in volume and changed rapidly in the twentieth century as Congress and state legislatures have enacted statutes that displace many common-law principles. In addition, the National Conference of Commissioners on Uniform State Laws and the American Law Institute have proposed numerous model codes and laws for states to adopt. For example, these two groups drafted the UNIFORM COMMERCIAL CODE (UCC), which governs commercial transactions. The UCC has been adopted in whole or substantially by all states, replacing the common law and divergent state laws as the authoritative source of substantive COMMERCIAL LAW.

CROSS-REFERENCES

Model Acts; Uniform Acts.

SUBSTITUTED SERVICE

Service of process upon a defendant in any manner, authorized by statute or rule, other than PERSONAL SERVICE *within the jurisdiction; as by publication, by mailing a copy to his or her last known address, or by personal service in another state.*

SUCCESSION

The transfer of title to property under the law of DESCENT AND DISTRIBUTION. *The transfer of legal or official powers from an individual who formerly held them to another who undertakes current responsibilities to execute those powers.*

SUCCESSION OF STATES

Succession occurs when one state ceases to exist or loses control over part of its territory, and another state comes into existence or assumes control over the territory lost by the first state. A central concern in this instance is whether the international obligations of the former state are taken over by the succeeding state. Changes in the form of government of one state, such as the replacement of a monarchy by a democratic form of government, do not modify or terminate the obligations incurred by the previous government.

When the state ceases to exist, however, the treaties it concluded generally are terminated and those of the successor state apply to the territory. These include political treaties like alliances, which depend on the existence of the state that concluded them. But certain obliga-

tions, such as agreements concerning boundaries or other matters of local significance, carry over to the successor state. More difficult to determine is the continuing legality of treaties granting concessions or contract rights. Scholarly opinion has diverged on this aspect of succession, and state practice has likewise divided. Consequently each case must be studied on its merits to determine whether the rights and duties under the contract or concession are such that the successor state is bound by the obligations of the previous state.

SUE

To initiate a lawsuit or continue a legal proceeding for the recovery of a right; to prosecute, assert a legal claim, or bring action against a particular party.

SUFFER

To admit, allow, or permit.

The term *suffer* is used to convey the idea of ACQUIESCENCE, passivity, indifference, or abstention from preventive action, as opposed to the taking of an affirmative step.

SUFFRAGE

The right to vote at public elections.

SUI GENERIS

*[*Latin, Of its own kind or class.*] That which is the only one of its kind.*

SUI JURIS

*[*Latin, Of his or her own right.*]*

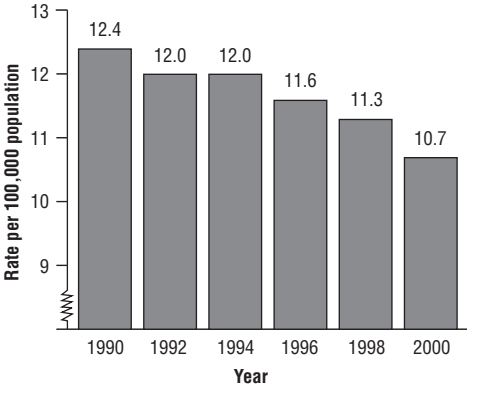
Possessing full social and CIVIL RIGHTS*; not under any legal disability, or the power of another, or guardianship. Having the capacity to manage one's own affairs; not under legal disability to act for one's self.*

SUICIDE

The deliberate taking of one's own life.

Under COMMON LAW, suicide, or the intentional taking of one's own life, was a felony that was punished by FORFEITURE of all the goods and chattels of the offender. Under modern U.S. law, suicide is no longer a crime. Some states, however, classify attempted suicide as a criminal act, but prosecutions are rare, especially when the offender is terminally ill. Instead, some jurisdictions require a person who attempts suicide to undergo temporary hospitalization and psychological observation. A person who causes the death of an innocent bystander or would-be rescuer while in the process of attempting suicide may be guilty of murder or MANSLAUGHTER.

Suicide Rate in the United States, 1990 to 2000



SOURCE: American Association of Suicidology, *Official Final Data on Suicide in the United States*, 2000.

More problematic is the situation in which someone helps another to commit suicide. Aiding or abetting a suicide or an attempted suicide is a crime in all states, but prosecutions are rare. Since the 1980s the question of whether physician-assisted suicide should be permitted for persons with terminal illnesses has been the subject of much debate, but as yet this issue has not been resolved.

The debate over physician-assisted suicide concerns persons with debilitating and painful terminal illnesses. Under current laws a doctor who assists a person's suicide could be charged with aiding and abetting suicide. Opponents of decriminalizing assisted suicide argue that decriminalization would lead to a "slippery slope" that would eventually result in doctors being allowed to assist persons who are not terminally ill to commit suicide.

The debate on physician-assisted suicide intensified after 1990 when Dr. JACK KEVORKIAN, a retired Michigan pathologist, began to attend many suicides. Kevorkian admitted to obtaining carbon monoxide and instructing persons who suffered from terminal or degenerative diseases

on how to administer the gas so they would die. Despite the efforts of Michigan legislators and prosecutors to convict Kevorkian of murder, the pathologist, who was dubbed "Doctor Death," successfully fought the charges. Three murder charges were dismissed by Michigan courts, and in 1994 Kevorkian was acquitted of violating Michigan's assisted suicide law (Mich. Comp. Laws § 752.1021 et seq.). Despite Kevorkian's acquittals other assisted suicide advocates believe his methods have actually hurt the cause. In 1997 the U.S. Supreme Court held that neither the DUE PROCESS CLAUSE (WASHINGTON V. GLUCKSBERG, 521 U.S. 702, 117 S. Ct. 2258, 138 L. Ed. 2d 772) nor the EQUAL PROTECTION CLAUSE (*Vacco v. Quill,* 521 U.S. 743, 117 S. Ct. 2293, 138 L. Ed. 2d 834) of the FOURTEENTH AMENDMENT includes a right to assisted suicide.

After four acquittals, Kevorkian was convicted in March 1999 of second-degree murder and delivery of a controlled substance by a jury in Pontiac, Michigan. Kevorkian administered a lethal injection in September 1998 to Thomas Youk, a 52-year-old man who suffered from amyotrophic lateral sclerosis, or Lou Gehrig's disease, a fatal neurological disorder that slowly disables its victims. Kevorkian performed the procedure on the CBS television program *60 Minutes* amid great controversy.

At the time of his trial, Kevorkian represented himself, insisting that only he could explain to the jury that he did not intend to kill Youk but to end his suffering. The jury nevertheless reached a guilty verdict. Although he could have been sentenced to life in prison, he was sentenced to ten to 25 years in prison. He sought unsuccessfully for three years to appeal his conviction.

Kevorkian was not entirely alone in his crusade to legalize assisted suicide. In 1994, Oregon voters passed the Oregon Death with Dignity Act (DWDA), which allows physicians to prescribe lethal medication to Oregon residents who request it. The statute requires that the patient must be 18 years or older, must be able to make and communicate HEALTHCARE decisions, and have been diagnosed with a terminal illness that likely will result in death within six months. While physicians may make the prescription, patients must self-administer it, since the DWDA specifically prohibits "lethal injection, mercy killing, or active euthanasia." Oregon is the only jurisdiction in the world that has legalized physician-assisted suicide.

The Oregon legislature enacted the DWDA after residents voted in favor of the law twice, 51 percent in favor in 1994, then 60 percent in 1997. The law originally went into effect in 1994 but immediately was suspended by court injunctions pending legal challenges. After the Supreme Court rendered its decisions in *Glucksberg* and *Vacco*, the Ninth Circuit Court of Appeals lifted the INJUNCTION. The Oregon law went into effect on October 27, 1997.

Between 1998 and 2001, between 70 and 96 patients—the exact numbers are disputed—committed suicide under the act. In November 2001, U.S. attorney general JOHN ASHCROFT issued a directive stating that physicians who prescribe lethal doses of drugs to end the lives of terminally ill patients would be subjected to criminal charges and have their medical licenses revoked or suspended. Ashcroft issued this directive pursuant to the Controlled Substances Act and reversed the position previously taken by former attorney general JANET RENO, who determined that the Oregon statute was outside the scope of the Controlled Substances Act. Members of Congress, including Senator Orrin Hatch (R-Utah) and Representative Henry Hyde (R-IL), also unsuccessfully sought to pass federal legislation that would have revoked the registration of Oregon physicians who participated in assisted suicide efforts.

In response to Ashcroft's order, the state of Oregon brought suit against the attorney general, seeking a permanent injunction to prevent him and the U.S. JUSTICE DEPARTMENT from enforcing the directive. In April 2002, U.S. District Court Judge Robert E. Jones issued the injunction and also criticized Ashcroft for his handling of the directive. According to Jones, the Controlled Substances Act was not intended to override a state's decision concerning what constitutes legitimate medical practice, at least in the absence of federal law prohibiting such a practice. The judge also found that Congress never intended, through the Controlled Substances Act or other federal law, to grant blanket authority to the attorney general or the Drug Enforcement Agency to define what constitutes the legitimate practice of medicine.

The DWDA has strict requirements that are designed to prevent abuse of the act. Patients must make two verbal requests for lethal medication separated by at least 15 days, plus a written request. Two physicians must inde-

pendently confirm that the patient has a terminal illness likely to result in death within six months and that the patient is capable to make and communicate healthcare decisions. If either physician believes the patient suffers from depression or any other psychiatric disorder, he or she must refer the patient for counseling. The prescribing physician must request, but not require, the patient to inform his or her next of kin of the suicide decision. The prescribing physician also must inform the patient of alternatives to suicide, including hospice care and pain control, and give the patient the opportunity to change his or her mind after the 15 day waiting period.

The strict DWDA requirements have not silenced its critics. Opponents in the medical community, including Physicians for Compassionate Care, believe that physician-assisted suicide is contrary to the profession's purpose—to promote health. Religious opponents, including the Roman Catholic Church, Mormons, and Christian fundamentalists, feel that suicide of any kind devalues life. Not Dead Yet, an organization of DISABLED PERSONS, believes that states should instead enact legislation to improve access to health and hospice care, and the overall quality of life, for terminally ill patients. Many opponents are concerned that poor or uneducated patients will be pressured by family members or the healthcare insurance industry to chose death over life with its medically expensive consequences.

To the supporters of physician-assisted suicide, the issue is a matter of personal autonomy and control. The Hemlock Society, an organization that supports physician-assisted suicide, claims that terminally ill patients must be allowed to end their lives voluntarily rather than suffer through the painful and disabling effects of a terminal illness.

CROSS-REFERENCES

Death and Dying; Euthanasia; Patients' Rights; Physicians and Surgeons.

SUIT

A generic term, of comprehensive signification, referring to any proceeding by one person or persons against another or others in a court of law in which the plaintiff pursues the remedy that the law affords for the redress of an injury or the enforcement of a right, whether at law or in EQUITY.

SUMMARY

As a noun, an abridgment; brief; compendium; digest; also a short application to a court or judge, without the formality of a full proceeding.

As an adjective, short; concise; immediate; peremptory; off-hand; without a jury; provisional; statutory. The term as used in connection with legal proceedings means a short, concise, and immediate proceeding.

A SUMMARY JUDGMENT is a final decision in a civil action that does not involve lengthy presentations of evidence. It totally circumvents the need for trial because there is no genuine issue of fact concerning specified questions in the lawsuit that must be decided. In such an action, the party who believes that she is entitled to prevail as a MATTER OF LAW makes a motion for summary judgment. In deciding such a motion, the court considers the entire record of the case and, if the evidence warrants it, can even grant a summary judgment to the party who did not ask for it. Summary judgment is *governed* in federal courts by the Federal Rules of Civil Procedure and in state courts by state codes of civil procedure.

SUMMARY JUDGMENT

A procedural device used during civil litigation to promptly and expeditiously dispose of a case without a trial. It is used when there is no dispute as to the material facts of the case and a party is entitled to judgment as a MATTER OF LAW.

Any party may move for summary judgment; it is not uncommon for both parties to seek it. A judge may also determine on her own initiative that summary judgment is appropriate. Unlike with pretrial motions to dismiss, information such as affidavits, interrogatories, depositions, and admissions may be considered on a motion for summary judgment. Any evidence that would be admissible at trial under the RULES OF EVIDENCE may support a motion for summary judgment. Usually a court will hold oral arguments on a summary judgment motion, although it may decide the motion on the parties' briefs and supporting documentation alone.

The purpose of summary judgment is to avoid unnecessary trials. It may also simplify a trial, as when partial summary judgment dispenses with certain issues or claims. For example, a court might grant partial summary judgment in a personal injury case on the issue

of liability. A trial would still be necessary to determine the amount of damages.

Two criteria must be met before summary judgment may be properly granted: (1) there must be no genuine issues of material fact, and (2) the MOVANT must be entitled to judgment as a matter of law. A genuine issue implies that certain facts are disputed. Usually a party opposing summary judgment must introduce evidence that contradicts the moving party's version of the facts. Moreover, the facts in dispute must be central to the case; irrelevant or minor factual disputes will not defeat a motion for summary judgment. Finally, the law as applied to the undisputed facts of the case must mandate judgment for the moving party. Summary judgment does not mean that a judge decides which side would prevail at trial, nor does a judge determine the credibility of witnesses. Rather, it is used when no factual questions exist for a judge or jury to decide.

The moving party has the initial burden to show that summary judgment is proper even if the moving party would not have the BURDEN OF PROOF at trial. The court generally examines the evidence presented with the motion in the light most favorable to the opposing party. Where the opposing party will bear the burden of proof at trial, the moving party may obtain summary judgment by showing that the opposing party has no evidence or that its evidence is insufficient to meet its burden at trial.

Jurisdictions vary in their requirements for opposing a summary judgment motion. Federal rule of civil procedure 56 governs the applicability of summary judgment in federal proceedings, and each state has its own rules. In some states it is sufficient if the party opposing the motion merely calls the court's attention to inconsistencies in the pleadings and the movant's evidence without introducing further evidence. This approach rarely results in a court's granting summary judgment. On the other hand, other jurisdictions, including federal courts, do not permit a party opposing summary judgment to rest on the pleadings alone. Once the movant has met the initial burden of showing the absence of a genuine issue of material fact, the burden shifts to the opposing party to introduce evidence to contradict the movant's allegations.

SUMMARY PROCEEDINGS

An alternative form of litigation for the prompt disposition of legal actions.

Legal proceedings are regarded as summary when they are shorter and simpler than the ordinary steps in a suit. Summary proceedings are ordinarily available for cases that require prompt action and generally involve a small number of clearcut issues.

SUMMARY PROCESS

A legal procedure used for enforcing a right that takes effect faster and more efficiently than ordinary methods. The legal papers—a court order, for example—used to achieve an expeditious resolution of the controversy.

Because summary process deprives a defendant of all the time and legal defenses usually available, a plaintiff may invoke it only when specifically permitted by law. For example, some states provide for a special procedure for evicting a tenant without the normal delays of a lawsuit, and some states allow summary process for resolving incidental issues that arise between the parties during the pendency of a lawsuit.

SUMMONS

The paper that tells a defendant that he or she is being sued and asserts the power of the court to hear and determine the case. A form of legal process that commands the defendant to appear before the court on a specific day and to answer the complaint made by the plaintiff.

The summons is the document that officially starts a lawsuit. It must be in a form prescribed by the law governing procedure in the court involved, and it must be properly served on, or delivered to, the defendant. If the prescribed formalities are not observed, the court lacks authority to hear the dispute.

In the federal district courts, the summons is prepared by the attorney for the plaintiff and given to the clerk of the court where the case will be heard. When the plaintiff's complaint, setting out his claim, is filed with the court, the clerk signs the summons and gives it and a copy of the complaint to a U.S. marshal or to someone else appointed to serve the papers. Once the summons and complaint are served on the defendant, she must respond to them within twenty days or whatever other time the court allows.

Some states follow this same procedure, but other states allow service of the summons and complaint by delivery directly to the defendant. In those states, the lawsuit is considered begun as soon as the defendant receives the papers,

A sample summons

Summons

United States District Court
DISTRICT OF

SUMMONS IN A CIVIL CASE

_____ V. _____ CASE NUMBER: _____

TO: (*Name and address of defendant*)

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (*name and address*)

as answer to the complaint which is herewith served upon you, within _____ days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

_____ _____
CLERK DATE

_____
(BY) DEPUTY CLERK

RETURN OF SERVICE

_____
DATE
Service of the Summons and Complaint was made by me[1]

_____ _____
NAME OF SERVER (*Print*) TITLE

Check one box below to indicate appropriate method of service

☐ Served personally upon the defendant. Place where served: _____

☐ Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.
Name of person with whom the summons and complaint were left: _____

☐ Returned unexecuted: _____

☐ Other (specify): _____

STATEMENT OF SERVICE FEES

TRAVEL SERVICES TOTAL

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on _____ _____
Date Signature of Server

_____
Address of Server

[1]As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure

AO 440 (Rev. 10/93) Summons in a Civil Action

even though nothing has yet been filed with a court. Actions commenced in this way are sometimes called "hip pocket" suits.

CROSS-REFERENCES

Service of Process.

SUMNER, CHARLES

Charles Sumner served as U.S. senator from Massachusetts for 23 years starting in 1851. His career in the Senate was a turbulent one, marked by much controversy.

Sumner was born January 6, 1811, in Boston, Massachusetts. Sumner graduated from Harvard University with a bachelor of arts degree in 1830 and a bachelor of laws degree in 1833.

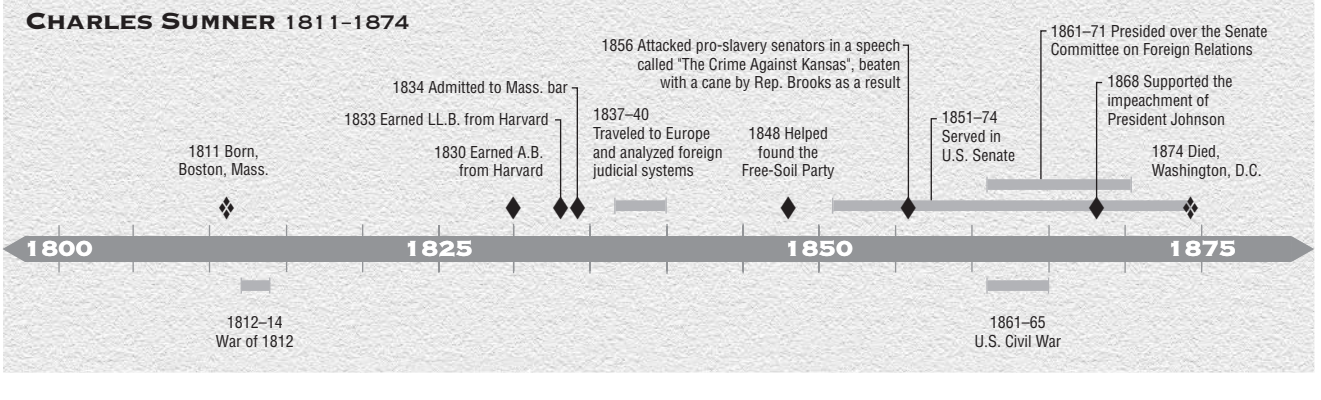
After his ADMISSION TO THE BAR in 1834, Sumner traveled through Europe from 1837 to 1840 to analyze foreign judicial systems. When he returned to the United States, he became interested in reform issues and emerged as a reform leader and an abolitionist. He was instrumental in the development of the Free-Soil Party in 1848 and endorsed MARTIN VAN BUREN, the candidate of that party, in the presidential election of 1848.

Sumner staunchly opposed SLAVERY and advocated the revocation of the FUGITIVE SLAVE ACT OF 1850 (9 Stat. 462). He vehemently attacked the Kansas-Nebraska Bill of 1854 (10 Stat. 277), which allowed residents of new territories to determine the slavery issue for their areas. In 1856, in a speech known as "The Crime Against Kansas," Sumner attacked STEPHEN A. DOUGLAS, the originator of the bill, and South Carolina senator Andrew Pickens Butler, who strongly supported slavery. After the scathing oration, Sumner was beaten with a cane by Representative Preston Smith Brooks, who was related to Senator Butler. The injuries Sumner sustained prevented him from actively participating in senatorial affairs for the next three years.

Charles Sumner. NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

In 1861 Sumner became the presiding officer of the Senate Committee on Foreign Relations. He held that position until 1871, when his radical behavior resulted in his removal from that office.

During the Reconstruction period, Sumner was a member of the radical Republican faction. He opposed President Andrew Johnson's conservative policy toward the South and advocated a policy that would allow freed men to own land that was previously a part of their owner's estates. Sumner also believed that the state legislatures should control the school system, and



that all races should be allowed to attend public schools. Sumner and Johnson were often at odds over their conflicting policies, and Sumner supported the IMPEACHMENT of the president in 1868.

Sumner did not fare any better with the new administration of President ULYSSES S. GRANT. He opposed Grant's policy to annex Santo Domingo and demanded large reparations from Great Britain because that country had aided the Confederacy during the Civil War by supplying ships. Secretary of State Hamilton Fish spoke against Sumner's policy toward the British, saying that it interfered with current relations with that country. In 1871 Sumner was asked to leave his post as chairman of the Foreign Relations Committee, but he remained in the Senate until his death March 11, 1874, in Washington, D.C.

FURTHER READINGS

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CROSS-REFERENCES

Abolition; Kansas-Nebraska Act.

SUMPTUARY LAWS

Rules made for the purpose of restraining luxury or extravagance.

Sumptuary laws are designed to regulate habits, especially on moral or religious grounds. They are particularly directed against inordinate expenditures on apparel, drink, food, and luxury items.

These laws existed in Rome and were enacted in a variety of forms in England during the Middle Ages to regulate the ornateness of dress and to impose dietary restrictions. Sumptuary laws varied according to classes, with peasants being subjected to a different set of rules than the gentry. The primary purpose of the laws was to distinguish the different classes of people, and often, a person's social class could be determined by something as simple as the style or length of his or her coat.

Today sumptuary laws are ecclesiastical in nature and not part of the U.S. legal system.

SUNDAY CLOSING LAWS

See BLUE LAWS.

SUNSET PROVISION

A statutory provision providing that a particular agency, benefit, or law will expire on a particular date, unless it is reauthorized by the legislature.

Federal and state governments grew dramatically in the 1950s and 1960s. Many EXECUTIVE BRANCH administrative agencies were established to oversee government programs. The escalation of government budgets and the perception that government bureaucracy was not accountable led Congress and many state legislatures in the 1970s to enact "sunset" laws.

Sunset laws state that a given agency will cease to exist after a fixed period of time unless the legislature reenacts its statutory charter. Sunset provisions differ greatly in their details, but they share the common belief that it is useful to compel the Congress or a state legislature to periodically reexamine its delegations of authority and to assess the utility of those delegations in the light of experience.

There are two types of sunset provisions. In some instances the statute creating a particular ADMINISTRATIVE AGENCY contains a sunset provision applicable only to that agency. In other instances a state may enact a general sunset law that may eliminate any agency that is unable to demonstrate its effectiveness.

Sunset provisions have had a checkered history. Although they were popular at the state level in the 1970s and early 1980s, sunset laws have produced mixed results, and many states have repealed ineffective sunset legislation. Few agencies have been terminated under sunset provisions, in part because agencies develop constituents who do not want the service to end. In addition, the cost of disbanding agencies and reassigning work can be expensive.

Attempts to pass a federal sunset law in the 1990s, which would have required formal reauthorization of federal programs every ten years, were unsuccessful. Advocates of accountability have abandoned the idea of "sunsetting" agencies and have sought to strengthen agency reauthorization requirements by incorporating rigorous performance measurements and enforcing appropriate discipline in government.

In addition to their application to government agencies, sunset provisions have been applied to laws themselves and to benefits, such

as immigration benefits. Without reauthorization by the legislature, the law or benefit ceases on a particular date.

SUNSHINE LAWS

Statutes that mandate that meetings of governmental agencies and departments be open to the public at large.

Through sunshine laws, administrative agencies are required to do their work in public, and as a result, the process is sometimes called "government in the sunshine." A law that requires open meetings ordinarily specifies the only instances when a meeting can be closed to the public and mandates that certain procedures be followed before a particular meeting is closed. The FREEDOM OF INFORMATION ACT (5 U.S.C.A. § 552) requires agencies to share information they have obtained with the public. Exceptions are permitted, in general, in the interest of national security or to safeguard the privacy of businesses.

CROSS-REFERENCES

Administrative Agency; Administrative Law and Procedure.

SUPERIOR

One who has a right to give orders; belonging to a higher grade.

A superior is someone or something entitled to command, influence, or control. In the judicial system, a superior court has general or extensive jurisdiction, as opposed to an inferior court. A superior court bears a different meaning in different states. In some states, it is a tribunal of intermediate jurisdiction between the trial courts and the chief appellate court; in other states, however, it is the name given to trial courts.

In the law of NEGLIGENCE, a superior force is an uncontrollable and irresistible force that produces results that could not be avoided.

In real property, a holder of a superior estate has an EASEMENT, or a nonpossessory interest in land, in an inferior estate.

SUPERSEDE

To obliterate, replace, make void, or useless.

Supersede means to take the place of, as by reason of superior worth or right. A recently enacted statute that repeals an older law is said to supersede the prior legislation.

A *superseding cause* is an act of a third person or some intervening force that prevents a tortfeasor from being held liable for harm to another. A supervening act is one that insulates an actor from responsibility for negligently causing a dangerous condition that results in an injury to the plaintiff.

SUPERSEDEAS

The name given to a writ, a court order, from a higher court commanding a lower court to suspend a particular proceeding.

A supersedeas is a writ that suspends the authority of a trial court to issue an execution on a judgment that has been appealed. It is a process designed to stop enforcement of a trial court judgment brought up for review. The term is often used interchangeably with a stay of proceeding.

SUPERVENING

Unforeseen, intervening, an additional event or cause.

A *supervening cause* is an event that operates independently of anything else and becomes the proximate cause of an accident.

For an event to fall within the doctrine of supervening NEGLIGENCE, also known as LAST CLEAR CHANCE, four conditions must be satisfied. These conditions are that the injured party has already come into a perilous position; the tortfeasor in the exercise of ordinary prudence becomes or ought to have become aware that the party in peril cannot safely avoid injury; the tortfeasor has the opportunity to save the other person from harm; and he or she fails to exercise such care.

SUPPLEMENTARY PROCEEDINGS

A proceeding in which a JUDGMENT DEBTOR *is summoned into court for questioning by a* JUDGMENT CREDITOR *who has not received payment.*

A supplementary proceeding provides the creditor with a chance to discover whether the debtor has any money or property that can be used to satisfy the judgment. If the debtor is found to have money or property, the court can order the debtor to use it to satisfy the judgment.

SUPPORT

As a verb, furnishing funds or means for maintenance; to maintain; to provide for; to enable to

continue; to carry on. To provide a means of livelihood. To vindicate, to maintain, to defend, to uphold with aid or countenance.

As a noun, that which furnishes a livelihood; a source or means of living; subsistence, sustenance, maintenance, or living.

Support includes all sources of living that enable a person to live in a degree of comfort suitable and befitting her station in life. Support encompasses housing, food, clothing, health, nursing, and medical needs, along with adequate recreation expenses. Most states impose a legal duty on an individual to support his or her spouse and children.

CROSS-REFERENCES

Child Support.

SUPPRESS

To stop something or someone; to prevent, prohibit, or subdue.

To suppress evidence is to keep it from being admitted at trial by showing either that it was illegally obtained or that it is irrelevant.

SUPRA

[Latin, Above; beyond.] *A term used in legal research to indicate that the matter under current consideration has appeared in the preceding pages of the text in which the reference is made.*

SUPREMACY CLAUSE

Article VI, Section 2, of the U.S. Constitution is known as the Supremacy Clause because it provides that the "Constitution, and the Laws of the United States . . . shall be the supreme Law of the Land." It means that the federal government, in exercising any of the powers enumerated in the Constitution, must prevail over any conflicting or inconsistent state exercise of power.

The concept of federal supremacy was developed by Chief Justice JOHN MARSHALL, who led the Supreme Court from 1801 to 1835. In MCCULLOCH V. MARYLAND, 17 U.S. (4 Wheat.) 316, 4 L. Ed. 579 (1819), the Court invalidated a Maryland law that taxed all banks in the state, including a branch of the national bank located at Baltimore. Marshall held that although none of the enumerated powers of Congress explicitly authorized the incorporation of the national bank, the NECESSARY AND PROPER CLAUSE provided the basis for Congress's action. Having established that the exercise of authority was proper, Marshall concluded that "the government of the Union, though limited in its power, is supreme within its sphere of action."

After the Civil War, the Supreme Court was more supportive of STATES' RIGHTS and used the TENTH AMENDMENT, which provides that the powers not delegated to the federal government are reserved to the states or to the people, to justify its position. It was not until the 1930s that the Court shifted its position and invoked the Supremacy Clause to give the federal government broad national power. The federal government cannot involuntarily be subjected to the laws of any state.

The Supremacy Clause also requires state legislatures to take into account policies adopted by the federal government. Two issues arise when STATE ACTION is in apparent conflict with federal law. The first is whether the congressional action falls within the powers granted to Congress. If Congress exceeded its authority, the congressional act is invalid and, despite the Supremacy Clause, has no priority over state action. The second issue is whether Congress intended its policy to supersede state policy. Congress often acts without intent to PREEMPT state policy making or with an intent to preempt state policy on a limited set of issues. Congress may intend state and federal policies to coexist.

Some federal legislation preempts state law, however, usually because Congress believes its law should be supreme for reasons of national uniformity. For example, the National Labor Relations Act of 1935 (WAGNER ACT) (29 U.S.C.A. § 151 et seq.) preempts most state law dealing with LABOR UNIONS and labor-management relations.

In *Pennsylvania v. Nelson,* 350 U.S. 497, 76 S. Ct. 477, 100 L. Ed. 640 (1956), the Supreme Court developed criteria for assessing whether federal law preempts state action when Congress has not specifically stated its intent. These criteria include whether the scheme of federal regulations is "so pervasive as to make the inference that Congress left no room for the States to supplement it," whether the federal interest "is so dominant that the federal system [must] be assumed to preclude enforcement of state laws on the same subject," or whether the enforcement of a state law "presents a serious danger of conflict with the administration of the federal program."

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CROSS-REFERENCES

Federalism; Preemption.

SUPREME COURT

An appellate tribunal with high powers and broad authority within its jurisdiction.

The U.S. government and each state government has a supreme court, though some states have given their highest court a different name. A supreme court is the highest court in its jurisdiction. It decides the most important issues of constitutional and statutory law and is intended to provide legal clarity and consistency for the lower appellate and trial courts. Because it is the court of last resort, a supreme court's decisions also produce finality. In addition, a supreme court oversees the administration of the jurisdiction's judicial system.

A supreme court is established by a provision in the state or federal constitution. The legislative bodies of the jurisdiction enact statutes that create a court system and provide funding for it. A supreme court usually consists of five, seven, or nine judges, who are called justices. In the federal courts, the justices are appointed for life, whereas the states have a variety of selection methods. Typically the state governor will appoint a state supreme court justice, and then he will stand for election within two years to serve a full term, which may be from six to twelve years. A judicial election may involve a contest between the justice and another candidate, or it may be a retention election, where the voters must decide whether the judge should be retained for another term.

A supreme court consists of the justices, their administrative support staff, law clerks, and staff attorneys. As an appellate court, it is limited to reviewing trial proceedings and, if applicable, intermediate appellate court decisions. No new testimony is taken, and the arguments before the court by the parties are confined to points of SUBSTANTIVE LAW and procedure. A supreme court holds public proceedings, called oral arguments, in which the attorneys for the parties are given a short amount of time to advocate their positions and answer questions from members of the court. The justices, who have been briefed on the case prior to the oral arguments, conduct a conference on the case following the oral arguments.

At this meeting the justices express their opinions and vote on the case. The chief justice typically assigns a member of the court to write the majority opinion. Once a justice circulates an opinion to the court, the other justices are free to comment, criticize, and offer suggestions on how the opinion can be improved. The author of the opinion generally tries to accommodate the other justices' ideas. However, if a fundamental difference arises during the circulation process, justices may shift sides and change the outcome of the decision. At that point, a justice in the new majority will be assigned to write the opinion. A justice is always permitted to file a dissenting opinion if she disagrees with the outcome.

Once the court releases an opinion, it is published in an official report. The decision of the court is generally final, absent special circumstances. If the court's decision is based on an interpretation of a constitutional provision, it is final unless the constitution is amended or the court reverses itself at some later time. This is rarely done. For example, the U.S. Supreme Court decision in ROE V. WADE, 410 U.S. 113, 93 S. Ct. 705, 35 L. Ed. 2d 147 (1973), legalized ABORTION based on a constitutional right of privacy. Those opposed to abortion have sought to have Congress pass a constitutional amendment to overturn the decision or to convince the Court to reverse its decision, but without success.

If a supreme court's decision is based on statutory interpretation, its reading of legislative intent or purpose may be overridden by the legislature. A law can be enacted that "corrects" the court and directs it to honor specific intentions of the legislature.

Every supreme court has a procedure to limit the number of cases it hears. The U.S. Supreme Court uses a writ of certiorari, which is a legal PLEADING that requests the Court to hear the case. State supreme courts have similar pleadings, sometimes called petitions for review, which also allow the court discretion in choosing cases to consider. Typically cases are chosen

to resolve conflicts in the lower courts or to decide new legal issues.

Apart from discretionary review, supreme courts permit direct appeal, or appeal by right, on a limited set of cases. At the state level, appeals of first-degree murder and death penalty cases are heard by supreme courts, bypassing the intermediate court of appeals. The U.S. Supreme Court hears direct appeals of cases involving federal reapportionment, disputes between states, and a few other issues.

Supreme courts also administer their judicial systems, overseeing the trial and intermediate appellate courts. In addition, supreme courts enact the rules of procedure that govern the workings of their court systems. Examples include rules of civil, criminal, and appellate procedure, as well as RULES OF EVIDENCE. Most state supreme courts also oversee the admission of attorneys to the bar and discipline attorneys for ethical violations.

CROSS-REFERENCES

Court Opinion; State Courts.

SUPREME COURT HISTORICAL SOCIETY

The Supreme Court Historical Society (the Society) is a nonprofit organization incorporated in the District of Columbia. It is dedicated to expanding public awareness of the history and heritage of the SUPREME COURT OF THE UNITED STATES and to preserving historical documents and artifacts relating to the Court's history. The Society conducts public and educational programs, publishes books and periodicals, supports historical research, and collects antiques and period pieces to enhance an appreciation of the history behind the U.S. Constitution and its first interpreters. It supports its programs through member contributions, grants, gifts, and a small endowment. The Society is located in the Opperman House on East Capitol Street in Washington, D.C. It also maintains its own website located at <www.supremecourthistory.org>.

Founded in 1974 by the late Chief Justice WARREN E. BURGER, the Society has approximately 6,000 individual members who volunteer services on its standing and ad hoc committees; the committees report to an elected Board of Trustees. The Chief Justice of the United States serves as Honorary Chairman of the Society. Former Chief Justice Burger served as the Society's first chairman. Retired Associate Justice BYRON R. WHITE is an honorary member of the Board of Trustees.

The Society's most ambitious historic project to date has been the research and publication of the first six volumes of the *Documentary History of the Supreme Court, 1789 to 1800.* This series is projected to require at least two more volumes and represents the reconstruction of an accurate record of the development of the federal judiciary in the formative decade between 1789 and 1800. The series has been published by the Columbia University Press. Another scholarly publication is the Society's *Supreme Court of the United States 1789–1990: An Index to Opinions Arranged by Justice,* which is updated periodically. The three-volume publication is the only printed resource of all the opinions of each justice and thus provides easy reference to each individual's contribution to the United States Reports, the official record of the Court's opinions. Additionally, a pilot program of oral recorded histories, documenting the careers and service of retired Supreme Court Justices, has been in progress. Thus far, the Society has completed oral histories of the late Associate Justices HARRY BLACKMUN, WILLIAM J. BRENNAN JR., THURGOOD MARSHALL, and LOUIS F. POWELL.

Semi-annually, the Society publishes the *Journal of Supreme Court History,* which features articles by the justices, noted academicians, solicitors general, and other noted contributors. Special topic publications by the Society include *The Supreme Court in the Civil War, The Jewish Justices of the Supreme Court Revisited: Brandeis to Fortas,* and *The Supreme Court in World War II.* The Society's quarterly newsletter for its members contains short historical articles and news of programs and activities.

For the general public, the Society co-publishes an ongoing illustrated history of the Court, *Equal Justice Under Law,* in conjunction with the National Geographic Society. In cooperation with Congressional Quarterly, Inc., the Society published *The Supreme Court Justices: Illustrated Biographies, 1789–1995,* a collection of biographies of 108 current and former justices.

