

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

[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.

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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.

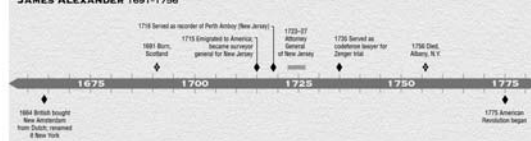
The Alien and Sedition Acts of 1798

Passions over the French Revolution split early American politics. Having endured SHAY'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. Jonathan 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

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JAMES ALEXANDER 1691-1756



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The First Payments of Social Security

After the enactment of the Social Security Act of 1935 (42 U.S.C. § 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.

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THE
GOVERNMENT
[THAT THE
FRAMERS OF THE
CONSTITUTION]
DEVELOPED 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

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 he 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.

FURTHER READINGS

Taylor, Stacy A. 2006. "A Subtle Revolution as Winters Lead the Bench." *Christian Science Monitor* (January 5).
Larose, Denise. 2002. "Court Rules on Pathosuous Conception." *Associated Press* (January 2).

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 establishment 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.

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 HOLSTON, the first African American to win a case before the U.S. Supreme Court. Holston 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 Holston offered him a position with the National Association for the Advancement of Colored People (NAACP).

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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.

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

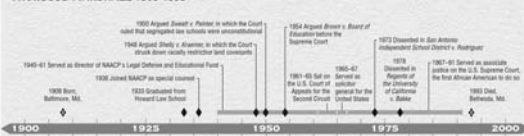


Thurgood Marshall.
LIBRARY OF CONGRESS

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

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THURGOOD MARSHALL 1908-1993



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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 twentieth 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 "generational equity." They expressed 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.

Analysis 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 reduction 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 return on stocks have historically exceeded those on federal government bonds, where all Social Security

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. BAKE*, 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 *Annals of the United States 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.

FURTHER READINGS

Bland, Randall Watson. 2001. *Justice Thurgood Marshall: Crusader for Liberty: His Judicial Biography* (1908-1993). Bethesda, Md.: Academia Press.

Clemson, U.W., and Bryan K. Felt. 2003. "Lawyers, Civil Disobedience, and Equality in the Twenty-First Century: Lessons from Two American Heroes." *Alabama Law Review* 34 (spring): 559-83.

Kennedy, Randall. 1999. "Thurgood's Coming." *Long Before He Became the Nation's First Black Supreme Court Justice*. Thurgood Marshall Was a Lawyer on the Razor's Edge of American Social Struggle. *American Lawyer* 21 (December): 94.

Malow, Richard H.W. 1999. "Thurgood Marshall and the High Court—the Two Decades Jurisprudence of a Conscience." *Appellate Law Review* 26 (January): 289-332.

Tushnet, Mark V. 1997. *Making Constitutional Law: Thurgood Marshall and the Supreme Court, 1961-1991*. New York: Oxford Univ. Press.

Williams, Juan. *Thurgood Marshall: American Revolutionary*. 2000. New York: Times Books.

CROSS-REFERENCES

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.

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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VOLUME 2



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helps to expand and fuel the frame-
work of our Republic.



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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 docu-

ments, 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 Birmingham 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.

Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed. 2d 694 (1966)

1 2 3 4 5 6 7

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.

<i>Brady Handgun Violence Prevention Act,</i>	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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B (cont.)

❖ **BEAN, ROY**

Roy Bean achieved prominence for his unconventional law enforcement procedures. His methods for enforcing the law were questionable and unorthodox.

Bean was born circa 1825, in Mason County, Kentucky. His career included many undertakings, not always legal. In 1847, he was in charge of a trading post in Mexico. Accused of cattle rustling in 1849, he was forced back to the United States. He was a member of a group of vigilantes who fought for the Confederacy during the Civil War. Bean was a saloonkeeper and a gambler in the postwar years. In 1882 Bean settled in Texas.

He changed the name of the Texas camp where he lived from Vinegaroon to Langtry and established himself as **JUSTICE OF THE PEACE**. His saloon was the courthouse where Bean presided as judge, using a law book, a gun, his

sense of humor, and practical thinking as his guides to making judicial decisions.

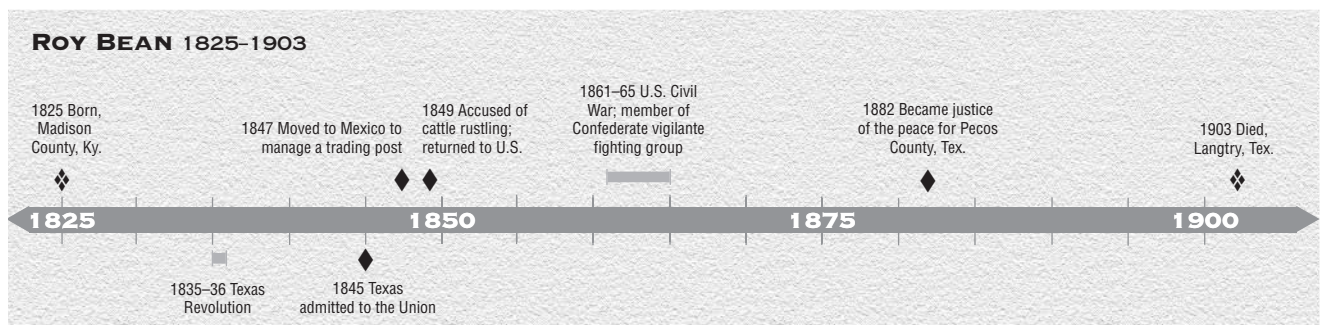
Bean died March 16, 1903, in Langtry.

❖ **BEARD, CHARLES AUSTIN**

Few academicians achieve the public recognition and professional respect accorded to historian Charles Austin Beard. His polemic *An Economic Interpretation of the Constitution of the United States* stirred debate among fellow scholars and the U.S. public by contradicting the popular understanding of how and why the United States was founded. A brilliant, original thinker, Beard achieved a unique prominence among twentieth-century historians and political scientists.

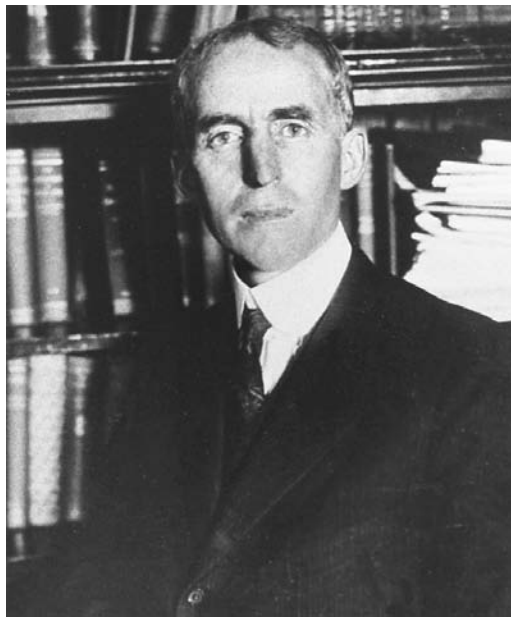
Beard was born to well-to-do parents in Knightstown, Indiana, on November 27, 1874. After graduating from Indiana's DePauw University in 1898, he sailed to England to attend

"THAT'S MY
RULIN'."
—ROY BEAN



Charles Austin
Beard.

LIBRARY OF CONGRESS



the University of Oxford. While at Oxford, he helped establish Ruskin Hall, a college for British working men that represented to Beard the liberation of the English masses from upper-class domination. In Beard's mind, Ruskin Hall was a symbol and precursor of the true political democracy that would be ushered in by the industrial revolution.

In 1900 Beard returned briefly to the United States to marry Mary Ritter. An intellectual in her own right, Mary Ritter Beard became an invaluable critic and collaborator in the more than fifty books produced during Beard's prolific career. After his marriage, Beard resumed his studies in England, then returned permanently to the United States. He earned his doctor's degree from New York City's Columbia University and in 1904 accepted a teaching position in political science at Columbia.

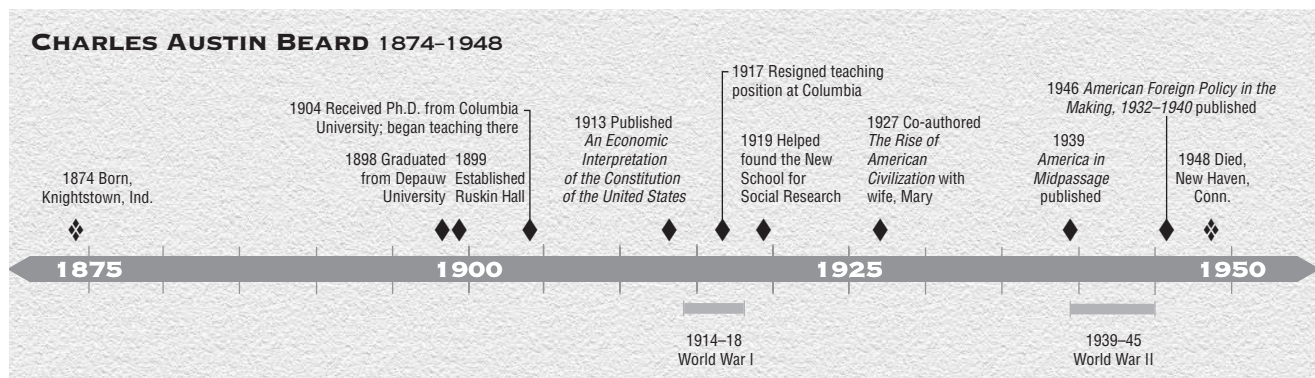
In 1913, Beard published *An Economic Interpretation of the Constitution of the United States*. The book created a mild sensation because it suggested that the United States was not yet a true democracy. Even more disturbing to some U.S. citizens was Beard's argument that the U.S. Constitution was designed primarily to protect the property rights of the wealthy capitalists attending the Constitutional Convention. He insisted that self-interest, not democratic principles, motivated the Founding Fathers. To Beard, the Constitution was a tribute to the power of class, not democracy.

Although several U.S. politicians criticized Beard's unorthodox view of U.S. history, many of his colleagues praised his innovative approach. They understood how the private economic interests of the colonial ruling class could have had a far-reaching effect on the nascent U.S. government.

In 1917 Beard protested the firing of several Columbia University faculty members by resigning his own position. Beard had been outraged when the university dismissed his colleagues for their refusal to support the United States' involvement in WORLD WAR I. In 1919 he helped found the New School for Social Research in New York City.

In 1927 Beard produced another remarkable tome, *The Rise of American Civilization*. Coauthored by his wife, it provided an overview of U.S. history with further insights into the government's origins. This sprawling, two-volume set was followed by *America in Midpassage*, in 1939, and *The American Spirit*, in 1942.

During the early 1930s, Beard wrote extensively about the nature of historical knowledge. He was particularly interested in historians' personal biases and the effect of those biases on the presentation of historical facts.



Although Beard was closely associated with the U.S. progressive movement and social reforms, he disagreed with several aspects of FRANKLIN D. ROOSEVELT'S NEW DEAL programs. In 1934 he began an acrimonious, decade-long campaign against Roosevelt's foreign policy. In *American Foreign Policy in the Making, 1932–1940* (1946) and *President Roosevelt and the Coming of War* (1948), Beard maintained that the United States had backed Japan into a corner and had forced the country into a war. His extreme isolationist views damaged his professional reputation to some extent.

Beard died in 1948, at the age of seventy-three. He is remembered as an accomplished historian who influenced the way U.S. citizens view their own history.

FURTHER READINGS

Noble, David W. 1985. *The End of American History*. Minneapolis: Univ. of Minnesota Press.

Snider, Keith F. 2000. "Rethinking Public Administration's Roots in Pragmatism: The Case of Charles A. Beard." *American Review of Public Administration* 30 (June): 123–43.

CROSS-REFERENCES

Constitution of the United States; Constitution of the United States "Constitutional Convention of 1787" (Sidebar); Constitution of the United States "Federalists vs. Anti-Federalists" (In Focus).

BEARER

One who is the holder or possessor of an instrument that is negotiable—for example, a check, a draft, or a note—and upon which a specific payee is not designated.

A negotiable instrument that is payable to "bearer" or to "cash" or to "the order of cash,"

that is, not naming a payee, is a bearer instrument, and is called "bearer" paper.

❖ BEASLEY, MERCER

Mercer Beasley was an eminent New Jersey jurist. He was born March 27, 1815, in Philadelphia, Pennsylvania, to Frederick and Maria Beasley. He studied at the College of New Jersey (now Princeton) but only for a year, after which he studied the law. He was admitted to the bar in 1838 and established a successful legal practice in Trenton, New Jersey. He became active in local politics, first as a Whig and later as a Democrat, before pursuing a career in the judicial system.

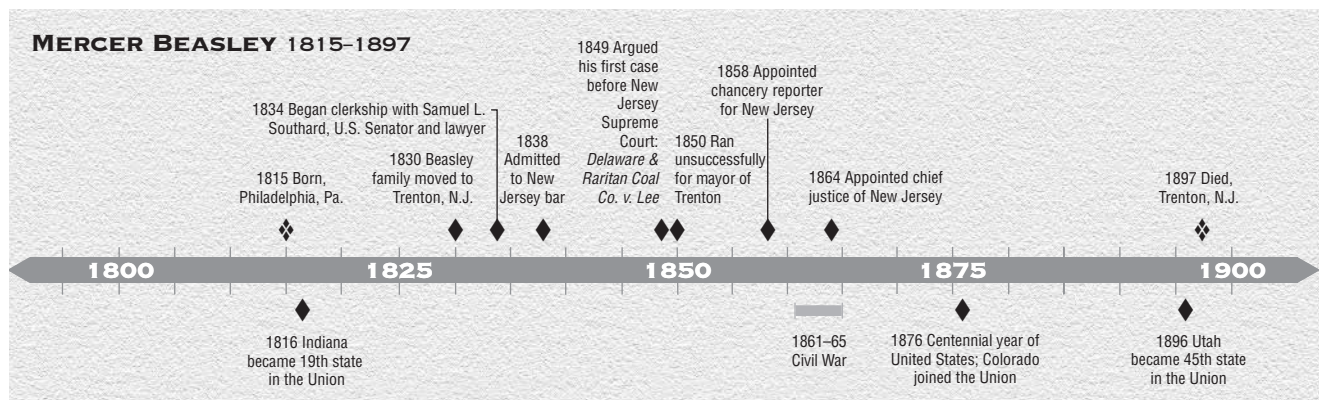
On March 8, 1864, the governor appointed Beasley to a seven-year term as the New Jersey high court's chief justice. Four succeeding governors retained him, allowing Beasley to serve on the bench for almost 33 years. He gained prominence for his equitable decisions, particularly those concerning political dissent.

Beasley died from pneumonia on February 19, 1897, in Trenton.

❖ BECCARIA, CESARE BONESANO, MARCHESE DI

Cesare Bonesano Beccaria was an expert in law and economics and put forth new principles in both fields which were widely accepted throughout Europe.

Beccaria was born March 15, 1738. He taught law and economics in Milan. He vehemently opposed CAPITAL PUNISHMENT and cruel treatment of prisoners. His economic theories concerned wages and labor and influenced such eminent economists as Adam Smith and Thomas Robert Malthus.



In 1771 Beccaria served as councilor of state and magistrate; in 1790, he was a member of a committee that advocated reform of criminal and CIVIL LAW in Lombardy.

Beccaria's ideas were published in 1764 in his *Essay on Crimes and Punishments*. The book was well received throughout Europe and greatly influenced changes in European economic and legal systems.

He died November 8, 1794, in Milan.

❖ BECKET, SAINT THOMAS

Saint Thomas Becket was chancellor of England and archbishop of Canterbury during the reign of HENRY II and was martyred following a bitter battle with the monarchy over royal control of church law.

Becket was born around 1118 in London, England, the son of a prosperous London merchant and his wife who were of Norman ancestry. He was first educated at a monastery in Merton, just outside London, and then in London grammar schools. In his late teens, he was sent to Paris for further schooling, including the study of logic, rhetoric, and philosophy. At age twenty-one, after his mother had died and his father had lost his fortune, Becket returned to London and became a city clerk to three sheriffs. Three years later, in about 1143, his father introduced him to Theobald, archbishop of Canterbury. Becket soon joined Theobald's household, becoming a clerk and later a close adviser to the archbishop. In about 1150, Theobald sent Becket to Italy and France to study civil and CANON LAW. Upon his return to Theobald's court in 1152, Becket was able to secure the papal letters that prevented the English king Stephen from crowning his son to be successor to the throne. Becket's intervention

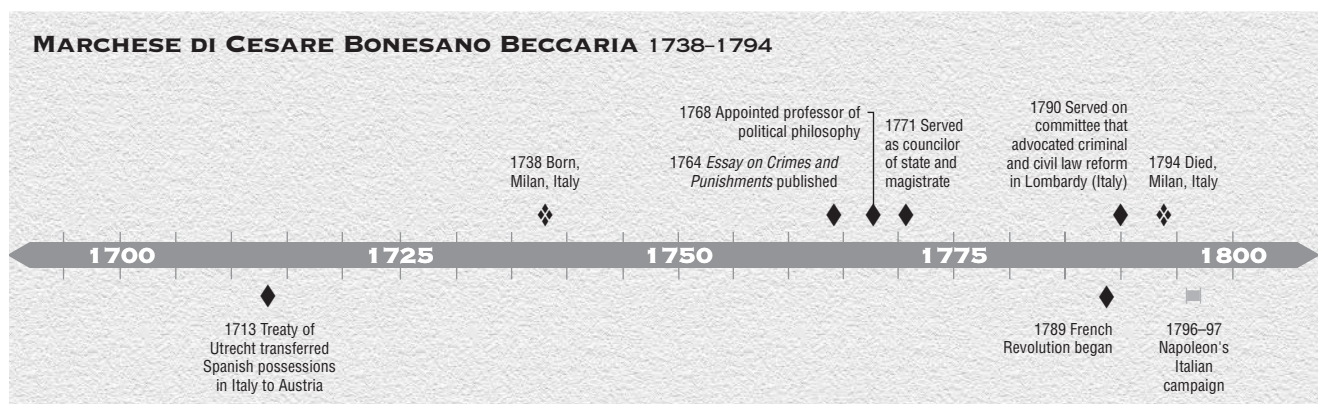
permitted Henry II, in 1154, to become the king of England.

In the same year, Theobald appointed Becket archdeacon of Canterbury. Less than three months later, on Theobald's recommendation and in gratitude for Becket's role in helping him to gain the throne, Henry II named Becket chancellor of England.

Becket became the king's most trusted adviser and a constant and devoted companion. He was an effective chancellor, leading troops into war, repairing castles, conducting foreign policy, and negotiating a marriage between Prince Henry, son of the king, and the daughter of King Louis VII of France. Becket lived luxuriously, holding extravagant receptions and dressing in splendid clothes. Theobald disapproved of his protégé's lavish lifestyle. To Theobald, it was inappropriate for Becket, who still remained archdeacon while serving as chancellor, to surround himself with worldly things. Becket ignored the concerns of his mentor and even refused to visit Theobald on his deathbed.

After Theobald died in 1161, Henry appointed Becket archbishop of Canterbury in 1162. Becket, aware of the influence he now wielded as a religious leader, promptly abandoned the trappings of his previous life as chancellor. He devoted himself to the study of canon law and to the spiritual obligations of his new role. He also became involved in a series of clashes between the church and the state that put him at odds with King Henry, his closest friend and confidant.

In late 1163 Henry decided to abolish certain privileges enjoyed by the clergy, which exempted them, when they were accused of crimes, from the jurisdiction of the civil courts. Criminous clerks, as they were known, were instead allowed



to stand trial before a bishop in the ecclesiastical (church) courts, which usually resulted in much milder punishments. Under Henry's reforms, an accused clerk would be required to appear first in a civil court to answer the charges. If the clerk denied the offense and asked to be heard in an ecclesiastical court, the clerk would then appear before a bishop. If convicted by the ecclesiastical court, the clerk would return to the civil court to face charges as a layperson.

Becket vehemently opposed Henry's measures. He maintained that they subjected the clergy to be punished twice for the same offense: the clergy, he argued, would lose their clerical status in the ecclesiastical courts and would also face secular penalties imposed by the civil courts. However, under intense pressure from the monarchy, Becket eventually relented and agreed verbally to Henry's proposals.

In January 1164 Henry summoned a convocation at Clarendon, where he planned to put his reforms into a document known as the *CONSTITUTIONS OF CLARENDON*, and to secure Becket's signature. But at the last minute, Becket repudiated his previous verbal agreement to the measures and refused to sign the documents, on the grounds that they violated canon law. Becket's defiance incurred the wrath of the king, who denounced him as a traitor to the throne. Henry then threatened to imprison Becket or at least force him to resign as archbishop. Becket, fearing for his safety, fled to France in late 1164 and remained in exile at Flanders for the next six years. In France, Becket struck back at Henry by excommunicating several of his councilors and threatening to excommunicate the king as well.

In 1169 Henry and Becket attempted a reconciliation, but Henry soon incensed Becket by

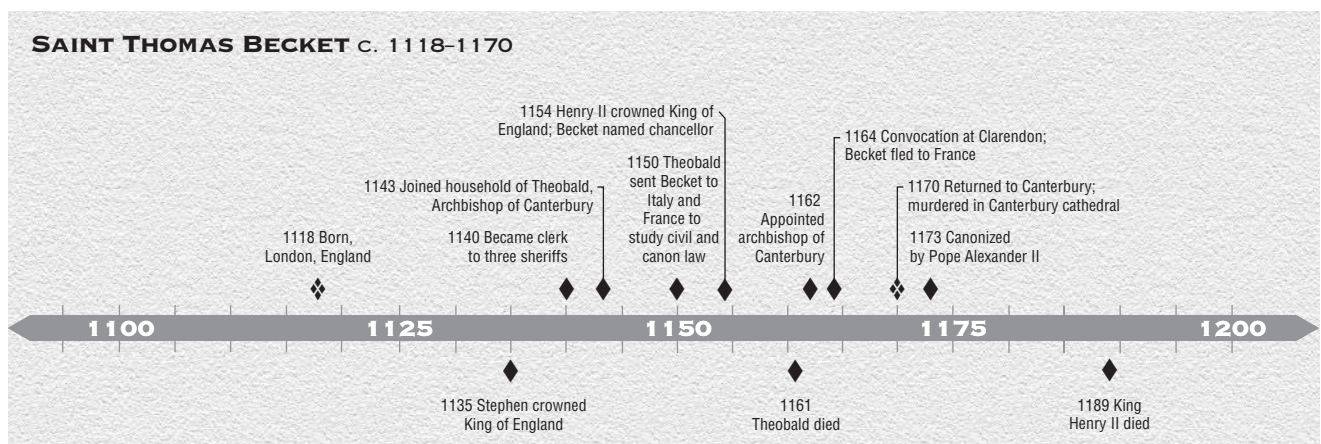
having Roger, the archbishop of York and a rival of Becket's, crown Prince Henry as his successor. Such coronations were traditionally undertaken by the archbishop of Canterbury. Becket retaliated by suspending Roger and the other bishops who participated in the coronation.

In late 1170 Henry and Becket briefly resolved their differences and Becket returned to Canterbury amid great fanfare. Almost immediately, however, officers of the king demanded that Becket absolve the suspended bishops involved in Prince Henry's coronation. Becket steadfastly refused, maintaining that only the pope had the authority to give absolution.

The king, by now exasperated with Becket, is said to have uttered, in a fit of anger, "Will nobody rid me of this turbulent priest?" Four of his knights took his plea literally and on December 29, 1170, went to Canterbury, where they confronted Becket in the cathedral and again demanded that he absolve the suspended bishops. Becket refused. The knights beat him over the head repeatedly with their swords until he died.

Word of Becket's murder spread quickly, and his tomb soon became a shrine visited by thousands of pilgrims. Becket, in his early fifties at the time of his death, was canonized by Pope Alexander II in 1173. Henry II did penance at Canterbury and was absolved of the murder. The four assassins did fourteen years' service in the Holy Land as penance for the crime. A later English king, Henry III, had Becket's remains placed in a more elaborate tomb at Canterbury, which remained a popular place of pilgrimage. The religious journeys to Becket's tomb became the basis for Chaucer's masterpiece *Canterbury Tales*, which was written almost two hundred years after Becket's death.

"IF IT BE A QUESTION OF TEMPORAL MATTERS, WE SHOULD RATHER FEAR THE LOSS OF SOULS THAN OF TEMPORALITIES."
—THOMAS BECKET



In 1538 Henry VIII became embroiled in his own struggles with the church and viewed the pilgrimages to Becket's tomb with increasing hostility. As a result, he had the shrine destroyed and reportedly had Becket's bones burned.

FURTHER READINGS

Barlow, Frank. 1986. *Thomas Becket*. Berkeley: Univ. of California Press.

Knowles, David. 1971. *Thomas Becket*. Stanford, Calif.: Stanford Univ. Press.

Staunton, Michael. 2001. *The Lives of Thomas Becket*. New York: Manchester Univ. Press.

❖ BEECHER, HENRY WARD

Henry Ward Beecher was one of the most prominent U.S. ministers of the nineteenth century as well as an active participant in various reform movements.

Beecher was born June 24, 1813, in Litchfield, Connecticut. He was the son of preacher Lyman Beecher and the brother of **HARRIET BEECHER STOWE**, author of *Uncle Tom's Cabin*. He studied at Amherst College and Lane Theological Seminary and served as a novice minister in Indiana before becoming minister at the Plymouth Congregational Church in Brooklyn, New York, in 1847. A liberal thinker, Beecher was in favor of such principles as women's suffrage, **ABOLITION** of **SLAVERY**, and acceptance of the theory of evolution and often lectured on these and other controversial ideas from the pulpit.

Beecher excelled as a speaker and in 1863 he went on a lecture tour throughout England and spoke in support of the Union position in the Civil War.

In 1875, Beecher, regarded as one of the United States' foremost preachers, was involved in a sensational trial that damaged his honor. Journalist Theodore Tilton accused the minister



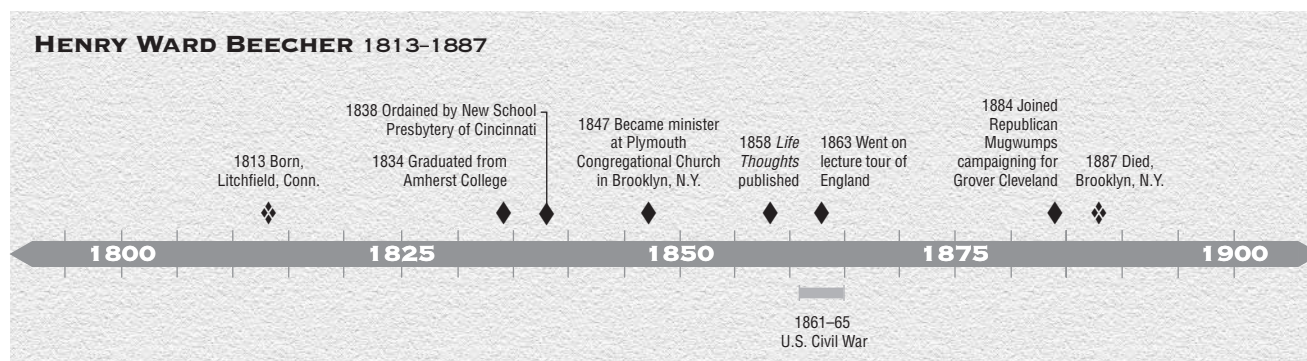
Henry Ward Beecher. LIBRARY OF CONGRESS

of committing **ADULTERY** with Mrs. Tilton. Beecher was expertly defended by his attorney, **WILLIAM M. EVARTS**, and, after a lengthy trial, the jury could not agree on a verdict. Beecher's church proclaimed him the victor and officially cleared him of the charges. In spite of the scandal, Beecher continued to be an influential force in the U.S. ministry until his death on March 8, 1887, in Brooklyn.

BELIEF

Mental reliance on or acceptance of a particular concept, which is arrived at by weighing external evidence, facts, and personal observation and experience.

"IT USUALLY
TAKES A HUNDRED
YEARS TO MAKE A
LAW, AND THEN,
AFTER IT HAS
DONE ITS WORK, IT
USUALLY TAKES A
HUNDRED YEARS
TO GET RID OF IT."
—HENRY BEECHER



Belief is essentially a subjective feeling about the validity of an idea or set of facts. It is more than a mere suspicion and less than concrete knowledge. Unlike suspicion, which is based primarily on inner personal conviction, belief is founded upon assurance gained by empirical evidence and from other people. Positive knowledge, as contrasted with belief, is the clear perception of existing facts.

Belief has been defined as having faith in an idea or formulating a conclusion as the result of considering information. Information and belief is a legal term that is used to describe an allegation based upon GOOD FAITH rather than first-hand knowledge.

❖ BELL, DERRICK ALBERT, JR.

Derrick Albert Bell Jr. was the first tenured black law professor at Harvard Law School, a renegade CIVIL RIGHTS scholar and proponent and a prolific author of civil rights-related works, including the critically acclaimed books *And We Are Not Saved: The Elusive Quest for Racial Justice* (1987) and *Faces at the Bottom of the Well: The Permanence of Racism* (1992).

Bell was born November 6, 1930, in Pittsburgh. The seeds of his views on racial injustice—and his response to racial bigotry and prejudice—were sown in the Great Depression. When he was five years old, he watched his mother, Ada Elizabeth Bell, demand that the family's landlord fix the rotted stairs behind their apartment. His mother finally told the landlord, who had ignored her requests for months, that she refused to pay the rent unless he fixed the stairs. A few days later, the landlord fixed their steps—and all the other broken steps on their road. Bell's interpretation of the event? "Good things happen when you push." Bell has also said that he carries his father's "dignified suspicion" of whites in hard-time Pittsburgh and his mother's homespun conception of a rights-based economy of self-respecting agitation.

The eldest of four children, Bell earned a bachelor of arts degree and an Air Force commission when he graduated from Duquesne University in 1952, and then he served in the KOREAN WAR. While in the Air Force, Bell made his first discreet push for racial equality: he complained to the commanding officer at a base in Louisiana about black soldiers having to sit in the back of the bus whenever they left base. After



Derrick A. Bell Jr.
COURTESY OF
DERRICK BELL

his military stint, he attended the University of Pittsburgh School of Law, lived at home, and kept the books for his father, Derrick Bell Sr., who ran a trash-collection business. Bell was elected as the associate editor-in-chief for the *Pittsburgh Law Review*, a prestigious position for a student to hold at any law school. He competed strenuously in law school and has admitted to being "a little obnoxious" in his attempt to succeed in an otherwise all-white class: in the yearbook, underneath his picture, the following description is given: "Knows everything and wants others to know he knows everything."

After graduating fourth in his class and being admitted to the District of Columbia bar in 1957, Bell applied to a top local law firm, which had asked the law school to send over its best students. "When I walked in, there were all these gasps," he said. "It was like a line of heart attacks down the hall." Bell did not get the job, but he did go on to become one of only three black attorneys at the U.S. DEPARTMENT OF JUSTICE after being assigned to the Civil Rights Division. His first professional act of defiance came in 1959, when he quit his job at the Justice Department in protest after being told to give up his membership in the National Association for the Advancement of Colored People (NAACP), which the Justice Department considered a conflict of interest.

Bell returned to Pittsburgh and although he had passed the Pennsylvania bar, he accepted the position of executive secretary of the NAACP's Pittsburgh branch. A year later he was recruited

"CIVIL RIGHTS
CAMPAIGNS AIMED
AT CHANGING THE
RULES WITHOUT
AFFECTING THE
UNDERLYING
STATUS QUO."
—DERRICK BELL JR.

by its then-director, THURGOOD MARSHALL, to join the staff of the NAACP LEGAL DEFENSE AND EDUCATIONAL FUND to champion the cause of racial equality. After starting as the executive secretary for the Pittsburgh branch of the Defense Fund, Bell was promoted to first assistant counsel at the New York City branch, where he remained from 1960 to 1966. While working as a civil rights lawyer, he confronted many difficult people and situations—from judges predisposed to ruling against his black clients to segregated public buildings. During this time, Bell spent a night in jail in Mississippi for refusing to leave a train station’s “whites-only” waiting room. He oversaw 300 SCHOOL DESEGREGATION cases and played a central role in getting JAMES MEREDITH, a black student, admitted to the all-white University of Mississippi, despite the resistance of Governor Ross Barnett. “Down South, I learned a lot. . . . It just seems that unless something’s pushed, unless you litigate or protest, nothing happens,” Bell said.

In 1966 Bell was admitted to the New York bar. From 1966 to 1968, he served as deputy director of the U.S. Department of Health, Education, and Welfare’s Office for Civil Rights. In 1968 he moved to California and became the executive director of the Western Center of Law and Poverty, at the University of Southern California (USC). He passed the California bar in 1969 and taught law as an adjunct professor at USC’s law center.

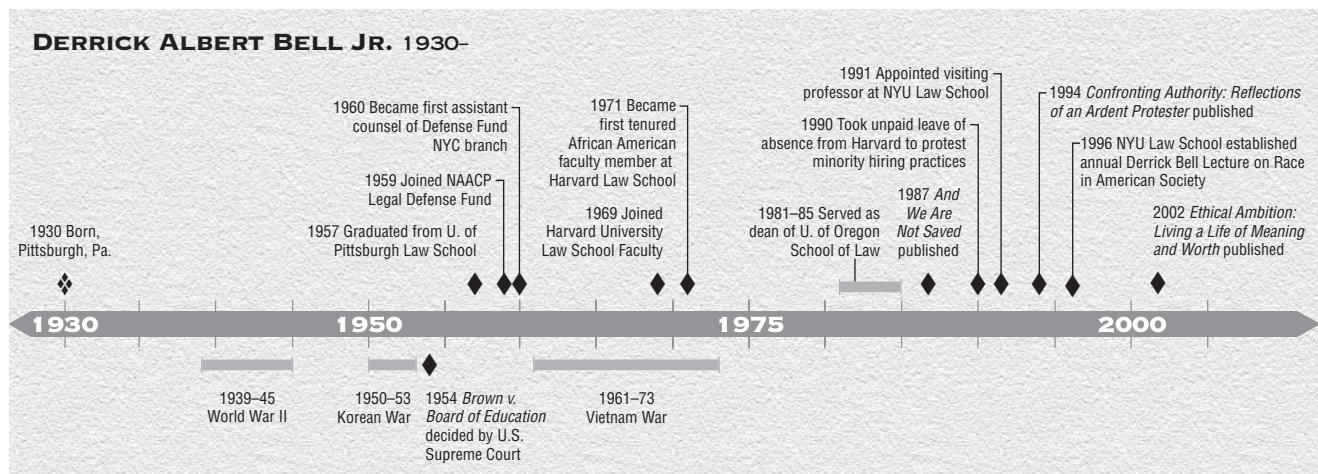
After the 1968 assassination of Dr. MARTIN LUTHER KING JR. and inner-city riots, Bell received a number of offers to teach law, including one from Harvard. He accepted Harvard’s offer and lectured there from 1969 to 1971, after

telling the school that he was willing to be the first black there but not the last. In 1971, after Bell challenged the school to vote on his tenure, he became the law school’s first tenured African American faculty member, a position he kept until December 1980. During his tenure, he wrote several articles and the text, *Race, Racism and American Law* (1973; 4th ed. in 2000).

Bell left Harvard in January 1981 to become a professor and the dean of the University of Oregon School of Law. He resigned from there in 1985, when the school refused to back his decision to offer a tenure-line position to an Asian American woman. The same year, he published the foreword in the *Harvard Law Review*, “The Civil Rights Chronicles.” In 1996 the Society of American Law Teachers named him Teacher of the Year.

After leaving Oregon, Bell spent a semester the next year as a visiting professor at Stanford Law School, where, once again, he found himself mired in controversy—this time for his revisionist teaching of CONSTITUTIONAL LAW. Some Stanford law students, who disliked Bell’s interpretation of the Constitution, pressured the faculty into offering supplemental lectures from other professors. Shortly before the first of these additional lectures, Stanford’s Black Law Student Association staged a protest, and the administration made a formal apology to Bell.

In the fall of 1986 Bell returned to Harvard to teach law. He soon was caught up—yet again—in racial discord. During commencement exercises in May of 1987, he staged a four-day round-the-clock sit-in inside his office to protest the denial of tenure to two members of the CRITICAL LEGAL STUDIES movement, a left-



ist movement that challenges the basic tenets of LEGAL EDUCATION and scholarship. Also in 1987, Bell's alter ego, Geneva Crenshaw, who had first come to life in his Harvard Law School foreword, became the heroine in the pages of his book *And We Are Not Saved*. At the fulcrum of this collection of ten allegorical tales was the contention that racism is an immutable, permanent problem in U.S. society; Bell used Socratic dialogues between himself, as narrator, and Crenshaw, a black civil rights lawyer, to measure the "progress" of blacks since *BROWN V. BOARD OF EDUCATION*, 349 U.S. 294, 75 S. Ct. 753, 99 L. Ed. 1083 (1955). Further, in 1987, Bell spoke out in support of Justice Thurgood Marshall, whose minority report that year had criticized the Constitution and blacks' "token presence" in the bicentennial celebrations: "We need . . . more candor about why the *Constitution* was written the way it was and what still needs to be done to insure individual rights," said Bell.

The following year, Bell wrote *Civil Rights in Two Thousand Four: Where Will We Be?* Also in 1988, he wrote a scathing indictment of Harvard Law's AFFIRMATIVE ACTION performance; his article, published in 1989 by the *Michigan Law Review*, gave a fictional account of how Harvard came to hire more minorities only after the school's black faculty and the university president were killed in a terrorist bombing. Bell was privately criticized for having dared to paint a grisly portrait of the president of Harvard being blown to pieces. Robert C. Clark, a professor at Harvard and a future dean of the school, objected to Bell's many protests, saying, "This is a university, not a lunch counter in the Deep South." "In its own way, this law school is as much in need of reform as the lunch counters of the South, although in a far more subtle way," said Bell. Clark later apologized and spoke of sharing Bell's goal of building a diverse faculty.

Bell's dissension at Harvard came to a head in the spring of 1990, when Professor Regina Austin was denied tenure at the law school. In early April, students on 50 law campuses boycotted classes in a call for more minority teachers; later that month, Bell announced that he would step down—and forgo his \$100,000 annual salary—until a black or other minority woman was considered for tenure. Of the school's sixty-five full-time professors at the time, five were white women and five were black men.

Bell's position was that qualified persons of color were not getting through an obsolete and irrelevant tenure-granting process, despite their qualifications and the valuable perspective they could provide law students. He said the traditional checklist for tenure—Was the candidate at the top of his or her law class? an editor on law review? someone with prestigious clerkships?—must be made more flexible when considering minority professors. "The traditional way of doing legal scholarship doesn't do justice to our experience," said Bell. "But minorities who are trying to blaze new trails in legal academia are meeting opposition and silencing." Comparing Bell to Rosa Parks—a black woman who refused to sit in the back of the bus in Montgomery, Alabama, in 1955—the Reverend JESSE JACKSON offered in May 1990 to mediate between the school and Bell. Harvard turned down the offer.

Many observers marveled at the public attention attracted by Bell's dramatic move at Harvard—among them, Richard H. Chused, professor of the Georgetown University Law Center, who in 1989 published an empirical study demonstrating the lack of diversity within law school faculties, and Nathaniel R. Jones, judge for the federal Ninth Circuit Court of Appeals and a part-time Harvard Law instructor. Not all of Bell's colleagues agreed with this form of protest, however. Professor Charles Fried, of Harvard Law, called Bell "off his head," and others termed him "counterproductive." Dean Clark continued to assert that Harvard should make appointments based on merits and not because of protests.

Bell's struggle with Harvard may not have been entirely for naught: in September 1992, Dean Clark acknowledged bitter divisions within the school and created a working group of faculty, students, and staff to improve the level of civility and community and to foster discussion of issues that had shaken the institution. And in June 1993, Harvard granted tenure to its seventh black law professor, Charles Ogletree.

In the early 2000s, Bell was continued to be a prolific writer. In addition to publishing other books such as *Confronting Authority: Reflections of An Ardent Protestor* (1996), *Constitutional Conflicts* (1997), *Afrolantica Legacies* (1998), and *Ethical Ambition: Living a Life of Meaning and Worth* (2002), he is also the author of a foreword in *Critical Race Feminism: A Reader*. Bell's articles have appeared in the *New York Times Magazine*, the *Boston Globe*, the *Los Angeles Times*, and

the *Christian Science Monitor* as well as *Essence*, and *Mother Jones* magazine.

Since 1991 Bell has been a visiting professor at New York University Law School. He has written commentary for a number of legal journals including those of Harvard, Yale, Columbia, and the University of Michigan. Bell continues to lecture around the country and to comment on legal issues on radio and television programs. He anticipated that New York University Press would publish his book critiquing the 1954 decision in *Brown v. Board of Education* in early 2004.

FURTHER READINGS

"Action of Harvard's Prof. Bell Focuses Attention on Diversity." 1990. *National Law Journal* (May 7).

Association of American Law Schools. 1993. *Directory of Law Teachers*. Association of American Law Schools.

"Bell, Harvard Agree to Disagree on His Departure." 1992. *National Law Journal* (July 20).

"Bell Still Teaching." 1990. *National Law Journal* (November 12).

"Bell Wants Harvard." 1992. *National Law Journal* (March 23).

Carter, Stephen L. 1991. *Reflections of an Affirmative Action Baby*. New York: Basic Books.

Delgado, Richard, and Jean Stefancic. 1999. *Critical Race Theory: The Cutting Edge*. Philadelphia: Temple Univ. Press.

Essed, Philomena, and Davie Goldberg. 2001 ed. *Race Critical Theories*. New York: Blackwell.

"In Move to NYU, Derrick Bell Cites Friendship with Its Dean." 1991. *National Law Journal* (April 22).

"Prof. Moves." 1991. *National Law Journal* (April 15).

CROSS-REFERENCES

Civil Rights; Discrimination; Legal Education.

❖ BELL, GRIFFIN BOYETTE

Griffin Boyette Bell served as U.S. attorney general from 1977 to 1979 under President JIMMY CARTER and before that from 1961 to 1976 as a judge on the U.S. Court of Appeals for the Fifth Circuit. He is also nationally recognized for his skills as a corporate lawyer.

Bell was born October 31, 1918, in Americus, Georgia, only 12 miles from Plains, Georgia, the boyhood home of Carter. (In fact, Carter and Bell knew each other as children.) Bell served in the U.S. Army during WORLD WAR II. After the war, he studied at Mercer University Law School, graduating cum laude in 1948. He gained admission to the Georgia bar in 1947.

Bell practiced law in Savannah, Georgia, and Rome, Georgia, from 1947 to 1953, after which

he moved to Atlanta to work in the prestigious firm of King and Spalding, where he eventually earned the position of managing partner. Bell also became involved in politics, serving from 1959 to 1961 as chief of staff to Governor S. Ernest Vandiver, of Georgia.

SCHOOL DESEGREGATION was a heated issue at the time. Governor Vandiver vigorously opposed desegregation, inventing the slogan "No, Not One" to symbolize his goal of keeping Georgia's schools completely segregated. Bell acted as a moderating influence on Vandiver, working behind the scenes to ease tensions with African American leaders. Eventually, Vandiver and the Georgia legislature agreed to conditional desegregation.

Bell served as cochairman of the Georgia election campaign in 1960 for JOHN F. KENNEDY. His success at that task won him an appointment as judge to the U.S. Court of Appeals for the Fifth Circuit in 1961, a position he held through 1976. During his 15 years on the bench, he took part in over 3,000 cases, 141 of them involving school desegregation.

Observers have categorized Bell's judicial decisions as moderate to conservative. He generally supported CIVIL RIGHTS advocates in employment and VOTING RIGHTS cases, but he opposed busing as a means to achieve school desegregation. At times, his decisions could have been described as liberal, as when he supported attempts to place more African Americans on juries and approved AFFIRMATIVE ACTION hiring for the Mississippi Highway Patrol. His most influential work was the initiation of a reform scheme that improved the efficiency of the court system.

Bell also served as cochairman of the Atlanta Commission on Crime and Delinquency from 1965 to 1966. He resigned from the appeals court in 1976, resumed private practice, and served as legal adviser to Carter during Carter's presidential campaign that year. Once elected as president, Carter named Bell attorney general, a move that disappointed those who had hoped Carter would appoint an African American or a woman to the office. Bell's nomination ran into trouble when it was revealed that he belonged to three clubs that were in effect racially segregated. Bell agreed to quit the clubs and was nominated to the post of attorney general on January 25, 1977.

Upon taking office, Bell defused some of the opposition to his appointment by naming African Americans to the posts of SOLICITOR

"IF YOU BELIEVE
IN EXALTING THE
BILL OF RIGHTS
... YOU HAVE TO
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—GRIFFIN BELL

GENERAL and assistant attorney general. He also appointed women to other key positions in the department and to federal judgeships. Later, Bell proudly pointed out that 41 women were appointed and confirmed to the federal bench during the Carter administration, producing an eightfold increase in the number of federal judgeships occupied by women. As attorney general, Bell again championed court reform and also pushed for greater FEDERAL BUREAU OF INVESTIGATION involvement in pursuing white-collar, narcotics, and antitrust violations.

Bell resigned as attorney general in 1979 and resumed his work in private practice as senior partner at King and Spalding. Bell has been called on frequently by Fortune 500 corporations for advice on difficult legal issues. He led independent investigations of Exxon Corporation's actions following a 1989 oil spill in Prince William Sound, off the coast of Alaska, and, in 1992, Dow Corning Corporation's handling of lawsuits resulting from its silicone breast implants. In the early 2000s Bell continued to focus on giving advice and counsel on matters relating to corporate crime. His organization of the firm's Special Matters Group assembled lawyers with a wide variety of experience in representing corporations charged with civil or corporate wrongdoing. He served as an arbitrator on two international ARBITRATION panels as well as an advisor on several major corporate litigation cases.

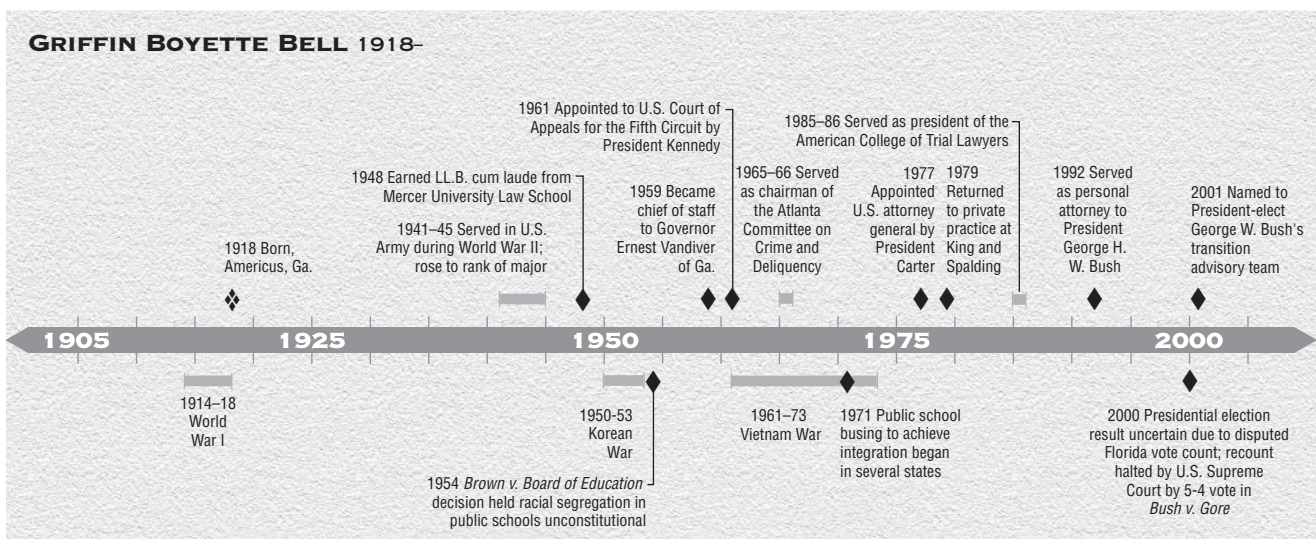
Bell served as cochairman of the National Task Force on Violent Crime in 1981 and cochairman of the Committee on Federal Ethics



Griffin Boyette Bell.
AP/WIDE WORLD
PHOTOS

in 1989. He has also served as president of the American College of Trial Lawyers. Bell received an honorary doctor of laws degree from Mercer University in 1967 and the ORDER OF THE COIF from Vanderbilt Law School. In 1982, he published *Taking Care of the Law*, which relates his experiences as attorney general and sets forth his recommendations for legal reform and the reduction of government bureaucracy.

After the SEPTEMBER 11TH ATTACKS of 2001, Bell wrote an editorial for the *Wall Street Journal* addressing the issue of the curtailment of civil liberties. In November 2001 he testified on the



same issue before the SENATE JUDICIARY COMMITTEE. In February 2003, the *Washington Post* reported that the Pentagon, in response to complaints from some lawmakers and civil liberties groups, planned to create an oversight board and outside advisory committee to track the activity of a global data-surveillance research program known as the Total Information Awareness Project. Griffin Bell was named to the advisory committee that would advise the secretary of defense on the social and legal implications of the new surveillance technology.

FURTHER READINGS

- Baker, Nancy V. 1992. *Conflicting Loyalties: Law and Politics in the Attorney General's Office, 1789–1990*. Lawrence: Univ. Press of Kansas.
- Bell, Griffin B. 1978. "The Attorney General: The Federal Government's Chief Lawyer and Chief Litigator, or One Among Many?" *Fordham Law Review* 46 (May).
- Bell, Griffin B., with Ronald J. Ostrow. 1982. *Taking Care of the Law*. New York: Morrow. Reprint 1986. Macon, Ga.: Mercer Univ. Press.
- Blum, Andrew. 1993. "In Bell Probe for Dow, Bid Made for Implant Papers." *National Law Journal* (February 1).
- . 1989. "Valdez Captain Takes Offensive." *National Law Journal* (October 23).
- Dillard, Stephen Louis A. 2003. "Griffin Bell" in *Great American Judges: An Encyclopedia*. Edited by John R. Vile. Santa Barbara, Calif.: ABC-CLIO. Reprinted online at <www.kslaw.com/library/pdf/griffinbell.pdf> (accessed August 27, 2003).
- Justice Department. 1991. *200th Anniversary of the Office of the Attorney General, 1789–1989*. Washington, D.C.: Department of Justice, Office of Attorney General and Justice Management Division.
- Murphy, Reg. 1999. *Uncommon Sense: The Achievement of Griffin Bell*. Atlanta, Ga.: Longstreet.

❖ BELL, JOHN

John Bell was born February 15, 1797, near Nashville, Tennessee. He graduated from Cumberland College in Nashville in 1817 and was admitted to the bar in the same year. He prac-



John Bell. LIBRARY OF CONGRESS

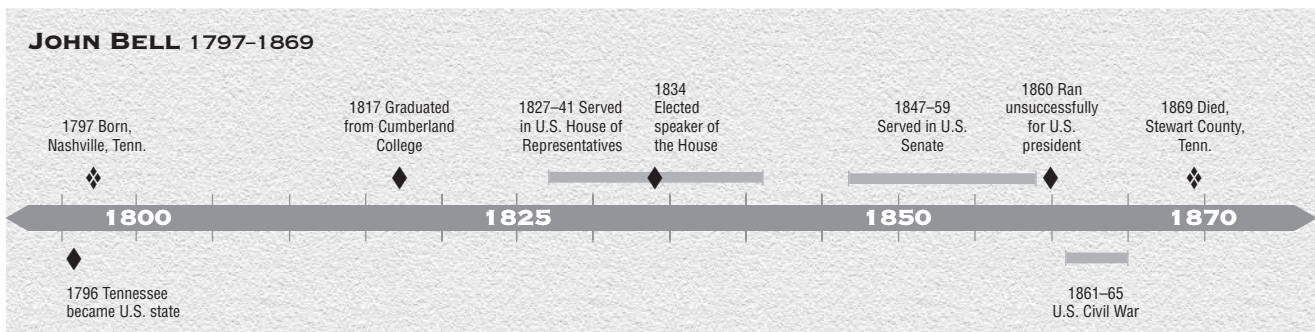
ticed law in Franklin and Nashville, Tennessee, before entering politics.

From 1827 to 1841, Bell served as a congressman for Tennessee in the U.S. House of Representatives. He voiced strong opposition to Andrew Jackson's program for the deposit of federal funds into state banks and to the elimination of the BANK OF THE UNITED STATES.

Bell was secretary of war in 1841 and then U.S. senator for Tennessee for twelve years beginning in 1847.

In 1860 Bell was the unsuccessful presidential candidate of a small party known as the Constitutional Union Party. He favored a cautious policy concerning SLAVERY and opposed

"IT FOLLOWS THAT
POPULARITY IS
NOT ALWAYS THE
BEST TEST OF
MERIT, OR OF
GENERAL
PROPRIETY."
—JOHN BELL



the South's secession from the Union until the battle of Fort Sumter signaled the outbreak of the Civil War; he then encouraged Tennessee to join the Confederacy.

Bell died September 10, 1869, in Stewart County, Tennessee.

BELOW

In an inferior, subordinate, or lower place in regard to any entity.

A court below is a lower court through which a case has passed. A case is removed for review from the court below to the court above, or a higher court. The forum where a lawsuit is initially brought is called an inferior court, or the court below.

BENCH

A forum of justice comprised of the judge or judges of a court. The seat of the court occupied by the judges.

The bench is used to refer to a group of judges as a collective whole. It is a tribunal or place where justice is administered. To appear before the full bench means to appear before the entire group of judges of the court.

BENCH TRIAL

A trial conducted before a judge presiding without a jury.

BENCH WARRANT

A process that is initiated by the court pro se in order to attach or arrest a person. An order that a judge, or group of judges, issues directly to the police with the purpose of directing a person's arrest.

A bench warrant is used for attachment or arrest in a case of CONTEMPT, which is the willful disregard or disobedience of an authority such as the court. A bench warrant is also issued when an indictment, which is a written accusation of a person's guilt for an act or omission, is handed down. A third instance where a bench warrant is issued is to obtain a witness who disobeys a subpoena, which is a command to appear at a specified time and place to present testimony upon a certain matter.

BENEFICIAL ASSOCIATION

An incorporated or voluntary nonprofit organization that has been created primarily to protect and aid its members and their dependents.

Beneficial association is an all-inclusive term that refers to an organization that exists for the mutual assistance of its members or its members' families, relatives, or designated beneficiaries, during times of hardship, such as illness or financial need. The assistance provided by a beneficial association can take the form of life, accident, health, or burial insurance. Beneficial associations may also be called benevolent associations, fraternal societies, fraternal orders, or friendly associations or societies.

History

Early beneficial associations were similar to the English friendly societies, which first appeared in the 1500s. Working people organized these clubs to provide sickness and death benefits for members. Several fraternal societies established branches in the United States and Canada in the early 1800s.

The Ancient Order of United Workmen, founded in 1868, was the first beneficial association to pay substantial death benefits. Other groups that followed its model were soon created. These early associations and societies furnished life insurance to members whose income was so low they could not have otherwise obtained insurance benefits. In addition, many of these associations provided companionship and social activities for their members.

The National Fraternal Congress was formed in 1886 to provide state regulation and uniform legislation for beneficial associations. In 1901, a group of associations and societies formed the Associated Fraternities of America. In 1913, the two groups merged to form the National Fraternal Congress of America.

Beneficial associations include the Police Benevolent Association, Loyal Order of the Moose, Knights of Columbus, Independent Order of Odd Fellows, and Benevolent and Protective Order of Elks. Many of these associations are secret lodges, with passwords, ceremonies, and initiation rites.

Organization and Incorporation

The common-law right of contract authorizes the formation of a beneficial association through the voluntary association of its members. Incorporation of a beneficial association may occur either by a specific legislative act or under general statutes that expressly authorize such incorporation. Some states codify laws pertaining to the formation and incorporation of beneficial associations in their nonprofit corpo-

*A sample bench
warrant*

Bench Warrant

STATE OF NEW MEXICO COUNTY OF _____ JUDICIAL DISTRICT

STATE OF NEW MEXICO v. No. _____, Defendant

BENCH WARRANT

THE STATE OF NEW MEXICO TO ANY OFFICER AUTHORIZED TO EXECUTE THIS WARRANT:

YOU ARE HEREBY COMMANDED to arrest _____ and bring (him) (her) forthwith before this court to answer the following charges:

(check appropriate box or boxes)

- ☐ grand jury indictment filed on _____ (date) on the following charges: _____
- ☐ failure to appear at the time and place ordered by this court.
- ☐ failure to appear as required by a subpoena issued by this court.
- ☐ failure to appear in accordance with the conditions of release imposed by this court.
- ☐ conditions of release previously imposed should be revoked or reviewed.
- ☐ contempt of court.
- ☐ failure to pay fines or costs previously imposed.
- ☐ failure to comply with conditions of probation.
- ☐ Other: _____

Bond provisions:

Bond is set in the amount of \$ _____. (cash bond 10% of bond) (surety) (property bond).

Judge

Description of defendant:

Name _____ Alias _____

Date of birth _____ Social Security No. _____

Address _____

Sex (male) (female) Height _____ Weight _____

Hair color _____ Eyes _____

Scars, marks and tattoos: _____

Vehicle (make, model, year and color, if known) _____

Extradition Information:

The State will extradite the defendant from:
(check and complete)

- ☐ any contiguous State.
- ☐ anywhere in the continental United States.
- ☐ any other State.
- ☐ anywhere.

Prosecuting attorney: _____ By: _____

Date: _____

Originating officer: _____ Originating agency: _____

RETURN

I arrested the above-named person on the _____ day of _____, _____, by taking such person into custody.

Signature Title

[As amended, effective October 7, 1999.]DBD::DB2::st execute failed: [IBM][CLI Driver][DB2/6000] SQL0530N The insert or update value of the FOREIGN KEY "DBUSER.BILLDETAIL.SQL980508102800170" is not equal to any value of the parent key of the parent table. SQLSTATE=23503

ration law; they do so because beneficial associations may not be formed with the purpose of bringing a financial benefit to their founders.

A beneficial association is organized through its charter, constitution, and bylaws.

Charter The charter of a benevolent association is the basis of its legal existence and the source of its power to carry out the objects of its creation. A charter is analogous to articles of incorporation and becomes part of the contract of membership when one joins the beneficial association. For beneficial associations that elect to incorporate, the charter will be embodied in the articles of incorporation. Regardless of whether the association is incorporated, the charter incorporates by reference the general laws of the state in which the association is formed.

Constitution and Bylaws The constitution of a benevolent association defines the fundamental principles that will govern the duties of the association and its officers and the regulation of its membership. Unless the constitution is expressly embodied in the charter, it is regarded as a code of laws similar in effect to bylaws. A constitutional provision will prevail over a provision of a conflicting bylaw because it is viewed as a fundamental rule for the government of the association.

Beneficial associations may adopt bylaws that will determine all questions of discipline, doctrine, and internal policy and will regulate the association's general business activities. The enactment of a bylaw is governed by provisions contained in either the charter or the constitution. Bylaws must be in accordance with the law and public policy, must be reasonable, and must apply to all members uniformly. The constitution and the bylaws form a binding contract between and upon all the organization's members. Finally, bylaws also provide for the dissolution of a beneficial association.

Rights, Powers, and Liabilities

The authority and powers of beneficial associations are subject to the statutes under which the associations are formed and organized. An incorporated association may not enlarge the powers granted to it by the statute under which it was created. Certain powers, such as the power to enter into contractual relations, may be implied when they are essential to the accomplishment of the association's objectives. Contracts are binding upon the association when they have been executed by the appropriate officers of the association. Through its proper com-

mittees or officers, a beneficial association may enter into a lease.

Generally, a beneficial association has no power to borrow money. However, some states permit proper officers or committees to execute bonds and mortgages in order to secure building loans.

Ordinarily, beneficial associations can transact business in places other than the state within which they have been organized.

Because beneficial associations are founded on the principle of mutuality, in which each member shares all the benefits as well as all the burdens, they do not have capital stock, nor do all associations maintain a fund for paying benefits. If a fund is not maintained, each member promises to contribute an equal share with every other member as the association's need for funds arises.

Unless a statute makes a distinction, courts generally recognize a beneficial association certificate containing insurance features to be the same as any other similar insurance contract. If the certificate indemnifies a member in case of disability or death, the association will be regarded as a mutual insurance company. However, beneficial associations are not the same as insurance companies. First, beneficial associations do not have as a purpose the goal of indemnifying or securing against loss; rather, they create a trust fund with their members' dues, from which they may provide relief to their members. Second, beneficial associations are not created for profit. Third, these associations do not advertise for business but limit their clientele to their members. Finally, whereas an insurance company fixes a beneficiary's rights with the terms of the insurance policy, a beneficial association member's rights to receive benefits depend on both the certificate and the constitution and bylaws of the association.

Power to Acquire Funds and Property A beneficial association may acquire and dispose of property in a proper manner and for proper purposes, whether by sale, deed, lease, mortgage, or other document. A valid bequest of property for charitable purposes may be made to an association that has been incorporated and authorized by its charter to hold property for such purposes.

The funds of a beneficial association should be spent according to the association's purpose as defined by its charter, articles of incorporation, constitution, or bylaws.

Benefits A beneficial association's bylaws and controlling statutes specifically designate which benefits are payable to its members, and the types of benefits provided are restricted to those specified.

Beneficial associations may make payments in two ways. The first is based on the contractual agreement between the association and its members. As with an insurance policy, the members' dues are a contribution to a fund from which specified benefits are paid upon a proper claim. Disputes arising from this contractual relationship may ultimately be resolved in a court of law.

The second way a beneficial association confers payments is through an act of benevolence. The term *benevolence* means the doing of a kind or helpful action towards another, under no obligation except possibly an ethical one. A beneficial association may appoint a board to review applications for benefits not based on the contractual relationship. This board could, for example, extend additional financial benefits to a disabled member who has exhausted the benefits specified in the bylaws. If such a benefit is given as a matter of benevolence, it may not be claimed as a right, and it is not enforceable in court. Likewise, a beneficial association could donate money to a civic activity as an act of benevolence.

An association may set forth certain conditions precedent to the receipt of benefits by its members. Such conditions must be met before the right to receive benefits may be enforced.

If a member of a beneficial association defaults on the payment of dues, the member might lose the right to receive benefits.

In general, one claiming benefits from an association must exhaust all remedies within the organization before seeking judicial relief.

Liabilities A beneficial association may not ordinarily be held liable in TORT or contract for unauthorized acts of its members or agents. A voluntary unincorporated beneficial association is considered to be a joint enterprise, and no liability for tort exists between those engaged therein. An unincorporated association, may, however, be held responsible for damages resulting from the NEGLIGENCE of its employees in work of a noncharitable character.

FURTHER READINGS

"Fraternal Orders and Benefit Societies." *American Jurisprudence* 36, no. 2.

Owens, Bill. 1975. *Our Kind of People: American Groups and Rituals*. San Francisco, Calif.: Straight Arrow Books.

Whalen, William J. 1967. *Handbook of Secret Organizations*. Milwaukee, WI: Bruce.

CROSS-REFERENCES

Bylaws; Insurance.

BENEFICIAL INTEREST

Profits or advantages from property derived from the terms of a trust agreement.

A beneficiary of a trust has a beneficial interest in the trust property, the legal title of which is held by the trustee. The beneficiary receives the advantages of ownership of the property which the trustee holds and distributes according to the terms of the trust agreement.

BENEFICIAL USE

A right to utilize real property, including light, air, and access to it, in any lawful manner to gain a profit, advantage, or enjoyment from it. A right to enjoy real or PERSONAL PROPERTY held by a person who has equitable title to it while legal title is held by another.

A beneficial use involves greater rights than a mere right to possession of land, since it extends to the light and air over the land and access to it, which can be infringed by the beneficial use of other property by another owner. If a dispute arises from the conflicting ways in which two ADJOINING LANDOWNERS exercise their respective beneficial uses of their property, a court, exercising its discretion, may adjudicate those rights.

A beneficiary of a trust has beneficial use of the trust property, the legal title to which is held by the trustee.

BENEFICIARY

An organization or a person for whom a trust is created and who thereby receives the benefits of the trust. One who inherits under a will. A person entitled to a beneficial interest or a right to profits, benefit, or advantage from a contract.

BENEFIT OF CLERGY

In old England, the privilege of clergy that allowed them to avoid trial by all courts of the civil government.

Originally members of the clergy were exempted from CAPITAL PUNISHMENT upon conviction of particular crimes based on this

privilege, but it did not encompass crimes of either high TREASON or misdemeanors.

Benefit of clergy existed to alleviate the severity of criminal laws as applied to the clergy. It was, however, found to promote such extensive abuses that it was ultimately eliminated. Benefit of clergy does not exist in the United States today.

The phrase “without the benefit of clergy” is used colloquially to describe a couple living together outside a legal marriage.

❖ BENJAMIN, JUDAH PHILIP

Judah Philip Benjamin was attorney general of the Confederate States of America under President Jefferson Davis. Though described by many as a brilliant, self-made man, he was also characterized as the “dark prince of the Confederacy” in Robert W. Service’s poem “John Brown’s Body.”

Benjamin was born August 6, 1811, on St. Croix Island, in the British West Indies. His parents, Philip Benjamin and Rebecca de Mendes Benjamin, were Sephardic Jews who had immigrated to the West Indies from Spain. Hearing that Jews were tolerated and allowed to prosper in the U.S. Carolinas, the family moved to the United States in 1813, settling in Charleston, South Carolina. Young Benjamin attended the Fayetteville Academy, in Fayetteville, North Carolina, and entered Yale in 1825 at the age of fourteen. He was the top student in his class when he was expelled in 1827. He was charged with stealing from a fellow student, but the allegations were never proved. Though Benjamin was not an observant Jew, historians acknowledge that anti-Semitism was probably at the heart of the charges and his dismissal from school.

Following his expulsion, Benjamin moved to New Orleans, where he clerked in a commercial house and studied law until he was admitted to the bar in 1832. (A commercial house of the early 1800s was usually involved in the financial transactions around the movement of goods, i.e., lending, bonding, insuring, fees for transport, rent for storage, and contracts of sales.) While studying, he supplemented his income by giving English lessons to the French Creole aristocracy. One of his pupils, Natalie St. Martin, became his wife in a Roman Catholic ceremony in 1833. Though his wife was extravagant and notoriously promiscuous, Benjamin indulged her. Many of his peers commented that Ben-



Judah Philip Benjamin.

PUBLIC DOMAIN

jamin’s wealth could be attributed more to the demands of his wife than to his personal ambitions. For her, he acquired the Belle Chase sugar plantation and an elegant townhouse on Bourbon Street in New Orleans.

His real estate purchases were made possible by a growing and successful law practice. By 1834 he had secured his place in the local legal community through a joint publishing venture with Thomas Slidell. Their *Digest of the Reported Decisions of the Superior Court of the Late Territory of Orleans and of the Supreme Court of Louisiana* was widely used. Benjamin’s national reputation as a lawyer was established by his participation in a case involving the brig *Creole*. His brief—which reviewed the status of SLAVERY under both INTERNATIONAL LAW and U.S. domestic law—was printed as a pamphlet and widely circulated. In this more liberal period of his life, he believed and argued that slavery was against the laws of humans and nature. He would later reverse his position.

Benjamin began his political career in 1842 when he was elected as the Whig candidate to the lower house of the Louisiana Legislature. He attended the Louisiana Constitutional Convention from 1844 to 1845. Benjamin’s wife was not supportive of his interest in politics, or tolerant of his absences. In 1845, after eleven years of marriage, she moved to Paris. The couple rarely

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RECOGNITION.”
—JUDAH BENJAMIN

lived together again as **HUSBAND AND WIFE**, but they never divorced—and Benjamin's lifelong devotion to his wife has been well documented.

After his wife's departure, Benjamin retreated to his plantation, from 1845 to 1848, and began to experiment with sugar chemistry and processing. Ultimately, he lost the plantation when a friend defaulted on a note that Benjamin had signed.

Despite his business reversals, Benjamin had "great dreams about the future development of American commerce" and found himself with a renewed commitment to political service. He shared a growing belief in the South that foreign commerce would strengthen the region and restore the balance of power lost by the **COMPROMISE OF 1850**. In 1852 Benjamin ran as a **WHIG PARTY** candidate for one of Louisiana's U.S. Senate seats.

His successful bid for office made him the nation's first Jewish U.S. senator. Also in 1852, Benjamin was nominated to the U.S. Supreme Court by President **MILLARD FILLMORE**. Preferring to take his seat in the Senate, Benjamin declined Fillmore's offer and thereby missed the opportunity to be the first Jewish Supreme Court justice. Benjamin also turned down an appointment as ambassador to Spain, in 1853. Mindful of the escalating national conflict between North and South, he wanted to stay in the United States. In 1854 he wrote, "[A] gulf . . . is already opened between the Northern and Southern Whigs. . . . God knows what awaits us. The future looks full of gloom to me."

In 1856 Benjamin left the Whig party and joined the more conservative southern Democrats. He was reelected to the Senate and continued to serve Louisiana there until the Civil War. Following the election of **ABRAHAM LINCOLN** in 1860, Benjamin advised secession; he resigned

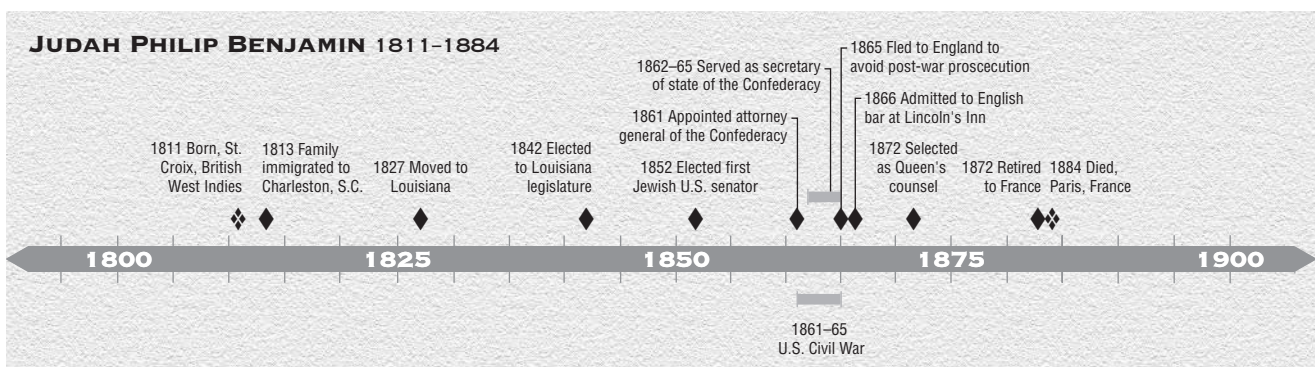
his Senate seat when Louisiana voted to leave the Union.

Benjamin was named attorney general of the Confederate States of America in early 1861. He served as attorney general until November 21, 1861, when he became secretary of war. He inherited a war department that was disorganized and deeply in debt. Throughout 1862, the Confederacy suffered both human resource and equipment shortages, and severe casualties.

A plan by Benjamin to build troop strength by drafting slaves—with the promise of emancipation for service—was prepared and sent to the Confederate congress. Seeing the initiative as a threat to the principle of slavery, the congress failed to pass the measure. Benjamin was eventually charged with inefficiency, and a motion to remove him from his post was drafted.

President Davis, still confident in Benjamin's abilities, stepped in and appointed him **SECRETARY OF STATE** on March 18, 1862. Benjamin served in that capacity until the fall of the Confederacy, but he never fully regained his popularity with the Southern people. Viewed in a historical context, Benjamin's service and loyalty to the Confederacy are extraordinary and commendable—especially in light of the extreme anti-Semitism and hatred that pervaded the South throughout the war years.

After Robert E. Lee's surrender to **ULYSSES S. GRANT** at Appomattox Courthouse on April 9, 1865, U.S. agents targeted Benjamin for capture because it was assumed, falsely, that he knew the location of large sums of money. After a brief stop in North Carolina, Benjamin headed south to Florida. Garbed as a Frenchman and speaking fluent French, he passed himself off as a journalist, *Monsieur Bonfals* (which translates as Mr. Good Disguise). Because Benjamin was too fat to ride a horse, he traveled by cart in the com-



pany of a former Confederate officer from New Orleans who pretended to be his interpreter.

On May 1, 1865, federal agents increased their efforts to locate all Confederate fugitives, and the *New York Times* called for Jefferson Davis, Judah Benjamin, and Confederate secretary of war John C. Breckenridge to die “the most disgraceful death on the gallows.” The price on Benjamin’s head was \$40,000, dead or alive. But by May, Benjamin had already made it to Tampa.

With the help of Confederate sympathizers and former Confederate soldiers, Benjamin traveled from Tampa to the Gamble Mansion on Florida’s southwest coast. En route, he presented himself as Mr. Howard, a farmer and cattle buyer. With federal troops closing in, he was twice forced to hide in a canebrake near the mansion to avoid capture. Eventually, Benjamin was moved to Sarasota Bay, where he sailed down the coast to Knight’s Key with Captain Frederick Tresca, a former blockade runner, and H. A. McLeod, an experienced sailor for hire. The trio reached Knight’s Key on July 7, 1865. From there, Benjamin boarded a boat for Bimini, in the Bahamas. After this vessel was shipwrecked, he was rescued and returned to Florida, where he again faced capture by federal agents. Benjamin eventually reached Bimini, and then set sail for England. He arrived in England on August 30, 1865, after almost five months of dangerous and grueling travel.

Without funds, Benjamin made the necessary arrangements to practice law in England. He was admitted to the bar at Lincoln’s Inn in 1866, and he was soon a respected member of the British bar. Most of his cases focused on corporate law. He also wrote about matters pertaining to business and corporate law. His *Treatise on the Law and Sale of Personal Property: With Special Reference to the American Decisions and the French Code and Civil Law* was published in 1868. Commonly known as *Benjamin on Sales*, the book was a definitive source on commercial matters on both sides of the Atlantic for the next twenty-five years. In 1872, Benjamin was selected Queen’s Counsel. He practiced law in England until 1883, when he retired to France. He is credited with making major contributions to the British Empire’s dominance of world trade in the last half of the nineteenth century.

Benjamin died May 6, 1884, in Paris. He was buried at the Pere Lachaise Cemetery under a headstone marked Philippe Benjamin.

FURTHER READINGS

- “The Daring Escape of Judah P. Benjamin.” 1982. *Tampa Bay History* 4, no. 1.
- Detroit College of Law Review*. 1991:1019.
- “The Enigmatic Judah Benjamin.” 1978. *Midstream* 24, no. 8.
- Evans, Eli N., and Robert Weinberg. 1988. *Judah P. Benjamin: The Jewish Confederate*. New York: Free Press.
- “From Benjamin to Brandeis to Breyer: Is There a Jewish Seat?” 2002. *Brandeis Law Journal* 41 (winter): 229–36.
- “Journey to Asylum.” 1987. *Civil War Times Illustrated* 26, no. 8.
- “Judah P. Benjamin’s Loyalty to Jefferson Davis.” 1966. *Georgia Review* 20, no. 3.
- Law and Contemporary Problems*. 55:107.
- “Meeting Mr. Benjamin.” 1986. *Queen City Heritage* 44, no. 3.
- Nareish, Suman. 1996. “Judah Philip Benjamin at the English Bar.” *Tulane Law Review* 70 (June): 2487–514.
- Patrick, Rembert W. *The Opinions of the Confederate Attorneys General, 1861–1865*. Buffalo: Dennis.
- “Some Legal and Political Views of Judah P. Benjamin.” 1956. *Historica Judaica* (France) 18, no. 1.
- “The Spectrum of Jewish Leadership in Ante-Bellum America.” 1982. *Journal of American Ethnic History* 1, no. 2.
- “The Three Lives of Judah P. Benjamin.” 1967. *History Today* 17, no. 9.
- “The Virginia Decision to Use Negro Soldiers in the Civil War, 1864–1865.” 1975. *Virginia Magazine of History and Biography* 82, no. 1.

❖ BENJAMIN, PARK

Park Benjamin was an eminent patent lawyer and author.

Benjamin was born May 11, 1849. A graduate of the U.S. Naval Academy in 1867, he left the Navy in 1869 and earned a bachelor of laws degree from Albany Law School in 1870.

From 1872 to 1878, Benjamin was associate editor of the *Scientific American* and became editor-in-chief of *Appleton’s Cyclopaedia of Applied Mechanics* in 1893.

Benjamin wrote *The United States Naval Academy* (1900) and numerous essays and naval articles for various periodicals.

He died August 21, 1922, in New York City.

❖ BENTHAM, JEREMY

Described as a philosopher, jurist, and reformer, Jeremy Bentham is possibly best known as one of the leading proponents of UTILITARIANISM. Although he was a devoted scholar who spent much of his life writing about legal reform, he published little. Regardless, Bentham had a profound effect on the politics of his day, influenced many of his contemporaries (including eminent

“EVERY LAW IS AN
INFRACTION OF
LIBERTY.”

—JEREMY BENTHAM

British philosopher JOHN STUART MILL), and introduced a number of terms and definitions, which are still used today in the study of philosophy, economics, and politics.

Bentham was born February 15, 1748, in Houndsditch, near London, into a family of attorneys. He was educated at Oxford and admitted to the bar, but decided not to follow in the footsteps of his father and grandfather. Instead of practicing law, Bentham chose to pursue a career in legal, political, and social reform, applying principles of ethical philosophy to these endeavors.

He was greatly influenced by the work of Claude-Adrien Helvétius, a French philosopher who believed that all persons are intellectually equal and that differences arise solely from educational opportunities. Helvetius also formulated a theory that good is measured by the degree of self-contentment experienced by a person, and that self-interest is the compelling force for all action. This latter belief had a profound effect on Bentham, who incorporated the idea in the formulation of the basic principles of utilitarianism.

In 1789, Bentham gained public attention with the publication of his *Introduction to the Principles of Morals and Legislation*, which set forth his fundamental principles. He believed that the greatest happiness for the greatest number is the basis of morality. Happiness and pleasure were the same, and included social, intellectual, and moral as well as physical pleasures. According to Bentham, each pleasure has certain characteristics, including intensity and duration, and he established a scale of measurement to judge the worth of a pleasure or a pain.

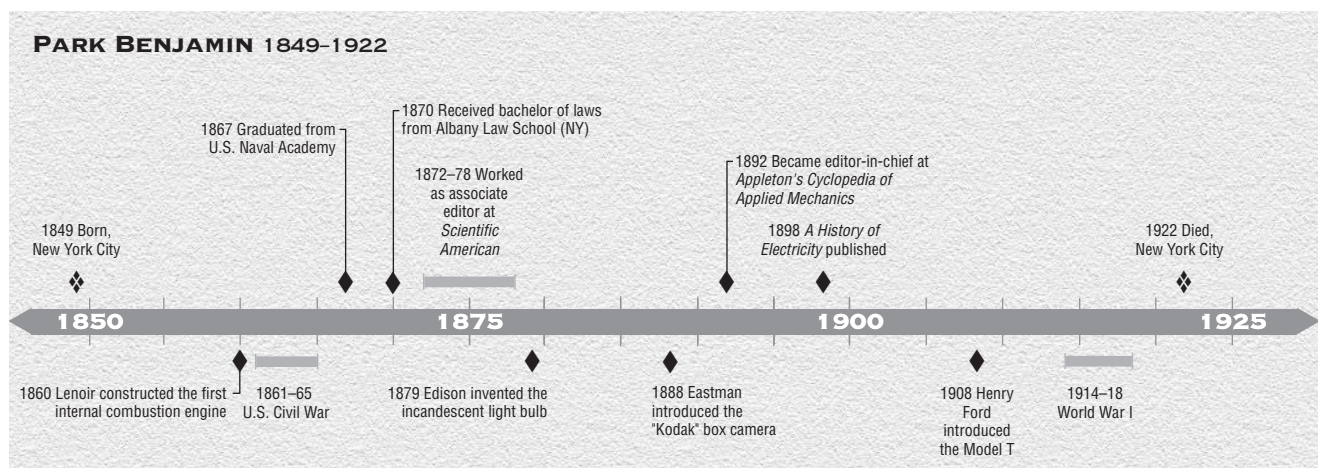
Bentham further opined that each person strives to do what makes him or her happiest. The happiness of an individual and the GENERAL WELFARE are complementary; the achievement of the greatest amount of happiness is the goal of morality.

Bentham applied his views to reform legislation, feeling that the purpose of the law was to maximize total happiness within the limitations of government. As a result, he achieved great advances in prison reform, CRIMINAL LAW, civil service, and insurance and was active in the compilation of laws into comprehensible text.

Bentham is particularly noted for his theories of punishment. He claimed that all punishment required justification, because he believed that all punishment is inherently evil. Bentham also believed that to a utilitarian such as himself, real justice is less important than apparent justice. In other words, Bentham believed that seeing justice done is more important than justice actually being done.

Influenced by the work of Italian philosopher CESARE BECCARIA, Bentham formed some harsh notions of punishment, such as his belief that in certain cases torture could be justified. He wrote that punishment was a relatively weak disincentive against RECIDIVISM, and that there is always a risk that an offender will commit another offense. He suggested that torture removes this risk because torture ceases immediately when a subject complies with the demands of authority. Of course, this idea discounts the question of whether the subject can in fact comply.

As a theorist of punishment, Bentham was naturally interested in the English penal system.



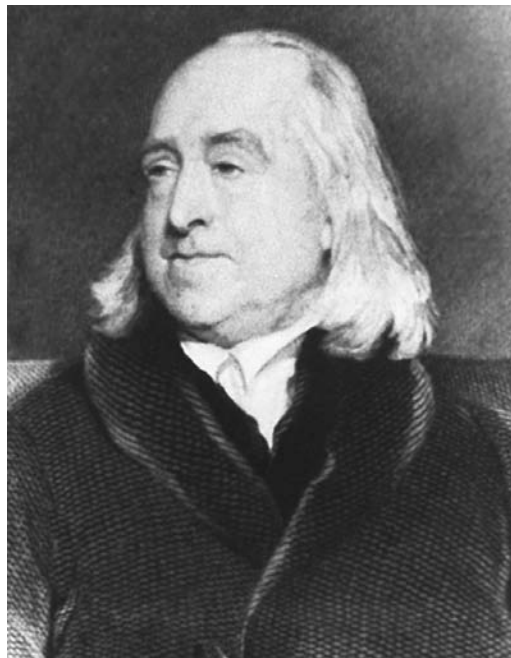
His studies led him to develop a model of an English prison that applied his theories of punishment to incarceration. He called his model the “Panopticon.” The Panopticon was a prison building—and a whole system of incarceration—that allowed guards total surveillance and physical control over prison inmates. Writing of the Panopticon, Bentham claimed that hard labor, constant surveillance and monitoring, and solitary confinement (for purposes of reflection and repentance) were fundamental requirements needed to reform and rehabilitate criminal offenders. This theory builds upon the notion that punishment can be the means to make an offender lead a life of moral and civil rectitude.

Bentham attempted to persuade President JAMES MADISON to adopt a code of laws that he himself had devised. The philosopher was careful to cite existing rules and previous cases to illustrate that his legal theories were sound. Madison rejected Bentham’s idea in 1811, but in the 1830s, a group of U.S. reformers adopted several of his policies with the objective of formulating a simplified code of law.

When Bentham died June 6, 1832, he left behind a vast number of manuscript pages, as well as a large estate. Funds from the estate were used to help launch University College, London, an institution which was established to educate students excluded from universities of the day. In accordance with Bentham’s instructions, upon his death his body was dissected, embalmed, dressed, and seated in a chair. The seated Bentham is housed in a cabinet in the main building of University College.

FURTHER READINGS

Ben-Dor, Oren. 2000. *Constitutional Limits and the Public Sphere: A Critical Study of Bentham’s Constitutionalism*. Oxford; Portland, Ore.: Hart.



Jeremy Bentham.
LIBRARY OF CONGRESS

“Bentham, Jeremy.” The Internet Encyclopedia of Philosophy. Available online at <www.utm.edu/research/iep/b/bentham.htm> (accessed May 7, 2003).

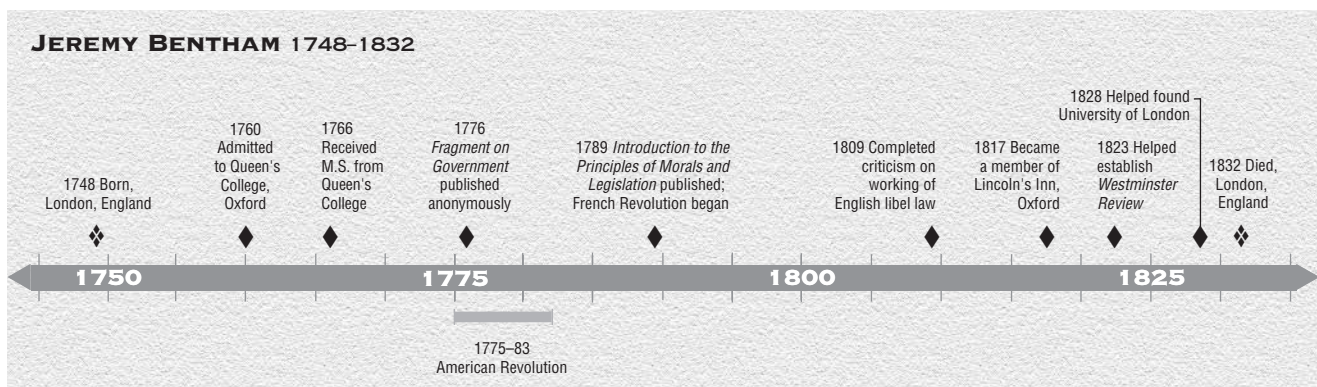
Burns, J. H., and H. L. A. Hart, eds. 1970. “Jeremy Bentham.” In *An Introduction to the Principles of Morals and Legislation*. London, England: Athlone.

Engelmann, Stephen G. 2003. *Imagining Interest in Political Thought: Origins of Economic Rationality*. Durham, N.C.: Duke Univ. Press.

Kelly, Paul Joseph. 1997. *Utilitarianism and Distributive Justice: Jeremy Bentham and the Civil Law*. Oxford: Clarendon.

BEQUEATH

To dispose of **PERSONAL PROPERTY** owned by a decedent at the time of death as a gift under the provisions of the decedent’s will.



The term *bequeath* applies only to personal property. A testator, to give real property to someone in a testamentary provision, devises it. *Bequeath* is sometimes used as a synonym for *devise*.

BEQUEST

A gift of **PERSONAL PROPERTY**, such as money, stock, bonds, or jewelry, owned by a decedent at the time of death which is directed by the provisions of the decedent's will; a legacy.

A bequest is not the same as a devise (a testamentary gift of real property) although the terms are often used interchangeably. When this occurs, a bequest can be a gift of real property if the testator's intention to dispose of real property is clearly demonstrated in the will.

There are different types of bequests. A *charitable bequest* is a gift intended to serve a religious, educational, political, or general social purpose to benefit mankind, aimed at the community or a particular segment of it. Charitable bequests also reduce the estate taxes that might be owed on the estate left by a decedent.

A *demonstrative bequest* is a gift of money that must be paid from a particular source, such as a designated bank account or the sale of stock in a designated corporation.

A *general bequest* is a gift of money or other property that can be paid or taken from the decedent's general assets and not from a specific fund designated by the terms of the will.

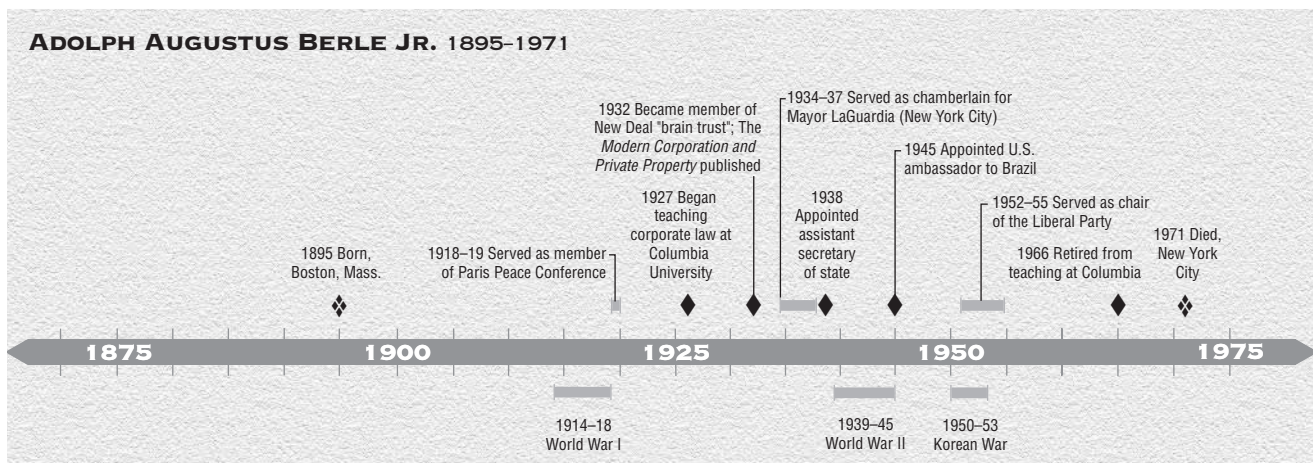
BERING SEA DISPUTE

The Bering Sea Dispute involved a late nineteenth-century controversy between the United

States on one side and Great Britain and Canada on the other side over the international status of the Bering Sea. The dispute was generated over the U.S. assertion that it controlled the Bering Sea and all seal hunting off the coast of Alaska. The dispute, which led to the seizure of a number of Canadian ships by the United States, was finally resolved by an international **ARBITRATION** in 1893.

The Bering Sea is the northernmost part of the Pacific Ocean. After the United States purchased Alaska from Russia in 1867, it assumed the right of control over the Bering Sea that had been held by Russia. The dispute arose after the Alaska Commercial Company, a U.S. business that had a **MONOPOLY** on killing seals for their furs, found that Canadian hunters were killing seals as they swam through the ocean each spring toward their summer homes in the Pribilof Islands. The Pribilof Islands were part of the U.S. Alaskan territories. Fearing that the herds would be killed off by pelagic (open-sea) sealing, the U.S. government seized several Canadian sealing vessels in 1886 and instituted condemnation proceedings in an Alaskan court. The proceeds were given to the Alaskan Commercial Company as compensation.

These actions outraged the Canadian and British governments, who disputed the U.S. claim that it controlled not just the three-miles of sea bordering the Pribilof Islands but the entire Bering Sea. After several years of tensions and additional vessel seizures, the three countries agreed to arbitration by an international tribunal in Paris. The tribunal issued its decision in 1893. It rejected the U.S. claim of total control of the Bering Sea and awarded the Canadian own-



ers of the seized ships \$473,000 in damages. The tribunal also imposed restrictions on pelagic sealing, but it failed to control the problem. In 1911 the United States, Great Britain, Russia, and Japan signed a treaty that prohibited pelagic sealing for a period of time and then placed limits on how many seals could be hunted. The agreement was an important step in seeking international consensus on environmental matters.

FURTHER READINGS

Gay, John Thomas. 1987 *The American Fur Seal Controversy*. New York: Peter Lang.

Mead, Walter Russell. 2002. *Special Providence: American Foreign Policy and How It Changed the World*. New York: Routledge.

CROSS-REFERENCES

Boundaries; International Law.

❖ BERLE, ADOLPH AUGUSTUS, JR.

Adolph Augustus Berle Jr. was a diplomat, teacher, and writer. He was born January 29, 1895, in Boston, Massachusetts. He was educated at Harvard, receiving a bachelor of arts degree in 1913, a master of arts degree in 1914, and a bachelor of laws degree in 1916, in which year he was also admitted to the bar.

After military duty in WORLD WAR I, Berle served as a U.S. representative at the Paris Peace Conference during 1918 and 1919. He opposed the conditions of the Versailles Treaty and resigned from the delegation. He returned to the United States and established his legal practice in New York City.

Berle began teaching corporate law at Columbia University in 1927. During the 1930s, he assisted the administration of President FRANKLIN DELANO ROOSEVELT in the formulation of NEW DEAL legislation concerning SECURITIES and banking.

From 1938 to 1944, Berle was assistant SECRETARY OF STATE; in 1945 he was U.S. ambassador to Brazil; and in 1946 he returned to Columbia University to continue his teaching career. He helped establish the Liberal party and acted as its chairman from 1952 to 1955.

One of Berle's several publications was *The Modern Corporation and Private Property* (1932), written with coauthor G. C. Means.

Berle died February 17, 1971, in New York City.

❖ BERRIEN, JOHN MACPHERSON

John Macpherson Berrien served as U.S. attorney general under President ANDREW JACKSON.

Berrien was born August 23, 1781, in New Jersey. He graduated from Princeton in 1796 and was admitted to the Georgia bar in 1799. He began his judicial career in Georgia as a circuit court judge in 1810 and remained on the bench until 1821.

Berrien sat in the Georgia Senate from 1822 to 1823. From 1824 to 1829, he represented Georgia in the U.S. Senate, as a member of the DEMOCRATIC PARTY.

He served as U.S. attorney general from 1829 to 1831. He again served as senator from Georgia from 1841 to 1845 and from 1845 to 1852 as a member of the WHIG PARTY.

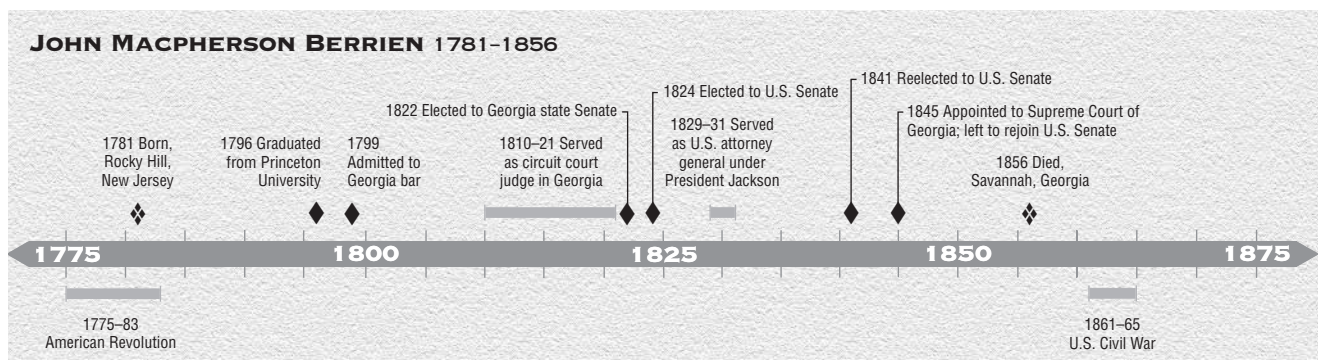
BEST EVIDENCE

An original document or object offered as proof of a fact in a lawsuit as opposed to a photocopy of, or other substitute for, the item or the testimony of a witness describing it.

Best evidence, also known as primary evidence, usually denotes an original writing, which is considered the most reliable proof of its existence and its contents. If it is available to,

"ALL POWERS GRANTED TO A CORPORATION . . . WHETHER DERIVED FROM STATUTE OR CHARTER . . . [ARE] EXERCISABLE ONLY FOR THE RATABLE BENEFIT OF ALL THE SHAREHOLDERS AS THEIR INTEREST APPEARS."
—ADOLPH BERLE JR.

"IF THIS POWER IS NOT GRANTED BY THE CONSTITUTION, IT IS VERY CERTAIN, THAT NO SERIES OF USURPATION CAN GIVE IT A LEGITIMATE EXISTENCE IN THAT INSTRUMENT."
—JOHN BERRIEN



and obtainable by, a party, it must be offered into evidence at a trial. Best evidence is distinguishable from secondary evidence, a reproduction of an original or testimony establishing its existence, which will be admissible as proof only if the best evidence cannot be obtained, and ensuring no fault of the party seeking to present it.

The principle that the best available evidence must be presented as proof in a lawsuit is embodied in the best-evidence rule.

BESTIALITY

Sexual relations between a human being and an animal.

At COMMON LAW, bestiality was considered a crime against nature and was punishable by death.

Today, it is prohibited by statutes in most states as a form of SODOMY. The penalty for committing the offense is a fine, imprisonment, or both.

BEYOND A REASONABLE DOUBT

The standard that must be met by the prosecution's evidence in a criminal prosecution: that no other logical explanation can be derived from the facts except that the defendant committed the crime, thereby overcoming the presumption that a person is innocent until proven guilty.

If the jurors or judge have no doubt as to the defendant's guilt, or if their only doubts are unreasonable doubts, then the prosecutor has proven the defendant's guilt beyond a reasonable doubt and the defendant should be pronounced guilty.

The term connotes that evidence establishes a particular point to a moral certainty and that it is beyond dispute that any reasonable alternative is possible. It does not mean that no doubt exists as to the accused's guilt, but only that no REASONABLE DOUBT is possible from the evidence presented.

Beyond a reasonable doubt is the highest standard of proof that must be met in any trial. In civil litigation, the standard of proof is either proof by a PREPONDERANCE OF THE EVIDENCE or proof by clear and convincing evidence. These are lower burdens of proof. A preponderance of the evidence simply means that one side has more evidence in its favor than the other, even by the smallest degree. CLEAR AND CONVINCING PROOF is evidence that establishes a

high probability that the fact sought to be proved is true. The main reason that the high proof standard of reasonable doubt is used in criminal trials is that such proceedings can result in the deprivation of a defendant's liberty or even in his or her death. These outcomes are far more severe than in civil trials, in which money damages are the common remedy.

CROSS-REFERENCES

Clear and Convincing Proof; Due Process of Law; Preponderance of Evidence; Reasonable Doubt.

BIAS

A predisposition or a preconceived opinion that prevents a person from impartially evaluating facts that have been presented for determination; a prejudice.

A judge who demonstrates bias in a hearing over which he or she presides has a mental attitude toward a party to the litigation that hinders the judge from supervising fairly the course of the trial, thereby depriving the party of the right to a fair trial. A judge may RECUSE himself or herself to avoid the appearance of bias.

If, during the VOIR DIRE, a prospective juror indicates bias toward either party in a lawsuit, the juror can be successfully challenged for cause and denied a seat on the jury.

BICAMERAL

The division of a legislative or judicial body into two components or chambers.

The CONGRESS OF THE UNITED STATES is a bicameral legislature, since it is divided into two houses, the Senate and the House of Representatives.

❖ BICKEL, ALEXANDER MORDECAI

Alexander Mordecai Bickel was a noted legal scholar, law professor, and essayist who wrote extensively about CONSTITUTIONAL LAW issues and the U.S. Supreme Court.

Bickel was born December 17, 1924, in Bucharest, Romania, and immigrated to the United States with his parents in 1939. He attended the City College of New York, graduating Phi Beta Kappa in 1947, and Harvard Law School, where he served as editor of the *Harvard Law Review* and graduated summa cum laude in 1949.

Following law school, Bickel clerked for Judge Calvert Magruder of the U.S. Court of

Appeals in Boston. From 1950 to 1952 he was a STATE DEPARTMENT law officer in Frankfurt, Germany, and he was a member of the European Defense Community Observer Delegation in Paris. He returned to the United States to become law clerk to Justice FELIX FRANKFURTER during the U.S. Supreme Court's 1952–53 term.

Bickel assisted Justice Frankfurter in the Court's consideration of the landmark desegregation decision in *BROWN V. BOARD OF EDUCATION*, 349 U.S. 483, 74 S. Ct. 686, 98 L. Ed. 873 (1954). The plaintiffs in *Brown* challenged the assignment of black and white students to separate public schools. The Court held that such racial SEGREGATION in public education was unconstitutional. During his clerkship with Frankfurter, Bickel studied the FOURTEENTH AMENDMENT extensively and concluded that the Constitution did provide that congressional or judicial action could be used to abolish school segregation.

After completing his clerkship with Justice Frankfurter, Bickel joined the faculty of Yale Law School, in 1956. He was named Chancellor Kent Professor of Law and Legal History in 1966, and Sterling Professor of Law in 1974, the year of his death.

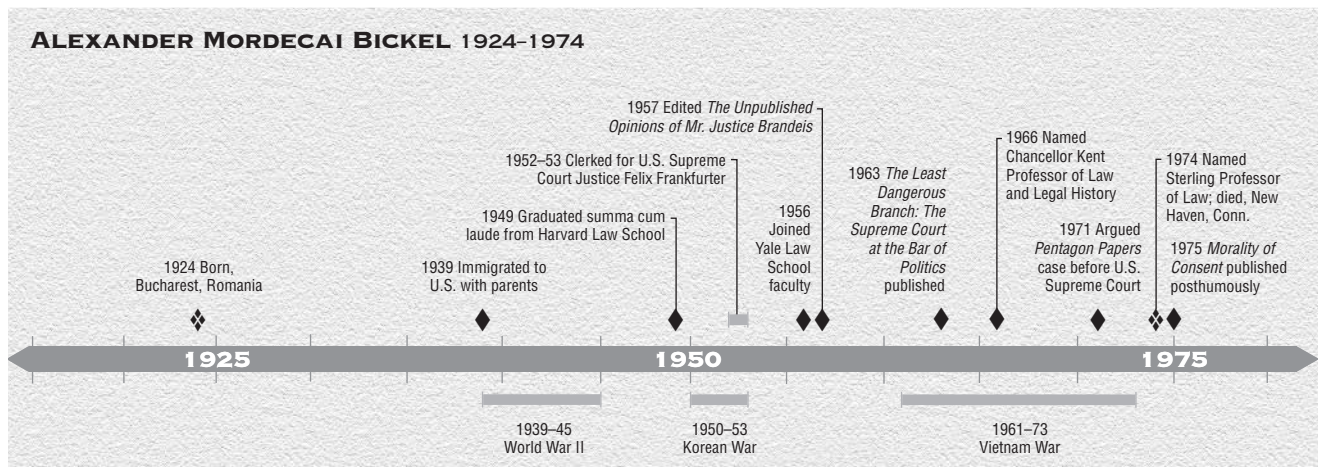
Bickel wrote a number of influential books and essays. In addition to longer works, he published more than a hundred articles in newspapers and magazines. He edited *The Unpublished Opinions of Mr. Justice Brandeis*, a volume of eleven Brandeis draft opinions concerning the issue of judicial restraint, a major theme in much of Bickel's later writings. In his most influential work, *The Least Dangerous Branch: The Supreme Court at the Bar of Politics* (1963),

Bickel argued that courts should make decisions that are grounded in history and in the values found in the Constitution, and should not make decisions that cannot gain public support. He believed that judges should exercise care to avoid deciding constitutional issues if other grounds for a ruling are available, such as grounds for refusing to hear the case or grounds for using doctrines like statutory construction to decide the case.

In *The Supreme Court and the Idea of Progress* (1970), another work advocating judicial restraint, Bickel criticized the activism of the WARREN COURT in tackling social issues. He noted that "history has little tolerance for ... [the Court's] reasonable judgments that turn out to be wrong." Bickel also argued for judicial restraint in the so-called *Pentagon Papers* case, *New York Times Co. v. United States*, 403 U.S. 713, 91 S. Ct. 2140, 29 L. Ed. 2d 822 (1971), in which he represented the *New York Times* before the Supreme Court. In *Pentagon Papers*, the government sought to prevent the *New York Times* and the *Washington Post* from publishing the contents of a classified study titled *History of U.S. Decision-Making Process on Viet Nam Policy*. Rather than arguing that PRIOR RESTRAINT of the publication of the classified material was unconstitutional, Bickel instead maintained that the government had been unable to rebut the heavy presumption against prior restraint and that such restraint was to be found in congressional legislation rather than in assertions of governmental power. The Court ultimately rejected the government's claim that the papers should not be published, and several of the justices adopted Bickel's analysis in their opinions.

"[THE JUDICIARY IS] THE LEAST DANGEROUS BRANCH OF OUR GOVERNMENT."

—ALEXANDER BICKEL



A recognized expert on the SUPREME COURT OF THE UNITED STATES, Bickel served as a member of the Study Group on the Caseload of the Supreme Court. In 1973, he authored *The Caseload of the Supreme Court, and What, If Anything, to Do about It*, in which he concluded that the Court's caseload should be reduced. Easing the Court's workload is critical, he argued, to ensure careful deliberation of important issues and to avoid transforming the Court "into a high-speed, high-volume enterprise" that would "mock the idea of justice and mock the substantive reforms of a generation."

FURTHER READINGS

Bickel, Alexander M. 1973. *The Caseload of the Supreme Court and What, If Anything, to Do About It*. Washington, D.C.: American Enterprise Institute for Public Policy Research.

———. 1970. *The Supreme Court and the Idea of Progress*. New York: Harper & Row.

———. 1963. *The Least Dangerous Branch: The Supreme Court at the Bar of Politics*. Indianapolis: Dobbs-Merrill.

Congressional Quarterly. 1989. *Guide to the U.S. Supreme Court*. 2d ed. Washington, D.C.: Congressional Quarterly. 1990.

Ward, Kenneth. 1996. "Alexander Bickel's Theory of Judicial Review Reconsidered." *Arizona State Law Journal* 28 (fall): 893–926.

❖ BIDDLE, FRANCIS BEVERLY

Francis Beverly Biddle achieved prominence as a jurist.

Biddle was born May 9, 1886, in Paris, France. He was a graduate of Harvard, class of 1909, and earned a bachelor of laws degree from his alma mater in 1911. From 1911 to 1912, he was private secretary to OLIVER WENDELL HOLMES JR., an eminent U.S. Supreme Court justice.

In 1912, Biddle was admitted to the Pennsylvania bar and from 1915 to 1939, practiced with



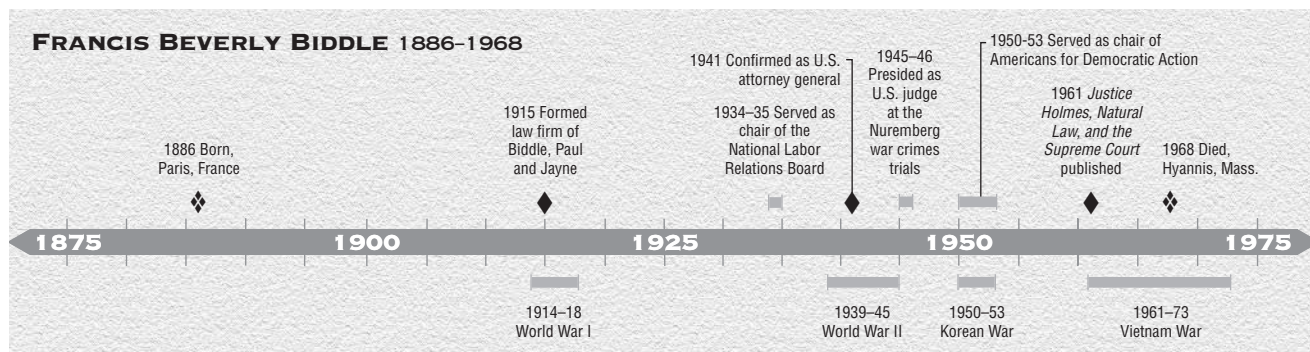
Francis Beverly Biddle. AP/WIDE WORLD PHOTOS

two successful Philadelphia law firms—Biddle, Paul and Jayne, and Barnes, Biddle and Myers—specializing in corporation law.

Biddle served as special assistant U.S. attorney from 1922 to 1926 and as chairman of the NATIONAL LABOR RELATIONS BOARD from 1934 to 1935. In 1939, he presided for one year as a justice of the U.S. Circuit Court of Appeals.

Biddle was SOLICITOR GENERAL of the United States in 1940, and the following year he became U.S. attorney general for a three-year period. From 1945 to 1946, he presided as a U.S. judge at the NUREMBERG TRIALS of Nazi war criminals.

"TO BLAME THE
PUBLIC IS BUT THE
EXCUSE OF THOSE
WHO HAVE BEEN
UNABLE TO
INFLUENCE THE
PUBLIC."
—FRANCIS BIDDLE



He died October 4, 1968, in Hyannis, Massachusetts.

CROSS-REFERENCES

Nuremberg Trials.

BIFURCATED TRIAL

One judicial proceeding that is divided into two stages in which different issues are addressed separately by the court.

A common example of a bifurcated trial is one in which the question of liability in a personal injury case is tried separately from and prior to a trial on the amount of damages to be awarded if liability is found. A bifurcated trial in such a case is advantageous because if the defendant is not found liable, there is no need to spend the money or time in the presentation of proof and witnesses on the issue of damages.

In CRIMINAL PROCEDURE, a bifurcated trial is useful where the issues of sanity and guilt or guilt and punishment must be decided.

BIGAMY

See POLYGAMY.

❖ BIGELOW, MELVILLE MADISON

Melville Madison Bigelow achieved prominence as an author, legal historian, and a founder of Boston University Law School.

Bigelow was born August 2, 1846, in Eaton Rapids, Michigan. He was educated at the University of Michigan, where he earned a bachelor of arts degree in 1866, a bachelor of laws degree in 1868, and a master of arts degree in 1871. He also received a master of arts degree and a doctor of philosophy degree from Harvard in 1879. Two doctor of laws degrees were bestowed upon him, from Northwestern University in 1896, and the University of Michigan in 1912.

Bigelow taught law at the University of Michigan and the Northwestern University Law School and also held a professorship at Boston University Law School.

Bigelow's *Elements of the Law of Torts* (1878) was used as a basic legal textbook. His numerous other publications included *Law of Fraud on its Civil Side* (1888–1890); *The Law of Estoppel and its Application in Practice* (1872); and *History of Procedure in England from the Norman Conquests: The Norman Period 1066–1204* (1880).

He died May 4, 1921, in Boston.

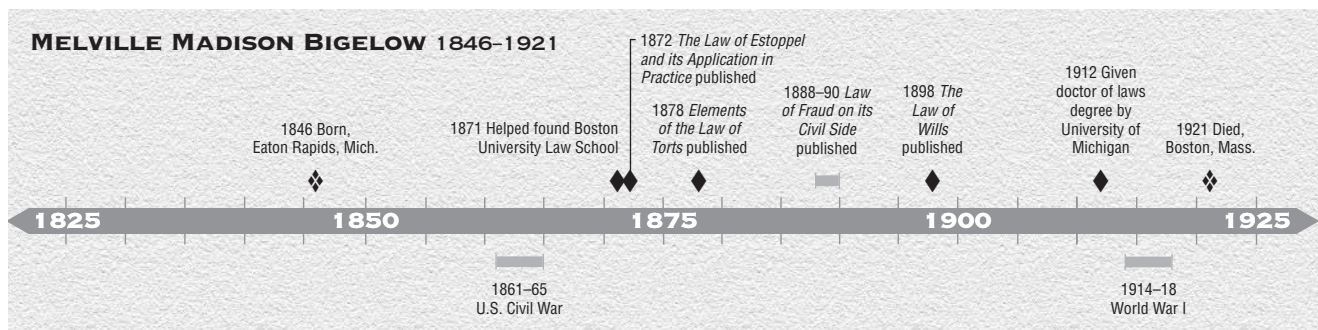
BILATERAL CONTRACT

An agreement formed by an exchange of a promise in which the promise of one party is consideration supporting the promise of the other party.

A bilateral contract is distinguishable from a unilateral contract, a promise made by one party in exchange for the performance of some act by the other party. The party to a unilateral contract whose performance is sought is not obligated to act, but if he or she does, the party that made the promise is bound to comply with the terms of the agreement. In a bilateral contract both parties are bound by their exchange of promises.

Both parties to a bilateral contract make promises. With respect to the promise in issue, the party making the promise is the promisor and the other party is the promisee. The legal detriment incurred by the promisee consists of a different promise by him or her to do something or refrain from doing something that he or she was not previously legally obligated to do or to refrain from doing. This legal detriment constitutes consideration, the cause, motive, or benefit that induces one to enter into a contract. Consideration is an essential component of a contract.

"GOVERNMENT
FROM THE TOP IS
RIGHT ONLY WHEN
IT PROCEEDS FROM
BELOW, WITH
SUPPORT ALL THE
WAY UP."
—MELVILLE
BIGELOW



Traditionally, courts have distinguished between unilateral and bilateral contracts by determining whether one or both parties provided consideration and at what point they provided the consideration. Bilateral contracts were said to bind both parties the minute the parties exchange promises, as each promise is deemed sufficient consideration in itself. Unilateral contracts are said to bind only the promisor and do not bind the promisee unless the promisee accepts by performing the obligations specified in the promisor's offer. Until the promisee performs, he or she has provided no consideration under the law.

For example, if someone offered to drive you to work on Mondays and Tuesdays in exchange for your promise to return the favor on Wednesdays and Thursdays, a bilateral contract would be formed binding both of you once you provided consideration by accepting those terms. But if that same person offered to pay you \$10 each day you drove him to work, a unilateral contract would be formed, binding only upon the promisor until you provided consideration by driving him to work on a particular day.

Modern courts have de-emphasized the distinction between unilateral and bilateral contracts. These courts have found that an offer may be accepted either by a promise to perform or by actual performance. An increasing number of courts have concluded that the traditional distinction between unilateral and bilateral contracts fails to significantly advance legal analysis in a growing number of cases where performance is provided over an extended period of time.

Suppose you promise to pay someone \$500.00 to paint your house. The promise sounds like an offer to enter a unilateral contract that binds only you until the promisee accepts by painting your house. But what constitutes lawful "performance" under these circumstances? The act of beginning to paint your house or completely finishing the job to your satisfaction?

Most courts would rule that the act of beginning performance under these circumstances converts a unilateral contract into a bilateral contract, requiring both parties to fulfill the obligations contemplated by the contract. However, other courts would analyze the facts of each case so as not to frustrate the reasonable expectations of the parties. In neither of these cases are the legal rights of the parties ultimately

determined by the courts by applying the concepts of unilateral and bilateral contracts.

In still other jurisdictions, courts have simply expressed a preference for interpreting contracts as creating bilateral obligations in all cases where there is no clear evidence that a unilateral contract was intended. The rule has been stated that in case of doubt an offer will be presumed to invite the formation of a bilateral contract by a promise to perform what the offer requests, rather than the formation of a unilateral contract commencing at the time of actual performance. The bottom line across most jurisdictions is that as courts have been confronted by a growing variety of fact patterns involving complicated contract disputes, courts have shifted from rigidly applying the concepts of unilateral and bilateral contracts to a more ad hoc approach.

Mutuality of obligation must exist in an enforceable bilateral contract, and this involves the concept of reciprocity. A cannot enforce B's promise unless A's promise entails a legal detriment, and B can enforce A's promise only if B's promise involves a legal detriment.

If a minor enters a bilateral contract with an adult that is unenforceable due to the minor's age, the adult party cannot assert absence of mutuality as a defense if the minor sues to enforce the contract. This principle applies to any situation where the law grants a particular party a privilege to avoid a contract because of his or her status.

FURTHER READINGS

Boyer, Paul S. 2001. *Oxford Companion to United States History*. New York: Oxford Univ. Press.

Jolls, Christine. 1997. "Contracts as Bilateral Commitments: A New Perspective on Contract Modification." *Journal of Legal Studies* 26 (January): 203-237.

CROSS-REFERENCES

Performance; Promise; Reciprocal; Unilateral Contract.

BILL

A declaration in writing. A document listing separate items. An itemized account of charges or costs. In EQUITY practice, the first PLEADING in the action, the paper in which the plaintiff sets out his or her case and demands relief from the defendant.

Many states require that laws must be passed by their state legislatures in the form of a bill. For example, the Texas Constitution requires that "no law shall be passed, except by bill, and no bill shall be so amended in its passage

through either House, as to violent change its original purpose.” Tex. Const. art. III, § 30. Likewise, the California Constitution may not make any law except by statute and may not make any statute except by bill. Cal. Const. art. IV, § 8(b). In some instances, however, a joint resolution that is enacted in the same manner as a bill may have the same force of law as a statute enacted through the passage of a bill.

A bill of indictment is a formal written document accusing someone of having committed a crime. It is presented to a **GRAND JURY** for its consideration and decision whether to act on it. A **BILL OF RIGHTS** is a formal declaration that the people have certain rights and liberties. Rights are often asserted when there is a change in government, and a bill of rights has been included in the federal and many state constitutions in the United States.

A bill of particulars itemizes all the facts making up a claim asserted in a lawsuit. It is delivered to the opposing party in order to sharpen the issues in dispute. A bill of review lists errors alleged to have been made by a trial court. It is presented to a court that has jurisdiction to correct those errors or reverse the decision.

A bill of costs is a certified, itemized statement of expenses incurred by the successful party in a lawsuit. Courts are generally empowered to order the losing party to reimburse the winning party for some or all of these expenses. A bill of sale is a writing that lists property exchanged in a bargain for money or something else of value.

A bill corresponds to the declaration made by the plaintiff when beginning a common-law action. Modern rules of pleading have merged the procedures for handling cases at law and in equity, and the modern equivalent of both the bill in equity and the declaration at law is the complaint.

BILL OF ATTAINDER

A special legislative enactment that imposes a death sentence without a judicial trial upon a particular person or class of persons suspected of committing serious offenses, such as TREASON or a felony.

A bill of attainder is prohibited by Article I, Section 9, Clause 3 of the Constitution because it deprives the person or persons singled out for punishment of the safeguards of a trial by jury.