Another important part of the Society's activities is its co-sponsorship of the National Heritage Lecture, rotating the hosting of the annual event with the White House Historical Association and the U.S. Capitol Historical Society. Along with Street Law, Inc., it also conducts the Supreme Court Summer Institute, a program for secondary school teachers to help them

develop in their students an awareness of their rights and duties as citizens. It has developed a special "landmark cases" volume as an education tool for teachers, that provides extensive information on some of the Court's most important cases, many of which have been included in states' standards for teaching history and government. In 2000 the Society launched a special initiative for high school teachers in the Washington, D.C., public schools.

Finally, the Society conducts an acquisition program, working closely with the Court Curator's office, to locate, acquire, and display the Court's permanent collection of busts and portraits of justices, as well as period furnishings, original documents, and private papers, and other artifacts relating to the Court and its history. Many of these items are on display or otherwise made available for the benefit of the Court's one million annual visitors.

FURTHER READINGS

U.S. Supreme Court Historical Society website. Available online at <www.supremecourthistory.org> (accessed February 1, 2004).

SUPREME COURT OF THE UNITED STATES

The Supreme Court of the United States is the highest federal court. Although it was explicitly recognized in Article III of the Constitution, it was not formally established until passage of the JUDICIARY ACT OF 1789 (1 Stat. 73) and was not organized until 1790. Though its size and jurisdiction have changed over time, the Supreme Court has fulfilled its two main functions: acting as the final interpreter of state and federal law and establishing procedural rules for the federal courts.

Composition

The Supreme Court, sometimes called the High Court, is comprised of a chief justice and eight associate justices. Article III provides that the justices of the Court are to be appointed by the president of the United States with the advice and consent of the Senate. Once appointed, a justice may not be removed from office except by congressional IMPEACHMENT. Because of this provision, many justices have remained on the bench into their eighties.

In 1789 the Court initially consisted of six members, but membership was increased to seven in 1807. In 1837 an eighth and ninth justice were added, and in 1863 the number rose to ten. Congress lowered the number to eight to prevent President ANDREW JOHNSON from appointing anyone, and since 1869 the Court has consisted of nine justices.

The only modern attempt to alter the size of the Court occurred in 1937, when President FRANKLIN D. ROOSEVELT attempted to "pack" the Court by trying to add justices more sympathetic to his political ideals. Between 1935 and 1937, the Supreme Court struck down as unconstitutional numerous pieces of Roosevelt's NEW DEAL program that attempted to regulate the national economy. Most of the conservative judges who voted against the New Deal statutes were over the age of 70. Roosevelt proposed that justices be allowed to retire at age 70 with full pay. Any judge who declined this offer would be forced to have an assistant with full VOTING RIGHTS. This plan was met with hostility by Democrats and Republicans and ultimately rejected as an act of political interference.

When the office of chief justice is vacant, the president may choose the new chief justice from among the associate justices but does not need to do so. Whenever the chief justice is unable to perform his or her duties or the office is vacant, the associate justice who has been on the Court the longest performs the duties. The Court can take official action with as few as six members joining in deliberation. However, extremely important cases will sometimes be postponed until all nine justices can participate.

Court Term

The Court sits in Washington, D.C., and begins its term on the first Monday in October of each year. It may also hold adjourned terms or special terms whenever required. These special calendars are reserved for emergency matters that usually occur when the Court is in recess between July and October. Between October and June 30 of the following year, the Court hears oral arguments for each case in its courtroom, confers and votes on the case, and then assigns a justice to write the majority opinion. An opinion must be released on every case by the end of the Court's term. However, if the Court cannot agree on how to resolve a case, it may hold the case over until the next term and schedule further oral arguments.

Administration of the Court

The law provides for the appointment of a clerk of the Supreme Court, a deputy clerk, a

marshal, a court reporter, a librarian, judicial law clerks, secretaries to the justices, and an administrative assistant to help with court management. The law provides for the printing of Supreme Court decisions to ensure that they will be available to the public. The Court also disseminates its opinions electronically through its website. In addition, it posts its court calendar, docket, and orders on its website.

The official seal of the U.S. Supreme Court.
COLLECTION OF THE CURATOR OF U.S. SUPREME COURT

Jurisdiction

The Judiciary Act of 1789 gave the Supreme Court authority to hear certain appeals brought from the lower federal courts and the state courts. The Court was also given power to issue various kinds of orders, or writs, to enforce its decisions.

Article III of the Constitution declares that the Supreme Court shall have original jurisdiction "[i]n all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a state shall be a party. . . ." Original jurisdiction is the authority to hear a case from the outset. Nevertheless, Congress has enacted legislation giving the district courts concurrent jurisdiction in cases dealing with ambassadors and foreign consul as well as in cases between the U.S. government and one or more state governments. The Supreme Court retains exclusive jurisdiction only in suits between state governments, which often involve boundary disputes. These cases arise infrequently and are usually placed before special masters who hear the evidence, make findings, and recommend a decision that is acceptable to the Court.

Article III states that the Supreme Court's appellate jurisdiction extends to all federal cases "with such Exceptions, and under such Regulations as the Congress shall make." Appellate cases coming to the Court from the lower federal courts usually come from the 13 courts of appeals, although they may come from the Court of Military Appeals or, under special circumstances, directly from the district courts. Appellate cases may also come from the state courts of last resort, usually a state's supreme court.

Until 1891 losing parties in the lower federal courts and state courts of last resort had the right to appeal their cases to the Supreme Court. The Court's docket was crowded with appeals, many of which raised routine or frivolous claims. In 1891 Congress created nine courts of appeals to correct errors in routine cases. (28 U.S.C.A. ch. 3). This reduced the Supreme Court's caseload, but parties often retained statutory rights to have their cases reviewed by the Court.

In 1925 Congress reformed, at the Court's insistence, the Supreme Court's appellate jurisdiction by restricting the categories of cases in which litigants were afforded an appeal by right to the Supreme Court. In addition, the JUDICIARY ACT of 1925, 43 Stat. 936, gave the Court the power to issue writs of certiorari to review all cases, federal or state, posing "federal questions of substance." The writ of certiorari gives the Court discretionary review, allowing it to address some issues and ignore others. Because of these reforms, the courts of appeals are the final decision-making courts in 98 percent of federal cases.

In 1988 Congress passed the Act to Improve the Administration of Justice, 102 Stat. 663. This law eliminated most appeals by right to the Supreme Court, requiring the Court to hear appeals only in cases involving federal CIVIL RIGHTS laws, legislative reapportionment, federal antitrust actions, and a few other matters. As a result of this growth in discretionary jurisdiction, the Supreme Court has the ability to set its own agenda.

A party who seeks review of a decision petitions the Court for a writ of certiorari, an ancient PLEADING form that grants the right for review. The justices deliberate in private on whether the issues presented by the case are significant enough to merit review. They operate under an informal rule of four, which means that certiorari will be granted if any four

justices favor it. If certiorari is granted, the justices can decide the case on the papers submitted or schedule a full argument before the Court. If certiorari is denied, the matter ends there. With discretionary review, the justices have complete freedom in deciding whether to hear the case, and no one may question or appeal their decision.

The Supreme Court also has special jurisdiction to answer certified questions sent to it from a federal court of appeals or from the U.S. Claims Court. The Supreme Court can either give instructions that the lower court is bound to follow or require the court to provide the record so that the Supreme Court can decide the entire lawsuit. Certification is rarely used.

Decisions

The decisions of the Supreme Court, whether by a denial of certiorari or by an opinion issued following oral argument, are final and cannot be appealed. A Supreme Court decision based on an interpretation of the Constitution may be changed by constitutional amendment. Congress may modify a decision that is based on the interpretation of an act of Congress by passing a law that directs the Court as to congressional intent and purpose. However, Congress has no power to modify a High Court decision that is based on the Court's interpretation of the Constitution. Finally, the Court may overrule itself, although it rarely does so.

Rule Making

Congress has conferred upon the Supreme Court the power to prescribe rules of procedure that the Court and the lower federal courts must follow. The Court has promulgated rules that govern civil and criminal cases in the district courts, BANKRUPTCY proceedings, ADMIRALTY cases, copyrights cases, and appellate proceedings.

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CROSS-REFERENCES

Judicial Review.

SURCHARGE

An overcharge or additional cost.

A surcharge is an added liability imposed on something that is already due, such as a tax on tax. It also refers to the penalty a court can impose on a fiduciary for breaching a duty.

In EQUITY, surcharging means to show that a particular item, in favor of the party surcharging, should be included in an account that is alleged to be settled or complete.

SURETY

An individual who undertakes an obligation to pay a sum of money or to perform some duty or promise for another in the event that person fails to act.

SURGEON GENERAL

The U.S. Surgeon General is charged with the protection and advancement of health in the United States. Since the 1960s the surgeon general has become a highly visible federal public health official, speaking out against known health risks such as tobacco use, and promoting disease prevention measures such as exercise and community water fluoridation.

The U.S. Surgeon General's Office is a unit of the Office of Public Health and Science, which is a major component of the HEALTH AND HUMAN SERVICES DEPARTMENT (HHS). The surgeon general is appointed by the president and serves as a highly recognized symbol of the federal government's commitment to protecting and improving public health.

The surgeon general performs four major functions: promoting disease prevention and health in the United States through special health initiatives, advising the president and the secretary of the HHS on public health issues, encouraging the enhancement of public health practice in the professional disciplines, and administering the PUBLIC HEALTH SERVICE Commission Corps in ongoing and emergency response activities. The corps is comprised of approximately 6,000 doctors, nurses, pharmacists, and scientists.

The surgeon general oversees research on public health matters and writes reports that

inform the medical profession and the public about ways of preventing disease. These reports have dealt with topics such as tobacco use, HIV and AIDS prevention, drug abuse, and the need for physical exercise.

The 1964 report of surgeon general Dr. Luther L. Terry on tobacco, entitled *Smoking and Health,* is perhaps the most famous example of how the surgeon general draws public attention to public health concerns. In 1964, 46 percent of all U.S. citizens smoked, and smoking was accepted in offices, airplanes, and elevators. Television programs were sponsored by cigarette brands. Terry's report concluded that smoking causes cancer. This conclusion became the foundation for later efforts to ban tobacco advertising from television, to restrict smoking in public places, and to place warning labels on cigarette packages. Since the 1964 report, smoking rates have declined from 46 percent to 25 percent.

Other surgeons general have sparked public controversy as well. In the 1980s Dr. C. Everett Koop's advocacy of the use of condoms to reduce the spread of HIV and AIDS angered religious groups and others. Dr. M. Joycelyn Elders, who was sworn in as surgeon general in September 1993, was forced to resign in December 1994 for promoting masturbation for young people as a way to avoid teenage pregnancy and sexually transmitted diseases.

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CROSS-REFERENCES

Health Care Law.

SURPLUSAGE

Extraneous matter; impertinent, superfluous, or unnecessary.

In pleadings, surplusage refers to allegations that are not relevant to the CAUSE OF ACTION. Under the Federal Rules of Civil Procedure, upon a motion, a court can strike from the pleadings any surplusage, such as an insufficient defense or an immaterial matter.

SURPRISE

An unexpected action, sudden confusion, or an unanticipated event.

As a ground for a new trial, surprise means the condition in which a party to a lawsuit is unexpectedly placed and that is detrimental to that party's case. The situation must be one that the party could not reasonably have anticipated and that could not be guarded against or prevented.

When a party is taken by surprise by the testimony of his or her own witness, the party may be permitted to discredit the witness by showing that the witness made prior contradictory or inconsistent statements.

SURREBUTTER

In COMMON-LAW PLEADING, *the plaintiff's factual reply to the defendant's rebutter or answer.*

Surrebutter is governed by the same rules as replication and is no longer required under modern practice and PLEADING.

SURREJOINDER

In the second stage of COMMON-LAW PLEADING, *the plaintiff's answer to the defendant's rejoinder.*

SURRENDER

To give up, return, or yield.

The word *surrender* presupposes the possession or ownership of the thing that is to be returned or given up. It indicates a transfer of title as well as possession, but it does not express or in any way suggest the transaction of a sale and delivery. Instead, it involves yielding or delivering in response to a demand. A surrender may be compelled or it may be voluntary.

In landlord-tenant law, surrender occurs when a tenant agrees to return the leased premises to the landlord before the expiration of the lease and the landlord agrees to accept the return of the premises.

In this respect a surrender differs from ABANDONMENT, which is simply a unilateral act on the part of the tenant. In contrast, a surrender arises through a mutual agreement between the lessor and lessee.

Surrender is used in many areas of SUBSTANTIVE LAW. For example, in CRIMINAL LAW it refers to a suspect's giving up to the police. In insurance law the "cash surrender" value is the amount of money a person will receive when he elects to end a policy and take the proceeds allocated under the insurance contract.

The Surgeon General and a Smoke-Free Future

In the early 2000s smokers risk more than their health. Bans and restrictions on smoking have swept through nearly every walk of public life, driving smokers out of offices, restaurants, and public buildings. Some firms even limit hiring to nonsmokers. Since the mid-1960s, the antismoking movement has changed social attitudes and laws that govern this age-old habit. Leading this change were numerous studies warning that exposure to secondhand smoke kills thousands of U.S. citizens each year. Increasingly provoked by the antismoking clampdown, smokers' rights groups and the U.S. tobacco industry protest what they see as discriminatory treatment.

Laws against smoking date back to the late nineteenth century, when 14 states prohibited cigarettes. Contemporary antismoking efforts began with a U.S. surgeon general's report in 1964 endorsing medical findings that smoking causes cancer. Congress required warning labels on tobacco products in 1965. In 1967 the **FEDERAL COMMUNICATIONS COMMISSION** (FCC) mandated that broadcasters carry antismoking messages in proportion to tobacco advertisements. This ruling led to the disappearance of tobacco ads from television and radio.

In the 1970s, public concern shifted. A long-standing awareness of smokers' personal health risks was surmounted by growing fears about hazards to the public in general. Increased attention to secondhand smoke, or environmental tobacco smoke (ETS), fueled this significant change. A 1972 report by the U.S. Surgeon General's Office, containing a chapter on ETS, gave antismoking activists a powerful new weapon (The Health Consequences of Smoking: A Report of the Surgeon General). Restrictions on public smoking began to appear. In 1973 the Civil Aeronautics Board required airlines to provide separate smoking and nonsmoking sections. States passed clean indoor air acts to protect the health of nonsmokers, beginning with Arizona in 1973 (Ariz. Rev. Stat. Ann. § 36-601.01). The U.S. tobacco industry lobbied strongly against such measures and defeated a 1977 California bill, but momentum was with the antismoking movement. By the early 1990s, all but five states had enacted some form of state antismoking law.

The next victory for nonsmokers came in a landmark 1976 court case that upheld a worker's right to a smoke-free work environment (*Shimp v. New Jersey Bell Telephone,* 145 N.J. Super. 516, 368 A. 2d 408 [N.J. 1976]). Donna Shimp, an office worker, successfully sued her employer after complaining that an allergy to smoke caused her physical suffering. Her employer installed an exhaust fan, but when this proved ineffective, Shimp was asked to move to a different work site; the move amounted to a demotion and pay cut. In *Shimp,* the court ruled that workers who are especially sensitive to smoke must not be subjected to it in the course of performing their job. The court's opinion cited clear and overwhelming evidence that cigarette smoke poses general health hazards by contaminating the air.

A turning point came in 1986 when Surgeon General **C. EVERETT KOOP** issued a report titled *The Health Effects of Involuntary Smoking.* The report concluded that ETS causes lung cancer and other diseases in nonsmokers. It carried a dramatic warning: separating smokers and nonsmokers within the same airspace might reduce—but could not eliminate—the hazards of breathing ETS. Koop's report coincided with a study by the National Academy of Sciences that reached similar conclusions. Although the tobacco industry disputed these findings, the reports galvanized the antismoking movement.

The first effect on federal legislation was seen in December 1987, when Congress enacted an amendment to the Federal Aviation Act of 1958 (§404[d][1][A]) that placed a two-year ban on smoking on all domestic airline flights of less than two hours' duration.

Debate over the amendment was fierce. Supporters of the ban included flight attendants and a coalition of health groups, including the American Cancer Society. Their argument centered on the perils of ETS. The airline industry noted that smoking on airplanes created many problems, ranging from damage to aircraft interiors to the difficulty of purifying recirculated cabin air. Opponents, particularly members from tobacco-producing states, argued that the ban would depress tobacco prices. They also said it would be difficult to enforce. But enforcement proved effective because Congress granted the **FEDERAL AVIATION ADMINISTRATION** (FAA) the power to fine violators without resort to judicial intervention. After the two-year ban expired, Congress passed a law permanently banning smoking on all domestic airline flights under six hours' duration (103 Stat.

SURROGATE COURT

A tribunal in some states with **SUBJECT MATTER JURISDICTION** *over actions and proceedings involving, among other things, the probate of wills, affairs of decedents, and the guardianship of the property of* **INFANTS**.

SURROGATE MOTHERHOOD

A relationship in which one woman bears and gives birth to a child for a person or a couple who then adopts or takes legal custody of the child; also called mothering by proxy.

1098 [49 U.S.C.A. § 1374(d) app.]), which went into effect February 25, 1990.

Surgeon General Koop's report also sparked a surge of state legislation. In June 1989, New Jersey became the third state in the nation, after Kansas and Utah, to ban smoking in buildings owned by boards of education. The New Jersey law, New Jersey Statutes Annotated, section 26.3D-17(b) (West 1990 Supp.), was aimed at preventing teenagers from picking up the smoking habit. Many other states passed antismoking laws as well, including Virginia, a tobacco industry stronghold. Virginia's law, Code of Virginia Annotated, section 15.1-291.2 (West 1990 Supp.), restricted smoking in public places such as common areas of schools, government buildings, and restaurants. A more comprehensive New York law, New York Public Health Law I, sections 1399-n to 1399-x (McKinney 1990), took effect January 1, 1990, and targeted most public areas and workplaces. The law permitted smoking at work in limited areas as long as all present agree to allow it.

Federal policy making followed this trend. In 1987 the **GENERAL SERVICES ADMINISTRATION** (GSA) banned smoking in its 6,900 federal buildings, and Amtrak, the federal passenger rail line, imposed new limits on smoking in its trains, effective April 1, 1990. Also in 1990, the **INTERSTATE COMMERCE COMMISSION** banned smoking on interstate buses.

Private bans on smoking also increased. Some companies, such as Turner Broadcasting, in Atlanta, Georgia and Northern Life Insurance, in Seattle, Washington refused to hire smokers.

Many smokers view laws dictating when and where they may smoke as an infringement of their personal rights. However, a federal appeals court in 1987 rejected the argument that the U.S. Constitution protects the right to smoke. In *Grusendorf v. City of Oklahoma,* 816 F.2d 539 (10th Cir. 1987), the court upheld a city fire department's dismissal of a trainee for smoking during a lunch break in violation of a policy prohibiting smoking both on and off the job. The ruling said this limit on individual liberty was justified by a rational purpose: namely, to protect the health of employees in an industry that demands that its workers be in good physical condition.

Supported by civil libertarians and tobacco industry **LOBBYING**, smokers have had some success seeking laws designed to protect them from being fired or passed over for job promotions. By 1992, 13 states had passed smokers' rights legislation. Not everywhere have such laws been successful, however. In New Jersey, Governor James J. Florio vetoed smokers' rights legislation in January 1991. The New Jersey bill would have protected smokers in much the same way **CIVIL RIGHTS** laws now protect people against job discrimination on the basis of race, religion, and sex. Florio refused to put smoking into that category.

On January 7, 1993, the **ENVIRONMENTAL PROTECTION AGENCY** (EPA) handed antismoking forces further ammunition in a report on secondhand smoke ("Respiratory Health Effects of Passive Smoking: Lung Cancer and Other Disorders" [EPA Report EPA/600/6-90/006F]). Based on several years of research, the report designated ETS as a potent carcinogen that kills about 3,000 U.S. citizens annually and causes hundreds of thousands of respiratory illnesses in children. Strikingly, the agency placed ETS in the same risk category as radon and asbestos.

Reaction to the EPA risk assessment was swift and dramatic. In the six months that followed, approximately 145 local governments banned smoking in public buildings. Los Angeles passed far-reaching legislation that banned smoking in most restaurants. Effective August 2, 1993, the law applied to some 7,000 indoor restaurants, permitting smoking only in outdoor seating areas. Violators face citations of up to $250, and restaurant owners who permit indoor smoking face jail sentences of up to six months and $1,000 fines. An effort to repeal the controversial law was soon underway.

Although the U.S. Surgeon General's Office did not reach its hoped-for goal of a smoke-free United States by 2000, antismoking laws have continued to proliferate. As of May 2003, according to the American Nonsmokers' Rights Foundation, more than 1,600 municipalities in the United States had some sort of smoking restrictions. Probably the most noteworthy development is the growing number of municipalities that are banning smoking from restaurants and bars. Nonsmokers in New York City found a staunch ally in Mayor Michael Bloomberg, who lobbied relentlessly for a smoke-free workplace ordinance that went into effect in April 2003. Boston implemented a similar ban a month later. Tobacco firms remain resolutely opposed to further controls, arguing that these would endanger a legitimate $350 billion industry. But the trends since the mid-1960s suggest that smokers will find fewer and fewer places to light up legally.

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CROSS-REFERENCES

Tobacco; Tobacco Institute.

In surrogate motherhood, one woman acts as a surrogate, or replacement, mother for another woman, sometimes called the intended mother, who either cannot produce fertile eggs or cannot carry a pregnancy through to birth, or term.

Surrogate mothering can be accomplished in a number of ways. Most often, the husband's sperm is implanted in the surrogate by a procedure called **ARTIFICIAL INSEMINATION.** In this case, the surrogate mother is both the genetic

Does Surrogacy Involve Making Families or Selling Babies?

Medical science continues to devise new procedures and treatments that test the boundaries of law and ethics. One such result is modern surrogate motherhood, which has been made possible by **ARTIFICIAL INSEMINATION** and in vitro fertilization.

Surrogate motherhood has both advocates and detractors, each with strong arguments in their favor. A number of important questions lie at the heart of the debate over the ethics and legality of surrogacy: Does surrogacy necessarily involve the exploitation of the woman serving as the surrogate mother, or turn her into a commodity? What rights does the surrogate mother have? Is surrogacy equivalent to baby selling? Should brokers or third parties be allowed to make a profit from surrogacy arrangements?

The Case Against Surrogacy Nearly all opponents of surrogacy find it to be a morally repugnant practice, particularly when it involves a commercial transaction. Many base their opposition on religious grounds, whereas others judge it using philosophical, legal, or political criteria.

The Roman Catholic Church is just one of many religious institutions that oppose surrogacy. It is against all forms of surrogacy, even altruistic surrogacy, which does not involve the payment of a fee to the surrogate. It holds that surrogacy violates the sanctity of marriage and the spiritual connection between mother, father, and child. It finds commercial surrogacy to be especially offensive. Commercial surrogacy turns the miracle of human birth into a financial transaction, the church maintains, reducing the child and the woman bearing it to objects of negotiation and purchase. It turns women into reproductive machines and exploiters of children. The church argues that surrogacy also leads to a confused parent-child relationship that ultimately damages the institution of the family.

Some feminists oppose surrogacy because of its political and economic context. They disagree with the notion

mother and the birth, or gestational mother, of the child. This method of surrogacy is sometimes called traditional surrogacy.

Less often, when the intended mother can produce fertile eggs but cannot carry a child to birth, the intended mother's egg is removed, combined with the husband's or another man's sperm in a process called in vitro fertilization (first performed in the late 1970s), and implanted in the surrogate mother. This method is called gestational surrogacy.

Surrogacy arrangements are categorized as either commercial or altruistic. In commercial surrogacy, the surrogate is paid a fee plus any expenses incurred in her pregnancy. In altruistic surrogacy, the surrogate is paid only for expenses incurred or is not paid at all.

The first recognized surrogate mother arrangement was made in 1976. Between 1976 and 1988, roughly 600 children were born in the United States to surrogate mothers. Since the late 1980s, surrogacy has been more common: between 1987 and 1992, an estimated 5,000 surrogate births occurred in the United States.

The issue of surrogate motherhood came to national attention during the 1980s, with the *Baby M* case. In 1984 a New Jersey couple, William Stern and Elizabeth Stern, contracted to pay Mary Beth Whitehead $10,000 to be artificially inseminated with William Stern's sperm and carry the resulting child to term. Whitehead decided to keep the child after it was born, refused to receive the $10,000 payment, and fled to Florida. In July 1985, the police arrested Whitehead and returned the child to the Sterns.

In 1987 the New Jersey Superior Court upheld the Stern-Whitehead contract (**IN RE BABY M.**, 217 N.J. Super. 313, 525 A.2d 1128). The court took all parental and **VISITATION RIGHTS** away from Whitehead and permitted the Sterns to legally adopt the baby, whom they named Melissa Stern. A year later, the New Jersey Supreme Court reversed much of this decision (*In re Baby M.*, 109 N.J. 396, 537 A.2d 1227). That court declared the contract unenforceable but allowed the Sterns to retain physical custody of the child. The court also restored some of Whitehead's parental rights, including visitation rights, and voided the **ADOPTION** by the Sterns. Most important, the decision voided all surrogacy contracts on the ground that they conflict with state public policy. However, the court still permitted voluntary surrogacy arrangements.

that women freely choose to become surrogates. They argue that coercion at the societal level, rather than the personal level, causes poor women to become surrogate mothers for rich women. If surrogacy contracts are legalized, they maintain, the reproductive abilities of a whole class of women will be turned into a brokered commodity. Some feminists have gone so far as to call surrogacy reproductive prostitution.

Other critics join with Catholics and feminists to decry surrogacy as baby selling and a vehicle for the exploitation of poor women.

The Case for Surrogacy Advocates for surrogate motherhood propose it as a humane solution to the problem of infertility. They note that infertility is common, affecting almost one out of six couples, and that surrogacy may represent the only option for some couples who wish to have children to whom they are genetically related. Advocates also point out that infertility is likely to increase as more women enter the workforce and defer childbirth to a later age, when fertility problems are more common.

Advocates of surrogacy also argue that ADOPTION does not adequately meet the needs of infertile couples who wish to have a baby. They point out that there are many times more couples than available INFANTS. Moreover, couples must wait three to seven years on average to adopt an infant. Here, too, social trends have contributed to a greater call for alternative reproductive options. Most important, an increased use of contraceptives and ABORTION and a greater acceptance of unwed mothers have led to a shortage of adoptable babies.

Those who favor commercial surrogacy object to characterizations of the practice as baby selling. A surrogacy contract, they assert, is a contract to bear a child, not to sell a child. Advocates of surrogacy see payment to a surrogate as a fee for gestational services, just like the fees paid to lawyers and doctors for their services. Some advocates even argue that the prohibition of commercial surrogacy infringes on a woman's constitutional right to contract.

Surrogacy is also supported by those who believe that society is served best when the liberty of individuals is maximized. They claim that women and society as a whole benefit from the increased opportunity of choice offered by surrogacy.

Advocates also maintain that in a successful surrogacy arrangement, all parties benefit. The intended parents take home a cherished child, and the surrogate receives a monetary reward and the satisfaction of knowing that she has helped someone realize a special goal.

The *Baby M.* decision inspired state legislatures around the United States to pass laws regarding surrogate motherhood. Most of those laws prohibit or strictly limit surrogacy arrangements. Michigan responded first, making it a felony to arrange surrogate mother contracts for money and imposing a $50,000 fine and five years' imprisonment as punishment for the offense (37 Mich. Comp. Laws § 722.859). Florida, Louisiana, Nebraska, and Kentucky enacted similar legislation, and Arkansas and Nevada passed laws permitting surrogacy contracts under judicial regulation.

In 1989 the AMERICAN BAR ASSOCIATION (ABA) drafted two alternative model laws involving surrogate motherhood. These laws are not binding but are intended to guide states as they formulate their own laws. One legalizes the practice of surrogate motherhood and makes surrogacy contracts enforceable in court; the other bars the enforcement of contracts in which a surrogate mother is paid to have a child and then give up any claim to the child.

Under either ABA model, states legalizing surrogate contracts limit them to agreements between a surrogate mother and a married couple. A genetic link must be established between the couple and the child, by the husband's supplying sperm or the wife's contributing an egg, or both. To be valid, the contract must be approved by a judge before conception takes place, and it must be accompanied by proof that the wife is unable to bear a child. The surrogate mother has the right to repudiate the contract up to 180 days after conception, in which case she may keep the child. If she does not repudiate the contract during that time, the couple becomes the child's legal parents 180 days after conception.

In 1993 the California Supreme Court issued a landmark ruling declaring surrogacy contracts legal in California. The case, *Johnson v. Calvert,* 5 Cal. 4th 84, 19 Cal. Rptr. 2d 494, 851 P.2d 776, involved a surrogacy contract between a married couple, Mark Calvert and Crispina Calvert, and Anna L. Johnson. Crispina Calvert was unable to bear children. In 1990 the Calverts and Johnson signed a surrogacy contract in which the Calverts agreed to pay Johnson $10,000 to carry an embryo created from the Calverts' ovum and sperm. Disagreements ensued, and later that year, Johnson became the first surrogate mother to seek custody of a child to whom she was not genetically related.

A sample surrogate parenting agreement

Surrogate Parenting Agreement

SURROGATE PARENTING AGREEMENT

This Agreement is made on _____ (Date), by and between _____ , a married woman (Referred to as Surrogate), _____ , her husband (Referred to as Surrogate's Husband), who both reside at _____ (Address) and _____ , (Referred to as Natural Father), who resides at _____ (Address).

RECITALS

This Agreement is made with reference to the following facts:

A. Natural Father is a married man over the age of _____ (_____) (Eighteen (18) or Applicable Age Required by Statute) years who desires to enter into this Agreement, the sole purpose of which is to enable the Natural Father and his wife, who cannot conceive, to have a child who is biologically related to the Natural Father.

B. Surrogate and Surrogate's Husband are over the age of _____ (_____) (Eighteen (18)) years and both desire and are willing to enter into this Agreement subject to the terms and conditions contained in this Agreement. NOW THEREFORE, in consideration of the mutual promises, representations, terms and conditions contained in this Agreement, the parties agree as follows:

SECTION ONE

Surrogate represents that she is capable of conceiving children. Surrogate understands and agrees that in the best interests of the child she will not form or attempt to form a parent-child relationship with any child or children she may conceive, carry to term, and give birth to, pursuant to this Agreement.

SECTION TWO

Surrogate and Surrogate's Husband have been married since _____ (Date). Surrogate's Husband agrees with the purposes and provisions of this Agreement and acknowledges that his wife, Surrogate, shall be artificially inseminated pursuant to the provisions of this Agreement. Surrogate's Husband agrees that in the best interests of the child he will not form or attempt to form a parent-child relationship with any child or children Surrogate may conceive by artificial insemination, as described in this agreement, and agrees to freely and readily surrender immediate custody of the child to Natural Father.

Surrogate's Husband further agrees to terminate his parental rights to such child. Surrogate's Husband acknowledges he will do all acts necessary to rebut the presumption of paternity of any offspring conceived and born pursuant to this Agreement as provided by law, including blood testing and/or HLA testing.

SECTION THREE

Surrogate shall be artificially inseminated with the semen of Natural Father by a physician. Surrogate, upon becoming pregnant, agrees she will carry the embryo (or fetus) until delivery. Surrogate and Surrogate's Husband, agree that they will cooperate with any background investigation into Surrogate's medical, family, and personal history and warrants the information to be accurate to the best of their knowledge and belief. Surrogate and Surrogate's Husband agree to surrender custody of the child to Natural Father, to institute, and cooperate, in proceedings to terminate their respective parental rights to such child, and to sign any and all necessary affidavits, documents, and papers in order to further the intent and purposes of this Agreement. Surrogate and Surrogate's Husband understand that the child is being conceived for the sole purpose of giving such child to Natural Father, its natural and biological father. Surrogate and Surrogate's Husband agree to sign all necessary affidavits and other documents, prior to and subsequent to the birth of the child, and to voluntarily participate in any paternity proceedings necessary for the Natural Father's name to be entered on the child's birth certificate as the natural or biological father.

SECTION FOUR

The consideration for this Agreement which is compensation for services and expenses, and should in no way be construed as a fee for the termination of parental rights or as payment in exchange for a consent to surrender the child for adoption, in addition to other provisions contained in this Agreement, shall be as follows:

1. _____ ($_____) dollars shall be paid to Surrogate, for services and expenses in carrying out Surrogate's obligations under this Agreement, immediately upon surrender to Natural Father custody of the child born pursuant to the provisions of this Agreement.

2. The consideration to be paid to Surrogate shall be deposited with _____ (Referred to as Custodian), the representative of Natural Father, at the time of the signing of this Agreement and shall be held in escrow until completion of the duties and obligations of Surrogate as provided for in this Agreement.

3. Natural Father shall pay the expenses incurred by Surrogate, pursuant to her pregnancy, which are specifically defined as follows:

(a) All medical, hospitalization, pharmaceutical, laboratory, and therapy expenses, incurred as a result of Surrogate's pregnancy, not covered or allowed by her present health and major medical insurance, including all extraordinary medical expenses and all reasonable expenses for treatment of any emotional, mental, or other problems related to such pregnancy. In no event, however, shall any such expenses be paid or reimbursed after a period of _____ (_____) months has elapsed since the date

[continued]

A sample surrogate parenting agreement (continued)

Surrogate Parenting Agreement

of the termination of the pregnancy. This agreement specifically excludes expenses for lost wages or other non-itemized incidentals related to such pregnancy.

(b) Natural Father shall not be responsible for any medical, hospitalization, pharmaceutical, laboratory, or therapy expenses occurring _____ (_____) months after the birth of the child, unless the medical problem incident to such expenses was known and treated by a physician prior to the expiration of the _____ (_____) month period and written notice advising of this treatment is given to Custodian, as representative of Natural Father, by certified mail, return receipt requested.

(c) Natural Father shall be responsible for the total cost of all paternity testing. Such paternity testing may, at the option of Natural Father, be required prior to release of the Surrogate fee from escrow. If Natural Father is conclusively determined not to be the biological father of the child as a result of an HLA test, this Agreement will be deemed breached and Surrogate shall not be entitled to any fee, and Natural Father shall be entitled to reimbursement of all medical and related expenses from Surrogate and Surrogate's Husband.

(d) Natural Father shall be responsible for Surrogate's reasonable travel expenses incurred at the request of Natural Father pursuant to this Agreement.

SECTION FIVE

Surrogate and Surrogate's Husband are aware, understand, and agree to assume all risks, including the risk of death, which are incidental to conception, pregnancy, childbirth, and includes, but is not limited to, complications subsequent to such childbirth.

SECTION SIX

Surrogate and Surrogate's Husband, hereby agree to undergo psychiatric evaluation by _____ , a psychiatrist, as designated by Natural Father. Natural Father shall pay for the cost of such psychiatric evaluation. Prior to their evaluations, Surrogate and Surrogate's Husband shall sign a medical release permitting dissemination to Custodian or Natural Father and his wife copies of the report prepared as a result of such psychiatric evaluations.

SECTION SEVEN

Surrogate and Surrogate's Husband hereby agree it is the exclusive and sole right of Natural Father to name such child born pursuant to this agreement.

SECTION EIGHT

Child, as referred to in this agreement, shall include all children born simultaneously pursuant to the inseminations contemplated in this Agreement.

SECTION NINE

In the event of the death of Natural Father prior or subsequent to the birth of such child, it is understood and agreed by Surrogate and Surrogate's Husband, the child will be placed in the custody of Natural Father's wife.

SECTION TEN

In the event the child is miscarried prior to the _____ (____) (Fifth or as the Case May Be) month of pregnancy, no compensation, as enumerated in Section Four, Paragraph 1, shall be paid to Surrogate. However, the expenses enumerated in Section Four, Paragraph 3 shall be paid or reimbursed to Surrogate. In the event the child is miscarried, dies, or is stillborn subsequent to the _____ (_____) (Fourth or as the Case May Be) month of pregnancy the Surrogate shall receive _____ ($_____) dollars in lieu of the compensation enumerated in Section Four, Paragraph 1. In the event of a miscarriage or stillbirth as described above, this agreement shall terminate, and neither Surrogate nor Natural Father shall be under any further obligation under this Agreement.

SECTION ELEVEN

Surrogate and Natural Father shall each undergo complete physical and genetic examination and evaluation, under the direction and supervision of a licensed physician, to determine whether the physical health and well-being of each is satisfactory. Such physical examination shall include testing for AIDS and venereal diseases including, but not limited to, syphilis, herpes, and gonorrhea. Such AIDS and venereal disease testing shall be done prior to, but not limited to, each series of inseminations.

SECTION TWELVE

In the event that pregnancy has not occurred within a reasonable time in the opinion of Natural Father, this Agreement shall terminate by written notice to Surrogate, at the residence provided to the Custodian by the Surrogate (from Custodian, as representative of the Natural Father).

SECTION THIRTEEN

Surrogate agrees she will not abort the child once conceived except if, in the professional medical opinion of the inseminating physician, such action is necessary for the physical health of Surrogate or the child has been determined by such physician to be physiologically abnormal. Surrogate further agrees, at the request of such physician, to undergo amniocentesis or similar tests to detect genetic and congenital defects. In the event such test reveals the fetus is genetically or congenitally abnormal, Surrogate agrees to abort the fetus on

[continued]

A sample surrogate parenting agreement (continued)

Surrogate Parenting Agreement

demand of Natural Father. The fee paid to Surrogate in this circumstance will be in accordance to Section Ten. If Surrogate refuses to abort the fetus upon demand of Natural Father, Natural Father's obligations, as stated in this Agreement, shall cease except as to obligations of paternity imposed by statute.

Natural Father recognizes that some genetic and congenital abnormalities may not be detected by amniocentesis or other tests, and, therefore, if proven to be the biological father, assumes the legal responsibility for any child who may possess genetic or congenital abnormalities.

SECTION FOURTEEN

Surrogate agrees to adhere to all medical instructions given her by the inseminating physician as well as her independent obstetrician. Surrogate also agrees not to smoke cigarettes, drink alcoholic beverages, use illegal drugs, or take prescription or nonprescription medications without written consent from her physician. Surrogate agrees to follow a prenatal medical examination schedule to consist of no fewer visits than: one (1) visit per month during the first _____ (_____) (Seven or as the Case May Be) months of pregnancy, two (2) visits (each to occur at two-week intervals) during the _____ (_____) and _____ (_____) (Eighth and Ninth or as the Case May Be) months of pregnancy.

SECTION FIFTEEN

Prior to signing this Agreement, each party has been given the opportunity to consult an attorney of his or her own choice concerning the terms and legal significance of the agreement and the effect it has upon any and all interests of the parties to this Agreement.

SECTION SIXTEEN

Each party acknowledges that he or she has carefully read and understands every word in this Agreement, realizes its legal effect, and is signing this agreement freely and voluntarily. None of the parties has any reason to believe the other party or parties did not understand fully the terms and effects of this Agreement, or that the other parties did not freely and voluntarily execute this Agreement.

SECTION SEVENTEEN

In the event any of the provisions of this Agreement are deemed to be invalid or unenforceable, such invalid or unenforceable provision may be severed from the remainder of this Agreement and shall not cause the invalidity or unenforceability of the reminder of this Agreement. If such provision shall be deemed invalid due to its scope or breadth, then such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

SECTION EIGHTEEN

This Agreement shall be executed in three copies, each of which shall be deemed an original. One copy shall be given to Custodian, another copy to Natural Father, and the third copy to Surrogate.

SECTION NINETEEN

This instrument embodies the entire Agreement of the parties with respect to the subject matter of surrogate parenting. There are no promises, terms, conditions, or obligations other than those contained in this Agreement, and this Agreement shall supersede all previous communications, representations, or agreements, either verbal or written, among the parties.

SECTION TWENTY

This Agreement cannot be modified except by written agreement signed by all the original parties.

SECTION TWENTY-ONE

This Agreement has been drafted, negotiated, and executed and shall be governed by, and enforced in accordance with, the laws of the State of _____.

_____ _____
Signature of Surrogate Mother Date

_____ _____
Signature of Surrogate's Husband Date

_____ _____
Signature of Natural Father Date

Warning:

These forms are provided AS IS. They may not be any good. Even if they are good in one jurisdiction, they may not work in another. And the facts of your situation may make these forms inappropriate for you. They are for informational purposes only, and you should consult an attorney before using them.

After the child's birth, the Calverts were awarded custody. Johnson appealed the decision. The state supreme court finally upheld the legality of surrogacy contracts under both the state and federal constitutions. The court held such contracts valid whether or not the surrogate mother provides the egg. The U.S. Supreme Court declined to hear Johnson's appeal.

In many states, surrogacy contracts are considered unenforceable because of existing adoption laws designed to discourage "baby selling." These laws may, for example, forbid any consent to adoption given prior to the birth of the child. They may also make it illegal for a birth mother to receive payment for consenting to give up a child or for an intermediary or **BROKER** to receive a fee for arranging an adoption. In states with these laws, a surrogate mother who wishes to keep the child rather than give it up for adoption may successfully challenge an already established surrogacy contract.

Laws concerning artificial insemination can also conflict with surrogacy agreements. Some states have laws maintaining that semen donors are not legally the fathers of children created with their sperm. These laws were originally designed to facilitate the development of sperm banks. In a surrogacy arrangement, they conflict with an attempt to adopt the surrogate child. Increasingly, states are drafting laws that clarify the legal status of surrogacy arrangements, including who is the rightful parent of a child born through surrogate mothering.

State laws differ in the way they handle surrogate motherhood contracts. Most state laws on the issue are designed to prevent or discourage surrogacy. Four states (Florida, Nevada, New Hampshire, and Virginia) specifically allow surrogacy contracts under certain conditions. Several other states (Arizona, Indiana, Louisiana, Michigan, Nebraska, New York, North Dakota, and Tennessee) specifically prohibit surrogacy contracts as void and in violation of public policy. In some states (Kentucky, Michigan, Utah, and Washington, as well as the District of Columbia) entering into a surrogacy contract or assisting in procuring such a contract is a criminal act, punishable by fine, imprisonment, or both.

State laws likewise vary in the way they handle disputes over custody. Surrogacy laws in Michigan and Washington make custody determinations on a case-by-case basis, attempting to reach the decision that best serves the interests of the child. In New Hampshire and Virginia, such laws presume that the contracting couple are the legal parents but give the surrogate a period of time to change her mind. In North Dakota and Arizona, the surrogate and her husband are the legal parents of the child.

Mark and Crispina Calvert, holding a picture of their son, won a landmark 1993 case in which the California Supreme Court ruled on the legality of surrogacy contracts in California.

AP/WIDE WORLD PHOTOS

The **COMMISSIONERS ON UNIFORM LAWS** created a stir when it amended the Uniform Parentage Act to authorize gestational agreements as valid contracts. According to the prefatory note to the uniform act, the commissioners determined that such agreements had become commonplace during the 1990s, so the law was merely designed to provide a legal framework for such agreements. However, several organizations have decried the inclusion of these provisions. As of 2003, two states, Texas and Washington, had adopted the new uniform act, while legislatures in four other states were considering its adoption.

FURTHER READINGS

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CROSS-REFERENCES

Adoption; Child Custody; Family Law; Parent and Child.

SURTAX

An additional charge on an item that is already taxed.

A surtax is a tax on a tax. For example, if a person pays one hundred dollars of tax on one thousand dollars of income, a 5 percent surtax would amount to an additional five dollars.

SURVEILLANCE

See ELECTRONIC SURVEILLANCE; WIRETAPPING.

SURVIVORS INSURANCE

See OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE.

SURVIVORSHIP

See RIGHT OF SURVIVORSHIP.

SUSPECT CLASSIFICATION

A presumptively unconstitutional distinction made between individuals on the basis of race, national origin, alienage, or religious affiliation, in a statute, ordinance, regulation, or policy.

The U.S. Supreme Court has held that certain kinds of government discrimination are inherently suspect and must be subjected to strict judicial scrutiny. The suspect classification doctrine has its constitutional basis in the FIFTH AMENDMENT and the EQUAL PROTECTION CLAUSE of the FOURTEENTH AMENDMENT, and it applies to actions taken by federal and state governments. When a suspect classification is at issue, the government has the burden of proving that the challenged policy is constitutional.

The concept of suspect classifications was first discussed by the Supreme Court in KOREMATSU V. UNITED STATES, 323 U.S. 214, 65 S. Ct. 193, 89 L. Ed. 194 (1944). The Court upheld the "relocation" of Japanese Americans living on the West Coast during WORLD WAR II, yet Justice HUGO L. BLACK, in his majority opinion, stated that

> all legal restrictions which curtail the CIVIL RIGHTS of a single group are immediately suspect. That is not to say that all such restrictions are unconstitutional. It is to say that courts must subject them to the most rigid scrutiny. Pressing public necessity may sometimes justify the existence of such restrictions; racial antagonism never can.

Though it is now widely recognized that no compelling justification existed for the relocation order and that racial prejudice rather than national security led to the forced removal of Japanese Americans, *Korematsu* did signal the Court's willingness to apply the Equal Protection Clause to suspect classifications.

STRICT SCRUTINY of a suspect classification reverses the ordinary presumption of constitutionality, with the government carrying the burden of proving that its challenged policy is constitutional. To withstand strict scrutiny, the government must show that its policy is necessary to achieve a compelling state interest. If this is proved, the state must then demonstrate that the legislation is narrowly tailored to achieve the intended result. Although strict scrutiny is not a precise test, it is far more stringent than the traditional RATIONAL BASIS TEST, which only requires the government to offer a reasonable ground for the legislation.

Race is the clearest example of a suspect classification. For example, the Supreme Court in *Loving v. Virginia,* 388 U.S. 1, 87 S. Ct. 1817, 198 L. Ed. 2d 1010 (1967), scrutinized a Virginia statute that prohibited interracial marriages. The Court noted that race was the basis for the classification and that it was, therefore, suspect. The Court struck down the law because Virginia failed to prove a compelling STATE INTEREST in preventing interracial marriages. Legislation discriminating on the basis of religion or ethnicity, as well as those statutes that affect fundamental rights, also are inherently suspect. The Supreme Court has not recognized age and gender as suspect classifications, though some lower courts treat gender as a suspect or quasi-suspect classification.

CROSS-REFERENCES

Equal Protection; Japanese American Evacuation Cases.

SUSPENDED SENTENCE

A sentence given after the formal conviction of a crime that the convicted person is not required to serve.

In criminal cases a trial judge has the ability to suspend the sentence of a convicted person. The judge must first pronounce a penalty of a fine or imprisonment, or both, and then suspend the implementation of the sentence.

There are two types of suspended sentences. A judge may unconditionally discharge the defendant of all obligations and restraints. An unconditionally suspended sentence ends the court system's involvement in the matter, and the defendant has no penalty to pay. However, the defendant's criminal conviction will remain part of the public record. A judge may also issue a conditionally suspended sentence. This type of sentence withholds execution of the penalty as long as the defendant exhibits good behavior. For example, if a person was convicted of shoplifting for the first time, the judge could impose thirty days of incarceration as a penalty and then suspend the imprisonment on the condition that the defendant not commit any crimes during the next year. Once the year passes without incident, the penalty is discharged. If, however, the defendant does commit another crime, the judge is entitled to revoke the suspension and have the defendant serve the thirty days in jail.

Whether a conditionally suspended sentence is considered equivalent or complementary to a PROBATION order or is considered an entirely distinct legal action depends on the jurisdiction. Under a probation order, the convicted person is not incarcerated but is placed under the supervision of a probation officer for a specified length of time. A person who violates probation will likely have his probation revoked and will have to serve the original sentence.

In some jurisdictions a postponement of sentencing is also considered to be a suspended sentence. A postponement of a criminal sentence means that the judge does not pronounce a penalty immediately after a conviction. Courts use postponement and conditionally suspended sentences to encourage convicted persons to stay out of trouble. In most cases courts will impose these types of conditional sentences for less serious crimes and for persons who do not have a criminal record. Where there is overcrowding in jails, suspended sentences for petty crimes may be used to prevent further congestion.

SUSPICION

The apprehension of something without proof to verify the belief.

Suspicion implies a belief or opinion based upon facts or circumstances that do not constitute proof.

SUSTAIN

To carry on; to maintain. To affirm, uphold or approve, as when an appellate court sustains the decision of a lower court. To grant, as when a judge sustains an objection to testimony or evidence, he or she agrees with the objection and gives it effect.

♦ SUTHERLAND, GEORGE

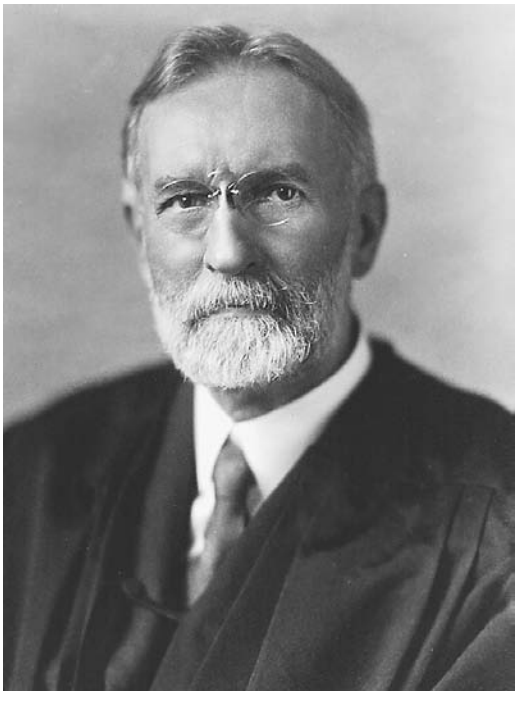
George Sutherland served as associate justice of the U.S. Supreme Court from 1922 to 1938. A conservative jurist, Sutherland opposed the efforts of Congress and state legislatures to regulate business and working conditions. During the 1930s he was part of a conservative bloc that ruled unconstitutional major parts of President FRANKLIN D. ROOSEVELT'S NEW DEAL program.

"[THE] SADDEST EPITAPH WHICH CAN BE CARVED IN MEMORY [FOR] A VANISHED LIBERTY IS THAT IT WAS LOST BECAUSE ITS POSSESSORS FAILED TO STRETCH FORTH A SAVING HAND WHILE YET THERE WAS TIME."
—GEORGE SUTHERLAND

Sutherland was born on March 25, 1862, in Buckinghamshire, England. When Sutherland was a young child, his parents emigrated to the United States, settling in Provo, Utah. Sutherland graduated from Brigham Young University in 1881 and attended the University of Michigan Law School in 1882 and 1883. He was admitted to the Michigan bar in 1883 but returned that same year to Utah, where he established a law practice in Salt Lake City.

Sutherland took an interest in politics and served in the territorial legislature. In 1896, after Utah had become a state, Sutherland was elected to the first Utah Senate as a REPUBLICAN PARTY member. In 1901 he was elected to the U.S. House of Representatives, and in 1905 he became a U.S. senator from Utah.

Despite Sutherland's reputation as a political conservative in Congress, he did support President Theodore Roosevelt's reform programs. He also supported WORKERS' COMPENSATION legislation for railroad workers and the NINETEENTH AMENDMENT to the U.S. Constitution, which



George Sutherland.
PHOTOGRAPH BY HARRIS & EWING. COLLECTION OF U.S. SUPREME COURT

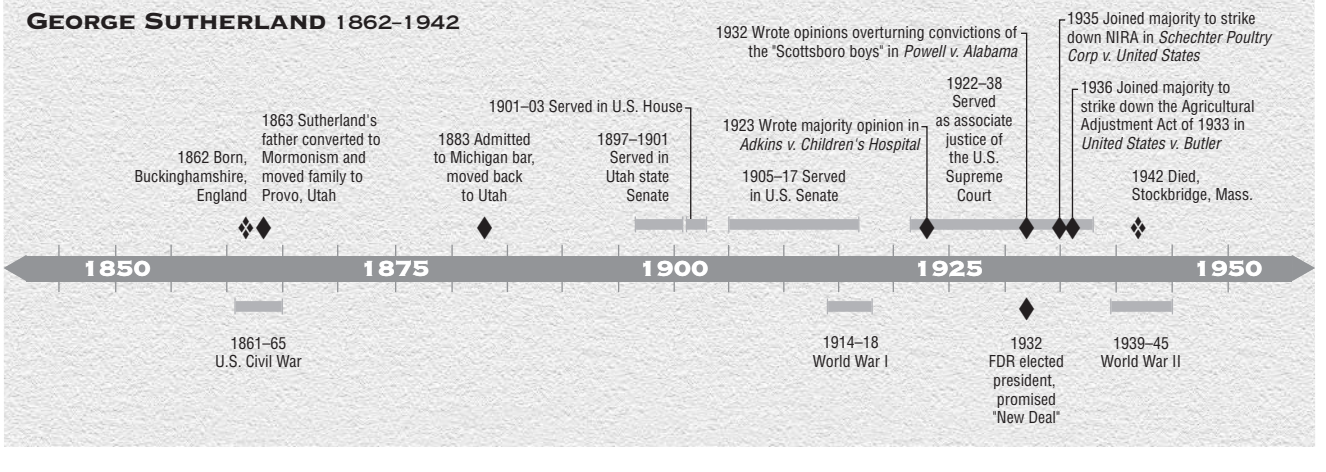
provided for women's suffrage. Nevertheless, he believed that individual rights were paramount and that government should not intrude on most economic activities.

After being defeated in the 1916 Senate election, Sutherland became involved in national Republican politics and served as an adviser to President WARREN G. HARDING, who was elected in 1920. Sutherland's name had been mentioned for several years as a possible Supreme Court appointee, and in September 1922 Harding nominated Sutherland to the Court.

Sutherland joined a Supreme Court dominated by conservatives. Like the conservative majority, Sutherland believed in the doctrine of SUBSTANTIVE DUE PROCESS, which held that the DUE PROCESS Clauses of the Fifth and Fourteenth Amendments to the U.S. Constitution could be invoked to impose limits on the substance of government regulations and other activities by which government affects "life, liberty, and property." Since the 1880s the Supreme Court had invoked substantive due process to strike down a variety of state and federal laws that regulated working conditions, wages, and business activities.

Sutherland also adhered to the concept of liberty of contract, which held that the government should not interfere with the right of individuals to contract with their employers concerning wages, hours, and working conditions. Sutherland wrote the majority opinion in *Adkins v. Children's Hospital,* 261 U.S. 525, 43 S. Ct. 394, 67 L. Ed. 785 (1923), in which the Court struck down a federal MINIMUM WAGE law for women workers in the District of Columbia. Sutherland concluded that employer and employee had the constitutional right to negotiate whatever terms they pleased concerning wages. Sutherland rejected the idea that Congress had the authority to correct social and economic disparities that hurt society in general.

With the STOCK MARKET crash of 1929 and the Great Depression of the 1930s, the conservative majority on the Court came under intense public and political scrutiny. Franklin D. Roosevelt's election in 1932 signaled a change in philosophy concerning the role of the federal government. Roosevelt's New Deal was premised on national economic planning and the creation of administrative agencies to regulate business and labor. This was anathema to Sutherland and his conservative brethren.



From 1933 to 1937 the Court struck down numerous New Deal measures. Sutherland, along with Justices JAMES C. MCREYNOLDS, WILLIS VAN DEVANTER, and PIERCE BUTLER, formed the core of opposition to federal efforts to revitalize the economy and create a social safety net. The so-called Four Horsemen helped strike down as unconstitutional the NATIONAL INDUSTRIAL RECOVERY ACT OF 1933 in *Schechter Poultry Corporation v. United States,* 295 U.S. 495, 55 S. Ct. 837, 79 L. Ed. 1570 (1935), and the Agricultural Adjustment Act of 1933 in *United States v. Butler,* 297 U.S. 1, 56 S. Ct. 312, 80 L. Ed. 477 (1936).

Roosevelt responded by proposing a court-packing plan that would have added an additional justice to the Court for each member over the age of seventy. This plan targeted the Four Horsemen and, if implemented, would have canceled out their votes. Although Roosevelt's plan was rejected by Congress, the national debate over the role of the federal government and the recalcitrance of the Supreme Court led more moderate members of the Court to change their positions and vote in favor of New Deal proposals. With the tide turning, Sutherland retired in 1938.

Despite his conservative views on government and business, Sutherland defended liberty rights as well as property rights. In POWELL V. ALABAMA, 287 U.S. 45, 53 S. Ct. 55, 77 L. Ed. 158 (1932), Sutherland overturned the convictions of the "Scottsboro boys," a group of young African Americans sentenced to death for an alleged sexual assault on two white women. Sutherland ruled that the SIXTH AMENDMENT guarantees adequate legal counsel in state criminal proceedings.

Sutherland died on July 18, 1942, in Stockbridge, Massachusetts.

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SWANN V. CHARLOTTE-MECKLENBURG BOARD OF EDUCATION

During the 15 years that followed the Supreme Court's momentous SCHOOL DESEGREGATION decision in BROWN V. BOARD OF EDUCATION, 347 U.S. 483, 74 S. Ct. 686, 98 L. Ed. 873 (1954), school boards throughout the South did little to eliminate racial separation in the public schools. In some cases school boards merely announced a race-neutral school attendance policy. In other cases white-dominated school boards closed schools that were ripe for INTEGRATION and instead built new schools in suburban areas that would be virtually white-only. The NAACP and the federal government became increasingly frustrated by these methods and sought relief in the federal courts. As federal courts began to issue desegregation plans, questions arose over whether court-ordered supervision of local schools was proper. In *Swann v. Charlotte-Mecklenburg Board of Education,* 402 U.S. 1, 91 S. Ct. 1267, 28 L. Ed.2d 554 (1971) (also known as *North Carolina State Board of Education v. Swann*, the Supreme Court issued another landmark decision, ruling that federal courts could exercise their remedial powers to end a dual school system divided by race. The Court made clear that when school boards refused to act in GOOD FAITH, the federal courts had broad discretion to order, implement, and oversee the desegregation of school systems. In addition, the Court endorsed the use of busing to ensure desegregation. *Swann* was a controversial decision that guided federal courts for almost 30 years. By the late 1990s, however, federal courts had ended oversight of school desegregation and busing began to lose favor.

The Charlotte-Mecklenburg school system included the city of Charlotte and the surrounding Mecklenburg County, North Carolina. The school district was very large, encompassing over 550 square miles of territory. During the 1968–1969 school year 84,000 pupils attended 107 schools in the district, with 71 percent of the students white and 29 percent black. Of the 24,000 black students, 21,000 attended schools within the city of Charlotte. Of that number, 14,000 black students attended 21 schools with were either completely black or more than 99 percent black. These statistics demonstrated that the racial SEGREGATION persisted 15 years after the *Brown* decision. James E. Swann and a number of other black parents filed suit in 1965, asking the federal court to mandate that the school system be desegregated. The school board responded by passing a plan based on geographic ZONING with a free-transfer provision. Swann and the other plaintiffs returned to court

in 1968 and asked again for a plan that would dismantle the dual system and impose a unitary system upon the school district.

The district court conducted many hearings on the issues and found that the school district had drawn school attendance zones in such a way as to result in segregated education. The key issue, however, was how to remedy this situation. The school board proposed closing seven schools and restructuring attendance zones. The court found little merit in this proposal, finding that more than half the black and white students would remain in heavily segregated schools. The court appointed an expert, Dr. John Finger, to prepare another desegregation plan. The "Finger Plan" slightly modified the school board's plans for high school and junior high school students but was more drastic when it came to handling the 76 elementary schools in the system. This plan proposed using zoning, paring, and other grouping techniques so that student bodies in the school district would range from nine percent to 38 percent black. Black students in grades one through four would be bused from the inner city to predominantly white schools in the suburbs, while white students in the fifth and sixth grades would be bused to predominantly black schools in Charlotte. Under this plan, nine inner city schools were grouped with 24 suburban schools.

The Supreme Court, in a unanimous decision, upheld the desegregation plan and outlined what powers a federal court could employ to desegregate a public school system. Chief Justice WARREN BURGER, writing for the Court, noted that it had issued a second *Brown* decision in 1955 that addressed the need for school systems to move with "all deliberate speed" to end state-imposed segregated school systems. *Brown v. Board of Education,* 349 U.S. 249, 75 S. Ct. 753, 99 L. Ed. 1083 (1955). Despite the Court's desire that desegregation decisions be made by local school boards, it concluded that very little progress had been made when it issued its 1968 decision, *Green v. County School Board,* 391 U.S. 430, 88 S. Ct. 1689, 20 L. Ed. 2d 716 (1968). In *Green* the Court set out standards for measuring success in creating a unitary school system that no longer displayed the vestiges of segregation. The decision had made clear that school districts must take definite action to desegregate all aspects of public education or face court-imposed action. With *Swann,* Chief Justice Burger saw the opportunity to "make plain" and to "amplify guidelines" that would assist school districts and the lower federal courts.

The Court first stated that once a school district had been found in violation of the Fourteenth Amendment's EQUAL PROTECTION CLAUSE, a district court's "equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies." Though judges could only employ these vast powers on the basis of a constitutional violation, once a violation had been established a court could fashion a remedy based on the scope of the violation. Chief Justice Burger rejected the school board's claim that Title IV of the CIVIL RIGHTS ACT OF 1964 limited the federal courts' ability to implement the *Brown* decision. He concluded that the 1964 act restricted the courts from dealing with "de facto segregation," where racial imbalance in the schools had occurred without the discriminatory actions of state officials. The North Carolina schools had been segregated by state laws and therefore were subject to correction by the federal courts.

Chief Justice Burger addressed four main issues concerning student assignments to particular schools: (1) the use of racial balance or quotas; (2) the elimination of one-race schools; (3) limitations on attendance zones; and (4) the use of busing to correct state-enforced racial school segregation. As to the first issue, Burger emphasized that courts should not use a "fixed mathematical" ratio of white to black students for each school. A school district did not have the obligation to ensure that "every school in every community must always reflect the racial composition of the school system as a whole." In the case of the Charlotte-Mecklenburg schools, however, the court-approved ratio of 71 percent to 29 percent was "no more than a starting point in the process of shaping of a remedy." The limited use of this ratio was within the discretion of the district court.

As to one-race schools, Chief Justice Burger found that these would require "close scrutiny to determine that school assignments are not part of state-enforced segregation." Moreover, where a school system has a history of segregation, the courts were warranted to presume that one-race schools had been created as a result of past or present discriminatory action. As to the altering of school attendance zones, the Court admitted that federal courts had employed "drastic" gerrymandering to ensure a mix of white and black students. Such actions were acceptable as "interim

corrective measure[s]" and were not "beyond the broad remedial powers of a court."

The use of busing to desegregate public schools was the most controversial remedy imposed by the federal courts. Chief Justice Burger noted that bus transportation had been an integral part of U.S. schools for years and that 39 percent of public school children had been bused during the 1969–1970 school year. The "normal" use of bus transportation, coupled with the finding that neighborhood school attendance zones would not dismantle the dual school system, led the Court to conclude that busing was an acceptable remedy. Burger pointed out that under the desegregation plan many students would actually have shorter bus rides. To rule out busing would doom desegregation.

The Court pointed out that the school system would someday be judged unitary and that the federal court would withdraw from its oversight of the system. At that point the school board would be free to consider how it wanted to draw its attendance zones. This happened in 1999 when the district court released the Charlotte-Mecklenburg district from its order. The school district then ended busing and returned to neighborhood attendance zones. Segregation of the school district also returned.

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CROSS-REFERENCES

Civil Rights Acts; Discrimination.

SWAT TEAMS

First developed in the 1960s by local law enforcement agencies, Special Weapons and Tactics units, or SWAT teams, have become common in police departments throughout the United States. These teams generally consist of small numbers of highly trained officers who use specialized weapons and tactics to handle high-risk situations. Although SWAT teams have been used successfully during countless numbers of altercations since their development, some critics charge that their use exceeds the traditional POLICE POWER given to the states.

SWAT teams began during the turbulent 1960s. In August 1966, Charles Joseph Whitman climbed a tower on the campus of the University of Texas at Austin and shot 47 people, killing 15. The incident took place during a 90-minute span, and police officers were ill-equipped to handle the situation. Officers eventually climbed the tower and reached Whitman's position, killing him after he tried to shoot the officers.

Police departments recognized that their forces needed officers trained to handle these types of incidents. The Los Angeles Police Department (LAPD) had struggled to contend with rioters during the 1966 Watts riots. Officers found that traditional police and riot-control tactics were ineffective against the disorganized nature of the mobs they faced. During the same year, LAPD officers were ambushed by Jack Ray Hoxsie, who began a shooting spree from within his home. Officers failed in their attempts to shoot back at Hoxsie. The officers were successful in subduing the situation only after they threw tear gas through a broken window and then stormed the house.

Former LAPD Police Chief Daryl Gates is credited with developing the first SWAT team in 1966. Gates was then a patrol area commander in charge of the Metro Division of the LAPD. The division was a floating police unit responsible for handling unusual criminal activity within the city of Los Angeles. Gates and others in the LAPD studied guerrilla warfare tactics of the U.S. military, determining that new teams trained to handle these dangerous situations needed to be smaller, with each member of the team given a specific purpose.

The LAPD SWAT teams gained notoriety in 1969 when one of the teams was used to serve an arrest warrant on two members of the BLACK PANTHERS, a radical and armed activist group known nationally for espousing revolutionary politics. The mission was successful. Five years later, the LAPD SWAT force, in conjunction with federal SWAT teams, engaged in an altercation with the Symbionese Liberation Army (SLA), best known for its KIDNAPPING of publishing heiress PATTY HEARST. During the altercation between the SWAT team members and the SLA, the house in which the SLA members were hiding caught fire, eventually killing the six members.

The number of SWAT teams in police departments began to rise during the 1970s and has risen steadily ever since. An estimated 89

percent of police departments in cities with populations of more than 50,000 maintain SWAT teams. The vast majority of federal law enforcement agencies have also established specialized response units. SWAT is among a number of names given to such units by federal and local agencies. Others include Special Response Team (SRT), Emergency Response Team (ERT), Special Emergency Response Team (SERT), and Emergency Services Unit (ESU).

SWAT teams are designed to work only in extraordinary circumstances, such as those involving hostages, hijackers, and suspects who have barricaded themselves. The most common use of SWAT teams is to assist other officers in serving arrest warrants when the subject of the warrant is considered a high risk. SWAT teams generally enter and secure the premises where the subject is located so that officers charged with serving the warrant can do so. The use of SWAT teams is rather common in the apprehension of suspected drug dealers, who are often armed and considered dangerous.

In 1981, Congress passed the Military Cooperation with Law Enforcement Officials Act, which allows the U.S. military to provide equipment and facilities for civilian police in the war on drugs. As a result, SWAT teams could be armed with military-style, high-tech arms and other equipment to carry out their functions. Moreover, many members of SWAT teams receive their training from military units. The result is that some SWAT teams now resemble paramilitary units more than they represent a division of a civilian police force.

The widespread use of SWAT teams has been criticized as the militarization of civilian law enforcement. Critics note that some SWAT teams are now used in routine police matters and that the paramilitary approach adopted by the SWAT teams is not appropriate for enforcement of the law. Law enforcement supporters often respond that criminals are much more dangerous than they were in the past and that traditional civilian policing methods are ineffective against many types of criminals.

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CROSS-REFERENCES

Police Power.

♦ SWAYNE, NOAH HAYNES

Noah Haynes Swayne served as associate justice of the U.S. Supreme Court from 1862 to 1881. A prominent Ohio attorney for almost forty years before becoming a judge, Swayne was President ABRAHAM LINCOLN's first Supreme Court appointment. His tenure on the Court was relatively undistinguished.

Swayne was born on December 7, 1804, in Frederick County, Virginia. He studied law with two Virginia attorneys and was admitted to the Virginia bar in 1823. His antislavery views proved troublesome, however, and he moved his law practice to Coshocton, Ohio. Appointed county attorney in 1826, Swayne soon became involved in DEMOCRATIC PARTY politics. An ardent supporter of President ANDREW JACKSON, Swayne was elected to the Ohio state legislature in 1829. In 1830 Jackson named him U.S. district attorney, a position he held for almost ten years. He moved to Columbus, Ohio, to administer his office.

By 1840 Swayne had returned to private practice, but he served on many public commissions in Ohio, including a commission to arbitrate a boundary dispute between Ohio and Michigan. He left the Democratic party in 1856 because he disagreed with the party's support of SLAVERY and joined the newly formed REPUBLICAN PARTY. As a lawyer, he represented several runaway slaves in legal proceedings in which slaveholders sought to reclaim their property.

In 1862 Justice JOHN MCLEAN, an Ohio native and friend of Swayne, died suddenly. Swayne used his Ohio political connections to lobby for an appointment to the Supreme Court. President Lincoln nominated Swayne in January 1862. He was confirmed two days later.

Though Swayne spent almost twenty years on the Supreme Court, he left no mark on the institution. An inveterate politician, he lobbied for the position of chief justice in 1864 and 1873. During the U.S. CIVIL WAR, he was a consistent supporter of Lincoln's emergency war measures, including the imposition of MARTIAL

Noah H. Swayne. ARCHIVE PHOTOS, INC.

LAW and the issuance of paper money called "greenbacks," which were not redeemable for gold or silver. In addition, he upheld the constitutionality of a federal INCOME TAX imposed during the Civil War (*Springer v. United States,* 102 U.S. (12 Otto) 586, 26 L. Ed. 253 [1881]).

Swayne retired from the Court in 1881. He died on June 8, 1884, in New York City.

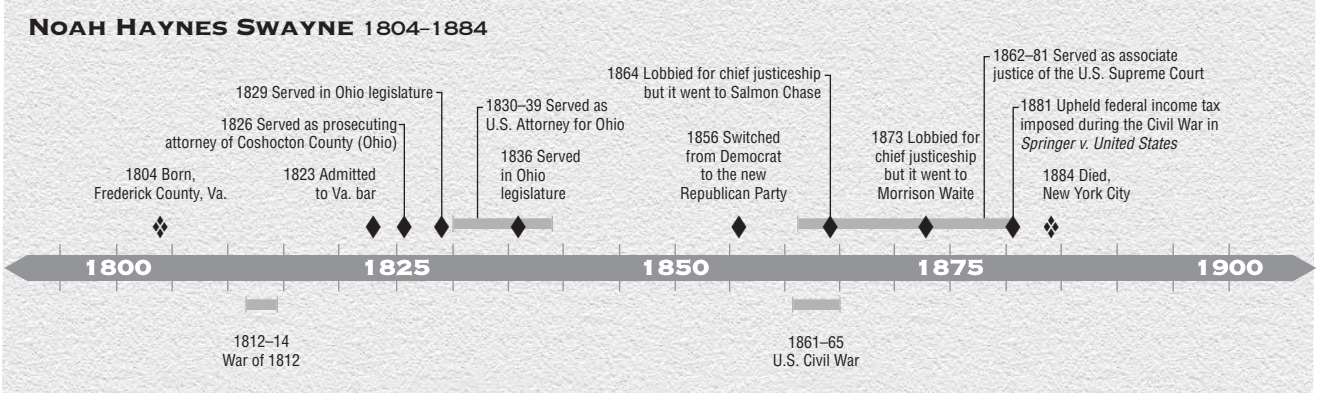
SWIFT V. TYSON

For almost one hundred years, the U.S. Supreme Court's decision in *Swift v. Tyson,* 41 U.S. (16 Pet.) 1, 10 L. Ed. 865 (1842), allowed the federal courts to create their own body of civil COMMON LAW in cases in which the parties were from different states. In exercising its diversity jurisdiction, a federal court was free to ignore the pertinent common law of the state in which it sat and apply federal common law. Though it was intended to encourage the development of a uniform set of COMMERCIAL LAW principles, the *Swift* decision was sharply criticized as an unwarranted intrusion into areas reserved to state courts.

Swift involved a legal dispute over the law of negotiable instruments. A negotiable instrument is a document by which one party promises to pay either money or goods to another party, called the bearer. For example, a check written on a person's bank account is a negotiable instrument. Negotiable instruments used by business are called COMMERCIAL PAPER and played an important role in the U.S. economy in the early nineteenth century. An unresolved issue was whether the bearer could assign a bill of exchange to a third party, who could then collect on the obligation.

The question of assignments was at the heart of *Swift.* A third-party assignee of a bill of exchange drawn in New York presented it for payment and was refused. The third party, who was not a New York resident, sued in New York federal district court. The New York common law held that a bill of exchange could not be assigned, and the federal judge ruled accordingly. Because New York was the leading commercial center in the United States, this ruling had serious implications for the national economy.

On appeal, the Supreme Court overturned the decision by reinterpreting the federal RULES OF DECISION ACT, originally section 34 of the JUDICIARY ACT OF 1789 (1 Stat. 73). In its original form, the act provided that "the laws of the several states . . . shall be regarded as rules of decision in trials at common law in the courts of



the United States in cases where they apply." The main issue before the Court concerned the meaning of the word *laws.* Was the word limited to legislatively enacted statutes or did it include state common-law decisions as well?

Justice JOSEPH STORY, writing for a unanimous Court, concluded that the term *laws* did not include common-law decisions. Such decisions were "at most, only evidence of what the laws are, and are not, of themselves, laws." Except for decisions of a "local" nature, such as those dealing with real estate, a federal judge was not required to apply a "general" state common-law rule involving commerce to a diversity-based case. Under the act a federal judge could apply only state statutes to a legal dispute.

Story, who was the leading U.S. authority on commercial law and commercial paper, believed it was imperative for the growth of the U.S. economy that the United States develop a uniform national law of commerce for the federal courts to apply. Therefore, he declared that federal common law permitted the assignment of commercial paper. Economic and legal historians have concluded that *Swift* did contribute to the growth of multistate transactions and the national economy. Businesses were able to assign commercial paper without fear that a state would invalidate the assignment.