BILL OF EXCHANGE

A three-party negotiable instrument in which the first party, the drawer, presents an order for the payment of a sum certain on a second party, the drawee, for payment to a third party, the payee, on demand or at a fixed future date.

A bill of exchange is distinguishable from a promissory note, since it does not contain a promise and the drawer does not expressly pledge to pay it. It is similar to a note, however, since it is payable either on demand or at a specific time.

The terms *bill of exchange* and *draft* are synonymous; however, the former is generally used in **INTERNATIONAL LAW**, whereas the latter is used in the **UNIFORM COMMERCIAL CODE**.

BILL OF INDICTMENT

A formal written document that is drawn up by a government prosecutor accusing a designated person of having committed a felony or misdemeanor and which is presented to a GRAND JURY so that it may take action upon it.

BILL OF LADING

A document signed by a carrier (a transporter of goods) or the carrier’s representative and issued to a consignor (the shipper of goods) that evidences the receipt of goods for shipment to a specified designation and person.

Carriers using all modes of transportation issue bills of lading when they undertake the transportation of cargo. A bill of lading is, in addition to a receipt for the delivery of goods, a contract for their carriage and a document of title to them. Its terms describe the freight for identification purposes; state the name of the consignor and the provisions of the contract for shipment; and direct the cargo to be delivered to the order or assigns of a particular person, the consignee, at a designated location.

There are two basic types of bills of lading. A straight bill of lading is one in which the goods are consigned to a designated party. An order bill is one in which the goods are consigned to the order of a named party. This distinction is important in determining whether a bill of lading is negotiable (capable of transferring title to the goods covered under it by its delivery or endorsement). If its terms provide that the freight is to be delivered to the bearer (or possessor) of the bill, to the order of a named party, or, as recognized in overseas trade, to a named

A sample bill of lading

Bill of Lading

BILL OF LADING

ORIGINAL

Shipper's number: _____ (Name of issuing carrier)

Agent's number: _____

Received, subject to the classifications and tariffs in effect on the date of the issue of this bill of lading at _____ (place of issue) on _____ (date), from _____ (shipper), the property described below, in apparent good order, except as noted contents and condition of contents of packages unknown, marked, consigned, and destined as indicated below. Each person or corporation in possession of the property under the contract, here referred to as carrier, agrees to carry such property to its usual place of delivery at such destination, if on its own road or its own water line, otherwise to deliver to another carrier on the route to such destination. It is mutually agreed, by each carrier of all or any of such property over all or any portion of such route to destination, and by shipper and any other party at any time interested in all or any of such property, that every service to be performed under this bill of lading shall be subject to all the conditions, whether printed or written, not prohibited by law, that are contained in this bill of lading, including the terms and conditions on the reverse of the document. The surrender of this original ORDER bill of lading properly endorsed shall be required before the delivery of the property. Inspection of property covered by this bill of lading will not be permitted unless provided by law or unless permission is endorsed on this original bill of lading or given in writing by shipper.

Consigned to ORDER of _____ (consignee).

Destination: _____ (address), _____ (city), _____ County, _____ (state), .

Notify: _____ (designate), at _____ (address), _____ (city), _____ County, _____ (state), .

Route: _____ (describe).

Delivering carrier: _____ (designate). Car _____ Car No. _____:

Special Mark	Weight	Subject	Check No.	Rate
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

*If the shipment moves between two ports by a carrier by water, the law requires that the bill of lading shall state whether it is carrier's or shipper's weight.

Subject to paragraph 7 of the terms and conditions on the reverse of this bill of lading, if this shipment is to be delivered to consignee without recourse on consignor, consignor shall sign the following statement: The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges.

(Signature of shipper, if desired)

if charges are to be prepaid, write or stamp here, To Be Prepaid: _____.

Received _____ Dollars (\$_____) to apply in prepayment of the charges on the property described in this bill of lading.

_____, Agent or Cashier

Per _____ (signature, if desired) (The signature here acknowledges only the amount prepaid.)

Charges advanced: _____ Dollars (\$_____).

Note where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property.

The agreed or declared value of the property is hereby specifically stated by shipper to not exceed _____ Dollars (\$_____)

per _____ (article, unit of weight, or the like).

_____, Shipper _____, Agent

Per _____

1Signature Per _____

Permanent post office address of shipper: _____

CONTRACT TERMS AND CONDITIONS

Set forth general terms and conditions:

person or assigns, a bill, as a document of title, is negotiable. In contrast, a straight bill is not negotiable.

State laws, which often include provisions from the **UNIFORM COMMERCIAL CODE**, regulate the duties and liabilities imposed by bills of lading covering goods shipped within state boundaries. Federal law, embodied in the **INTERSTATE COMMERCE ACT** (49 U.S.C. [1976 Ed.] § 1 et seq.) apply to bills of lading covering goods traveling in interstate commerce.

CROSS-REFERENCES

Consignment; Shipping Law.

BILL OF PARTICULARS

A written statement used in both civil and criminal actions that is submitted by a plaintiff or a prosecutor at the request of a defendant, giving the defendant detailed information concerning the claims or charges made against him or her.

In civil actions a bill of particulars is a written demand for the specifics of why an action at law was brought. Although usually requested by a defendant, it can be demanded by a plaintiff if the defendant makes a counterclaim for a setoff or asserts a defense against him or her. A bill can be submitted either voluntarily or pursuant to a court order for compliance with the demand. Its function is to give the party who requests it knowledge of what the opposing party has alleged in order to protect the party requesting the bill from surprise and in order to establish the real issues of the action. It also serves to expedite the orderly progress of judicial proceedings by reducing, if not eliminating, the need for the amendment of ambiguous or vague pleadings. A bill of particulars is neither a **PLEADING** nor proof of the facts it states, but, rather, an elucidation of a pleading. It is not to be used as a discovery device to learn the evidence or strategy to be used at trial by the opposing party.

State codes of **CIVIL PROCEDURE** impose rules that govern the use of bills of particulars in civil actions brought in state court. In federal courts the Federal Rules of Civil Procedure have replaced the use of a bill of particulars with a motion for a more definite statement. If, however, the information sought by such a motion is obtainable by use of discovery mechanisms, the motion will be denied.

In **CRIMINAL LAW**, a bill of particulars serves the same purpose. It is submitted by the prose-

cution to the defendant, at the defendant's demand, to provide the facts alleged in the complaint or the indictment that related to the commission of the crime. The defendant is given notice of the offenses with which he or she is charged so that a defense may be prepared and the possibility of surprise or **DOUBLE JEOPARDY** avoided. As in civil procedure, a bill of particulars is not intended to serve as a discovery device.

State codes of **CRIMINAL PROCEDURE** and the Federal Rules of Criminal Procedure regulate the use of bills of particulars in criminal prosecutions in their respective courts.

BILL OF REVIEW

In the practice of EQUITY courts, a paper filed with a court after expiration of the time for filing a petition for a rehearing in order to request, due to exceptional circumstances, the correction or reversal of a final judgment or decree.

The use of a bill of review is limited to three situations: (1) the correction of a judgment that has incorporated errors found in the record of the case; (2) the reversal of a judgment because of recent discovery of evidence that is decisive on the issues of the case but that could not have been found in time for the trial; and (3) the setting aside of a judgment based upon proceedings that were tainted by **FRAUD**, such as perjured testimony.

In states where courts of equity and law have merged, a bill of review has been replaced by a motion for relief from a judgment or decree, governed by state rules of **CIVIL PROCEDURE**. A motion for relief from a judgment or order serves the same function in federal courts as provided by Rule 60 of the Federal Rules of Civil Procedure, which abolished bills of review.

BILL OF RIGHTS

A declaration of individual rights and freedoms, usually issued by a national government.

A list of fundamental rights included in each state constitution.

The first ten amendments to the U.S. Constitution, ratified in 1791, which set forth and guarantee certain fundamental rights and privileges of individuals, including freedom of religion, speech, press, and assembly; guarantee of a speedy jury trial in criminal cases; and protection against excessive bail and CRUEL AND UNUSUAL PUNISHMENT.

*A sample motion for
bill of particulars*

Motion for Bill of Particulars

Jul 31 1984

CLERK, U.S. DISTRICT COURT
DISTRICT OF COLUMBIA

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Criminal No. 84-00255
Judge Joyce Hens Green
Trial Date: 9/17/84

UNITED STATES OF AMERICA:

v.

WILLIAM THOMAS
CONCEPCION PICCIOTTO, et. al

MOTION FOR BILL OF PARTICULARS

Concepcion Picciotto, through her council, respectfully requests this Court, pursuant to Federal Rules of Criminal Procedure 7(f) and 76, to direct the filling of a bill of particulars.

In, support thereof, Ms. Picciotto states as follows:

1. Ms. Picciotto was arraigned in the instant case on July 13, 1984. She is charged with violation of 36 C.F.R. §50.5 and 50.27 (camping/sleeping and storage of property).
2. The information Fails to specifically state the time this alleged offense occurred.
3. The information fails to specify the exact location on the South sidewalk of Lafayette Park where Ms. Picciotto is alleged to have camped.
4. The information fails to specify what activities Ms. Picciotto is alleged to have engaged in. (See Information Line 6 " . . . including activities and making preparations to sleep . . .")
5. The information fails to specify what property Ms. Picciotto allegedly stored.
6. An informal discovery conference with Assistant United States Attorney Pamela Stuart was held on July 5, 1983. At that time defense counsel made a bona fide attempt, pursuant to Fed. R. Cr. P. 16 to ascertain the particulars of the crime charged with respect to Ms. Picciotto. Specifically, counsel requested the exact time and location of the alleged occurrence. The government was either unable or unwilling to comply with this request. Indeed, Assistant United States Attorney Stuart refused to even release the United States Park Police Incident Report, a document which certainly should provide this information.
7. At the discovery conference counsel also asked about the property allegedly stored by Ms. Picciotto. In response to this inquiry a list of over sixty (60) assorted items seized pursuant to the arrest of the defendants was orally read to counsel. The government was either unable or unwilling to specify what items were allegedly stored by defendant Picciotto.
8. Because Ms. Picciotto has been engaged in a round-the-clock vigil in the White House vicinity since 1981, and because she preparations been arrested previous to and subsequent to June 6, 1984, read is crucial that she be apprised of the exact time of day or night on June 6, 1984 when she is alleged to have camped. Further, preparations because other persons, including the co-defendants are similarly engaged, and because "stored Property" has been seized from Ms. Picciotto and other persons on numerous occasions, she must be apprised of exactly what "stored property" the government attributes to her in this case and what illegal "activities" she allegedly personally performed. In order to conduct her own investigation, to prepare an adequate defense, and to avoid danger of surprise at trial, Ms. Picciotto preparations needs to be apprised of these aforementioned particulars.

WHEREFORE, Ms. Picciotto respectfully requests that this Court grant her Motion for Bill of Particulars and order the government to disclose the time and exact location of the alleged camping, the "activities" Ms. Picciotto engaged in, and what property she allegedly stored.

Respectfully submitted.

/s/ Phyllis B. Tatik

PHYLLIS B. TATIK

[continued]

Motion for Bill of Particulars

GEORGETOWN CRIMINAL JUSTICE CLINIC
605 G Street, N.W.
Third Floor
Washington, D.C. 20001
(202) 624-8380

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Motion for Bill of Particulars and attached Points and Authorities has been personally delivered to Assistant United States Attorney Pamela Stuart, Room 3836, United States Courthouse, 3rd and Constitution Avenue, N.W., Washington, D.C. 20001 on this 31st day of July 1984.

/s/ Phyllis B. Tatic

PHYLLIS B. TATIK

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA:

v.: Criminal No. 84-00255

: Judge Joyce Hens Green

: Trial Date: 9/17/84

WILLIAM THOMAS:

CONCEPCION PICCIOTTO, et. al.

ORDER

This matter having come before the Court on Defendant Picciotto's Motion for Bill of Particulars, and the Court having considered the Motion and Memorandum In Support Thereof and the government's Opposition, now this _____ day of _____ 1984, IT IS HEREBY ORDERED

Defendant Picciotto's Motion for Bill of Particulars is GRANTED.

/s/ Judge Joyce Green

United States District Court Judge

*A sample motion for
bill of particulars
(continued)*

As a fundamental guarantee of individual liberty, the U.S. Bill of Rights (see appendix volume for primary document) forms a vital aspect of American law and government. It establishes many legal principles that have had a decisive effect upon law and society, including the functioning of the criminal justice system, the separation of church and state, and the exercise of FREEDOM OF SPEECH.

The concept of a bill of rights as a statement of basic individual freedoms derives in part from the English Bill of Rights, passed in 1689 (see appendix volume for primary document). This document, which was created after the Glorious Revolution of 1688, established the terms by which William and Mary were accepted as king and queen of England. It forbade the monarchy to suspend laws, raise taxes, or maintain an army without consent of Parliament. It

also declared that freedom of speech in Parliament could not be challenged, protected those accused of crimes from "excessive bail" and "cruel and unusual punishments," and provided a number of other privileges and freedoms (1 Will. & Mar., Sess. 2, C. 2).

Nearly a century later, seven of the 13 states of the newly independent United States of America adopted a bill of rights as part of their state constitutions, and the remaining six included elements of the English Bill of Rights in the bodies of their constitutions. Virginia, the first state to adopt a bill of rights, passed the VIRGINIA DECLARATION OF RIGHTS in 1776. Drafted largely by GEORGE MASON, Virginia's declaration became a model for later state bills of rights and ultimately for the federal Bill of Rights, and it remains a part of that state's constitution.

At the Constitutional Convention of 1787, the Framers of the U.S. Constitution used the English Bill of Rights and state bills of rights as resources as they sought to define the fundamental principles and institutions of U.S. government. However, they declined to add a bill of rights to the Constitution, on the grounds that the Constitution itself provided adequate protection from intrusive government. Indeed, the Constitution contained some elements of the English Bill of Rights, including Congress's exclusive power to maintain armed forces and, on the federal level, to pass laws and impose taxes. The Constitution also incorporated other specific rights traditional in ENGLISH LAW, including that of HABEAS CORPUS, which protects against unlawful imprisonment. However, the Constitution made no mention of other basic rights of constitutional government such as freedom of speech, press, and religion, and the rights of those accused of crimes.

During the Constitution's ratification process, from 1787 to 1789, state ratifying conventions pointed out the lack of such fundamental guarantees in the Constitution and submitted lists of proposed constitutional amendments. The Federalists, who supported ratification of the Constitution, eventually conceded and promised to attach a bill of rights to the document. The leading contributors to the creation of these amendments—which came collectively to be called the Bill of Rights—were George Mason, THOMAS JEFFERSON, and JAMES MADISON, with Madison serving as their principal author and sponsor on the floor of the U.S. House during the First Congress.

On September 25, 1789, 12 amendments to the Constitution were submitted to the states by the required two-thirds majority of Congress. Two of the amendments—which dealt with congressional pay and the APPORTIONMENT, or assignment, of congressional seats to the states—were voted down by the states. The other ten amendments were ratified by December 15, 1791.

Scholars have described the Bill of Rights as protecting three different types of HUMAN RIGHTS: (1) rights of conscience, including the First Amendment's freedom of speech and religion; (2) rights of those accused of crimes, such as the Eighth Amendment's protection against excessive bail and fines; and (3) rights of property, such as the Fifth Amendment's provision that no one may be deprived of property without DUE PROCESS OF LAW.

One vital issue in the history of the interpretation of the Bill of Rights has concerned its application to the states. In the case of *Baron ex rel. Tiernan v. Mayor of Baltimore*, 32 U.S. (7 Pet.) 243, 8 L. Ed. 672 (1833), the Supreme Court ruled that the Bill of Rights applied only to the federal government. However, by the 1920s, the Court, using a principle known as the INCORPORATION DOCTRINE, had begun to apply selected elements of the first ten amendments to the states. According to this doctrine, elements of the Bill of Rights may be applied to the states through the Due Process Clause of the FOURTEENTH AMENDMENT, which holds that no state shall "deprive any person of life, liberty, or property, without due process of law." Thus in 1925 the Supreme Court ruled that the FIRST AMENDMENT protections of freedom of speech applied to the states as well as the federal government (*GITLOW v. NEW YORK*, 268 U.S. 652, 45 S. Ct. 625, 69 L. Ed. 1138). Incorporation gave the Supreme Court wide power to strike down state laws that it deemed to be in violation of the Constitution's Bill of Rights.

By the end of the twentieth century, nearly all provisions of the Bill of Rights had been declared binding on the states. Only five provisions of the Bill of Rights had not been applied to the states: (1) the Second Amendment's right to bear arms; (2) the Third Amendment's prohibition against involuntary quartering of troops; (3) the Fifth Amendment's requirement of GRAND JURY indictment in capital cases; (4) the Seventh Amendment's provision for trial by jury in civil cases; and (5) the Eighth Amendment's prohibition of excessive bail and fines.

States are free to provide additional protections beyond those offered in the federal Bill of Rights, but they may not reduce CIVIL RIGHTS or liberties to standards lower than those of the federal Constitution.

Other countries have passed bills of rights that differ from those of England and the United States. In 1789 the Constituent Assembly of France passed the Declaration of the Rights of Man, a document that stated the philosophical principles of the French Revolution. Canada adopted the Act for the Recognition and Protection of Human Rights and Fundamental Freedoms in 1960 (8-9 Eliz. II, ch. 44, § 1[c]-[f] [Can.]) and the Charter of Rights and Freedoms in 1982 (Can. Const. [Constitution Act, 1982] pt. I).

FURTHER READINGS

- Amar, Akhil Reed. 1998. *The Bill of Rights: Creation and Reconstruction*. New Haven: Yale Univ. Press.
- Coleman, John. 1998. *What You Should Know about the U.S. Constitution and the Bill of Rights*. Carson City, Nev.: Bridger House.
- Lewis, Thomas T., ed. 2002. *The Bill of Rights*. Pasadena, Calif.: Salem Press.
- Monk, Linda R. 2000. *The Bill of Rights: A User's Guide*. Alexandria, Va.: Close Up Pub.
- Reese, Lee F. 1986. *George Mason's Part in Framing the Constitution of the U.S.A. and the Bill of Rights*. Lexington, Ky.: Lexington Books.

CROSS-REFERENCES

Constitutional Amendment; Eminent Domain; English Bill of Rights (Appendix, Primary Document); Equal Protection; Freedom of Association and Assembly; Freedom of the Press; Privilege Against Self-Incrimination; Religion; Right to Counsel; Search and Seizure; Speedy Trial; U.S. Bill of Rights (Appendix, Primary Document). See also entries on each amendment to the U.S. Constitution (e.g., First Amendment).

BILL OF SALE

In the law of contracts, a written agreement, previously required to be under seal, by which one person transfers to another a right to, or interest in, PERSONAL PROPERTY and goods, a legal instrument that conveys title in property from seller to purchaser.

BILLS AND NOTES

An archaic term that designated the body of law currently known as the law of COMMERCIAL PAPER, which governs the methods by which commercial transactions are financed and facilitated by the execution and transfer of documents that contain promises to repay debts according to the terms specified in the documents.

BILLS OF CREDIT

Non-interest-bearing promissory notes issued by the government and backed by its faith and credit to be paid when presented by their holders, which are in the form of currency and are intended to be circulated and exchanged in the community as money.

The federal government, acting through the FEDERAL RESERVE banks, issues bills of credit in the form of dollar bills that are promises to pay the specific denominations indicated on them to the bearer of such paper on demand. Article I, Section 10 of the Constitution, in order to provide a uniform standard of money throughout the United States, prohibits states from issuing their own bills of credit for circulation as currency.

A sample bill of sale

Bill of Sale

Dated: [date]

[seller], referred to as "SELLER", sells, bargains and conveys all of SELLER'S right, title and interest in:

[describe goods]

to [buyer], referred to as "BUYER", his heirs and assigns.

[seller] acknowledges receipt of a total of \$ [price, e.g. \$5000] from [buyer], BUYER, in full payment of the purchase price of the goods conveyed hereby.

[seller] warrants that there are no liens or encumbrances on the goods sold, and the [seller]'s title to the goods is clear and merchantable. [seller] shall defend [buyer] from any adverse claims to SELLER's title to the goods sold.

The BUYER, [buyer], acknowledges examining the goods sold herein. The goods sold herein are used and sold "as is", "where is", "with all faults." These goods are sold without UCC warranty of any kind, including fitness for a particular purpose or merchantability. The goods herein are not sold by a merchant in the field.

The parties agree to the terms and conditions stated herein:

[seller], SELLER

[buyer], BUYER

BINDER

A written document that records the essential provisions of a contract of insurance and temporarily protects the insured until an insurance company has investigated the risks to be covered, or until a formal policy is issued.

A receipt for cash or for a check that is deposited by a prospective buyer with the seller to secure the right to purchase real estate at terms that have been agreed upon by both buyer and seller.

BINDING AUTHORITY

Source of law that a judge must evaluate when making a decision in a case. For example, statutes from the same state where a case is being brought, or higher court decisions, are binding authority for a judge.

According to Article VI of the Constitution—the Supremacy Clause—all laws made pursuant to the Constitution are considered the supreme law of the land. They are entitled to legal superiority over any conflicting state law or constitutional provision.

CROSS-REFERENCES

Primary Authority.

"IT IS CLEARLY
THE RIGHT OF THE
REPUBLIC TO LIVE
AND TO DEFEND
ITS LIFE . . . [JUST]
AS IT IS THE RIGHT
OF THE INDIVIDUAL
TO LIVE SO LONG
AS GOD GIVES HIM
LIFE."
—JOHN BINGHAM

BINDING OVER

The requirement imposed by a court or a magistrate upon a person to enter into a recognizance or to post bail to ensure that he or she will appear for trial. The transfer of a case from a lower court to a higher court or to a GRAND JURY after PROBABLE CAUSE to believe that the defendant committed the crime has been established.

❖ **BINGHAM, JOHN ARMOR**

John Armor Bingham was born January 21, 1815, at Mercer, Pennsylvania. He attended

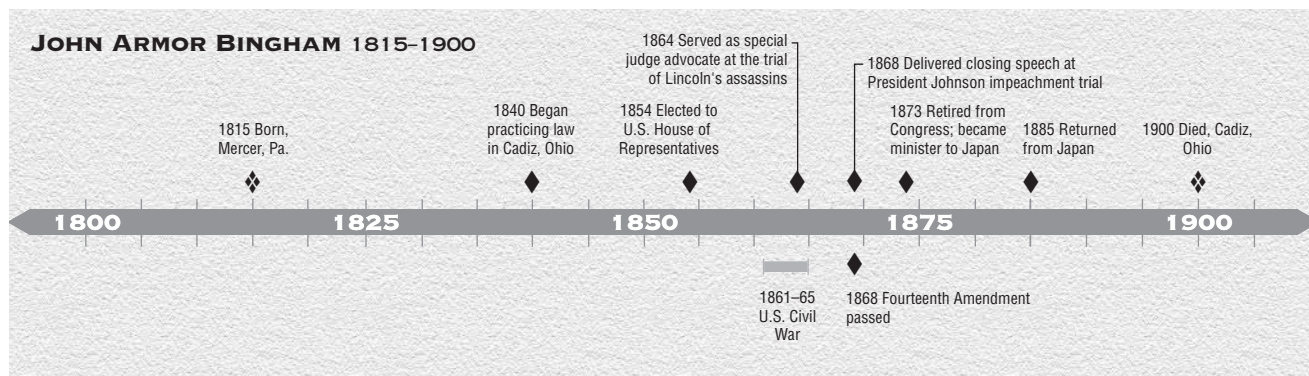


John Armor Bingham. LIBRARY OF CONGRESS

Franklin College and pursued legal studies before establishing a successful legal practice in Cadiz in 1840.

In 1854, Bingham became an Ohio representative to Congress, serving until 1873, with the exception of one session in 1864. In 1864, he became JUDGE ADVOCATE and, subsequently, solicitor of the court of claims. After his congressional tenure, he was minister to Japan until 1885.

Bingham gained fame for his participation in three significant historical events. He presided as special judge advocate at the proceedings



against the assassins of ABRAHAM LINCOLN; he delivered the closing speech at the IMPEACHMENT trial of President ANDREW JOHNSON; and he was instrumental in shaping the Privileges and Immunities Clause added to the FOURTEENTH AMENDMENT. In the last-mentioned endeavor Bingham worked with Senators Thaddeus Stevens of Pennsylvania, Jacob Howard of Michigan, and Lyman Trumbull of Illinois. The clause prohibited a state from abridging the PRIVILEGES AND IMMUNITIES guaranteed to a citizen of the United States.

Bingham died March 19, 1900, in Cadiz, Ohio.

❖ BINNEY, HORACE

Horace Binney was born January 4, 1780. He graduated from Harvard in 1797 and was admitted to the Philadelphia bar in 1800.

In 1806, Binney became a member of the Pennsylvania legislature, serving until 1807. In 1808 he became a director of the first BANK OF THE UNITED STATES, then returned to his political career in 1810 as a member of the Philadelphia Common Council and, from 1816 to 1819, the Philadelphia Select Council.

As a counselor, Binney displayed his legal expertise in cases concerning land titles. He won a famous victory in the Girard Trust Case of 1844, which involved the legality of a charitable legacy left to Philadelphia by philanthropist Stephen Girard. Binney defended the validity of this gift and set a precedent for interpretation of the law in regard to charitable bequests.

Binney was a representative for Pennsylvania in the U.S. House of Representatives from 1833 to 1835. He opposed the views of ANDREW JACKSON on the Second Bank of the United States:

Binney favored the federal bank, while Jackson preferred the use of state banks for federal deposits.

Binney wrote several biographies and case reports, including *Leaders of the Old Bar of Philadelphia* (1859). He died August 12, 1875, in Philadelphia.

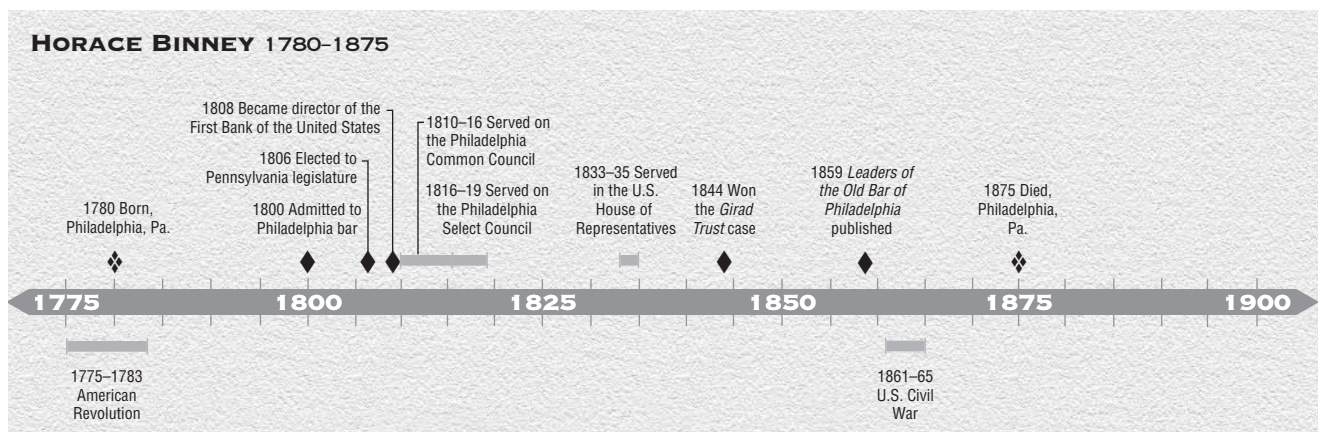
❖ BIRD, ROSE ELIZABETH

Rose Elizabeth Bird served as the first woman on the California Supreme Court, becoming the chief justice of one of the most prominent appellate courts in the United States. Bird became a controversial figure during the 1980s, as her adamant opposition to CAPITAL PUNISHMENT drew fire from political conservatives. In 1986, these views led voters to remove her from office. In her nine years on the court, however, Bird led a liberal majority that strengthened environmental laws, consumer rights, and WOMEN'S RIGHTS.

Bird was born on November 2, 1936, in Tucson, Arizona. She spent her childhood in Arizona and New York, where she graduated from Long Island University in 1958. She attended graduate school in political science at the University of California at Berkeley in 1960 but switched her career path to law when she entered Berkeley's Boalt Hall School of Law in 1962. After graduation in 1965, Bird was admitted to the PRACTICE OF LAW in California.

Following graduation, Bird served a one-year term as a law clerk for the chief justice of the Nevada Supreme Court. In 1966 she joined the Santa Clara County, California, public defenders office. Bird remained in the public defenders office until 1974, serving successively as deputy public defender, senior trial deputy, and chief

"THE BAR IS A
LARGE AND
DIVERSIFIED BODY.
LIKE THE WEB OF
OUR LIFE, IT IS A
MINGLED YARN,
GOOD AND ILL
TOGETHER."
—HORACE BINNEY



Rose Bird.
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PHOTOS



"MY ROLE ISN'T
TO BE POLITICALLY
SMART. MY ROLE
IS TO DO WHAT'S
RIGHT UNDER THE
CONSTITUTION.
AND IF THAT'S
POLITICALLY
UNPOPULAR, SO
BE IT."
—ROSE BIRD

public defender of the appellate division. As head of the appellate division, Bird oversaw all public defender criminal appeals to the California Courts of Appeal and the California Supreme Court. In addition to these duties, Bird served as an adjunct professor of law at Stanford University Law School from 1972 to 1974.

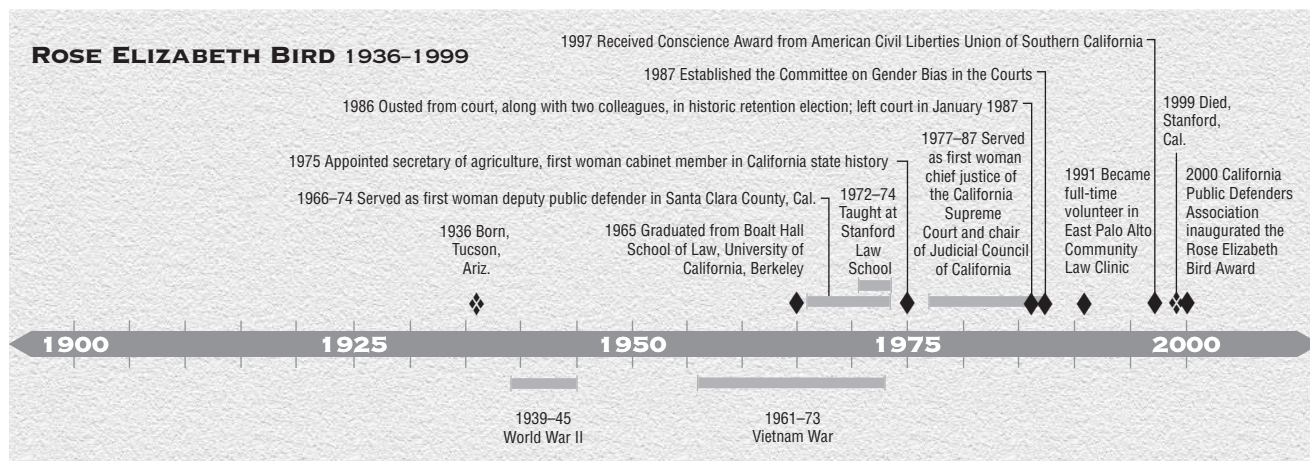
Bird's eventual rise to the California Supreme Court began when she became the chauffeur during Democrat Jerry Brown's campaign for the governorship in 1974. Following his election, Brown appointed Bird to his cabinet as secretary of agriculture. She spent most of her time in that office working to settle a series

of ongoing disputes between growers and farm unions. Moreover, she drafted reforms to the state's farm LABOR LAW and to consumer legislation.

In 1977, after twenty-two months in the cabinet, Governor Brown appointed Bird, then age 40, as chief justice of the California Supreme Court. She gained immediate national prominence because she was the first woman to serve on the state's high court. As a member of a liberal majority, Bird established herself as a brilliant and combative judge. During her tenure, the court issued decisions that promoted environmental regulation and CIVIL RIGHTS for racial minorities and women. Other decisions gave tenants more rights and poor women the right to have a state-funded ABORTION.

Coming from the public defenders office, the large corporate law firms and influential bar associations viewed her as an outsider. Bird signaled her disdain for the "old boys" system of privilege by selling the chief justice's Cadillac and by staying at inexpensive motels rather than at expensive hotels while on state business. She also exercised strong leadership over the administration of the courts. Bird promoted racial and gender diversity on the bench. During her tenure, more than one-thousand judges were appointed who were either persons of color or female. In addition, she led the court system to change its rules to allow cameras in the courtroom. Finally, she initiated a study of gender bias in the courts, a groundbreaking effort that was adopted by many other state courts during the 1980s and 1990s.

It was Bird's opposition to the death penalty, however, that had the greatest effect on her judi-



cial career. California reinstated the death penalty in 1977 over the VETO of Governor Brown. Thus, Bird took the bench at the same time that death penalty appeals would return to the state supreme court. Although Bird never discussed her personal views while on the court, she voted to overturn all sixty-four death sentences under her consideration.

By the mid-1980s, conservative political leaders began attacking Bird and members of the liberal majority who regularly voted against the death sentence. In 1986, Republican Governor George Deukmejian, along with local prosecutors, led a hard-hitting campaign to remove Bird and fellow justices Cruz Reynoso and Joseph Grodin from the court. They became the first judges in state history to be removed from office in a retention election. A retention election allows citizens to vote to retain or oust the judge in which there are no opposing candidates. Governor Deukmejian then appointed three justices to fill the vacancies.

Following her defeat, Bird dropped from the public scene. She volunteered at a Palo Alto legal aid office, doing clerical work because she let her bar registration dues lapse. She also worked at a local food bank, taught for a short time in Australia at the University of Sydney, and lectured occasionally around the country. She died on December 4, 1999, in Palo Alto from complications related to breast cancer.

FURTHER READINGS

Beck, Susan. 1998. "Justice on the Run." *American Lawyer* (September): 76.

Cooper, Claire. 2000. "Rose Bird: The Last Interview." *California Lawyer* 20 (February): 38.

BIRTH CONTROL

A measure or measures undertaken to prevent conception.

In the 1800s, temperance unions and anti-vice societies headed efforts to prohibit birth control in the United States. Anthony Comstock, the secretary of the Society for the Suppression of Vice, advocated a highly influential law passed by Congress in 1873. It was titled the Act for the Suppression of Trade in, and Circulation of Obscene Literature and Articles of Immoral Use, but known popularly as the COMSTOCK LAW or Comstock Act (18 U.S.C.A. § 1416-62 [1964]; 19 U.S.C.A. § 1305 [1964]). The Comstock Act prohibited the use of the mail system to transmit



obscene materials or articles addressing or for use in the prevention of conception, including information on birth control methods or birth control devices themselves.

Soon after the federal government passed the Comstock Act, over half of the states passed similar laws. All but two of the rest of the states already had laws banning the sale, distribution, or advertising of contraceptives. Connecticut had a law that prohibited even the *use* of contraceptives; it was passed with little or no consideration for its enforceability.

Despite popular opposition, birth control had its advocates, including MARGARET SANGER. In 1916, Sanger opened in New York City the first birth control clinic in the United States. For

The birth control pill is one of the most widely used forms of birth control. In the 1950s, birth control advocate Margaret Sanger raised \$150,000 to pay for research into the development of the birth control pill by Dr. Gregory Pincus.

AP/WIDE WORLD
PHOTOS

doing so, she and her sister Ethel Byrne, who worked with her, were prosecuted under the state's version of the Comstock law (*People v. Byrne*, 99 Misc. 1, 163 N.Y.S. 682 [1917]; *People v. Sanger*, 179 A.D. 939, 166 N.Y.S. 1107 [1917]). Both were convicted and sentenced to thirty days in a workhouse.

After serving her sentence, Sanger continued to attack the Comstock Act. She established the National Committee for Federal Legislation for Birth Control, headquartered in Washington, D.C., and proposed the "doctor's bill." This bill advocated change in the government's policy toward birth control, citing the numerous instances in which women had died owing to illegal ABORTIONS and unwanted pregnancies. The bill was defeated, due, in part, to opposition from the Catholic Church and other religious groups.

But when the issue of Sanger's sending birth control devices through the mail to a doctor was pressed in *United States v. One Package*, 13 F. Supp. 334 (S.D.N.Y. 1936), the court ruled that the Comstock Act was not concerned with preventing distribution of items that might save the life or promote the well-being of a doctor's patients. Sanger had sought to challenge the Comstock Act by breaking it and sending contraception in the mail. Her efforts were victorious and the exception was made. The doctor to whom Sanger had sent the device was granted its possession.

Sanger furthered her role in reforming attitudes toward birth control by founding the Planned Parenthood Federation of America in 1942. Planned Parenthood merged previously existing birth control federations and promoted a range of birth control options. In the 1950s, Sanger went on to support the work of Dr. Gregory Pincus, whose research eventually produced the revolutionary birth control pill.

By the 1960s, partly as a result of Sanger's efforts, popular and legal attitudes toward birth control began to change. The case of *GRISWOLD V. CONNECTICUT*, 381 U.S. 479, 85 S. Ct. 1678, 14 L. Ed. 2d 510 (1965), loosened the restrictions of the Comstock Act. When the Planned Parenthood League of Connecticut opened in 1961, its executive director, Estelle Griswold, faced charges of violating Connecticut's ban on the use of contraceptives (Conn. Gen. Stat. Ann. §§ 53-32, 54-196 [1958]).

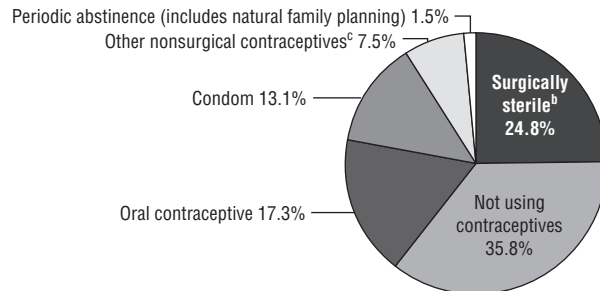
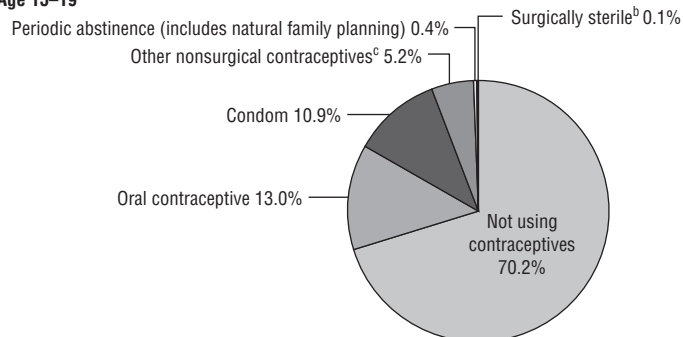
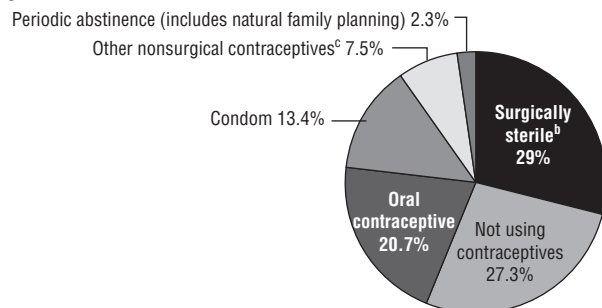
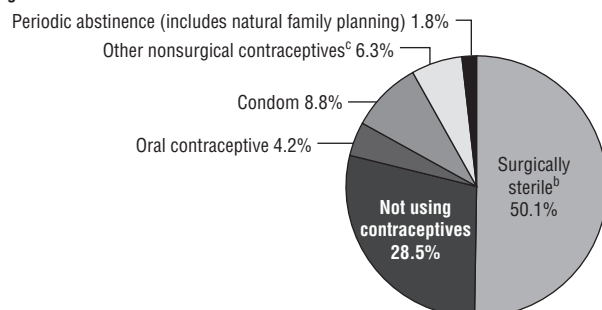
A divided Supreme Court overturned Griswold's conviction with a ground-breaking opin-

ion that established a constitutional right to marital privacy. The Court threw out the underlying Connecticut statute, which prohibited both using contraception and assisting or counseling others in its use. The majority opinion, authored by Justice WILLIAM O. DOUGLAS, looked briefly at a series of prior cases in which the Court had found rights not specifically enumerated in the Constitution—for example, the right of FREEDOM OF ASSOCIATION, which the Court has said is protected by the FIRST AMENDMENT, even though that phrase is not used there (*NAACP v. Alabama*, 357 U.S. 449, 78 S. Ct. 1163, 2 L. Ed. 2d 1488 [1958]). Douglas concluded that various guarantees contained in the Bill of Rights' Amendments One, Three, Four, Five, Nine, along with Amendment Fourteen, create "zones of privacy," which include a right of marital privacy. The Connecticut statute, which could allow police officers to search a marital bedroom for evidence of contraception, was held unconstitutional; the government did not have a right to make such intrusions into the marital relationship.

The other branches of the government followed the Court's lead. President LYNDON B. JOHNSON endorsed public funding for family planning services in 1966, and the federal government began to subsidize birth control services for low-income families. In 1970 President RICHARD M. NIXON signed the Family Planning Services and Population Research Act (42 U.S.C.A. § 201 et seq.). This act supported activities related to population research and family planning.

More and more, the Comstock Act came to be seen as part of a former era, until, in 1971, the essential components of it were repealed. But this repeal was not necessarily followed in all the states. In the 1972 case of *Eisenstad v. Baird*, 405 U.S. 438, 92 S. Ct. 1029, 31 L. Ed. 2d 349, the Court struck down a Massachusetts law still on the books that allowed distribution of contraceptives to married couples only. The Court held that the Massachusetts law denied single persons EQUAL PROTECTION, in violation of the FOURTEENTH AMENDMENT.

In the 1977 case of *Carey v. Population Services International*, 431 U.S. 678, 97 S. Ct. 2010, 52 L. Ed. 2d 675, the Supreme Court continued to expand constitutional protections in the area of birth control. The Court imposed a strict standard of review for a New York law that it labeled "defective." The law had prohibited any-

Birth Control**CONTRACEPTIVE USE BY WOMEN OF CHILDBEARING AGE, 15 TO 44 YEARS OLD, IN 1995****All women age 15–44^a****Age 15–19^a****Age 30–34^a****Age 40–44^a**

^a Numbers may not add up to 100 due to rounding.

^b Includes sterilizations performed on woman for contraceptive or medical reasons, as well as sterilization performed on husband or partner.

^c Includes IUD, diaphragm, withdrawal, and other methods.

SOURCE: U.S. National Center for Health Statistics, *Vital Health Statistics*, vol. 23, no. 19, 1997.

one but physicians from distributing contraceptives to minors under sixteen years of age. The law had also prohibited anyone but licensed pharmacists from distributing contraceptives to persons over sixteen. *Carey* allowed makers of contraceptives more freedom to distribute and sell their products to teens.

Throughout the 1990s, cases were brought in a number of jurisdictions in which parents sought to prohibit the distribution of condoms and other forms of birth control in schools to unemancipated minor students without the consent of a parent or guardian. Although some jurisdictions held that such birth control distribution programs violated the parents' DUE PROCESS rights, other jurisdictions upheld the privacy rights of such minors and found the programs to be constitutional.

More controversy arose after women gained access to RU-486, the so-called "morning-after" pill and later generations of emergency contraceptives, which are high-dosage birth control pills designed to be taken shortly after unprotected intercourse has taken place. Emergency contraception continues to be opposed by antiabortion groups on the ground that it is another form of abortion.

Since 2000, the election of Republican majorities in various state legislatures has strengthened the position of groups opposing abortion and reproductive rights. In addition to continuing to battle for the right to require parental consent for contraceptive services to minors both in schools and community health clinics, a number of conservative groups support "abstinence-only" sexuality education classes in schools. While some proponents want to make such classes optional and are willing to have them taught alongside traditional courses

that discuss various methods of birth control, other adherents seek to have these classes taught in place of the traditional courses.

President GEORGE W. BUSH's election in 2000 as well as the Republican gains in the House in 2002, further strengthened the efforts of those who seek to restrict access to birth control education and methods.

FURTHER READINGS

- Bacigal, Ronald J. 1990. *The Limits of Litigation—The Dalkon Shield Controversy*. Durham, N.C.: Carolina Academic Press.
- Hoff-Wilson, Joan. 1991. *Gender and Injustice: A Legal History of U.S. Women*. New York: New York Univ. Press.
- McCann, Carole R. 1994. *Birth Control Politics in the United States, 1916–1945*. Ithaca: Cornell Univ. Press.
- McLaren, Angus. 1990. *A History of Contraception from Antiquity to the Present*. Cambridge, Mass.: Blackwell.
- Planned Parenthood. Available online at <www.plannedparenthood.org> (accessed June 1, 2003).
- Solinger, Rickie. 2000. *Wake Up Little Susie: Single Pregnancy and Race before Roe v. Wade*. New York: Routledge.

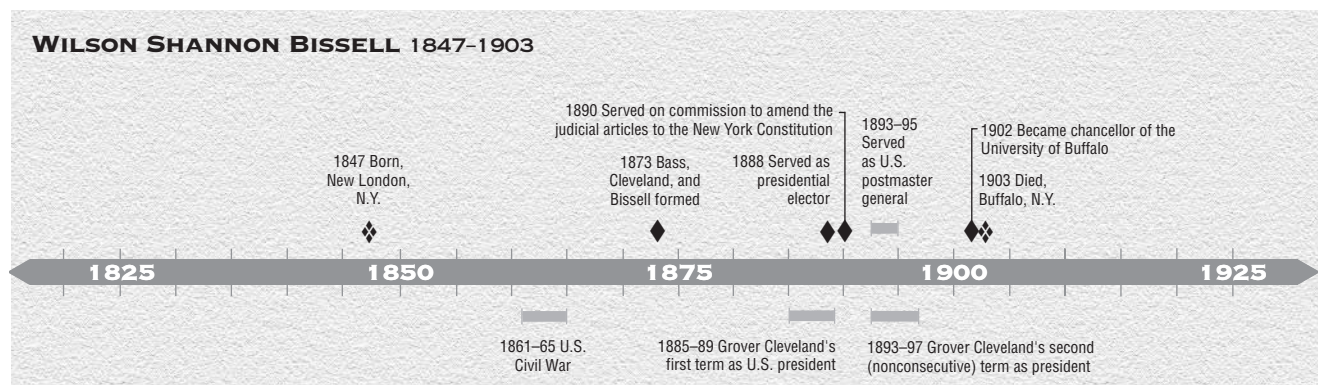
CROSS-REFERENCES

Family Law; *Griswold v. Connecticut* (Appendix, Primary Document); Parent and Child; Privacy; Reproduction; Schools and School Districts.

❖ BISSELL, WILSON SHANNON

Wilson Shannon Bissell was born December 31, 1847, in New London, New York. He graduated from Yale in 1869 and received a doctor of laws degree in 1893. In 1872 he established a legal practice with Lyman K. Bass and in 1873 GROVER CLEVELAND joined the firm, forming Bass, Cleveland and Bissell.

In 1888 Bissell acted as a presidential elector and in 1890, served on a commission to amend the judicial articles of the New York Constitution.



Grover Cleveland, as president of the United States in 1893, selected his former law partner to serve as U.S. postmaster general, which post Bissell held until 1895.

Extending his career to the field of education, Bissell became chancellor of the University of Buffalo in 1902. He died October 6, 1903, in Buffalo.

BLACK CODES

A body of laws, statutes, and rules enacted by southern states immediately after the Civil War to regain control over the freed slaves, maintain white supremacy, and ensure the continued supply of cheap labor.

The Union's victory over the South in the Civil War signaled the end for the institution of SLAVERY in the United States. Ratified in 1865, the THIRTEENTH AMENDMENT to the U.S. Constitution formalized this result in U.S. law, abolishing slavery throughout the country and every territory subject to its jurisdiction.

For the next several months, southern states sought a way to restore for the white majority what the Civil War and the Thirteenth Amendment had tried to deny them, supremacy, control, and economic power over the fate of African Americans. Under slavery, whites had disciplined the blacks largely outside the law, through extralegal whippings administered by slave owners and their overseers. After the slaves were emancipated, panicky whites feared that blacks would seek revenge against them for their harsh and inhumane treatment on the southern plantations. Former slave owners feared for themselves, their families, and their property.

While some white southerners thought that African-Americans were best controlled through VIGILANTISM, Mississippi whites began passing laws to take away the former slaves' new found freedom. The first such law was enacted on November 22, 1865. It directed civil officers to hire orphaned African Americans and forbade the orphans to leave their place of employment for any reason. Orphans were typically compensated with a free place to live, free meals, and some type of nominal wage. Other white employers were prohibited from offering any enticement to blacks "employed" by someone else.

The Mississippi legislature next passed a VAGRANCY law, defining vagrants as workers

who "neglected their calling or employment or misspent what they earned." Another Mississippi law required African Americans to carry with them written evidence of their present employment at all times, a practice that was hauntingly reminiscent of the old pass system under slavery. The final piece to the puzzle came when Mississippi established a system of special county courts to punish blacks charged with violating one of the new state employment laws. The law imposed draconian punishments, including "corporal chastisement" for blacks who refused to work or otherwise tried to frustrate the system. African Americans who committed real crimes, such as stealing, could be hung by their thumbs.

Widely considered to be the first set of *Black Codes* passed in the south after the Civil War, these Mississippi laws represented a concerted effort by white lawmakers to restore the master-slave relationship under a new name. Within a few months after Mississippi passed its first such law, Alabama, Georgia, Louisiana, Florida, Tennessee, Virginia, and North Carolina followed suit by enacting similar laws of their own.

Congress quickly responded to the Black Codes by passing the CIVIL RIGHTS ACT of 1866, which made it illegal to discriminate against blacks by assigning them an inferior legal and economic status. Two years later the states ratified the FOURTEENTH AMENDMENT, which guaranteed "equal protection of the laws" to the residents of every state.

But the southern states were not deterred. They soon passed a new set of laws that permitted local officials to informally discriminate against blacks, without specific statutory authority. The thrust-and-parry exchanges between Congress and the southern states continued throughout the period Reconstruction (1865-77) and through the first half of the twentieth century.

FURTHER READINGS

Kramer, William. 1984. "How 'Black Codes' Virtually Nullified the Emancipation Proclamation." *The Los Angeles Daily Journal* 97.

Pulliam, Ted. 2001. "The Dark Days of Black Codes." *Legal Times* 24.

CROSS-REFERENCES

Civil Rights Acts; Civil Rights Cases; Civil Rights Movement; Corporal Punishment; Fourteenth Amendment; Jim Crow Laws; Reconstruction; Segregation; Thirteenth Amendment.

❖ **BLACK, HUGO LAFAYETTE**

Hugo LaFayette Black was an associate justice on the U.S. Supreme Court for nearly thirty-four years, serving one of the longest and most influential terms in the history of the Court.

Black was born February 27, 1886, in Harlan, Alabama, the eighth child of a storekeeper and farmer. He was raised in rural Alabama and attended local schools. At the age of seventeen, Black entered Birmingham Medical College. He decided that he was more suited to the study of law, however, and left the college after one year to attend the University of Alabama Law School, where he received his bachelor of laws degree in 1906. In the same year, Black was admitted to the Alabama bar. He practiced briefly in Ashland, Alabama, near his childhood home. He then moved to Birmingham, where he quickly developed a successful practice in TORT, labor, and contract law. In 1911, he was appointed as judge on the Birmingham Police Court, but he resigned eighteen months later to return to private practice. In 1914, Black was elected county prosecutor for Jefferson County, Alabama, and gained local prominence for his investigation of brutal police tactics used to question suspects at the county jail. In 1917 Black resigned his position as prosecutor and enlisted in the Army. He remained in the United States and served as a captain of the artillery for a year. Then he resumed his private practice in Birmingham, where he frequently represented local workers in personal injury suits and served as an attorney for the local chapter of the United Mine Workers. In 1921 he married Josephine Foster, with whom he had three children.

In 1923 Black joined the Birmingham chapter of the KU KLUX KLAN (KKK). He remained a member for two years. He commented later that, at the time, he believed joining the group could further his political and professional career.

In 1926, Black, a Democrat, won a seat in the U.S. Senate, overcoming four other Democrats in the race. Black served in the Senate for nearly ten years and gained prominence as a tenacious and sometimes relentless investigator into the activities of Washington, D.C. lobbyists for PUBLIC UTILITIES. He was also a member of the SENATE JUDICIARY COMMITTEE and a staunch supporter of President FRANKLIN D. ROOSEVELT's NEW DEAL legislation. A longtime supporter of organized labor, Black helped secure passage of the FAIR LABOR STANDARDS ACT of 1938 (29 U.S.C.A. § 201 et seq.), which estab-

lished a MINIMUM WAGE and a forty-hour work-week for enterprises in interstate commerce.

In August 1937, Black became Roosevelt's first appointee to the U.S. Supreme Court, nominated to replace retiring justice WILLIS VAN DEVANTER. Initially, Black's nomination was met with some opposition. Some critics cited his relative lack of judicial experience; others expressed concern about his "judicial temperament," given the aggressive and even abrasive manner that he was said to display when interrogating witnesses while a senator. Black was nevertheless confirmed in October 1937, by a vote of 63–16. Shortly afterward came confirmation of rumors that had been circulating throughout Washington, D.C., about Black's KKK ties in the mid-1920s. The controversy died quickly after Black spoke about the matter in a radio address. He admitted that he had once been a member but maintained that he had resigned many years earlier and had disavowed any further association with the organization.

Throughout his long career on the Court, Black wrote a number of landmark decisions concerning CIVIL RIGHTS, free speech, and other important constitutional issues. In *Chambers v. Florida*, 309 U.S. 227, 60 S. Ct. 472, 84 L. Ed. 716 (1940), he wrote the majority opinion overturning the death sentences of several blacks who had been coerced, through many hours of POLICE INTERROGATION, into confessing to murder. The *Chambers* decision, which came early in Black's tenure on the Court and was the first major civil rights decision he wrote, did much to alleviate the fears of civil libertarians about his earlier KKK involvement. In another civil rights case, *Boydton v. Virginia*, 364 U.S. 454, 81 S. Ct. 182, 5 L. Ed. 2d 206 (1960), Black wrote the majority opinion holding that racial SEGREGATION in facilities for travelers violated the INTERSTATE COMMERCE ACT (49 U.S.C.A. § 501 et seq.).

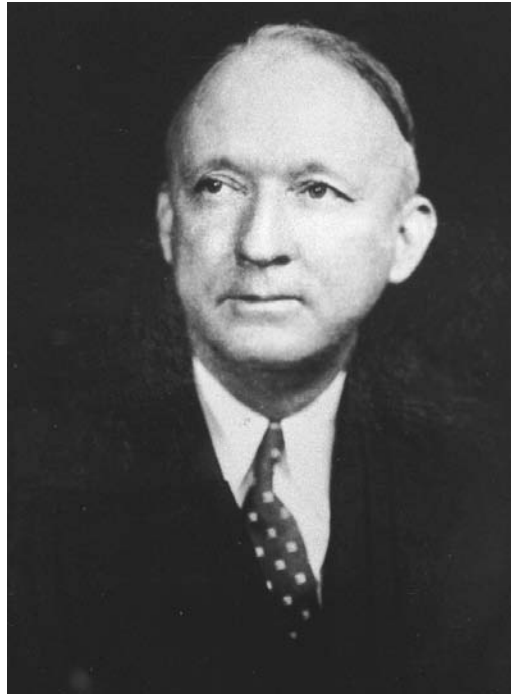
Black had represented many labor organizations while a practicing attorney, and he continued his strong pro-labor stance throughout his career on the Court. In *National Labor Relations Board v. Waterman Steamship Corp.*, 309 U.S. 206, 60 S. Ct. 493, 84 L. Ed. 704 (1940), which involved a dispute over UNFAIR LABOR PRACTICES, Black wrote for the majority that the court of appeals could not substitute its judgment for that of the NATIONAL LABOR RELATIONS BOARD. In his dissent in *United Public Workers v. Mitchell*, 330 U.S. 75, 67 S. Ct. 556, 91 L. Ed. 754 (1947), he opposed restrictions that

"THE LAYMAN'S
CONSTITUTIONAL
VIEW IS THAT
WHAT HE LIKES IS
CONSTITUTIONAL
AND THAT WHICH
HE DOESN'T LIKE IS
UNCONSTITUTIONAL."
—HUGO BLACK

prohibited federal government workers from participating in political campaigns. In *YOUNGSTOWN SHEET & TUBE CO. V. SAWYER*, 343 U.S. 579, 72 S. Ct. 863, 96 L. Ed. 1153 (1952), the Court, with Black writing the majority opinion, held that President **HARRY S. TRUMAN** did not have the authority to seize most of the United States' steel mills to avert a threatened strike.

Black strongly believed that the **DUE PROCESS CLAUSE** of the **FOURTEENTH AMENDMENT** to the Constitution—which provides that “[n]o State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States”—means that the first eight amendments of the **BILL OF RIGHTS** must be applied to the states as well as to the federal government. Eventually, a majority of the Court agreed with him. In *GIDEON V. WAINWRIGHT*, 372 U.S. 335, 83 S. Ct. 792, 9 L. Ed. 2d 799 (1963), Black wrote for the majority that states must provide defense counsel to indigent defendants accused of a felony, at any “critical stage” of the criminal proceedings. In *Pointer v. Texas*, 380 U.S. 400, 85 S. Ct. 1065, 13 L. Ed. 2d 923 (1965), in another majority opinion, Black wrote that the **SIXTH AMENDMENT** right of an accused to confront witnesses extends to defendants in state cases.

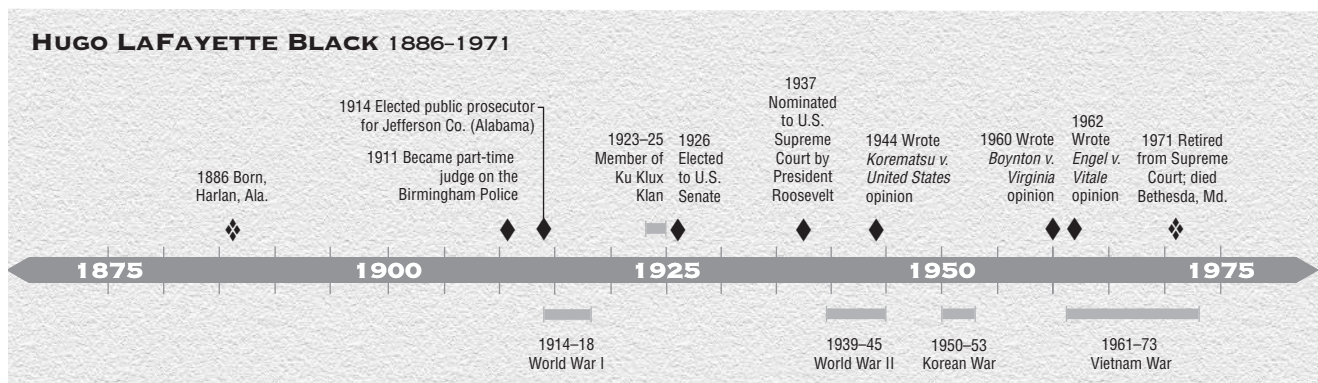
Black always carried a copy of the Constitution in his pocket. He was a staunch defender of the **FIRST AMENDMENT** and vehemently opposed any restrictions on the **FREEDOM OF SPEECH**. He dissented in *DENNIS V. UNITED STATES*, 341 U.S. 494, 71 S. Ct. 857, 95 L. Ed. 1137 (1951), which upheld a federal statute making it a crime to advocate the overthrow of the government by force. Black rejected the Court's reliance on the “clear-and-present-danger” test, in which the Court considered whether such a serious danger existed that the



Hugo L. Black.