Nevertheless, the decision angered many who believed a federal common law interfered with the right of states to develop their own principles of commercial law. The *Swift* doctrine also led to situations in which the SUBSTANTIVE LAW applied to litigants might be determined simply by the fortuity of their residences. Two cases might have different legal results depending only on whether the plaintiff and the defendant were from the same state or from different states. This led to significant unfairness and forum shopping. For example, in *Black & White Taxicab & Transfer Co. v. Brown & Yellow Taxicab and Transfer Co.,* 276 U.S. 518, 48 S. Ct. 404, 72 L. Ed. 681 (1928), a Kentucky corporation dissolved and reincorporated in Tennessee to obtain the benefit of substantive federal common law against another Kentucky corporation.

Faced with mounting criticism of *Swift,* in 1938 the Supreme Court overturned the decision in ERIE RAILROAD CO. V. TOMPKINS, 304 U.S. 64, 58 S. Ct. 817, 82 L. Ed. 1188. Federal courts were again required to apply state law, whether statutory or common, in diversity jurisdiction cases. In a radical shift from *Swift,* federal district courts periodically refer questions to state supreme courts, asking for a ruling on what the state law is on a specific issue.

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SYLLABUS

A headnote; a short note preceding the text of a reported case that briefly summarizes the rulings of the court on the points decided in the case.

The syllabus appears before the text of the opinion. The syllabus generally is not part of the opinion of the court but is prepared by a legal editor employed by a private law book company that publishes court decisions to serve as a quick reference for a researcher. Some courts prepare the syllabus for their own decisions, but in many states the syllabus has no legal effect. Ohio is one exception, however, where the court-prepared syllabus is part of the decision and is considered a statement of the law. In most states, only the opinion of the court containing the original statement of the grounds for the opinion may be used in legal papers in a lawsuit to convince a court or jury of a particular point of law.

CROSS-REFERENCES

Court Opinion.

SYMBOLIC DELIVERY

The constructive conveyance of the subject matter of a gift or sale, when it is either inaccessible or cumbersome, through the offering of some substitute article that indicates the donative intent of the donor or seller and is accepted as the representative of the original item.

For example, when one individual wishes to make a gift of a car to another individual, he or she might do so by handing over the keys and all documents indicating ownership thereof. In the law of real property, the transfer of a twig or clod of dirt from the grantor of land to the grantee was LIVERY OF SEISIN that constituted symbolic delivery of the right of legal possession or ownership of land pursuant to a freehold estate. Today the transfer of a deed from the seller to a buyer demonstrates the change in ownership of property.

SYMBOLIC SPEECH

Nonverbal gestures and actions that are meant to communicate a message.

The term *symbolic speech* is applied to a wide range of nonverbal communication. Many political activities, including marching, wearing armbands, and displaying or mutilating the U.S. flag, are considered forms of symbolic expression. The U.S. Supreme Court has held that this form of communicative behavior is entitled to the protection of the FIRST AMENDMENT to the U.S. Constitution, but the scope and nature of that protection have varied.

The Supreme Court first gave symbolic speech First Amendment protection in *Stromberg v. California,* 283 U.S. 359, 51 S. Ct. 532, 75 L. Ed. 1117 (1931). The Court overturned a California statute that prohibited the display of a red flag as a "sign, symbol or emblem of opposition to organized government." But not until the VIETNAM WAR era did the Court articulate the rules to be followed in determining whether symbolic expression is entitled to the protection of the First Amendment.

In *United States v. O'Brien,* 391 U.S. 367, 88 S. Ct. 1673, 20 L. Ed. 2d 672 (1968), the Court reviewed the conviction of David Paul O'Brien for violating a 1965 amendment to the Selective Service Act (50 U.S.C.A. App. §§ 451 et seq.) that prohibited any draft registrant from knowingly destroying or mutilating his draft card. O'Brien had burned his Selective Service card on the steps of the South Boston Courthouse at a rally protesting the Vietnam War. He claimed that his act of burning his card was symbolic speech protected by the First Amendment. The government argued that it could prohibit this conduct because it had a legitimate interest in requiring registrants to have draft cards always in their possession as a means of ensuring the proper functioning of the military draft.

The Supreme Court sided with the government, with Chief Justice EARL WARREN rejecting "the view that an apparently limitless variety of conduct can be labeled speech whenever the person engaging in the conduct intends thereby to express his idea." When "speech" and "nonspeech" elements are combined in the same course of conduct, a lesser burden will be placed on the government to justify its restrictions. Accordingly, the Court announced the appropriate constitutional standard:

> [A] government regulation is sufficiently justified if it is within the constitutional power of the Government; if it furthers an important or substantial government interest; if the governmental interest is unrelated to the suppression of free expression; and if the incidental restriction on First Amendment freedoms is no greater than is essential to the furtherance of that interest. Applying this test to the statute involved in *O'Brien,* the Court found the law constitutional.

A less defiant form of symbolic speech was extended constitutional protection during the Vietnam War. In TINKER V. DES MOINES INDEPENDENT COMMUNITY SCHOOL DISTRICT, 393 U.S. 503, 89 S. Ct. 733, 21 L. Ed. 2d 731 (1969), high school officials in Des Moines, Iowa, had suspended students for wearing black armbands to school to protest U.S. involvement in the Vietnam War. Justice ABE FORTAS, in his majority opinion, rejected the idea that the school's response was "reasonable" because it was based on the fear that the wearing of the armbands would create a disturbance. Fortas ruled that the wearing of the armbands was "closely akin to 'pure speech' which . . . is entitled to comprehensive protection under the First Amendment. . . ." Public school officials could not ban expression out of the "mere desire to avoid discomfort and unpleasantness that always accompany an unpopular viewpoint."

Political protesters have often used the U.S. flag as a vehicle to express opposition to government policies. During the Vietnam War era, the mutilation or burning of the flag became commonplace. Such actions angered many people, and legislation was passed at the state level to prohibit this conduct. In *Street v. New York,* 394 U.S. 576, 89 S. Ct. 1354, 22 L. Ed. 2d 572 (1969), the Supreme Court had the opportunity to address the question of whether flag burning is entitled to constitutional protection as symbolic speech. However, the Court focused on the element of verbal expression also presented in this case and effectively avoided the symbolic speech issue. In a 1974 case, the Court did strike down a Washington state law that prohibited the display of the U.S. flag with "extraneous material" attached to it (*Spence v. Washington,* 418 U.S. 405, 94 S. Ct. 2727, 41 L. Ed. 2d 842).

The *Street* decision left open the question of whether flag burning per se was a form of symbolic speech protected by the First Amendment. In 1989, in the highly publicized case of TEXAS V. JOHNSON, 491 U.S. 397, 109 S. Ct. 2533, 105 L.

Flag Burning: Desecration or Free Expression?

The Supreme Court's decision in **TEXAS V. JOHNSON**, 491 U.S. 397, 109 S. Ct. 2533, 105 L. Ed. 2d 342 (1989), striking down a Texas law that made burning the U.S. flag a crime, was endorsed by the **AMERICAN CIVIL LIBERTIES UNION** (ACLU) and other groups that seek to preserve freedom of expression under the **FIRST AMENDMENT**. Other groups and individuals, however, were dismayed that the Court would strike down a law that protected the symbol of the United States. Congress responded by passing the federal Flag Protection Act of 1989, 103 Stat. 777, which made flag burning a federal crime. When the Supreme Court struck down the federal law in *United States v. Eichman,* 496 U.S. 310, 110 S. Ct. 2404, 110 L. Ed. 2d 287 (1990), opponents of flag burning began to campaign for a constitutional amendment that would make such a law constitutional.

The proponents of a flag protection amendment have been led by the Citizens Flag Alliance (CFA), a nonpartisan, nonprofit national coalition that includes more than one hundred organizations and is funded, in large part, by the **AMERICAN LEGION**. The proposed amendment states that "Congress shall have power to prohibit the physical desecration of the flag of the United States." The House of Representatives overwhelmingly passed the amendment in June 1995, but the Senate defeated the amendment by three votes in December 1995.

Despite this defeat, the CFA has continued to campaign for the amendment, noting that opinion polls consistently show that 80 percent of U.S. citizens support the amendment. In addition, forty-nine state legislatures have passed resolutions asking Congress to pass a flag protection amendment—eleven more states than are needed to ratify an amendment. The amendment was reintroduced in Congress in 1997. The House passed the measure by a vote of 310–114, but a vote in the Senate was delayed.

Proponents of the amendment contend that it does not restrict freedom of expression or limit the First Amendment. They note that there have always been limits on free speech and that the Supreme Court has never regarded the guarantees of the First Amendment as absolute. Proponents point to Chief Justice **WILLIAM H. REHNQUIST**'s dissent in *Johnson,* in which he characterized flag burning as "the equivalent of an inarticulate grunt or roar" and the flag as a national symbol deserving of protection.

In addition, supporters of the amendment deny that flag burning is

Ed. 2d 342, the Court surprised many observers by ruling that flag burning was protected. After publicly burning the U.S. flag outside the 1984 Republican National Convention in Dallas, Texas, Gregory Lee Johnson was charged with violating a Texas law prohibiting flag desecration. Johnson was convicted at trial, but his conviction was reversed by the Texas Court of Criminal Appeals, which held that the law violated the First Amendment. On a 5–4 vote, the U.S. Supreme Court agreed.

Writing for the majority, Justice **WILLIAM J. BRENNAN JR.** noted that "[t]he expressive, overtly political nature of [Johnson's] conduct was both intentional and overwhelmingly apparent." It was clear that "Johnson was convicted for engaging in expressive conduct." Rejecting the assertion by Texas that the law prevented breaches of the peace, the Court concluded that "Johnson's conduct did not threaten to disturb the peace. Nor does the State's interest in preserving the flag as a symbol of nationhood and national unity justify his criminal conviction for engaging in political expression."

Chief Justice **WILLIAM H. REHNQUIST**, in a dissenting opinion, dismissed the idea that flag burning was a form of symbolic speech. On the contrary, he stated, "flag burning is the equivalent of an inarticulate grunt or roar that . . . is most likely to be indulged in not to express any particular idea, but to antagonize others. . . ." Rehnquist argued that the flag "as the symbol of our Nation, [has] a uniqueness that justifies a governmental prohibition against flag burning. . . ."

The *Johnson* decision angered conservatives, who called for a constitutional amendment to place flag burning beyond the First Amendment's protection. When the amendment proposal failed to gain support, Congress passed the federal Flag Protection Act of 1989, Pub. L. No. 101-131, 103 Stat. 777, which made flag burning a federal crime. In *United States v. Eichman,* 496 U.S. 310, 110 S. Ct. 2404, 110 L. Ed. 2d 287 (1990), the Court struck down the Flag Protec-

symbolic speech. They argue that the act of flag desecration is conduct rather than speech and is thus outside the First Amendment's protection. The Supreme Court's decisions have regarded flag burning as protected symbolic speech, however, so this argument can only prevail if the Court's interpretation is overridden by an amendment to the Constitution.

Supporters of the amendment contend that the flag has a special place in U.S. society and culture and serves as a unifying symbol for a heterogeneous nation. Because of its unique status, the flag must be honored and respected. They argue that the freedom to desecrate the flag is not a fundamental freedom deeply rooted in the First Amendment. Therefore, they conclude, it is reasonable for a balance to be struck between the rights of the individual and her responsibility to society. In this instance societal values should prevail over individual interests.

Proponents of the amendment strenuously object to the charge that they are restricting **FREEDOM OF SPEECH**. The amendment does not prevent a person from criticizing, in speech or writing, the government, government officials, or even the flag itself. The amendment simply gives Congress the authority to pass legislation that prohibits the desecration of the U.S. flag.

Opponents of the amendment, led by the ACLU, insist that the passage of the flag amendment would limit freedom of expression and restrict the First Amendment. They point out that the word *desecration* is a religious concept that means to profane or violate the sanctity of something. According to opponents, the flag amendment would implicitly constitutionalize the flag as the sacred or divine object of the United States. Such an action would run counter to the **BILL OF RIGHTS**.

Opponents of the amendment contend that flag burning is a rare event that does not merit the amending of the Constitution. No more than five or six persons were prosecuted annually for flag burning before the *Johnson* decision. Opponents worry that once a flag desecration amendment is passed, it will open the door to the revocation of other individual freedoms. The Constitution and the Bill of Rights were designed to prevent the tyranny of the majority. Just because a flag desecration amendment has broad support does not make it right. Once flag burning is banned, legislators and pressure groups will seek to restrict other freedoms.

Those opposed to the amendment also argue that the Supreme Court's decision in *Johnson* contained the best reason for rejecting it. As Justice **WILLIAM J. BRENNAN JR.** stated, "We do not consecrate the flag by punishing its desecration, for in doing so we dilute the freedom that this cherished emblem represents." Opponents see the toleration of actions such as flag burning as a sign and source of national strength. In their view the flag stands for the freedoms each U.S. citizen enjoys, including the right to burn that very symbol.

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tion Act as applied to flag burning as a means of political protest.

Many commentators have criticized the way the Supreme Court has treated the symbolic speech area. In particular, observers have noted that the line between "speech" and nonverbal "conduct" is impossible to draw and that the real emphasis should be placed on the motive behind the government regulation. This approach would determine whether the regulation was intended to censor certain ideas or whether it was directed at the noncommunicative impact of the behavior.

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CROSS-REFERENCES

Censorship; Freedom of Speech.

SYNDICATE

An association of individuals formed for the purpose of conducting a particular business; a **JOINT VENTURE**.

A syndicate is a general term describing any group that is formed to conduct some type of business. For example, a syndicate may be formed by a group of investment bankers who underwrite and distribute new issues of **SECURITIES** or blocks of outstanding issues. Syndicates can be organized as corporations or partnerships.

Newspaper or press syndicates came into existence after the Civil War. A press syndicate sells the exclusive rights to entertainment features, such as gossip and advice columns, comic strips, and serialized books, to a subscribing newspaper in each territory. These "syndicated" features, which appear simultaneously around the United States, can generate large sums for the creators of the features and for the syndicate that sells them. Similarly, when television programs are syndicated, one station in each television market is allowed to broadcast a popular game show or rebroadcast a popular network series. A syndicated show may be televised at different times depending on the schedule of the local station. In contrast, on network television, a program is televised nationally at one scheduled time.

The term *syndicate* is also associated with ORGANIZED CRIME. In the 1930s, the term *crime syndicate* was often used to describe a loose association of racketeers in control of organized crime throughout the United States. For example, the infamous "Murder, Inc." of the 1930s, which was part of a national crime syndicate, was founded to threaten, assault, or murder designated victims for a price. A member of the crime syndicate anywhere in the United States could contract with Murder, Inc., to hire a "hit man" to kill a person.

SYNDICATED CRIME

See ORGANIZED CRIME.

SYNOPSIS

A summary; a brief statement, less than the whole.

A synopsis is a condensation of something—for example, a synopsis of a trial record.

TABLE OF CASES

An alphabetized list of the judicial decisions that are cited, referred to, or explained in a book with references to the sections, pages, or paragraphs where they are cited.

A table of cases is commonly found in either the prefix or appendix of the book.

TACIT

Implied, inferred, understood without being expressly stated.

Tacit refers to something done or made in silence, as in a *tacit agreement.* A *tacit understanding* is manifested by the fact that no contradiction or objection is made and is thus inferred from the situation and the circumstances.

TACKING

The process whereby an individual who is in ADVERSE POSSESSION *of real property adds his or her period of possession to that of a prior adverse possessor.*

In order for title to property to vest in an adverse possessor, occupancy must be continuous, regular, and uninterrupted for the full statutory period. If privity exists between the parties, such that one possessor gives possession of the land to the next, the time periods that the successive occupants have had possession of the property may be added or tacked together to meet the continuity requirement.

Tacking is allowed only when no time lapses between the end of one occupant's possession and the beginning of another's occupancy. In addition, possession by the prior occupant must have been adverse or under color of title.

♦ TAFT, ALPHONSO

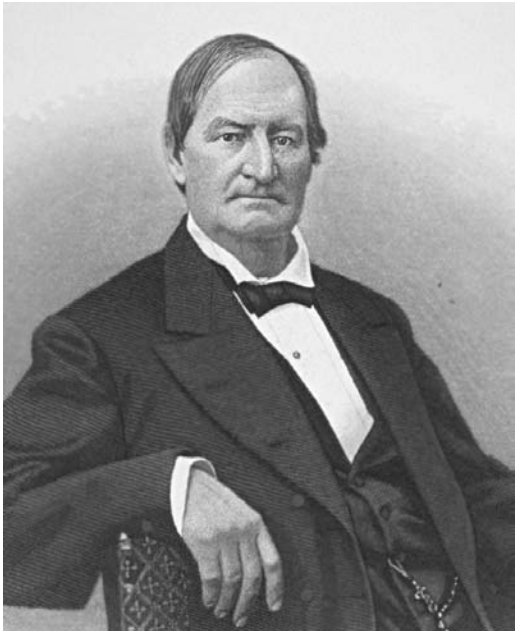
Alphonso Taft served as attorney general of the United States from 1876 to 1877, under President ULYSSES S. GRANT.

"THE GOVERNMENT IS NEUTRAL, AND, WHILE PROTECTING ALL, IT PREFERS NONE AND DISPARAGES NONE."
—ALPHONSO TAFT

Taft was born November 5, 1810, in Townsend, Vermont, to pioneers Peter Rawson Taft and Sylvia Howard Taft. He was well aware of his family's long history and tradition of public service in the American colonies. His father was a descendant of Edward Rawson, a 1636 settler who had served as secretary of the Massachusetts Province. Other Taft family members held positions of responsibility and influence in communities all along the eastern seaboard.

Although Taft's parents were of modest financial means, they had a strong commitment to education, and Taft was well schooled. Taft left Vermont to attend Yale University in 1829, where he received a bachelor of arts degree in 1833 and his law degree in 1836.

Like many young men of his day, Taft saw his future in the West. In 1839 Taft moved to Cincinnati, Ohio, and opened his law practice. On August 29, 1841, he married Fanny Phelps, the daughter of family friends Charles Phelps and Eliza Houghton Phelps. Fanny died in 1852.



Alphonso Taft.
ARCHIVE PHOTOS, INC.

Taft remarried in 1853, to Louise Maria Torret. They had three sons and one daughter, including WILLIAM HOWARD TAFT, who became the twenty-seventh president of the United States and the tenth chief justice of the U.S. Supreme Court.

Taft played an important role in organizing his influential friends to support the national Republican effort, and he is personally credited with the birth of the REPUBLICAN PARTY in Cincinnati. He was chosen to represent Hamilton County at the first Republican National Convention, in 1856. He later sought to represent Ohio's first district in the thirty-fifth Congress. He ran as a Republican candidate, but was defeated. He remained active in Republican party politics for most of his life.

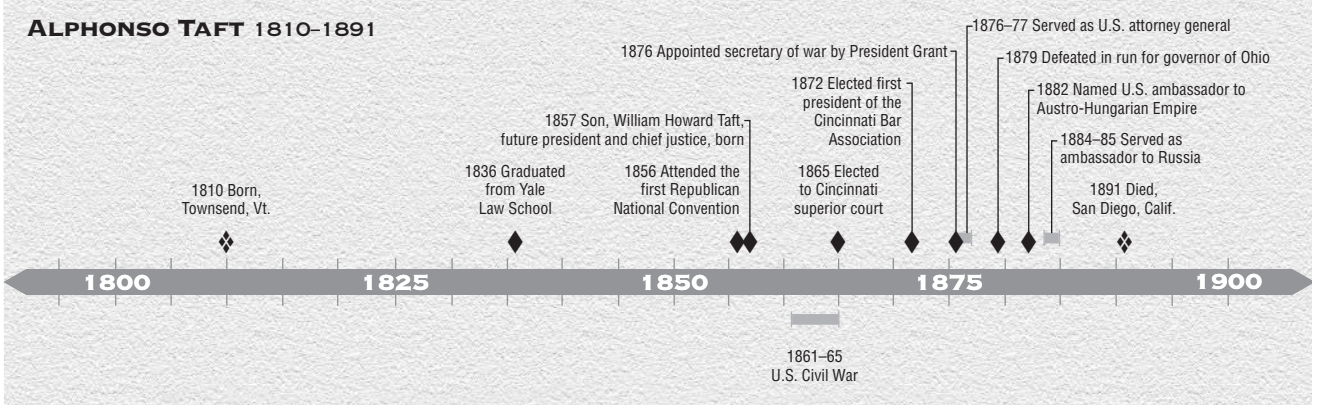
In 1865 Taft was appointed to fill the remaining term of a Cincinnati superior court judge. Later that year, he was elected in his own right, and he served as a judge of the Superior Court of Cincinnati from 1865 to 1872.

In 1872 Taft left the bench to practice law with his grown sons. He took an active role in the establishment and organization of the Cincinnati Bar Association, and he was elected the first president of the new organization in March 1872. Taft's political, judicial, and legal activities during the late 1860s and early 1870s elevated him to national attention, so few were surprised when President Grant appointed him secretary of war in March 1876. (It was a position his son William Howard Taft would also hold thirty years later, under President THEODORE ROOSEVELT.) Only two months later, Grant named Taft to be attorney general.

Taft served as attorney general from May 1876 to January 1877. In November 1876, the government's policy of suspending pay to sailors who were jailed or removed from duty was challenged. Taft rendered an opinion finding "nothing in the law of the naval service which justifies the view that confinement or suspension from duty under sentence of COURT-MARTIAL is attended by FORFEITURE or loss of pay" (15 Op. Att'y Gen. 175, 176).

Following his term as attorney general, Taft made several unsuccessful bids for elected office. He was defeated in his run for a U.S. Senate seat in 1878. And he was defeated in two attempts at the Ohio governor's seat, in 1877 and 1879.

In April 1882, he was named U.S. ambassador to the Austro-Hungarian Empire. In 1884 Taft was offered the ambassadorship to Russia. He accepted, and served until August 1885.



At the close of his foreign service, Taft settled in California. In retirement, he devoted his time to a number of educational institutions, including Yale University, where he was a fellow of the college, and the University of Cincinnati, where he was a charter trustee. After his death on May 21, 1891, in San Diego, the University of Cincinnati's Alphonso Taft School of Law was named in his honor.

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TAFT-HARTLEY ACT

Over President HARRY S. TRUMAN's VETO, the Taft-Hartley Act—which is also called the Labor-Management Relations Act (29 U.S.C.A. § 141 et seq.)—was passed in 1947 to establish remedies for UNFAIR LABOR PRACTICES committed by unions. It included amendments to the National Labor Relations Act, also known as the WAGNER ACT of 1935 (29 U.S.C.A. § 151 et seq.), which were crafted to counteract the advantage that LABOR UNIONS had gained under the original legislation by imposing corresponding duties on unions. Prior to the amendments, the National Labor Relations Act had proscribed unfair labor practices committed by management.

The principal changes imposed by the act encompass the following: prohibiting secondary boycotts; abolishing the CLOSED SHOP but allowing the union shop to exist under conditions specified in the act; exempting supervisors from coverage under the act; requiring the NATIONAL LABOR RELATIONS BOARD (NLRB) to accord equal treatment to both independent and affiliated unions; permitting the employer to file a representation petition even though only one union seeks to represent the employees; granting employees the right not only to organize and bargain collectively but also to refrain from such activities; allowing employees to file decertification petitions for elections to determine whether employees want to revoke the designation of a union as their bargaining agent; declaring certain union activities to constitute unfair labor practices; affording to employers, employees, and unions new guarantees of the right of free speech; proscribing strikes to compel an employer to discharge an employee due to his or her union affiliation, or lack of it; and providing for settlement by the NLRB of certain jurisdictional disputes.

The act also makes collective bargaining agreements enforceable in federal district court, and it provides a civil remedy for damages to private parties injured by secondary boycotts. The statute thereby marks a shift away from a federal policy encouraging unionization, which has been embodied in the Wagner Act, to a more neutral stance, which maintains the right of employees to be free from employer coercion.

CROSS-REFERENCES

Labor Law; Labor Union.

♦ TAFT, WILLIAM HOWARD

William Howard Taft is the only person to serve as both president and Supreme Court chief justice of the United States. A gifted judge and administrator, Taft helped modernize the way the U.S. Supreme Court conducted its business and was the driving force behind the construction of the Supreme Court Building in Washington, D.C.

"THE ORDINARY RESULT OF HUMAN PUNISHMENT IS THAT THOSE NEAR TO THE CRIMINAL, OR DEPENDENT UPON HIM, SUFFER IN MANY CASES MORE THAN HE DOES."
—WILLIAM HOWARD TAFT

Taft was born on September 15, 1857, in Cincinnati, Ohio. His father, ALPHONSO TAFT, served as secretary of war and attorney general in President Ulysses S. Grant's administration. Taft graduated from Yale University in 1878 and earned a law degree from Cincinnati Law College (now University of Cincinnati College of Law) in 1880. He established a law practice in Cincinnati and served as assistant prosecuting attorney for Hamilton County, Ohio, from 1881 to 1883. Taft was assistant county solicitor from 1885 to 1887 and a superior court judge from 1887 to 1890.

Though only thirty-three years old, Taft lobbied President BENJAMIN HARRISON for a seat on the U.S. Supreme Court in 1890. Although Harrison demurred, he did make Taft U.S. SOLICITOR GENERAL, the person who argues on behalf of the federal government before the Supreme Court. Taft won sixteen of the eighteen cases he argued before 1892, when Harrison appointed him to the U.S. Court of Appeals for the Sixth Circuit.

The jurisdiction of the Sixth Circuit included Chicago and other industrialized cities of the Midwest, which were the scenes of conflict between LABOR UNIONS and large manufacturing

William Howard Taft.
LIBRARY OF CONGRESS

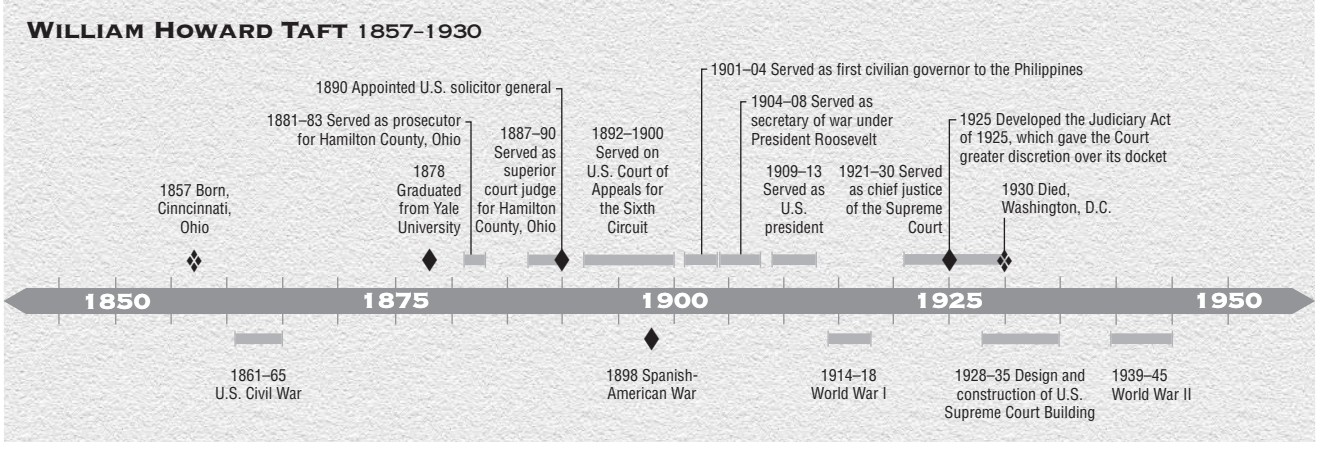
companies. Taft, like most conservative judges of his time, upheld the use of the labor **INJUNCTION** to prevent labor strikes and violence. The use of the injunction removed an important bargaining tool and seriously weakened labor unions. Taft, however, did believe workers had a right to organize and could legally strike, if the strike was peaceful.

Taft left the court in 1900 at the request of President **WILLIAM MCKINLEY**. In the aftermath of the **SPANISH-AMERICAN WAR** (1898), the United States had taken possession of the Philippine Islands. Taft was chosen to lead a commission that would help establish a civil government in the islands and end military rule. In 1901 he became the first civilian governor of the Philippines and drew praise from the Philippine people for his administration. Taft reluctantly returned to Washington in 1904 at the request of President **THEODORE ROOSEVELT** to become secretary of war. As secretary, Taft supervised the construction of the Panama Canal, established the U.S. Canal Zone, and helped negotiate a treaty that ended the Russo-Japanese War in 1905.

When Roosevelt declined to run for another term in 1908, Taft was nominated as the Republican candidate. He easily defeated the Democratic candidate, **WILLIAM JENNINGS BRYAN**, in the general election and assumed office in 1909 as Roosevelt's political heir. Taft's administration proved to be lackluster at best, however. Though he was an able administrator, he lacked the political skills necessary to succeed in Washington. He alienated Roosevelt and other liberal Republicans by appeasing conservative Republicans, splitting the party in the process.

Taft did carry on Roosevelt's "trust-busting" initiatives, attacking business trusts under the **SHERMAN ANTI-TRUST ACT** (15 U.S.C.A. § 1 et seq.) and supporting the Mann-Elkins Act of 1910 (49 U.S.C.A. § 1 et seq.), which gave more power to the **INTERSTATE COMMERCE COMMISSION**. He also established the **LABOR DEPARTMENT**. In foreign affairs Taft adopted a policy of "dollar diplomacy" as an economic substitute for military aid to underdeveloped countries.

Taft's political downfall began in 1910 with his support of Speaker of the House of Representatives Joseph Cannon, a conservative Republican who ran the House with an iron fist. Liberals had counted on Taft to help them break Cannon's power, but he refused. When Taft



approved the development of Alaskan coal resources, he drew public criticism from Gifford A. Pinchot of the Forestry Service, a promoter of conservation and Roosevelt's close ally.

In 1912 Roosevelt ran against Taft for the Republican presidential nomination. When Taft won the endorsement, Roosevelt formed the PROGRESSIVE PARTY, effectively guaranteeing that Democrat WOODROW WILSON would be elected president. Taft carried only Utah and Vermont and split the Republican vote with Roosevelt, allowing Wilson to win handily.

After leaving the presidency, Taft became a law professor at Yale University. During WORLD WAR I he served on the National War Labor Board and advocated the establishment of the LEAGUE OF NATIONS and U.S. participation in that world organization.

In 1921 President WARREN G. HARDING appointed Taft chief justice of the United States Supreme Court. On a Court dominated by conservatives, Taft usually went along with his brethren in striking down laws that sought to regulate business and labor practices.

Taft distinguished himself more as an administrator than as a judge. He developed and lobbied for the JUDICIARY ACT OF 1925, 43 Stat. 936, which gave the Court almost complete discretion over its docket. Under Taft the Court developed the writ of certiorari process, whereby a party files a petition seeking review by the Court. Because only a small fraction of these petitions are granted, the process has dramatically reduced the work of the Court. Taft also lobbied Congress for funds to construct a separate building for the Court. Although he did not live to see its completion, the Supreme Court Building, which was designed by CASS GILBERT, proved to be a lasting monument to Taft's administrative talents.

Taft's health began to fail in 1928, and he was forced to resign from the Court in February 1930. He died on March 8, 1930, in Washington, D.C.

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TAIL

Limited, abridged, reduced, or curtailed.

An *estate in tail* is a legally recognizable interest of inheritance that goes to the heirs of the donee's body instead of descending to the donee's heirs generally. The heirs of the donee's body are his or her lawful issue (children, grandchildren, great-grandchildren, and so on, in a direct line for as long as the descendants endure in a regular order and course of descent). Upon the death of the first owner to die without issue, the estate tail ends.

CROSS-REFERENCES

Entail.

TAKEOVER

To assume control or management of a corporation without necessarily obtaining actual title to it.

A *takeover bid* or tender offer is a proposal made by one company to purchase shares of stock of another company, in order to acquire control thereof.

CROSS-REFERENCES

Mergers and Acquisitions.

TAKINGS CLAUSE

See EMINENT DOMAIN; FIFTH AMENDMENT.

TALESMAN

An individual called to act as a juror from among the bystanders in a court.

A talesman refers to a person who is summoned as an additional juror to make up for a deficiency in a jury panel.

"TO THE OLD ADAGE THAT DEATH AND TAXES SHARE A CERTAIN INEVITABLE CHARACTER, FEDERAL JUDGES MAY BE EXCUSED FOR ADDING ATTORNEY'S FEES CASES."
—EDWARD ALLEN TAMM

♦ TAMM, EDWARD ALLEN

Edward Allen Tamm served the federal bench with distinction for almost forty years, as a district and appellate court judge. For much of his life, he was a guiding force in the field of judicial ethics. His committee work for the U.S. Judicial Conference helped to set the standards for judicial conduct throughout the nation and to instill public confidence in the fair administration of justice. (The Judicial Conference is the principal machinery through which the federal court system operates. This group establishes the standards and shapes the policies governing the federal judiciary.)

Tamm was born April 21, 1906, in St. Paul, Minnesota. Shortly afterward, his family moved

to Washington State. Tamm attended Mount Saint Charles College, in Helena, Montana, and the University of Montana. In 1928 he moved to Washington, D.C., and he earned his doctor of JURISPRUDENCE degree from Georgetown University Law School in 1930.

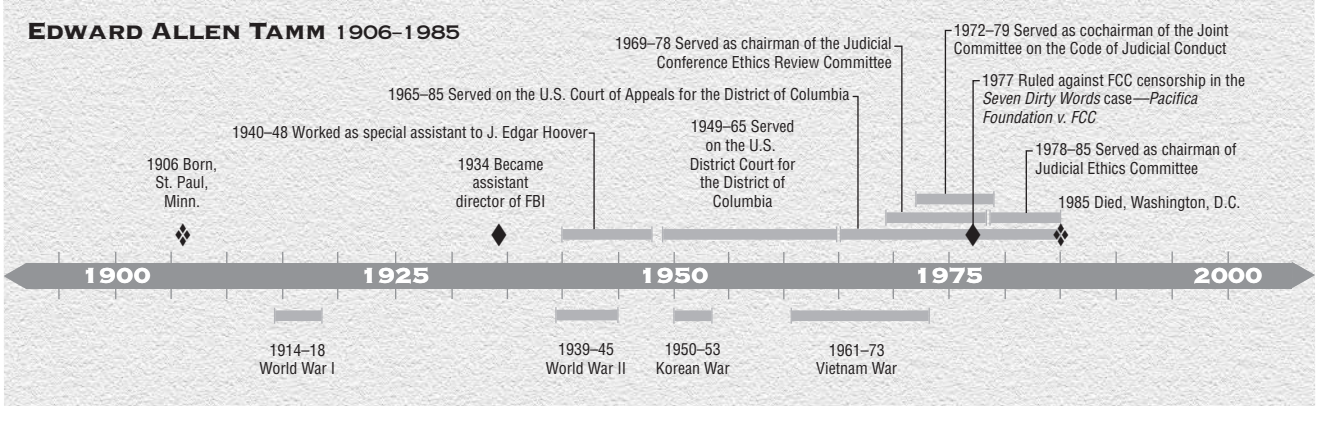
After graduating from law school, Tamm joined the FEDERAL BUREAU OF INVESTIGATION (FBI). There, he advanced quickly, achieving a promotion to assistant director in 1934. From 1940 to 1948, he worked closely with Director J. EDGAR HOOVER as a special assistant and, as such, traveled around the world. In 1945, Tamm served as special adviser to the U.S. delegation to the U.N. Conference on International Organizations. During the WORLD WAR II years, Tamm also served his country in the Navy Reserve, attaining the rank of lieutenant commander.

In 1948 Tamm was appointed U.S. district judge for the District of Columbia by President HARRY S. TRUMAN. Because of Tamm's background with the FBI and his lack of trial experience, the appointment was met with mixed reaction. Eventually confirmed, Tamm served the district court for the next seventeen years. At the time of his appointment, the district court not only handled federal cases but also was a court of general jurisdiction for the District of Columbia. This meant that Tamm handled local cases, including traffic and small claims issues, as well as federal issues. Therefore, Tamm had ample opportunity to develop his skills as a trial judge. He heard a wide variety of cases that normally would have been tried before state courts.

As a district judge, Tamm cultivated an interest in JUDICIAL ADMINISTRATION. He established a reputation for knowing how to move cases through the court. In the late 1950s, Tamm chaired a district courts committee to explore the use of electronic equipment for court reporting. He also pioneered the use of six-member juries for civil cases. His vision was a long time coming, but in the mid-1990s, electronic court reporting methods were widely used, and six-member jury panels for civil matters were the rule in most of the nation's federal courts.

Tamm was elevated to the U.S. Court of Appeals for the District of Columbia Circuit in 1965, by President LYNDON B. JOHNSON. Tamm's work on the trial bench deeply influenced his opinion writing as an appellate judge. His opinions were usually short and to the point; they were written to provide trial courts with a clear guide to the proper application of the law—and not to impress the reader with the judge's literary skill.

The case for which Tamm is best known is often called the *Seven Dirty Words* case—*Pacifica Foundation v. FCC,* 556 F.2d 9, 181 U.S. App. D.C. 132 (D.C. Cir. Mar. 16, 1977). In it, Tamm set aside a FEDERAL COMMUNICATIONS COMMISSION (FCC) ruling that a recording containing seven specific words (referring to such things as sexual acts and portions of human anatomy) could not be aired on the radio. He wrote that the FCC order banning air play of the explicit excerpts from George Carlin's *Occupation Foole* album carried the agency into the "forbidden realm of censorship." Tamm's decision was ultimately overturned by the U.S. Supreme Court, in a 5–4 ruling concluding that neither the FIRST AMENDMENT guarantee of free speech nor federal law against broadcast CENSORSHIP barred the FCC from revoking the license of any station that aired explicit material



during the daytime or early evening hours (*Pacifica Foundation,* 438 U.S. 726, 98 S. Ct. 3026, 57 L. Ed. 2d 1073 [1978]).

As an appellate judge, Tamm continued his commitment to improving the administration of justice and increased his participation on Judicial Conference committees. During these years, Tamm also took up the cause of monitoring judicial ethics. He served as chairman of the Judicial Conference Ethics Review Committee (1969–78), chairman of the Judicial Ethics Committee (1978–85), member of the Judicial Conference Committee on Court Administration (1970–85), cochairman of the Joint Committee on the Code of Judicial Conduct (1972–79), and member of the Advisory Committee on Federal Rules of Appellate Procedure (1979–85). As chairman of the committee responsible for administering both self-imposed Judicial Conference ethical standards and, later, congressionally mandated financial reporting, Tamm personally examined or reviewed the thousands of financial statements submitted by federal judges and employees each year.

Tamm died on September 22, 1985, at his home in Washington, D.C. He was survived by his wife of fifty years, Grace Monica Sullivan Tamm.

In the spring of 1986, Tamm was posthumously awarded the Devitt Distinguished Service to Justice Award, which is administered by the American Judicature Society. This award is named for Edward J. Devitt, a former chief U.S. district judge for Minnesota. It acknowledges the dedication and contributions to justice made by all federal judges, by recognizing the specific achievements of one judge who has contributed significantly to the profession. Tamm was acknowledged for administrative innovations that improved the performance of the courts and for his work in promoting and monitoring judicial ethics.

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CROSS-REFERENCES

Judicial Conference of the United States.

TAMMANY HALL

Political machines have traditionally wielded influence in U.S. society, and one of the most notorious was Tammany Hall in New York. Controlled by the DEMOCRATIC PARTY, the power of Tammany Hall grew to such an extent that its members dominated New York government for nearly two centuries.

The members of Tammany Hall had a corrupt stonghold on New York City politics from the early 1800s until the 1930s.

AP/WIDE WORLD PHOTOS

Founded by William Mooney in 1789, Tammany Hall was originally a fraternal and patriotic organization first called the Society of St. Tammany, or the Columbian Order. The name *Tammany* evolved from Tamanend, a legendary Delaware Indian chief, and the members of Tammany Hall used many Indian words to designate their various titles. Each trustee was a sachem, and the presiding officer was a grand sachem; the only person to receive the honor of great grand sachem was a president of the United States. The member who served as secretary was known as a scribe, and the building that housed the Tammany meetings was called a wigwam.

From these innocent beginnings, Tammany Hall grew into a political force. Affiliates of the organization actively participated in politics in the early nineteenth century. In 1812 the association moved into the first Tammany Hall with a membership of approximately fifteen hundred members. By 1821 the association was receiving widespread support in New York City. Unfortunately Tammany Hall was also gaining a reputation for corruption, control, and subterfuge.

In 1854 Tammany Hall member Fernando Wood was elected mayor of New York City. From then until 1933, City Hall was dominated almost exclusively by Tammany Hall.

The most corrupt and infamous member of Tammany Hall was William Marcy Tweed, called "Boss" Tweed. He served as a state senator in 1868 and, with his followers, known as the Tweed Ring, dominated state government and defrauded New York City of millions of dollars.

The corruption continued under subsequent Tammany Hall leaders, such as "Honest John" Kelly, Richard F. Croker, and Charles F. Murphy. By 1930, however, Samuel Seabury had begun to direct revealing inquiries against the city magistrates' courts. These investigations led to the downfall of Tammany Hall and the resignation of incumbent mayor James J. Walker in 1932. Fiorello LaGuardia was elected mayor in 1933, and an anti-Tammany Hall era began. The once-powerful Tammany Hall machine was resurrected briefly in the 1950s by politician Carmine DeSapio but never regained the stronghold in New York politics that it once enjoyed.

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"WE MUST LOOK AT THE INSTITUTION OF SLAVERY AS PUBLICISTS, AND NOT AS CASUISTS. IT IS A QUESTION OF LAW, AND NOT A CASE OF CONSCIENCE."
—ROGER BROOKE TANEY

TAMPER

To meddle, alter, or improperly interfere with something; to make changes or corrupt, as in tampering with the evidence.

♦ TANEY, ROGER BROOKE

Roger Brooke Taney served as chief justice of the U.S. Supreme Court from 1836 to 1864. During his almost thirty years on the bench, Taney sought to encourage economic growth and competition by rendering decisions that reshaped the traditional law concerning property rights and commerce. Although he served with great distinction on the Court, he is best known as the author of the infamous decision in Dred Scott's case, DRED SCOTT V. SANDFORD, 60 U.S. (19 How.) 393, 15 L. Ed. 691 (1857). This decision fueled sectional hostility and moved the nation closer to civil war.

Taney was born on March 17, 1777, in Calvert County, Maryland. A descendant of an aristocratic tobacco-growing family, Taney graduated from Dickinson College in 1795, studied law, and was admitted to the Maryland bar in 1799. That same year he was elected to a one-year term in the Maryland House of Delegates. Taney practiced briefly in Annapolis before settling in Frederick, where he soon was recognized as a distinguished attorney.

Taney was elected to the Maryland Senate in 1816 as a member of the FEDERALIST PARTY. Despite the party's belief in a strong national government, Taney endorsed STATES' RIGHTS. By the time he left the Senate in 1821, the Federalist party was on the verge of extinction. Taney switched his allegiance to the DEMOCRATIC PARTY and soon became an influential figure in the Maryland state party leadership. He was elected Maryland attorney general in 1826 and served until 1831.

President ANDREW JACKSON appointed Taney U.S. attorney general in 1831. Taney supported the president's opposition to rechartering the Second Bank of the United States and helped him write the VETO message. Jackson and the Democrats saw the bank as a dangerous institution that would enhance the power of the national government. Having vetoed the rechartering, in 1833 Jackson ordered Secretary of the Treasury William J. Duane to withdraw the deposits of the federal government from the bank, but Duane resigned instead. Jackson then appointed Taney secretary of the treasury so that he could carry out the order. Confirmation of Taney's appointment as treasury secretary was frustrated by members of the WHIG PARTY in the U.S. Senate, but by that time Taney had succeeded in distributing the federal funds among several state banks.

Taney returned to private practice, but President Jackson wanted him on the U.S. Supreme Court. In 1835 he nominated Taney as an associate justice, but the Senate, still disgruntled about the bank deposit issue, refused to confirm the appointment. The composition of the Senate soon changed, however, and upon the death of JOHN MARSHALL in 1836, Taney was nominated and confirmed as chief justice.

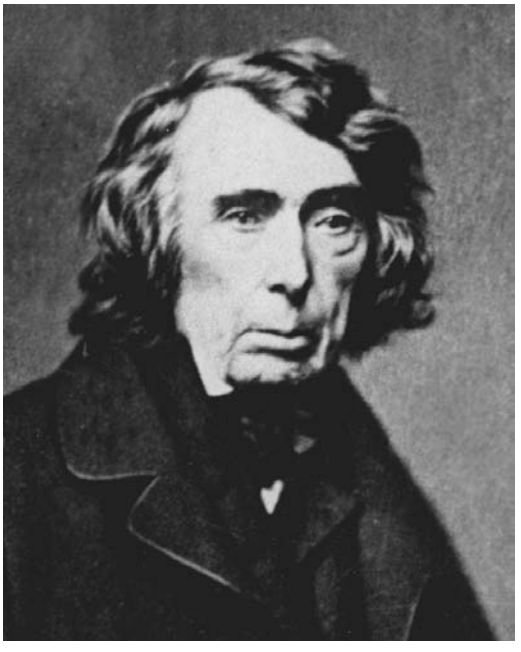
In his first major opinion as chief justice, in the case of CHARLES RIVER BRIDGE V. PROPRIETORS OF WARREN BRIDGE, 36 U.S. (11 Pet.) 420, 9 L. Ed. 773 (1837), Taney wrote for the majority of a divided Court. Taney decided that a franchise to operate a toll bridge that had been granted by the state of Massachusetts in the late eighteenth century, in the absence of explicit provisions, could not be construed as granting a MONOPOLY to the toll bridge operator. There-

fore, when the Massachusetts state legislature later granted another franchise to operate a competing toll bridge nearby, the legislature did not violate Article I, Section 10, of the U.S. Constitution, which forbids states from impairing the obligation of contracts. The opinion demonstrated Taney's belief that economic development could best be promoted and the public good most expeditiously furthered by fostering competition.

Until *Dred Scott* Taney had demonstrated a reluctance to make the Supreme Court the arbiter of national political issues. By the mid-1850s, however, the national debate over SLAVERY had almost reached the boiling point. Taney believed a decision by the Court would have a tempering effect on the country. He was clearly wrong.

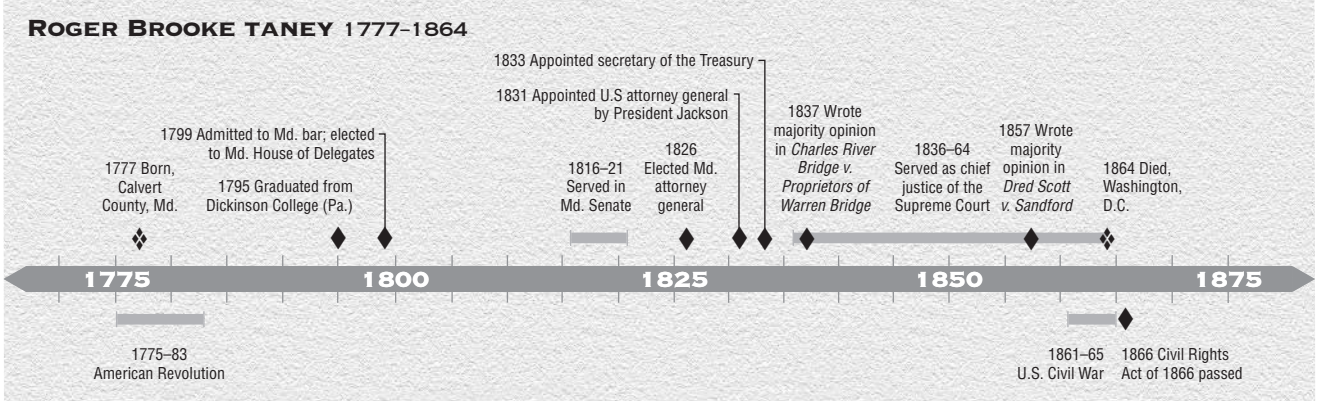
Dred Scott was a slave owned by an army surgeon, John Emerson, who resided in Missouri. In 1836 Emerson took Scott to Fort Snelling, in what is now Minnesota, but was then a territory in which slavery had been expressly forbidden by the MISSOURI COMPROMISE OF 1820. In 1846 Scott sued for his freedom in a Missouri state court, arguing that his residence in a free territory released him from slavery. The Missouri Supreme Court rejected his argument, and Scott appealed to the U.S. Supreme Court.

The Court heard arguments in *Dred Scott* in 1855 and 1856. The Court could have properly disposed of the case on narrow procedural grounds, but Taney decided that the Court needed to address the status of slavery in the territories. He wrote a tortuous opinion, arguing that because of the prevailing attitudes toward slavery and African Americans in 1787–1789, when the Constitution was drafted and ratified, a slave was not and never could become a federal citizen. In addition, Taney ruled that the free descendants of slaves were not federal citizens and that property in slaves was entitled to such protection that Congress could not constitutionally forbid slavery in the territories.



Roger Taney.
PHOTOGRAPH BY MATHEW BRADY. LIBRARY OF CONGRESS

The immediate effect of the *Dred Scott* decision was to convince abolitionists that the South and the Supreme Court planned to impose slavery throughout the Union. Taney was attacked as a former slave owner (though he had freed his slaves, whom he had inherited) and was called wicked, cowardly, and hypocritical. With the outbreak of the Civil War in 1861, it became clear that Taney's decision had failed to achieve its essential purpose.



Taney remained loyal to the Union during the Civil War, yet his effectiveness and that of the Court had been seriously compromised by *Dred Scott.* Taney sought to protect constitutional rights during the Civil War, ruling that even in wartime the EXECUTIVE BRANCH and the military had no power to suspend constitutional protections (*Ex Parte Merryman,* 17 Fed. Cas. 144 [1861]). Though Taney saw the Court as a restraining influence on the exercise of ARBITRARY power by other branches of government, his efforts were ineffective. The Radical Republican–controlled Congress and President ABRAHAM LINCOLN ignored the pronouncements of the Court. From Lincoln's EMANCIPATION PROCLAMATION and the CIVIL RIGHTS ACT of 1866 (14 Stat. 27) through the passage of the Thirteenth, Fourteenth, and Fifteenth Amendments to the Constitution, the Republicans repeatedly repudiated *Dred Scott.* Nevertheless, Taney continued to hold the office of chief justice until his death on October 12, 1864, in Washington, D.C.

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TANGIBLE

Possessing a physical form that can be touched or felt.

Tangible refers to that which can be seen, weighed, measured, or apprehended by the senses. A tangible object is something that is real and substantial. An automobile is an example of tangible PERSONAL PROPERTY.

TARIFF

The list of items upon which a duty is imposed when they are imported into the United States, together with the rates at which such articles are taxed.

The term *tariff* is also used in reference to the actual custom or duty payable on such items.

CROSS-REFERENCES

Customs Duties; Import Quotas.

TAX AVOIDANCE

The process whereby an individual plans his or her finances so as to apply all exemptions and deductions provided by tax laws to reduce taxable income.

Through tax avoidance, an individual takes advantage of all legal opportunities to minimize his or her state or federal INCOME TAX, gift tax, or estate tax. An individual may, for example, avoid federal income tax by investing a large sum of money in municipal bonds, since the interest on such bonds is not considered taxable income on which federal tax is due. Interest on the same amount of money placed in a savings account must be included as taxable income.

Tax avoidance must be distinguished from TAX EVASION, which is the employment of unlawful methods to circumvent the payment of taxes. Tax evasion is a crime; tax avoidance is not.

TAX COURT

A specialized federal or state court that decides cases involving tax-related controversies.

All state governments and the federal government provide a means of adjudicating cases dealing with taxation. Tax courts deal solely with tax disputes, which may involve the valuation of real property, the amount of tax the state or federal revenue agency seeks to collect, or the tax status of a PENSION plan or a charitable organization.

The U.S. Tax Court is organized under Article I of the U.S. Constitution (26 U.S.C.A. § 7441). Currently an independent judicial body in the legislative branch, the court was originally created as the U.S. Board of Tax Appeals, an independent agency in the EXECUTIVE BRANCH, by the Revenue Act of 1924 (43 Stat. 336) and continued by the Revenue Act of 1926 (44 Stat. 105) and the INTERNAL REVENUE CODES of 1939, 1954, and 1986. The court's name was changed to the Tax Court of the United States by the Revenue Act of 1942 (56 Stat. 957), and the Article I status and change in name to U.S. Tax Court were effected by the Tax Reform Act of 1969 (83 Stat. 730).

The court is composed of nineteen judges. Its strength is augmented by senior judges who may be recalled by the chief judge to perform further judicial duties and by fourteen special trial judges who are appointed by the chief judge and serve at the pleasure of the court. The chief judge is elected biennially from among the nineteen judges of the court.

The Tax Court tries and adjudicates controversies involving deficiencies or overpayments in income, estate, gift, and generation-skipping transfer taxes in cases where deficiencies have been determined by the commissioner of Internal Revenue. It also hears cases started by transferees and fiduciaries who have been issued notices of liability by the commissioner.

The Tax Court has jurisdiction to redetermine excise taxes and penalties imposed on private foundations. It also has jurisdiction over excise taxes with regard to public charities, qualified pension plans, and real estate investment trusts.

At the option of the individual taxpayer, simplified procedures may be used for the trial of small tax cases. In a case conducted under these procedures, the decision of the court is final and is not subject to review by any court. The jurisdictional maximum for such cases is $10,000 for any disputed year.

In disputes relating to public inspection of written determinations by the INTERNAL REVENUE SERVICE (IRS), the Tax Court has jurisdiction to restrain disclosure or to obtain additional disclosure of written determinations or background files.

The Tax Court also has jurisdiction to make declaratory judgments relating to the qualification of retirement plans, including pension, profit sharing, stock bonus, ANNUITY, and bond purchase plans; the tax-exempt status of a charitable organization, qualified charitable donee, private foundation, or private operating foundation; and the status of interest on certain government obligations. Under the Technical and Miscellaneous Revenue Act of 1988 (102 Stat. 3342), the Tax Court also has injunctive authority over certain assessment procedures, authority to review certain assessments and levies, and authority to hear and decide appeals by taxpayers concerning the denial of administrative costs by the IRS.

All decisions, other than those in small tax cases, are subject to review by the U.S. COURTS OF APPEALS and thereafter by the U.S. Supreme Court upon the granting of a writ of certiorari.

The office of the court and all of its judges are located in Washington, D.C., with the exception of a field office located in Los Angeles, California. The court conducts trial sessions at various locations in the United States as convenient to taxpayers as is practicable. Each trial session is conducted by a single judge or a special trial judge. All proceedings are public and are conducted judicially in accordance with the court's rules of practice and the RULES OF EVIDENCE applicable in trials without a jury in the U.S. District Court for the District of Columbia. A fee of $60 is required for filing a petition. Practice before the court is limited to practitioners admitted under the court's rules.

State tax courts are generally part of the executive branch of government. These courts handle cases from taxpayers that are primarily concerned with the valuation of real and PERSONAL PROPERTY.

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TAX DEED

A written instrument that provides proof of ownership of real property purchased from the government at a TAX SALE*, conducted after the property has been taken from its owner by the government and sold for delinquent taxes.*

TAX EVASION

The process whereby a person, through commission of FRAUD*, unlawfully pays less tax than the law mandates.*

Tax evasion is a criminal offense under federal and state statutes. A person who is convicted is subject to a prison sentence, a fine, or both. The failure to file a federal tax return is a misdemeanor, but a consistent pattern of failure to file for several years will constitute evidence that these failures were part of a scheme to avoid the payment of taxes. If this pattern is established, the violator may be charged with a felony under section 7201 of the INTERNAL REVENUE CODE.

The U.S. Supreme Court, in *Spies v. United States,* 317 U.S. 492, 63 S. Ct. 364, 87 L. Ed. 418 (1943), ruled that an OVERT ACT is necessary to

give rise to the crime of INCOME TAX evasion. Therefore, the government must show that the taxpayer attempted to evade the tax rather than passively neglected to file a return, which could be prosecuted under section 7203 as a misdemeanor. A person who has evaded taxes over the course of several years may be charged with multiple counts for each year taxes were allegedly evaded.

According to the Supreme Court in *Sansone v. United States,* 380 U.S. 343, 85 S. Ct. 1004, 13 L. Ed. 2d 882 (1965), a conviction under section 7201 requires proof BEYOND A REASONABLE DOUBT as to each of three elements: the existence of a tax deficiency, willfulness in an attempted evasion of tax, and an affirmative act constituting an evasion or attempted evasion of the tax.

An affirmative act is anything done to mislead the government or conceal funds to avoid payment of an admitted and accurate deficiency. Affirmative behavior can take two forms: the evasion of assessment and the evasion of payment. Affirmative acts of evasion include evading taxes by placing assets in another's name, dealing in cash, and having receipts or debts paid through and in the name of another person. Merely failing to pay assessed tax, without more, does not constitute tax evasion.

The keeping of a double set of books or the making of false invoices or documents can be proof of tax evasion. In some cases the mailing of a false return may constitute the overt act required under section 7201.

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Calling the bill a victory for fairness, President Ronald Reagan signs the Tax Reform Act of 1986 into law on the south lawn of the White House.

AP/WIDE WORLD PHOTOS

CROSS-REFERENCES

Taxation; Tax Avoidance.

TAX RATE

The amount of charges imposed by the government upon personal or corporate income, capital gains, gifts, estates, and sales that are within its statutory authority to regulate.

Tax rate schedules are utilized by taxpayers whose taxable incomes exceed certain designated amounts. Separate schedules are provided for married individuals who file jointly, unmarried people who maintain a household, single people, estates, trusts, and married couples who file separate returns.

CROSS-REFERENCES

Income Tax; Taxation.

TAX REFORM ACT OF 1986

The Tax Reform Act of 1986 (100 Stat. 2085, 26 U.S.C.A. §§ 47, 1042) made major changes in how income was taxed. The act either altered or eliminated many deductions, changed the tax rates, and eliminated several special calculations that had been permitted on the basis of marriage or fluctuating income. Though the act was the most massive overhaul of the tax system in decades, some of its key provisions were changed in the Revenue Reconciliation Act of 1993 (107 Stat. 416).

The 1986 act reduced the number of INCOME TAX rates to two rates of 15 percent and 28 percent for most taxpayers, although a third rate of 33 percent was imposed on income within a certain upper-middle income bracket. Congress and the administration of President RONALD REAGAN believed a policy of low rates on a broad tax base would stimulate the economy and end an era of complex tax laws and regulations that mainly benefited those who knew how to manipulate the system.

The 1986 act also sought to eliminate special incentives that made tax shelters attractive and the tax law more complicated. Income derived from real estate became distinguishable on the basis of whether it was "active" or "passive." Passive income is income derived from a situation in which the taxpayer does not have an active management role, but it does not include capital gains on stocks, interest income on bonds, or interest on money market accounts. Before 1986 wealthy individuals could use passive income

losses from a real estate tax shelter to offset active income. The 1986 act limited the deduction of passive losses to the amount of passive income but allowed taxpayers to carry forward any excess passive losses to the next year.

The act also eliminated the deductibility of nonmortgage consumer interest payments such as interest on credit card balances, automobile loans, and life insurance loans. It also established the floor for miscellaneous expenses at two percent of adjusted gross income for taxpayers who itemized deductions.

Individual Retirement Accounts (IRAs) once allowed a taxpayer to invest before-tax dollars and enjoy tax-free compounding of interest. The 1986 statute ended full deductibility of IRAs for single employees covered by qualified retirement plans and earning more than $35,000 annually. For married employees the cutoff for full deductibility was set at $50,000. In addition, the law imposed a penalty on withdrawals of IRA contributions before the age of fifty-nine and a half years.

Another retirement plan, the KEOGH PLAN, permitted under section 401(k), once allowed a taxpayer to invest up to $30,000 a year without paying taxes on this income. The ceiling dropped to $7,000 in 1987.

The act also eliminated a provision that had enabled two-income married couples to reduce their taxes. A couple can no longer take a deduction based on the lower salary of the two; the deduction had allowed them to pay the same tax on the lower salary as a single person would pay on that amount. The act also abolished "income averaging." Formerly, individuals whose incomes varied considerably from year to year could average their income over several years, a calculation that resulted in lower taxes owed in the years of highest income.

The ballooning FEDERAL BUDGET deficits of the late 1980s and early 1990s led Congress to make changes in the 1986 act. The 1993 Revenue Reconciliation Act revamped the rate structure, imposing rates of 15, 28, 31, 36, and 39.6 percent. The act also limited itemized deductions for upper-income taxpayers and removed the limit on earned income subject to MEDICARE tax. The 1993 act also established tax incentives for selected groups and reduced the amount that can be deducted for moving expenses and meals and entertainment.

CROSS-REFERENCES

Taxation.

TAX RETURN

The form that the government requires a taxpayer to file with the appropriate official by a designated date to disclose and detail income subject to taxation and eligibility for deductions and exemptions, along with a remittance of the tax due or a claim for a refund of taxes that were overpaid.

The federal and state governments specify the deadlines for filing tax returns without incurring any additional interest or penalties for lateness. For most income taxpayers, the deadline of April 15 of the year following the close of the tax year for which the report is filed applies to both federal and many state returns. For persons who have made taxable gifts, the federal gift tax return is due annually on or before April 15 of the year following the tax year (as opposed to the former requirement of quarterly filing). For executors or administrators of estates that owe estate tax, a federal estate tax return must be filed within nine months of the date of death of the decedent. States may have comparable deadlines for gift and estate tax returns.

CROSS-REFERENCES

Estate and Gift Taxes; Income Tax.

TAX SALE

A transfer of real property in exchange for money to satisfy charges imposed thereupon by the government that have remained unpaid after the legal period for their payment has expired.

Tax sales are authorized by state statutes to collect taxes that are long overdue to the state government from negligent or unwilling individuals.

Requirements

Any sale of real property for delinquent taxes must be conducted in compliance with legally imposed requirements, or it is not valid. Ordinarily the tax collector is required to make and publish a list of property on which taxes have not been paid. Such a list must contain an adequate description of each parcel of land to be sold, the owner's name, the amount due, and the period of time for which the taxes are due. The interest permitted by law on the delinquent taxes, penalties for default in payment, and the costs incurred for the sale may be included in the amount due. Certain states mandate that this delinquency list must be filed or recorded in the office of the county clerk, and statutes may indicate specifically the newspapers in which the list is to be published.

Notice

The purpose of a notice of a tax sale is to warn the owner of the property that it will be sold and to furnish information to prospective buyers. Failure to provide notice to the owner renders any subsequent sale of the property invalid. This rule is consistent with DUE PROCESS requirements that any individual must be given notice and opportunity to defend himself or herself before being deprived of his or her property. The notice given to the owner must adequately describe the property, the amount of tax owed, and for what years it is due.

Manner

State statutes regulate the manner in which tax sales may be conducted. Ordinarily the sale is open to the public in order to ascertain that a fair price for the property will be obtained in the open market. A private sale is valid, however, when authorized by statute.

Price

The general rule is that land offered at a tax sale must bring at least the total amount of taxes due on it, plus legal costs and charges. In some jurisdictions, a sale for a smaller amount is invalid.

In the event that the land is sold at the tax sale for a price that exceeds the amount owed, the sale might be valid, depending upon the state; however, the excess must be given to the delinquent taxpayer.

Buyer

Any individual who is not disqualified by statute may purchase land at a tax sale provided he or she is the highest bidder. Upon payment of the amount bid, the buyer will be given a tax deed that serves as proof of his or her ownership of the property. Certain states mandate that a tax sale be confirmed in a court proceeding before the purchaser actually takes title or ownership to the property.

A state, county, MUNICIPAL CORPORATION, or other governmental unit may buy land sold at a tax sale only if authorized by statute.

Redemption

The owner of property that is the subject of a tax sale is given a statutory right of redemption —that is, if, within a certain period, the owner pays the back taxes plus any other legal charges due, he or she will regain complete ownership of the property free of the prior tax debt. The public policy behind such a statute is to provide the taxpayer with every reasonable opportunity to redeem property since FORFEITURE of land has always been regarded as a drastic remedy. Generally any individual interested in the property sold for taxes is entitled to redeem it if his or her interest in the property will be affected by the purchaser taking complete ownership of the land, such as in the case of an individual who has a life estate in the property.

Redemption must occur within the time and in the manner specified by the statute.

Sale Prohibited

Courts can proscribe a tax sale in cases where (1) a sale would be unlawful, so that the buyer's ownership of the land would be open to question; (2) the taxes have been paid; (3) the levy or assessment was unlawful or fraudulent; or (4) the valuation was grossly excessive.

Where errors or irregularities exist in the assessment that could have been rectified if promptly brought to the attention of the proper authorities, the tax sale will not be enjoined if such errors have no effect upon the substantial justice of the tax or the liability of the property for its satisfaction.

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TAXABLE INCOME

Under the federal tax law, gross income reduced by adjustments and allowable deductions. It is the income against which tax rates are applied to compute an individual or entity's tax liability. The essence of taxable income is the accrual of some gain, profit, or benefit to a taxpayer.

CROSS-REFERENCES

Income Tax.

TAXABLE SITUS

The location where charges may be levied upon PERSONAL PROPERTY *by a government, pursuant to provisions of its tax laws.*

The situs of property for tax purposes is determined on the basis of whether the state imposing the tax has adequate contact with the property it is seeking to tax so that the particular tax is justified in fairness. Ordinarily personal property has its taxable situs in the place where its owner is domiciled or in the state where the owner has a true, fixed, and permanent home.

TAXATION

The process whereby charges are imposed on individuals or property by the legislative branch of the federal government and by many state governments to raise funds for public purposes.

The theory that underlies taxation is that charges are imposed to support the government in exchange for the general advantages and protection afforded by the government to the taxpayer and his or her property. The existence of government is a necessity that cannot continue without financial means to pay its expenses; therefore, the government has the right to compel all citizens and property within its limits to share its costs. The state and federal governments both have the power to impose taxes upon their citizens.

Kinds of Taxes

The two basic kinds of taxes are *excise taxes* and *property taxes.*

Excise Tax An excise tax is directly imposed by the law-making body of a government on merchandise, products, or certain types of transactions, including carrying on a profession or business, obtaining a license, or transferring property. It is a fixed and absolute charge that does not depend upon the taxpayer's financial status or the value that the taxed property has to the taxpayer.

An estate tax is a tax that is placed on, and paid by, the estate of a decedent prior to the distribution of the property among the heirs in exchange for the privilege of transferring the property. Individuals who inherit property may be required to pay an inheritance tax on the value of the particular property received. Gift taxes are incurred by an individual who gives another a valuable gift.

Another type of excise tax is a sales tax, which is placed on certain goods and services. Precisely what goods and services are taxed is determined by the individual state legislatures. In some instances, a sales tax placed upon expensive items that are considered luxuries is known as a *luxury tax.*

A *corporate tax* is an excise tax imposed upon the privilege of conducting business in the corporate capacity, which provides certain advantages to individuals, such as limited liability. It is measured by the income of the corporation involved.

Other common examples of excise taxes are those imposed upon the processing of meat, tobacco, cheese, and sugar.

Property Tax A property tax takes the taxpayer's wealth into account, as represented by the taxpayer's income or the property he or she owns. INCOME TAX, for example, is a property tax that is assessed and levied upon the taxpayer's income; *property taxes* are imposed mainly on real property.

Direct and Indirect Taxes Taxes are also classified as direct and indirect. A direct tax is one that is assessed upon the property, business, or income of the individual who is to pay the tax. Conversely *indirect taxes* are taxes that are levied upon commodities before they reach the consumer who ultimately pays the taxes as part of the market price of the commodity. A common example of an indirect tax is a *value-added tax,* which is paid on the value added to the product at each stage of production, distribution, and sales.

Federal Tax

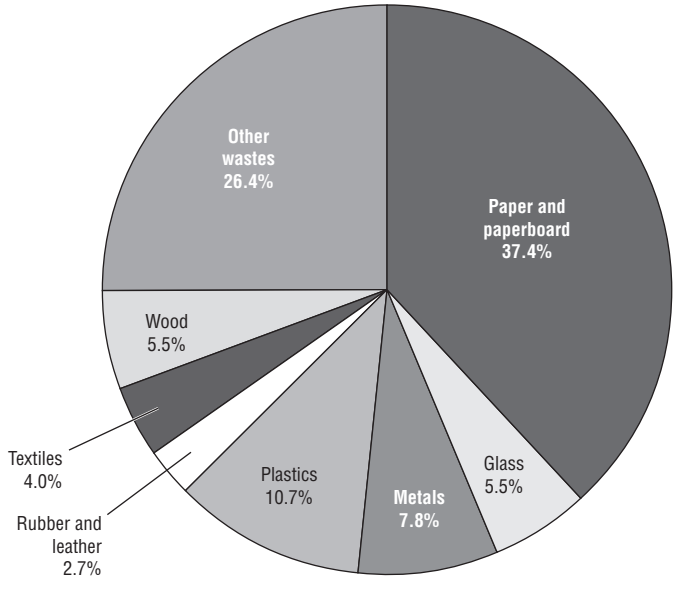
The Constitution and laws passed by Congress have given the U.S. government authorization to collect various taxes. For example, duties are taxes imposed upon imports and can be either advalorem (a percentage of the value of the property) or specific (a fixed amount). An impost is another name for an import tax. Congress may not, however, tax exports.

The SIXTEENTH AMENDMENT to the Constitution gives Congress the power to impose a federal income tax. Congress has also enacted laws that allow the federal government to tax estates remaining after people die and gifts made while people are alive.

State Tax

States possess the inherent power to levy both property and excise taxes. The TENTH AMENDMENT to the Constitution, which reserves to the states powers that have neither been granted to the United States nor proscribed to the states by the Constitution, implicitly

Materials Generated in Municipal Solid Waste, in 2000



SOURCE: U.S. Environmental Protection Agency, *Municipal Solid Waste in the United States: 2000 Facts and Figures.*

acknowledges this fundamental right. A state may raise funds by taxation in aid of its own welfare, provided the tax does not constitute unjust discrimination among those who are to share the tax burden. Property taxes, for example, may properly be imposed on landowners within the jurisdiction. In addition, the state may levy income, gift, estate, and inheritance taxes upon its residents.

The question of whether states should be able to tax sales conducted over the INTERNET has generated increased interest as states scramble for additional funding in the wake of budget deficits. Technically, these transactions are taxable. A U.S. Supreme Court ruling in 1992, however, stated that states can only require sellers to collect taxes if they have a physical presence in the same state as the consumer. The reason, said the Court in *Quill Corp. v. North Dakota,* 504 U.S. 298 112 S. Ct. 1904, 119 L. Ed. 2d 91, is that the current system of 7,500 taxing jurisdictions across the country makes it too complicated for online retailers to collect sales taxes fairly and efficiently. In 1998 Congress imposed a three-year MORATORIUM against any Internet taxes; the moratorium was renewed for two years in 2001. Online businesses and consumers have supported these moratoria for the obvious reason that taxes would cost money and affect sales, as well as the less obvious reason that tracking Internet sales would violate individual privacy by generating records of who is purchasing what.

The National Governors Association (NGA) initiated the Streamlined Sales Tax Project (SSTP) in 2000 with the goal of adopting uniform tax rates among the states and thus making it easier for online retailers to collect taxes. NGA hopes to complete SSTP by the end of 2005.

Equality

Equality is a fundamental principle of taxation. The taxing power of the legislature must always be exercised in such a way that the burdens imposed by taxation are laid as equally as possible on all classes. The progressive tax, which imposes a higher rate of taxation upon individuals with large incomes than on those with small incomes, is an attempt to achieve this objective.

Equality in taxation is achieved when no higher rate in proportion to value is imposed on one individual or his or her property than on other people or property in similar circumstances. Equality does not mandate that the benefits that arise from taxation should be enjoyed by all the people in equal degree or that each individual should share in each particular benefit. For example, the fact that a HUSBAND AND WIFE have no children or choose to send their children to private school does not signify that they are permitted to stop paying their share of school tax.

Uniformity

The principle of uniformity of taxation bears a close relation to the concept of equality because similar items are taxed equally only if the mode of assessment is the same or uniform.

A tax that is levied upon property must be in proportion or according to its value, ordinarily determined as its fair cash or fair market value. This requirement protects equality and uniformity of taxation by preventing ARBITRARY or inconsistent methods of determining how much tax is due. This requirement applies only to property taxes, not to excise taxes.

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CROSS-REFERENCES

Customs Duties; Estate and Gift Taxes; Internal Revenue Service; Tax Rate; Taxpayer Bill of Rights.

TAXING COSTS

The designation given to the process of determining and charging to the losing party in a legal action the expenses involved in initiating or defending the action, to which the successful side is lawfully entitled.

CROSS-REFERENCES

Costs.

TAXPAYER BILL OF RIGHTS

A federal or state law that gives taxpayers procedural and substantive protection when dealing with a revenue department concerning a tax collection dispute.

Perceived abuses by the federal INTERNAL REVENUE SERVICE (IRS) during tax audits led to the enactment of the "Omnibus Taxpayer Bill of Rights" in 1988 (Pub. L. No. 100-647). A second set of provisions was enacted in 1996 (Pub. L. No. 104-168) to give taxpayers increased leverage in dealings with the IRS. The 1988 act also spurred many states to enact similar taxpayer bill of rights laws.

Although the rights given to taxpayers under these federal acts do not reduce the chance of being audited or diminish IRS authority to penalize taxpayers for inaccuracies or cheating on their returns, the provisions correct many of the perceived abuses in IRS auditing and collection procedures. The bill of rights seeks to relieve taxpayers from the unfettered discretion of IRS agents. Congress stated that the aim of the 1988 act was "to inject reason and protection for individual rights into the tax collection process."

The bill of rights requires the IRS to explain the audit and collection process to the taxpayer before any initial audit or collection interviews and to include on all tax notices a description of the basis for taxes, interest, or penalties due. The bill also requires the IRS to inform taxpayers of their rights, including the right to be represented by an attorney or tax accountant, whenever an audit notice is sent. The bill allows the taxpayer to make an audio recording of the interview with the IRS agent, provided prior notice is given. An actual audit interview can be stopped, WITHOUT PREJUDICE, so that the taxpayer can consult with an attorney or accountant. Another key provision prohibits the IRS from imposing quotas or goals on agents with respect to the number of returns they audit and the amount of taxes and fines collected.