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restriction of speech was justified. Black wrote, “There is hope . . . that in calmer times, when present pressures, passions and fears subside, this or some other Court will restore the First Amendment liberties to the high preferred place where they belong in society.” He joined Justice William O. Douglas's dissent in the **OBSCENITY** case *ROTH V. UNITED STATES*, 354 U.S. 476, 77 S. Ct. 1304, 1 L. Ed. 2d 1498 (1957), in which Douglas maintained that even “prurient” material was entitled to absolute First Amendment protection. In the First Amendment case *ENGEL V. VITALE*, 370 U.S. 421, 82 S. Ct. 1261, 8 L. Ed. 2d 601 (1962), he wrote the majority opinion holding that voluntary prayers sponsored by public schools are unconstitutional. He stated,



"It is neither sacrilegious nor antireligious to say that each separate government in this country should stay out of the business of ... sanctioning ... prayers and leave that purely religious function to the people themselves and to those the people choose to look to for religious guidance." One of Black's last opinions before leaving the Court was for the *Pentagon Papers* case, *NEW YORK TIMES CO. V. UNITED STATES*, 403 U.S. 713, 91 S. Ct. 2140, 29 L. Ed. 2d 822 (1971), in which he concurred in the Court's holding that the government could not prevent publication of a classified study on the VIETNAM WAR.

Black departed from his liberal views in *KOREMATSU V. UNITED STATES*, 323 U.S. 214, 65 S. Ct. 193, 89 L. Ed. 194 (1944), a widely criticized decision, for which he wrote the majority opinion upholding the internment of Japanese Americans during WORLD WAR II. Despite the condemnation of *Korematsu* in the years following the war, Black stood by the decision, maintaining that it was justified by the climate of fear that existed at the time. In addition, his STRICT CONSTRUCTION of the Constitution led him to write other opinions that sometimes seem inconsistent with his liberal views. He dissented in *GRISWOLD V. CONNECTICUT*, 381 U.S. 469, 85 S. Ct. 1678, 14 L. Ed. 2d 510 (1965), in which the Court struck down, on privacy grounds, a state law that prohibited the sale of contraceptives. Black maintained that no right of privacy could be found to emanate "from one or more constitutional provisions."

While on the Court, Black was known for being sometimes antagonistic toward other justices with whom he disagreed. The Court's tradition of keeping private its inner workings and the nature of the personal relationships between the justices was broken when Black became engaged in an unusually public feud with Justice ROBERT H. JACKSON in 1946. The dispute began when Jackson, in a letter to the Senate and House Judiciary Committees, accused Black of a conflict of interest for participating in two labor decisions that were argued by a former law partner of Black's. Jackson failed to mention that Black and the attorney had dissolved their partnership nineteen years earlier and had hardly seen each other since. Black, in turn, publicly criticized Jackson's leave of absence from the Court from 1945 to 1946 to serve as the U.S. prosecutor at the NUREMBERG TRIALS, calling those proceedings a "high grade lynching party." Jackson was in line for the chief justice seat,

which had been vacated in 1946, and he blamed Black when the appointment went to FRED M. VINSON, selected by President Truman to restore peace among the members of the Court. Following Vinson's appointment, Black and Jackson were outwardly cordial to each other, though Jackson was reported to have remained resentful, believing that Black's actions had denied him the post of chief justice.

Healthy and vigorous well into his later life, Black was an avid tennis player who often shared the court with his law clerks. On September 17, 1971, Black resigned from the Court at the age of eighty-five. He died just eight days later after suffering a massive stroke.

FURTHER READINGS

- Frank, John P. 1997. "The Shelf Life of Justice Hugo L. Black." *Wisconsin Law Review*. (January-February).
- Hockett, Jeffrey D. 1996. *New Deal Justice: The Constitutional Jurisprudence of Hugo L. Black, Felix Frankfurter, and Robert H. Jackson*. Lanham, Md.: Rowman & Littlefield.
- Newman, Roger K. 1999. "The Populist: Hugo Black Overcome Humble Beginnings—and Membership in the Ku Klux Klan—To Become a Constitutional Pioneer of Civil Rights and Civil Liberties." *American Lawyer* 21 (December).
- . 1997. *Hugo Black: A Biography*. New York: Fordham Univ. Press.

CROSS-REFERENCES

Freedom of the Press; Incorporation Doctrine; Japanese American Evacuation Cases; Right to Counsel; School Prayer.

❖ BLACK, JEREMIAH SULLIVAN

Jeremiah Sullivan Black was a prominent lawyer, judge, and U.S. attorney general, and also an unsuccessful nominee for the U.S. Supreme Court.

Black was born January 10, 1810, in Stony Creek, Pennsylvania. He was raised in rural Pennsylvania and was largely self-educated through his own reading and study of Shakespeare, the Bible, and other works of literature. He originally planned a career in medicine, but his father arranged for him to study law with Chauncey Forward, a prominent local attorney and politician. After three years with Forward, Black was admitted to the Pennsylvania bar, in late 1830. Forward then left his practice to take a seat in the U.S. Congress and turned over his clients to Black, enabling Black to develop a lucrative law practice of his own. Black married Forward's daughter in 1836, and they had two children.

Black soon became active in Democratic politics and was appointed deputy attorney general for his county. In 1842 he was appointed judge of the district court, and nine years later, he was elected to the state supreme court. He won reelection to the state high court in 1854, and served as chief justice for three years. While an appellate judge, Black was best known for his opinions defining and construing the meaning of corporate charters.

A longtime supporter of President JAMES BUCHANAN, Black was appointed U.S. attorney general by Buchanan in 1857. While attorney general, Black gained recognition for launching a vigorous prosecution of fraudulent land schemes in California. The investigation, headed by EDWIN M. STANTON, Black's eventual successor, resulted in the U.S. Supreme Court's reversing many district court cases involving land FRAUD. Black also enforced federal laws concerning the slave trade and the return of fugitive slaves. In addition, Black helped establish the Buchanan administration's position on secession, urging the president to maintain a strong Unionist stance.

In a shuffle of cabinet offices in December 1860, Black served for a short time as SECRETARY OF STATE. During his brief tenure, South Carolina became the first state to secede from the Union, and Black was a key adviser to Buchanan in handling the crisis.

In January 1861, with only a few weeks left in his own term as president, Buchanan named Black to a seat on the U.S. Supreme Court that had been vacant for eight months. Republican senators, anxious to give the incoming president, ABRAHAM LINCOLN, his first appointment to the Court, opposed Black. Furthermore, although Black was a strong supporter of the Union, he was not an abolitionist. As a result, his



Jeremiah Sullivan Black.

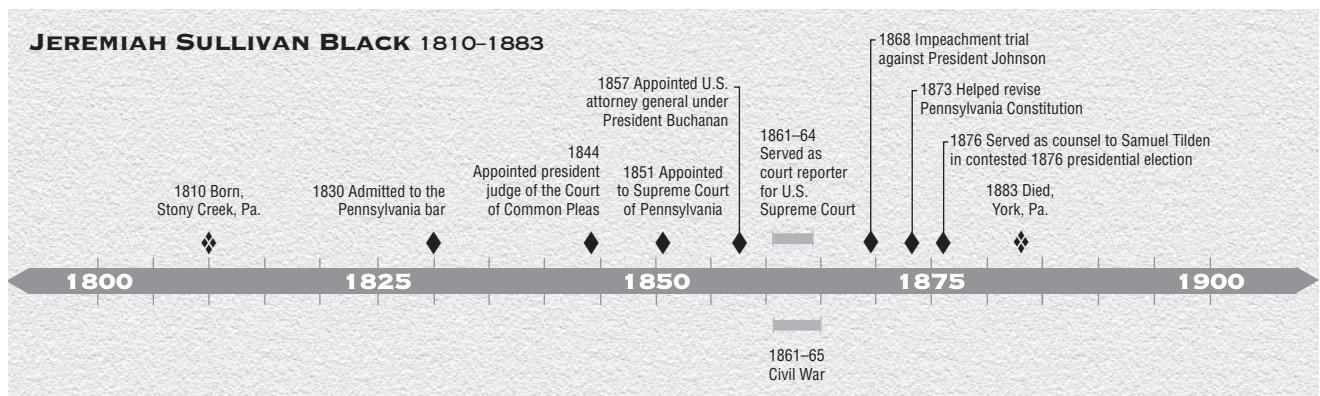
LIBRARY OF CONGRESS

nomination was harshly criticized by the Northern antislavery press and by Democrat STEPHEN A. DOUGLAS, who had just lost the election to Lincoln. Also, Southern senators who might have supported Black were resigning from the Senate to join the Confederacy. Had Buchanan acted earlier to fill the seat, Black could have been easily confirmed. Instead, he was rejected 26–25.

Deeply disappointed at his narrow defeat, Black returned to his home in York, Pennsylvania. He then suffered a number of personal setbacks, including the loss of his life savings, which he had entrusted to a relative for investment, and a rapid decline in health. In late 1861, Black's health gradually started to improve and he resumed practicing law. In December of that

"JUSTICE TRAVELS
WITH A LEADEN
HEEL, BUT STRIKES
WITH AN IRON
HAND."

—JEREMIAH BLACK



year, he was appointed reporter of decisions for the U.S. Supreme Court, a position created by Congress in 1816. As reporter, Black was primarily responsible for editing, publishing, and distributing the Court's opinions. The reporter was paid a modest yearly salary and usually earned additional income selling copies of the bound volume in which an important case appeared or printing and selling a significant opinion separately in a pamphlet. In those days, the volumes produced by a particular reporter usually bore the reporter's name on the spine. Black served as reporter for three years and produced *Black's Reports*, two volumes of opinions that earned him high praise.

In 1864, Black left the Court and returned to private practice in Pennsylvania. He handled several important cases before the U.S. Supreme Court, including *EX PARTE MILLIGAN*, 71 U.S. (4 Wall.) 2, 18 L. Ed. 281 (1866). In *Milligan*, the Court held that the president lacked the power to authorize military tribunals to try civilians when they could be tried in civil courts. Black also remained involved in the continuing litigation over California land titles, and earned high fees for his services.

Black was a close friend of President ANDREW JOHNSON, who assumed the presidency after Lincoln was assassinated. Black was initially engaged to represent Johnson in his IMPEACHMENT trial but withdrew after disagreements with Johnson's other lawyers arose. He also served as counsel to SAMUEL J. TILDEN, an unsuccessful Democratic presidential candidate, in an investigation of the disputed results of the 1876 presidential election.

Black continued to practice law and remain active in civic affairs until 1883, when he died at the age of seventy-three.

FURTHER READINGS

Congressional Quarterly. 1989. *Guide to the U.S. Supreme Court*. 2d ed. Washington, D.C.: Congressional Quarterly.

Elliott, Stephen P., ed. 1986. *A Reference Guide to the United States Supreme Court*. New York: Facts on File.

BLACK LETTER LAW

A term used to describe basic principles of law that are accepted by a majority of judges in most states.

The term probably derives from the practice of publishers of encyclopedias and legal treatises to highlight principles of law by printing them in boldface type.

BLACK MONDAY

See STOCK MARKET.

BLACK PANTHER PARTY

No group better dramatized the anger that fueled the 1960s BLACK POWER MOVEMENT than the Black Panther Party for Self-Defense (BPP). For five tumultuous years, the Panthers brought a fierce cry for justice and equality to the streets of the largest U.S. cities. Its members flashed across TV screens in black berets and leather coats, shotguns and law books in hand, confronting the police or storming the California Legislature. Political demands issued from the party's newspaper; loudspeakers boomed at rallies for jailed Panther leaders. Behind the scenes, the FEDERAL BUREAU OF INVESTIGATION (FBI) spent millions of dollars in a secret counterintelligence program aimed at destroying the group. By the time a 1976 congressional report revealed the extent of the FBI's efforts, it was too late. Shoot-outs with police officers, conflicts with other groups, murder, prison sentences, and internal dissent had destroyed the Black Panthers. The details surrounding the 1969 shooting deaths of two party leaders by Chicago police remain unclear. The other party leaders split in 1972 and one of them, BOBBY SEALE, ran for mayor of Oakland in 1973, losing in a runoff. By 1975, the last of the group, a splinter faction under ELDRIDGE CLEAVER, had disappeared.

Before the advent of the Panthers, the mid-1960s saw gradual progress in the struggle for CIVIL RIGHTS. This progress was too slow for many African Americans. Traditional civil rights groups such as Martin Luther King Jr's SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE (SCLC) were focusing their efforts on ending SEGREGATION in the South, but conditions in urban areas were reaching a boiling point. Younger activists increasingly turned away from these older groups and toward leaders such as STOKELY CARMICHAEL, whose STUDENT NONVIOLENT COORDINATING COMMITTEE (SNCC) demanded not merely INTEGRATION but economic and social liberation for African Americans. Black power was Carmichael's message, and in Mississippi, he had organized an all-black political party that took as its symbol a snarling black panther. The ethos of black power spread quickly to urban areas in the North, East, and West, where integration alone had not soothed the problems of racism, poverty, and violence.

Police violence against African Americans was a common complaint in impoverished Oakland, California. By 1966, two young men had had enough. One was HUEY P. NEWTON, age 23, a first-year law student. With his friend Bobby Seale, age 30, Newton founded the BPP, with the intent of monitoring police officers when they made arrests. This bold tactic—already being employed in Minneapolis by the nascent AMERICAN INDIAN MOVEMENT (AIM)—was entirely legal. Also legal under California state law was the practice of carrying a loaded weapon, as long as it was visible. But legal or not, the sight of Newton and Seale bearing shotguns as they rushed to the scene of an arrest had enormous shock value. To police officers and citizens alike, this represented a huge change from the previously nonviolent demonstrations of civil rights activists. Although they did not use the guns and maintained the legally required eight to ten feet

from officers, the Panthers inspired fear. They also quickly won respect from neighbors who saw them as standing up to the predominantly white police force. The law books they carried—and from which they read criminal suspects their rights—appeared to many in the community to give the Panthers a kind of legitimacy.

Attracting new members through their high visibility, the Panthers sprang to national attention in 1967. Antagonism toward the party by law enforcement officials had prompted California lawmakers to consider GUN CONTROL. In May 1967, legislators met in Sacramento, the state capital, to discuss a bill that would criminalize the carrying of loaded weapons within city limits. To Seale and Newton, chairman and minister of defense of the BPP, respectively, the proposed law was unjust. Governor RONALD REAGAN was on the lawn of the state legislature as 30 armed Black Panthers arrived and entered

On May 2, 1967, armed members of the Black Panther Party enter the California state capital to protest a bill restricting the carrying of arms in public.

AP/WIDE WORLD
PHOTOS



the building. TV cameras followed the group's progress to the legislative chambers, where they were stopped by police officers, Seale shouting, "Is this the way the racist government works—[you] won't let a man exercise his constitutional rights?" He then read a prepared statement:

The Black Panther Party calls upon American people in general and black people in particular to take full note of the racist California legislature which is now considering legislation aimed at keeping the black people disarmed and powerless, at the very same time that racist police agencies throughout the country are intensifying the terror, brutality, murder and repression of black people.

The Panthers kept their guns, left the building, and were subsequently disarmed by the police.

No sooner had the demonstration ended than the national media denounced the Panthers as antiwhite radicals. For many white U.S. citizens, the Panthers symbolized terror. The party denied being antiwhite, but a new political focus now superseded its original goal of SELF-DEFENSE. In a ten-point program, the Panthers called for full employment, better housing and education, and juries composed of African Americans. It denounced the war in Vietnam and the military draft. Some of its demands went further. Point 3 said the group wanted an end to the robbing of the black community by the whites. Another point called for the release of all African American men from prison. The group's major political objective was self-determination. It demanded United Nations-supervised elections in the black community, which it dubbed the black colony, for blacks only, so that "black colonials" could determine their own national destiny.

To advance its cause, the party published the *Black Panther* newspaper. Its articles, cartoons, and imagery reflected a hardening stance. The police were caricatured as pigs—introducing a term of condemnation that would enter the national vernacular—and a recurring image was that of a Black Panther holding a gun to the head of a pig in a police uniform. However extreme such rhetoric may sound today, it galvanized young African Americans coming of age in the Vietnam era. BPP chapters sprang up nationwide, and by 1968 as many as five thousand members worked from BPP offices in 25 major U.S. cities. Prominent activists, including Stokely Carmichael and Eldridge Cleaver, joined the party. Cleaver had achieved national promi-

nence for his 1967 essay collection *Soul on Ice*. As the BPP's minister of information, he had a voice that struck exactly the tone the Panthers wanted, a blend of determination, outrage, and threat. "These racist Gestapo pigs," Cleaver told reporters, "have to stop brutalizing our community or we are going to take up arms and we are going to drive them out."

On another front, the Panthers proceeded with charitable services to African American communities, called Serve the People programs. They organized health clinics and schools. Holding food drives, they rounded up groceries and distributed them for free. Morning breakfast programs for African American children served food and spirituals, as kids sang "Black Is Beautiful." White liberals supported the Panthers, writing supportive articles in intellectual journals such as the *New York Review of Books*; writing books that showed admiration for their style, like Norman Mailer's *The White Negro*; and inviting them to fashionable fund-raising parties, as did composer and conductor Leonard Bernstein. But this support was far from unanimous; the author Thomas C. Wolfe coined the phrase *radical chic* to satirize it.

The successes achieved by the Panthers in Oakland and beyond were soon overshadowed by violence as tense confrontations between the police and Panther members erupted in gunfire. In October 1967, after a gun battle left one officer wounded and another dead, Newton was arrested. "Free Huey!" became a cry at protests across the United States while Newton remained in jail. From his cell, he told national TV audiences that the plight of African Americans was similar to that of the Vietnamese. "The police occupy our community," he said, "as a foreign troop occupies territory." Convicted of murder, he remained in prison until August 1970. An appeals court later threw out the conviction.

The violence continued, as the police began raiding BPP offices. In 1968, a confrontation in West Oakland left three officers and two Panther members wounded. A 17-year-old Panther was killed. Seale announced on television that black people should organize so that they could retaliate against racist police brutality and attacks.

In 1969, Seale too was in court. The police had arrested him at an antiwar demonstration outside the 1968 Democratic National Convention in Chicago. He was charged with rioting. During the trial of Seale and other demonstrators—dubbed the Chicago Eight—federal dis-



Eldridge Cleaver, the Black Panther Party's (BPP) minister of information, outside of BPP headquarters in Oakland in September 1968 after two of the city's police officers fired shots into the building.

AP/WIDE WORLD
PHOTOS

strict court judge Julius J. Hoffman ordered the vociferous Seale handcuffed to a chair and gagged, a move that inspired such public revulsion that a mistrial was declared.

However, in 1970, Seale and several other Panthers were back in court, in New Haven, Connecticut. The charge was the 1969 alleged murder of suspected Panther police informant Alex Rackley. Seale and fellow Panther Erica Huggins were ultimately acquitted, but two other Panthers, including Warren Kimbro (who plea-bargained), were sentenced to prison. Seale's controversial trial inspired a "May Day" riot at Yale University in New Haven, prompting the federal government to send in 2,500 NATIONAL GUARD members after a substantial amount of mercury (a bomb-making ingredient) was taken from a Yale chemistry lab and several rifles were discovered missing.

The Panthers affected the highest circles of federal law enforcement. J. EDGAR HOOVER, director of the FBI, considered them a black nationalist hate group. In November 1968, he ordered FBI field agents to begin destabilizing the group by exploiting dissension within its

ranks. This end was to be achieved through the FBI's Counterintelligence Program (COINTELPRO), a surveillance and misinformation program widely used in the late 1960s against civil rights, black power, and various leftist groups. The FBI infiltrated the Panther membership with informants, wiretapped telephones, mailed fake letters to leaders, and spread innuendo both inside and outside the party. Documentation of the counterintelligence campaign would emerge in a report issued in 1976 by the U.S. Senate Select Committee to Study Government Operations, titled *The FBI's Covert Program to Destroy the Black Panther Party*. The report revealed that the FBI had gone to great lengths, some of them illegal, to pit the Panthers against themselves and other groups.

The destabilization worked. The FBI managed to exacerbate a bloody feud between the Panthers and another California-based group, United Slaves (US). It poured resources into making leaders suspicious of each other, notably aggravating a rift between Newton and Cleaver. Perhaps its most egregious involvement came during a 1969 operation against Fred Hampton,

the Chicago-based chairman of the Illinois BPP. In late 1967, the FBI launched a disinformation campaign against the 19-year-old, and his file in the FBI's Racial Matters Squad soon swelled to over four thousand pages. When Hampton fell under suspicion in the murder of two Chicago police officers, an FBI informant provided authorities with a detailed floor plan of his apartment. On December 4, 1969, police officers raided the apartment. Hampton and another Panther member were killed; four others were wounded. The Panthers alleged that the incident was an assassination.

Several official and private inquiries were conducted, including one led by ROY WILKINS, executive director of the NAACP, and RAMSEY CLARK, former U.S. attorney general. Lawsuits brought against the FBI by the victims' survivors dragged through the courts until 1983, when the federal government agreed to pay them a \$1.85 million settlement. U.S. district court judge John F. Grady imposed sanctions on the FBI for having covered up facts in the case. For the Illinois Panther chapter, however, the raid in 1969 had signaled the beginning of the end.

In disarray in 1972, the Panthers soon collapsed. Its leadership feuded, police and FBI harassment took a heavy toll, and the black power movement had nearly expired. Charged with murder, Cleaver had fled to Cuba and Algeria, where he continued to urge African Americans on to revolution. Cleaver maintained his Black Panther faction in exile until 1975.

Seale and Newton preferred nonviolent solutions. After the Panthers disbanded, Seale ran for mayor of Oakland in 1973, winning a third of the vote. He later became a public speaker and a community liaison on behalf of Temple University's African American studies program. Newton earned a doctor's degree from the University of California, Santa Cruz, but his legal problems continued. In March 1987, he was convicted for being a felon in possession of a firearm—despite the overturning of his original murder conviction—and sentenced to three years' imprisonment. In 1989, he was again in prison, serving time for a PAROLE violation for possessing cocaine. He died in August 1989, after being shot during a drug deal in the neighborhood where he began the Panthers.

Conversely, fellow Panther Kimbro was accepted into a graduate program at Harvard while still in prison, and was released after serving little more than four years of his sentence.

He became an assistant dean at a local university and later served as director of Project More, a halfway house and prison-alternative program in New Haven. He was quoted in a 2000 issue of the *Christian Science Monitor* as wanting to be known as “a guy who made some mistakes, turned his life around, and learned to help other people.”

The legacy of Newton and Seale's party is debatable. Its alliance with international revolutionary leaders—Mao Tse-tung, Fidel Castro, and Ho Chi Minh, to name a few—cost it credibility in the eyes of mainstream U.S. citizens. An organization devoted originally to the aim of self-defense for beleaguered urban African Americans, it nose-dived into violence and terror. For this reason, the BPP is customarily dismissed as an extremist, self-destructive exponent of the black power movement. But this transformation owed something to the harassment of the Panthers by law enforcement agencies. In turn, the calculated federal and local campaigns against the Panthers initiated the group's most tangible effect on U.S. law: highlighting FBI counterintelligence against U.S. citizens was a noteworthy gain. In the years following the death of FBI director Hoover, pressure for reforms dismantled the apparatus he single-handedly used against his political enemies.

Drawing attention to the issue of urban police brutality was another major Panther contribution, one that grew as a concern in subsequent years. In addition, the group's focus on the questionable number of African American men fighting the U.S. war in Vietnam inspired black intellectuals to criticize the role of race in the U.S. military. Moreover, in the party's passionate ten-point program were the seeds of ideas that eventually took root in the U.S. legal system: by the 1990s, juries increasingly reflected the racial composition of the communities in which defendants lived. As the history of the CIVIL RIGHTS MOVEMENT demonstrates, such change came slowly, begrudgingly, and often at great personal cost to the men and women who fought for it.

The original Black Panther Party for Self-Defense is not to be confused with an entity that emerged in the late 1990s, calling itself the New Black Panther Party for Self-Defense and adopting the original STALKING panther logo. The newer group allegedly violated a 1997 Texas state court order prohibiting them from “referring to themselves ... by any name containing the words

Panther, Black Panthers, or Black Panther Party.” In 2003, lawyers representing some of the original Panthers, e.g., The Black Panther Party, Inc. (which brought the Texas action) and the Huey P. Newton Foundation, contemplated filing a federal **TRADEMARK** infringement suit after an August 2002 cease and desist letter apparently went unheeded.

FURTHER READINGS

- Alexandri, Maya. 2003. “Stalking the New Panthers.” *IP Law & Business* (January).
- Baker, Naima. 2000. “May Day, May Day.” *211 Park St. Newsletter*. Afro-American Cultural Center at Yale University (October).
- Colhoun, Alexander. 2000. “Ex-Black Panther Warren Kimbro.” *Christian Science Monitor* (September 7).
- “A Panther Generation Gap.” 2002. *Chicago Tribune* (October 30).
- Yale University Library Manuscripts and Archives, Record Unit 16, 1996. *Guide to the Inventory of May Day Records, 1970–1972, 1976*. New Haven: Yale Univ. Library.

CROSS-REFERENCES

Black Power Movement; Civil Rights Movement; Vietnam War.

BLACK POWER MOVEMENT

The Black Power movement grew out of the **CIVIL RIGHTS MOVEMENT** that had steadily gained momentum through the 1950s and 1960s. Although not a formal movement, the Black Power movement marked a turning point in black-white relations in the United States and also in how blacks saw themselves. The movement was hailed by some as a positive and proactive force aimed at helping blacks achieve full equality with whites, but it was reviled by others as a militant, sometimes violent faction whose primary goal was to drive a wedge between whites and blacks. In truth, the Black Power movement was a complex event that took place at a time when society and culture was being transformed throughout the United States, and its legacy reflects that complexity.

In the 1950s and early 1960s, groups such as the National Association for the Advancement of Colored People (NAACP) and the **SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE** (SCLC) worked with blacks and whites to create a desegregated society and eliminate **RACIAL DISCRIMINATION**. Their efforts generated positive responses from a broad spectrum of people across the country. Rev. **MARTIN LUTHER KING JR.**, who headed the SCLC, made significant headway with his adherence to nonviolent tac-

tics. In 1964, President **LYNDON B. JOHNSON** signed the **CIVIL RIGHTS ACT** and a year later he signed the **VOTING RIGHTS ACT**.

CIVIL RIGHTS legislation was an earnest and effective step toward eliminating inequality between blacks and whites. Even with the obvious progress, however, the reality was that prejudice could not be legislated away. Blacks still faced lower wages than whites, higher crime rates in their neighborhoods, and unspoken but palpable racial discrimination. Young blacks in particular saw the civil rights movement as too mainstream to generate real social change. What they wanted was something that would accelerate the process and give blacks the same opportunities as whites, not just socially but also economically and politically. Perhaps more important, they felt that the civil rights movement was based more on white perceptions of civil rights than black perceptions.

Not all blacks had been equally impressed with the civil rights movement. **MALCOLM X** and the **NATION OF ISLAM**, for example, felt that racial self-determination was a critical and neglected element of true equality. By the mid-1960s, dissatisfaction with the pace of change was growing among blacks. The term “black power” had been around since the 1950s, but it was **STOKELY CARMICHAEL**, head of the **STUDENT NONVIOLENT COORDINATING COMMITTEE** (SNCC), who popularized the term in 1966.

Carmichael led a push to transform SNCC from a multiracial community activist organization into an all-black social change organization. Late in 1966, two young men, **HUEY NEWTON** and **BOBBY SEALE**, formed the **BLACK PANTHER PARTY FOR SELF-DEFENSE** (BPP), initially as a group to track incidents of police violence. Within a short time groups such as SNCC and BPP gained momentum, and by the late 1960s the Black Power movement had made a definite mark on American culture and society.

The Black Power movement instilled a sense of racial pride and self-esteem in blacks. Blacks were told that it was up to them to improve their lives. Black Power advocates encouraged blacks to form or join all-black political parties that could provide a formidable power base and offer a foundation for real socioeconomic progress. For years, the movement’s leaders said, blacks had been trying to aspire to white ideals of what they should be. Now it was time for blacks to set their own agenda, putting their needs and aspirations first. An early step, in fact, was the

replacement of the word “Negro” (a word associated with the years of SLAVERY) with “black.”

The movement generated a number of positive developments. Probably the most noteworthy of these was its influence on black culture. For the first time, blacks in the United States were encouraged to acknowledge their African heritage. COLLEGES AND UNIVERSITIES established black studies programs and black studies departments. Blacks who had grown up believing that they were descended from a backwards people now found out that African culture was as rich and diverse as any other, and they were encouraged to take pride in that heritage. The Black Arts movement, seen by some as connected to the Black Power movement flourished in the 1960s and 1970s. Young black poets, authors, and visual artists found their voices and shared those voices with others. Unlike earlier black arts movements such as the Harlem Renaissance, the new movement primarily sought out a black audience.

The same spirit of racial unity and pride that made the Black Power movement so dynamic also made it problematic—and to some, dangerous. Many whites, and a number of blacks, saw the movement as a black separatist organization bent on segregating blacks and whites and undoing the important work of the civil rights movement. There is no question that Black Power advocates had valid and pressing concerns. Blacks were still victims of racism, whether they were being charged a higher rate for a mortgage, getting paid less than a white co-worker doing the same work, or facing violence at the hands of white racists. But the solutions that some Black Power leaders advocated seemed only to create new problems. Some, for example, suggested that blacks receive paramilitary training and carry guns to protect themselves. Though these individuals insisted this device was solely a means of SELF-DEFENSE and not a call to violence, it was still unnerving to think of armed civilians walking the streets.

Also, because the Black Power movement was never a formally organized movement, it had no central leadership, which meant that different organizations with divergent agendas often could not agree on the best course of action. The more radical groups accused the more mainstream groups of capitulating to whites, and the more mainstream accused the more radical of becoming too ready to use violence. By the 1970s, most of the formal organi-

zations that had come into prominence with the Black Power movement, such as the SNCC and the Black Panthers, had all but disappeared.

The Black Power movement did not succeed in getting blacks to break away from white society and create a separate society. Nor did it help end discrimination or racism. It did, however, help provide some of the elements that were ultimately necessary for blacks and whites to gain a fuller understanding of each other.

FURTHER READINGS

- Carmichael, Stokely, and Charles V. Hamilton. 1967. *Black Power: The Politics of Liberation in America*. New York: Vintage Books.
- Cross, Theodore. 1984. *The Black Power Imperative*. New York: Faulkner.
- Van Deburg, William, L. 1992. *New Day in Babylon: The Black Power Movement and American Culture*. Chicago: Univ. of Chicago Press.

CROSS-REFERENCES

Black Panther Party; Carmichael, Stokely; Civil Rights Acts; Malcolm X; Nation of Islam; NAACP; Southern Christian Leadership Conference; Voting Rights Act of 1965.

BLACKACRE

A fictitious designation that legal writers use to describe a piece of land.

The term *Blackacre* is often used in comparison with *Whiteacre* in order to distinguish one parcel of land from another.

❖ BLACKFORD, ISAAC NEWTON

Isaac Newton Blackford achieved prominence as a jurist. He was born November 6, 1786, in Bound Brook, New Jersey. A graduate of the College of New Jersey (later Princeton University), Blackford served as clerk and recorder of Washington County, Indiana, in 1813. The following year he became a territorial court judge.

Blackford served as a member of the Indiana state house of representatives from 1816–1817. He was also a candidate for Presidential Elector for Indiana in 1824. The following year he ran unsuccessfully for the U.S. Senate seat for Indiana.

Blackford participated in state politics as a county delegate to the Indiana legislature, serving as speaker of the state's house of representatives in 1816.

In 1817 Blackford returned to the judiciary and sat as a justice of the Indiana Supreme Court until 1853. He subsequently served as a U.S. Court of Claims judge from 1855 to 1859.

Blackford died on December 31, 1859, in Washington, D.C., and was buried at Crown Hill Cemetery in Indianapolis.

BLACKLIST

A list of individuals or organizations designated for special discrimination or boycott; also to put a person or organization on such a list.

Blacklists have been used for centuries as a means to identify and discriminate against undesirable individuals or organizations. A blacklist might consist, for example, of a list of names developed by a company that refuses to hire individuals who have been identified as union organizers; a country that seeks to boycott trade with other countries for political reasons; a **LABOR UNION** that identifies firms with which it will not work; or a government that wishes to specify who will not be allowed entry into the country.

Many types of blacklists are legal. For example, a store may maintain a list of individuals who have not paid their bills and deny them credit privileges. Similarly, credit reports can effectively function as blacklists by identifying individuals who are poor credit risks.

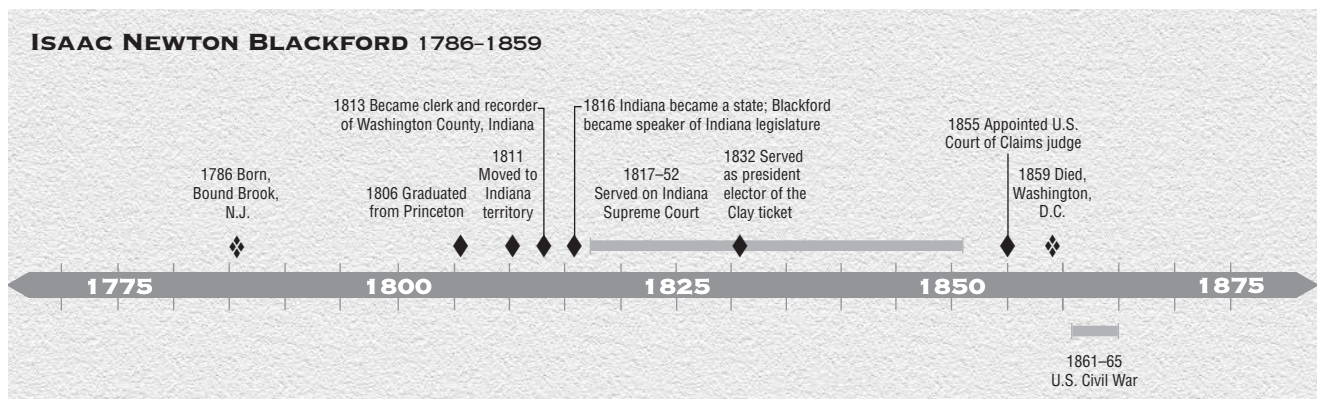
Because the purpose of blacklists is to exclude and discriminate, they can also result in unfair and illegal discrimination. In some cases, blacklists have done great damage to people's lives, locking them out of employment in their chosen careers or denying them access to influential organizations. For example, if a labor union makes a blacklist of workers who refuse to become members or conform to its rules, it has committed an **UNFAIR LABOR PRACTICE** in violation of federal laws. Blacklists may also necessitate disclosure laws. State and federal fair credit reporting acts, for example, require that access

to information in a credit report must be given, upon request, to the person to whom the information applies.

The most famous instance of blacklisting in U.S. history occurred in the entertainment industry during the 1940s and 1950s. Motion picture companies, radio and television broadcasters, and other firms in that industry developed blacklists of individuals accused of being Communist sympathizers. Those firms then denied employment to those who were named on the blacklists.

Blacklisting in Hollywood came about largely through the work of the House Un-American Activities Committee (HUAC), which was formed to investigate the activities of Communist, fascist, or other supposedly subversive and "un-American" political groups. Though the committee purported to be concerned with all types of potential subversion, after **WORLD WAR II** ended in 1945 and relations with the Soviet Union subsequently deteriorated, it focused largely on **COMMUNISM** as a threat to the internal stability of the United States. In highly publicized hearings in 1947, 1951–52, and 1953–55 the committee sought to ferret out Communist sympathizers, conspiracies, and propaganda in the entertainment industry.

The HUAC hearings produced lists of individuals who either had been identified by witnesses as Communists or had refused to answer questions in appearances before the committee on the grounds of the **FIRST AMENDMENT**, which protects free speech and free association, or the **FIFTH AMENDMENT**, which protects against **SELF-INCRIMINATION**. Entertainment industry companies, fearing that they would be perceived by the public as pro-Communist if they employed people named in the hearings,



The Hollywood Ten were photographed in January 1948, before their arraignment on charges of contempt of Congress. Nine of the ten were later blacklisted in the film industry.

AP/WIDE WORLD
PHOTOS



then used these lists as blacklists. They refused to hire hundreds of actors, writers, and other entertainment professionals named in the HUAC hearings. Many promising careers were thus ended and much potentially edifying art was lost.

Some of the first victims of Hollywood blacklisting were known as the Hollywood Ten. In the October 1947 HUAC Hearings Regarding Communist Infiltration of the Motion Picture Industry, ten Hollywood screenwriters and directors—Alvah Bessie, Herbert Biberman, Lester Cole, Edward Dmytryk, Ring Lardner Jr., John Howard Lawson, Albert Maltz, Samuel Ornitz, Adrian Scott, and Dalton Trumbo—appeared under subpoena, or court order, before the committee. Each of them refused to answer questions regarding affiliation with the Communist party on the grounds that such questions violated their First Amendment right to privacy, or a right to remain silent, regarding their political beliefs or affiliations. The courts rejected this argument, found the Hollywood Ten guilty of CONTEMPT of Congress, and gave them prison sentences lasting from six months to one year.

Nine of the ten were blacklisted in the film industry. (Ironically, the man conducting the 1947 HUAC hearings, Representative J. Parnell

Thomas (R-N.J.), joined Lardner in federal prison in 1950 after Thomas was convicted of stealing government funds.)

Subpoenaed witnesses in these hearings faced a dilemma: on the one hand, they could invoke constitutional protection such as the Fifth Amendment, thereby implying current or former membership in the Communist party, putting themselves on the blacklist, and ending their chances of ever working in the entertainment industry again; on the other hand, they could “name names,” or identify their friends as Communists, thereby betraying those close to them. In many cases, people were blacklisted for past political affiliations that they had abandoned. During the anti-Communist hysteria that gripped the nation in the 1950s, Congress’s investigations into the Hollywood film industry went unchecked and the resulting blacklists destroyed numerous promising careers.

FURTHER READINGS

Vaughn, Robert. 1972. *Only Lies: A Study of Show Business Blacklisting*. New York: Putnam.

CROSS-REFERENCES

Communism “House Un-American Activities Committee” (In Focus); Entertainment Law; Freedom of Association and Assembly; Freedom of Speech.

BLACKMAIL

The crime involving a threat for purposes of compelling a person to do an act against his or her will, or for purposes of taking the person's money or property.

The term *blackmail* originally denoted a payment made by English persons residing along the border of Scotland to influential Scottish chieftains in exchange for protection from thieves and marauders.

In blackmail the threat might consist of physical injury to the threatened person or to someone loved by that person, or injury to a person's reputation. In some cases the victim is told that an illegal act he or she had previously committed will be exposed if the victim fails to comply with the demand.

Although blackmail is generally synonymous with **EXTORTION**, some states distinguish the offenses by requiring that the former be in writing.

Blackmail is punishable by a fine, imprisonment, or both.

CROSS-REFERENCES

Threats.

❖ BLACKMUN, HARRY ANDREW

Harry Andrew Blackmun, associate justice of the U.S. Supreme Court from 1970 to 1994, stepped into a political maelstrom when he authored the much-lauded, much-reviled 1973 opinion **ROE V. WADE**, 410 U.S. 113, 93 S. Ct. 705, 35 L. Ed. 2d 147. *Roe* guaranteed access to safe, legal **ABORTIONS** for women in the first trimester of pregnancy. Depending on one's viewpoint, Blackmun was considered either a public hero or a Supreme Court villain, for authoring the

opinion upholding a woman's right to privacy in the matter of abortion.

An unassuming and highly intelligent man, Blackmun seemed an unlikely symbol for an explosive social and political issue. Born November 12, 1908, in Nashville, Illinois, he spent his childhood in St. Paul, Minnesota, where his father ran a hardware and grocery store. Blackmun was an outstanding student and received a scholarship to Harvard University, where he graduated *summa cum laude* with a mathematics degree in 1929. He went on to earn a law degree from Harvard Law School in 1932.

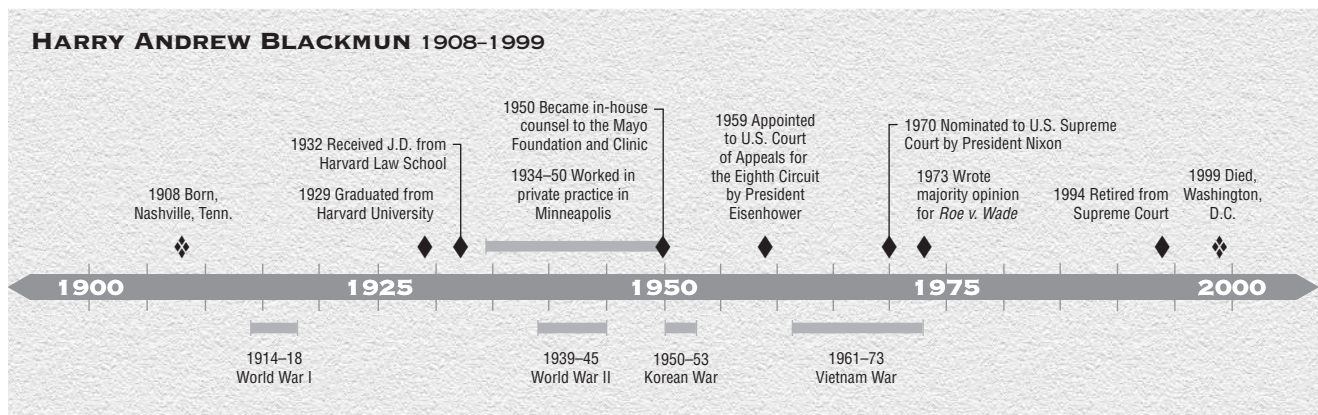
Blackmun's first job out of law school was a federal clerkship for Judge John B. Sanborn, of the U.S. Court of Appeals for the Eighth Circuit. After his clerkship, Blackmun spent 16 years practicing law in Minneapolis as a tax and trust specialist at a large, prestigious firm. In 1941, Blackmun and Dorothy E. Clark married; they later raised three children.

Blackmun also taught at the St. Paul College of Law (later renamed the William Mitchell College of Law) and at the University of Minnesota Law School. In 1950, he became head counsel at the Mayo Clinic, in Rochester, Minnesota, a position he particularly enjoyed because of a lifelong interest in medicine.

In 1959 President **DWIGHT D. EISENHOWER** appointed Blackmun to the U.S. Court of Appeals for the Eighth Circuit to replace his former boss, Judge Sanborn. While on the appeals court, Blackmun was a diligent and fair-minded judge, with a conservative outlook. A significant portion of his decisions involved tax issues.

Blackmun sat on the Eighth Circuit until 1970 when President **RICHARD M. NIXON** appointed him to the U.S. Supreme Court.

"ABORTION
RAISES MORAL
AND SPIRITUAL
QUESTIONS OVER
WHICH
HONORABLE
PERSONS CAN
DISAGREE
SINCERELY AND
PROFOUNDLY. BUT
THOSE
DISAGREEMENTS
... DO NOT NOW
RELIEVE US OF
OUR DUTY TO
APPLY THE
CONSTITUTION
FAITHFULLY."
—HARRY BLACKMUN



Harry Blackmun.
 PHOTOGRAPH BY RON
 SACHS. ARCHIVE
 PHOTOS, INC.



Blackmun was Nixon's third choice for the Supreme Court seat formerly held by Associate Justice ABE FORTAS. Earlier, Nixon had nominated CLEMENT F. HAYNSWORTH JR. and G. HAROLD CARSWELL, two candidates with unconvincing qualifications. After the Senate refused to confirm either Haynsworth or Carswell, Nixon turned to Blackmun as a candidate with sterling legal credentials and a fine personal reputation. Unlike the rancorous Senate proceedings for the two failed candidates, Blackmun's confirmation hearing was quick and congenial. He was approved unanimously by the Senate on May 12, 1970.

When Blackmun joined the Supreme Court, he teamed up with his boyhood friend WARREN E. BURGER, who was chief justice. Years before, Blackmun had been best man at Burger's wedding. The two St. Paul natives were immediately dubbed the Minnesota Twins.

Blackmun entered the Court with the reputation of being a hardworking, irreproachable, and conservative jurist. During his quarter century on the Supreme Court, his reputation changed in one significant way: although he continued to be seen as hardworking and irreproachable, he was perceived less and less as a conservative.

Court observers noted that Blackmun's voting record indicated a swing to the political left. His support for civil liberties in the areas of commercial speech and the rights of ALIENS, as well as his acceptance of a broadened judicial role, resulted in an alliance with liberal justices

THURGOOD MARSHALL and WILLIAM J. BRENNAN JR.

Blackmun insisted that he was merely taking a central ground on the issues before the Court. Nevertheless, in 1991, he acknowledged the change in public perception, saying, "having been appointed by a Republican president and being accused now of being a flaming liberal, the Republicans think I'm a traitor and the Democrats don't trust me. And so I twist in the wind, I hope, beholden to no one, and that's just exactly where I want to be."

Roe is Blackmun's most famous contribution as a Supreme Court justice. Writing for the seven-member majority, Blackmun ruled that women could obtain abortions without interference from the state as a matter of right under the FOURTEENTH AMENDMENT to the U.S. Constitution. The case came about as a challenge to a Texas law (Tex. Rev. Civ. Stats. arts.1191–1194, 1196) that made abortion illegal unless performed to save the life of the mother. The law was challenged by a pregnant woman as a violation of her right to privacy.

Blackmun held that the privacy rights of the pregnant woman outweighed the state's interest. His knowledge of medical issues is evident in the case. Blackmun based his ruling on a three-part division of pregnancy: the first trimester, when a woman can obtain an abortion and the state has no interest; the second trimester, when the state has an interest in the licensing of the performing physician; and the last trimester, when the fetus is considered viable, or capable of living outside the mother's womb, and the state's interest reaches a level where the state may restrict access to abortion. Although Blackmun earned praise for this ruling, he also became the target of protests and death threats.

In another indication of his more liberal leanings, Blackmun publicly denounced CAPITAL PUNISHMENT in 1994. Two months before his retirement from the Court, Blackmun, who had been a strong and consistent supporter of the death penalty, announced that he had come to believe that the system for capital punishment was so riddled with bias and error as to be unworkable. "From this day forward," he stated, "I no longer shall tinker with the machinery of death." After his retirement in April 1994, Blackmun continued to come daily to the court and go to the cafeteria for breakfast with his clerks. Blackmun died in Washington, D.C., on March 4, 1999, at the age of 90.

FURTHER READINGS

- Abraham, Henry Julian. 1999. *Justices, Presidents, and Senators: A History of the U.S. Supreme Court Appointments from Washington to Clinton*. New York: Rowman & Littlefield.
- Barnes, Catherine A. 1978. *Men of the Supreme Court: Profiles of the Justices*. New York: Facts on File.
- Congressional Quarterly. 1989. *Guide to the U.S. Supreme Court*. 2d ed. Washington, D.C.: Congressional Quarterly.
- Cushman, Claire, ed. 1993. *The Supreme Court Justices: Illustrated Biographies, 1789–1993*. Washington, D.C.: Congressional Quarterly.
- Levy, Leonard. 1974. *Against the Law: The Nixon Court and Criminal Justice*. New York: Harper & Row.
- Schwartz, Bernard. 1993. *A History of the Supreme Court*. New York: Oxford Univ. Press.

CROSS-REFERENCES

Abortion; Privacy.

❖ **BLACKSTONE, SIR WILLIAM**

The groundwork for U.S. JURISPRUDENCE lies in a four-volume eighteenth-century publication by British legal commentator Sir William Blackstone. Blackstone's *Commentaries on the Laws of England* provided a systematic analysis of English COMMON LAW. Published between 1765 and 1769, the treatise was an exhaustive compilation of Blackstone's Oxford University lectures on law. *Commentaries* was unprecedented in scope and purpose, and profoundly influenced the development of common law and LEGAL EDUCATION in England and the United States.

Born July 10, 1723, Blackstone was the son of Mary Blackstone and Charles Blackstone, of London. Blackstone's father, a silk merchant, died before Blackstone was born; his mother died while he was a young boy. Raised by an older brother and tutored by an uncle, Black-

stone attended Charterhouse and Pembroke College, at Oxford University, where his education included a thorough exposure to mathematics and logic. Blackstone entered All Souls College, Oxford, in 1743, and became a fellow in 1744.

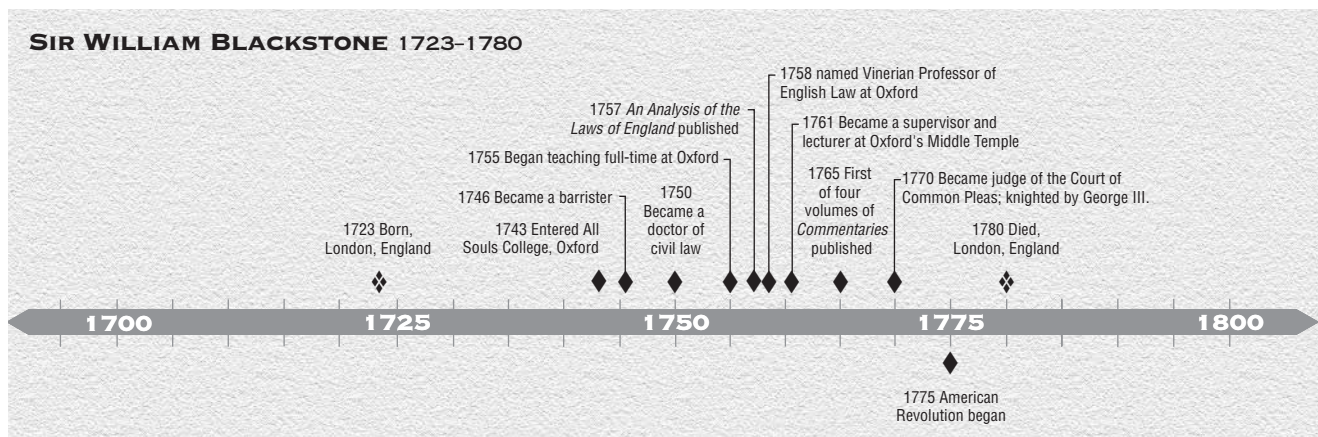
In preparation for a law practice, Blackstone received a CIVIL LAW degree in 1745, and became a barrister in 1746. In 1750, he became a doctor of civil law. One year later, he was selected as an assessor (judge) of Chancellor's Court.

In 1755, after three years of a lusterless law practice, Blackstone decided to devote all of his time to teaching law at Oxford. His first book, published in 1757, was titled *An Analysis of the Laws of England*. In 1758, Blackstone was named Oxford's Vinerian Professor of ENGLISH LAW, receiving the first chair of common law ever established at the university. Blackstone's lectures were well received, providing students with a comprehensive introduction to the laws of England.

The success of his lectures enhanced Blackstone's career. In 1761 he became a benchler (supervisor and lecturer) at Oxford's Middle Temple. The same year, he was elected to Parliament, where he served for seven years—although, according to most historians, he was not an especially ambitious or effective politician. Also in 1761, Blackstone married Sarah Clitherow, with whom he had nine children.

In 1765, Blackstone published the first of his four volumes of *Commentaries*. The treatise discussed the cases, rules, and legal principles outlined in his popular Oxford lectures. Each volume concentrated on a particular area of law—personal rights, property rights, TORTS, or CRIMINAL LAW. As Blackstone analyzed the laws,

"IT IS BETTER
THAT TEN GUILTY
PERSONS ESCAPE
THAN ONE
INNOCENT
SUFFER."
—SIR WILLIAM
BLACKSTONE



Sir William
Blackstone.

LIBRARY OF CONGRESS



he also revealed their relationship to a higher power. Throughout his *Commentaries*, Blackstone wove the concept of “natural law,” or God’s laws imposed on humankind.

Some critics maintain that Blackstone’s view of British law was misleading because a logical, cohesive legal system simply did not exist at the time he was writing. Also, they argue that although Blackstone’s writing style was graceful, he sometimes treated legal terms loosely. Yet even his harshest critics concede that Blackstone’s effort to synthesize English law was indeed impressive, as was the effect of his treatise in his country and beyond.

Blackstone’s *Commentaries* was particularly influential in the United States as the new nation sought to establish its own laws and legal system. Although Blackstone is no longer cited by practicing attorneys—his importance in the United States decreased dramatically during the twentieth century—he remains a revered figure in U.S. law. Over thirty editions of *Commentaries* have been printed in the United States and England.

In 1770, Blackstone became judge of the Court of COMMON PLEAS and was knighted. He died on February 14, 1780, at age fifty-seven.

FURTHER READINGS

Carrese, Paul O. 2003. *The Cloaking of Power: Montesquieu, Blackstone, and the Rise of Judicial Activism*. Chicago: Univ. of Chicago Press.

CROSS-REFERENCES

Blackstone’s *Commentaries*.

BLACKSTONE’S COMMENTARIES

A series of lectures delivered by the English jurist SIR WILLIAM BLACKSTONE at Oxford in 1753 and published as Commentaries on the Laws of England in four volumes between 1765 and 1769, which systematized and clarified the amorphous body of ENGLISH LAW.

The *Commentaries* are the first attempt to state the entire corpus of the COMMON LAW. They were acclaimed internationally and their precepts were applied to the study and PRACTICE OF LAW in England and the United States. They exerted a tremendous influence on the American bar, both because of their intrinsic value and because they were the only treatises readily available during that period of U.S. history. The *Commentaries* were the primary reference tools for lawyers and judges until the nineteenth century because the appellate courts in America did not regularly submit their opinions for publication in bound volumes. Although there were court reporters, their records of decisions were incomplete and sporadic; and few attorneys could afford a comprehensive library.

Since the common law of England was incorporated into the legal systems of the colonies, Blackstone’s summaries rendered the legal system accessible to the entire educated class of the colonies. Dissatisfaction with the common-law restrictions on FREEDOM OF SPEECH and the press was an important aspect of the burgeoning resentment of English rule; and the knowledge and intellectual stimulation provided by Blackstone thereby played a role in causing the American Revolution. Blackstone’s books, which were periodically updated by American editors, constituted a major source of law for approximately fifty years after the American Revolution.

The *Commentaries* are viewed as the most comprehensive summary of the entire body of English law ever compiled by a single author. Their clarity, sophistication, and formality have caused them to be highly regarded. While studying to be a lawyer, ABRAHAM LINCOLN reportedly read Blackstone by candlelight.

Blackstone did have detractors, however, most notably THOMAS JEFFERSON and JEREMY BENTHAM, the English Utilitarian philosopher. Jefferson believed that Blackstone and his followers were “Tories” and that he was a negative

influence on America in the sense that more attention needed to be devoted to “whiggism” or “republicanism.” Bentham criticized Blackstone for his perception that English law needed no improvement and for his imprecise analysis of the historical and social factors underlying systems of justice.

Although the *Commentaries* might seem antiquated by current standards, Blackstone’s work represented a tremendous advance in the study of law and played a significant role in the development of the American legal system.

❖ BLAIR, JOHN, JR.

John Blair Jr., was among the original members of the U.S. Supreme Court. Nominated by President GEORGE WASHINGTON, Blair began his term as an associate justice shortly after the Court’s establishment on February 2, 1790. Considered a fair-minded, incorruptible jurist, he remained on the bench for six years.

Blair was born in 1732 into a wealthy, well-established Virginia family. His parents were John Blair Sr., a public official with important political connections, and Mary Munro (or Monro) Blair, whose father was a rector in Virginia’s St. John’s Parish. In 1754, Blair graduated from the College of William and Mary (founded by his great-uncle), and he then studied law at Oxford’s Middle Temple, in London.

In 1756 Blair returned to Virginia with his Scottish wife, Jean Balfour, and began a successful law practice in Williamsburg. He served in the House of Burgesses as a representative of William and Mary from 1766 to 1770. (The House of Burgesses was a colonial assembly of elected officials and the governor.) He served as

clerk of the governor’s council from 1770 to 1775. Blair attended the Virginia Constitutional Convention and the Virginia PRIVY COUNCIL in 1776. (The Privy Council was an advisory group to the English monarchy.)

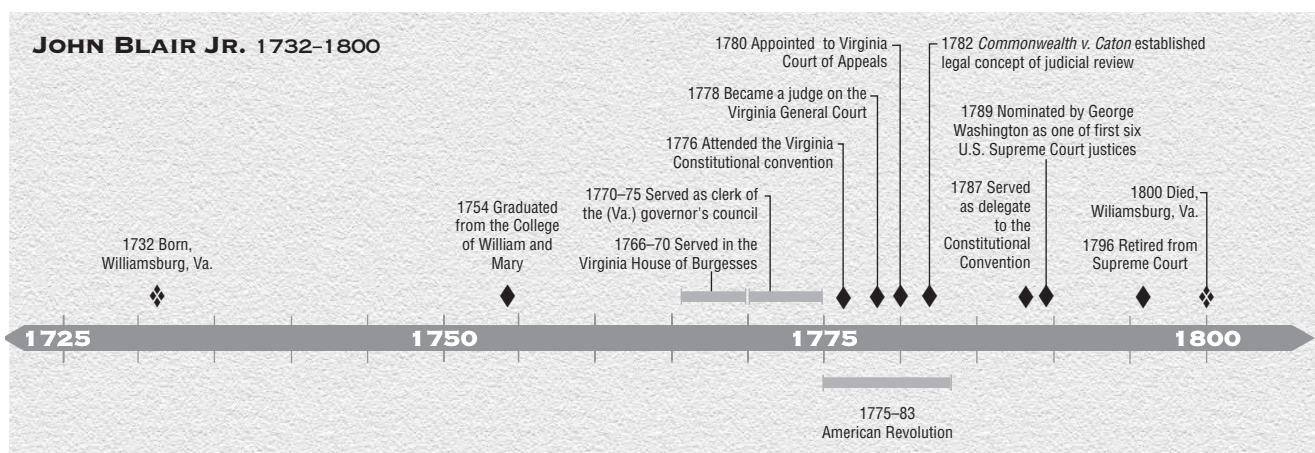
Before his ascension to the U.S. Supreme Court, Blair performed judicial duties for various state courts. He became a judge on the newly established Virginia General Court in 1778. In 1780, he became chancellor of the high court of chancery and was appointed to Virginia’s first court of appeals.