The 1988 act created the Office of Taxpayer OMBUDSMAN, which served as the primary advocate for taxpayers within the IRS. The 1996 act shifted this role to the newly established Office of the Taxpayer Advocate. This office helps taxpayers resolve problems with the IRS, identifies areas in which taxpayers have problems in dealings with the IRS, proposes changes in the administrative practices of the IRS, and suggests potential legislative changes that may reduce these problems. To ensure independence from the IRS, the Taxpayer Advocate reports directly to Congress twice a year.

The Taxpayer Advocate also has broad authority to issue Taxpayer Assistance Orders. These orders can release property or require the IRS to cease any action, or refrain from taking any action, that will cause significant hardship as a result of the administration of the internal revenue laws.

Under the bill of rights, before the IRS can put a lien on or seize taxpayer property, it must give the taxpayer thirty days' notice instead of the previous ten days' notice. Taxpayers are permitted to sue the IRS for damages suffered as a result of tax or property collection actions or refusals to release a lien; they can be awarded court costs and legal and administrative fees if they win an administrative or court action against the IRS.

Under the bill of rights, the IRS is authorized to make installment agreements with taxpayers to alleviate the burden on a taxpayer who would experience financial hardship if forced to make a lump-sum payment. The IRS must give thirty days' notice before altering, modifying, or terminating a previously agreed upon installment agreement, unless the change is caused by a determination that the collection of tax is in jeopardy.

Another provision of the law states that if the IRS believes additional taxes are owed, the agency must send the taxpayer a written notice that explains and identifies all amounts due. The IRS must also describe the procedures that it will use to collect any amounts due. Previously, the IRS generally explained the basis for a tax deficiency but was not required to explain penalties or how they would be collected. Instead, the IRS simply sued the taxpayer.

The bill of rights gives the IRS authority to abate interest for delays or unreasonable errors caused by nondiscretionary procedural acts of the IRS or by IRS managerial acts such as loss of records by the IRS or transfers, extended illnesses, leave, or professional training of IRS personnel.

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CROSS-REFERENCES

Income Tax; Taxation.

TAXPAYER'S SUIT

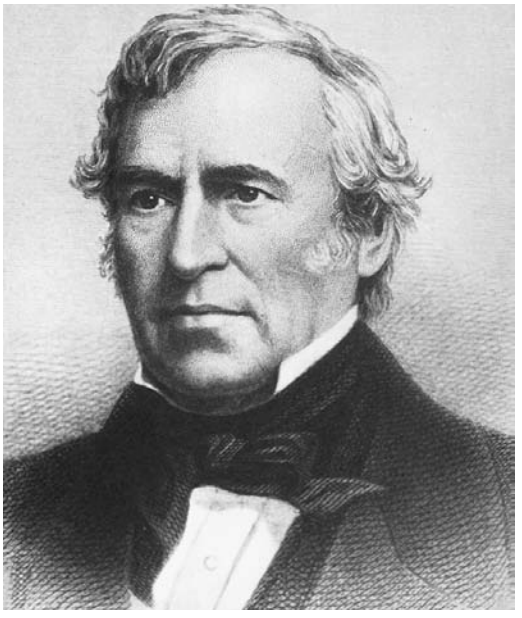
An action brought by an individual whose income is subjected to charges imposed by the state or federal government, for the benefit of that individual and others in order to prevent the unlawful diversion of public funds.

For example, because every taxpayer of a town has an interest in the preservation of an orderly government, many state laws grant individual taxpayers the right to sue town officers, boards, or commissions to recover money that has been wrongfully spent.

"LET US INVOKE A CONTINUANCE OF THE SAME PROTECTING CARE WHICH HAS LED US FROM SMALL BEGINNINGS TO THE EMINENCE WE THIS DAY OCCUPY . . . WHICH SHALL ACKNOWLEDGE NO LIMITS BUT THOSE OF OUR OWN WIDE-SPREAD REPUBLIC."
—ZACHARY TAYLOR

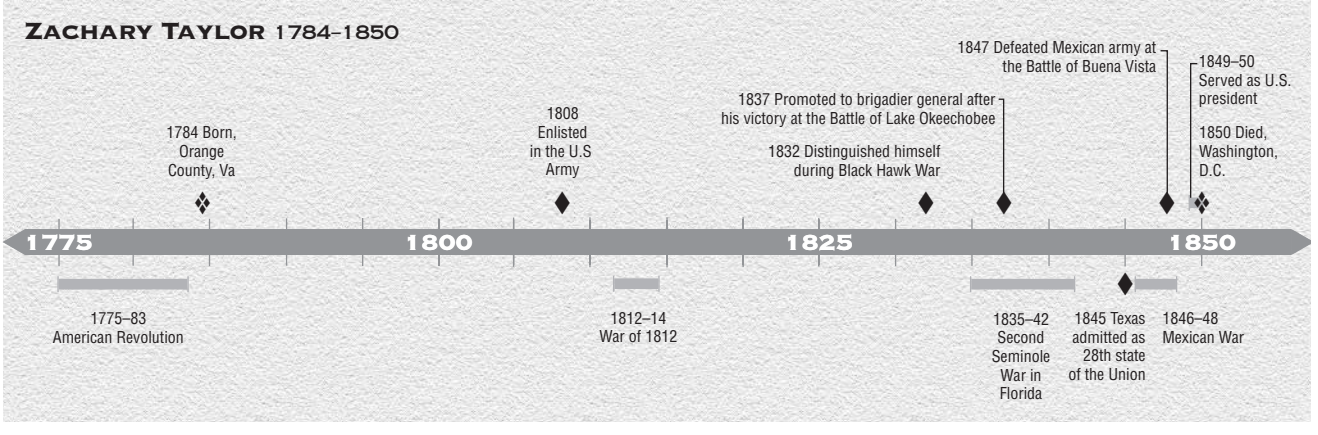
♦ TAYLOR, ZACHARY

Zachary Taylor served as the twelfth president of the United States from 1849 until his death in 1850. A famous military general, Taylor was an apolitical leader who accomplished little during his sixteen months in office.



Zachary Taylor. LIBRARY OF CONGRESS

Taylor was born on November 24, 1784, in Orange County, Virginia, but moved as a child to Kentucky. He enlisted in the U.S. Army in 1808 and was commissioned as a first lieutenant in the infantry that same year. Taylor quickly emerged as a military hero during the WAR OF 1812 while serving under General WILLIAM HENRY HARRISON. He distinguished himself during the Black Hawk War in 1832 and the Second Seminole War in Florida between 1835 and 1842. He was promoted to brigadier general in 1837 after his victory at the Battle of Lake Okeechobee.



In 1845, soon after the annexation of Texas, President JAMES K. POLK ordered Taylor and an army of four thousand men to the Rio Grande. Border hostilities with Mexico over the boundary between the two countries escalated into full battles in May of 1845. Taylor's troops defeated an invading Mexican army at the Battles of Palo Alto and Resaca de la Palma. That same month the United States declared war on Mexico.

Taylor and his army invaded Mexico and advanced to Monterrey, capturing the city in late September. His military career was put in doubt, however, when a letter became public in which Taylor criticized President Polk and his secretary of war, William L. Marcy. An angry Polk could not relieve the popular war hero of his command, but he stripped Taylor of his best troops and ordered him to adopt a defensive posture. Taylor, who was nicknamed "Old Rough and Ready," disobeyed Polk's orders and defeated a Mexican army that outnumbered his troops by four to one at the Battle of Buena Vista in February 1847. This stunning victory guaranteed Taylor the status of national hero.

The WHIG PARTY nominated Taylor as its presidential candidate in 1848, even though Taylor had no interest in politics (he had never voted in an election) and was a slave owner. Taylor defeated the Democratic candidate, Lewis Cass, in the November general election.

Taylor's brief service as president was unremarkable. Having no political background, Taylor was unprepared for the give-and-take of Washington politics. The biggest issue facing him was statehood for California and New Mexico, which had been acquired from Mexico as a result of the war. Although he owned slaves, Taylor was opposed to the expansion of SLAVERY into the new territories, a position that alienated Southern Whigs and Democrats in Congress. When California voted to prohibit slavery, the South opposed its admission to the Union. Attempts by Senator HENRY CLAY of Kentucky to negotiate a compromise were rebuffed by Taylor.

As this political conflict unfolded in the summer of 1850, Taylor contracted cholera. He died on July 9, 1850, in Washington, D.C.

Taylor was succeeded by Vice President MILLARD FILLMORE, who quickly agreed to resolve the Mexican territories issue with the COMPROMISE OF 1850. This act admitted California into the Union as a free state, gave the territories of Utah and New Mexico the right to determine the slavery issue for themselves at the time of their admission to the Union, outlawed the slave trade in the District of Columbia, and gave the federal government the right to return fugitive slaves in the FUGITIVE SLAVE ACT (9 Stat. 462).

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TEAPOT DOME SCANDAL

The presidential administration of WARREN G. HARDING, from 1921 to 1923, was characterized by scandal and corruption, the most controversial of which was the Teapot Dome oil scandal.

Conservation was a popular cause throughout the first quarter of the twentieth century and was encouraged by various presidents. As a result, several oil reserves for the exclusive use of the U.S. Navy were established in Wyoming and California. The oil was kept in storage places called domes, one of which, located near Casper, Wyoming, was christened Teapot Dome due to a rock formation in the area that resembled a teapot.

Although many politicians favored the establishment of the oil reserves, others believed they were superfluous. One opponent of the oil policy was Senator Albert B. Fall of New Mexico, who sought to make the reserves accessible to private industry.

In 1921, Senator Fall was selected as secretary of the interior in the Harding cabinet. Authority over the oil fields was transferred from the Department of the Navy to the INTERIOR DEPARTMENT, with the consent of Edwin Denby, Secretary of the Navy. Fall was in a position to lease the oil reserves, without public bidding, to private parties. In 1922, Harry F. Sinclair, president of the Mammoth Oil Company, received rights to Teapot Dome, and Edward L. Doheny, a friend of Fall and prominent in the Pan-American Petroleum and Transport Company, leased the Elk Hills fields in California. Fall received approximately four hundred thousand dollars in exchange for his favoritism.

Senator Thomas J. Walsh of Montana initiated a Senate investigation of the oil reserve lands at the recommendation of Senator ROBERT M. LAFOLLETTE of Wisconsin. Eventually, the U.S. Supreme Court declared the leases inoperative, and the oil fields at Teapot Dome and Elk Hills were returned to the U.S. government.

Albert B. Fall (left), U.S. secretary of the interior, and Harry F. Sinclair, president of the Mammoth Oil Company, received prison terms for their roles in the Teapot Dome Scandal—Fall for accepting bribes and Sinclair for contempt of court.

BETTMANN/CORBIS

Sinclair served nine months in prison for CONTEMPT of court, but both he and Doheny were found not guilty of BRIBERY. Fall, who had left the cabinet in 1923, was found guilty in 1929 of accepting bribes; his punishment was one year in prison and a fine of $100,000. President Harding died in office in 1923, never aware of the notoriety of his administration.

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TELECOMMUNICATIONS

The transmission of words, sounds, images, or data in the form of electronic or electromagnetic signals or impulses.

From the introduction of the telegraph in the United States in the 1840s to the present-day INTERNET computer network, telecommunication has been a central part of American culture and society. What would we do without telephone, radio, broadcast television, CABLE TELEVISION, satellite television, fax machines, cellular telephones, and computer networks? They have become integral parts of our everyday lives. And as telecommunication technology advanced, the more complicated the TELECOMMUNICATIONS industry became. As a result, federal and state governments attempted to regulate the pricing of telecommunication systems and the content of transmitted material. The Telecommunications Act of 1996 (Pub. L. No. 104-104), however, deregulated much of the telecommunication industry, allowing competition in markets previously reserved for government-regulated monopolies.

Telegraph

The first telegraph system in the United States was completed in 1844. Originally used as a way of managing railroad traffic, the telegraph soon became an essential means of transmitting news around the United States. The Associated Press was formed, in 1848, to pool telegraph expenses; other "wire services" soon followed.

Many telegraph companies were formed in the early years of the business, but by 1856 Western Union Telegraph Company had become the first dominant national telegraph system. In 1861, it completed the first transcontinental line, connecting San Francisco first to the Midwest and then on to the East Coast. As worldwide interest increased in applications of the telegraph, the International Telegraph Union was formed, in 1865, to establish standards for use in international communication. In 1866, the first transatlantic cables were completed.

The telegraph era came to an end after WORLD WAR II, with the advent of high-speed transmission technologies that did not use telegraph and telephone wires. By 1988, Western Union was reorganized to handle money transfers and related services.

Telephone Systems

The invention of the telephone in the late nineteenth century led to the creation of the American Telephone and Telegraph Company (AT&T). The company owned virtually all telephones, equipment, and long-distance and local wires for personal and business service in the national telephone system. Smaller companies seeking a part of the long-distance telephone market challenged AT&T's MONOPOLY in the 1970s.

In 1982, the U.S. JUSTICE DEPARTMENT allowed AT&T to settle a lawsuit alleging antitrust violations because of its monopolistic holdings. AT&T agreed to divest itself of its local operating companies by January 1, 1984, while retaining control of its long-distance, research, and manufacturing activities. Seven regional telephone companies (known as the Baby Bells) were given responsibility for local telephone service. Other companies now compete with AT&T to provide long-distance service to telephone customers.

In an effort to spur competition, however, the Telecommunications Act of 1996 allowed the seven regional phone companies to compete in the long-distance telephone market. The act also permitted AT&T and other long-distance carriers, as well as cable companies, to sell local telephone service.

Local telephone rates are regulated by state commissions, which also work to see that the regional telephone companies provide good maintenance and services. In addition, the use of a telephone for an unlawful purpose is a crime under state and federal laws, as is the WIRETAPPING of telephone conversations.

In 2002, the U.S. Supreme Court issued two rulings that had a significant impact on large regional telephone companies. The first was *Verizon Communications v. FCC* 535 U.S. 467, 122 S.Ct. 1646, 152 L. Ed. 2d 701, which had beginnings in the 1990s. Under the 1996 Telecommunications Act, multiple local exchange carriers (LECs) are allowed to compete in the same market. Incumbent LECs, or ILECs, are those that already have a presence in a market. Competing LECs (CLECs) are providers that want to enter an ILEC's market. The ILECs are required to share their telecommunications network with the CLECs for a GOOD FAITH negotiated price (47 U.S.C.A. Secs. 251–52). They must form a written agreement; if there are points of contention in the agreement, they must be submitted for binding ARBITRATION to the state utility commission. That decision may be appealed to a federal district court if either side believes that it constitutes a violation of the act.

Several LECs and state utility commissions challenged the FEDERAL COMMUNICATIONS COMMISSION (FCC), the federal agency charged with regulating communications, over the way it mandated pricing formulas. The Eighth Circuit Court of Appeals sided with the plaintiffs in *Iowa Utilities Board v. FCC,* 120 F.3d 753 (8th Cir. 1997). The Supreme Court reversed the Eighth Circuit's decision, concluding that the FCC was within its rights to establish a pricing methodology, and ordered the appellate court to determine whether that methodology met the requirements of the 1996 act (*AT&T Corp. v. Iowa Utilities Board,* 525 U.S. 366, 119 S. Ct. 721, 142 L. Ed. 2d 835 (1999). In *Iowa Utilities Board v. FCC,* 219 F.3d 744 (8th Cir. 2000), the appellate court ruled that the FCC pricing rules were invalid.

On appeal, the Supreme Court again reversed the Eighth Circuit, observing that the FCC's methodology had been designed so that smaller companies could enter and compete more easily in local phone markets. The ILECs preferred a methodology that would have increased the amount they were allowed to charge the CLECs. The increase would have amounted to billions of dollars in charges. Moreover, the Court held that the FCC also has the authority to force ILECs to combine leased elements upon request by a CLEC. These include local, long-distance, Internet, and pay-per-call information and entertainment services.

In a decision that involved two cases, the Supreme Court ruled that state utility commissions and individual commissioners may be sued in federal court by long-distance phone companies that disagree with the way they are enforcing federal laws (*Verizon Maryland v. Public Service Commission of Maryland,*535 U.S. 635, 122 S. Ct. 1753, 152 L.Ed. 2d 871 (2002), *Mathias v. Worldcom Technologies, Inc.,* 535 U.S. 682, 122 S. Ct. 1780 (Mem), 152 L.Ed.2d 911(2002).

In the first of these cases, Bell Atlantic Maryland, the region's ILEC, had refused to pay reciprocal compensation to Worldcom, a CLEC. The second case involved the same issue, except that the ILEC in question was Ameritech Illinois. Under the 1996 Telecommunications Act, local calls trigger the ILEC's obligation to offer reciprocal compensation, while long-distance calls do not. The Maryland and Illinois ILECs refused to offer reciprocal compensation when their customers made phone calls to Internet service providers that were customers of the CLECs, arguing that a call to an Internet service provider is a long-distance call even though the number may be local. They reasoned that a phone call to another person connects the caller to that person, but a connection to the Internet gives the caller access to websites and information around the world—hence, a long-distance call.

The Maryland Public Service Commission and the Illinois Commerce Commission, respectively, rejected this argument, and the ILECs sued them in federal court, along with individual commissioners and the CLECs in question. The federal courts upheld the utility commission's decisions; the Forth and Seventh Circuit Courts did so, as well, on appeal (*Bell Atlantic Maryland, Inc, v. MCI WorldCom, Inc.,* 240 F.3d 279 [4th Cir. 2001]; *Illinois Bell Telephone Co. v. Worldcom Technologies, Inc.,* 179 F.3d 566 7th Cir. [1999]). One of the arguments made by the ILECs was that federal courts had no jurisdic-

tion over these cases under the Telecommunications Act.

The Supreme Court held that the 1996 Telecommunications Act is a federal law, and as such, federal courts should be able to enforce the law by hearing cases brought against state regulators. As for whether individual commissioners could be sued, the Court cited *Ex parte Young,* 209 U.S. 123, 28 S.Ct. 441, 52 L.Ed 714 (1908), and said that state officials can be sued in their official capacity as long as the suit alleges an ongoing violation of federal law, and as long as the relief sought can be characterized as prospective (looking toward the future).

Radio

In the early twentieth century, radio was regarded primarily as a device to make maritime operations safer and a potential advancement of military technology. During WORLD WAR I, however, entrepreneurs began to recognize the commercial possibilities of radio. By the mid-1920s, commercial radio stations were operating in many parts of the United States, and owners began selling air time for advertisements. The Federal Radio Commission was created, in 1927, to assign applicants designated frequencies under specific engineering rules and to create and enforce standards for the broadcasters' privilege of using the public's airwaves.

The commission later became the Federal Communications Commission (FCC), which was established by the Communications Act of 1934 (47 U.S.C.A. § 151 et seq.). The FCC issues licenses to radio and television stations, which permit the stations to use specific frequencies to transmit programming. Licenses are issued only on a showing that public convenience, interest, and necessity will be served and that an applicant satisfies certain requirements, such as citizenship, good character, financial capability, and technical expertise.

Before 1996, the FCC restricted persons or entities from acquiring excessive power through ownership of a number of radio and television facilities. The rule was based on the assumption that if one person or company owned most or all of the media outlets in an area, the diversity of information and programming on these stations would be restricted.

The Telecommunications Act of 1996 eliminated the limit on the number of radio stations that one entity may own nationally. The FCC was also directed to reduce the restrictions on locally owned radio stations. Congress determined that less regulation was in the public interest.

In addition, the FCC seeks to prohibit the broadcast of obscene and indecent material. The Supreme Court has upheld regulations banning obscene material, because OBSCENITY is not protected by the FIRST AMENDMENT. It also permits the FCC to prohibit material that is "patently offensive," and either "sexual" or "excretory," from being broadcast during times when children are presumed to be in the audience (*FCC v. Pacifica Foundation,* 438 U.S. 726, 98 S. Ct. 3026, 57 L. Ed. 2d 1073 [1978]).

Television

The commercial exploitation of television did not begin in the United States until the late 1940s. The FCC followed its example from radio and established licensing procedures for stations seeking permission to transmit television signals. It became the oversight body for the U.S. television industry.

The FCC has applied to television a prohibition similar to that imposed on radio against the broadcast of obscene and indecent material. For purposes of parental control, the Telecommunications Act of 1996 mandated the establishment of an advisory committee to rate video programming that contains indecent material. The act also stated that, by 1998, new television sets had to be equipped with a so-called V-chip to allow parents to block programs with a predesignated rating for sex and violence.

Cable television became a viable commercial form of telecommunication in the 1980s. Both the FCC and local governments had an interest in regulating cable systems, with municipalities awarding a cable system franchise to one vendor. Cable operators negotiated system requirements and pricing with local governments, but federal law imposed some restrictions on rates to consumers. Concerns about rate regulation led Congress to enact the Cable Television CONSUMER PROTECTION and Competition Act of 1992 (Pub. L. No. 102-385). The act gave the FCC greater control of the cable television industry and set rate structures to control the price of cable subscriptions. The Telecommunications Act of 1996, however, reversed the 1992 act by ending all rate regulation. The act also allowed the seven regional telephone companies to compete in the cable television market to end the monopoly that cable systems had enjoyed under the previous regulatory scheme.

For customers who cannot obtain cable television programming, the transmission of television signals by satellite has been a practical solution. Since their introduction in the 1990s, direct broadcast satellite systems have competed with cable television systems, offering high-quality video and audio signals, and access to a wide range of programming.

Transmission of Digital Data

In the 1980s and 1990s, the use of digital data transmission revolutionized the communication of words, images, and sounds. Computer-driven means of telecommunication have made possible electronic mail (E-MAIL), the sharing of computer files, and, most importantly, the Internet.

The Internet is a network of computers linking the United States with the rest of the world. Originally developed as a way for U.S. research scientists to communicate with each other, by the mid-1990s the Internet had become a popular form of telecommunication for personal computer users. Written text represents a significant portion of the Internet's content, in the form of both E-mail and articles posted to electronic discussion forums. In the mid-1990s, the appearance of the World Wide Web made the Internet even more popular. The Web is a multimedia interface that allows for the transmission of what are known as Web pages, which resemble pages in a magazine. In addition to combining text and pictures or graphics, the multimedia interface makes it possible to add audio and video components. Together these various elements have made the Internet a medium for communication and for the retrieval of information on virtually any topic.

The federal government has attempted to regulate this form of telecommunication. Congress passed the Electronic Communications Privacy Act of 1986 (ECPA) (18 U.S.C.A. § 2701 et seq. [1994]), also known as the Wiretap Act, which made it illegal to read private E-mail. The ECPA extended to electronic mail most of the protection already granted to conventional mail. This protection, however, has not been extended to all E-mail that is transmitted in the workplace.

A controversial issue in the workplace is whether an employer should be able to monitor the E-mail messages of its employees. An employer has a strong legal and financial motive to prohibit unauthorized and inappropriate use of its E-mail system. Under the Wiretap Act, a company is not restricted in its ability to review messages stored on its internal E-mail system. In addition, interception of electronic communications is permitted when it is done in the ordinary course of business or to protect the employer's rights or property. This exception would apply when, for example, an employer has reasons to suspect that an employee is using the E-mail system to disclose information to a competitor or to send harassing messages to a coworker. Finally, the prohibitions of the Wiretap Act do not apply if the employee whose messages are monitored has explicitly or implicitly consented to such monitoring.

Congress sought to curb the transmission of indecent content on the Internet and other computer network telecommunications systems by enacting the Communications Decency Act (CDA) (47 U.S.C.A. § 223(a)-(h)), as part of the Telecommunications Act of 1996. The CDA made it a federal crime to use telecommunications to transmit "any comment, request, suggestion, proposal, image, or other communication which is obscene or indecent, knowing that the recipient of the communication is under 18 years of age, regardless of whether the maker of such communication placed the call or initiated the communication." It includes penalties for violations of up to five years imprisonment and fines of up to $250,000.

In *Reno v. American Civil Liberties Union,* 521 U.S. 844, 117 S. Ct. 2329, 138 L. Ed. 2d 874 (1997), the Supreme Court struck down the "indecent" provision as a violation of the First Amendment right of free speech.

Standards in Telecommunication

Certain telecommunication methods have become standards in the telecommunication industry because devices with different standards cannot communicate with each other. Standards are developed either through the widespread use of a particular method or by a standard-setting organization. The International Telecommunication Union, a UNITED NATIONS agency which sits in Geneva, Switzerland, and one of its operational bodies, the International Telegraph and Telephone Consultative Committee, play a key role in standardizing telecommunication methods. For example, the committee's standards for the fax machine that were adopted in the 1980s facilitated the dramatic increase in use of this form of telecommunication.

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CROSS-REFERENCES

Broadcasting; Electronic Surveillance; Employment Law; Entertainment Law; Fairness Doctrine; Privacy; Pornography.

TELEVISION

Television is the most powerful medium of mass communication seen regularly by most persons in the United States. Television signals may be delivered by using antennas (broadcast), communication satellites, or cable systems. Because of television's societal impact, the federal government regulates companies that operate television systems.

Experimental television systems were developed in the 1930s, but commercial exploitation did not occur in the United States until the late 1940s. Initially, television signals were broadcast from antennas and received by a television set in a person's home or business. Improved technology led to the replacement of black-and-white images with color signals in the 1960s.

The FEDERAL COMMUNICATIONS COMMISSION (FCC), which was established by the Communications Act of 1934 (47 U.S.C.A. § 151 et seq.), originally was charged with the regulation of radio. With the introduction of television and the need for television stations to obtain FCC licenses to use broadcast frequencies, the FCC assumed sole jurisdiction over the television industry.

Television broadcasts may be regulated for content. Typically, this regulation has focused on broadcasts of allegedly obscene or indecent material. The U.S. Supreme Court has upheld regulations banning obscene material, as OBSCENITY is not protected by the FIRST AMENDMENT to the U.S. Constitution. It has also permitted the FCC to prohibit material that is "patently offensive" and either "sexual" or "excretory" from being broadcast during times when children are presumed to be in the audience (*FCC v. Pacifica Foundation,* 438 U.S. 726, 98 S. Ct. 3026, 57 L. Ed. 2d 1073 [1978]).

The Telecommunications Act of 1996 (Pub. L. No. 104-104) mandated the establishment of an advisory committee for the rating of video programming that contains indecent materials for purposes of parental control. The act also required televisions with screens 13 inches or larger, manufactured after 1998, to be equipped with a so-called V chip to allow parents to block programs having a predesignated rating for sex and violence. In 1998, the FCC approved the program rating system developed by the networks to assist parents in monitoring the shows their children watch.

CABLE TELEVISION has grown tremendously since the 1980s. Cable television originally served communities in mountainous regions that had difficulty receiving broadcast transmissions. Many communities solved this problem by erecting tall receiving towers to capture broadcast signals and retransmit them over wires running from the tower to homes that subscribed to this service.

During the 1970s and 1980s, large corporations installed cable systems in every large metropolitan area in the United States, as well as in many rural areas. Independent programming was transmitted on cable systems by companies such as Home Box Office (HBO) and Cable News Network (CNN).

Although cable television could not be categorized as broadcasting in the traditional sense, the FCC adopted the first general federal regulation of cable systems. Local government also became involved, as each municipality had to award a cable system franchise to one vendor. Cable operators negotiated system requirements and pricing with local governments, but federal law imposed some restrictions on rates to consumers.

The Telecommunications Act of 1996 deregulated cable television rates, in part because of increased interest by telephone companies in entering the cable market by sending programming through existing phone lines. The act permits phone companies to provide video programming directly to subscribers in their service areas.

Even prior to deregulation in 1996, companies in the telecommunications industry had been involved in major mergers. In 1985, Capital Cities acquired the ABC network, and one year later, General Electric acquired NBC. In 1995, two major mergers occurred, as Westinghouse bought CBS for a reported $5.4 billion, and the Walt Disney Company purchased Capital Cities/ABC for a reported $19 billion. Disney went on to purchase or otherwise acquire a wide

range of cable networks as well, including ESPN, Fox Family Worldwide, the History Channel, and E! Entertainment Television.

Since deregulation, companies have merged to create even larger media conglomerates. A number of commentators have questioned whether the presence of a few enormous entities would stifle competition in the industry. Others questioned whether federal antitrust policy would need to be adapted to address concerns about such large corporations owning multiple media entities. Many of these questions have gone unanswered, and in many ways consumers have benefited from the products that these conglomerates offer. For instance, since the late 1990s, the ABC network has enhanced its sports coverage through its association with ESPN by offering dual coverage of certain sporting events, such as professional football.

For customers who cannot obtain cable television programming, the transmission of television signals by satellite has been a practical solution. In the 1990s, however, direct broadcast satellite (DBS) systems began to compete with cable television systems by going after a broader consumer base. The DBS systems offer high-quality video and audio signals, and access to a wide range of programming.

The development of digital high-definition television (HDTV) was the broadcast television industry's top priority in the 1990s and into the 2000s. HDTV, which has a significantly finer picture resolution than an ordinary television screen, requires additional broadcast frequencies, which the FCC must license to broadcasters. Broadcast television, which saw its viewership steadily drop as cable and DBS became popular, sees HDTV as a way to reclaim its market share.

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CROSS-REFERENCES

Fairness Doctrine; Mass Communications Law.

TEMPERANCE MOVEMENT

The TEMPERANCE MOVEMENT in the United States first became a national crusade in the early nineteenth century. An initial source of the movement was a groundswell of popular religion that focused on abstention from alcohol. Evangelical preachers of various Christian denominations denounced drinking alcohol as a sin. People who drank, they claimed, lost their faith in God and ceased to observe the teachings of Jesus.

Other supporters of the first temperance movement objected to alcohol's destructive effects on individuals, communities, and the nation as a whole. According to these activists, the consumption of alcohol was responsible for many personal and societal problems, including unemployment, absenteeism in the workplace, and physical violence. Scores of short stories and books published in the mid-nineteenth century described in dramatic detail the abuse suffered by the families of alcoholics. Alcoholics were characterized as dangerous to themselves, their families, and even their nation's security. In the words of temperance advocate Lyman Beecher, a drunk electorate would "dig the grave of our liberties and entomb our glory."

The temperance movement was marked by an undercurrent of ethnic and religious hostility. Some of the first advocates were people of Anglo-Saxon heritage who associated alcohol with the growing number of Catholic immigrants from Ireland and the European continent. Supposedly, the Catholics were loud and boisterous as a result of too much drinking.

Most of the first temperance advocates were sincerely concerned for the welfare of others, however, and were not motivated by such faulty perceptions. The public's rate of alcohol consumption was, in fact, increasing steadily during the nineteenth century, and the reformers saw the banishment of alcohol not as a punishment but as necessary to an orderly, safe, and prosperous society. Despite its good intentions, the first movement splintered. The largest rift occurred between a minority of abolitionists, who favored the promotion of total abstinence from alcohol, and the majority of reformers, who favored only abstinence from hard liquor.

Although it lacked cohesion, the first temperance movement yielded some legislative reforms. In 1846, Maine became the first state to enact a law prohibiting liquor consumption. Twelve other states followed suit, but the laws were difficult to enforce, and public support for the laws quickly waned. By 1868 Maine was the only state left with a liquor PROHIBITION law, and the temperance movement appeared to have come and gone.

Carry Nation, a well-known prohibitionist, holds a Bible and a hatchet. Nation often used a hatchet to smash liquor bottles and furniture in saloons.

BETTMANN/CORBIS

Groups such as the Women's Christian Temperance Union (WCTU) and the Anti-Saloon League were at the forefront of the onslaught on alcohol. Members of these groups spoke publicly in favor of Prohibition and lobbied elected officials for laws banning the consumption of alcohol. Some of the more active members disrupted business at saloons and liquor stores. One of the most visible prohibitionists, Carry Nation, used a hatchet to smash liquor bottles and break furniture in saloons.

In the 1870s some prohibitionists began to form political parties and nominate candidates for public office. Leaders in the so-called Progressive movement were instrumental in the resurgence of the temperance movement. The Progressives called for sweeping governmental controls in response to perceived social crises, and they began to promote the abolition of alcohol as part of a plan to clean up cities and eliminate poverty. By the time **WORLD WAR I** began in 1914, an increasing number of politicians were advocating a ban on alcohol, and the conservation efforts for the war gave the temperance movement additional momentum.

Congress enacted the Lever Act of 1917 (40 Stat. 276) to outlaw the use of grain in the manufacture of alcoholic beverages, and many state and local governments passed laws prohibiting the distribution and consumption of alcohol. Two years later, the states ratified the **EIGHTEENTH AMENDMENT** to the U.S. Constitution, which prohibited the manufacture, transportation, and sale of alcoholic beverages in the United States. The complete ban on alcohol was put into effect by the Volstead Act (41 Stat. 305). President **WOODROW WILSON** vetoed the act, but Congress overrode the **VETO** and the United States became officially dry in January 1920.

The effect of Prohibition was to drive drinking underground. Saloons were replaced by speakeasies, hidden drinking places that, in some areas, were tolerated by local police. The more enterprising individuals set up homemade stills to produce alcohol for their own consumption. Others turned to bootlegging, or the illegal sale of alcohol. Prices on the black market were markedly higher than they had been prior to Prohibition, and gangsters used violence to acquire and maintain control over the highly profitable bootlegging business. Bootlegging was so profitable because so many people wanted to drink alcohol. Federal, state, and local law enforcement officials found themselves at war not only with gangsters, but with the general public as well.

Popular support for Prohibition quickly waned after the Eighteenth Amendment was passed, but it took thirteen years to end it. **HERBERT HOOVER**, who served as president from 1929 to 1933, supported Prohibition, calling it "an experiment noble in purpose." Hoover was defeated in his bid for reelection, however, and in 1933 President **FRANKLIN D. ROOSEVELT** called for an amendment to the Volstead Act that would legalize light wine and beer consumption. The bill passed quickly and received widespread public support, and Congress set about the task of repealing Prohibition. On December 5, 1933, the **TWENTY-FIRST AMENDMENT** to the U.S. Constitution was ratified, and the "noble experiment" was dismantled.

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CROSS-REFERENCES

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TEMPORARY EMERGENCY COURT OF APPEALS

Congress created the Temporary Emergency Court of Appeals (TECA) in 1971, 85 Stat. 749, specifically to hear cases from district courts regarding the Economic Stabilization Act of 1970 (84 Stat. 799). The idea for TECA grew out of the Emergency Court of Appeals (1942–61), which had adjudicated price control measures passed during WORLD WAR II. TECA had nine judges and its own set of rules and procedures for its first case in February 1972. The act that created TECA expired in 1972, but Congress enacted the Emergency Petroleum Allocation Act of 1973 (82 Stat. 627), which granted it authority over controversies arising from the new law. The Energy Policy and Conservation Act of 1975 (89 Stat. 871) and the Emergency Natural Gas Act of 1977 (91 Stat. 4) further elongated TECA's existence and expanded its oversight. In 1992, however, TECA ceased to exist when the U.S. Circuit Court of Appeals for the Federal (D.C.) Circuit assumed its duties and abolished it by an act of October 29, 1992, effective April 30, 1993, 106 Stat. 4507.

TEMPORARY RESTRAINING ORDER

A court order that lasts only until the court can hear further evidence.

A TEMPORARY RESTRAINING ORDER (TRO) is a court order of limited duration. A TRO commands the parties in the case to maintain a certain status until the court can hear further evidence and decide whether to issue a preliminary injunction.

Under federal and state rules of CIVIL PROCEDURE, a person may obtain a TRO by visiting a judge or magistrate without notice to, or the presence of, the adverse party. A TRO may be issued by a court only if (1) it appears from specific facts shown in a signed, sworn AFFIDAVIT or complaint that immediate irreparable injury, loss, or damage will result to the applicant before the adverse party or the adverse party's attorney can be heard in opposition; and (2) the applicant's attorney describes to the court in writing the efforts, if any, that have been made to give notice to the adverse party and gives reasons to support the claim that notice should not be required.

Temporary restraining orders are extraordinary measures because they are court orders issued against a party without notice to that party and without giving the party an opportunity to argue against the order. A TRO usually lasts only two or three days, until the court can hear both sides of the issue and decide whether to issue a preliminary INJUNCTION. A court generally hears arguments on the preliminary injunction as soon as possible after the TRO is issued. On the federal level, rule 65 of the Federal Rules of Civil Procedure mandates that a TRO should not last longer than ten days, and that a TRO may be renewed only for an additional ten days. State courts have similar provisions in their rules of civil procedure.

The immediate potential for irreparable harm is the gravamen of the TRO. If an applicant is unable to prove that the harm suffered will be irreparable or that the irreparable harm is imminent, a court will not approve a TRO. Assume that a person purchases a car with financing from the dealership. The buyer then becomes embroiled in a dispute with the dealership over the car and stops making payments; the dealership responds by threatening to repossess the car. If the buyer applies for a TRO preventing the dealership from taking the car, a court would likely refuse the request, because the loss of the car is not imminent. Moreover, the loss of a car is not an irreparable injury; a court would likely expect the buyer to carry on with other modes of transportation.