In the 1782 chancery case *Commonwealth v. Caton*, 8 Va. (4 Call) 5, Blair concluded that courts were entitled to review state legislation and to invalidate any laws found unconstitutional. The legal concept of judicial review—whereby the courts examine legislative acts and determine their constitutionality—was later embraced fully by the U.S. Supreme Court, in the landmark case *MARBURY V. MADISON*, 5 U.S. 137, 2 L. Ed. 60 (1803).

In 1787 Blair served as a delegate to the Constitutional Convention in Philadelphia. Soon afterward he was appointed to the Virginia Court of Appeals. Blair received his greatest judicial honor when President Washington nominated him, along with five other men, to the first High Court on September 24, 1789. (At the time, only six justices sat on the Supreme Court. By 1869 the number had risen to nine.) Blair was confirmed by the U.S. Senate on September 26, 1789.

As an associate justice, Blair took part in *CHISHOLM V. GEORGIA*, 2 U.S. 419, 1 L. Ed. 440 (1793), the Supreme Court’s first major opinion. The issue before the Court was state sovereignty and whether a citizen of one state could sue

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—JOHN BLAIR JR.



John Blair Jr.
CORBIS



another state in federal court over a disputed claim. The Supreme Court ruled that under Article III, Section 2, of the U.S. Constitution, a citizen of one state could indeed sue another state in federal court.

Many states decried the outcome of *Chisholm*, fearing lawsuits that would lead to economic disaster. Four years after the decision was handed down, Congress ratified the ELEVENTH AMENDMENT to the U.S. Constitution, which prohibited citizens of one state from suing another state without the consent of the defendant state. The amendment in effect overturned *Chisholm*.

Until the 1860s, U.S. Supreme Court justices sat on a circuit court as well as the High Court. In *Hayburn's Case*, 2 U.S. 408, 1 L. Ed. 436 (1792), Blair broke new ground as a federal appeals judge by ruling that a congressional act ordering circuit judges to serve as PENSION commissioners was unconstitutional. Blair noted that the supervision of a federal pension plan was not a judicial duty. He ruled that the designation of circuit judges as administrators violated the SEPARATION-OF-POWERS doctrine.

Blair retired from the High Court on January 27, 1796, citing the stress of serving on both the Supreme Court and the circuit court, which

in Blair's case stretched from New Jersey to Virginia. He died in his native Williamsburg at age sixty-eight, in 1800.

FURTHER READINGS

Congressional Quarterly. 1989. *Guide to the U.S. Supreme Court*. 2d ed. Washington, D.C.: Congressional Quarterly.

Cushman, Claire, ed. 1993. *The Supreme Court Justices: Illustrated Biographies, 1789–1993*. Washington, D.C.: Congressional Quarterly.

BLANK

Lacking something essential to fulfillment or completeness; unrestricted or open. A space left empty for the insertion of one or more words or marks in a written document that will effectuate its meaning or make it legally operative. A printed legal form in which the standard or necessary words are printed in their proper order with spaces left open, to be filled with names, dates, figures, and additional clauses.

A blank check is one that is unrestricted as to the amount to be paid.

BLANK ENDORSEMENT

The writing of the name of a person who holds a negotiable instrument on the back of the document without specifically designating to whom the paper is to be paid, which transfers the rights that the signer had in the instrument to the person who presents it for payment.

When a person endorses a paycheck, for example, with just a signature, such as "John Jones," then the bank is authorized to pay the check to anyone who presents it for payment, since there is no specification or restriction as to whom the check can be paid. Such a signature is a blank endorsement. A negotiable instrument that has a blank endorsement is called bearer paper.

BLASPHEMY

The malicious or wanton reproach of God, either written or oral. In ENGLISH LAW, the offense of speaking disparaging words about God, Jesus Christ, the Bible, or the Book of Common Prayer with the intent to undermine religious beliefs and promote CONTEMPT and hatred for the church as well as general immorality. In U.S. law, any maliciously intended written or oral accusation made against God or religion with the purpose of dishonoring the divine majesty and alienating mankind from the love and reverence of God.

Blasphemy is a common-law offense and also an offense by statute in certain jurisdictions. It must be uttered in the presence of another person or persons or published in order to be an offense. Mere use of profanity is not considered blasphemy.

Blasphemy statutes are rarely, if ever, enforced today.

❖ **BLATCHFORD, SAMUEL**

Samuel Blatchford was an astute and conscientious jurist who served on the U.S. Supreme Court from 1882 to 1893. He was known primarily for his maritime and patent expertise and for his remarkable productivity. During his eleven-year tenure on the High Court he wrote 430 opinions and two dissents. His most noteworthy opinions, *Chicago, Milwaukee & St. Paul Railway Co. v. Minnesota*, 134 U.S. 418, 10 S. Ct. 462, 33 L. Ed. 970 (1890), and *Budd v. People of New York*, 143 U.S. 517, 12 S. Ct. 468, 36 L. Ed. 247 (1892), were roundly criticized for their apparently contradictory conclusions about DUE PROCESS under the FOURTEENTH AMENDMENT of the U.S. Constitution.

Blatchford was born in New York City on March 9, 1820, the son of Richard Blatchford, a lawyer, and Julia Ann Mumford. He attended Columbia College (renamed Columbia University), and graduated with honors at age seventeen in 1837. Blatchford served as a trustee of Columbia from 1867 to 1893.

After graduation Blatchford became the private secretary of Governor William H. Seward of New York, a family friend. Blatchford studied law, was admitted to the New York bar in 1842, and practiced for three years with his father in Manhattan. Blatchford then joined Seward's law firm in Auburn, New York. He married Caroline Appleton in 1844.

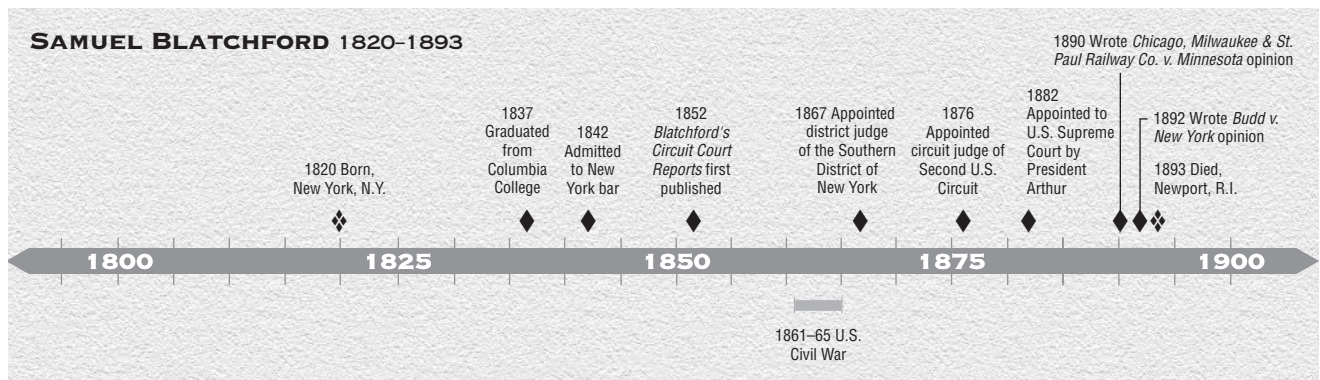
In 1854 Blatchford started his own law firm and he eventually became a respected authority on international, maritime, and patent law. Because of his extensive knowledge of patent law he was asked by lawmakers to help write key federal statutes governing patent infringement.

Blatchford made a significant contribution to the legal profession by organizing a reporting system for federal case law. During much of the nineteenth century federal opinions were not compiled or readily accessible to practicing lawyers. In 1852 Blatchford collected and published federal court ADMIRALTY decisions in *Blatchford's Circuit Court Reports*, a series that grew to twenty-four volumes. He also produced *Blatchford's and Howland's Reports*, a volume of admiralty cases from the District Court for the Southern District of New York, and *Blatchford's Prize Cases*, a collection of cases from circuit and district courts. His case reporting is credited with improving legal research.

Although Blatchford turned down an opportunity to sit on the New York Supreme Court in 1855, he eventually accepted another court appointment and rose through the ranks of the judiciary. In 1867 he was appointed by President ANDREW JOHNSON as district judge of the Southern District of New York. Nine years later President RUTHERFORD B. HAYES named him circuit judge for the second judicial circuit.

Blatchford reached the pinnacle of his career in 1882, when President CHESTER A. ARTHUR nominated him to the U.S. Supreme Court. Blatchford was Arthur's third choice for the seat vacated by WARD HUNT. Although the U.S. Senate had already confirmed New York politician ROSCOE CONKLING, Arthur's first choice, Conkling declined to serve. Arthur's second choice, Senator George F. Edmunds, of Vermont, also turned down the honor. Known as a hardworking and

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—SAMUEL
BLATCHFORD



Samuel Blatchford.
SUPREME COURT OF
THE UNITED STATES



capable lawyer and judge, Blatchford accepted the nomination and was easily confirmed.

In 1890, Blatchford wrote *Chicago, Milwaukee*, an opinion that shielded business from public regulation. The Court ruled that the reasonableness of railroad rates could not be decided by an independent commission established by the Minnesota Legislature. The state law establishing the commission was ruled unconstitutional because it did not allow for court review and therefore violated the railway's right to due process. Two years later, in *Budd*, Blatchford changed course and the Court held that the state legislature could determine business rates affecting the public interest. The inconsistency between the two cases produced widespread criticism.

Blatchford wrote one significant civil liberties opinion, *Counselman v. Hitchcock*, 142 U.S. 547, 12 S. Ct. 195, 35 L. Ed. 1110 (1892), a case that strengthened the constitutional right against SELF-INCRIMINATION. Blatchford held that under the FIFTH AMENDMENT of the U.S. Constitution, a witness could not be ordered to testify unless the state promised never to use the information against her or him.

Blatchford died in 1893 in Newport, Rhode Island, at age seventy-three.

FURTHER READINGS

Congressional Quarterly. 1989. *Guide to the U.S. Supreme Court*. 2d ed. Washington, D.C.: Congressional Quarterly.

Leon, Friedman, and Fred L. Israel, eds. 1969. *The Justices of the United States Supreme Court, 1789–1969: Their Lives and Major Opinions*. New York: Chelsea House.

BLOCK

A segment of a town or city surrounded by streets and avenues on at least three sides and usually occupied by buildings, though it may be composed solely of vacant lots. The section of a city enclosed by streets that is described by a map which indicates how a portion of land will be subdivided.

BLOCKADE

See NEUTRALITY.

BLOCKBUSTING

The practice of illegally frightening homeowners by telling them that people who are members of a particular race, religion, or national origin are moving into their neighborhood and that they should expect a decline in the value of their property. The purpose of this scheme is to get the homeowners to sell out at a deflated price.

An unscrupulous real estate agent will subsequently sell the vacated homes to minority group members at an inflated price, thereby obtaining a large profit. Fair access to housing is defeated by blockbusting.

BLOOD FEUD

Avenging the WRONGFUL DEATH of a person's kin by killing the murderer or by receiving compensation from the murderer's possessions.

During the Middle Ages all European nations had similar customs concerning the murder of their inhabitants. The closest next of kin to a person who had wrongfully died at the hands of another had the primary duty to retaliate against the killer. This obligation was subject to certain laws and customs concerning the type of permissible vengeance, the amount of compensation that could be exacted, the location at which the compensation was to be made, and the circumstances in which compensation was not required. For example, a blood feud was not sanctioned if the person killed was a convicted thief or if the person who did the killing did so to defend his lord or a close female family member. The idea of the imprisonment of a person who had committed a HOMICIDE was unknown during this period of history.

There is dispute over whether the blood feud was legal under Teutonic or Anglo-Saxon law.



"Devil Anse" Hatfield, pictured with members of his family. The Hatfield-McCoy feud, which lasted almost 30 years, is perhaps the most infamous example of a blood feud.

BETTMANN/CORBIS

During the ninth-century reign of Alfred, a feud could lawfully commence only after an attempt was made to exact the price of a life. The price, called *weregild*, also applied when other atrocious personal offenses were committed and was paid partly to the monarch for the loss of a subject, partly to the lord for the loss of a vassal, and partly to the next of kin of the injured person. In Anglo-Saxon law, the amount of compensation, called *angylde*, was fixed at law and varied with the status of the person killed.

The Catholic Church exerted much influence to have a death avenged through the payment of compensation, not further violence, but the blood feud continued throughout England until after the Norman Conquest (1066).

BLOTTER

A written record of arrests and other occurrences maintained by the police. The report kept by the police when a suspect is booked, which involves the written recording of facts about the person's arrest and the charges against him or her.

BLUE BOOK

A publication that establishes the correct form of case citations or of references to a legal authority showing where information can be found. A volume that explains the organization of a state government and provides the names of state officials. The proper title is "The Bluebook: A Uniform System of Citation." In a generic sense, this term also refers to a report issued by the Joint Committee on Taxation regarding recent tax legislation.

The Blue Book is published by the Harvard Law Review Association in conjunction with law review journals in Yale University, Columbia University, and the University of Pennsylvania. It has been the preeminent authority on proper citation form for more than 70 years.

CROSS-REFERENCES

Citation.

BLUE LAWS

A state or local law that prohibits commercial activities on Sunday.

Blue laws have been part of U.S. LEGAL HISTORY since the colonial period. These laws, which today are usually referred to as Sunday closing laws, prohibit certain types of commercial activity on Sundays. Originally these laws were directed at personal activities regarded as moral offenses, such as gambling or the consumption of alcohol. In the nineteenth century, however, state and local governments passed laws that forbade businesses from operating on Sunday. Although these laws were clearly based on Christian beliefs, the U.S. Supreme Court has ruled that they do not violate the First Amendment's Establishment Clause. Many blue laws have been repealed since the 1960s, but some laws that ban the sale of alcohol on Sunday remain in force.

In 1781, the Reverend Samuel Peters published *A General History of Connecticut*, in which he used the term *blue laws* to refer to a set of laws that the Puritans had enacted in the 1600s to control morality. He claimed that the laws were printed on blue paper, hence the terminology. Historians, however, have concluded that this claim was false, as were many of the laws he purported to have discovered. Some have speculated that the use of the word *blue* came from a connotation that suggested a rigidly moral position, akin to the term *bluenose* that refers to a prudish, moralistic person.

The decline of Puritanism and religious-based governments in the 1700s signaled a decline in laws that banned personal activities on Sunday. Many states and towns, however, passed laws to forbid merchants and laborers from working on Sunday. These laws were not based on concerns that workers deserved a day of rest. Instead, they were meant to respect the Christian Sabbath. In the nineteenth century, the enactment of these laws proceeded west with the expansion of the United States. By the late 1850s, the courts had been called upon to analyze the effect of blue laws on liability issues. For example, in *Philadelphia, Wilmington, and Baltimore Railroad Co. v. Philadelphia and Havre de Grace Steam Towboat Co.*, 64 U.S. (23 How.) 209 (1859), the U.S. Supreme Court held that a railroad that left debris in the water is not excused for damage to a commercial boat that sailed on Sunday. The Court reasoned that boats are works of necessity that are not bound by Sunday closing laws.

The rise of the TEMPERANCE MOVEMENT after the Civil War led to the passage of many

blue laws that forbade the sale of liquor on Sunday, whether in a bar or in a retail store. These prohibitions sometimes banned the sale of tobacco products and by the late nineteenth century, certain public entertainments were not allowed on Sunday. After the failure of PROHIBITION and the legalization of alcoholic beverages in 1933, many states and localities used their blue laws to prevent the operation of liquor stores and bars on Sunday.

Between 1859 and 1900, the Supreme Court heard eight cases involving blue laws. In *Soon Hing v. Crowley*, 113 U.S. 703, 5 S. Ct. 730. 28 L.Ed. 1145 (1885), the Court upheld a law that barred physical labor on Sunday. The Court concluded that the law was intended to prevent undue physical labor rather than promote religion. This was the first decision that examined whether a Sunday closing law was based on religious grounds. Other decisions during this period found the court validating jury verdicts made on Sunday and determining that the operation of a barber shop on Sunday was not a "work of necessity" that exempted the shop from a blue law.

During the early twentieth century many blue laws were amended to permit exemptions. Over time these exemptions produced a bewildering set of rules that appeared ARBITRARY and at times absurd. For example, a hardware store could be open on Sundays, and the proprietor could sell nails, but not hammers. After WORLD WAR II and expansion of U.S. consumer culture, Sunday closing laws were repealed, or were not enforced for commerce that did not involve the sale of alcohol. Nevertheless, non-Christians and some business owners chafed under the restrictions that remained in force.

The Supreme Court resolved the constitutionality of blue laws in *McGowan v. Maryland*, 366 U.S. 420, 81 S.Ct. 1101, 6 L.Ed.2d 393 (1961). The state of Maryland mandated that many businesses must be closed on Sunday. Occupations of necessity or charity were exempted from the law, which included hospitals. Department stores could open on Sunday, but only certain retail items could be sold on that day: tobacco products, candy, milk, bread, fruit, gasoline, oils, greases, drugs, medicines, newspapers, and magazines. Maryland fined the employees of a department store for selling items not on the exempted list. These items included a notebook, a can of floor wax, a stapler and staples, and a toy submarine. The

employees appealed their convictions all the way to the Supreme Court, arguing that the Maryland blue law violated the **EQUAL PROTECTION** and **DUE PROCESS** clauses of the **FOURTEENTH AMENDMENT** as well as the First Amendment's Establishment Clause. They contended that the law was based on specific religious beliefs and compelled all persons to minimally observe the Christian day of worship.

The Court rejected these arguments and upheld the law. Chief Justice **EARL WARREN**, writing for the majority, acknowledged that the law and other similar laws had originally been enacted for religious purposes. He concluded, however, that the Sunday closing laws had evolved into further secular ends and that this defeated an Establishment Clause claim. The Court, in reviewing the history of blue laws, ruled that nonreligious reasons for the laws had been propounded since the 1700s. Secular argument for blue laws included the idea that it was good for the government to encourage people to take a day off work for rest and relaxation. In addition, the Court ruled that the employees could not make an Establishment Clause claim because they did not allege that their religious freedom had been infringed. They had only claimed the law had caused them economic harm. The Court, however, did not address how the secular goals it described were achieved when the law merely banned the sale of certain retail items. Justice **WILLIAM O. DOUGLAS** filed a dissenting opinion in which he argued that the state had no business restricting innocent acts because they offended the "sentiments of their Christian neighbors." In his view the law violated the Establishment Clause.

Since this decision the Supreme Court has not revisited blue laws. As long as these laws can be supported by a secular purpose they will be viewed as constitutional. In the 40 years since *McGowan*, however, most states and localities have abandoned enforcement of blue laws. The one exception remains the sale of alcohol on Sundays by liquor stores.

FURTHER READINGS

- Andrus, Silas. 1999. *The Blue Laws*. Storrs, Conn.: Bibliopola Press.
- "The First Amendment Religion Clauses and Labor and Employment Law in the Supreme Court, 1984." 1986. *New York Law School Law Review* 31 (winter).
- Raucher, Alan. 1994. "Sunday Business and the Decline of Sunday Closing Laws: A Historical Overview." *Journal of Church and State* 36 (winter).

BLUE RIBBON JURY

A group of highly qualified persons selected by a court on the request of either party to a lawsuit to decide complex and specialized disputes.

A blue ribbon jury is also known as a special jury. From the earliest period of **COMMON LAW**, such juries were used to try cases beyond the understanding of the average person so that justice could be administered as fairly as possible. A number of states still provide for blue ribbon juries by statute. It is not an absolute right in all jurisdictions, however, but rather a matter wherein the court can exercise its discretion.

The use of a blue ribbon jury does not violate the constitutional guarantees of trial by a fair and impartial jury or **EQUAL PROTECTION OF LAWS** if the process by which its jurors are selected is neither **ARBITRARY** nor invidiously discriminatory.

CROSS-REFERENCES

Due Process of Law.

BLUE SKY LAW

*A popular name for state statutes providing for the regulation and supervision of **SECURITIES** offerings and sales, to protect citizen-investors from investing in fraudulent companies. Most blue sky laws require the registration of new issues of securities with a state agency that reviews selling documents for accuracy and completeness. Blue sky laws also often regulate securities brokers and salespeople.*

Almost all states have adopted blue sky laws, regulating the sale of securities—investments in bonds, mutual funds, limited partnerships, and so forth. These laws acquired their name as early as 1917, when the Supreme Court issued a decision on "speculative schemes which have no more basis than so many feet of 'blue sky'" (*Hall v. Geiger-Jones Co.*, 242 U.S. 539, 37 S. Ct. 217, 61 L. Ed. 480).

Blue sky laws place requirements on corporations and securities dealerships that offer investments for sale to the public in a particular state. These laws are in many cases adopted from the Uniform Securities Act, and are usually enforced primarily by the state's attorney general's office. The federal **SECURITIES AND EXCHANGE COMMISSION (SEC)** enforces federal laws that concern foreign and interstate transactions.

State blue sky laws require corporations to register securities before selling them so that

regulators can check their marketing information for accuracy. National on-line computer networks that became widely available in the mid-1990s posed new problems for states trying to enforce these requirements. Texas, Ohio, and New Jersey were among states that by 1995 had begun prosecuting some of the thousands of dealers who were offering unregistered investment opportunities to small investors on computer bulletin boards.

State laws usually require corporations to file financial information, and can deny corporations the privilege of doing business if their profile or history is risky. State investigators can determine whether a corporation's financial structure allows it to sell certain securities.

The laws also spell out the qualifications of brokers, dealers, salespeople, investment advisers, and others who work in the securities business. They require dealers to identify the type of investments they are planning to sell and where.

Among the activities blue sky laws seek to prevent are hard-sell tactics. Telephone "stock-peddling" techniques that are high-pressure and misleading can result in the suspension of a broker's license. A 1992 survey by Louis Harris and Associates indicated that more than one-third of all U.S. citizens had received a phone call about investing, and five percent had made a purchase. Many states now require that brokerages and corporations selling on the public market also provide a printed prospectus that describes the risks of investing.

What happens when blue sky laws do not work? States often provide an avenue for victims of illegally sold securities to try to recover their money, sometimes in addition to criminal prosecution. Investors can charge MISREPRESENTATION or lack of suitability and can demand restitution from the BROKER in ARBITRATION. CLASS ACTION suits can also be filed against a fraudulent brokerage or corporation.

FURTHER READINGS

- CCH Editorial Staff. 1999. *Blue Sky Law Desk Reference*. Chicago, Ill.: CCH Inc.
- Maynard, Therese H. 1997. "The Future of California's Blue Sky Law." *Loyola of Los Angeles Law Review* 30 (June): 1573-98.
- Shade, Joseph. 1997. "Financing Exploration: Requirements of Federal and State Securities Laws." *Natural Resources Journal* 37 (summer): 749-83.
- Slobodzian, Joseph A. 1999. Third Circuit Upholds Blue Sky Law." *The National Law Journal* 20 (February 1): B4.

CROSS-REFERENCES

Securities; Stock.

BOARD OF DIRECTORS

A group of people comprising the governing body of a corporation.

The shareholders of a corporation hold an election to choose people who have been nominated to direct or manage the corporation as a board. In the past nearly all states required that at least three directors run a corporation. The laws have changed, however, since many corporations have only one or two shareholders and therefore require only one or two directors to serve on the board.

Directors are elected at the first annual meeting of shareholders and at each successive annual meeting for one-year terms, unless they are divided into classes. In a corporation that divides its directors into classes, called a classified board, conditions are often imposed concerning the minimum size of the board, the minimum number of directors to be elected annually, and the maximum number of classes or maximum terms. The purpose of a classified board, which is expressly permitted by most statutes, is to make takeover attempts more difficult by staggering the terms of the directors.

Removal of a director during the course of his or her term may occur for cause by shareholders or by the board itself if there is a provision in the bylaws or articles of incorporation that confers such power upon them. The removal of a director for cause is reviewable by a court. Many jurisdictions have put into effect statutes that concern the removal of directors with or without cause.

The functions of directors involve a fiduciary duty to the corporation. Directors are in control of others' property and their powers are derived primarily from statute.

Directors are responsible for determining and executing corporate policy. For example, they make decisions regarding supervision of the entire enterprise and regarding products and services.

Liabilities of directors extend to both their individual and joint actions. A director who commits a TORT against his or her corporation can be held personally liable.

Directors are bound by certain duties such as the duty to act within the scope of their

authority and to exercise due care in the performance of their corporate tasks.

BOARD OF PARDONS

Part of the executive branch of state government authorized to grant pardons, and restore civil and political rights, to individuals convicted of crimes. A pardon, in the legal sense, releases an individual from punishment or penalty, but does not necessarily exonerate them of guilt.

Unlike the federal government, where the president possesses the power to pardon persons convicted of felonies, many states have delegated this executive branch function to boards of pardons. These boards review pardon applications and determine if individuals have demonstrated that they have acted constructively. Pardon applicants who have been law-abiding citizens and who have stable work and family histories have the best chance of receiving pardons. Review boards are empowered through state constitutions to issue pardons or, in some cases, to recommend pardons to the governor.

The membership of boards of pardons varies from state to state. For example, in Georgia the governor appoints those who sit on the five-member board, while in Minnesota the board is composed of the governor, chief justice of the state supreme court, and the state attorney general. Where a statute does not designate constitutional officers (e.g., governor or SECRETARY OF STATE) pardon boards generally consist of individuals with experience or an interest in the criminal justice system. Members may be current or former law enforcement officers, correctional officials, lawyers, educators, and business people. Board members usually serve four- or five-year terms. In many states the board also reviews applications for PAROLE (early and conditional release) from prison, but the popularity of mandatory sentencing has greatly reduced the need for these boards to conduct parole reviews.

Eligibility for pardons is governed by statute. Generally, a person convicted of a crime of violence must wait ten years since the discharge of the sentence and cannot be on parole or PROBATION. A person convicted of a nonviolent crime generally must wait five years before applying for a pardon. Some pardon boards also allow an applicant to seek relief earlier for good cause. However, these pardons are difficult to obtain because pardon boards usually must vote unanimously to grant them.

An applicant must file the appropriate paperwork with the board of pardons. The board then notifies the sentencing judge and prosecutor of the hearing date and time. Many states also notify crime victims of the hearing date and publish notices in local newspapers where the crime occurred. At the hearing, the applicant explains to the board why he or she is deserving of a pardon and presents character witnesses. Judges, prosecutors, and victims may also testify.

The pardon board considers all testimony and any written submissions before voting. Boards of pardon may grant an absolute pardon, which is also called a full or unconditional pardon. In contrast, the board may grant a conditional pardon, which must state the terms and conditions on which it was granted. A person who receives an absolute or conditional pardon still bears a criminal record and is required to disclose this information on employment applications and similar forms. However, pardon boards may issue a *pardon extraordinary* that sets aside the conviction and effectively erases the person's criminal record. With a pardon extraordinary the recipient does not have to disclose the conviction except in a judicial proceeding.

Pardon board decisions are not appealable to a court of law. A person who is denied a pardon usually will face an uphill battle to secure it at a future time. For example, in Minnesota two of the three pardon board members must grant permission for the filing of a second application.

FURTHER READINGS

- Abadinsky, Howard. 2002. *Probation and Parole: Theory and Practice*. 8th ed. New York: Prentice Hall.
- Klofas, John, et al. 2003. *Criminal Justice Organizations: Administration and Management*. 3d ed. Belmont, Calif.: Wadsworth.
- Miller, Vivien, and John David Smith. 2001. *Crime, Sexual Violence, and Clemency: Florida's Pardon Board and Penal System in the Progressive Era*. Gainesville: Univ. Press of Florida.

BOARD OF REGENTS

An independent governing body that oversees a state's public COLLEGES AND UNIVERSITIES.

All 50 states have governing bodies that oversee the administration of public education. A number of states call the body that administers the state college and university system the board of regents. The word *regent* is an English term that originally meant ruler. In the British

university system, a regent presided over academic debates; this association with higher education increased over time. Some states refer to their educational bodies as boards of trustees, which suggests the type of role such boards play in education. In a few states, including New York, the board of regents also oversees elementary and secondary education. Most boards of regents, however, deal only with post-secondary education institutions.

Boards of regents gain their authority from either state constitutional provisions or statutes. States that create a board of regents through constitutional means grant these boards great political independence. For many states such a provision creates a “fourth branch of government,” insulated from direct interference by a governor or legislature. Board members, however, are selected by these branches. They are either nominated by the governor and confirmed by the legislature, or elected directly by the legislature. Regents serve for specified terms of office and are selected as at-large members or drawn from particular regions of the state.

A board of regents has a number of duties it must perform. It must do short-range and long-range planning, develop and articulate the vision and mission of the university system, hire and oversee the university chief executive and other top leadership, and make broad policy decisions. Regents are not expected to be involved in day-to-day administration, but they do serve on standing committees that review all aspects of university life. In addition, they are often called on to lobby the governor and legislature for funding. Though these boards meet monthly or bimonthly, the work is constant. This is not surprising, as the annual budgets of state college systems rival those of midsize corporations. Unlike corporate directors, regents do not receive compensation for their service.

Boards of regents approve policies that may be challenged in court. For example, numerous university systems have implemented student codes of conduct, which ban certain types of speech and behavior because they are considered to be “hate crimes.” These policies sometimes result in lawsuits alleging the restriction of FIRST AMENDMENT rights (*UWM Post, Inc. v. Board of Regents of University of Wisconsin*, 774 F.Supp. 1163 [E.D.Wis.1991]). Boards of regents also have been involved in controversy over AFFIRMATIVE ACTION admission policies. Some policies have generated litigation that has

reached the Supreme Court (*Gratz v. Bollinger*, __U.S.__, 123 S.Ct. 2411, __L.Ed.2d__ [2003]).

Because of such high profile issues, boards of regents have been attacked by those who have opposing viewpoints. In some cases, a new governor or a displeased legislature will replace regents with whom they disagree. In general, however, boards are usually diverse bodies, composed of business executives, doctors, labor leaders, farmers, lawyers and, in some cases, a member of the student body. Historically, the independence of boards of regents has been respected.

FURTHER READINGS

Birnbaum, Robert. 2001. *Management Fads in Higher Education: Where They Come From, What They Do, Why They Fail*. San Francisco: Jossey-Bass.

———. 1988. *How Colleges Work: The Cybernetics of Academic Organization and Leadership*. San Francisco: Jossey-Bass.

Duderstadt, James J. 2000. *A University for the 21st Century*. Ann Arbor: Univ. of Michigan Press.

BODY

The principal part of anything as distinguished from its subordinate parts, as in the main part of an instrument. An individual, an organization, or an entity given legal recognition, such as a corporation or “body corporate.” A compilation of laws known as a “body of laws.”

BODY EXECUTION

An arrest; a seizure of a defendant.

A sheriff or other public officer can be ordered by a court to arrest a defendant and the officer executes the order by taking the body of the defendant into custody. The order itself may be called a *capias*, or *capias ad satisfaciendum* (Latin for “that you take him in order to satisfy it”).

❖ BOGGS, CORINNE CLAIBORNE

Corinne Claiborne (“Lindy”) Boggs was a Democratic representative from New Orleans, the first woman from Louisiana elected to the U.S. Congress. During her 17 years in Congress her political acumen and experience made her a popular and effective politician.

Boggs was born March 13, 1916, on Brunswick Plantation, in Louisiana. Her father owned a successful sugar plantation. She received her bachelor’s degree in 1935 from Sophie Newcomb College at Tulane University and taught

history in Romeville, Louisiana. Her 1938 marriage to Hale Boggs marked the beginning of an enduring and formidable political dynasty.

Boggs and her husband first went to Washington in 1940 when he was a first-year representative from New Orleans. Then only 24 and 26 years old, respectively, the young couple devoted themselves to the DEMOCRATIC PARTY. Boggs's husband lost his bid for reelection in 1942 but regained his seat in 1946, beginning a string of 22 consecutive victories by him or Boggs. During the years that her husband was in Congress, Boggs, in addition to raising their three children, worked as his campaign manager, did community work in New Orleans, organized social events, and devised an innovative bill-tracking system for her husband at a time when no such system existed. When her husband was killed in an airplane crash in 1972 Boggs ran in the special election to fill his seat. She won easily, becoming Louisiana's first woman—and one of only 14 women—in Congress.

Although Boggs took her seat in 1973 as a first-year representative, her three decades as a congressional wife had given her the types of contacts enjoyed only by senior members. The friendships and alliances she had developed with prominent Democrats helped her gain an appointment to the House Appropriations Committee. There she used her influence to deliver many important appropriations to her home district, including money for colleges, hospitals, housing projects; a \$10 million energy research center at the University of New Orleans; and numerous navigational and hurricane protection projects.

Boggs built a reputation as a compassionate, even-tempered lawmaker who quietly worked

long hours in the nitty-gritty, behind-the-scenes operation of the Appropriations Committee.

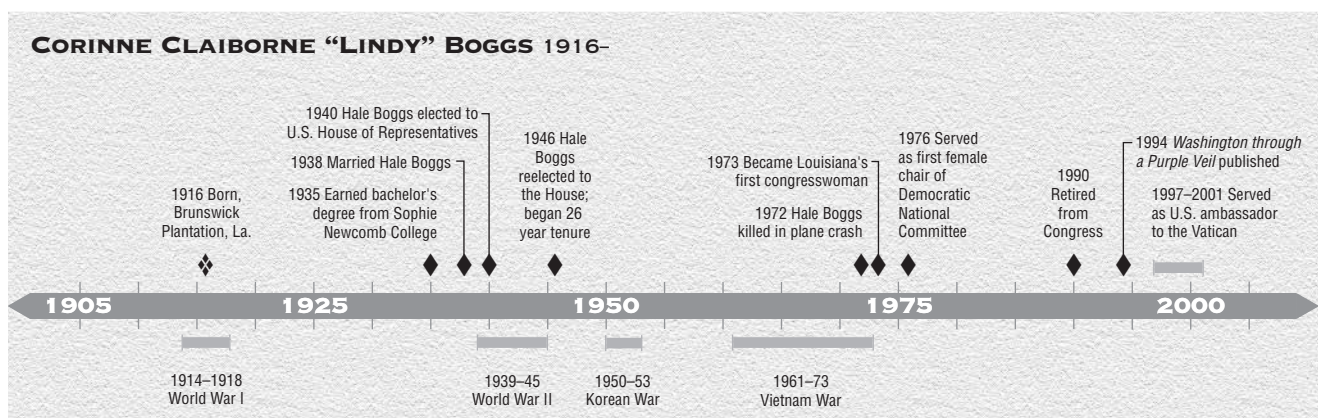
Boggs's other "firsts" included being the first woman to chair the Democratic National Convention, in 1976, and the first female regent of the Smithsonian Institution. At the time of her retirement, she was the only white congressperson representing a district where most of the voters were African American, defying the conventional wisdom that voters prefer candidates of their own race.

In addition to her work on the Appropriations Committee, Boggs served on the Banking, Currency, and Housing Committee, where she worked to pass legislation aimed at solving the housing problems of elderly people and members of other low- and middle-income groups. A strong supporter of equal opportunities for women, she helped pass legislation that guarantees equal access to credit and prohibits discrimination on the basis of sex in the granting of small-business loans.

During her many years in Washington, D.C., Boggs acted as an unofficial hostess for the Democratic party, presiding over parties and receptions attended by most of the Democrats in the nation's capital. In looking back on her career, Boggs expressed pride in having played a "small role in opening doors for blacks and women," in helping to fund Head Start, and in securing money for businesses owned by minorities and women. She stressed that leaving public office would not mean the end of her career.

Since leaving the House, Boggs has lectured at Tulane University and the University of New Orleans and established the Hale and Lindy Boggs Center for Legislative Affairs, at George-

"I CAME TO
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GOVERNMENT."
—CORINNE "LINDY"
BOGGS



town University Law School. In January 1991 she attended the dedication of the Lindy Claiborne Boggs Room, a reading room for congresswomen at the U.S. Capitol.

In 1997 Boggs was confirmed by the Senate as U.S. ambassador to the Vatican, a position she held until March 2001. Since that time she has spoken on the topics of HEALTH CARE advocacy and other health issues.

She has also spoken of her political and personal experiences including raising two politically active daughters. Her older daughter, Barbara Boggs Sigmund, was the mayor of Princeton, New Jersey, when she became terminally ill with cancer. Boggs cited Sigmund's illness as one of the reasons she did not run for reelection in 1990; Sigmund died later that year. Boggs's younger daughter, Corinne "Cokie" Roberts, worked as a journalist and congressional reporter for National Public Radio and ABC News in the early 2000s.

FURTHER READINGS

- Berry, Dawn Bradley. 1996. *The 50 Most Influential Women in American Law*. Los Angeles: Contemporary Books.
- Boggs, Lindy, with Katherine Hatch. 1994. *Washington through a Purple Veil: Memoirs of a Southern Woman*. New York: Harcourt Brace.
- Catholic Health Association. Available online at <www.chausa.org> (accessed June 1, 2003).
- Ehrenhalt, Alan, ed. 1983. *Politics in America*. Washington, D.C.: Congressional Quarterly.
- Gilbert, Lynn, and Gaylen Moore. 1981. *Particular Passions: Talks with Women Who Have Shaped Our Times*. New York: Potter.
- Keil, Sally Van Wagenen. 1979. *Those Wonderful Women in Their Flying Machines*. New York: Rawson Wade.
- O'Neill, Lois D., ed. 1979. *The Women's Book of World Records and Achievements*. Garden City, N.Y.: Anchor Press.
- Stineman, Esther. 1980. *American Political Women*. Littleton, Colo.: Libraries Unlimited.

BOILERPLATE

A description of uniform language used normally in legal documents that has a definite, unvarying meaning in the same context that denotes that the words have not been individually fashioned to address the legal issue presented.

❖ BOLIN, JANE MATILDA

Jane Matilda Bolin was the first black woman judge in the United States.

Bolin was born April 11, 1908, in Poughkeepsie, New York, to Gaius C. Bolin and Matilda Emery Bolin. Her father, who was born

to a Native American mother and a black father, was the first African American graduate of Williams College. He went on to become a lawyer and practiced law in Poughkeepsie for more than 50 years. Bolin's mother was born in England and immigrated to the United States with her parents.

Bolin was raised in a middle-class family. She attended public elementary and secondary schools. After graduation from high school she entered Wellesley College and soon was named a Wellesley scholar, one of the top 20 women in her class. She received her bachelor of arts degree, with honors, in 1928.

Shortly after her graduation from college Bolin announced her intention to attend Yale Law School. Her father was at first opposed to the idea because he felt that the law was a profession unsuited to women. He let his daughter know he would prefer her to pursue teaching, but she was determined to become a lawyer. Bolin graduated from Yale Law School in 1931, the first African American woman to do so.

Bolin was admitted to the New York bar in 1932 and began her legal career with her father and brother's law firm in Poughkeepsie. In 1933 she married Ralph E. Mizelle, also an attorney, and they settled in New York City.

Bolin's judicial career commenced just a few years after she and her husband began practicing law together. On April 7, 1937, she was named assistant corporate counsel in New York City's law department. She served two years in that position before being summoned, to her complete surprise, to the office of Mayor Fiorello La Guardia. On July 22, 1939, La Guardia appointed Bolin justice of the Domestic Relations Court of the City of New York (later called the family court), making her the first black woman judge in the United States. She presided over family court cases for four consecutive ten-year terms, until she reached the mandatory retirement age of 70.

In her many years on the bench Bolin saw the full spectrum of domestic cases: serious crimes, including homicides, committed by juveniles; nonpayment of family support; spouse battering; child neglect; lack of supervision for children; ADOPTION; and PATERNITY. Upon her retirement in 1978 she noted that during her years as a judge, she had viewed a steady increase in violent behavior among young people. Asked if she could suggest solutions to the problem, Bolin responded that the answers were

very complex and that she could not accept the “easy answers” psychiatrists and social workers were handing out, “saying it’s because of the wars ... or the violent programs on television”

From the beginning of her career Bolin was determined to fight racial prejudice in any way she could. She worked to bring about changes in the way PROBATION officers were assigned to cases in family court. When she became a judge black probation officers were assigned exclusively to cases involving black families; through Bolin’s efforts, probation officers were eventually assigned without regard to race or religion. She also instituted a requirement that private social service agencies receiving public funds accept children without regard to ethnic background. “They used to put a big N or PR on the front of every [file], to indicate if the family was black or Puerto Rican,” she recalled, because the agencies were segregated.

Bolin has been described as a militant, but quiet, fighter for justice. She earned a reputation as a courageous, no-nonsense, hard worker who never shirked an assignment. In addition to being a committed professional, Bolin served on the boards of a number of organizations: the New York Urban League, the National Association for the Advancement of Colored People (NAACP) and its New York chapter, the Harlem Tuberculosis Committee, the legislative committee of the United Neighborhood Houses, the Wiltwick School for Boys, the Dalton School, and the Harlem Lawyers’ Association. She was a member of the Committee on Children of New York City, the Scholarship Service and Fund for Negro Students, and the Committee against Discrimination in Housing.

Bolin and her first husband had one child, Yorke Bolin Mizelle, who was born in 1941 and

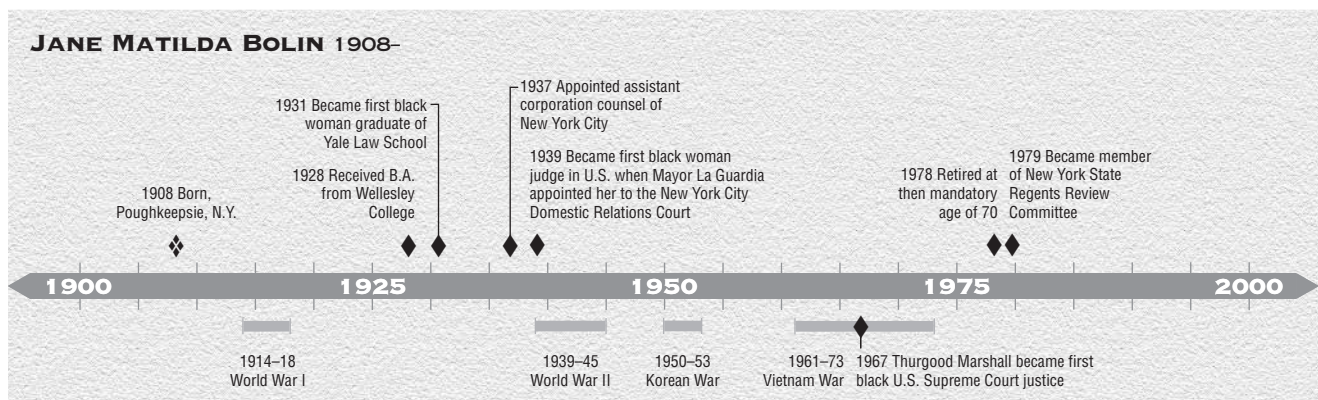


Jane Matilda Bolin.
FISK UNIVERSITY
LIBRARY

became a New York businessman. Asked how she combined motherhood, community activities, and a high-pressure career, Bolin said, “I didn’t get all the sleep I needed, and I didn’t get to travel as much as I would have liked, because I felt my first obligation was to my child.” Bolin’s first husband died in 1943. In 1950, she married Walter P. Offutt Jr., a minister, who died in 1974.

In recognition of her many accomplishments and contributions to the field of FAMILY LAW, Bolin has received many awards, including honorary doctor of law degrees from Morgan State University, Western College for Women, Tuskegee University, Hampton University, and Williams College. However, asked to recount her

“I’D RATHER SEE IF
I CAN HELP A
CHILD THAN
SETTLE AN
ARGUMENT
BETWEEN ADULTS
OVER MONEY.”
—JANE BOLIN



most memorable experience, she did not speak of her many achievements. Rather, she told the story of a child who was in trouble and whose mother asked Bolin to send the child to the same institution where she had spent some time. When Bolin said she preferred to help the mother keep her child at home, the woman told her the institution had helped her, and she wanted the same help for her child. Bolin listened to the mother's reasoning and complied with her wishes.

After her retirement, Bolin worked as a family law consultant and did volunteer tutoring in math and reading with public school children.

FURTHER READINGS

- Drachman, Virginia G. 1998. *Sisters in Law: Women Lawyers in Modern American History*. Cambridge: Harvard Univ. Press.
- Harrington, Mona. 1994. *Women Lawyers: Rewriting the Rules*. New York: Knopf.
- Hine, Darlene C., ed. 1993. *Black Women in America: An Historical Encyclopedia*. Brooklyn: Carlson.
- Smith, Jessie C., ed. 1992. *Notable Black American Women*. Detroit: Gale Research.

BONA FIDE

[Latin, In good faith.] *Honest; genuine; actual; authentic; acting without the intention of defrauding.*

A bona fide purchaser is one who purchases property for a valuable consideration that is inducement for entering into a contract and without suspicion of being defrauded or deceived by the seller. He or she has no notice of any defects of the title. A bona fide purchaser pays in **GOOD FAITH** full value for the property and, without any **FRAUD**, goes into possession.

❖ **BONAPARTE, CHARLES JOSEPH**

Charles Joseph Bonaparte, who served as U.S. attorney general under president **THEODORE**

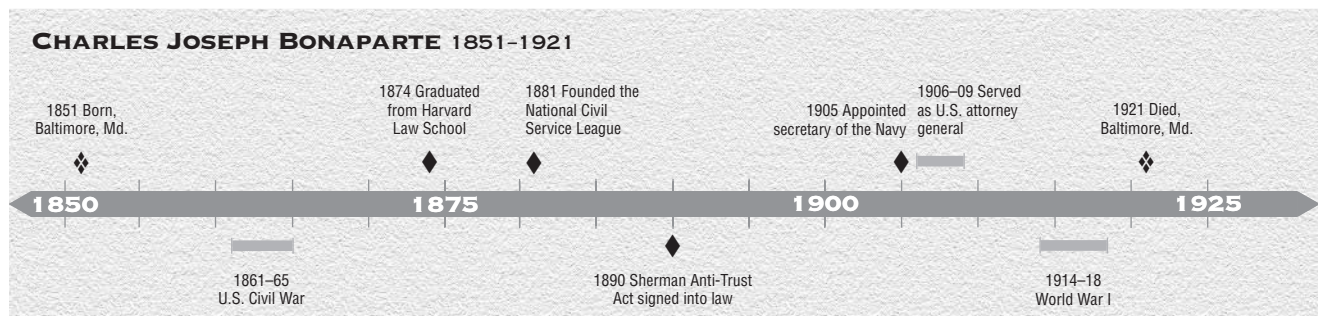
ROOSEVELT, was one of the organizers of the Civic Reform League and the National Municipal League, and he helped to found a Special Agents Force within the **JUSTICE DEPARTMENT** that was the forerunner of the **FEDERAL BUREAU OF INVESTIGATION (FBI)**.

A grandson of Jerome Bonaparte, who was Napoleon's youngest brother, Charles Joseph Bonaparte was born in Baltimore, Maryland, on July 9, 1851. After graduating from Harvard College in 1871, he attended Harvard Law School, graduating in 1874. Bonaparte returned to Baltimore and established a private practice. At the time, public corruption of elected officials was widespread in the United States and the political situation in Maryland was considered to be the worst in the country. Bonaparte, of Italian-American descent, became interested in civic reform, commenting in an article published in *Forum* magazine that the politicians of that period if not technically criminals themselves, were the "allies and patrons of habitual lawbreakers."

In 1881, Bonaparte became one of the founders of the National Civil Service Reform League. Along with other political reformers he sought to raise the awareness of the electorate regarding crimes such as **BRIBERY** and **UNDUE INFLUENCE** and the need for fair and impartial administration of the government. The reformers were known in the popular parlance as "goo-goods" because they sought good government. Bonaparte also helped to found the National Municipal League in 1894. The organization, an amalgamation of various citywide reform groups throughout the United States, elected Bonaparte its president in 1905.

Bonaparte was a member of the **REPUBLICAN PARTY** although not a particularly active one. In 1892, Bonaparte and Theodore Roosevelt met in Baltimore when they both spoke to a local civil service reform organization. In 1902,

"TO HAVE A
POPULAR
GOVERNMENT WE
MUST, FIRST OF
ALL, AND BEFORE
ALL ELSE, HAVE
GOOD CITIZENS."
—CHARLES JOSEPH
BONAPARTE



President Roosevelt appointed Bonaparte to the Board of Indian Commissioners. In 1905, Roosevelt named Bonaparte secretary of the United States Navy.

In his second term of office, Roosevelt found it necessary to name a replacement for Attorney General WILLIAM HENRY MOODY, who left in December 1906 to become an associate justice on the U. S. Supreme Court. Because of his reformer passions, Bonaparte was chosen by Roosevelt to be Moody's successor. Roosevelt, who had first begun his political career in New York City by campaigning for municipal reform, was now seeking reform on a national basis by going after corrupt businesses and corporations that had formed "trusts" aimed at stifling competition and keeping wages low. Roosevelt had become the nation's "trust-buster," and Bonaparte joined the pursuit, launching antitrust investigations aimed at corporations such as Standard Oil and the American Tobacco Company, and railroads including the Union Pacific. During his tenure in office, Bonaparte argued over 50 cases before the Supreme Court.

While pursuing his various antitrust investigations, Bonaparte found himself hindered by the lack of a permanent investigative staff within the Justice Department. Temporary investigators, who were private detectives or SECRET SERVICE operatives on loan from the TREASURY DEPARTMENT carried out the investigations. Congress, under pressure from corporations to end the investigations, enacted a law that prohibited the Justice Department from using members of the Secret Service for the Department's investigations.

In 1908, Roosevelt directed Bonaparte to create an investigative force that would be a subdivision of the Justice Department. Before he left office, Bonaparte suggested making the division permanent. His suggestion was upheld by his successor, GEORGE WICKERSHAM, who called the group the Bureau of Investigation. The 23-member unit developed by Bonaparte was renamed the Federal Bureau of Investigation (FBI) in 1935.

After leaving office in March 1909, Bonaparte continued to pursue his advocacy of civil reform. He died on June 28, 1921, at his estate, Bella Vista, located outside Baltimore.

FURTHER READINGS

Hall, Kermit L. 1989. *The Magic Mirror: Law in American History*. New York: Oxford Univ. Press.



Charles Joseph Bonaparte.

LIBRARY OF CONGRESS

Justice Department. 1985. *Attorneys General of the United States, 1789–1985*. Washington, D.C.: GPO.

"Remarks of Judge Arthur Gajarsa, U.S. Federal Circuit Court of Appeals." June 26, 1998. Washington, D.C.: Italian Historical Society of America.

CROSS-REFERENCES

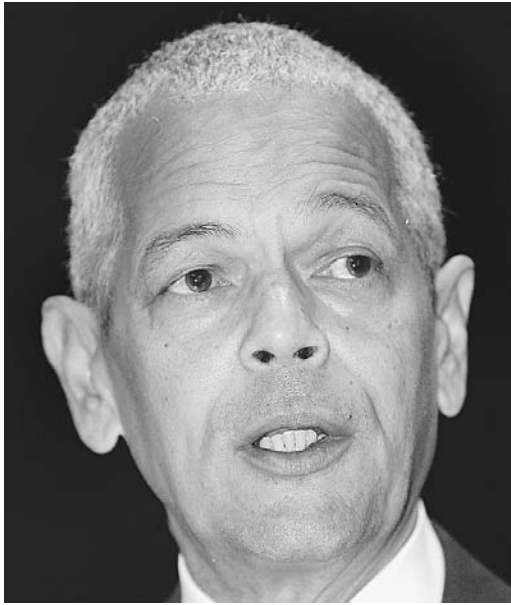
Federal Bureau of Investigation; Justice Department; Roosevelt, Theodore.

❖ BOND, HORACE JULIAN

In the annals of the CIVIL RIGHTS MOVEMENT, the career of the politician, activist, and educator Julian Bond holds a unique place. Bond's work on behalf of social justice spans the period from the 1960s to the early 2000s. As a college organizer in 1960, he helped found the STUDENT NON-VIOLENT COORDINATING COMMITTEE (SNCC), arguably the most important group channel for the young people who expanded and radicalized the movement. In 1965, he became one of the first members of his generation to make the transition from activism to political office, subsequently serving for nearly two decades in Georgia state government. Through his legislation, writing, teaching, and planning for legal affairs groups, Bond is widely recognized as an intellectual leader of the contemporary CIVIL RIGHTS movement.

Born on January 14, 1940, in Nashville, Tennessee, Bond was the son of black educators. His

Julian Bond.
AP/WIDE WORLD
PHOTOS



"WE ARE A FORCE
TO BE RECKONED
WITH: WELL-
EDUCATED, WELL-
INFORMED AND
STRONGLY
COMMITTED TO
SOCIAL JUSTICE. . . .
AND WE VOTE."
—JULIAN BOND

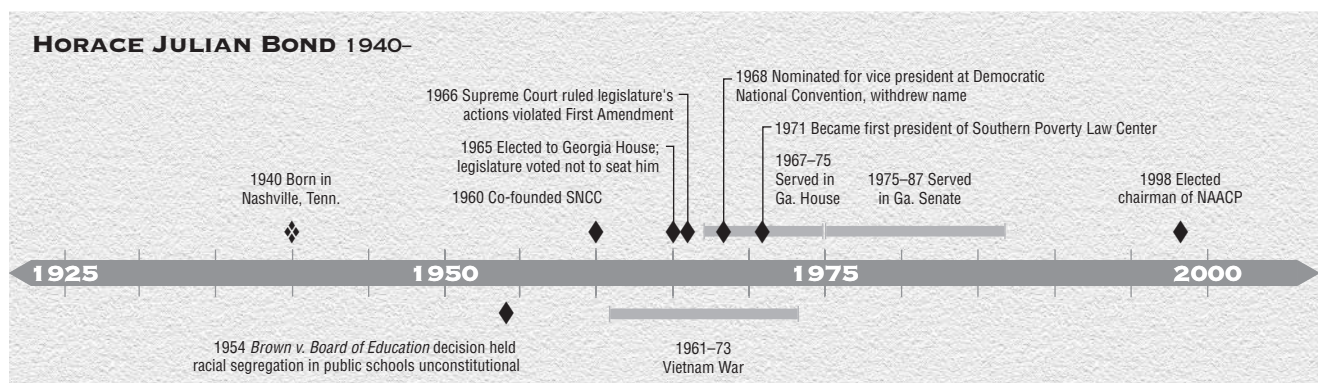
childhood was steeped in the intellectual life of Lincoln University in Pennsylvania, where his father, Horace Mann Bond, served as president. The family's accomplishments—Bond was the descendant of a freed slave—did not insulate him from prejudice. While at the George School, a Quaker prep school at which he was the only black student in the 1950s, Bond was told by the headmaster not to wear his school jacket on dates with white girls. The experience scarred him yet awakened him politically. At that time he also began developing a philosophy of racial awareness and **PACIFISM**, along with the witty, penetrating style for which he later became known.

In 1957, Bond entered Morehouse College in Atlanta, Georgia. He did not receive his bachelor of arts degree in English until 14 years later, but in the interim, he made history. Bond was inspired by the civil rights movement and par-

ticularly the philosophy of nonviolent change espoused by **MARTIN LUTHER KING JR.** In 1960, Bond helped found two influential student groups. The first of these, the Committee on Appeal for Human Rights, succeeded in integrating Atlanta businesses and public places. The second group, the Student Non-violent Coordinating Committee (SNCC), grew into a national phenomenon, becoming the leading civil rights organization among young people in the mid-1960s. SNCC activities ranged from voter registration drives in the South to opposition to the **VIETNAM WAR**, and Bond, in addition to joining SNCC in the field, edited its newsletter.

Dropping out of college in 1961 to become a full-time activist, Bond soon established himself as a national figure through this work and his subsequent political career. In 1965, he won election to the Georgia House of Representatives. But lawmakers voted not to seat him, ostensibly because of his anti-war activities, particularly his signing of a SNCC statement that supported men who chose not to respond to their draft summons. Bond's supporters argued that the real reason he was not seated was racism. After the legislature called a new election, Bond won again, but he was still refused office. His lawsuit claiming the right to be seated went to the U.S. Supreme Court, which ruled unanimously in December 1966 that the legislature's actions violated the **FIRST AMENDMENT** (*Bond v. Floyd*, 385 U.S. 116, 87 S. Ct. 339, 17 L. Ed. 2d 235). Bond took office in January 1967.

Bond's success led to his name being placed in nomination for vice president at the 1968 Democratic Convention, a first for a black man. The nomination was symbolic; he was too young to serve and so withdrew his name. In Georgia, he served as a state representative until 1974 and as a state senator from 1974 to 1987. During this



period, he introduced some 60 bills aimed at helping minorities and low-income citizens; he also led a successful drive to create a new congressional district in Atlanta representing a black majority. He made an unsuccessful bid for the U.S. House of Representatives in 1987.

During his career, Bond has written about and taught civil rights and has served in many civil rights organizations. In 1971, he became the first president of the SOUTHERN POVERTY LAW CENTER, a nonprofit legal organization based in Montgomery, Alabama, devoted to ending discrimination. In the 1990s Bond served four terms on the board of the National Association for the Advancement of Colored Persons (NAACP). Bond has served since 1998 as national board chairman of the NAACP.

A holder of 23 honorary degrees, Bond has taught at Drexel University, Harvard University, the University of Pennsylvania, and Williams College. In 2003 he served as a distinguished professor at American University in Washington, D.C. and a professor of history at the University of Virginia.

In the early 2000s Bond continued to be a prolific writer. His articles and poems have appeared in numerous magazines and newspapers including *The Nation*, *Playboy*, *Ramparts*, the *New York Times*, and the *Los Angeles Times*. Bond has also continued his work as a narrator and commentator and has made appearances on television and in the movies. In 2002 he received the EUGENE V. DEBS Award for his work with social justice issues and also the prestigious National Freedom Award.

FURTHER READINGS

Branch, Taylor. 1989. *Parting the Waters: America in the King Years, 1954–1963*. New York: Touchstone.

National Association for the Advancement of Colored People. Available online at <www.naacp.org> (accessed June 1, 2003).

Reed, Adolph. 1999. *Stirrings in the Jug: Black Politics in the Post-Segregation Era*. Minneapolis, Minn.: Univ. of Minnesota Press.

CROSS-REFERENCES

Civil Rights Movement.

BONDS

Written documents by which a government, corporation, or individual—the obligor—promises to perform a certain act, usually the payment of a definite sum of money, to another—the obligee—on a certain date.