Now assume that the purchased vehicle is a large utility van that the buyer has customized to use in her catering business. The loss of the van for a few days would be disastrous to the business and could eventually lead to BANKRUPTCY, so the buyer would likely be able to obtain a TRO, provided the harm was sufficiently imminent.

The adverse party cannot appeal the issuance of a TRO to a higher court. The best remedy for an adverse party is to obtain a court hearing as soon as possible on the issuance of a preliminary injunction. PRELIMINARY INJUNCTIONS may be appealed to higher courts.

TROs are commonly issued in situations involving STALKING and harassment or damage to property. Other common TRO situations include UNFAIR COMPETITION and TRADEMARK, COPYRIGHT, or patent infringement, all of which involve potentially irreparable damage to a party's economic livelihood.

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TENANCY

A situation that arises when one individual conveys real property to another individual by way of a lease. The relation of an individual to the land he or she holds that designates the extent of that person's estate in real property.

A *tenancy* is the occupancy or possession of land or premises by lease. The occupant, known as the tenant, must acquire control and possession of the property for the duration of the lawful occupancy. A tenancy can be created by any words that indicate the owner's intent to convey a property interest on another individual.

CROSS-REFERENCES

Landlord and Tenant.

TENANCY BY THE ENTIRETY

A type of concurrent estate in real property held by a HUSBAND AND WIFE *whereby each owns the undivided whole of the property, coupled with the* RIGHT OF SURVIVORSHIP, *so that upon the death of one, the survivor is entitled to the decedent's share.*

A TENANCY BY THE ENTIRETY allows spouses to own property together as a single legal entity. Under a tenancy by the entirety, creditors of an individual spouse may not attach and sell the interest of a debtor spouse: only creditors of the couple may attach and sell the interest in the property owned by tenancy by the entirety.

There are three types of concurrent ownership, or ownership of property by two or more persons: tenancy by the entirety, JOINT TENANCY, and TENANCY IN COMMON. A tenancy by the entirety can be created only by married persons. A married couple may choose to create a joint tenancy or a tenancy in common. In most states a married couple is presumed to take title to property as tenants by the entirety, unless the deed or conveyancing document states otherwise.

The most important difference between a tenancy by the entirety and a joint tenancy or tenancy in common is that a tenant by the entirety may not sell or give away his interest in the property without the consent of the other tenant. Upon the death of one of the spouses, the deceased spouse's interest in the property devolves to the surviving spouse, and not to other heirs of the deceased spouse. This is called the right of survivorship.

Tenants in common do not have a right of survivorship. In a tenancy in common, persons may sell or give away their ownership interest. Joint tenants do have a right of survivorship, but a joint tenant may sell or give away her interest in the property. If a joint tenant sells her interest in a joint tenancy, the tenancy becomes a tenancy in common, and no tenant has a right of survivorship. A tenancy by the entirety cannot be reduced to a joint tenancy or tenancy in common by a conveyance of property. Generally, the couple must DIVORCE, obtain an ANNULMENT, or agree to amend the title to the property to extinguish a tenancy by the entirety.

FURTHER READINGS

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TENANCY IN COMMON

A form of concurrent ownership of real property in which two or more persons possess the property simultaneously; it can be created by deed, will, or operation of law.

TENANCY IN COMMON is a specific type of concurrent, or simultaneous, ownership of real property by two or more parties. Generally, concurrent ownership can take three forms: JOINT TENANCY, TENANCY BY THE ENTIRETY, and tenancy in common. These forms of concurrent ownership give individuals a choice in the way that co-ownership of property will be carried out. Each type of tenancy is distinguishable from the others by the rights of the co-owners.

Usually, the term *tenant* is understood to describe a person who rents or leases a piece of property. In the context of concurrent estates, however, a tenant is a co-owner of real property.

All tenants in common hold an individual, undivided ownership interest in the property. This means that each party has the right to alienate, or transfer the ownership of, her ownership interest. This can be done by deed, will, or other conveyance. In a tenancy by the entirety (a concurrent estate between married persons), neither tenant has the right of alienation with-

out the consent of the other. When a tenant by the entirety dies, the surviving spouse receives the deceased spouse's interest, thus acquiring full ownership of the property. This is called a RIGHT OF SURVIVORSHIP. Joint tenants also have a right of survivorship. A joint tenant may alienate his property, but if that occurs, the tenancy is changed to a tenancy in common and no tenant has a right of survivorship.

Another difference between tenants in common and joint tenants or tenants by the entirety is that tenants in common may hold unequal interests. By contrast, joint tenants and tenants by the entirety own equal shares of the property. Furthermore, tenants in common may acquire their interests from different instruments: joint tenants and tenants by the entirety must obtain their interests at the same time and in the same document.

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TENANCY IN COPARCENARY

A type of concurrent estate in real property by which property rights were acquired only through intestacy by the female heirs when there were no surviving male heirs.

This type of estate, which has only historical value today, occurred when an ancestor left no son who could take property by primogeniture.

TENANT

An individual who occupies or possesses land or premises by way of a grant of an estate of some type, such as in fee, for life, for years, or at will. A person who has the right to temporary use and possession of particular real property, which has been conveyed to that person by a landlord.

CROSS-REFERENCES

Landlord and Tenant.

TENDER

An offer of money; the act by which one individual offers someone who is holding a claim or demand against him or her the amount of money that the offeror regards and admits is due, in order to satisfy the claim or demand, in the absence of any contingency or stipulation attached to the offer.

The two essential characteristics of tender are an unconditional offer to perform, together with manifested ability to do so, and the production of the subject matter of tender. The term is generally used in reference to an offer to pay money; however, it may properly be used in reference to an offer of other kinds of property.

CROSS-REFERENCES

Tender Offer.

TENDER OFFER

A proposal to buy shares of stock from the stockholders of a corporation, made by a group or company that desires to obtain control of the corporation.

A tender offer to purchase may be for cash or some type of corporate security of the acquiring company—for example, stock, warrants, or debentures. Such an offer is sometimes subject to either a minimum or maximum that the offeror will accept and is communicated to the stockholders through newspaper advertisements or a general mailing to the complete list of stockholders. Tender offers are subject to regulations by state and federal SECURITIES laws, such as the WILLIAMS ACT (15 U.S.C.A. § 78a et seq.).

CROSS-REFERENCES

Mergers and Acquisitions; Stock Warrant.

TENDER YEARS DOCTRINE

A doctrine rarely employed in CHILD CUSTODY *disputes that provides that, when all other factors are equal, custody of a child of tender years—generally under the age of thirteen years—should be awarded to the mother.*

The TENDER YEARS DOCTRINE is a judicial presumption that operates in DIVORCE cases to give custody of a young child to the mother. Most states have eliminated this presumption, and some courts have held that the tender years doctrine violates the EQUAL PROTECTION CLAUSE of the FOURTEENTH AMENDMENT to the U.S. Constitution because it discriminates on the basis of sex.

Early English COMMON LAW originally gave custody of the children of divorcing parents to the father. Women had few individual rights until the nineteenth century; most of their rights were derived through their fathers and husbands. Under these conditions women had no right to raise their children after a divorce.

In the early nineteenth century, Mrs. Caroline Norton, a prominent London hostess,

author, and journalist, began to campaign for the right of women to have custody of their children. Norton, who had undergone a divorce and been deprived of her children, was able to convince the British Parliament to enact legislation to protect mothers' rights. The result was the Custody of Infants Act of 1839, which gave some discretion to the judge in a child custody case and established a presumption of maternal custody for children under the age of seven years. In 1873 Parliament extended the presumption of maternal custody until a child reached sixteen years of age. Courts made exceptions in cases in which the father established that the mother had committed ADULTERY.

Many courts and legislatures in the United States adopted the tender years presumption. To grant custody of a child to a father was "to hold nature in CONTEMPT, and snatch helpless, puling infancy from the bosom of an affectionate mother, and place it in the coarse hands of the father." The mother was "the softest and safest nurse of infancy" (*Ex parte Devine,* 398 So. 2d 686 [Ala. 1981], quoting *Helms v. Franciscus,* 2 Bland Ch. [Md.] 544 [1830]).

The tender years presumption in child custody cases persisted for more than one hundred years, with the majority of states recognizing the presumption. In the latter half of the twentieth century, courts and legislatures began to reverse decisions and repeal laws that recognized the tender years presumption in favor of gender-neutral considerations. In most states the best interests of the child are now the primary consideration in child custody cases, and the primary caretaker is presumed to be the best parent to handle primary custody of a small child. Some state courts have gone so far as to hold that the tender years doctrine violates the Equal Protection Clause of the state constitution. (See, e.g., *King v. Vancil,* 34 Ill. App. 3d 831, 341 N.E.2d 65 [Ill. 1975].)

A small number of states still recognize the tender years presumption, but only in certain cases. In *Pennington v. Pennington,* 711 P.2d 254 (Utah 1985), the Supreme Court of Utah stated that it had "long expressed a preference for placing very young children in the mother's custody." The court noted, however, that "the preference operates only when all other things are equal." The *Pennington* court held that the best interests of the child were to be given primary consideration, and it went on to affirm the award of child custody to the father in the case.

In other areas of the law, the term *tender years* may refer to a law that creates special rules for small children. For example, some states enact special laws governing HEARSAY evidence in child SEX ABUSE cases. These tender years laws create exceptions to evidentiary rules by allowing the introduction of hearsay statements and videotaped testimony of children under a certain age.

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CROSS-REFERENCES

Child Abuse; Children's Rights; Family Law; Sexual Abuse.

TENEMENT

A comprehensive legal term for any type of property of a permanent nature—including land, houses, and other buildings as well as rights attaching thereto, such as the right to collect rent.

In the law of EASEMENTS, a dominant tenement or estate is that for which the advantage or benefit of an easement exists; a servient tenement or estate is a tenement that is subject to the burden of an easement.

The term *tenement* is also used in reference to a building with rooms or apartments that are leased for residential purposes. It is frequently defined by statute, and its meaning therefore varies from one jurisdiction to another.

TENNESSEE VALLEY AUTHORITY

In 1933, U.S. President FRANKLIN DELANO ROOSEVELT approved the passage of the TENNESSEE VALLEY AUTHORITY ACT (16 U.S.C.A. § 831 et

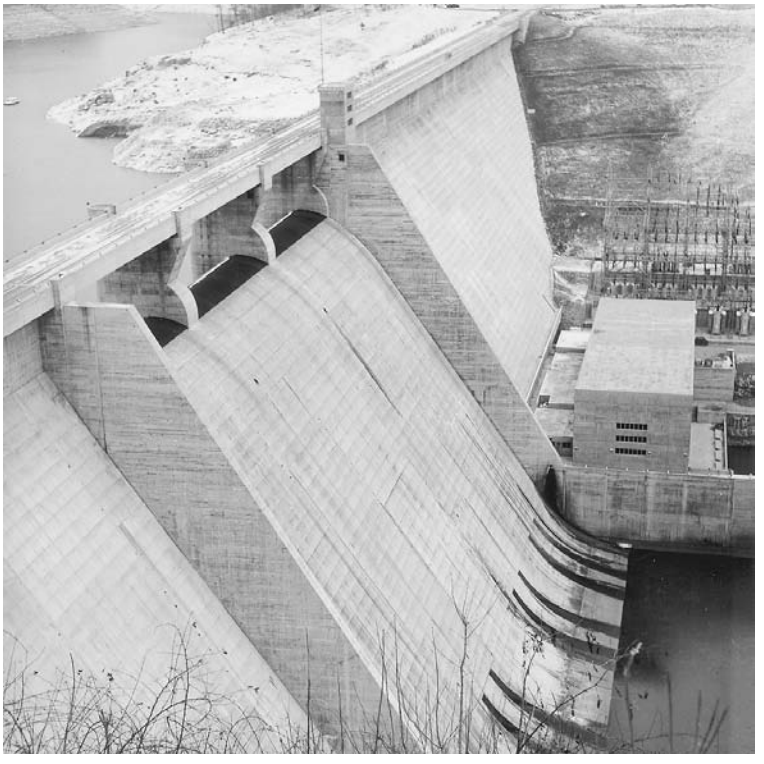
seq.). The act provided for a source of hydroelectric power, control of a troublesome flood situation, revitalization of forest areas, and navigation and economic benefits for the region. These goals, announced during a devastating nationwide depression, made the Tennessee Valley Authority (TVA) an ambitious project of the era.

The idea for the project was originally developed in 1918, when two nitrate facilities and a dam were constructed at Muscle Shoals, Alabama, on the Tennessee River. Previously the area had been prone to severe floods, and water travel was impeded by sandbanks. The area had abundant natural resources, but the surrounding basin was depleted, and the region had experienced a depressed economy even before the hard times suffered throughout the nation in the Depression of the 1930s.

Politicians and developers of the project envisioned a growth of industry and water power in the Tennessee Valley, as well as the manufacture of low-priced fertilizer and public control of the valuable resources. Debates over whether the project area should be rented to private parties or be controlled by the government continued throughout the 1920s. Senator GEORGE W. NORRIS of Nebraska was instrumental in the passage of measures by Congress advocating government control, but these bills did not receive presidential approval until 1933, when Roosevelt based his Tennessee Valley plan on the Norris proposals.

Roosevelt's Tennessee Valley Act authorized the establishment of a corporation owned by the federal government and directed by Arthur E. Morgan, the chairman, and Harcourt A. Morgan, and David Lilienthal. The early years of TVA were fraught with adversity, particularly when its constitutionality was questioned. Disputes between the directors and an investigation conducted by Congress hampered its initial achievements, but the TVA continued its work despite these difficulties.

The TVA succeeded in its projected goals. Since the development of its dams and reservoirs, the region has not been subjected to serious floods. The electrical system developed by the TVA afforded the region power at a low cost, and throughout the decades, power development has been extended to include coal and nuclear systems. The TVA also benefited agrarian interests by encouraging conservation, replenishment of forests, and agricultural and fertilizer research. Although the power program of the TVA is financially self-supporting today, other programs conducted by the authority are financed primarily by appropriations from Congress.



The Norris Dam was one of the first major projects of the Tennessee Valley Authority in 1942.

LIBRARY OF CONGRESS

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TENNESSEE VALLEY AUTHORITY ACT

The Tennessee Valley Authority Act was passed by the U.S. Congress in 1933 to establish the TENNESSEE VALLEY AUTHORITY (TVA), an autonomous federal corporate agency responsible for the integrated development of the Tennessee River basin. The concept of the TVA Act (16 U.S.C.A. § 831 et seq.) initially appeared in the early 1920s, when Senator GEORGE W. NORRIS introduced a plan to have the government assume the operation of the Wilson Dam and other installations the government had constructed at Muscle Shoals, Alabama, for national security reasons during WORLD WAR I. President CALVIN COOLIDGE and President HERBERT HOOVER, in 1928 and 1931, respectively, vetoed the legislation. In 1933, President FRANKLIN

DELANO ROOSEVELT reworked the legislation, and Congress passed the TVA Act. This version significantly expanded the scope of the previous legislation in that it propelled the federal government into a comprehensive scheme of regional planning and development. This marked the first time one agency was directed to coordinate the entire resource development of a major region, and the endeavor served as the prototype for similar river projects.

The TVA was responsible for resolving the problems arising from serious floods, substantially eroded land, a lackluster economy, and continual emigration from the region. It has revitalized the economy of the Tennessee River basin, particularly by the construction of reservoirs and multipurpose dams. Other noteworthy projects of the TVA, executed in conjunction with local authorities, have included malaria control; tree planting; the development of mineral, fish, and wildlife resources; land conservation; educational and social programs; and the construction of recreational facilities adjacent to reservoir banks.

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TENOR

An exact replica of a legal document in words and figures.

For example, the tenor of a check would be the exact amount payable, as indicated on its face.

TENTH AMENDMENT

The Tenth Amendment to the U.S. Constitution reads:

> 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.

Ratified in 1791, the Tenth Amendment to the Constitution embodies the general principles of FEDERALISM in a republican form of government. The Constitution specifies the parameters of authority that may be exercised by the three branches of the federal government: executive, legislative, and judicial. The Tenth Amendment reserves to the states all powers that are not granted to the federal government by the Constitution, except for those powers that states are constitutionally forbidden from exercising.

For example, nowhere in the federal Constitution is Congress given authority to regulate local matters concerning the health, safety, and morality of state residents. Known as POLICE POWERS, such authority is reserved to the states under the Tenth Amendment. Conversely, no state may enter into a treaty with a foreign government because such agreements are prohibited by the plain language of Article I to the Constitution.

At the time the states adopted the Tenth Amendment, two primary conceptions of government were under consideration. Many federalists supported a centralized national authority, with power concentrated in a single entity. This type of government was exemplified by the English constitutional system, which vested absolute authority in the monarchy during the seventeenth century and in Parliament during the eighteenth century.

On the other hand, many anti-federalists supported a more republican form of government consisting of a loose confederation of sovereign states that would form an alliance only for the purpose of mutual defense. The ARTICLES OF CONFEDERATION, which governed the 13 states in national matters until 1787, when the Constitution was ratified, epitomized this form of government. Under the Articles of Confederation, the national government was unable to levy and collect taxes on its own behalf.

Many federalists, such as JAMES MADISON, argued that the Tenth Amendment was unnecessary because the powers of the federal government are carefully enumerated and limited in the Constitution. Because the Constitution does not give Congress, the president, or the federal judiciary the prerogative to regulate wholly local matters, Madison concluded that no such power existed and no such power would ever be exercised. However, British oppression had made the Founding Fathers fearful of unchecked centralized power. The Tenth Amendment was enacted to limit federal power. Although it appears clear on its face, the Tenth Amendment has not been consistently applied.

Before the Civil War, nearly every state urged a broad reading of the Tenth Amendment. Although no state wanted a federal government that was impotent against internal enemies or foreign aggressors, many state politicians chal-

lenged the authority of the federal government to regulate any matter that could otherwise be handled by local authorities. For example, immediately after the U.S. Revolution, all 13 states resisted federal efforts to force local governments to return the property of British loyalists taken during the war. During the first half of the nineteenth century, Southern states objected to federal legislation that attempted to limit SLAVERY. State sovereignty reached its height when 11 states seceded from the Union to form the Confederacy.

Following the Civil War, the Tenth Amendment was virtually suspended. For a number of years during the Reconstruction era, the federal government occupied the former Confederate states with military troops and required each occupied state to ratify the Civil War Amendments, which outlawed slavery, gave African Americans the right vote, and declared the equality of all races. To a large extent the federal government ran local matters in Southern states during this period.

In 1883, the Tenth Amendment regained some of its force. In that year the Supreme Court invalidated the federal CIVIL RIGHTS ACT of 1875 (18 Stat. 335), which criminalized RACIAL DISCRIMINATION in public accommodations, such as hotels and restaurants, because it violated state sovereignty under the Tenth Amendment (CIVIL RIGHTS CASES, 109 U.S. 3, 3 S. Ct. 18, 27 L. Ed. 835 [1883]). In 1909, the Supreme Court struck down the White Slave Traffic Act (34 Stat. 898), which Congress had passed to prohibit the harboring of alien women for the purposes of prostitution, because it violated the Tenth Amendment (*Keller v. United States,* 213 U.S. 138, 29 S. Ct. 470, 53 L. Ed. 737 [1909]).

Nine years later the Court struck down another congressional law prohibiting the interstate shipment of products that had been manufactured by certain businesses that employed children under the age of 14 (HAMMER V. DAGENHART, 247 U.S. 251, 38 S. Ct. 529, 62 L. Ed. 1101 [1918]). "In interpreting the Constitution," the Court said in *Hammer,* "it must never be forgotten that the nation is made up of states to which are entrusted the powers of local government. And to them the powers not expressly delegated to the national government are reserved."

During the depth of the Great Depression, the Tenth Amendment returned to a dormant condition. President FRANKLIN ROOSEVELT worked with Congress to pass the NEW DEAL, a series of programs designed to stimulate the troubled economy. After the Supreme Court upheld a provision of the National Labor Relations Act (mandatory COLLECTIVE BARGAINING) in NLRB V. JONES & LAUGHLIN STEEL CORP., 301 U.S. 1, 57 S. Ct. 615, 81 L. Ed. 893 (1937), Congress began exercising unprecedented lawmaking power over state and local matters. For the next 40 years, the Supreme Court upheld congressional authority to regulate a variety of matters that had been traditionally addressed by state legislatures. For example, in one case the Supreme Court upheld the Agricultural Adjustment Act of 1938 (7 U.S.C.A. §§ 1281 et seq.) over objections that it allowed Congress to regulate individuals who produced and consumed their own foodstuffs entirely within the confines of a family farm (*Wickard v. Filburn,* 317 U.S. 111, 63 S. Ct. 82, 87 L. Ed. 122 [1942]).

The Tenth Amendment enjoyed a brief resurgence in 1976 when the Supreme Court held that the application of the FAIR LABOR STANDARDS ACT of 1938 (29 U.S.C.A. §§ 201 et seq.) to state and local governments was unconstitutional. In *National League of Cities v. Usery,* 426 U.S. 833, 96 S. Ct. 2465, 49 L. Ed. 2d 245 (1976), the Court said that the MINIMUM WAGE and maximum


Congress of the United States,
begun and held at the City of New York, on
Wednesday the fourth of March, one thousand seven hundred and eighty nine.
THE
RESOLVED
ARTICLES
Article the first
Article the second
Article the third
Article the fourth
Article the fifth
Article the sixth
Article the seventh
Article the eighth
Article the ninth
Article the tenth
Article the eleventh
Article the twelfth
Frederick Augustus Muhlenberg Speaker of the House of Representatives
John Adams Vice President of the United States and President of the Senate

In this 1789 draft of the Bill of Rights, the Tenth Amendment to the Constitution appears as Article the Twelfth, reserving to the states or to the people powers not delegated to the federal government.
NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

hour provisions of this act significantly altered and displaced the states' abilities to structure employment relationships in such areas as fire prevention, police protection, sanitation, public health, and parks and recreation. These services, the Court emphasized, are historically reserved to state and local governments. If Congress may withdraw from the states the authority to make such fundamental employment decisions, the Court concluded, "there would be little left of the states' separate and independent existence," or of the Tenth Amendment.

National League of Cities proved to be an unworkable constitutional precedent. It cast doubt on congressional authority to regulate many aspects of local affairs that most of society had come to rely upon. It was unclear, for example, whether the Occupational Safety and Health Administration (OSHA), a federal agency established by Congress to regulate workplace safety, retained any constitutional authority after the Supreme Court announced its decision in *National League of Cities.*

The Supreme Court eliminated these concerns by overturning *National League of Cities* in *Garcia v. San Antonio Metropolitan Transit Authority,* 469 U.S. 528, 105 S. Ct. 1005, 83 L. Ed. 2d 1016 (1985). In *Garcia* the Court upheld the minimum wage and maximum hour provisions of the Fair Labor Standards Act as it applied to a city-owned public transportation system. In reaching this decision, the Court said that if certain states are worried about the extent of federal authority over a particular local matter, the residents of such states should contact their senators and representatives who are constitutionally authorized to narrow federal regulatory power through appropriate legislation. JUDICIAL REVIEW of federal regulations under the Tenth Amendment, the Supreme Court suggested, is not the proper vehicle to achieve this end.

The ebb and flow of Tenth Amendment JURISPRUDENCE reflects the delicate constitutional balance created by the Founding Fathers. The states ratified the Constitution because the Articles of Confederation created a national government that was too weak to defend itself and could not raise or collect revenue. Although the federal Constitution created a much stronger centralized government, the Founders did not want the states to lose all of their power to the federal government, as the colonies had lost their powers to Parliament. The Tenth Amendment continues to be defined as courts and legislatures address the balance of federal and state power.

FURTHER READINGS

Derthick, Martha. 2001. *Keeping the Compound Republic: Essays on American Federalism.* Washington, D.C.: Brookings Institution.

Killenbeck, Mark R., ed. 2002. *The Tenth Amendment and State Sovereignty: Constitutional History and Contemporary Issues.* Lanham, Md.: Rowman & Littlefield.

CROSS-REFERENCES

Constitution of the United States; *Federalist Papers*; States' Rights.

TENURE

A right, term, or mode of holding or occupying something of value for a period of time.

In feudal law, the principal mode or system by which a person held land from a superior in exchange for the rendition of service and loyalty to the grantor.

The status given to an educator who has satisfactorily completed teaching for a trial period and is, therefore, protected against summary dismissal by the employer.

A length of time during which an individual has a right to occupy a public or private office.

In a general sense, the term *tenure* describes the length of time that a person holds a job, position, or something of value. In the context of academic employment, tenure refers to a faculty appointment for an indefinite period of time. When an academic institution gives tenure to an educator, it gives up the right to terminate that person without good cause.

In medieval England, tenure referred to the prevailing system of land ownership and land possession. Under the tenure system, a landholder, called a tenant, held land at the will of a lord, who gave the tenant possession of the land in exchange for a good or service provided by the tenant. The various types of arrangements between the tenant and lord were called tenures. The most common tenures provided for military service, agricultural work, economic tribute, or religious duties in exchange for land.

CROSS-REFERENCES

Feudalism.

TENURE OF OFFICE ACT

The assassination of President ABRAHAM LINCOLN on April 14, 1865, left the post–Civil War United States in the hands of his ineffectual and unpopu-

lar successor, ANDREW JOHNSON. It became Johnson's responsibility to determine a reconstruction policy, and he incurred the anger of the Radical Republicans in Congress when he chose a moderate treatment of the rebellious South.

Congress sought to diminish Johnson's authority to select or remove officials from office, and the Radical Republicans particularly wanted to protect Lincoln's secretary of war, EDWIN M. STANTON. Stanton, a valuable member of the existing cabinet, supported the Radicals' Reconstruction policies and openly opposed Johnson. On March 2, 1867, Congress enacted the Tenure of Office Act (14 Stat. 430), which stated that a U.S. president could not remove any official originally appointed with senatorial consent without again obtaining the approval of the Senate.

Andrew Johnson vetoed the measure and challenged its effectiveness when he removed the dissident Stanton from office. Stanton refused to leave, and the House of Representatives invoked the new act to initiate IMPEACHMENT proceedings against Johnson in 1868. The president was acquitted, however, when the Senate failed by one vote to convict him. Stanton subsequently relinquished his office, and the Tenure of Office Act, never a popular measure, was repealed in 1887.

FURTHER READINGS

Hearn, Chester G. 2000. *The Impeachment of Andrew Johnson.* Jefferson, N.C.: McFarland.

Abbreviations

A.	Atlantic Reporter
A. 2d	Atlantic Reporter, Second Series
AA	Alcoholics Anonymous
AAA	American Arbitration Association; Agricultural Adjustment Act of 1933
AALS	Association of American Law Schools
AAPRP	All African People's Revolutionary Party
AARP	American Association of Retired Persons
AAS	American Anti-Slavery Society
ABA	American Bar Association; Architectural Barriers Act of 1968; American Bankers Association
ABC	American Broadcasting Companies, Inc. (formerly American Broadcasting Corporation)
ABM	Antiballistic missile
ABM Treaty	Anti-Ballistic Missile Treaty of 1972
ABVP	Anti-Biased Violence Project
A/C	Account
A.C.	Appeal cases
ACAA	Air Carrier Access Act
ACCA	Armed Career Criminal Act of 1984
ACF	Administration for Children and Families
ACLU	American Civil Liberties Union
ACRS	Accelerated Cost Recovery System
ACS	Agricultural Cooperative Service
ACT	American College Test
Act'g Legal Adv.	Acting Legal Advisor
ACUS	Administrative Conference of the United States
ACYF	Administration on Children, Youth, and Families
A.D. 2d	Appellate Division, Second Series, N.Y.
ADA	Americans with Disabilities Act of 1990
ADAMHA	Alcohol, Drug Abuse, and Mental Health Administration
ADC	Aid to Dependent Children
ADD	Administration on Developmental Disabilities
ADEA	Age Discrimination in Employment Act of 1967
ADL	Anti-Defamation League
ADR	Alternative dispute resolution
AEC	Atomic Energy Commission
AECB	Arms Export Control Board
AEDPA	Antiterrorism and Effective Death Penalty Act
A.E.R.	All England Law Reports
AFA	American Family Association; Alabama Freethought Association
AFB	American Farm Bureau
AFBF	American Farm Bureau Federation
AFDC	Aid to Families with Dependent Children
aff'd per cur.	Affirmed by the court
AFIS	Automated fingerprint identification system
AFL	American Federation of Labor

AFL-CIO	American Federation of Labor and Congress of Industrial Organizations
AFRes	Air Force Reserve
AFSC	American Friends Service Committee
AFSCME	American Federation of State, County, and Municipal Employees
AGRICOLA	Agricultural Online Access
AIA	Association of Insurance Attorneys
AIB	American Institute for Banking
AID	Artificial insemination using a third-party donor's sperm; Agency for International Development
AIDS	Acquired immune deficiency syndrome
AIH	Artificial insemination using the husband's sperm
AIM	American Indian Movement
AIPAC	American Israel Public Affairs Committee
AIUSA	Amnesty International, U.S.A. Affiliate
AJS	American Judicature Society
ALA	American Library Association
Alcoa	Aluminum Company of America
ALEC	American Legislative Exchange Council
ALF	Animal Liberation Front
ALI	American Law Institute
ALJ	Administrative law judge
All E.R.	All England Law Reports
ALO	Agency Liaison
A.L.R.	American Law Reports
ALY	*American Law Yearbook*
AMA	American Medical Association
AMAA	Agricultural Marketing Agreement Act
Am. Dec.	American Decisions
amdt.	Amendment
Amer. St. Papers, For. Rels.	American State Papers, Legislative and Executive Documents of the Congress of the U.S., Class I, Foreign Relations, 1832–1859
AMS	Agricultural Marketing Service
AMVETS	American Veterans (of World War II)
ANA	Administration for Native Americans
Ann. Dig.	Annual Digest of Public International Law Cases
ANPA	American Newspaper Publishers Association
ANSCA	Alaska Native Claims Act
ANZUS	Australia-New Zealand-United States Security Treaty Organization
AOA	Administration on Aging
AOE	Arizonans for Official English
AOL	America Online
AP	Associated Press
APA	Administrative Procedure Act of 1946
APHIS	Animal and Plant Health Inspection Service
App. Div.	Appellate Division Reports, N.Y. Supreme Court
Arb. Trib., U.S.-British	Arbitration Tribunal, Claim Convention of 1853, United States and Great Britain Convention of 1853
Ardcor	American Roller Die Corporation
ARPA	Advanced Research Projects Agency
ARPANET	Advanced Research Projects Agency Network
ARS	Advanced Record System
Art.	Article
ARU	American Railway Union
ASCME	American Federation of State, County, and Municipal Employees
ASCS	Agriculture Stabilization and Conservation Service
ASM	Available Seatmile
ASPCA	American Society for the Prevention of Cruelty to Animals
Asst. Att. Gen.	Assistant Attorney General
AT&T	American Telephone and Telegraph
ATFD	Alcohol, Tobacco and Firearms Division
ATLA	Association of Trial Lawyers of America
ATO	Alpha Tau Omega
ATTD	Alcohol and Tobacco Tax Division
ATU	Alcohol Tax Unit
AUAM	American Union against Militarism
AUM	Animal Unit Month
AZT	Azidothymidine

BAC	Blood alcohol concentration
BALSA	Black-American Law Student Association
BATF	Bureau of Alcohol, Tobacco and Firearms
BBS	Bulletin Board System
BCCI	Bank of Credit and Commerce International
BEA	Bureau of Economic Analysis
Bell's Cr. C.	Bell's English Crown Cases
Bevans	United States Treaties, etc. *Treaties and Other International Agreements of the United States of America, 1776–1949* (compiled under the direction of Charles I. Bevans, 1968–76)
BFOQ	Bona fide occupational qualification
BI	Bureau of Investigation
BIA	Bureau of Indian Affairs; Board of Immigration Appeals
BID	Business improvement district
BJS	Bureau of Justice Statistics
Black.	Black's United States Supreme Court Reports
Blatchf.	Blatchford's United States Circuit Court Reports
BLM	Bureau of Land Management
BLS	Bureau of Labor Statistics
BMD	Ballistic missile defense
BNA	Bureau of National Affairs
BOCA	Building Officials and Code Administrators International
BOP	Bureau of Prisons
BPP	Black Panther Party for Self-defense
Brit. and For.	British and Foreign State Papers
BSA	Boy Scouts of America
BTP	Beta Theta Pi
Burr.	James Burrows, *Report of Cases Argued and Determined in the Court of King's Bench during the Time of Lord Mansfield* (1766–1780)
BVA	Board of Veterans Appeals
c.	Chapter
C^3I	Command, Control, Communications, and Intelligence
C.A.	Court of Appeals
CAA	Clean Air Act
CAB	Civil Aeronautics Board; Corporation for American Banking
CAFE	Corporate average fuel economy
Cal. 2d	California Reports, Second Series
Cal. 3d	California Reports, Third Series
CALR	Computer-assisted legal research
Cal. Rptr.	California Reporter
CAP	Common Agricultural Policy
CARA	Classification and Ratings Administration
CATV	Community antenna television
CBO	Congressional Budget Office
CBS	Columbia Broadcasting System
CBOEC	Chicago Board of Election Commissioners
CCC	Commodity Credit Corporation
CCDBG	Child Care and Development Block Grant of 1990
C.C.D. Pa.	Circuit Court Decisions, Pennsylvania
C.C.D. Va.	Circuit Court Decisions, Virginia
CCEA	Cabinet Council on Economic Affairs
CCP	Chinese Communist Party
CCR	Center for Constitutional Rights
C.C.R.I.	Circuit Court, Rhode Island
CD	Certificate of deposit; compact disc
CDA	Communications Decency Act
CDBG	Community Development Block Grant Program
CDC	Centers for Disease Control and Prevention; Community Development Corporation
CDF	Children's Defense Fund
CDL	Citizens for Decency through Law
CD-ROM	Compact disc read-only memory
CDS	Community Dispute Services
CDW	Collision damage waiver
CENTO	Central Treaty Organization
CEO	Chief executive officer
CEQ	Council on Environmental Quality

CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act of 1980
cert.	*Certiorari*
CETA	Comprehensive Employment and Training Act
C & F	Cost and freight
CFC	Chlorofluorocarbon
CFE Treaty	Conventional Forces in Europe Treaty of 1990
C.F. & I.	Cost, freight, and insurance
C.F.R	Code of Federal Regulations
CFNP	Community Food and Nutrition Program
CFTA	Canadian Free Trade Agreement
CFTC	Commodity Futures Trading Commission
Ch.	Chancery Division, English Law Reports
CHAMPVA	Civilian Health and Medical Program at the Veterans Administration
CHEP	Cuban/Haitian Entrant Program
CHINS	Children in need of supervision
CHIPS	Child in need of protective services
Ch.N.Y.	Chancery Reports, New York
Chr. Rob.	Christopher Robinson, *Reports of Cases Argued and Determined in the High Court of Admiralty* (1801–1808)
CIA	Central Intelligence Agency
CID	Commercial Item Descriptions
C.I.F.	Cost, insurance, and freight
CINCNORAD	Commander in Chief, North American Air Defense Command
C.I.O.	Congress of Industrial Organizations
CIPE	Center for International Private Enterprise
C.J.	Chief justice
CJIS	Criminal Justice Information Services
C.J.S.	Corpus Juris Secundum
Claims Arb. under Spec. Conv., Nielsen's Rept.	Frederick Kenelm Nielsen, *American and British Claims Arbitration under the Special Agreement Concluded between the United States and Great Britain, August 18, 1910* (1926)
CLASP	Center for Law and Social Policy
CLE	Center for Law and Education; Continuing Legal Education
CLEO	Council on Legal Education Opportunity; Chief Law Enforcement Officer
CLP	Communist Labor Party of America
CLS	Christian Legal Society; critical legal studies (movement); Critical Legal Studies (membership organization)
C.M.A.	Court of Military Appeals
CMEA	Council for Mutual Economic Assistance
CMHS	Center for Mental Health Services
C.M.R.	Court of Military Review
CNN	Cable News Network
CNO	Chief of Naval Operations
CNOL	Consolidated net operating loss
CNR	Chicago and Northwestern Railway
CO	Conscientious Objector
C.O.D.	Cash on delivery
COGP	Commission on Government Procurement
COINTELPRO	Counterintelligence Program
Coke Rep.	Coke's English King's Bench Reports
COLA	Cost-of-living adjustment
COMCEN	Federal Communications Center
Comp.	Compilation
Conn.	Connecticut Reports
CONTU	National Commission on New Technological Uses of Copyrighted Works
Conv.	Convention
COPA	Child Online Protection Act (1998)
COPS	Community Oriented Policing Services
Corbin	Arthur L. Corbin, *Corbin on Contracts: A Comprehensive Treatise on the Rules of Contract Law* (1950)
CORE	Congress on Racial Equality
Cox's Crim. Cases	Cox's Criminal Cases (England)
COYOTE	Call Off Your Old Tired Ethics