In most cases, a bond is issued by a public or private entity to an investor who, by purchasing the bond, lends the issuer money. Governments and corporations issue bonds to investors in order to raise capital. Each bond has a *par value*, or face value, and is issued at a fixed or variable interest rate; however, bonds often can be purchased for less or more than their par value. This means that the yield, or total return on a bond, varies based on the price the investor pays for the bond and its interest rate. Generally, the more secure a bond is (i.e., the stronger the assurance that the bond will be paid in full upon maturity), the less the bond will yield to the investor. Bonds that are not very secure investments tend to have higher returns. Junk bonds, for example, are high-risk, high-yield bonds. Except for the high-risk variety, bonds tend to be relatively solid, predictable investments, with prices that vary less than those of those of stocks on the STOCK MARKET. As a result, litigation because of unpaid bond agreements has rarely proved necessary.

The most common type of bond is the *simple bond*. This bond is sold with a fixed interest rate and is then redeemed at a set time. Several varieties of simple bonds exist. Municipal governments issue simple bonds to pay for public projects such as schools, highways, or stadiums. The U.S. Treasury issues simple bonds to finance federal activities. Foreign governments issue simple bonds, known as Yankee bonds, to U.S. investors. Corporations issue simple bonds to raise capital for modernization, expansion, and operating expenses.

Conditional bonds do not involve capital loans. Most of these bonds are obtained from persons or corporations that promise to pay, should they become liable. The payment is usually a nonrefundable fee or a percentage of the face value of the bond. A bail bond is a common type of conditional bond. The person who posts a bail bond promises to pay the court a particular sum if the accused person fails to return to court for further proceedings on the date specified. Once a bond payer satisfies the terms of a conditional bond, the liability is discharged. If the bond goes into default (i.e., if the obligations specified are not met) the amount becomes immediately due. Parties also can mutually decide to cancel a conditional bond.

The emergence of simple government and corporate bonds into the modern marketplace began with the economic boom of the 1920s.

Michael R. Milken: Genius, Villain, or Scapegoat?

Few business personalities have attracted as much attention—both negative and positive—as bond market financier Michael R. Milken. After earning an estimated \$1.1 billion in the 1980s as the head of Drexel Burnham Lambert's **SECURITIES** branch, Milken fell from grace in the press and in the eyes of many investors. In 1990 the Securities Exchange Commission charged Milken with securities **FRAUD**. In U.S. district court, Milken was fined \$600 million, permanently barred from engaging in the securities business, and sentenced to ten years behind bars. Some of Milken's associates believed that he had been made a scapegoat; Milken's prosecution, they argued, was little more than an attempt to pass judgment on the 1980s, sometimes cast as the decade of greed.

Milken had formerly been heralded by the *Wall Street Journal* as one of the century's most important financial thinkers. In the 1970s, after finishing studies at the University of Pennsylvania's Wharton Business School, Milken was early in anticipating the boom of the **JUNK BOND** market. He used his understanding of trends in investment activity, along with innovative approaches, to capitalize on what he called high-reward bonds. The junk bond boom led to both Milken's ascent and his incrimination. Milken's correct assessment of the junk bond boom paid off for him. While he worked for the powerful Drexel Burnham Lambert firm, his profits made him a billionaire. But how he made those profits also led to his downfall. The government held evidence implicating Milken in manipulation of stocks, insider trading, and **BRIBERY** of investment managers.

With fines and damages in civil lawsuits totaling \$1 billion, Milken became one of several news-making, white-collar criminals of the 1980s. After his sentencing, the *Wall Street Journal* retracted its praise of the man, saying that "evidence now suggests that Mr. Milken's theory was wrong—and that he was far

from the genius he seemed to be about junk bonds." (*National Review*, August 31, 1992). Milken's theory held that the high yields of junk bonds would draw investors to purchase many of them and that defaults on these securities would be few. The intense corporate competition of the 1980s waned; however, and in later years, investors moved away from junk bonds in search of other investment opportunities. Following his release from prison, after serving two years of his ten-year sentence, Milken was invited to lecture on ethics in business at the University of California, Los Angeles. To critics, however, Milken remained an icon of the money-mad 1980s, a financial wizard driven by the promise of vast wealth to push the limits of **SECURITIES LAW**. The one-time billionaire reemerged from prison with \$300 million from his days as the king of junk bonds, which he used entrepreneurially in the education market, most notably as the brainchild behind Knowledge Universe, a company that owned several other education training and consulting companies, including the popular Leapfrog Enterprises (makers of LeapPad learning aids). Additionally, Milken became more visible in his philanthropic endeavors, particularly favoring prostate cancer research and Milken creations such as the Milken Family Foundation, the Milken Institute, and Mike's Math Club.

FURTHER READINGS

- Bailey, Fenton. 1992. *Fall from Grace: The Untold Story of Michael Milken*. Secaucus, N.J.: Carol Pub. Group.
- Fischel, Daniel R. 1995. *Payback: The Conspiracy to Destroy Michael Milken and His Financial Revolution*. New York: HarperBusiness.
- Platt, Harlan D. 2002. *The First Junk Bond: A Story of Corporate Boom and Bust*. Washington, D.C.: Beard.

CROSS-REFERENCES

Investment; Stock; Stock Market.



Immediately after **WORLD WAR I**, the U.S. economy rewarded investors who were eager to see expansions in industrial growth. For most of the 1920s, until just before the Great Depression,

interest rates remained low. The bond market became sophisticated enough to raise funds for the U.S. Treasury, domestic corporations, and foreign borrowers. It also proved useful during

WORLD WAR II, when the federal government depended on the sale of war bonds to finance its military efforts.

During the 1980s, a different kind of boom in the U.S. economy sent the bond market in a more problematic direction. Even though high-yielding bonds tend to be less reliable investments than low-yielding ones, the rapidly increasing business activity in the 1980s led to large-scale buying of these high-risk investments. Corporations successfully bought out the stock of other corporations by raising money through the sale of millions of dollars of junk bonds. (Junk bonds have been given low ratings when measured by standard investment criteria—hence the pejorative name.)

Troubles soon arose from the shaky foundation of the JUNK BOND market. One of the country's leading figures in fostering junk bond investments, Michael R. Milken, faced criminal charges that he had manipulated bond prices, traded on inside information, and bribed investment managers. Milken's image was further complicated by his having worked with the stock baron Ivan F. Boesky, who had been convicted of insider trading. In April 1990, in *Securities & Exchange Commission v. Milken*, 1990 WL 455346, Fed. Sec. L. Rep. ¶ 95,200 (S.D.N.Y. April 24, 1990), Milken pleaded guilty to six felonies, including conspiracy, SECURITIES FRAUD, and aiding and abetting the filing of a false document with the SECURITIES AND EXCHANGE COMMISSION. At the time of the initial settlement, Milken agreed to pay \$600 million in fines and reparations. In November 1990, federal judge Kimba M. Wood sentenced Milken to ten years in prison. Milken served only two years of his sentence behind bars.

Problems have also arisen with bonds issued by governments. For example, when California's Orange County issued \$169 million in municipal bonds in June 1994, future taxes and other general revenues were expected to pay for the interest and principal of the bonds. But on December 6, 1994, the county filed Chapter Nine petitions in BANKRUPTCY court. The county could not pay the bondholders, since the money that had been set aside for them had been depleted. By 1995, losses in the Orange County investment pools approached \$1.7 billion. Representatives of the county found themselves in court, being sued by the company that represented investors. In *In re County of Orange*, 179 B.R. 185, 26 Bankr. Ct. Dec. 1050 (Bankr.

C.D. Cal. 1995), the bankruptcy court denied bondholders' claims to county revenues derived after the Chapter Nine filing. The interests of bondholders were seriously injured.

Nevertheless, bonds continue as popular investments. Junk bonds, especially, have regained favor as a means for earning considerable returns. The relatively high interest rates of junk bonds have entailed risks for buyers, but Wall Street analysts have argued that the rewards of these investment vehicles outweigh the dangers. Indeed, the bond market in general has even thrived in times of economic crisis.

FURTHER READINGS

- Geisst, Charles R. 1992. *Entrepot Capitalism*. New York: Praeger.
- Platt, Harlan D. 1994. *The First Junk Bond*. New York: Sharpe.
- Wurman, Richard S. 1990. *The Wall Street Journal Guide to Understanding Money and Money Markets*. New York: Access Press.
- Yago, Glenn. 1991. *Junk Bonds*. New York: Oxford Univ. Press.

CROSS-REFERENCES

Securities.

BONHAM'S CASE

See ENGLISH LAW "Dr. Bonham's Case" (In Focus).

BOOK VALUE

The current value of an asset. The book value of an asset at any time is its cost minus its accumulated depreciation. (Depreciation reflects the decrease in the useful life of an asset due to use of the asset.) Companies use book value to determine the point at which they have recovered the cost of an asset.

The net asset value of a company's SECURITIES. This is calculated by subtracting from the company's total assets the following items: intangible assets (such as goodwill), current liabilities, and long-term liabilities and EQUITY issues. This figure, divided by the total number of bonds or of shares of stock, is the book value per bond or per share of stock.

The calculation of book value is important in determining the value of a company that is being liquidated. For example, if a corporation has 100,000 shares of stock issued and outstanding and its assets total \$5 million and its intangible assets and all liabilities total \$1.6 million, its net asset value is \$3.4 million and its book value per share is \$34.

BOOKING

The procedure by which law enforcement officials record facts about the arrest of and charges against a suspect such as the crime for which the arrest was made, together with information concerning the identification of the suspect and other pertinent facts.

This information is written down on the police blotter in the police station. The process of booking may also include photographing and fingerprinting.

BOOKKEEPING

The process of systematically and methodically recording the financial accounts and transactions of an entity.

Double-entry bookkeeping is an accounting system that requires that for every financial transaction there must be a debit and a credit. When merchandise is sold for cost, there is a debit to cash and a credit to sales.

BOOTSTRAP DOCTRINE

A principle in the resolution of conflict of laws that prevents a party from bringing an action in one state's court in an attempt to collaterally attack the final judgment from another state's court. The doctrine is based upon the principle of RES JUDICATA, which prevents a party from litigating a jurisdictional claim that has already been resolved by a prior, final decision, or if the litigants had an opportunity to raise the issue and challenge the other court's lack of jurisdiction and failed to do so.

FURTHER READINGS

Cavers, David F. 1985. *The Choice of Law: Selected Essays, 1933–1983*. Durham, NC: Duke Univ. Press.

Hay, Peter. 2000. *Conflict of Laws*. 3d ed. St. Paul, Minn.: West Group.

CROSS-REFERENCES

Res Judicata.

♦ BORDEN, LIZZIE

The trial of Lizzie Borden shows the effect that public opinion can have on the life of an accused person, regardless of the outcome of a fair trial.

Lizzie Borden was born July 19, 1860. She was a plain, outspoken woman who lived with her father, stepmother, and sister in a house on Second Street in Fall River, a small industrial city located in southeastern Massachusetts.

According to local rumors, the Borden family was not noted for its harmonious relationships. Andrew Borden was a quiet, unpleasant man who had two daughters, Lizzie and Emma, by a previous marriage, and who had married his present wife in 1865. Neither Lizzie nor Emma favored the union and animosity existed among the three Borden women.

On August 4, 1892, the residents of Fall River were shocked and frightened by the brutal ax murders of Andrew Borden and his wife. The killings were committed at the Borden home in daylight. Emma Borden was out of town, but Lizzie discovered her father's body on the couch in the living room; she immediately sent a servant, Bridget, for help. Upon their return, Bridget and a neighbor found the body of Lizzie's stepmother in an upstairs bedroom.

The town was in an uproar and the newspapers seized the opportunity to sensationalize an already lurid story. Lizzie became the prime suspect, and throughout Fall River, speculation spread about her actions on that fatal day, suggesting that Lizzie attacked her stepmother and afterward carefully cleaned the ax and changed her clothes. She then did her normal housework until her father returned from town to take a nap on the couch. While he slept, Lizzie killed him, and again cleaned the ax and her clothing. Chemical tests did not provide any substantial evidence because the alleged murder weapon, the ax, was cleaned so thoroughly.

The story of the murders was embellished with continued fragmented reports of Lizzie's behavior. One source claimed that Lizzie was devoid of any emotion when the corpses were found; another witnessed Lizzie in the act of burning a dress shortly after the murders were committed; still another stated that the suspect had attempted to purchase poison as recently as one day before the killings. The condemning public showed Lizzie no mercy, and some unknown rhymers composed a grotesque verse relating the events. The still familiar rhyme reads as follows:

Lizzie Borden took an ax
And gave her mother forty whacks;
When she saw what she had done
She gave her father forty-one.

An inquest was held five days after the discovery of the murders, and Lizzie was subsequently arrested. The trial began in New Bedford, Massachusetts, in June 1893, and lasted thirteen days. Those days were filled with con-



Lizzie Borden (c.1890) was accused of the murder of her parents. She was acquitted in 1893. AP/WIDE WORLD PHOTOS

tradictory accounts of the crime, but the main point of contention concerned Lizzie's assertion that she was in the barn at the time the murders were committed, between 11:00 A.M. and 11:15 A.M. An ice cream vendor corroborated Lizzie's story by testifying that he had seen the defendant leaving the barn at the aforementioned time. The defense attorney argued brilliantly on his client's behalf—the evidence was mostly circumstantial—and the jury found Lizzie Borden not guilty of the murder of her parents.

Lizzie Borden was acquitted by the jury but not by the public. After her death on June 1, 1927, in Fall River, she was still not exonerated in the public mind; she is famous only in connection with the bloody events of August 4, 1892.

FURTHER READINGS

- Hoffman, Paul Dennis. 2000. *Yesterday in Old Fall River: A Lizzie Borden Companion*. Durham, N.C.: Carolina Academic Press.
- Masterton, William L. 2000. *Lizzie Didn't Do It!* Boston: Branden.
- Ortiz, Catalina. 1997. "Defense Has the Edge: New Trial, Same Verdict: Lizzie Borden 'No Murderer.'" *Chicago Daily Law Bulletin* 143 (September 17).

Robertson, Cara W. 1996. "Representing 'Miss Lizzie': Cultural Convictions in the Trial of Lizzie Borden." *Yale Journal of Law & the Humanities* 8 (summer): 351–416.

❖ BORK, ROBERT HERON

Robert Heron Bork, conservative legal scholar, author, and former federal appellate judge, was one of President Ronald Reagan's most controversial nominees for the U.S. Supreme Court.

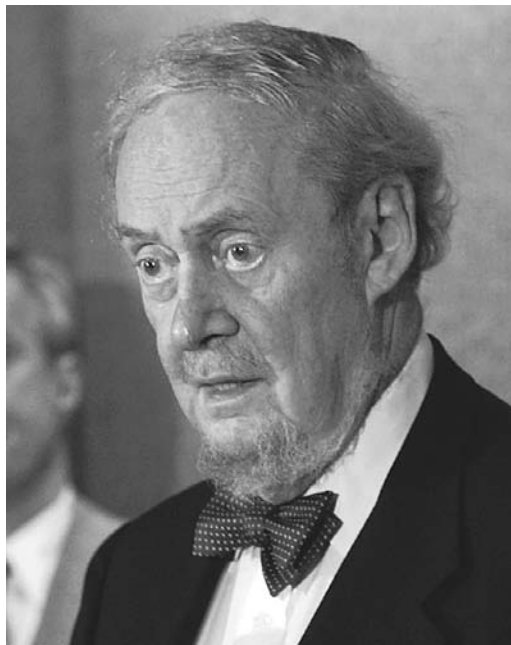
When Bork was nominated to the Supreme Court in July 1987 his opponents ridiculed him as an archconservative who wanted to take away the rights and freedoms enjoyed by the political mainstream. They may have been surprised to learn that Bork began his career at the other end of the political spectrum. Born March 1, 1927, in Pittsburgh, Bork spent his high school and college years as a socialist. He attended the University of Chicago, where he received his bachelor's degree in 1948. In 1952, as a University of Chicago law student, Bork was a NEW DEAL liberal supporting ADLAI STEVENSON for president. Eventually, however, his political philosophy changed to embrace free-market LIBERTARIANISM: the law and economics program at the University of Chicago, a bastion of free enterprise research and laissez-faire economic theory, convinced Bork that government should not intervene in the economy.

Bork received his law degree in 1953. After serving two hitches in the U.S. Marine Corps he practiced for a large law firm in Chicago, where he specialized in ANTITRUST LAW. In 1962, Bork accepted a position teaching antitrust and CONSTITUTIONAL LAW at Yale University. At Yale, he developed his doctrine of "original intent and judicial restraint," which stated that courts can protect only the rights that are guaranteed in the Constitution; all other rights are subject to limitation by Congress and the legislatures. In deciding which rights are to be afforded constitutional protection, courts must be guided by the ORIGINAL INTENT of the Constitution's Framers. For example, the FOURTEENTH AMENDMENT was intended to grant EQUAL PROTECTION under the laws to black citizens; therefore, Bork argued, it cannot be used to approve or mandate AFFIRMATIVE ACTION for women.

President RICHARD M. NIXON appointed Bork SOLICITOR GENERAL in 1973. Later that year, by order of Nixon and at the request of the attorney general, who had resigned in protest against the order, Bork fired Special Prosecutor ARCHIBALD COX at a crucial stage of the WATERGATE investiga-

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Robert Bork.
AP/WIDE WORLD
PHOTOS



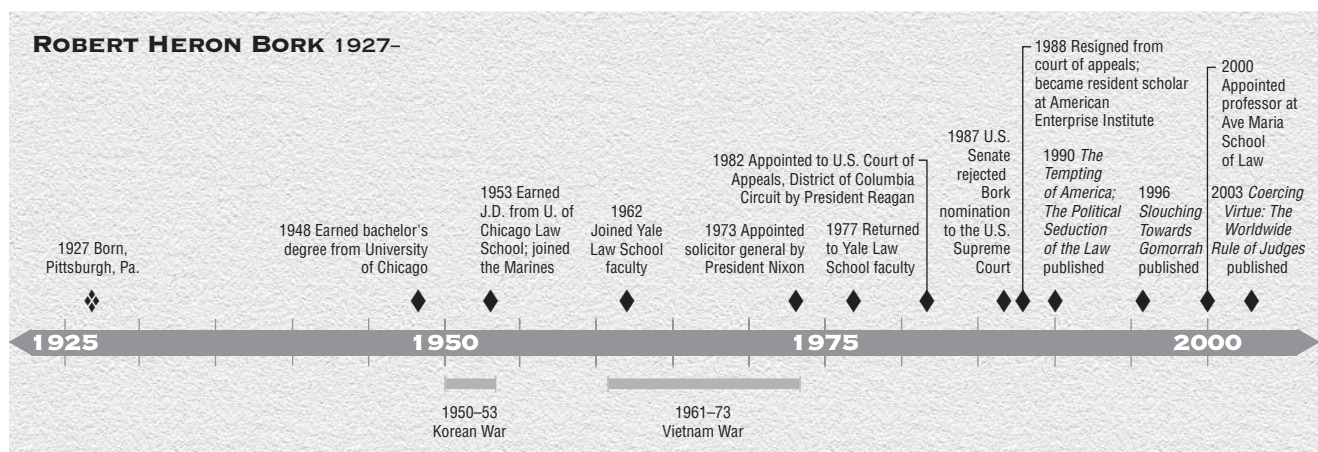
tion. Those events came to be known as the Saturday Night Massacre. In 1977 Bork returned to Yale, and in 1981 he left Yale for private practice in Washington, D.C. The following year President Reagan appointed him to the U.S. Court of Appeals, District of Columbia Circuit. On July 1, 1987, Bork was nominated to the Supreme Court to replace retiring associate justice LEWIS F. POWELL JR.

Over the years, Bork criticized many Supreme Court decisions. In a 1963 article in *The New Republic*, Bork attacked the proposed Public Accommodations Act—which became title II of the CIVIL RIGHTS ACT OF 1964 (78 Stat. 2441, 42 U.S.C.A. § 2000a)—as an infringement

of the right of free association. Eight years later, in an article in the *Indiana Law Journal*, Bork summarized his view of the Constitution and pointed out Court decisions that, in his opinion, were unconstitutional. He declared that the Constitution provided no unwritten protections and therefore guaranteed no right to privacy, contrary to what the Court had established in *GRISWOLD V. CONNECTICUT*, 381 U.S. 479, 85 S. Ct. 1678, 14 L. Ed. 2d 510 (1965). Privacy, Bork said, was a free-floating right not derived in a principled fashion from the Constitution. If no right of privacy existed in *Griswold*, then, according to Bork, the landmark ABORTION case *ROE V. WADE* 410 U.S. 113, 93 S. Ct. 705, 35 L. Ed. 2d 147 (1973) was wrongly decided.

Similarly unprincipled, said Bork, were the decisions of the WARREN COURT that affected voting practices and established the principle of “one person, one vote.” Bork also said POLL TAXES (devices often used to keep poor blacks from voting in the South) were not necessarily unconstitutional. In addition, according to Bork, the FIRST AMENDMENT should protect only political speech. When he was solicitor general, Bork criticized *Shelley v. Kraemer*, 334 U.S. 1, 68 S. Ct. 836, 92 L. Ed. 1161 (1948), a landmark CIVIL RIGHTS decision that outlawed the enforcement of restrictive covenants in the courts. Finally, Bork publicly expressed his belief that it would be healthy to reintroduce religion into the public schools.

In the summer of 1987 the United States witnessed the most contentious Supreme Court confirmation battle in the 200-year history of the Constitution. The battle over Bork’s confirmation turned into a fight-to-the-finish for ide-



ological control of the Court and in a very real sense for the Constitution itself. Bork was a prolific legal scholar who had left a vast "paper trail" for his opponents to pore over in the search for ammunition to block his appointment to the Court. While leaders of the political right such as the Reverend Jerry L. Falwell and Pat Robertson praised Bork as a savior for a "morally misguided" Court, a coalition of prominent civil rights and other organizations, including the National Association for the Advancement of Colored People (NAACP), Common Cause, People for the American Way, the NATIONAL ORGANIZATION FOR WOMEN, the National Abortion Rights Action League, and the AMERICAN CIVIL LIBERTIES UNION, came together quickly to fight the nomination. LOBBYING efforts on both sides of the struggle were aggressive. Clearly, both liberals and conservatives saw the Bork nomination as the culmination of all previous showdowns between the left and the right throughout the Reagan administration. Liberals were particularly determined to stop the nomination. Despite evidence to the contrary, the White House continued to insist that Bork was a moderate conservative like Justice Powell and a model practitioner of judicial restraint.

Bork's confirmation hearing before the SENATE JUDICIARY COMMITTEE in September 1987 seemed to hurt his appointment more than any criticisms since the announcement of his nomination. His testimony further stirred his critics to label Bork as much further to the right on the political and legal spectrum than many Americans. In addition, during the hearings, Bork revised or backed down from some of his previous positions, which seemed to indicate that he was willing to change his mind in order to gain the nomination. Commentators believe that this helped convince many undecided senators to vote against him. On October 6 the Senate Judiciary Committee rejected Bork's nomination by a vote of 9–5. In a vote by the full Senate on October 23, Bork's nomination to the Supreme Court was rejected by a margin of 58 to 42.

Critics of original intent saw Bork's rejection as a victory for the perception of the Constitution as a "living" instrument, to be adapted to human needs by a judiciary with sufficient discretion to decide what public values are important enough to protect from majority rule. Bork's supporters called him a victim of liberal attacks.

Bork resigned from the court of appeals in 1988 and joined the American Enterprise Institute for Public Policy Research, a prominent Washington-based think tank. As a senior fellow at the Institute, Bork continued to write and comment on U.S. law and society. Bork published numerous articles and has been a frequent legal commentator on various television shows.

In books such as *The Tempting of America: The Political Seduction of the Law* (1989), *The Antitrust Paradox: A Policy at War with Itself* (2d ed. 1993), and *Slouching Toward Gomorrah: Modern Liberalism and American Decline* (1996), Bork espoused his strongly conservative views. He advocated CENSORSHIP of certain rap lyrics as well as explicit sexual material found on the INTERNET. He has written that liberals and feminists have helped to destroy the morality of the United States and that there is a relationship between illegitimate births and crime rates.

FURTHER READINGS

- Abraham, Henry Julian. 1999. *Justices, Presidents, and Senators: A History of the U.S. Supreme Court Appointments from Washington to Clinton*. New York: Rowman & Littlefield.
- Bork, Robert H. 1990. *The Tempting of America: The Political Seduction of the Law*. New York: Simon & Schuster.
- Kutler, Stanley I. 1992. *The Wars of Watergate: The Last Crisis of Richard Nixon*. New York: Norton.
- Pertschuk, Michael, and Wendy Schaetzel. 1989. *The People Rising: The Campaign against the Bork Nomination*. New York: Thunder's Mouth Press.
- Sager, Lawrence. 1990. "Back to Bork." *New York Review of Books* (October 25).

♦ BOSONE, REVA BECK

Reva Beck Bosone was Utah's first woman judge and the first woman elected to the House of Representatives from that state.

Bosone was born April 2, 1895, in American Fork, Utah, the only daughter among the four children of Christian M. Beck and Zilpha Chipman Beck. Her father was of Danish extraction, and her mother was a descendant of the 1847 Mormon pioneers and of the Mayflower pilgrims. After attending elementary and high schools in American Fork, Bosone went to Westminster Junior College, in Salt Lake City, and in 1919 received her bachelor of arts degree from the University of California at Berkeley. She married Harold G. Cutler in 1920. They were divorced one year later. From 1920 to 1927 she taught in several Utah high schools.

"IF A LEGISLATOR
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CANDIDATE."
—REVA BOSONE

Inspired by her mother's admonition that a country is no better than its laws, Bosone decided that the best way to serve all the people was to become a lawmaker. Bosone was one of two women who entered the University of Utah College of Law in 1927 to "read law." While she was studying law, Bosone married fellow law school classmate Joseph P. Bosone in 1929. In 1930 she became the fourth woman to graduate from the University of Utah law school. In the same year she gave birth to a daughter and opened her own law practice.

In 1931, after her husband graduated from law school, the couple established the law firm of Bosone and Bosone in Helper, Utah. In 1932 Bosone became a candidate for the state legislature. After conducting a door-to-door campaign with her two-year-old daughter in her arms, she was elected to the Utah House of Representatives from Carbon County. Bosone was reelected in 1934 and in 1935 was elected majority leader. She became the first woman member of the influential Sifting (Rules) Committee, as well as its chairman. As a member of a group known as the "Progressive Bloc" Bosone played an integral role in the passage of a minimum wage-and-hour law for women and children and of the Utah child labor constitutional amendment. Her efforts in these areas were aided by FRANCES PERKINS, labor reformer and U.S. secretary of labor, and from ELEANOR ROOSEVELT, wife of President FRANKLIN D. ROOSEVELT.

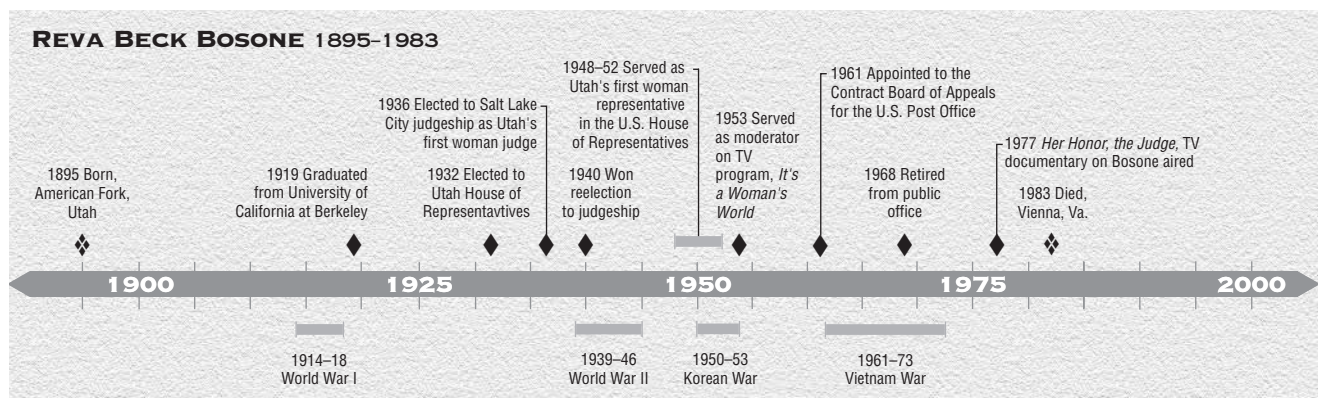
After leaving the Utah Legislature in 1936, Bosone returned to private practice for a short time before being elected a Salt Lake City judge in police and traffic court. In her judicial position, to which she was reelected until 1948, she instituted what were then extraordinary traffic fines: \$300 for drunken driving and \$200 for

reckless driving. During her tenure on the bench traffic cases more than tripled but only three appeals from her judgments were sustained. At the same time Bosone, theorizing that alcoholism was an illness rather than a moral failing, began to refer offenders to Alcoholics Anonymous and to make efforts to institute a government program for treating alcoholics.

Bosone, who divorced her husband in 1940, remained active touring a number of states as chair of a WORLD WAR II Civilian Advisory Committee and serving on the Salt Lake County Welfare Commission. In 1945 she was an "official observer" at the founding conference of the UNITED NATIONS in San Francisco.

In 1948 Bosone defeated incumbent William A. Dawson and became the U.S. representative from the Second Congressional District of Utah. At the time there were eight other women in the House of Representatives and one in the Senate. While serving in the House, Bosone was the first woman appointed to the Interior Committee. In 1950, Bosone was reelected after defeating Ivy Baker Priest a Republican who later became the second woman to hold the position of U. S. Treasurer. After her reelection Bosone pushed for legislation to remove Native Americans from government guardianship and sponsored water and soil conservation initiatives for the West.

Bosone ran for reelection in 1952 and in 1954 but was defeated both times by former incumbent Dawson. The campaigns, conducted in the nervous atmosphere of the COLD WAR, were hard-fought with Bosone facing charges of accepting kickbacks and being a Communist sympathizer. After her loss in 1954 she returned to private law practice until 1958, when she became legal counsel for the Subcommittee of Safety and Compensation of the House Com-



mittee on Education. In 1961 Postmaster General J. Edward Day appointed her a judicial officer and chairwoman of the Contract Board of Appeals for the U.S. Post Office Department. In this position, which she held until her retirement in 1968, Bosone was authorized to make final decisions for the department in OBSCENITY cases and FRAUD cases.

Throughout her professional life Bosone had a special interest in the problems of alcoholism and juvenile delinquency. Her work in these areas resulted in her being elected to Utah's Hall of Fame in 1943. In 1947 and 1948 she was director of the Utah State Board for Education on Alcoholism. Previously, during World War II, she was an active member of the United War Fund Committee of Utah and of the Veterans Central Welfare Committee.

Bosone was a pioneer in the use of television as a communication medium. In 1953 she moderated a program called *It's a Woman's World*, which received the Zenith Television Award for excellence in local programming. Her long and distinguished career was highlighted in a 1977 television documentary, *Her Honor, the Judge*.

Bosone received numerous recognitions and awards for her contributions to the worlds of law and politics. In 1965 her name was on the list of possible nominees for the U.S. Supreme Court. The University of California at Berkeley conferred on her the Distinguished Service in Government Award in 1970 and Westminster College awarded her an honorary doctor of humanities degree in 1973. Also in 1973 she received an award for her efforts to raise the status of women in Utah. In 1977 she received an honorary doctorate from the University of Utah. Bosone died in Vienna, Virginia, on July 21, 1983.

FURTHER READINGS

- Drachman, Virginia G. 1998. *Sisters in Law: Women Lawyers in Modern American History*. Cambridge: Harvard Univ. Press.
- Governor's Office on Families. Available online at <www.families.utah.gov> (accessed June 2, 2003).
- Matthews, Glenna. 1992. *The Rise of Public Woman: Woman's Power and Woman's Place in the United States, 1630–1970*. New York: Oxford Univ. Press.
- National Education Association Journal. 1949. April.
- Office of the Clerk, U.S. House of Representatives. Available online at <www.clerkweb.house.gov> (accessed June 2, 2003).
- Utah History to Go. Available online at <www.historytogo.utah.gov> (accessed on June 2, 2003).

CROSS-REFERENCES

Alcohol "Alcoholics Anonymous" (Sidebar); Perkins, Frances; Roosevelt, Anna Eleanor.

BOSTON MASSACRE SOLDIERS

The Boston Massacre, March 5, 1770, was an event that exemplified the growing tension between the American colonies and England which would subsequently result in the outbreak of the Revolutionary War.

In 1767 the English Parliament had levied an import tax on tea, glass, paper, and lead. The duties were labeled the Townshend Acts—part of a series of unpopular taxes directed at the colonists without their representation. The colonists retaliated with attacks on English representatives and officials, and troops were dispatched to America to restore order. The agitation between the colonists and the English soldiers increased, reaching a climax on the evening of March 5.

An apprentice antagonized an English soldier on guard duty and the soldier cuffed the boy on the ear with his firearm. The incident drew a gathering of hostile colonists, and the guard, alarmed at the size of the mob, called for help. The chief officer of the unit, Captain Thomas Preston, arrived with seven men. In an instant several shots were fired into the crowd of colonists: three men were killed at once; two more died later.

The city of Boston braced itself for more violence; Lieutenant Governor Thomas Hutchinson calmed the crowd by promising the incarceration of the guilty soldiers to be followed by a trial for murder.

Political leader Samuel Adams was influential in building a public case against the soldiers through his bombastic speeches and newspaper articles. He published a pamphlet that related the events of the violent evening as told by eyewitnesses; all the reports were decidedly in support of the colonists. The pamphlet, however, was not distributed in Boston, due to the belief that it might interfere with the fairness of the trial.

The trial became a controversial issue with political aspects. In addition to the murder charge, the legal action intensified the struggle between the King's men, who desired a verdict in their favor to counteract the tactics of Samuel Adams, and the colonists, who wanted the trial to be an example to Parliament against



On March 5, 1770, English soldiers fired into a crowd of angry colonists, killing five. Two of the soldiers were later found guilty of manslaughter.

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further use of the militia to restrain their freedom.

Lieutenant Governor Hutchinson believed that an immediate court hearing would be detrimental and unfair to the King's men; he advocated a series of postponements and the trial finally began in the fall of 1770. ROBERT TREAT PAINE served as prosecutor, and JOHN ADAMS (cousin to Samuel Adams) and Josiah Quincy were the defense counselors.

The trial progressed and arguments were presented for both sides. The defense was determined to prove that the soldiers were acting in SELF-DEFENSE. The prosecution attempted to show that the soldiers were guilty of malice with intent to kill.

Captain Preston was tried separately (there is evidence that the jury was packed in his favor). He was acquitted and he hastily left Boston.

Eight soldiers were next brought to trial and six were acquitted. The remaining two soldiers were found guilty of MANSLAUGHTER (as opposed to murder). The method of punish-

ment was branding on the thumb. The two soldiers, Matthew Killroy and Hugh Montgomery, received their penalty and were discharged from the military.

The irony of the Boston tragedy is that it need never have occurred. Shortly before the night of the bloodshed Parliament had decided to repeal the TOWNSHEND ACTS that had so greatly agitated the colonists. Word of this decision did not reach Boston until later.

The acts were revoked later in 1770, after the Boston Massacre; one tax remained, however, and that was a minimal tax on tea. This tea tax would later precipitate the Boston Tea Party.

BOTTOMRY

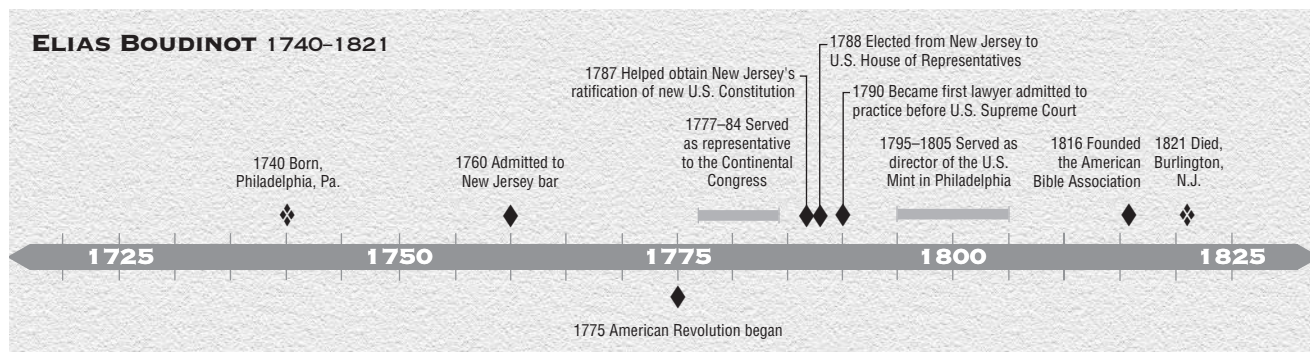
A contract, in maritime law, by which money is borrowed for a specified term by the owner of a ship for its use, equipment, or repair for which the ship is pledged as collateral. If the ship is lost in the specified voyage or during the limited time, the lender will lose his or her money according to the provisions of the contract. A contract by which a ship or its freight is pledged as security for a loan, which is to be repaid only in the event that the ship survives a specific risk, voyage, or period.

A bottomry bond is the instrument that embodies the contract or agreement of bottomry.

❖ BOUDINOT, ELIAS

The first lawyer admitted to practice before the U.S. Supreme Court was New Jersey patriot Elias Boudinot. A good friend of President George Washington, Boudinot was a prominent public official who strongly supported the American Revolution. Boudinot held several key positions in the CONTINENTAL CONGRESS and signed the 1783 peace treaty with England after the United States' victory in the WAR OF INDEPENDENCE.

"... THERE ARE NO EXPRESS WORDS; AND THIS IS THE CASE WITH MOST OF THE POWERS EXERCISED BY CONGRESS."
—ELIAS BOUDINOT



After the war he aligned himself with Federalists JOHN ADAMS and ALEXANDER HAMILTON. Like them, Boudinot supported a strong, centralized national government and distrusted many of the principles of participatory democracy.

Born May 2, 1740, in Philadelphia, Boudinot studied law and was admitted to the New Jersey bar in 1760. By 1770 he had risen to the prestigious level of **SERJEANT AT LAW**. Although Boudinot began his career as a political conservative, he eventually supported the colonies' efforts to break away from English domination. He joined the Revolutionary party after the U.S. War of Independence erupted and served as deputy of New Jersey's provincial assembly.

Boudinot was a representative to the Continental Congress from 1777 to 1784. He was president of the Congress from 1782 to 1784 and was named secretary of foreign affairs. He became commissary general of prisoners in 1777 and donated a large sum of his own money to help improve prison conditions. In 1787 Boudinot played a key role in obtaining New Jersey's ratification of the new U.S. Constitution.

In 1789 Boudinot became a member of the House of Representatives from New Jersey, holding office during the first three sessions of Congress. Once the U.S. Supreme Court was officially established, Boudinot became the first lawyer admitted to practice before it, on February 5, 1790. He also served as a trustee of Princeton University and was director of the U.S. Mint in Philadelphia from 1795 to 1805.

In the later years of his life, Boudinot's interests turned from politics to evangelical theology. Founder and president of the American Bible Association, Boudinot proposed a universal acceptance of religion as a cure for society's ills.

Boudinot died in New Jersey on October 24, 1821, at age eighty-one.

BOUNDARIES

Natural or artificial separations or divisions between adjoining properties that show their limits.

Boundaries are used to establish private and public ownership by determining the exact location of the points at which one piece of land is distinguishable from another. They are also used to mark the functional and jurisdictional limits of political subdivisions. For example, in the United States, boundaries are used to define villages, towns, cities, counties, and states.

The setting of boundaries is a characteristic of the modern era of history during which centralized states emerged that required both protection against attacks and definition of their populations. Historically, natural objects such as rivers and mountains served this purpose. Accurate determination of boundaries requires surveying and cartography, which were not widely used until the early nineteenth century. But even in the late twentieth century, with scientific information methods available, mapmakers occasionally are forced to turn to ancient landmarks and memories when attempting to set boundaries. For example, for centuries the borders within the Arabian peninsula had been loosely defined by tribes' grazing patterns. Following Saddam Hussein's invasion of Kuwait and subsequent defeat in 1991, UNITED NATIONS mapmakers attempted to determine the exact border between Iraq and Kuwait. The United Nations enlisted the help of British border expert Julian Walker, who sought out elderly guides who could describe the locations of landmarks referred to in earlier records and provide a starting place for demarcation of the border.

Boundary disputes can last for centuries, undermining efforts to end long-standing animosities. In May 1994, at the signing of the historic self-rule accord for Palestinians in the Israeli-occupied West Bank and Gaza Strip, the chairman of the Palestinian Liberation Organization, Yasir Arafat, suddenly refused to sign six maps appended to the agreement. After much discussion with his advisers, Arafat added an Arabic disclaimer to the maps which made the point that the boundaries of the ancient West Bank town of Jericho were still in dispute, and then he signed the accord.

Several types of maritime boundaries exist, such as the territorial sea, which is a belt of coastal waters—controlled by the adjacent state and subject to rights such as those of foreign ships to passage—whose boundary is a line measured three miles from the low-water mark along the shore; contiguous zones, which extend beyond the territorial sea to a maximum of twelve miles, within which the controlling state may act to prevent or punish violations of its regulations; and a two-hundred-mile exclusive economic zone, subject to a nation's rights of exploration, exploitation, conservation, and management of marine life, which was authorized by the Third United Nations Conference on the Law of the Sea.



Within the boundaries of an exclusive economic zone, a nation has the right to drill for oil, explore, and manage marine life.

AP/WIDE WORLD
PHOTOS

Marine boundaries provide fertile ground for international conflict. In June 1990, the United States and the Soviet Union signed an agreement resolving a 1,600-mile-long maritime boundary dispute that began in 1977. The area at issue, some 21,000 square nautical miles, contained valuable fishing grounds and possible oil and gas fields. The conflict had its origins in 1867, when czarist Russia sold Alaska to the United States. It was not until more than 100 years later, while establishing their respective 200-mile fisheries zones off the coasts of Alaska and Siberia in the Bering Sea, Chukchi Sea, and Arctic Ocean, that the two countries realized they had each set a different boundary for Alaska.

Even marine boundaries that have been widely accepted for years can be suddenly

ignored. For example, in March 1995, Canada seized a Spanish trawler fishing for halibut in international waters just beyond Canada's 200-mile boundary. Foreign Affairs Minister Andre Ouellet of Canada claimed that a catastrophic decline in fishing stock in recent years gave Canada moral authority to extend its jurisdiction beyond the internationally recognized 200-mile maritime limit.

Boundaries in inland waters, such as the Canadian-U.S. boundary through the Great Lakes, follow a median line equidistant from the opposite shores. Boundaries in navigable rivers are set at the middle of the *thalweg*, which is the deepest or most navigable channel, as distinguished from the geographic center or a line midway between the banks (*United States v. Louisiana*, 470 U.S. 93, 105 S. Ct. 1074, 84 L. Ed. 2d 73 [1985]). As the *thalweg* shifts owing to the accumulation of sediment in the river, the geographic boundary also shifts. The island exception to the rule of *thalweg* provides that if there is a divided river flow around an island, a boundary once established on one side of the island remains there, even if the main downstream navigation channel shifts to the island's other side (*Louisiana v. Mississippi*, 516 U.S. 22, 116 S. Ct. 290, 133 L. Ed. 2d 265 [1995]).

Boundary disputes between states often attract attention from the media and from legal scholars because they invoke the U. S. Supreme Court's seldom-used original jurisdiction. The most typical path to the nation's high court is by appeal, either from a federal court of appeals or a state supreme court. Article III, Section 2 gives the Court original jurisdiction to try cases "affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be a Party."

In 1993, the state of New Jersey filed a complaint in the Supreme Court against the state of New York, alleging that filled portions of Ellis Island belonged to New Jersey. In 1834, a compact between New York and New Jersey, approved by Congress, established the boundary line between the states as the middle of the Hudson River. Ellis Island, then only three acres, became part of New York according to the compact. The United States in 1891 decided to use Ellis Island as a port to receive immigrants. Over the next 42 years, the federal government added 24.5 acres to the island to facilitate its use as a portal for the more than 100 million immigrants who passed through the island facilities.

Although the Ellis Island Immigration Center closed in 1954, the site has remained an important historical landmark. The Supreme Court in 1994 appointed a *SPECIAL MASTER*, Paul Verkuil, to determine whether the filled portion of the island belonged to New York or to New Jersey. *New Jersey v. New York*, 513 U.S. 924, 115 S. Ct. 309, 130 L. Ed. 2d 273 (1994). Verkuil found that although the original 1834 compact designated the island as the property of New Jersey, the compact did not establish boundaries for the filled portions of the island. In a report filed with the Court in 1997 (520 U.S. 1273, 117 S. Ct. 2451, 138 L. Ed. 2d 209 [1997]), Verkuil concluded the filled portions belonged to New York according to the original compact, which set the boundary line as the middle of the Hudson River. The Supreme Court concurred with the Special Master in its final order and degree in 1999 (526 U.S. 589, 119 S. Ct. 1743, 143 L. Ed. 2d 774 [1999]).

The Supreme Court heard another boundary dispute in 2000 involving the states of New Hampshire and Maine. New Hampshire officials filed a lawsuit asking the Supreme Court to decide whether the Portsmouth Naval Shipyard is located in one state or the other. At stake in the case was approximately \$3 million per year in income taxes that Maine assesses against the nearly 1,400 New Hampshire residents who work at the shipyard. New Hampshire has no state *INCOME TAX*, and its residents who work at the shipyard asserted that the assessment constituted taxation without representation.

The shipyard sits on Seavey Island, a 272-acre tract in the Piscataqua River between Kittery, Maine, and Portsmouth, New Hampshire. New Hampshire contended that the island's border lies along the Main bank of the river, putting the shipyard in Maine. In 1976, the U.S. Supreme Court set the ocean boundary between the two states at a point in the mouth of the Piscataqua (*New Hampshire v. Maine*, 426 U.S. 363, 371, 96 S. Ct. 2113, 2118, 48 L. Ed. 2d 701 [1976]). The 1976 decision left unclear how that boundary extends up river to Seavey Island. The Court nevertheless decided that the doctrine of judicial *ESTOPPEL* precluded New Hampshire from asserting a position that contradicted its position in the 1976 case (*New Hampshire v. Maine*, 532 U.S. 742, 121 S. Ct. 1808, 149 L. Ed. 2d 968 [2001]). The Court's decision brought a conclusion to a controversy that began heating up in the early 1990s and that had involved a

series of hearings in the Senate Governmental Affairs Committee in 1997.

On June 14, 2003, in Pikeville, Kentucky, representatives of the Hatfield and McCoy families signed a truce officially ending the most famous mountain clan feud of them all. Some 60-plus descendants of the two families, which engaged in a bloody dispute that claimed at least a dozen lives at its height in the 1870s and 1880s, signed a peace proclamation to put the feud in the history books once and for all. The Hatfields and McCoys belonged to a single rural community that was artificially separated by the boundary line between Kentucky and West Virginia. The interfamilial dispute escalated over competing claims to timber rights on both sides of a meandering body of water.

Some observers believe that the traditional role of boundaries as buffer regions protecting the national security of nations began to change in the 1950s. Lawrence Herzog, professor of Mexican-American studies at San Diego State University, described the evolution of large-scale cities along the borders of nations, which he called transfrontier metropolises, that share ecological resources such as water and environmental problems such as sewage control and *AIR POLLUTION*. Traditionally, divergent laws and customs in boundary areas have discouraged economic development by interfering with the movement of labor and commodities across borders. But with the emergence of two important world regions—Western Europe and the United States-Mexico border zone—economic development in cities along borders has become intertwined.

According to Herzog, such border urbanization has generated legal and political concerns not previously addressed by *INTERNATIONAL LAW*. The emerging need for transborder cooperation in the areas of transportation, land use, and environmental regulation requires the development of new planning and policy guidelines that address the changing role of boundaries.

FURTHER READINGS

- Epstein, Richard A. 2000. *Private and Common Property*. New York: Garland.
- Herzog, Lawrence. 1991. "International Boundary Cities: The Debate on Transfrontier Planning in Two Border Regions." *Natural Resources Journal* 31.
- . 1990. *Where North Meets South: Cities, Space, and Politics on the U.S.-Mexico Border*. Austin, Tex.: CMAS Books.

BOUNTY HUNTER: LEGITIMATE LAW ENFORCEMENT OR DANGEROUS ANACHRONISM?

Most citizens do not realize bounty hunters still exist in modern society and that these agents have few limitations placed on them by state laws. Concerns have been raised about the failure of many states to regulate the actions of bounty hunters. In general, bounty hunters are not subject to civil liability for the injuries they may cause in recapturing a person who has been released on bond and fled. Critics contend that the legal privileges granted to bounty hunters in the nineteenth century make no sense today, and that it might be prudent to outlaw bounty hunters. Defenders reply that bounty hunters serve an important role in the criminal justice system and should not be forced to follow regulations that will prevent them from carrying out their responsibilities.

Defenders of bounty hunters note that the COMMON LAW right of recap-

ture dates back to the constitutional beginnings of the United States. They contend that critics have ignored the underlying legal relationship between the bail bonding company and the principal, the person who is bailed out of jail. When the bonding company bails a defendant out of jail, the defendant waives his rights when he signs the bail bond contract. Then, if a defendant fails to appear in court, the bail bond company may have to forfeit the bond it posted with the court. If this system was not available, many defendants would not be able to post bond

themselves, and they would have to remain in jail, which would drive up the cost for local governments to house defendants awaiting trial. In addition, the bail bonding company serves as guarantor that the defendant will appear in court. This system also removes from public law enforcement the responsibility

of tracking down many defendants who fail to appear in court.

Defenders also point out the significant difference between free-lance bounty hunters and agents who work directly for the bail bonding company. These agents, commonly known as bail agents, are involved from just after arrest to the disposition of the case. They are familiar with the workings of the local criminal courts and are trained by the bail bonding company. In contrast, free-lance bounty hunters cause most of the problems. Defenders of bounty hunting believe that the occasional public outcries over violent recapture of a bail-skipper are the result of a few irresponsible free-lancers.

Finally, defenders rely on the U.S. Supreme Court decision in *Taylor v. Taintor*, 83 U.S. (16 Wall.) 366, 21 L. Ed. 287 (1872). The *Taylor* ruling, which remains good law, gives bounty hunters authority to seize and imprison a principal at any



Sprankling, John G. 2000. *Understanding Property Law*. New York: Lexis.

CROSS-REFERENCES

Estoppel; Fish and Fishing; International Waterways; Territorial Waters.

BOUNTY HUNTER

Name for a category of persons who are offered a promised gratuity in return for "hunting" down and capturing or killing a designated target, usually a person or animal.

Bounty hunters can be defined broadly as a category of persons who track down someone or something for money. A bounty is a subsidy that is paid to a category of persons who have performed a public service. Bounty is the proper term to be applied when the services of several persons are sought, and each person who fulfills the offer is entitled to the promised compensation. By contrast, a reward compensates a single

service to be performed only once, such as in the capture of a fugitive. Therefore, it will be earned solely by the person who succeeds in this regard.

In practice, bounty hunters usually track down criminal defendants who skip bail and fail to appear for court appointments. Bail skipping is a constant in the American criminal justice system. In 1994, the DEPARTMENT OF JUSTICE reported that 25 percent of felony defendants who had been released on their own recognizance had failed to appear at their trials. Over the past decade, bounty hunters have apprehended about 25,000 fugitives in the United States each year. It has been estimated that they return to custody over 99 percent of the criminal defendants who skip bail.

Courts have granted bounty hunters extensive powers for the purposes of returning fugitives to justice. These include the powers to pursue a fugitive into another state, to arrest

time. The decision also allows bounty hunters to pursue a person to another state and arrest the pursued person without legal process. *Taylor* concludes that the bail bonding company has the "principal on a string," and "may pull the string" whenever it pleases. Defenders conclude, therefore, that the Court has given bounty hunters authority under the U.S. Constitution to practice their trade. This authority has never been revoked.

Finally, defenders point out that defendants who skip bail do not want to be found and do not want to surrender, if discovered. Bounty hunters do not seek to inflict injuries on principals or damage property, but in many situations surprise entry into a dwelling is required to effect the arrest. Physical resistance by the principal leads to most of the violence associated with bounty hunters.

Critics of bounty hunters contend that the time has long passed for bounty hunters. The *Taylor* decision was rendered a few years after the Civil War, at a time when the United States was relatively unpopulated and the West was just beginning to be settled. Moreover, police departments in urban areas were inadequate, ill-equipped, and ill-trained.

Cooperation between jurisdictions was minimal, and there was no organization similar to the **FEDERAL BUREAU OF INVESTIGATION** (FBI) with the power to cross state borders in pursuit of escaped felons. In addition communication between points separated by great distances was poor. At that time, therefore, it made sense to allow bounty hunters to track down persons who jumped bail. The critics argue that these considerations no longer make sense, when modern law enforcement has the benefit of the FBI, electronic communication, and cooperation between jurisdictions.

Critics believe that allowing bounty hunters to use questionable, and often violent, methods to recapture principals does not promote respect for the administration of justice. In addition, since the 1960s the Supreme Court has recognized that criminal defendants are entitled to numerous constitutional rights. The "due process revolution" runs counter to the methods of bounty hunters, who can commit acts that law enforcement officers are prohibited from committing. Critics contend that it is unwise to allow private law enforcement to run roughshod over the rights of persons,

merely because they have entered into a contractual relationship.

While some critics believe bounty hunters should be banned, others believe that states should regulate bail agents. Some states, such as Florida, require bounty hunters to be licensed and to be employed by only one bail bonding company that will supervise and be responsible for the agents. Florida imposes age and residence requirements on licensed bounty hunters, who must also demonstrate they are of high moral character. Some states also require bounty hunters to complete a certification course in criminal justice within a few years of obtaining their license. Some jurisdictions mandate that bounty hunters take continuing education courses in their field every year. Many of these reforms have been proposed by the National Institute of Bail Enforcement, which seeks to professionalize its membership and enhance its public reputation.

Critics also believe it essential that bounty hunters be held liable for injuries to persons and property. State laws must, they argue, be amended to impose civil liability. Such legislation would deter bounty hunters from taking dangerous actions that may injure innocent people.

him or her at any time, and to break into a fugitive's house in order to capture him or her. The powers of a **BOUNTY HUNTER** are usually received vicariously, through powers that already are invested in a bail bondsman.

Bounty hunters have existed since medieval times—the notion of bail predates written **ENGLISH LAW**. The foundation for bounty-hunter rights in the United States was laid down in the 1872 case of *Taylor v. Taintor*, 83 U.S. (16 Wall.) 366, 21 L.Ed. 287 (1872). "Where one charged with crime is released upon bail, he is regarded as being delivered to custody of his sureties. Their dominion is a **CONTINUANCE** of the original imprisonment," wrote the U.S. Supreme Court, in a decision that has never been overruled.

There has been increasing controversy in the United States over bounty hunters, with concern voiced over the lack of control that a state has over their behavior. In response, some states

have taken to curbing the bounty hunter's activities. For example, in 1998, Arizona passed a bill restricting bounty hunters from entering a residence without the consent of an occupant, as well as prohibiting bounty hunters from misrepresenting themselves as law enforcement agents or from working as a bounty hunter if convicted of certain crimes.

FURTHER READINGS

- Drimmer, Jonathan. 1996. "When Man Hunts Man: The Rights and Duties of Bounty Hunters in the American Criminal Justice System." *Houston Law Review* 33 (fall).
- Patrick, Andrew DeForest. 1999. "Running from the Law: Should Bounty Hunters Be Considered State Actors and Thus Subject to Constitutional Restraints?" *Vanderbilt Law Review* 52 (January).
- U.S. House of Representatives. 2000. *Bounty Hunter Responsibility Act of 1999: Hearing Before the Subcommittee on the Constitution of the Committee on the Judiciary, House of Representatives*. One Hundred Sixth Congress, 2d session, on H.R. 2964, March 30. Washington, D.C.: U.S. G.P.O.

BOY SCOUTS OF AMERICA V. DALE

In *Boy Scouts of America v. Dale*, 530 U.S. 640, 120 S.Ct. 2446, 147 L.Ed.2d 554 (U.S. 2000), the U.S. Supreme Court ruled that a New Jersey anti-discrimination law that required the Boy Scouts of America (BSA) to admit an openly gay man as a scoutmaster violated the Boy Scouts' FIRST AMENDMENT right of expressive association.

James Dale joined the Cub Scouts in 1978 at the age of eight. Three years later he became a Boy Scout and remained one until he turned 18. By all accounts, Dale was an exemplary scout, eventually achieving the status of Eagle Scout, the highest rank to which a scout can aspire. In 1989 Dale applied for adult membership and was approved. He then served as an assistant troop scoutmaster in Matawan, New Jersey during the periods he was not away at Rutgers University attending college. On August 5, 1990, Dale received a letter from the Monmouth Scout Council, informing him that his registration had been revoked. Registration was a prerequisite for service as an adult volunteer.

Asked to identify the grounds for the decision, Monmouth Council Executive James Kay told Dale that the BSA forbids "membership to homosexuals." Kay noted that Dale had been in a newspaper photograph taken at Rutgers, where he was co-president of the university's gay and lesbian campus organization. The accompanying newspaper story reported that Dale "admitt[ed] his homosexuality during his second year at Rutgers." According to Kay, Dale had demonstrated his inability to live by the Scout Oath and Law by publicly avowing his homosexuality.

Dale filed suit against the BSA in New Jersey state court, charging that his expulsion as an assistant scoutmaster violated New Jersey's Law Against Discrimination (LAD). N.J.S.A. 10:5-1 et seq. LAD prohibits discrimination based on several categories, including affectional or sexual orientation, which encompasses male or female heterosexuality, homosexuality, or bisexuality. The suit sought money damages and a court order reinstating him as assistant scoutmaster.

The trial court dismissed his suit, ruling that the BSA had consistently excluded any self-declared homosexuals. The court found that homosexuality, from a Biblical and historical perspective, was both morally wrong and criminal. The BSA had implicitly subscribed to this historical view since its inception, the court said. The LAD did not apply in Dale's case because the BSA was not a place of public accommoda-

tion and because the BSA, as a private association, could not be compelled to accept a gay scoutmaster because this would violate the FREEDOM OF ASSOCIATION guaranteed by the First Amendment to the U.S. Constitution.

The trial court's decision was overturned on appeal by New Jersey Superior Court, which concluded that the BSA was a "place of public accommodation" under the LAD. There were more than 100,000 BSA members in New Jersey alone, the appeals court said, demonstrating the public nature of the organization. The New Jersey Supreme Court affirmed the Superior Court's decision in *Dale v. Boy Scouts of America*, 160 N.J. 562, 734 A.2d 1196 (1999). The court found BSA had not demonstrated that it was a sufficiently private organization to warrant constitutional protection under the freedom of expression and association guarantees of the First Amendment.

The U.S. Supreme Court disagreed. In a 5-4 opinion written by Chief Justice WILLIAM REHNQUIST, the Court said that BSA enjoys a constitutionally protected right of "expressive association" that would be undermined if the organization were forced to accept the plaintiff as an assistant scoutmaster. Describing the Boy Scouts as a private organization that "believes homosexual conduct is inconsistent with the values it seeks to instill in its youth members," Rehnquist wrote that "Dale's presence in the Boy Scouts would, at the very least, force the organization to send a message, both to the youth members and the world, that the Boy Scouts accepts homosexual conduct as a legitimate form of behavior."

As a basic principle, Rehnquist stressed, the forced inclusion of an unwanted person in a group infringes the group's freedom of expressive association if the presence of that person affects in a significant way the group's ability to advocate public or private viewpoints. First, the Court said that the BSA engages in expressive activity by seeking to instill values in young people, and its expressive freedom would be curtailed if it had to accept avowed homosexuals as members despite the organization's policy to the contrary. Second, Rehnquist stated that the forced inclusion of an avowed gay rights activist as an assistant scoutmaster would significantly affect the Boy Scouts' ability to advocate public or private viewpoints, since application of the LAD in this manner would significantly burden the organization's right to oppose or disfavor homosexual conduct.

In a lengthy and spirited dissent, Justice JOHN PAUL STEVENS said the Boy Scouts had offered no evidence that it had any policy on homosexuality and that the absence of such a policy meant that the organization's shared goals could not be undermined by the acceptance of gay members and leaders. "The evidence before this court makes it exceptionally clear that BSA has, at most, simply adopted an exclusionary membership policy and has no shared goal of disapproving of homosexuality," Stevens wrote. Stevens also chided the court majority for what he said was its willingness to simply accept the BSA's own claims about the organization's views on homosexuality. "Unless one is prepared to turn the right to associate into a free pass out of discrimination laws, an independent inquiry is a necessity," he wrote.

Rehnquist was joined in the majority opinion by Justices SANDRA DAY O'CONNOR, ANTONIN SCALIA, ANTHONY M. KENNEDY, and CLARENCE THOMAS. Justices DAVID H. SOUTER, RUTH BADER GINSBURG, and STEPHEN G. BREYER joined Stevens in the dissent.

The ruling spurred many community organizations and governments to examine their relationships with the Boy Scouts. The Episcopal Diocese of Newark, New Jersey, which has 117 congregations, adopted a resolution deploring the scout policy. In Montclair, Cub Scout Pack 5 circulated petitions rejecting the BSA's anti-gay stance. A Princeton scout troop was denied permission to use a borough parking lot for its Christmas tree sale, and numerous companies and charities, including more than two dozen local United Ways, cut back or eliminated funding for the organization. Nonetheless, the BSA reported that revenues for the national opera-

tion rose from \$91 million to \$93 million in the year after the Supreme Court's decision.

FURTHER READINGS

- Lester, Martha L., and Julie Levinson Werner. 2000. "High Court Deserves No Merit Badge for *Boy Scouts of America v. Dale*." *New Jersey Law Journal* 161 (July 17).
 Powers, Elizabeth A. 2001. *Boy Scouts of America v. Dale*. *Florida Law Review* 53 (April): 399.
 Smart, Christopher W. 2001. *Boy Scouts of America v. Dale*. *Florida Law Review* 53 (April): 389.

CROSS-REFERENCES

Discrimination; First Amendment; Freedom of Association and Assembly; Gay and Lesbian Rights.

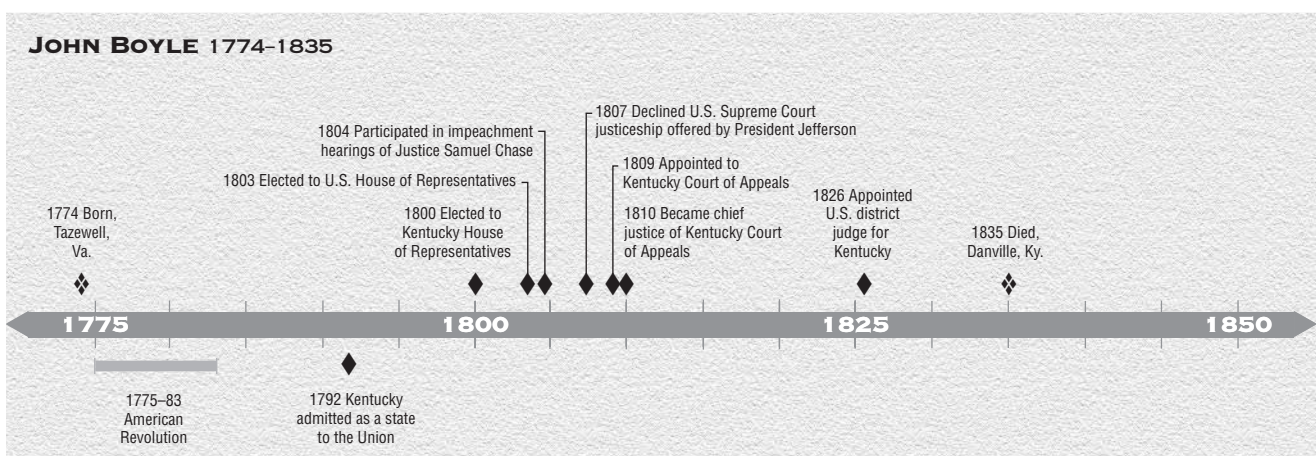
BOYCOTT

A lawful concerted attempt by a group of people to express displeasure with, or obtain concessions from, a particular person or company by refusing to do business with them. An unlawful attempt that is prohibited by the SHERMAN ANTI-TRUST ACT (15 U.S.C.A. § 1 et seq.), to adversely affect a company through threat, coercion, or intimidation of its employees, or to prevent others from doing business with said company. A practice utilized in labor disputes whereby an organized group of employees bands together and refrains from dealing with an employer, the legality of which is determined by applicable provisions of statutes governing labor-management relations.

A classic example of this is a consumer boycott whereby a group of customers refuses to purchase a particular product in order to indicate their dissatisfaction with excessive prices or the offensive actions of a particular manufacturer or producer.

CROSS-REFERENCES

Labor Law.



❖ **BOYLE, JOHN**

John Boyle was born October 28, 1774, near Tazewell in Botetourt County, Virginia. He was admitted to the Kentucky bar in 1797 and established a legal practice in Lancaster, Kentucky, before entering government service.

In 1800 Boyle participated in the Kentucky House of Representatives. He served in the U.S. House of Representatives as a member from Kentucky from 1803 to 1809 and participated in the IMPEACHMENT hearings of Justice SAMUEL CHASE, who was accused but found not guilty of prejudice in certain rulings.

Boyle presided over the Kentucky Court of Appeals from 1809 to 1810, acting as chief justice from 1810 to 1826. In that same year he became U.S. district judge for Kentucky and remained in that position until his death January 28, 1835, near Danville, Kentucky.

❖ **BRACKENRIDGE, HENRY MARIE**

Henry Marie Brackenridge was an eminent lawyer, statesman, and author.

Brackenridge was born May 11, 1786. His LEGAL EDUCATION was varied, including the study of law in Pittsburgh, Pennsylvania, ADMIRALTY LAW in Baltimore, Maryland, and Spanish law in New Orleans, Louisiana. He was admitted to the Pennsylvania bar in 1806 and practiced law in Pennsylvania as well as Missouri and Louisiana from 1810 to 1814, and in Baltimore from 1814 to 1817.

After serving as deputy attorney general and district judge in Louisiana, Brackenridge was a member of the Maryland legislature from 1814 to 1817 and from 1819 to 1821. He was a strong supporter of the South American nations, and in 1817 was sent to South America as part of a

commission to study the political conditions of the area. Subsequently, he relocated to Florida where he worked for Governor ANDREW JACKSON from 1821 to 1832, serving as secretary and judge of the Florida Territory.

As an author, Brackenridge wrote many publications, including *Views of Louisiana* (1814); *History of the Late War* (1816); *Voyage to South America* (1819); *Letters to the Public*, (1832); and *History of the Western Insurrection in Western Pennsylvania* (1859).

Brackenridge died January 18, 1871, in Pittsburgh.

BRACKET

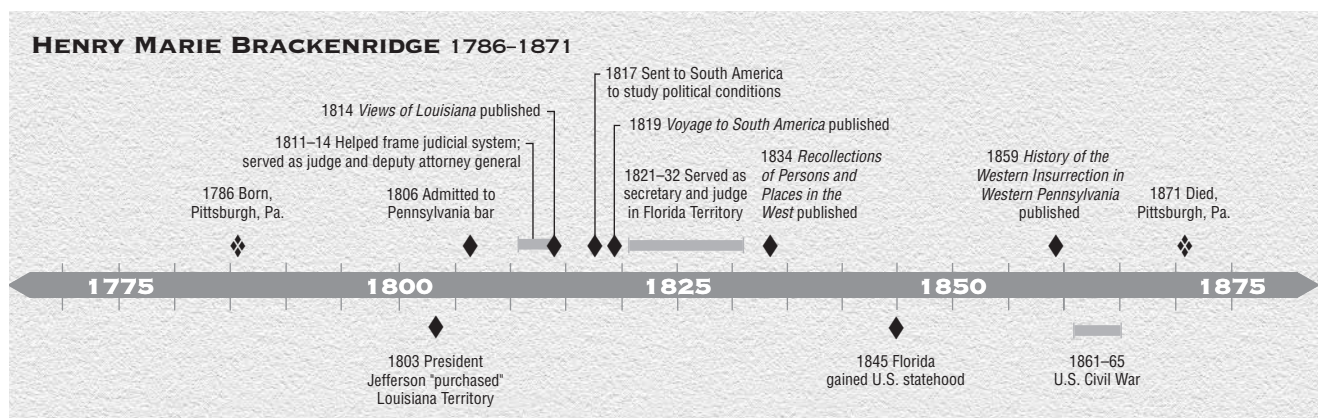
The category of the percentage of INCOME TAX found on the tax tables set by the INTERNAL REVENUE CODE, within which a taxpayer falls based upon his or her taxable income.

❖ **BRACTON, HENRY DE**

Henry de Bracton was a medieval jurist and priest whose masterful treatise on COMMON LAW and procedure provided a framework for the early English legal system.

Bracton's famous *De legibus et consuetudinibus Angliae* (On the laws and customs of England) was a systematic explanation of ENGLISH LAW for judges and practitioners during the reign of King Henry III. *De legibus* and another of Bracton's works, *Note-Book*, helped shape the system of case law and pleadings that began during the monarchy of King HENRY II. Although reliance on Bracton's works declined as English statutory law grew, historians consider *De legibus* the high point of medieval legal scholarship.

Bracton's exact date of birth early in the thirteenth century is unknown. His family, whose



name sometimes appears as Bratton or Bretton, owned land near Devon, England. Richard, Earl of Cornwall, the brother of King Henry III, and William de Raleigh, a prominent common-law judge, were important benefactors who helped advance Bracton's legal career.

By 1240 Bracton had the job of civil servant, a relatively lucrative position during the Middle Ages. In 1245 he was appointed to the judiciary. In 1247 he became a member of the King's Bench, where he served for ten years. After 1257 he held several assignments, including that of chancellor of Exeter Cathedral. During the Middle Ages it was not unusual for a priest to serve also as a judge.

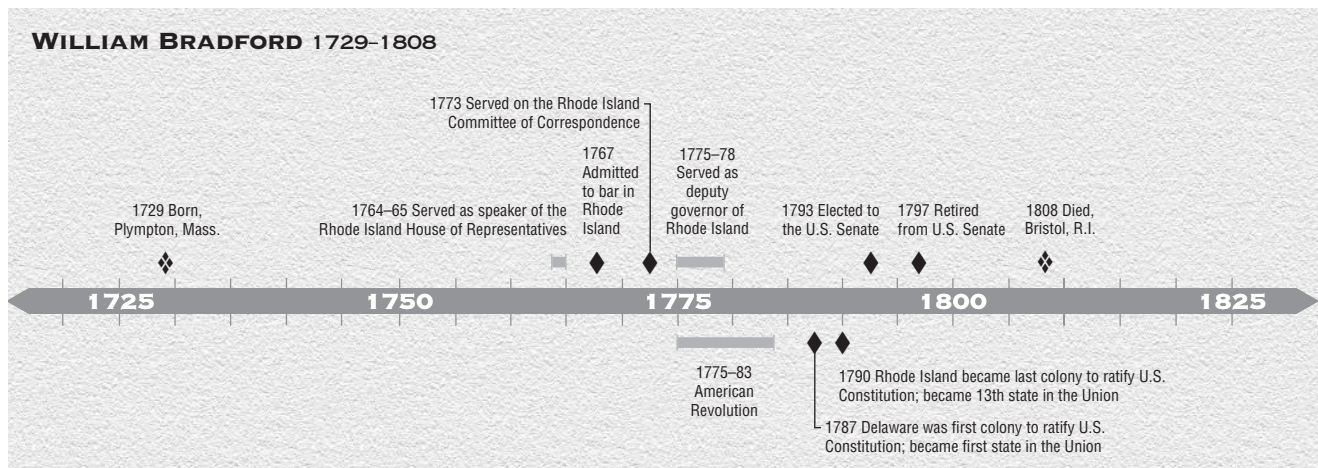
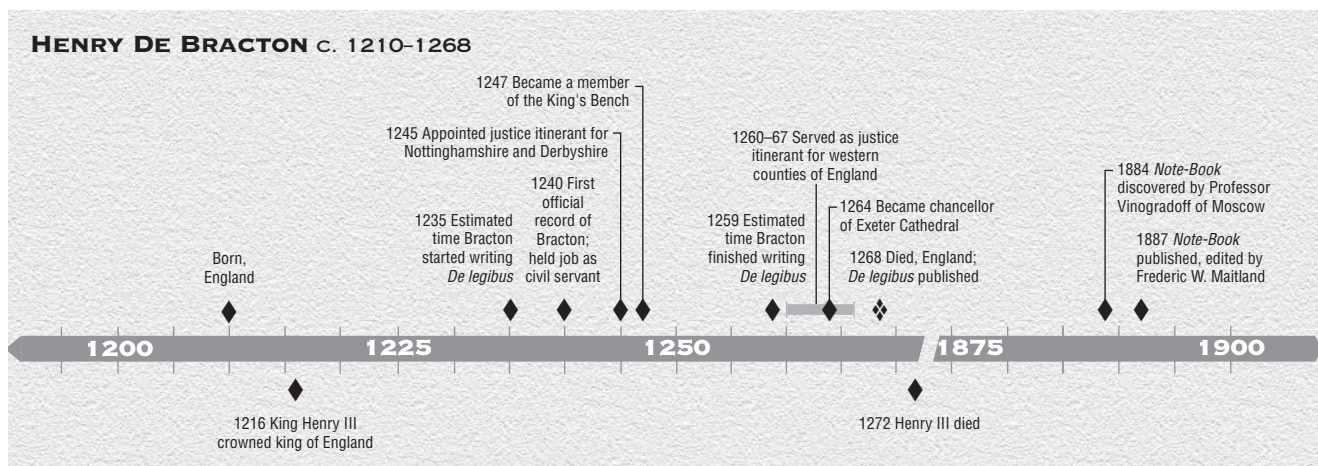
De legibus first appeared after Bracton's death in 1268. Although the original manuscript is lost, approximately three hundred reedited and hand copied manuscripts circulated during the thirteenth and fourteenth centuries. Intended as a guide to English law and process,

De legibus combines aspects of Roman and CANON LAW. Bracton was influenced by the *Institutes* of JUSTINIAN I and by medieval textbooks of Axo, Tancred, and Raymond of Penafort. His treatise includes a section of basic principles and a section of writs and commentary. It emphasizes the development and application of case law as written by judges grappling with medieval legal questions.

Bracton's *Note-Book* is a compendium of two thousand judicial opinions. Some historians believe that other medieval jurists contributed to the work, which was discovered in 1884. *Note-Book* was edited by FREDERIC W. MAITLAND and published in 1887.

❖ BRADFORD, WILLIAM

William Bradford, born November 4, 1729, in Plympton, Massachusetts, was a student of both law and medicine. After practicing medicine in



Warren, Rhode Island, Bradford was admitted to the bar in 1767 and established his legal practice in Bristol, Rhode Island.

From 1764 to 1765 Bradford was a member of the Rhode Island House of Representatives, and served as speaker. He continued his career in that state, serving on the Rhode Island Committee of Correspondence in 1773, and acting as deputy governor of Rhode Island from 1775 to 1778.

Bradford was elected senator from Rhode Island in 1793, serving in the U.S. Senate until 1797, and acting as president pro tem in that same year.

He died July 6, 1808, in Bristol.

❖ BRADFORD, WILLIAM

William Bradford was born September 14, 1755, in Philadelphia. He graduated from Princeton University with a bachelor of arts degree in 1772 and a master of arts degree in 1775.

Before beginning his legal career Bradford served in the Revolutionary War from 1776 to 1779, fought in numerous battles, including Valley Forge, and emerged with the rank of colonel in the Continental army. After his tour of duty, he was admitted to the Pennsylvania bar and established a legal practice in Yorktown, Pennsylvania.

Bradford served as Pennsylvania attorney general for an eleven-year period, from 1780 to 1791. He entered the judiciary in the latter year and presided as judge of the Pennsylvania Supreme Court for three years.

In 1794 Bradford was selected by President GEORGE WASHINGTON to serve as U.S. Attorney General for one year, the second man to hold this post. He died August 23, 1795, and was buried in Burlington, New Jersey.

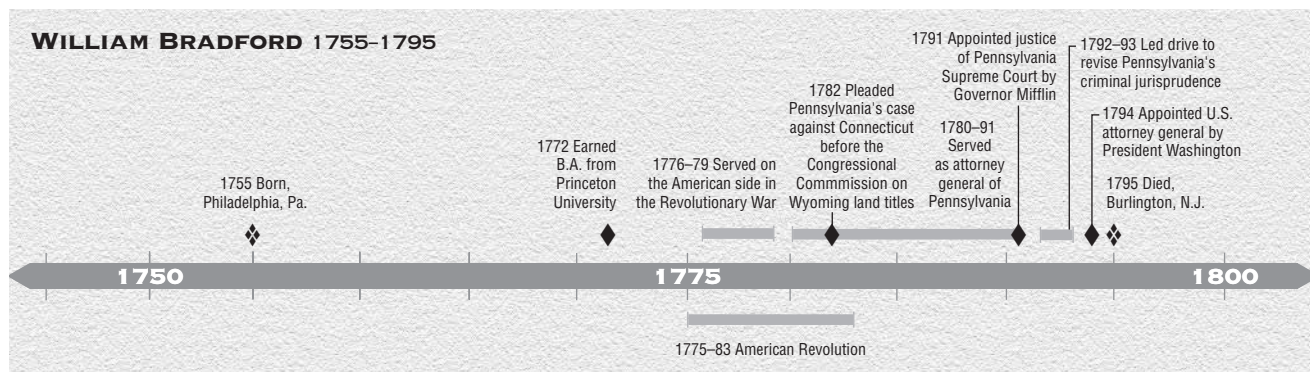
❖ BRADLEY, JOSEPH P.

Joseph P. Bradley was appointed to the U.S. Supreme Court in 1870 in a successful move by President ULYSSES S. GRANT to *pack the court*, or fill vacancies on the bench with jurists who supported the president's actions. Grant nominated Bradley and fellow Republican WILLIAM STRONG with the almost public understanding that they would save the invalidated Legal Tender Act (12 Stat. 345, 532, 709). As expected, Bradley and Strong voted to uphold the constitutionality of the act. Bradley went on to serve as an associate justice for 22 years and, as was the custom, as a traveling circuit judge for the Fifth (Southern) Circuit.

The eldest of 11 children, JOSEPH BRADLEY was born March 14, 1813, in Berne, New York, and raised on a farm. He was given no middle name at birth; his middle initial was likely an expansion he made of his name to honor his father. He relied on his intelligence, ambition, and strong work ethic to make a name for himself in the legal profession. An 1836 graduate of New Jersey's Rutgers College, Bradley was a self-taught lawyer who was admitted to the New Jersey bar in 1839. In 1859, he received an honorary law degree from Lafayette College, in Easton, Pennsylvania.

Bradley's marriage to Mary Hornblower helped to open doors in the legal community. His wife's father, WILLIAM HORNBLOWER, was chief justice of the New Jersey Supreme Court. Bradley built a successful law practice with a large business clientele that included the troubled Camden and Amboy Railroad. His expertise was in patent and COMMERCIAL LAW.

Bradley's appointment to the Supreme Court on February 7, 1870 came shortly after the Court ruled that the Legal Tender Act was unconstitutional. In 1862, Congress had used



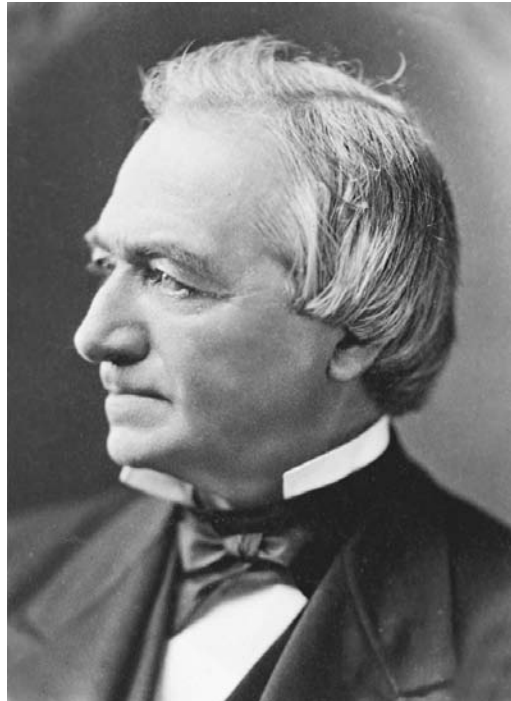
the act to issue treasury notes as a substitute for gold in its efforts to pay off Civil War debts. Upon reviewing the legislation, the Supreme Court invalidated the issuance of the paper money, in *Hepburn v. Griswold*, 75 U.S. (8 Wall.) 603, 19 L. Ed. 513 (1870) (the first of what became known as the *Legal Tender Cases*).

Court observers predicted that Grant's new appointees would agree to reverse *Hepburn* because of their long-standing ties to commercial interests. They were right: Bradley and Strong did vote to overturn, thereby upholding the legality of the notes (*Knox v. Lee*, and *Parker v. Davis*, 79 U.S. [12 Wall.] 457, 20 L. Ed. 287 [1871], heard concurrently).

Bradley's Supreme Court and circuit court opinions often fail the test of time. Although his contemporaries praised him for his keen intellect and legal acumen, many of his decisions are, by today's standards, objectionable in outcome and reasoning.

For example, Bradley wrote the majority opinion in the infamous **CIVIL RIGHTS CASES**, 109 U.S. 3, 3 S. Ct. 18, 27 L. Ed. 835 (1883), which declared the **CIVIL RIGHTS ACT** of 1875 (18 Stat. 336) unconstitutional. The Civil Rights Act was established to ensure the equal treatment of African-Americans in public facilities and accommodations. In effect, that decision sanctioned racial **SEGREGATION** and paved the way for discriminatory **JIM CROW LAWS**.

According to the Court, civil rights legislation could not prevent discrimination by private individuals. Although the **THIRTEENTH AMENDMENT** of the U.S. Constitution outlawed **SLAVERY**, and the **FOURTEENTH AMENDMENT** barred **RACIAL DISCRIMINATION** by states, discrimination by private citizens was allowable, according to the Court. Bradley argued that prejudice was

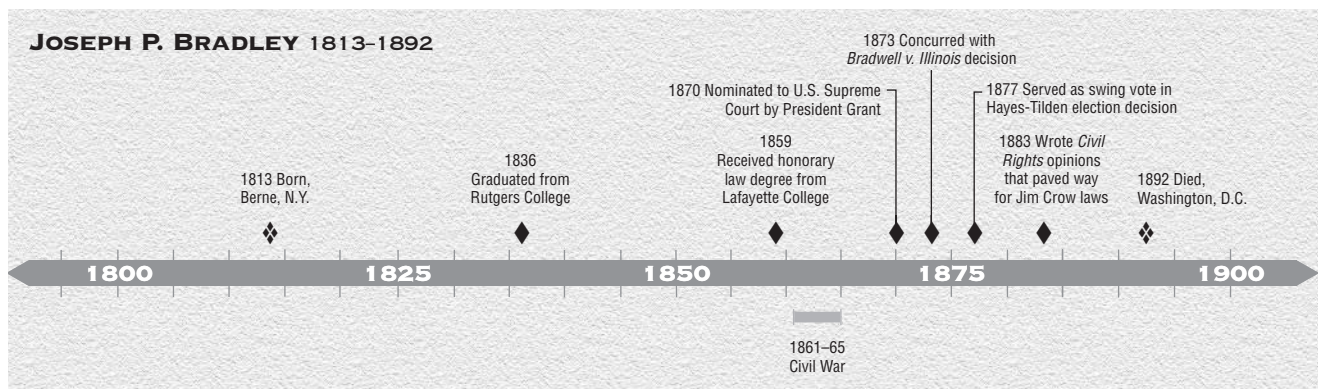


Joseph P. Bradley.
LIBRARY OF CONGRESS

not amenable to legislation. If private business owners refused to serve or accommodate African-Americans, Congress could not force them to do so. In this view, purely private conduct was not covered by the post-Civil War constitutional amendments.

In a famous dissent, Associate Justice **JOHN MARSHALL HARLAN** pointed out that because the restaurants, inns, theaters, and hotels owned by private citizens are actually quite public, discrimination against African-Americans in these places should not be tolerated. Harlan's dissent was later used to bolster support for the **CIVIL RIGHTS ACT OF 1964** (42 U.S.C.A. §§ 2000 et seq.).

"THE STUDY OF
LAW [IS] A
SUBJECT OF LIVING
INTEREST AND
IMPORTANCE,
INDEPENDENT OF
ITS ATTRACTIONS
AS A
PROFESSIONAL
CALLING."
—JOSEPH P.
BRADLEY



In *Bradwell v. Illinois*, 83 U.S. (16 Wall.) 130, 21 L. Ed. 442 (1872), Bradley concurred in the decision to reject Myra Bradwell's bid to practice law in Illinois. Bradwell had studied law with her husband and had passed the Illinois bar examination. However, Illinois denied her **ADMISSION TO THE BAR** because she was female. Bradwell appealed her case to the U.S. Supreme Court, claiming that the Fourteenth Amendment to the U.S. Constitution protected her right to practice in her chosen profession. The Supreme Court ruled otherwise. Bradley wrote in concurring dicta that God had created woman to be wife and mother, not lawyer.

In the **SLAUGHTER-HOUSE CASES**, 83 U.S. (16 Wall.) 36, 21 L. Ed. 394 (1873), Bradley's dissent foretold the Court's changing philosophy on **DUE PROCESS** for businesses. In those cases, Louisiana butchers objected to a state law that allowed only one company to slaughter cattle in New Orleans. The Court sided with the state, but Bradley's dissent was later used to argue for the protection of commercial enterprises from state government intrusion.

Bradley was chosen in 1877 to sit on the Hayes-Tilden Electoral Commission to determine the results of the presidential election between Republican candidate **RUTHERFORD B. HAYES** and his Democratic opponent, **SAMUEL J. TILDEN**. Bradley was the swing vote; he replaced Justice **DAVID DAVIS**, a political independent who could not fulfill his term on the electoral commission. Bradley had voted for Hayes, his fellow Republican.

Bradley died in Washington, D.C., on January 22, 1892, at the age of 79.

FURTHER READINGS

Collins, Michael C. 1996. "Justice Bradley's Civil Rights Odyssey Revisited." *Tulane Law Review* 70 (June): 1979–2002.

Congressional Quarterly. 1989. *Guide to the U.S. Supreme Court*. 2d ed. Washington, D.C.: Congressional Quarterly.

Cushman, Claire. 1993. *The Supreme Court Justices: Illustrated Biographies, 1789–1993*. Washington, D.C.: Congressional Quarterly.

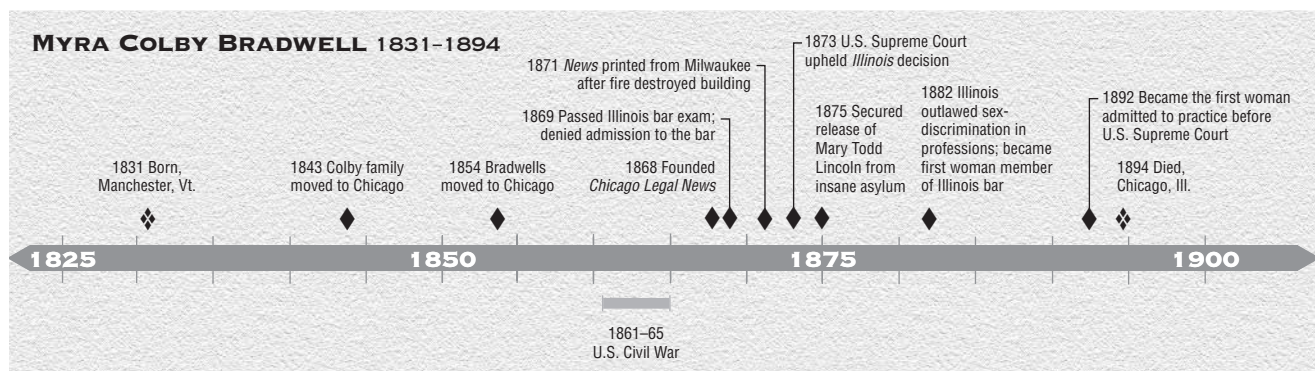
Lurie, Jonathan. 1986. "Mr. Justice Bradley: A Reassessment." *Seton Hall Law Review* 16 (spring): 343–75.

❖ BRADWELL, MYRA COLBY

Myra Bradwell was a legal editor and an early leader in the struggle for **WOMEN'S RIGHTS**, especially in the legal profession.

Bradwell was born February 12, 1831, in Manchester, Vermont. After an early childhood in Portage, New York, she moved with her family to Illinois and attended the ladies seminary in Elgin, where she subsequently became a teacher. In 1852 she married James B. Bradwell, an Englishman who had immigrated to the United States and studied law in Memphis, Tennessee. The Bradwells established a private school in Memphis but moved to Chicago in 1854. There James Bradwell opened a law office and eventually became a judge of the Cook County Court.

After the move to Chicago Bradwell began to study law with her husband with the intention of becoming his assistant; she later decided to establish a practice of her own. In 1868 she founded the *Chicago Legal News*, a weekly legal newspaper. With Bradwell serving as both editor and business manager, the *News* quickly became a success. It was chartered by the Illinois legislature, which also passed legislation establishing the paper as a valid place for the publication of legal notices and allowing state laws and opinions published in the paper to be offered as evidence in court. Under her editorial leadership, the *News* called for the regulation of corporations, the enactment of **ZONING** ordinances, and



the establishment of professional standards for the legal profession. The *News* building was destroyed in the Chicago fire of 1871 but Bradwell quickly arranged to have the paper printed in Milwaukee, Wisconsin, and published the next issue on schedule.

In 1869, after passing the state bar examination, Bradwell applied to the Illinois Supreme Court for **ADMISSION TO THE BAR**. The court rejected her application on the ground that as a married woman she “would be bound neither by her express contracts nor by those implied contracts which it is the policy of the law to create between attorney and client.” She reapplied, but the court rejected her again, this time because she was a woman, regardless of her marital status. The court said that if it were to admit women to the bar, it would be exercising its authority in a manner “never contemplated” by the state legislature when it granted that authority (*In re Bradwell*, 55 Ill. 535 [1870]). She appealed to the U.S. Supreme Court, which upheld the Illinois decision, saying that it could not interfere with each state’s right to regulate the granting of licenses within its borders (*Bradwell v. People*, 16 Wall [83 U.S.] 130, 21 L. Ed. 442 [1872]).

In 1882, however, the Illinois legislature passed a law guaranteeing all persons, regardless of sex, the right to select a profession as they wished. Although Bradwell never reapplied for admission to the bar, the Illinois Supreme Court informed her that her original application had been accepted. As a result, she became the first woman member of the Illinois State Bar Association; she was also the first woman member of the Illinois Press Association. On March 28, 1892, she was admitted to practice before the U.S. Supreme Court.

In addition to her efforts to win admission to the bar, Bradwell played a role in the broader women’s rights movement. She was active in the Illinois Woman Suffrage Association and helped form the American Woman Suffrage Association. She was also influential in the passage of laws by the Illinois legislature that gave married women the right to keep wages they earned and protected the rights of widows.

During the latter years of her life, Bradwell was one of a number of Chicago citizens who worked to secure the World’s Fair for their city. When the fair was held in 1893 she chaired the committee on law reform of its auxiliary congress.

Bradwell died February 14, 1894, in Chicago, Illinois.

FURTHER READINGS

- Cushman, Claire, ed. 1993. *The Supreme Court Justices: Illustrated Biographies, 1789–1993*. Washington, D.C.: Congressional Quarterly.
- Friedman, Jane M. 1993. *America’s First Woman Lawyer: The Biography of Myra Bradwell*. Buffalo, N.Y.: Prometheus Books.
- Paper, Lewis J. 1983. *Brandeis: An Intimate Biography*. Englewood Cliffs, N.J.: Prentice-Hall.
- Urofsky, Melvin I. 1981. *Louis D. Brandeis and the Progressive Tradition*. Boston: Little, Brown.

CROSS-REFERENCES

“Bradwell v. Illinois” (Appendix, Primary Document).

BRADY CENTER TO PREVENT GUN VIOLENCE

The Brady Center to Prevent Gun Violence and its sister organization the Brady Campaign to Prevent Gun Violence are dedicated to reducing gun deaths and injuries through education, legislative reform, and litigation. The history of the organizations can be traced back to 1974 when Dr. Mark Borinsky, a victim of gun violence, established Handgun Control, Inc. (HCI), a grassroots organization. Borinsky’s goal was to create common sense gun laws. He was joined in 1975 by Nelson “Pete” Shields, who had lost a

“ONE THING WE CLAIM—THAT WOMAN HAS THE RIGHT TO THINK AND ACT AS AN INDIVIDUAL—BELIEVING IF THE GREAT FATHER HAD INTENDED IT TO BE OTHERWISE, HE WOULD HAVE PLACED EVE IN A CAGE AND GIVEN ADAM THE KEY.”
—MYRA BRADWELL

son to a serial killer. In 1983, the Center to Prevent Handgun Violence (CPHV) was formed by Shields to focus on education and research in GUN CONTROL while the HCI remained a LOBBYING group.

In 1985, current chairperson Sarah Brady joined the group after her husband, Jim Brady, was shot and seriously wounded during the 1981 assassination attempt on President RONALD REAGAN. In 2001, Handgun Control was renamed the Brady Campaign to Prevent Gun Violence and the Center to Prevent Handgun Violence was renamed the Brady Center to Prevent Gun Violence. According to the Brady Campaign website, its mission remains the same: to “work to enact and enforce sensible gun laws, regulations and public policies through grassroots activism, electing pro-gun control public officials and increasing public awareness of gun violence.”

The legal arm of the Brady Center is the Legal Action Project (LAP). Its goal is to “represent gun violence victims and the public interest in the courts.” For example, LAP provides free legal assistance to victims in lawsuits against gun manufacturers, dealers, and owners. And it pushes for legislation that will force the gun industry to improve the safety in gun design and to change negligent methods of marketing, sales, and distribution. Until LAP became involved in several landmark civil cases gun makers and sellers were not held responsible for gun-related deaths and injuries. The logic was that only the individual shooter was responsible.

In *Merrill v. Navegar, Inc.*, 89 Cal.Rptr.2d 146 (Cal. App. 1999), LAP helped obtain the first appellate court decision to hold that a gun manufacturer can be held liable for its NEGLIGENCE in designing and selling a gun for use in crime, and promoting it so that it would appeal to individuals with violent intentions. On July 1, 1993, Gian Luigi Ferri entered a high rise office building in San Francisco, California, with two semi-automatic assault weapons manufactured and sold by Navegar, Inc., plus one other gun. He opened fire in the hallways and offices of the lower floors of the building, killing eight people and wounding six others before he shot and killed himself.

The survivors and relatives of the deceased brought suit against Navegar, Inc., on three legal theories: COMMON LAW negligence, negligence per se, and STRICT LIABILITY for engaging in an ultrahazardous activity. The trial court dis-

missed the case, holding that the victims could not sue the gun manufacturer for the actions of the gunman Ferri.

The case was then brought before the Court of Appeals of California. The court reversed on the single issue of common law negligence. Judge J. Anthony Kline, writing for the court, held that, “Fundamental fairness requires that those who create and profit from commerce in a potentially dangerous instrumentality should be liable for conduct that unreasonably increases the risk of injury above and beyond that necessarily presented by their enterprise.” The court referred to Navegar’s manufacture and marketing of the TEC-9 semi-automatic weapons used in the killings. It found that the gun had no legitimate civilian purpose; it was a weapon designed solely for the efficient killing of large numbers of people. The court also held that the TEC-9 was advertised in a manner to appeal to persons with violent or criminal tendencies. Navegar advertised the TEC-9 as being “tough as your toughest customer,” “paramilitary,” and providing “excellent resistance to fingerprints.”

In August 2001, Navegar appealed to the Supreme Court of California to reverse the decision of the appellate court. The court ruled in favor of the gun manufacturer, but declined to address the broader issues concerning negligent business practices of the gun industry. Instead, the court pointed to a state statute that precluded the particular type of claim brought against the gun manufacturer. In response to this ruling, the California Legislature, in September 2002, became the first state to repeal a statute that gave special legal IMMUNITY to the gun industry. The repeal was part of a group of far-reaching gun laws that were passed by the California Assembly and signed by Governor Gray Davis.

In addition to supporting negligence lawsuits against gun manufacturers, the Brady Center attempts to ensure that gun legislation is fairly interpreted. An example is *United States v. Emerson*, 46 F. Supp. 2d 598 (N.D.Tex.1999). Timothy Joe Emerson was under a domestic RESTRAINING ORDER, which prohibited him from coming into contact with his estranged wife and her daughter. As such, he was not allowed to possess a firearm, since federal law 18 U.S.C. § 922(g)(8) prohibits firearm possession while under a civil protective order. Emerson was indicted for violation of the law when he allegedly waved a weapon in front of his wife,

and then threatened to shoot his wife and her boyfriend. The federal judge dismissed the indictment against Emerson because it violated the “right to bear arms” provision of the **SECOND AMENDMENT**.

The United States appealed the decision and the center filed an **AMICUS CURIAE** brief in support of the government’s position. In October 2001, the Fifth Circuit Court of Appeals reversed the trial court’s ruling. In February 2002, Emerson petitioned the U.S. Supreme Court to rehear the case.

The Brady Center is also integral in shaping new gun policy. Perhaps its biggest success came with the 1993 passage of the Brady Bill, which went into effect on February 28, 1994. The law requires a background check on any individual who attempts to purchase a handgun and a five-day waiting period for handgun purchases. In 1998, the law was extended to include long guns (i.e., rifles and shotguns). In 2001, the Brady Center announced that in the eight years since the law was in effect, gun deaths in the United States dropped from 39,595 in 1993 to 28,874 in 1999, a 27 percent decline.

With the election of **GEORGE W. BUSH** as president in 2002, and the gain of Republican seats in both the House and Senate in 2002, opponents of gun control gained ground. In early 2003, legislation to give the gun industry legal immunity from lawsuits brought by the victims of gun violence was introduced in Congress. The Brady Campaign and the Brady Center were at the center of the debate, fighting to prevent the “weakening of our nation’s gun laws.”

FURTHER READINGS

Brady Campaign to Prevent Gun Violence. Available online at <www.bradycampaign.org> (accessed on June 12, 2003).

“Government Figures Show Gun Crimes Down, Brady Bill Successful.” June 5, 2000. CNN.com: Inside Politics. Available online at <www.cnn.com/2000/ALLPOLITICS/stories/06/05/brady.guns> (accessed on June 12, 2003).

Legal Action Center. Available online at <www.gunlawsuits.org> (accessed on June 12, 2003).

BRAGG, THOMAS

See **CONFEDERATE ATTORNEYS GENERAL**.

BRANCH DAVIDIAN RAID

On February 28, 1993, agents from the **ALCOHOL, TOBACCO AND FIREARMS BUREAU (ATF)** were met with gunfire when they tried to serve



search and arrest warrants on members of the Branch Davidian religious cult at the apocalyptic sect’s compound near Waco, Texas. Four ATF agents and six Davidians died of gunshot wounds that day. A 51-day standoff ensued between more than 100 Davidians inside the compound and 76 federal agents outside the compound.

On the morning of April 19, the **FEDERAL BUREAU OF INVESTIGATION (FBI)** ordered tanks to break through the compound’s walls, knock open holes, and pour tear gas inside. Around noon fires erupted, burning the compound to the ground. Approximately 80 Branch Davidians died, including their leader, 34-year-old David Koresh. In all, 57 Davidians died in the fire, while 23 died from gunshot wounds. Of these dead, 17 were children, some of whom died from gunshot wounds and some in the fire. Eighteen children and 22 adults left the compound unharmed during the seven-week standoff.

On the two-year anniversary of the Waco siege, Timothy McVeigh detonated a rental truck full of explosives outside the Alfred P. Murrah Federal Building in Oklahoma City, Oklahoma, killing 168 people. McVeigh later admitted that the Oklahoma City bombing was carried out in part to exact revenge against the federal government for the Branch Davidian raid. McVeigh was eventually convicted on various charges, including first degree murder, and sentenced to die. He was executed in June 2001.

The case began in the spring of 1992 when the FBI received information that Koresh was running a methamphetamine lab at a religious

On April 19, 1995, following a 51-day standoff, federal agents raided the Branch Davidian compound near Waco, Texas. A fire, later determined to have been set by the Davidians, destroyed the compound and killed 57 of its residents.

AP/WIDE WORLD
PHOTOS

compound near Waco. While investigating Koresh on possible drug charges, the FBI and ATF learned that the cult leader was possibly breaking federal firearms laws as well, allegedly converting semiautomatic weapons into unlawful machine guns. Federal agents also learned that United Parcel Service (UPS) had been regularly delivering firearms components and explosive materials to the Davidian compound over a period of several years. Using UPS invoices, federal agents tracked down serial numbers on weapons as well as explosives that had been delivered to Koresh. One invoice indicated that Koresh had received a shipment containing ammunition magazines for automatic AR-15 rifles, plus a large quantity of powdered aluminum metal, a common ingredient in explosives.

In obtaining the search and arrest warrants, federal authorities provided the issuing magistrate with evidence indicating that Koresh had spent \$199,715 in the previous year to buy illegal guns, gun parts, and other components, enough to build a fearsome arsenal. Koresh supporters claimed that the Davidians' leader was a gun dealer who had lawfully acquired the weapons. However, after the siege ended, federal authorities found 156 assault rifles, a heavy machine gun, several boxes of grenades, and grenade launchers, all of which Koresh had obtained and possessed in violation of federal weapons laws.

On February 26, 1994, almost a year to the day after the siege began, a federal jury in San Antonio, Texas, acquitted 11 cult members of murder and murder-conspiracy charges in the deaths of the four ATF agents. However, five Davidians were convicted of voluntary MANSLAUGHTER, and two were convicted on weapons charges. U.S. District Judge Walter Smith sentenced the defendants to serve ten to 15 years in prison, after the much stiffer sentences he initially handed down were overturned on appeal. Following the trial the jury foreperson said that the wrong people had been prosecuted. "The federal government was absolutely out of control there," she said. "[T]he ones who planned the raid and orchestrated it and insisted on carrying out the plan ... should have been on trial."

The FBI blamed the Davidians for igniting the fire. But on August 25, 1999, the FBI conceded that it had used "pyrotechnic" tear-gas canisters during the siege. The Waco controversy

had been gathering momentum ever since a 1997 documentary film, "Waco: The Rules of Engagement," uncovered evidence that the FBI had fired flammable tear gas into the Davidians' prairie bunker, sometimes known as Mount Carmel. Attorney General JANET RENO denied knowing about the canisters' flammability but ordered a complete investigation of the raid. On September 9, 1999, Reno named former Republican Senator John C. Danforth of Missouri as special counsel to lead the investigation.

The FBI told investigators that many of the Davidians who died during the conflagration were victims of mass suicide orchestrated by Koresh. But the nine Davidians who escaped the fire denied that any such suicide took place. They claimed that the FBI's tank crushed several fuel containers and that a grenade or some other projectile set off the fire. Before the fire started, however, the FBI intercepted troubling conversations coming from unidentified Branch Davidians inside Mount Carmel: "I already poured it... It's already poured. Don't pour it all out, we might need some later. So we only light 'em at first if they come in with that tank, right?" Additionally, FBI snipers said they saw a Davidian start a fire and infrared pictures taken from a plane overhead detected three fires burning in separate parts of the compound before the tanks entered.

On July 21, 2000, Danforth released his findings. Danforth first reported that he "had a lot of difficulty" getting relevant documents from the FBI. Although he was eventually given the documents he requested, Danforth reported that he felt that "there was a spirit of resistance ... in the FBI" against his investigation. Nonetheless, Danforth's investigation concluded that the canisters fired by the FBI did not start any of the fires that consumed the compound, since all available evidence demonstrated that the canisters landed 75 feet from the main building hours before the fires started. Instead, Danforth placed sole blame for the conflagration on Koresh. After reviewing two million pages of documents, 849 interviews, and thousands of pounds of physical evidence, Danforth said it was clear that the only persons who had started any fires at the Branch Davidian compound near Waco, Texas, were the Davidians themselves, probably at the direction of their leader David Koresh.

Survivors of the Branch Davidian raid and family members of those who died during the siege filed a series of WRONGFUL DEATH civil

lawsuits against the federal government. The suits were subsequently consolidated into one proceeding before Judge Walter Smith, sitting in the U.S. District Court at Waco. However, Smith dismissed the lawsuit in September 2000, concurring with Danforth's findings that federal agents had not used excessive force in their tear-gas assault on the cult's compound. Smith found that the Davidians themselves had started the fire. Attorneys for the plaintiffs filed an appeal that as of 2003 was pending before the U.S. Court of Appeals for the Fifth Circuit. The attorneys represent the estates of 14 children who died in the fire, a 15-year-old girl who was badly burned, and three parents whose children died in the blaze.

FURTHER READINGS

- Cole, Michael D. 1999. *Siege at Waco: Deadly Inferno*. Berkeley Heights, NJ: Enslow.
- Treaner, Nick, ed. 2004. *The Waco Standoff*. San Diego, Calif.: Greenhaven Press.
- Wright, Stuart A. 1995. *Armageddon in Waco: Critical Perspectives on the Branch Davidian Conflict*. Chicago: Univ. of Chicago Press.

CROSS-REFERENCES

Conspiracy; Federal Bureau of Investigation; Oklahoma City Bombing; Wrongful Death.

❖ BRANDEIS, LOUIS DEMBITZ

Louis Dembitz Brandeis's lifelong commitment to public service and social reform earned him the epithet the People's Lawyer. His twenty-three years on the Supreme Court were characterized by a deep respect for civil liberties and by an abiding distrust of centralized power in the hands of business and government.

Brandeis was famous for his prodigious intellect and his well-crafted, detailed dissents. He was a man of principle who enhanced the image of the legal profession by living up to his belief that lawyers should possess "the moral courage in the face of financial loss and personal ill-will to stand for right and justice."

Brandeis was born November 13, 1856, in Louisville, Kentucky, the youngest of four children of Adolph Brandeis and Fredericka Dembitz Brandeis. His parents were refined and well-to-do immigrants who left Prague, then part of Bohemia, in 1849. A brilliant student, Brandeis excelled in the public schools in Louisville. He also attended the Annen-Realschule, in Dresden, Germany, during his family's 1873–75 pilgrimage to Europe.

Although Brandeis did not have a college degree, he was admitted into Harvard Law School and graduated at the top of his class in 1877. Brandeis had an obvious passion for law and he considered the years at Harvard among the happiest in his life. His ties to the university were strengthened further in 1886 when he became one of the founders of the influential *Harvard Law Review*. Brandeis and Samuel D. Warren wrote a legendary article, "The Right to Privacy," in the December 1890 issue of the *Review*. It previewed Brandeis's Supreme Court opinions asserting privacy as a constitutionally guaranteed right.

After a year of graduate work Brandeis moved to St. Louis in 1878 to begin a law practice. He soon missed the intellectual stimulation of the East Coast and moved back to Boston, where he began a successful law practice with Warren. Their large firm had an impressive clientele and made Brandeis wealthy, although money held little interest for him. As he established himself professionally, Brandeis socialized with Boston's intellectual elite. In 1891, he married Alice Goldmark, a distant cousin, with whom he had two daughters.

Brandeis zealously embraced the ideals of the Progressive movement of the early twentieth century. He proved his dedication to social reform by serving as unpaid counsel in several public interest cases. Brandeis was one of the first U.S. lawyers to offer *pro bono services* (free legal services for people unable to afford an attorney). Along with a passionate belief in the virtue of volunteer legal work, Brandeis had a sense of fairness that compelled him to compensate his firm for any time spent in public service.

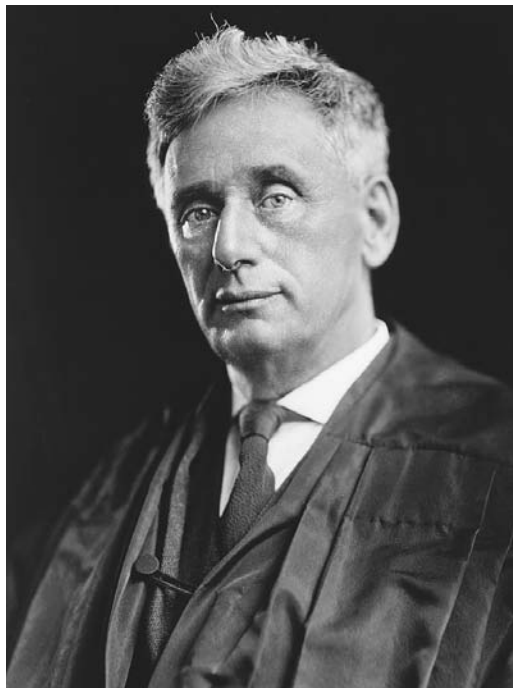
Brandeis worked without a fee to fight monopolistic streetcar franchises in Boston and to improve the questionable practices of life insurance companies. One of his most satisfying achievements was the creation of a savings bank plan that enabled people to obtain life insurance at reasonable rates. Brandeis also argued for the constitutionality of maximum hour and MINIMUM WAGE laws.

In 1914, Brandeis published *Other People's Money—and How the Bankers Use It*, a denunciation of trusts and investment banking. The book helped inspire important antitrust legislation and earned the antipathy of many U.S. bankers and businesspeople.

Brandeis also created a new style of legal writing, appropriately called the Brandeis brief.

"EXPERIENCE
SHOULD TEACH US
TO BE MOST ON
OUR GUARD TO
PROTECT LIBERTY
WHEN THE
GOVERNMENT'S
PURPOSES ARE
BENEFICIENT."
—LOUIS BRANDEIS

Louis Brandeis.
LIBRARY OF CONGRESS



With his sister-in-law Josephine Goldmark, of the National Consumer's League, Brandeis produced the first legal brief to include copious supporting data. For *Muller v. State of Oregon*, 208 U.S. 412, 28 S. Ct. 324, 52 L. Ed. 551 (1908), Brandeis wrote more than one hundred pages in favor of an Oregon state law mandating a maximum ten-hour workday for women. Later, when asked for an appropriate title for the seminal *Muller* brief, Brandeis replied, *What Any Fool Knows*. In the document, he described the deleterious physical and mental effects on women of extended periods of manual labor. He included references to sociology, psychology, history, politics, employment statistics, and economics; this method of amassing data from several different disciplines to persuade the court became popu-

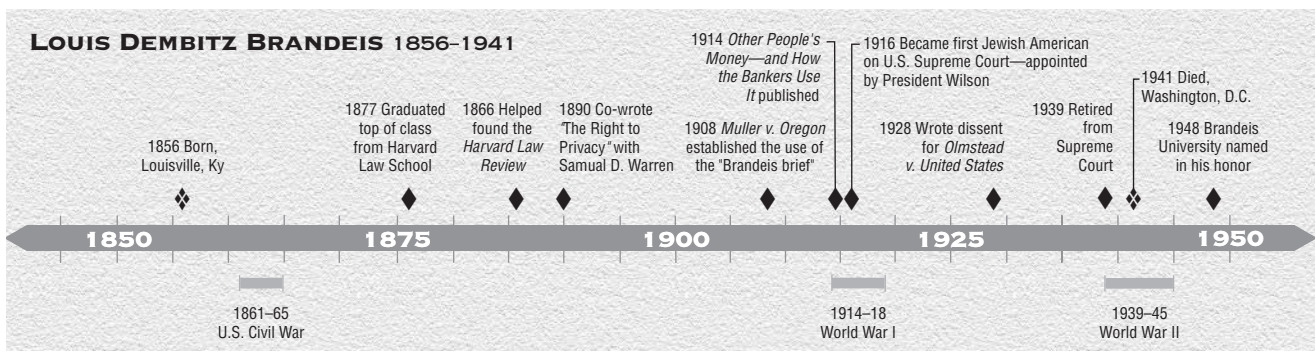
lar with other lawyers. The legal principles of the case were discussed in about two pages.

In 1916 Brandeis was appointed by President WOODROW WILSON to fill the associate justice seat vacated by Joseph R. Lamar. Brandeis thus became the first Jewish American to be nominated for the High Court. His Senate confirmation hearing was a bitter, drawn-out affair because of business's fierce opposition to him and his progressive politics. Anti-Semitism was also an element in the extended, four-month proceedings. Despite virulent criticism from insurance and banking officials, Brandeis was confirmed by the Senate, 47–22.

As a Supreme Court justice, Brandeis is remembered for his eloquent dissents, often joined by colleague OLIVER WENDELL HOLMES JR. Brandeis's dissents frequently signaled how the Court would rule in future cases. For example, his 1928 dissent in *OLMSTEAD V. UNITED STATES*, 277 U.S. 438, 48 S. Ct. 564, 72 L. Ed. 944, anticipated the reasoning and outcome of a Supreme Court case heard years later.

In *Olmstead*, Brandeis objected to the nearly unrestricted use of government wiretaps. Although the *Olmstead* majority approved state WIRETAPPING unless a physical TRESPASS was involved, Brandeis considered wholesale eavesdropping unconstitutional. In his view it violated the FOURTH AMENDMENT, prohibiting unreasonable government searches, and the FIFTH AMENDMENT, forbidding the deprivation of liberty without DUE PROCESS. Brandeis argued that the right to be left alone was guaranteed by the Constitution.

Almost forty years later, his views on privacy were adopted in *Katz v. United States*, 389 U.S. 347, 88 S. Ct. 507, 19 L. Ed. 2d 576 (1967). In *Katz*, relying heavily on Brandeis's reasoning, the Court overturned *Olmstead*, ruling that gov-



ernment wiretaps were permissible only if they met procedural requirements of the Fourth Amendment.

Despite his own clear convictions, Brandeis refused to declare a law unconstitutional simply because he disagreed with it. Particularly in economic matters, Brandeis exercised judicial restraint by deferring to Congress and its legislative power.

Brandeis was an ardent defender of civil liberties. Throughout his career, he strongly urged the Court to use the **FOURTEENTH AMENDMENT** to apply the **BILL OF RIGHTS** to the states. In particular, Brandeis declared that laws abridging free speech and assembly must be challenged if no emergency exists to justify them. Unless speech causes clear and imminent danger, it is unreservedly protected.

Although Brandeis was a nonobservant Jew, he was a respected leader of the American Zionist movement. From 1914 to 1921, Brandeis gave his name and public support to the movement to create a Jewish state in Palestine. In his later years Brandeis advised President **FRANKLIN D. ROOSEVELT** on the establishment of a Jewish homeland and the boycott of German products.

Brandeis retired from the Court on February 13, 1939. He died at age eighty-four, on October 5, 1941.

Brandeis was honored in 1948 when a new institution of higher learning was named after him. Brandeis University is a private, Jewish-sponsored, coeducational college in Waltham, Massachusetts. The nonsectarian school offers both undergraduate and graduate degrees.

FURTHER READINGS

- Baskerville, Stephen W. 1994. *Of Laws and Limitations: An Intellectual Portrait of Louis Dembitz Brandeis*. Rutherford: Fairleigh Dickinson Univ. Press.
- Bracey, Christopher A. 2001. "Louis Brandeis and the Race Question." *Alabama Law Review* 52 (spring): 859–910.
- Goodhart, Arthur L. 2000. *Five Jewish Lawyers of the Common Law*. Union, N.J.: Lawbook Exchange.
- Schroeder, Mary Murphy. 2000. "The Brandeis Legacy." *San Diego Law Review* 37 (summer): 711–23.
- Strum, Philippa S. 1999. "The Unlikely Radical: After a Violent Strike Shattered Louis Brandeis' Assumptions About the Legal System, He Transformed His Practice and Became the Country's Most Influential Public Interest Advocate." *American Lawyer* 21 (December): 42.

CROSS-REFERENCES

Antitrust Law; "Brief for the Defendant in Error, *Muller v. Oregon*" (Appendix, Primary Document); Electronic Surveillance; *Olmstead v. United States*; Privacy; Wiretapping.

BREACH OF MARRIAGE PROMISE

A common-law right of action for breaking a commitment to enter into matrimony.

The right of action for breach of a marriage promise has been abolished in a majority of states.

Agreement to Marry

An agreement to marry is different from all other contractual relations. The reason for this is that both its object and the relationship created between the parties are completely different from those of any other contract. In order to recover for breach of promise, the plaintiff must establish that the two parties had a valid existing contract to marry. This can be accomplished by a showing that both parties had a clear intent for the agreement to be binding.

If the parties to a contract to marry are incapable of creating a valid agreement due to a legal disability, a lawsuit for breach of marriage promise cannot be sustained. Generally, a valid defense to such an action is the infancy of the promisor at the time of the agreement. The infancy of the promisee, however, is not a valid defense. Statutes provide the ages of infancy.

An individual who is incapable of making a contract due to incompetence will not be held liable for breach of promise. Similarly, a promise to marry someone who is already married is invalid, provided the promisee knew this fact. When the plaintiff was unaware that the promisor was already married, however, he or she may recover. Upon the legal termination of the marriage by **DIVORCE**, **ANNULMENT**, or death of the former spouse, a defendant who breaches a promise to marry the plaintiff may be held liable.

A breach of contract action cannot be maintained when a marriage would be unlawful due to **INCEST**.

Offer and Acceptance

Fundamental elements to the creation of a marriage contract are an offer and acceptance. It is not necessary that the offer be in formal language. The key requirement is that both parties comprehend that there was a clearly intended offer of marriage. A statement of the intention to marry to a third person, absent any other indicated intent, is not enough.