CPA	Certified public accountant
CPB	Corporation for Public Broadcasting, the
CPI	Consumer Price Index
CPPA	Child Pornography Prevention Act
CPSC	Consumer Product Safety Commission
Cranch	Cranch's United States Supreme Court Reports
CRF	Constitutional Rights Foundation
CRR	Center for Constitutional Rights
CRS	Congressional Research Service; Community Relations Service
CRT	Critical race theory
CSA	Community Services Administration
CSAP	Center for Substance Abuse Prevention
CSAT	Center for Substance Abuse Treatment
CSC	Civil Service Commission
CSCE	Conference on Security and Cooperation in Europe
CSG	Council of State Governments
CSO	Community Service Organization
CSP	Center for the Study of the Presidency
C-SPAN	Cable-Satellite Public Affairs Network
CSRS	Cooperative State Research Service
CSWPL	Center on Social Welfare Policy and Law
CTA	*Cum testamento annexo* (with the will attached)
Ct. Ap. D.C.	Court of Appeals, District of Columbia
Ct. App. No. Ireland	Court of Appeals, Northern Ireland
Ct. Cl.	Court of Claims, United States
Ct. Crim. Apps.	Court of Criminal Appeals (England)
CTI	Consolidated taxable income
Ct. of Sess., Scot.	Court of Sessions, Scotland
CU	Credit union
CUNY	City University of New York
Cush.	Cushing's Massachusetts Reports
CWA	Civil Works Administration; Clean Water Act
DACORB	Department of the Army Conscientious Objector Review Board
Dall.	Dallas's Pennsylvania and United States Reports
DAR	Daughters of the American Revolution
DARPA	Defense Advanced Research Projects Agency
DAVA	Defense Audiovisual Agency
D.C.	United States District Court; District of Columbia
D.C. Del.	United States District Court, Delaware
D.C. Mass.	United States District Court, Massachusetts
D.C. Md.	United States District Court, Maryland
D.C.N.D.Cal.	United States District Court, Northern District, California
D.C.N.Y.	United States District Court, New York
D.C.Pa.	United States District Court, Pennsylvania
DCS	Deputy Chiefs of Staff
DCZ	District of the Canal Zone
DDT	Dichlorodiphenyltricloro-ethane
DEA	Drug Enforcement Administration
Decl. Lond.	Declaration of London, February 26, 1909
Dev. & B.	Devereux & Battle's North Carolina Reports
DFL	Minnesota Democratic-Farmer-Labor
DFTA	Department for the Aging
Dig. U.S. Practice in Intl. Law	Digest of U.S. Practice in International Law
Dist. Ct.	D.C. United States District Court, District of Columbia
D.L.R.	Dominion Law Reports (Canada)
DMCA	Digital Millennium Copyright Act
DNA	Deoxyribonucleic acid
Dnase	Deoxyribonuclease
DNC	Democratic National Committee
DOC	Department of Commerce
DOD	Department of Defense
DODEA	Department of Defense Education Activity
Dodson	Dodson's Reports, English Admiralty Courts
DOE	Department of Energy

DOER	Department of Employee Relations
DOJ	Department of Justice
DOL	Department of Labor
DOMA	Defense of Marriage Act of 1996
DOS	Disk operating system
DOT	Department of Transportation
DPT	Diphtheria, pertussis, and tetanus
DRI	Defense Research Institute
DSAA	Defense Security Assistance Agency
DUI	Driving under the influence; driving under intoxication
DVD	Digital versatile disc
DWI	Driving while intoxicated
EAHCA	Education for All Handicapped Children Act of 1975
EBT	Examination before trial
E.coli	Escherichia coli
ECPA	Electronic Communications Privacy Act of 1986
ECSC	Treaty of the European Coal and Steel Community
EDA	Economic Development Administration
EDF	Environmental Defense Fund
E.D.N.Y.	Eastern District, New York
EDP	Electronic data processing
E.D. Pa.	Eastern-District, Pennsylvania
EDSC	Eastern District, South Carolina
EDT	Eastern daylight time
E.D. Va.	Eastern District, Virginia
EEC	European Economic Community; European Economic Community Treaty
EEOC	Equal Employment Opportunity Commission
EFF	Electronic Frontier Foundation
EFT	Electronic funds transfer
Eliz.	Queen Elizabeth (Great Britain)
Em. App.	Temporary Emergency Court of Appeals
ENE	Early neutral evaluation
Eng. Rep.	English Reports
EOP	Executive Office of the President
EPA	Environmental Protection Agency; Equal Pay Act of 1963
ERA	Equal Rights Amendment
ERDC	Energy Research and Development Commission
ERISA	Employee Retirement Income Security Act of 1974
ERS	Economic Research Service
ERTA	Economic Recovery Tax Act of 1981
ESA	Endangered Species Act of 1973
ESF	Emergency support function; Economic Support Fund
ESRD	End-Stage Renal Disease Program
ETA	Employment and Training Administration
ETS	Environmental tobacco smoke
et seq.	*Et sequentes* or *et sequentia* (“and the following”)
EU	European Union
Euratom	European Atomic Energy Community
Eur. Ct. H.R.	European Court of Human Rights
Ex.	English Exchequer Reports, Welsby, Hurlstone & Gordon
Exch.	Exchequer Reports (Welsby, Hurlstone & Gordon)
Ex Com	Executive Committee of the National Security Council
Eximbank	Export-Import Bank of the United States
F.	Federal Reporter
F. 2d	Federal Reporter, Second Series
FAA	Federal Aviation Administration; Federal Arbitration Act
FAAA	Federal Alcohol Administration Act
FACE	Freedom of Access to Clinic Entrances Act of 1994
FACT	Feminist Anti-Censorship Task Force
FAIRA	Federal Agriculture Improvement and Reform Act of 1996
FAMLA	Family and Medical Leave Act of 1993
Fannie Mae	Federal National Mortgage Association
FAO	Food and Agriculture Organization of the United Nations
FAR	Federal Acquisition Regulations

FAS	Foreign Agricultural Service
FBA	Federal Bar Association
FBI	Federal Bureau of Investigation
FCA	Farm Credit Administration
F. Cas.	Federal Cases
FCC	Federal Communications Commission
FCIA	Foreign Credit Insurance Association
FCIC	Federal Crop Insurance Corporation
FCLAA	Federal Cigarette Labeling and Advertising Act
FCRA	Fair Credit Reporting Act
FCU	Federal credit unions
FCUA	Federal Credit Union Act
FCZ	Fishery Conservation Zone
FDA	Food and Drug Administration
FDIC	Federal Deposit Insurance Corporation
FDPC	Federal Data Processing Center
FEC	Federal Election Commission
FECA	Federal Election Campaign Act of 1971
Fed. Cas.	Federal Cases
FEHA	Fair Employment and Housing Act
FEHBA	Federal Employees Health Benefit Act
FEMA	Federal Emergency Management Agency
FERC	Federal Energy Regulatory Commission
FFB	Federal Financing Bank
FFDC	Federal Food, Drug, and Cosmetics Act
FGIS	Federal Grain Inspection Service
FHA	Federal Housing Administration
FHAA	Fair Housing Amendments Act of 1998
FHWA	Federal Highway Administration
FIA	Federal Insurance Administration
FIC	Federal Information Centers; Federation of Insurance Counsel
FICA	Federal Insurance Contributions Act
FIFRA	Federal Insecticide, Fungicide, and Rodenticide Act
FIP	Forestry Incentives Program
FIRREA	Financial Institutions Reform, Recovery, and Enforcement Act of 1989
FISA	Foreign Intelligence Surveillance Act of 1978
FISC	Foreign Intelligence Surveillance Court of Review
FJC	Federal Judicial Center
FLSA	Fair Labor Standards Act
FMC	Federal Maritime Commission
FMCS	Federal Mediation and Conciliation Service
FmHA	Farmers Home Administration
FMLA	Family and Medical Leave Act of 1993
FNMA	Federal National Mortgage Association, "Fannie Mae"
F.O.B.	Free on board
FOIA	Freedom of Information Act
FOMC	Federal Open Market Committee
FPA	Federal Power Act of 1935
FPC	Federal Power Commission
FPMR	Federal Property Management Regulations
FPRS	Federal Property Resources Service
FR	Federal Register
FRA	Federal Railroad Administration
FRB	Federal Reserve Board
FRC	Federal Radio Commission
F.R.D.	Federal Rules Decisions
FSA	Family Support Act
FSB	Federal'naya Sluzhba Bezopasnosti (the Federal Security Service of Russia)
FSLIC	Federal Savings and Loan Insurance Corporation
FSQS	Food Safety and Quality Service
FSS	Federal Supply Service
F. Supp.	Federal Supplement
FTA	U.S.-Canada Free Trade Agreement of 1988
FTC	Federal Trade Commission
FTCA	Federal Tort Claims Act
FTS	Federal Telecommunications System
FTS2000	Federal Telecommunications System 2000
FUCA	Federal Unemployment Compensation Act of 1988

FUTA	Federal Unemployment Tax Act
FWPCA	Federal Water Pollution Control Act of 1948
FWS	Fish and Wildlife Service
GAL	Guardian ad litem
GAO	General Accounting Office; Governmental Affairs Office
GAOR	General Assembly Official Records, United Nations
GAAP	Generally accepted accounting principles
GA Res.	General Assembly Resolution (United Nations)
GATT	General Agreement on Tariffs and Trade
GCA	Gun Control Act
Gen. Cls. Comm.	General Claims Commission, United States and Panama; General Claims United States and Mexico
Geo. II	King George II (Great Britain)
Geo. III	King George III (Great Britain)
GHB	Gamma-hydroxybutrate
GI	Government Issue
GID	General Intelligence Division
GM	General Motors
GNMA	Government National Mortgage Association, "Ginnie Mae"
GNP	Gross national product
GOP	Grand Old Party (Republican Party)
GOPAC	Grand Old Party Action Committee
GPA	Office of Governmental and Public Affairs
GPO	Government Printing Office
GRAS	Generally recognized as safe
Gr. Br., Crim. Ct. App.	Great Britain, Court of Criminal Appeals
GRNL	Gay Rights-National Lobby
GSA	General Services Administration
Hackworth	Green Haywood Hackworth, *Digest of International Law* (1940–1944)
Hay and Marriott	Great Britain. High Court of Admiralty, *Decisions in the High Court of Admiralty during the Time of Sir George Hay and of Sir James Marriott, Late Judges of That Court* (1801)
HBO	Home Box Office
HCFA	Health Care Financing Administration
H.Ct.	High Court
HDS	Office of Human Development Services
Hen. & M.	Hening & Munford's Virginia Reports
HEW	Department of Health, Education, and Welfare
HFCA	Health Care Financing Administration
HGI	Handgun Control, Incorporated
HHS	Department of Health and Human Services
Hill	Hill's New York Reports
HIRE	Help through Industry Retraining and Employment
HIV	Human immunodeficiency virus
H.L.	House of Lords Cases (England)
H. Lords	House of Lords (England)
HMO	Health Maintenance Organization
HNIS	Human Nutrition Information Service
Hong Kong L.R.	Hong Kong Law Reports
How.	Howard's United States Supreme Court Reports
How. St. Trials	Howell's English State Trials
HUAC	House Un-American Activities Committee
HUD	Department of Housing and Urban Development
Hudson, Internatl. Legis.	Manley Ottmer Hudson, ed., *International Legislation: A Collection of the Texts of Multipartite International Instruments of General Interest Beginning with the Covenant of the League of Nations* (1931)
Hudson, World Court Reps.	Manley Ottmer Hudson, ea., *World Court Reports* (1934–)
Hun	Hun's New York Supreme Court Reports
Hunt's Rept.	Bert L. Hunt, *Report of the American and Panamanian General Claims Arbitration* (1934)
IAEA	International Atomic Energy Agency
IALL	International Association of Law Libraries

IBA	International Bar Association
IBM	International Business Machines
ICA	Interstate Commerce Act
ICBM	Intercontinental ballistic missile
ICC	Interstate Commerce Commission; International Criminal Court
ICJ	International Court of Justice
ICM	Institute for Court Management
IDEA	Individuals with Disabilities Education Act of 1975
IDOP	International Dolphin Conservation Program
IEP	Individualized educational program
IFC	International Finance Corporation
IGRA	Indian Gaming Regulatory Act of 1988
IJA	Institute of Judicial Administration
IJC	International Joint Commission
ILC	International Law Commission
ILD	International Labor Defense
Ill. Dec.	Illinois Decisions
ILO	International Labor Organization
IMF	International Monetary Fund
INA	Immigration and Nationality Act
IND	Investigational new drug
INF Treaty	Intermediate-Range Nuclear Forces Treaty of 1987
INS	Immigration and Naturalization Service
INTELSAT	International Telecommunications Satellite Organization
Interpol	International Criminal Police Organization
Int'l. Law Reps.	International Law Reports
Intl. Legal Mats.	International Legal Materials
IOC	International Olympic Committee
IPDC	International Program for the Development of Communication
IPO	Intellectual Property Owners
IPP	Independent power producer
IQ	Intelligence quotient
I.R.	Irish Reports
IRA	Individual retirement account; Irish Republican Army
IRC	Internal Revenue Code
IRCA	Immigration Reform and Control Act of 1986
IRS	Internal Revenue Service
ISO	Independent service organization
ISP	Internet service provider
ISSN	International Standard Serial Numbers
ITA	International Trade Administration
ITI	Information Technology Integration
ITO	International Trade Organization
ITS	Information Technology Service
ITT	International Telephone and Telegraph Corporation
ITU	International Telecommunication Union
IUD	Intrauterine device
IWC	International Whaling Commission
IWW	Industrial Workers of the World
JAGC	Judge Advocate General's Corps
JCS	Joint Chiefs of Staff
JDL	Jewish Defense League
JNOV	Judgment *non obstante veredicto* ("judgment nothing to recommend it" or "judgment notwithstanding the verdict")
JOBS	Jobs Opportunity and Basic Skills
John. Ch.	Johnson's New York Chancery Reports
Johns.	Johnson's Reports (New York)
JP	Justice of the peace
K.B.	King's Bench Reports (England)
KFC	Kentucky Fried Chicken
KGB	Komitet Gosudarstvennoi Bezopasnosti (the State Security Committee for countries in the former Soviet Union)
KKK	Ku Klux Klan
KMT	Kuomintang (Chinese, "national people's party")
LAD	Law Against Discrimination

LAPD	Los Angeles Police Department
LC	Library of Congress
LCHA	Longshoremen's and Harbor Workers Compensation Act of 1927
LD50	Lethal dose 50
LDEF	Legal Defense and Education Fund (NOW)
LDF	Legal Defense Fund, Legal Defense and Educational Fund of the NAACP
LEAA	Law Enforcement Assistance Administration
L.Ed.	Lawyers' Edition Supreme Court Reports
LI	Letter of interpretation
LLC	Limited Liability Company
LLP	Limited Liability Partnership
LMSA	Labor-Management Services Administration
LNTS	League of Nations Treaty Series
Lofft's Rep.	Lofft's English King's Bench Reports
L.R.	Law Reports (English)
LSAC	Law School Admission Council
LSAS	Law School Admission Service
LSAT	Law School Aptitude Test
LSC	Legal Services Corporation; Legal Services for Children
LSD	Lysergic acid diethylamide
LSDAS	Law School Data Assembly Service
LTBT	Limited Test Ban Treaty
LTC	Long Term Care
MAD	Mutual assured destruction
MADD	Mothers against Drunk Driving
MALDEF	Mexican American Legal Defense and Educational Fund
Malloy	William M. Malloy, ed., *Treaties, Conventions International Acts, Protocols, and Agreements between the United States of America and Other Powers* (1910–1938)
Martens	Georg Friedrich von Martens, ea., *Noveau recueil général de traités et autres actes relatifs aux rapports de droit international* (Series I, 20 vols. [1843–1875]; Series II, 35 vols. [1876–1908]; Series III [1909–])
Mass.	Massachusetts Reports
MCC	Metropolitan Correctional Center
MCCA	Medicare Catastrophic Coverage Act of 1988
MCH	Maternal and Child Health Bureau
MCRA	Medical Care Recovery Act of 1962
MDA	Medical Devices Amendments of 1976
Md. App.	Maryland, Appeal Cases
M.D. Ga.	Middle District, Georgia
Mercy	Movement Ensuring the Right to Choose for Yourself
Metc.	Metcalf's Massachusetts Reports
MFDP	Mississippi Freedom Democratic party
MGT	Management
MHSS	Military Health Services System
Miller	David Hunter Miller, ea., *Treaties and Other International Acts of the United States of America* (1931–1948)
Minn.	Minnesota Reports
MINS	Minors in need of supervision
MIRV	Multiple independently targetable reentry vehicle
MIRVed ICBM	Multiple independently targetable reentry vehicled intercontinental ballistic missile
Misc.	Miscellaneous Reports, New York
Mixed Claims Comm., Report of Decs	Mixed Claims Commission, United States and Germany, Report of Decisions
M.J.	Military Justice Reporter
MLAP	Migrant Legal Action Program
MLB	Major League Baseball
MLDP	Mississippi Loyalist Democratic Party
MMI	Moslem Mosque, Incorporated
MMPA	Marine Mammal Protection Act of 1972
Mo.	Missouri Reports
MOD	Masters of Deception
Mod.	Modern Reports, English King's Bench, etc.

Moore, Dig. Intl. Law	John Bassett Moore, *A Digest of International Law,* 8 vols. (1906)
Moore, Intl. Arbs.	John Bassett Moore, *History and Digest of the International Arbitrations to Which United States Has Been a Party,* 6 vols. (1898)
Morison	William Maxwell Morison, *The Scots Revised Report: Morison's Dictionary of Decisions* (1908–09)
M.P.	Member of Parliament
MP3	MPEG Audio Layer 3
MPAA	Motion Picture Association of America
MPAS	Michigan Protection and Advocacy Service
MPEG	Motion Picture Experts Group
mpg	Miles per gallon
MPPDA	Motion Picture Producers and Distributors of America
MPRSA	Marine Protection, Research, and Sanctuaries Act of 1972
M.R.	Master of the Rolls
MS-DOS	Microsoft Disk Operating System
MSHA	Mine Safety and Health Administration
MSPB	Merit Systems Protection Board
MSSA	Military Selective Service Act
N/A	Not Available
NAACP	National Association for the Advancement of Colored People
NAAQS	National Ambient Air Quality Standards
NAB	National Association of Broadcasters
NABSW	National Association of Black Social Workers
NACDL	National Association of Criminal Defense Lawyers
NAFTA	North American Free Trade Agreement of 1993
NAGHSR	National Association of Governors' Highway Safety Representatives
NALA	National Association of Legal Assistants
NAM	National Association of Manufacturers
NAR	National Association of Realtors
NARAL	National Abortion and Reproductive Rights Action League
NARF	Native American Rights Fund
NARS	National Archives and Record Service
NASA	National Aeronautics and Space Administration
NASD	National Association of Securities Dealers
NATO	North Atlantic Treaty Organization
NAVINFO	Navy Information Offices
NAWSA	National American Woman's Suffrage Association
NBA	National Bar Association; National Basketball Association
NBC	National Broadcasting Company
NBLSA	National Black Law Student Association
NBS	National Bureau of Standards
NCA	Noise Control Act; National Command Authorities
NCAA	National Collegiate Athletic Association
NCAC	National Coalition against Censorship
NCCB	National Consumer Cooperative Bank
NCE	Northwest Community Exchange
NCF	National Chamber Foundation
NCIP	National Crime Insurance Program
NCJA	National Criminal Justice Association
NCLB	National Civil Liberties Bureau
NCP	National contingency plan
NCSC	National Center for State Courts
NCUA	National Credit Union Administration
NDA	New drug application
N.D. Ill.	Northern District, Illinois
NDU	National Defense University
N.D. Wash.	Northern District, Washington
N.E.	North Eastern Reporter
N.E. 2d	North Eastern Reporter, Second Series
NEA	National Endowment for the Arts; National Education Association

NEH	National Endowment for the Humanities
NEPA	National Environmental Protection Act; National Endowment Policy Act
NET Act	No Electronic Theft Act
NFIB	National Federation of Independent Businesses
NFIP	National Flood Insurance Program
NFL	National Football League
NFPA	National Federation of Paralegal Associations
NGLTF	National Gay and Lesbian Task Force
NHL	National Hockey League
NHRA	Nursing Home Reform Act of 1987
NHTSA	National Highway Traffic Safety Administration
Nielsen's Rept.	Frederick Kenelm Nielsen, *American and British Claims Arbitration under the Special Agreement Concluded between the United States and Great Britain, August 18, 1910* (1926)
NIEO	New International Economic Order
NIGC	National Indian Gaming Commission
NIH	National Institutes of Health
NIJ	National Institute of Justice
NIRA	National Industrial Recovery Act of 1933; National Industrial Recovery Administration
NIST	National Institute of Standards and Technology
N.J.	New Jersey Reports
N.J. Super.	New Jersey Superior Court Reports
NLEA	Nutrition Labeling and Education Act of 1990
NLRA	National Labor Relations Act
NLRB	National Labor Relations Board
NMFS	National Marine Fisheries Service
No.	Number
NOAA	National Oceanic and Atmospheric Administration
NOC	National Olympic Committee
NOI	Nation of Islam
NOL	Net operating loss
NORML	National Organization for the Reform of Marijuana Laws
NOW	National Organization for Women
NOW LDEF	National Organization for Women Legal Defense and Education Fund
NOW/PAC	National Organization for Women Political Action Committee
NPDES	National Pollutant Discharge Elimination System
NPL	National priorities list
NPR	National Public Radio
NPT	Nuclear Non-Proliferation Treaty of 1970
NRA	National Rifle Association; National Recovery Act
NRC	Nuclear Regulatory Commission
NRLC	National Right to Life Committee
NRTA	National Retired Teachers Association
NSA	National Security Agency
NSC	National Security Council
NSCLC	National Senior Citizens Law Center
NSF	National Science Foundation
NSFNET	National Science Foundation Network
NSI	Network Solutions, Inc.
NTIA	National Telecommunications and Information Administration
NTID	National Technical Institute for the Deaf
NTIS	National Technical Information Service
NTS	Naval Telecommunications System
NTSB	National Transportation Safety Board
NVRA	National Voter Registration Act
N.W.	North Western Reporter
N.W. 2d	North Western Reporter, Second Series
NWSA	National Woman Suffrage Association
N.Y.	New York Court of Appeals Reports
N.Y. 2d	New York Court of Appeals Reports, Second Series
N.Y.S.	New York Supplement Reporter

N.Y.S. 2d	New York Supplement Reporter, Second Series
NYSE	New York Stock Exchange
NYSLA	New York State Liquor Authority
N.Y. Sup.	New York Supreme Court Reports
NYU	New York University
OAAU	Organization of Afro American Unity
OAP	Office of Administrative Procedure
OAS	Organization of American States
OASDI	Old-age, Survivors, and Disability Insurance Benefits
OASHDS	Office of the Assistant Secretary for Human Development Services
OCC	Office of Comptroller of the Currency
OCED	Office of Comprehensive Employment Development
OCHAMPUS	Office of Civilian Health and Medical Program of the Uniformed Services
OCSE	Office of Child Support Enforcement
OEA	Organización de los Estados Americanos
OEM	Original Equipment Manufacturer
OFCCP	Office of Federal Contract Compliance Programs
OFPP	Office of Federal Procurement Policy
OIC	Office of the Independent Counsel
OICD	Office of International Cooperation and Development
OIG	Office of the Inspector General
OJARS	Office of Justice Assistance, Research, and Statistics
OMB	Office of Management and Budget
OMPC	Office of Management, Planning, and Communications
ONP	Office of National Programs
OPD	Office of Policy Development
OPEC	Organization of Petroleum Exporting Countries
OPIC	Overseas Private Investment Corporation
Ops. Atts. Gen.	Opinions of the Attorneys-General of the United States
Ops. Comms.	Opinions of the Commissioners
OPSP	Office of Product Standards Policy
O.R.	Ontario Reports
OR	Official Records
OSHA	Occupational Safety and Health Act
OSHRC	Occupational Safety and Health Review Commission
OSM	Office of Surface Mining
OSS	Office of Strategic Services
OST	Office of the Secretary
OT	Office of Transportation
OTA	Office of Technology Assessment
OTC	Over-the-counter
OTS	Office of Thrift Supervisors
OUI	Operating under the influence
OVCI	Offshore Voluntary Compliance Initiative
OWBPA	Older Workers Benefit Protection Act
OWRT	Office of Water Research and Technology
P.	Pacific Reporter
P. 2d	Pacific Reporter, Second Series
PAC	Political action committee
Pa. Oyer and Terminer	Pennsylvania Oyer and Terminer Reports
PATCO	Professional Air Traffic Controllers Organization
PBGC	Pension Benefit Guaranty Corporation
PBS	Public Broadcasting Service; Public Buildings Service
P.C.	Privy Council (English Law Reports)
PC	Personal computer; politically correct
PCBs	Polychlorinated biphenyls
PCIJ	Permanent Court of International Justice Series A-Judgments and Orders (1922–30) Series B-Advisory Opinions (1922–30) Series A/B-Judgments, Orders, and Advisory Opinions (1931–40)

PCIJ (cont'd.)	Series C-Pleadings, Oral Statements, and Documents relating to Judgments and Advisory Opinions (1923–42)
	Series D-Acts and Documents concerning the Organization of the World Court (1922 –47)
	Series E-Annual Reports (1925–45)
PCP	Phencyclidine
P.D.	Probate Division, English Law Reports (1876–1890)
PDA	Pregnancy Discrimination Act of 1978
PD & R	Policy Development and Research
Pepco	Potomac Electric Power Company
Perm. Ct. of Arb.	Permanent Court of Arbitration
PES	Post-Enumeration Survey
Pet.	Peters' United States Supreme Court Reports
PETA	People for the Ethical Treatment of Animals
PGA	Professional Golfers Association
PGM	Program
PHA	Public Housing Agency
Phila. Ct. of Oyer and Terminer	Philadelphia Court of Oyer and Terminer
PhRMA	Pharmaceutical Research and Manufacturers of America
PHS	Public Health Service
PIC	Private Industry Council
PICJ	Permanent International Court of Justice
Pick.	Pickering's Massachusetts Reports
PIK	Payment in Kind
PINS	Persons in need of supervision
PIRG	Public Interest Research Group
P.L.	Public Laws
PLAN	Pro-Life Action Network
PLC	Plaintiffs' Legal Committee
PLE	Product liability expenses
PLI	Practicing Law Institute
PLL	Product liability loss
PLLP	Professional Limited Liability Partnership
PLO	Palestine Liberation Organization
PLRA	Prison Litigation Reform Act of 1995
PNET	Peaceful Nuclear Explosions Treaty
PONY	Prostitutes of New York
POW-MIA	Prisoner of war-missing in action
Pratt	Frederic Thomas Pratt, *Law of Contraband of War, with a Selection of Cases from Papers of the Right Honourable Sir George Lee* (1856)
PRIDE	Prostitution to Independence, Dignity, and Equality
Proc.	Proceedings
PRP	Potentially responsible party
PSRO	Professional Standards Review Organization
PTO	Patents and Trademark Office
PURPA	Public Utilities Regulatory Policies Act
PUSH	People United to Serve Humanity
PUSH-Excel	PUSH for Excellence
PWA	Public Works Administration
PWSA	Ports and Waterways Safety Act of 1972
Q.B.	Queen's Bench (England)
QTIP	Qualified Terminable Interest Property
Ralston's Rept.	Jackson Harvey Ralston, ed., *Venezuelan Arbitrations of 1903* (1904)
RC	Regional Commissioner
RCRA	Resource Conservation and Recovery Act
RCWP	Rural Clean Water Program
RDA	Rural Development Administration
REA	Rural Electrification Administration
Rec. des Decs. des Trib. Arb. Mixtes	G. Gidel, ed., *Recueil des décisions des tribunaux arbitraux mixtes, institués par les traités de paix* (1922–30)
Redmond	Vol. 3 of Charles I. Bevans, *Treaties and Other International Agreements of the United States of America, 1776–1949* (compiled by C. F. Redmond) (1969)
RESPA	Real Estate Settlement Procedure Act of 1974
RFC	Reconstruction Finance Corporation

RFRA	Religious Freedom Restoration Act of 1993
RIAA	Recording Industry Association of America
RICO	Racketeer Influenced and Corrupt Organizations
RLUIPA	Religious Land Use and Institutionalized Persons Act
RNC	Republican National Committee
Roscoe	Edward Stanley Roscoe, ed., *Reports of Prize Cases Determined in the High Court Admiralty before the Lords Commissioners of Appeals in Prize Causes and before the judicial Committee of the Privy Council from 1745 to 1859* (1905)
ROTC	Reserve Officers' Training Corps
RPP	Representative Payee Program
R.S.	Revised Statutes
RTC	Resolution Trust Corp.
RUDs	Reservations, understandings, and declarations
Ryan White CARE Act	Ryan White Comprehensive AIDS Research Emergency Act of 1990
SAC	Strategic Air Command
SACB	Subversive Activities Control Board
SADD	Students against Drunk Driving
SAF	Student Activities Fund
SAIF	Savings Association Insurance Fund
SALT	Strategic Arms Limitation Talks
SALT I	Strategic Arms Limitation Talks of 1969–72
SAMHSA	Substance Abuse and Mental Health Services Administration
Sandf.	Sandford's New York Superior Court Reports
S and L	Savings and loan
SARA	Superfund Amendment and Reauthorization Act
SAT	Scholastic Aptitude Test
Sawy.	Sawyer's United States Circuit Court Reports
SBA	Small Business Administration
SBI	Small Business Institute
SCCC	South Central Correctional Center
SCLC	Southern Christian Leadership Conference
Scott's Repts.	James Brown Scott, ed., *The Hague Court Reports*, 2 vols. (1916–32)
SCS	Soil Conservation Service; Social Conservative Service
SCSEP	Senior Community Service Employment Program
S.Ct.	Supreme Court Reporter
S.D. Cal.	Southern District, California
S.D. Fla.	Southern District, Florida
S.D. Ga.	Southern District, Georgia
SDI	Strategic Defense Initiative
S.D. Me.	Southern District, Maine
S.D.N.Y.	Southern District, New York
SDS	Students for a Democratic Society
S.E.	South Eastern Reporter
S.E. 2d	South Eastern Reporter, Second Series
SEA	Science and Education Administration
SEATO	Southeast Asia Treaty Organization
SEC	Securities and Exchange Commission
Sec.	Section
SEEK	Search for Elevation, Education and Knowledge
SEOO	State Economic Opportunity Office
SEP	Simplified employee pension plan
Ser.	Series
Sess.	Session
SGLI	Servicemen's Group Life Insurance
SIP	State implementation plan
SLA	Symbionese Liberation Army
SLAPPs	Strategic Lawsuits Against Public Participation
SLBM	Submarine-launched ballistic missile
SNCC	Student Nonviolent Coordinating Committee
So.	Southern Reporter
So. 2d	Southern Reporter, Second Series
SPA	Software Publisher's Association
Spec. Sess.	Special Session
SPLC	Southern Poverty Law Center
SRA	Sentencing Reform Act of 1984

SS	*Schutzstaffel* (German, "Protection Echelon")
SSA	Social Security Administration
SSI	Supplemental Security Income
START I	Strategic Arms Reduction Treaty of 1991
START II	Strategic Arms Reduction Treaty of 1993
Stat.	United States Statutes at Large
STS	Space Transportation Systems
St. Tr.	State Trials, English
STURAA	Surface Transportation and Uniform Relocation Assistance Act of 1987
Sup. Ct. of Justice, Mexico	Supreme Court of Justice, Mexico
Supp.	Supplement
S.W.	South Western Reporter
S.W. 2d	South Western Reporter, Second Series
SWAPO	South-West Africa People's Organization
SWAT	Special Weapons and Tactics
SWP	Socialist Workers Party
TDP	Trade and Development Program
Tex. Sup.	Texas Supreme Court Reports
THAAD	Theater High-Altitude Area Defense System
THC	Tetrahydrocannabinol
TI	Tobacco Institute
TIA	Trust Indenture Act of 1939
TIAS	Treaties and Other International Acts Series (United States)
TNT	Trinitrotoluene
TOP	Targeted Outreach Program
TPUS	Transportation and Public Utilities Service
TQM	Total Quality Management
Tripartite Claims Comm., Decs. and Ops.	Tripartite Claims Commission (United States, Austria, and Hungary), Decisions and Opinions
TRI-TAC	Joint Tactical Communications
TRO	Temporary restraining order
TS	Treaty Series, United States
TSCA	Toxic Substance Control Act
TSDs	Transporters, storers, and disposers
TSU	Texas Southern University
TTBT	Threshold Test Ban Treaty
TV	Television
TVA	Tennessee Valley Authority
TWA	Trans World Airlines
UAW	United Auto Workers; United Automobile, Aerospace, and Agricultural Implements Workers of America
U.C.C.	Uniform Commercial Code; Universal Copyright Convention
U.C.C.C.	Uniform Consumer Credit Code
UCCJA	Uniform Child Custody Jurisdiction Act
UCMJ	Uniform Code of Military Justice
UCPP	Urban Crime Prevention Program
UCS	United Counseling Service
UDC	United Daughters of the Confederacy
UFW	United Farm Workers
UHF	Ultrahigh frequency
UIFSA	Uniform Interstate Family Support Act
UIS	Unemployment Insurance Service
UMDA	Uniform Marriage and Divorce Act
UMTA	Urban Mass Transportation Administration
U.N.	United Nations
UNCITRAL	United Nations Commission on International Trade Law
UNCTAD	United Nations Conference on Trade and Development
UN Doc.	United Nations Documents
UNDP	United Nations Development Program
UNEF	United Nations Emergency Force
UNESCO	United Nations Educational, Scientific, and Cultural Organization
UNICEF	United Nations Children's Fund (formerly United Nations International Children's Emergency Fund)
UNIDO	United Nations Industrial and Development Organization
Unif. L. Ann.	Uniform Laws Annotated
UN Repts. Intl. Arb. Awards	United Nations Reports of International Arbitral Awards

UNTS	United Nations Treaty Series
UPI	United Press International
URESA	Uniform Reciprocal Enforcement of Support Act
U.S.	United States Reports
U.S.A.	United States of America
USAF	United States Air Force
USA PATRIOT Act	Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act
U.S. App. D.C.	United States Court of Appeals for the District of Columbia
U.S.C.	United States Code; University of Southern California
U.S.C.A.	United States Code Annotated
U.S.C.C.A.N.	United States Code Congressional and Administrative News
USCMA	United States Court of Military Appeals
USDA	U.S. Department of Agriculture
USES	United States Employment Service
USF	U.S. Forestry Service
USFA	United States Fire Administration
USGA	United States Golf Association
USICA	International Communication Agency, United States
USMS	U.S. Marshals Service
USOC	U.S. Olympic Committee
USSC	U.S. Sentencing Commission
USSG	United States Sentencing Guidelines
U.S.S.R.	Union of Soviet Socialist Republics
UST	United States Treaties
USTS	United States Travel Service
v.	*Versus*
VA	Veterans Administration
VAR	Veterans Affairs and Rehabilitation Commission
VAWA	Violence against Women Act
VFW	Veterans of Foreign Wars
VGLI	Veterans Group Life Insurance
Vict.	Queen Victoria (Great Britain)
VIN	Vehicle identification number
VISTA	Volunteers in Service to America
VJRA	Veterans Judicial Review Act of 1988
V.L.A.	Volunteer Lawyers for the Arts
VMI	Virginia Military Institute
VMLI	Veterans Mortgage Life Insurance
VOCAL	Victims of Child Abuse Laws
VRA	Voting Rights Act
WAC	Women's Army Corps
Wall.	Wallace's United States Supreme Court Reports
Wash. 2d	Washington Reports, Second Series
WAVES	Women Accepted for Volunteer Service
WCTU	Women's Christian Temperance Union
W.D. Wash.	Western District, Washington
W.D. Wis.	Western District, Wisconsin
WEAL	*West's Encyclopedia of American Law,* Women's Equity Action League
Wend.	Wendell's New York Reports
WFSE	Washington Federation of State Employees
Wheat.	Wheaton's United States Supreme Court Reports
Wheel. Cr. Cases	Wheeler's New York Criminal Cases
WHISPER	Women Hurt in Systems of Prostitution Engaged in Revolt
Whiteman	Marjorie Millace Whiteman, *Digest of International Law,* 15 vols. (1963–73)
WHO	World Health Organization
WIC	Women, Infants, and Children program
Will. and Mar.	King William and Queen Mary (Great Britain)
WIN	WESTLAW Is Natural; Whip Inflation Now; Work Incentive Program
WIPO	World Intellectual Property Organization
WIU	Workers' Industrial Union
W.L.R.	Weekly Law Reports, England
WPA	Works Progress Administration
WPPDA	Welfare and Pension Plans Disclosure Act

WTO	World Trade Organization
WWI	World War I
WWII	World War II
Yates Sel. Cas.	Yates's New York Select Cases
YMCA	Young Men's Christian Association
YWCA	Young Women's Christian Association