An acceptance of an offer to marry must be given within a reasonable period of time. Such acceptance need not be formal but may be implied from the promisee's behavior.

For a marriage contract to be enforceable, there must be a showing that there has been a meeting of the minds of the individuals to the agreement. A promise to marry induced by duress is invalid. Similarly, a promise to marry made by fraudulent inducement—or fraudulent concealment of facts that would prevent the making of the agreement if revealed or disclosed—will render the promise invalid and relieve the innocent party from all liability.

A promise to marry must be based upon legal consideration. Generally, one individual's promise is adequate consideration for the promise of the other party. A promise to marry must not be based solely upon illegal or immoral consideration, such as sexual relations between the parties. A promise based upon legal consideration will not, however, be vitiated merely because unlawful sexual intercourse took place between the parties either prior to or following the promise.

If a promise to marry is conditional, liability for its breach will arise only following the performance or occurrence of the agreed condition.

A contract to marry may be manifested by many promises made at different times; however, there is only a single contract, and only a single breach can take place.

A contract to marry can be rescinded either by mutual consent of the parties or in instances of FRAUD or duress. The consent to postpone a marriage alone does not constitute a release of the obligation to perform it.

Breach

Unless there is a legally justifiable reason, an unwillingness to perform one's promise to marry creates a breach of promise to marry. Mere postponement of the wedding does not constitute a breach unless it is done arbitrarily and for no good reason. In such case, the postponement can be regarded as equivalent to a refusal to comply with the marital promise.

Defenses

Defenses exist other than the invalidity or termination of the marriage contract and lack of capacity.

The invalidity of the plaintiff's divorce from a former spouse may be used as a defense only if the issue of the divorce is raised on the ground that there was a lack of jurisdiction on the part of the court to permit the divorce. If the plaintiff had an invalid divorce, the defendant cannot be held liable for breach of the marriage promise

because the plaintiff was still lawfully married to his or her former mate and, therefore, could not validly contract a marriage with the defendant.

A valid defense to a breach of marriage promise is the plaintiff's refusal to marry the defendant. The defendant cannot later defend himself or herself on the basis of the fact that he or she subsequently offered to marry the plaintiff. The engagement of the plaintiff to another individual at the time of entering into a contract with the defendant is not a defense. Similarly, the marriage of the plaintiff to another party subsequent to the defendant's breach does not excuse the defendant of liability for a breach. Unattractive personality traits, or offensive conduct, such as drunkenness, cannot be used as a defense. When the objectionable behavior amounts to a felony, however, it can be used as a defense against the plaintiff in a breach of marriage promise action.

Generally, a defendant will successfully defeat an action by alleging physical incapacity or disease that makes it either unsafe or improper to enter into marriage. If a defendant has knowledge of the disability when he or she promises to marry the plaintiff there is no defense. A disability on the part of the defendant that would not interfere with the marital relationship is insufficient to relieve a defendant of his promise.

Damages

The nature and form of an action for breach of marriage promise is contractual. Recoverable damages include COMPENSATORY DAMAGES for injury to the feelings and health of the plaintiff as well as to his or her reputation. A plaintiff may also recover damages for any financial loss resulting from the breach, comparable to the recovery in a breach of any other contract action, in addition to compensation for loss of advantages that would have stemmed from a marital relationship with the defendant.

FURTHER READINGS

- Hirshman, Linda, and Jane Larson. 1998. *Hard Bargains: The Politics of Sex*. Don Mills, Ont.: Oxford Univ. Press.
- Tushnet, Rebecca. 1998. "Rules of Engagement: Laws Regarding Broken Marital Engagements." *Yale Law Journal* 107 (June): 2583–618.
- Wallman, Lester, and Sharon McDonnell. 1994. *Cupid, Couples, and Contracts: A Guide to Living Together, Prenuptial Agreements, and Divorce*. Sandy, Ore.: MasterMedia.

CROSS-REFERENCES

Divorce; Irretrievable Breakdown of Marriage; Marriage.

BREACH OF THE PEACE

A comprehensive term encompassing acts or conduct that seriously endanger or disturb public peace and order.

A breach of the peace was a common-law offense, but is presently governed by statute in many states. It is frequently defined as constituting a form of **DISORDERLY CONDUCT**. Examples include using abusive or obscene language in a public place, resisting a lawful arrest, and trespassing or damaging property when accompanied by violence.

Statutes commonly require that conduct constituting a breach of the peace must be clearly a type of misbehavior resulting in public unrest or disturbance. As an example, a prostitute who solicited men walking by on a public street from her window was found guilty of breaching the peace, but a man who raised his voice to a police officer while the officer was issuing a ticket to him was not guilty of the same offense.

A breach of the peace is synonymous with a disturbance of the peace. Jurisdictions that do not have a specific statutory provision for the offense may punish it as a form of disorderly conduct. The usual penalty imposed is either a fine, imprisonment, or both.

BREAKING

To use physical force to separate or damage a solid object.

When used in criminal statutes as an element of **BURGLARY** or housebreaking, to forcibly remove any part of a house that protects it from unauthorized entry such as locks, latches, windows, or doors, to gain access to the house with the intent to commit a crime; to use force or violence in escaping from a house after a felony has been committed or attempted therein.

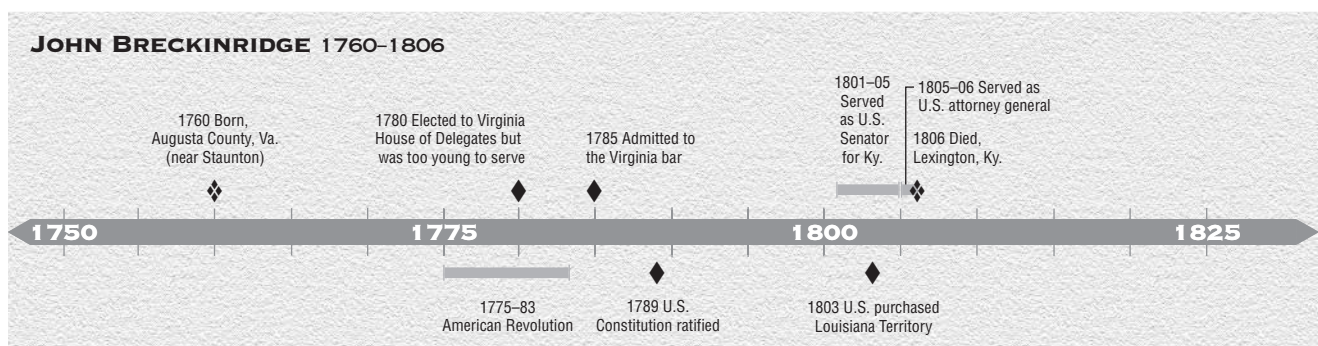
The slightest physical force—for example, lifting a latch, releasing a bolt, or opening an unlocked door or window—is enough to constitute breaking.

❖ BRECKENRIDGE, JOHN

John Breckenridge served as the fifth attorney general of the United States and was the second of three attorneys general who served under President **THOMAS JEFFERSON**. Breckenridge was born on December 2, 1760, in Augusta County near Staunton, Virginia. He attended Augusta Academy, now known as Washington and Lee University, and later transferred to the College of William and Mary located in Williamsburg, Virginia. One of his professors at William and Mary was **GEORGE WYTHE**, a distinguished teacher and scholar who counted **JOHN MARSHALL**, **HENRY CLAY**, and Thomas Jefferson among his students.

At age 19, the ambitious Breckenridge was elected to the Virginia House of Delegates in 1780 but was not permitted to take the position because of his youth. Breckenridge served in the Virginia militia during the Revolutionary War. Afterwards he studied law under the tutelage of a Virginia lawyer, and he was admitted to the Virginia bar in 1785.

Breckenridge established a law practice in Charlotte, Virginia, and re-entered the political arena. In 1792, he was elected to the U.S. House of Representatives of the Third Congress. Before his congressional term commenced, he resigned his seat in order to move to Lexington, Kentucky. The following year, Breckenridge established a law practice in Lexington and once again turned to politics. He ran for a U.S. Senate seat in 1794 and was defeated, but he was appointed attorney general for the state of Kentucky in 1795. He served until 1797, when he



resigned his position to make a successful run for the U.S. House of Representatives. Breckenridge was elected to Congress in 1798 and became speaker of the house in 1799.

Breckenridge, a Republican, ran for the senate and was elected in 1800. Taking office in 1801, Breckenridge strongly supported President Thomas Jefferson. Several times Breckenridge introduced as his own legislation bills that Jefferson had drafted, a maneuver that did not always meet with success. One bill, which was rejected by some who viewed Breckenridge as a mouthpiece for the president, would have allowed Jefferson and the territorial governor to rule the newly purchased Louisiana Territory by EXECUTIVE ORDER.

Breckenridge also advocated the IMPEACHMENT of John Pickering and SAMUEL CHASE, two federal district court judges who had ties to the rival FEDERALIST PARTY. Pickering, who had alcohol and mental problems, was removed. The move to impeach Chase was more patently political: Chase had cast accusations that the supporters of Jefferson were atheists and had made other anti-Republican remarks from the bench. Though the House voted to impeach Chase, the Senate voted by a narrow margin to acquit him. By refusing to allow political statements to be considered within the rubric of *high crimes and misdemeanors*, the Senate strengthened the concept of an independent judiciary.

Jefferson ran again for president in 1804. After rejecting the bid of AARON BURR for a second term as vice-president, the Republicans briefly considered Breckenridge for the position. He lost to Democrat George Clinton.

Breckenridge's ardent support of Jefferson and his political ambitions were rewarded when Jefferson appointed Breckenridge U.S. attorney general. At the time, the position was part-time,

and Breckenridge was able to continue spending many of his days in Lexington, Kentucky. Breckenridge held the position of attorney general until his death in Lexington on December 14, 1806.

FURTHER READINGS

Hall, Kermit L. 1989. *The Magic Mirror: Law in American History*. New York: Oxford Univ. Press.

Justice Department. *Attorneys General of the United States, 1789–1985*. Washington, D.C.: GPO, 1985.

CROSS-REFERENCES

Attorney General; Jefferson, Thomas; Republican Party.

❖ BREESE, SIDNEY

Sidney Breese was born July 15, 1800, in Whitesboro, New York. He graduated from Union College in Schenectady, New York, in 1818. Breese was admitted to the Illinois bar in 1820 and concentrated his career efforts in that state.

In 1821, Breese was appointed postmaster of Kaskasia, Illinois. From 1822 to 1826, he served as prosecuting attorney for the Illinois Circuit Court, and from 1827 to 1829, he performed the duties of federal district attorney. In 1831, he published *Breese's Reports*, a compilation of the decisions of the Illinois Supreme Court from 1820 to 1831.

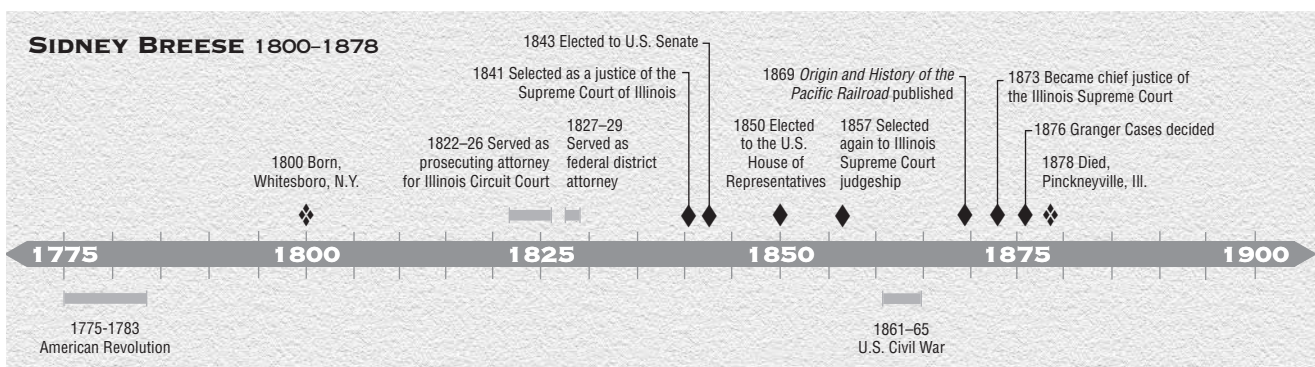
In 1832, Breese fought in the Black Hawk War, which was a conflict between the white settlers of Illinois and the Sac and Fox Indians. After the war Breese resumed his legal career.

In 1835 Breese was selected as a judge for the Illinois Circuit Court and he remained on the bench until 1841. From 1841 to 1842, he served as justice of the Supreme Court of Illinois.

Breese's career continued to be varied during the latter part of his life. He was elected to the United States Senate in 1843, and represented Illinois until 1849. During his senatorial term,

"WITH NATIONS,
MIGHT IS TOO
COMMONLY
REGARDED AS
RIGHT."

—SIDNEY BREESE



from 1845 to 1849, he also acted as administrator of the Smithsonian Institution. In 1850, he became a member of the House of Representatives of Illinois. In 1857, he was again selected to act as justice of the Supreme Court of Illinois. He served on the bench until 1878, becoming chief justice of this court in 1873. In 1873, Breese was responsible for the noteworthy court decision in the so-called Granger Cases, specifically *Munn v. Illinois*, 69 Ill. 80, by deciding in favor of STATES' RIGHTS in the regulation of grain elevators. This ruling was upheld by the U.S. Supreme Court the following year. 94 U.S. 113 (1877).

As an author, Breese gained prominence with the publication in 1869 of *Origin and History of the Pacific Railroad*.

He died June 27, 1878, in Pinckneyville, Illinois.

❖ BRENNAN, WILLIAM JOSEPH, JR.

William Joseph Brennan Jr. was the first Roman Catholic appointed to the Supreme Court; he served as associate justice of the Court from 1956 to 1990. His unshakable belief in the Constitution as the guardian of individual rights and liberties garnered both respect and criticism.

Brennan was born April 25, 1906, in Newark, New Jersey. He was the second of eight children of William Joseph Brennan and Agnes McDermott Brennan, Irish immigrants who settled in Newark in the 1890s. His father worked as a coal shoveler in a brewery and, according to Brennan, was the most influential person in Brennan's life. He was also a labor leader and municipal reformer who imbued Brennan with a profound social conscience and an affinity for activism.

Brennan received his early education in Newark public schools, and attended the Wharton School of Finance and Commerce, at the University of Pennsylvania, where he received his bachelor of science degree, cum laude, in 1928. He earned a scholarship to Harvard University Law School, where he studied under FELIX FRANKFURTER, who would later be his colleague on the Supreme Court. Brennan graduated near the top of his class in 1931.

He began his legal career in 1932 with the Newark law firm of Pitney, Hardin, and Skinner. The firm later added Brennan as a partner and became Pitney, Hardin, Ward, and Brennan. He specialized in LABOR LAW and showed a unique

talent for successfully negotiating employer-employee disputes. During WORLD WAR II, Brennan served in the U.S. Army and eventually became the labor branch chief, Civilian Personnel Division of Army Ordnance. He rose to the rank of colonel and was awarded the Legion of Merit for services to the Army and Army Air Forces procurement programs.

After his army service, Brennan returned to private practice, counseling large manufacturing corporations on labor matters. In 1949, he was tapped by New Jersey's Republican governor to serve on the state's superior court. Assigned to the appellate division, he distinguished himself by implementing reforms that relieved congestion in the court calendar. He was appointed to the New Jersey Supreme Court, and took his seat on March 24, 1952. While there, he helped institute a PRETRIAL CONFERENCE system that shortened and simplified trials and encouraged settlements, resulting in fewer and speedier trials.

Brennan had served only four years on the New Jersey Supreme Court when, to the surprise of everyone, including Brennan, President DWIGHT D. EISENHOWER nominated him to serve on the U.S. Supreme Court. Eisenhower, a Republican, would later regard his appointment of the liberal Democrat as one of his worst mistakes, along with his earlier appointment of Chief Justice EARL WARREN. Together, Brennan and Warren led the Court into an unprecedented era of judicial activism that was anathema to conservatives like Eisenhower.

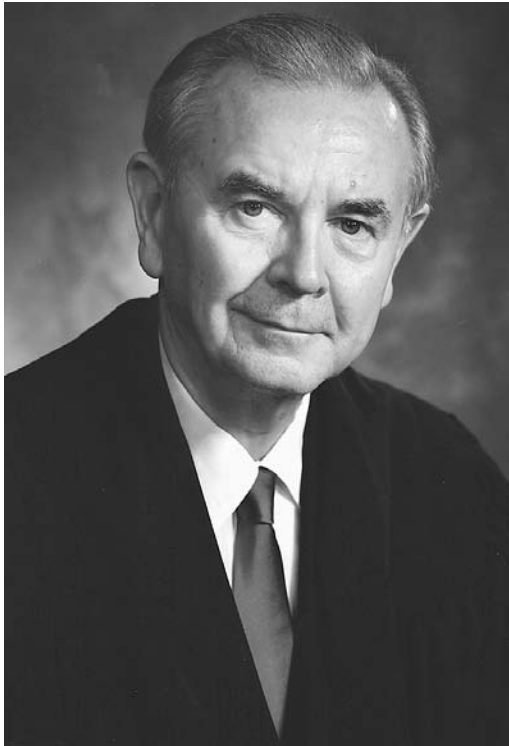
Brennan quickly established himself as a staunch supporter of the rights and liberties guaranteed by the Constitution. He insisted that the BILL OF RIGHTS applies to all U.S. citizens, whether of the lowest or the highest stature. Brennan invited controversy with his view that the Constitution's guarantees must be constantly evolving. Said Brennan, "The genius of the Constitution rests not in any static meaning it might have had in a world that is dead and gone, but in the adaptability of its great principles to cope with current problems."

Brennan's broad interpretation of the Constitution put him at odds with more conservative court members who construe the Constitution as narrowly as possible and attempted to ascertain the ORIGINAL INTENT of the drafters. Conservatives believe that if a right or freedom is not clearly conferred by the Constitution or by judicial precedent, it is not the job of the Court

"LAW CANNOT
STAND APART
FROM THE SOCIAL
CHANGES AROUND
IT."
—WILLIAM
BRENNAN JR.

William J. Brennan
Jr.

PHOTOGRAPH BY
ROBERT S. OAKES.
COLLECTION OF U.S.
SUPREME COURT



to try to find it there. They place the burden on the individual to show that the right or protection sought exists. Conversely, like-minded liberals (and Brennan was one) approach a case by asking whether anything in the Bill of Rights explicitly prevents the Court from finding that the right or protection exists, and they look to the government to prove that the right does not exist. Ironically, when a case involves the use of government power, the opposing groups tend to adopt each other's philosophy: conservatives ask whether anything in the law prevents the exercise of the power, and liberals ask whether the power is explicitly allowed by the Constitution or some other statute.

In spite of his single-minded determination to read the Constitution as broadly as possible, Brennan often acted as a mediator between the liberal and conservative wings of the Court. A warm and charming man who was universally well liked, he used his formidable intellectual and technical skills in tandem with his innate diplomacy to build coalitions on some of the most divisive issues of the time. "You cannot dislike this man on a personal level, no matter how destructive he's been to the values you hold dear," declared Charles J. Cooper, assistant attorney general under President RONALD REAGAN and an ideological archenemy of Brennan. Bren-

nan was respected by friends and adversaries alike. In fact, although he was a lifelong Democrat, his appointments to the judiciary were recommended by conservative Republicans.

It is impossible to overstate the effect Brennan had on the law of the land from 1960 to 1990. He was the architect of pivotal decisions that shaped U.S. life during those years, including *Eisenstadt v. Baird*, 405 U.S. 438, 92 S. Ct. 1029, 31 L. Ed. 2d 349, a 1972 decision that struck down a law prohibiting the distribution of contraceptives to unmarried women. Brennan recognized a constitutional "right to privacy" protecting "the decision whether to bear or beget a child." His reasoning in *Eisenstadt* became the foundation for *ROE V. WADE*, 410 U.S. 113, 93 S. Ct. 705, 35 L. Ed. 2d 147, the 1973 decision that removed many barriers to legal ABORTIONS.

Early in his career Brennan wrote the majority opinion in *BAKER V. CARR*, 369 U.S. 186, 82 S. Ct. 691, 7 L. Ed. 2d 663 (1962), which allowed federal courts to hear challenges to legislative APPORTIONMENT and paved the way for later Supreme Court cases establishing the concept of one person, one vote. In *NEW YORK TIMES V. SULLIVAN*, 376 U.S. 254, 84 S. Ct. 710, 11 L. Ed. 2d 686 (1964), Brennan wrote that the FIRST AMENDMENT protects the press from LIBEL suits brought by public officials, unless actual malice is proved. He extended the FIFTH AMENDMENT right against SELF-INCRIMINATION to prohibit mandatory registration of Communist party members in *Albertson v. Subversive Activities Control Board* (382 U.S. 70, 86 S. Ct. 194, 15 L. Ed. 2d 165 [1965]).

Brennan found that the Constitution prohibits unequal treatment based on race, age, or gender, in a number of decisions, including *IN RE WINSHIP* (establishing use of the REASONABLE DOUBT STANDARD for juveniles); *FRONTIERO V. RICHARDSON* (extending constitutional scrutiny to gender-based classifications); and *Craig v. Boren* (declaring that gender-based classifications are unconstitutional unless they are substantially related to the achievement of an important government objective) (*In re Winship*, 397 U.S. 358, 90 S. Ct. 1068, 25 L. Ed. 2d 368 [1970]; *Frontiero v. Richardson*, 411 U.S. 677, 93 S. Ct. 1764, 36 L. Ed. 2d 583 [1973]; and *Craig v. Boren*, 429 U.S. 190, 97 S. Ct. 451, 50 L. Ed. 2d 397 [1976]).

Brennan was a strong believer that AFFIRMATIVE ACTION was a way to remedy past discrim-

ination, and he wrote numerous opinions on the subject. In *United States v. Weber Aircraft Corp.*, 465 U.S. 792, 104 S. Ct. 1488, 79 L. Ed. 2d 814 (1984), the Court held that it is lawful for employers to adopt voluntary affirmative action programs that are race conscious. Brennan wrote the opinion that upheld limited preferential treatment on the job for women and minorities in *Johnson v. Transportation Agency of Santa Clara County*, 480 U.S. 616, 107 S. Ct. 1442, 94 L. Ed. 2d 615 (1987), and found in *United States v. Paradise*, 480 U.S. 149, 107 S. Ct. 1053, 94 L. Ed. 2d 203 (1987), that a one-black-for-one-white promotions quota did not violate the Constitution. Finally, in one of his last opinions on affirmative action, Brennan wrote that the Constitution permits preferential treatment of minorities in the awarding of FCC broadcast licenses (*Metro Broadcasting v. FCC*, 497 U.S. 547, 110 S. Ct. 2997, 111 L. Ed. 2d 445 [1990]).

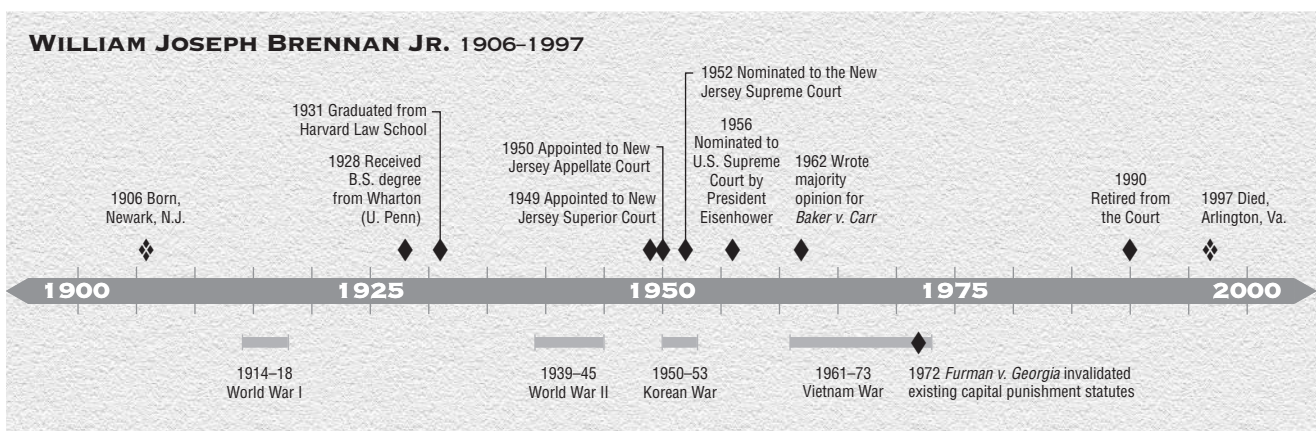
Brennan was an adamant defender of free expression even for the most reprehensible words or acts. In *TEXAS V. JOHNSON* (491 U.S. 397, 109 S. Ct. 2533, 105 L. Ed. 2d 342 [1989]) and in *United States v. Eichman* (496 U.S. 310, 110 S. Ct. 2404, 110 L. Ed. 2d 287 [1990]), he wrote opinions invalidating statutes that banned flag desecration, on the grounds that they violated the First Amendment. Although recognizing the “special place reserved for the flag in this Nation,” he stated, “we do not consecrate the flag by punishing its desecration, for in doing so we dilute the freedom that this cherished emblem represents” (*Johnson*).

He was also an ardent defender of the rights of children, declaring that we must teach young people “that our Constitution is a living reality, not parchment preserved under glass.” He was

appalled by cases in which the Court seemed to hold that the Bill of Rights does not apply to schoolchildren, and wrote in one dissent that the majority’s decision had given school officials the license to act as “thought police” and taught the students “to discount important principles of our government as mere platitudes” (*Hazelwood School Dist. v. Kuhlmeier*, 484 U.S. 260, 285, 290, 108 S. Ct. 562, 577, 580, 98 L. Ed. 2d 592 [1988]).

Brennan earned the highest praise as well as the harshest criticism from his opinions in cases involving the rights of the accused. He steadfastly opposed the use of CAPITAL PUNISHMENT, labeling it state-sanctioned killing, and in one of his final decisions on the Court, he voted against an execution by the state of Virginia. Taking human life, he said, “is God’s work, not man’s.” When that statement was dismissed as mere sentimentality, he replied, “The most vile murder does not, in my view, release the state from constitutional restraints on the destruction of human dignity.... The fatal constitutional infirmity of capital punishment is that it treats members of the human race as nonhuman, as objects to be toyed with and discarded.” Brennan’s critics pointed out that his opposition to the death penalty did not seem in harmony with his support of women’s right to abortion, which some consider “state-sanctioned killing.”

Brennan passionately defended the protections afforded by the Fourth Amendment’s prohibition of unreasonable SEARCHES AND SEIZURES. His interpretation of the amendment helped establish the EXCLUSIONARY RULE, which holds that any evidence obtained illegally is tainted and cannot be used against the accused. During the 1980s, the Supreme Court recognized a growing number of exceptions to the



rule, prompting Brennan to redouble his efforts to bolster its strength. His advocacy of the rights of criminal defendants brought him sharp criticism, particularly from the media, which often portrayed him as a libertarian who supported the rights of criminals while ignoring those of victims. In a radio interview in 1987, Brennan became uncharacteristically agitated when asked, "Why do you let some of those creeps go? They do such bad things, and on a technicality, you let them go." Brennan replied sharply,

You and the media ought to be ashamed of yourself to call the provisions and the guarantees of the Bill of Rights technicalities. They're not. We are what we are *because* we have those guarantees, and this Court exists to see that they are faithfully enforced. These guarantees have to be sustained—even though the immediate result is to help out some very unpleasant person. They're there to protect all of us.

Citing advancing age and health concerns, Brennan retired from the Court in July 1990, after 34 years as an associate justice. He was replaced by Associate Justice DAVID H. SOUTER. Although he eventually slowed his pace considerably, he continued to be sought as a speaker and used every opportunity to carry on his campaign for individual rights and liberties.

During his tenure on the Supreme Court, Brennan wrote almost 1,600 opinions, many of which have had a significant impact on the American justice system. In 1995, as a tribute to Brennan's legacy, a number of former law clerks, along with family and friends created the Brennan Center. The center, which is housed at New York University's School of Law, pursues an ambitious agenda of litigation, teaching, research, and advocacy in public policy areas, including democracy, poverty, and criminal justice. Brennan died on July 24, 1997, in Arlington, Virginia.

FURTHER READINGS

Brennan Center for Justice. Available online at <www.brennancenter.org> (accessed June 19, 2003).

CROSS-REFERENCES

Freedom of the Press; Freedom of Speech; Judicial Review; Warren Court.

❖ BREWER, DAVID JOSIAH

David Josiah Brewer was an associate justice of the Supreme Court from 1890 to 1910. A defender of personal liberty and property rights, he also supported STATES' RIGHTS and was

opposed to centralization of power in the federal government.

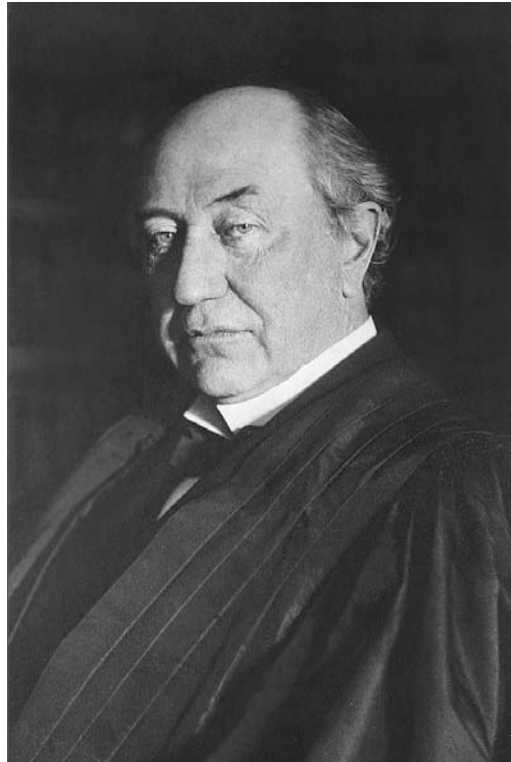
Brewer was born June 20, 1837, in Smyrna, Asia Minor (now Turkey). His father, Josiah Brewer, was a Yale graduate who worked in Turkey as a missionary. His mother, Emilia Field, was the sister of Supreme Court justice STEPHEN J. FIELD, with whom Brewer eventually served. After returning to the United States from their missionary work, the Brewers settled in Wethersfield, Connecticut. Brewer attended Wesleyan University for two years before transferring to Yale, where he graduated with honors in 1856. He studied law for a year with an uncle and then enrolled in Albany Law School. He received his law degree in 1858 and was admitted to the New York bar the same year.

Brewer decided to stake his future on the frontier West. He settled in Leavenworth, Kansas, and almost immediately began his long judicial career. He was appointed commissioner of the U.S. Circuit Court for the District of Kansas in 1861 and was elected judge of the probate and criminal courts of Leavenworth County in 1862. Brewer served as a judge of the first judicial district of Kansas from 1865 to 1869. He briefly left the judiciary in 1869 to become Leavenworth's city attorney, but returned in 1870 when, at the age of thirty-three, he was elected to the Kansas Supreme Court. He sat on the Kansas bench until 1884 when President CHESTER ARTHUR named him to the federal circuit court for the eighth circuit. Five years later, President WILLIAM H. HARRISON appointed him to the U.S. Supreme Court, where he remained until his death.

As a Supreme Court justice, Brewer was known for his ardent support of individual rights against the tyranny of the majority. "Here there is no monarch threatening TRESPASS upon an individual," he once said. "The danger is from the multitude—the majority with whom lies the power." Brewer had great compassion for the marginalized members of U.S. society. In 1908, he wrote the opinion for a unanimous Court in *Muller v. Oregon*, 208 U.S. 412, 28 S. Ct. 324, 52 L. Ed. 551, upholding a statute that established maximum work hours for women toiling in laundries. Although he had in 1905 voted to invalidate a similar statute that applied to bakers, in *LOCHNER v. NEW YORK* (198 U.S. 45, 25 S. Ct. 539, 49 L. Ed. 937 [1905]), Brewer was convinced that the particular statute at issue in *Muller* did not unnecessarily limit an individual's contract liberty.

Brewer also wrote strong dissents in several cases limiting the rights of Chinese and Japanese immigrants (see *Fong v. United States*, 149 U.S. 698, 13 S. Ct. 1016, 37 L. Ed. 905 [1893]; *United States v. Sing Tuck*, 194 U.S. 161, 24 S. Ct. 621, 48 L. Ed. 917 [1904]; *United States v. Ju Toy*, 198 U.S. 253, 25 S. Ct. 644, 49 L. Ed. 1040 [1905]; the *Japanese Immigrant* case, 189 U.S. 86, 23 S. Ct. 611, 47 L. Ed. 721 [1903]). His dissent in *Fong*, in which the Court found that the power of Congress to deport ALIENS was inherent in national sovereignty, included this sarcastic indictment of what he considered Congress's ARBITRARY denial of plaintiffs' rights: "In view of this enactment of the highest legislative body of the foremost Christian nation, may not the thoughtful Chinese disciple of Confucius ask, Why do they send missionaries here?"

Brewer was, in most cases, a moderate conservative. He spoke out against racial DISFRANCHISEMENT in *Giles v. Harris*, 189 U.S. 475, 23 S. Ct. 639, 47 L. Ed. 909 (1903). However, reflecting his belief in states' rights, he held that a state had the right to prohibit INTEGRATION in an institution it had created (*Berea College v. Kentucky*, 211 U.S. 45, 29 S. Ct. 33, 53 L. Ed. 81 [1908]) and that the federal government lacked power to prosecute a case of racially motivated harassment (*Hodges v. United States*, 203 U.S. 1, 27 S. Ct. 6, 51 L. Ed. 65 [1906]). A lifelong advocate of international peace, Brewer served as president of a congressional commission investigating a border dispute between Venezuela and British Guyana, and later served on the tribunal that ended the controversy. Brewer advocated women's suffrage and restrictions on immigration. He was a vigorous anti-imperialist who believed that the Philippines should be given independence with guaranteed neutrality.

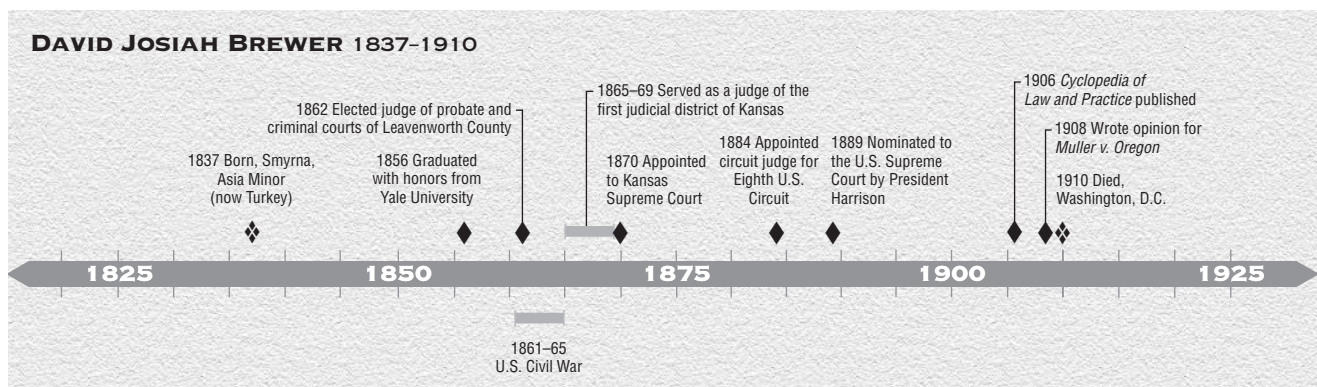


David J. Brewer.
LIBRARY OF CONGRESS

Brewer was an unusually outgoing justice who lectured frequently and wrote several books, including *The Pew to the Pulpit*, *The Twentieth Century from Another Viewpoint*, *American Citizenship*, and *The United States: A Christian Nation*. He felt strongly that judges have a moral obligation to use their lofty position to lead rather than simply observe. "It is one thing," he once said, "to fail of reaching your ideal. It is an entirely different thing to deliberately turn your back on it."

Brewer died in Washington, D.C., on March 28, 1910.

"YOU CANNOT
DISASSOCIATE THE
CHARACTER OF
THE NATION AND
THAT OF ITS
CITIZENS."
—DAVID BREWER



FURTHER READINGS

- Brodhead, Michael J. 1994. *David J. Brewer: The Life of a Supreme Court Justice, 1837-1910*. Carbondale: Southern Illinois Univ. Press.
- Hylton, Joseph Gordon. 1994. "David Josiah Brewer: A Conservative Justice Reconsidered." *Journal of Supreme Court History*. 45-64.
- Schwartz, Bernard. 1993. *A History of the Supreme Court*. New York: Oxford Univ. Press.
- Tribe, Laurence H. 1985. *God Save This Honorable Court*. New York: Random House.

❖ **BREWSTER, BENJAMIN HARRIS**

Benjamin Harris Brewster was the 37th attorney general of the United States, serving from 1881 to 1885 in the administration of President CHESTER ARTHUR. Previously, Brewster was appointed by President JAMES POLK as a special commissioner for the adjudication of claims by the members of the Cherokee Indian tribe against the U. S. government.

Brewster was born in Salem County, New Jersey, on October 13, 1816. In 1834 he graduated from Princeton College. Like many other aspiring lawyers of the period, Brewster did not attend law school. Instead these aspirants "read law" by performing various clerical and administrative duties for a lawyer who had already been admitted to the bar. Brewster studied under a Philadelphia attorney named Eli Price.

After mastering the necessary requirements, Brewster took and passed the bar exam in 1838. After his admittance to the Pennsylvania bar, he continued to practice law in Philadelphia.

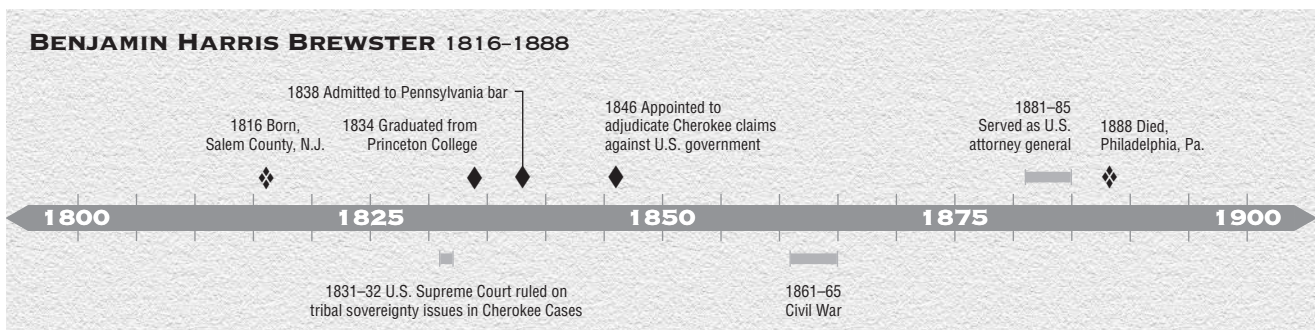
Although he had established a lucrative law practice, Brewster, like many other ambitious young lawyers his age, became interested in politics and government service. Brewster had a personal connection, his father-in-law, Robert J. Walker. In the decade between 1835 and 1845, Walker had served as the U.S. senator from Mississippi. In 1845, Walker was appointed by Pres-

ident James Polk to be secretary of the Treasury. Twelve years later, Walker would serve as governor of the Territory of Kansas.

It was through Walker that Brewster became a special commissioner for the adjudication of claims by the Cherokee Indians against the federal government. In 1846 Walker convinced President Polk to appoint his son-in-law to the position. The Cherokee had established a republican form of government called the Cherokee Nation. In the years leading up to the early nineteenth century, the Cherokee tribe was one of the most progressive and well-to-do tribes in North America. The Cherokee lived in the southeastern part of the country on lands that subsequently whites came to define as the states of North Carolina, Tennessee, Georgia and Alabama. As time went on, more and more white settlers moved into the area claiming land that belonged to the Cherokee Nation.

Some Cherokee leaders signed the Treaty of New Echola in 1835 that agreed to their removal to land west of the Mississippi River. A number of Cherokee opposed the relocation and under the leadership of Chief JOHN ROSS tried to resist. In 1838 President ANDREW JACKSON sent U.S. troops to forcibly move the Indians to the new land, the dry plains of the area that later became Oklahoma. The brutal relocation journey of between 13,000 and 17,000 people that became known as the *Trail of Tears* took place over winter and resulted in the deaths of thousands of Cherokee.

The leaders of those who survived regrouped as the Cherokee Nation and sought to make claims against the federal government concerning the forced relocation and their losses. As special commissioner in 1846, Brewster reviewed the claims and granted some relief before returning to his law practice in Philadelphia.



By now a prominent Pennsylvania attorney with strong connections to the REPUBLICAN PARTY, Brewster once again pursued political aspirations. In 1867, he was appointed by Governor Geary to be attorney general for the state of Pennsylvania. After a brief tenure, Brewster returned to private practice.

In September of 1881, following the assassination of JAMES GARFIELD, Vice-President Chester Arthur succeeded Garfield as president. In December of that year, Garfield's attorney general, ISAAC MACVEAGH, resigned so that the new president could make his own appointment. Arthur, who had practiced law in New York, appointed Brewster.

Many had anticipated that Arthur would continue as a supporter of the *spoils* system, whereby loyal party workers were given appointive office without attention to merit. Arthur surprised the analysts and the electorate by promoting government reform. Brewster backed the president, and in 1883, Congress enacted the Pendleton Act, which provided for civil service reform and helped to reduce the primacy of the spoils system.

Brewster also vigorously prosecuted the Star Route Trials, a group of cases involving several prominent Republicans who were found guilty of fraudulent activities concerning the United States Post Office Department.

Brewster continued his work as attorney general until GROVER CLEVELAND was elected president in 1884. In 1885 Brewster returned to Pennsylvania. He died in Philadelphia on April 4, 1888.

FURTHER READINGS

Hall, Kermit L. 1989. *The Magic Mirror: Law in American History*. New York: Oxford Univ. Press.

Justice Department. *Attorneys General of the United States, 1789–1985*. Washington, D.C.: GPO.

State Department Timeline. "Indian Treaties and the Removal Act of 1830." Available online at <www.state.gov> (accessed June 17, 2003).

CROSS-REFERENCES

Attorney General; Cherokee Cases; Native American Rights.

❖ BREYER, STEPHEN GERALD

As an associate justice of the U.S. Supreme Court, Stephen Breyer is regarded as a judicial moderate. The former law professor and Senate counsel locates his approach to the law in a deep pragmatism: He distrusts broad legal theory,

endorses judicial restraint, and wants his legal opinions to be clear enough for a high-school student to read. His reputation for forging consensus earned him a nomination to the U.S. Court of Appeals for the First Circuit in 1980, on which he later served as chief of the court from 1990 to 1994. During the 1980s, he also helped to shape a far-reaching and controversial revision of criminal sentencing guidelines. In April 1994, President BILL CLINTON nominated Breyer to replace the outgoing U.S. Supreme Court associate justice HARRY A. BLACKMUN, and his appointment was confirmed in July 1994.

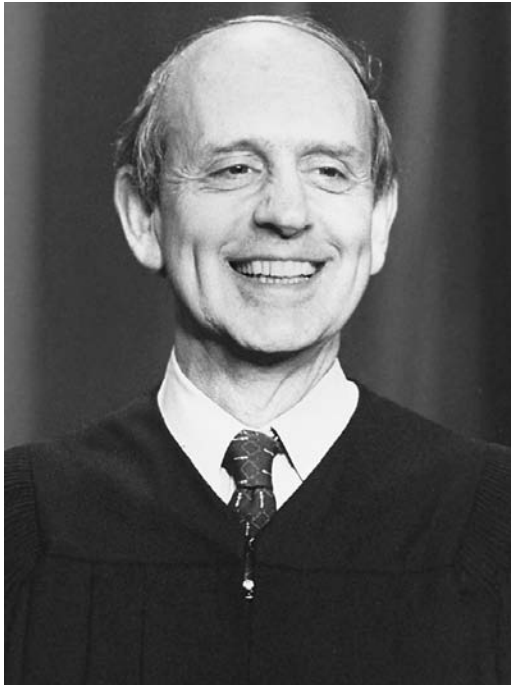
Breyer was born on August 15, 1938, in San Francisco. His attorney father and politically active mother set him on a course for achievement. He earned an A.B. from Stanford University in 1959, followed by a B.A. in philosophy and economics at Oxford University in England. He received a law degree from Harvard Law School in 1964, graduating magna cum laude. Breyer clerked for U.S. Supreme Court Justice ARTHUR J. GOLDBERG during the 1964–65 term and helped to write the justice's opinion in the landmark right-to-privacy case, *GRISWOLD V. CONNECTICUT*, 381 U.S. 479, 85 S. Ct. 1678, 14 L. Ed. 2d 510 (1965).

In 1967, Breyer embarked on dual careers in academia and government. He taught courses in antitrust, ADMINISTRATIVE LAW, and economic regulation at his alma mater, Harvard Law School. In the same year, he was appointed to the office of the Assistant U.S. Attorney General. He gained further prominence in 1974 by serving on the Watergate Special Prosecution Force, which pursued the possibility of impeaching President RICHARD M. NIXON. As a senior aide to Senator EDWARD M. KENNEDY (D-Mass.) in the 1970s and chief counsel to the SENATE JUDICIARY COMMITTEE from 1979 to 1980, Breyer crafted deregulation of the airline and trucking industries while also working on prison reform, judicial confirmations, and fair-housing law. He became known for an empirical approach to law, one that was less swayed by ideology than by careful balancing of facts.

By 1980, Breyer was well respected by liberals, moderates, and conservatives. Although he had been an aide to the liberal Senator Kennedy, he was adept at promoting agreement between such political opposites as Kennedy and Senator Orrin G. Hatch (R-Utah). This record served Breyer well when President JIMMY CARTER

"AS AN APPELLATE JUDGE, I SET . . . A GOAL OF TRYING TO WRITE MY OPINIONS SO THAT A HIGH SCHOOL STUDENT . . . [CAN] UNDERSTAND THE LAW, AS REVEALED IN THAT OPINION— BOTH IN TERMS OF BASIC FAIRNESS AND IN TERMS OF HELPING PEOPLE LEAD DECENT, PRODUCTIVE LIVES."
—STEPHEN G. BREYER

Stephen G. Breyer.
REUTERS/ARCHIVE
PHOTOS



nominated him to the U.S. Court of Appeals for the First Circuit. After Carter lost the 1980 election to RONALD REAGAN, the Republicans scrapped all but one of Carter's pending judicial appointments, as is common in an incoming administration. Breyer's appointment was allowed to go through.

Breyer's record on the Court of Appeals was generally moderate. In a 1983 environmental regulatory case, he blocked the INTERIOR DEPARTMENT from auctioning oil-drilling rights in the North Atlantic without giving ample consideration to alternative proposals (*Commonwealth of Massachusetts v. Watt*, 716 F. 2d 946 [1st Cir. 1983]). In the area of ABORTION, he voted to uphold a Massachusetts parental-notification law (*Planned Parenthood of Massachusetts v. Bellotti*, 868 F. 2d 459 [1st Cir. 1983]). But he joined the majority on the First Circuit in striking down the GEORGE H.W. BUSH Administration's ban on abortion counseling at family planning clinics funded by the federal government (*Commonwealth of Massachusetts v. Secretary of Health and Human Services*, 899 F. 2d 53 [1st Cir. 1990]).

Appointed to the U.S. SENTENCING COMMISSION in 1985, Breyer undertook the job of revising criminal-sentencing guidelines. Against strong opposition, he persuaded the other seven judges on the panel to base the guidelines on

national averages. The changes, which took effect in 1987, have proven controversial. Critics charge that they have too tightly bound judges and produced inequitable results for minority defendants. In response, Breyer has argued that the guidelines have built-in flexibility that allows judges to influence the Sentencing Commission in future revisions.

President Clinton twice sought Breyer for appointment to the U.S. Supreme Court. Although close to choosing him in 1993, Clinton instead selected RUTH BADER GINSBURG after Breyer became the target of criticism for late payments on SOCIAL SECURITY taxes for a part-time housekeeper. When a second vacancy on the Court opened in 1994, Clinton returned to Breyer. The president compared his intellectual vigor to that of Judge LEARNED HAND, the renowned appellate judge of the 1920s and 1930s. Minor opposition met the nomination. Critics questioned whether Breyer's 1993 book *Breaking the Vicious Circle: Toward Effective Risk Regulation* went too far in attacking government regulation. Others raised doubts about his investment judgment in losing money in the early 1990s in the Lloyd's of London scandal, Britain's largest insurance disaster ever. At the same time, however, he received praise for his past achievements and for a strong commitment to FIRST AMENDMENT rights. The Senate easily confirmed his appointment on July 29, 1994, by a vote of 87–9.

After two years on the Court, Breyer had aligned himself with the Court's moderates. He dissented when the majority struck down a 1990 federal law that prohibited the carrying of handguns outside schools, arguing that protecting schools should fall under Congress's power to regulate interstate commerce (*United States v. Lopez*, 514 U.S. 549, 115 S. Ct. 1624, 131 L. Ed. 2d 626 [1995]). He also dissented from the Court's ruling in *Seminole Tribe of Florida v. Florida*, 517 U.S. 44, 116 S. Ct. 1114, 134 L. Ed. 2d 252 (1996), which struck down the 1988 Indian Gaming Regulatory Act for violating STATES' RIGHTS. In a major victory for GAY AND LESBIAN RIGHTS, Breyer joined the majority in overturning Colorado's Amendment 2, which would have removed all legal protection for homosexuals against discrimination (*ROMER v. EVANS*, 116 S. Ct. 1620, 134 L. Ed. 2d 855 [1996]). And in a significant First Amendment decision, Breyer wrote the plurality opinion declaring that the government may not require

cable TV operators to segregate and block leased access channels that feature offensive or indecent programming (*Denver Area Consortium v. Federal Communications Commission*, 116 S. Ct. 2374 [1996]).

Recent Opinions

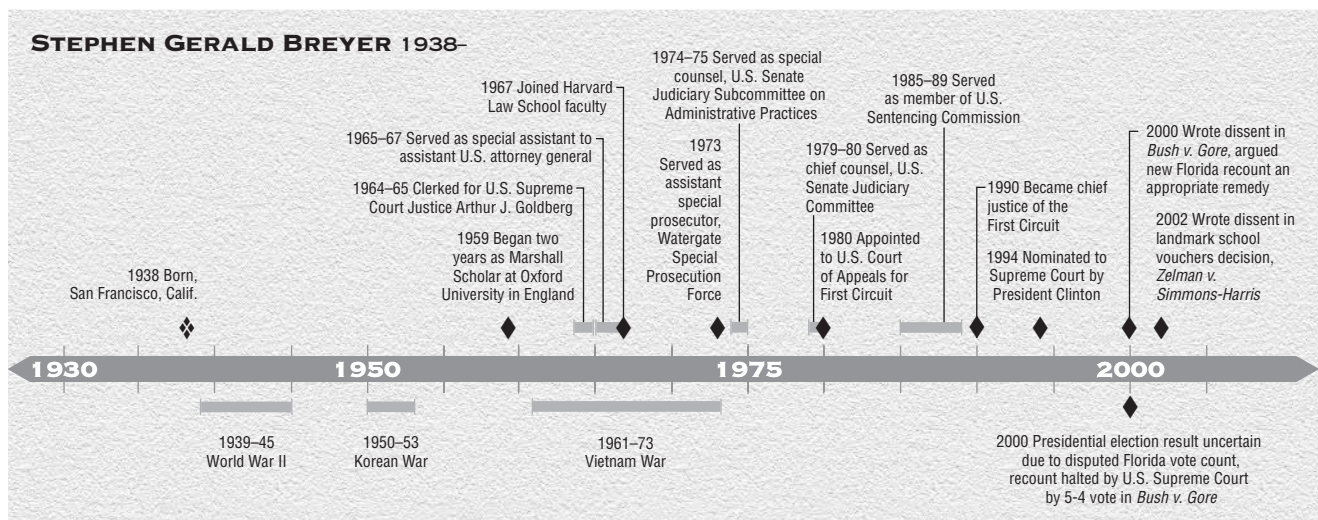
Justice Breyer's opinions have defied labels such as "conservative" or "liberal." Instead, his opinions continue to reflect his rather centrist approach to most issues. In fact, some observers believe that Breyer represents the ideological center of the court, notwithstanding statistics showing that Breyer tends to side most often with the more "liberal" members of the Court (associate justices JOHN PAUL STEVENS, RUTH BADER GINSBURG, and DAVID SOUTER) and least often with the more "conservative" members of the Court (Chief Justice WILLIAM REHNQUIST and associate justices ANTONIN SCALIA, SANDRA DAY O'CONNOR, and ANTHONY KENNEDY).

Breyer's dissenting opinion in *Bond v. United States*, 529 U.S. 334, 120 S.Ct. 1462, 146 L. Ed. 2d 365 (2000), surprised many observers who tend to classify Breyer as "liberal" justice who consistently votes in favor of criminal defendants' rights. In *Bond* the Court examined the issue of whether the Fourth Amendment's protection against unreasonable searches was violated when a Border Patrol agent, while checking the immigration status of passengers on a bus, squeezed a canvas bag that was located in the compartment above a bus passenger's seat. The passenger admitted that the bag was his and allowed the agent to open it, revealing a "brick" of methamphetamine.

A majority of the court ruled that the search was illegal, noting that the traveler's luggage was a personal "effect" as defined in the **FOURTH AMENDMENT**, and that the passenger exhibited an actual expectation of privacy in that "effect" by using an opaque bag and placing the bag directly over his seat. In his dissent, Justice Breyer criticized what he perceived as the short-sightedness of the majority's opinion, arguing that the court's ruling would lead to a constitutional **JURISPRUDENCE** of "squeezes," thereby complicating further already complex Fourth Amendment law.

A few days later, Breyer wrote a 5–4 majority opinion that overturned a Nebraska statute criminalizing "partial birth abortions," a second-trimester procedure in which, according to the statute, a physician "partially delivers vaginally a living unborn child before killing it." *Stenberg v. Carhart*, 530 U.S. 914, 120 S. Ct. 2597, 147 L. Ed. 2d 743 (2000). The Nebraska statute violated the Constitution for at least two independent reasons, Breyer wrote.

First, the statute lacked any exception for the preservation of the health of the mother. The Court had previously made clear that a state may promote, but not endanger, a woman's health when it regulates the methods of abortion. Second, Justice Breyer stated, the statute imposed an undue burden on a woman's ability to have an abortion, finding that the Nebraska statute banned an abortion procedure that was used as many as 5,000 times per year in the United States. (Breyer made no finding as to how often the procedure is used in Nebraska.) Breyer refused to revisit the Court's earlier



determinations and redeterminations that the federal Constitution offers basic protection guaranteeing women's right to procreative freedom.

In 2002, Breyer wrote a majority opinion clarifying an earlier U.S. Supreme Court decision concerning the constitutionality of civil-commitment procedures for so-called "sexual predators." In *Kansas v. Hendricks*, 521 U.S. 346, 117 S. Ct. 2072, 138 L. Ed. 2d 501 (1997), the Court had ruled that a convicted sex offender who satisfies the statutory definition of a sexual predator could be involuntarily committed to a mental-health institution following his or her release from prison for the SEX OFFENSE without violating the DOUBLE JEOPARDY Clause to the FIFTH AMENDMENT of the U.S. Constitution, even if the sex offender is committed based on some of the same evidence that was used earlier to convict him or her. In *Hendricks*, the Court wrote that the Double Jeopardy Clause applies only to subsequent prosecutions or punishments in criminal proceedings, and the sexual-predator law contemplated commitment by civil proceedings.

In *Kansas v. Crane*, 534 U.S. 407, 122 S. Ct. 867, 151 L. Ed. 2d 856 (2002), Breyer wrote a majority opinion that qualified *Hendricks* by ruling that before a convicted sex offender may be civilly committed as a sexual predator following his or her release from prison, the state must prove that the sex offender lacks some control over his or her behavior. The lack-of-control element, Breyer said, would allow the state to better distinguish between dangerous sexual offenders, whom it seeks to commit through civil proceedings, and other dangerous persons who are more appropriately dealt with through criminal proceedings. The federal Constitution prohibits civil commitment proceedings from becoming a "mechanism" for retribution or general deterrence, Breyer emphasized.

Breyer's most well-known opinion during the last nine years came in a dissenting role in one of the most controversial cases in the history of the U.S. Supreme Court. In *BUSH V. GORE*, 531 U.S. 98, 121 S. Ct. 525, 148 L. Ed. 2d 388 (2000), seven justices (including Breyer) 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. However, 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 Republican Presidential candidate GEORGE W. BUSH of Texas and Democratic candidate ALBERT GORE of Tennessee. As a result, the nation's high court effectively ordered the Florida recount to stop, which meant that Bush would become the forty-third President of the United States, as he was leading in Florida when the U.S. Supreme Court issued its opinion, and Florida's 25 electoral votes were enough for him to win in the ELECTORAL COLLEGE.

In his dissenting opinion, Justice Breyer proposed sending the case back to Florida's Supreme Court so that it could devise an order for "a constitutionally proper contest" by which to decide the winner. The majority's opinion, Breyer wrote, placed too much emphasis on equal protection and not enough emphasis on the right to vote. Breyer chastised the majority for finding an equal protection violation but offering no remedy to correct it. "An appropriate remedy," Breyer wrote, "would be to remand this case with instructions that, even at this late date, would permit the Florida Supreme Court to require recounting all undercounted votes in Florida . . . and to do so in accordance with a single uniform standard."

FURTHER READINGS

- "Court: 'Animus' in Colo. Gay Law." 1996. *National Law Journal* 18 (June 3).
- "Court Decisions." 1996. *National Law Journal* 18 (July 15).
- Joyce, Walter E. 1996. "The Early Constitutional Jurisprudence of Justice Stephen G. Breyer: A Study of the Justice's First Year on the United States Supreme Court." *Seton Hall Constitutional Law Journal* 7.
- Kersch, Ken I. 2003. "The Synthetic Progressivism of Stephen G. Breyer." *Rehnquist Justice: Understanding the Court Dynamic*. Edited by Earl M. Maltz. Lawrence: Univ. Press of Kansas.
- Lenine, Eric J., and Richard J. Williams Jr. 1994. "Justice Stephen G. Breyer." *Seton Hall Constitutional Law Journal* 5.
- Noble, Kenneth B. 1987. "Same Crime, Same Time (United States Sentencing Commission Guidelines)." *Los Angeles Daily Journal* 100.
- Pierce, Richard J. 1995. "Justice Breyer: Intentionalist, Pragmatist, and Empiricist." *Administrative Law Journal of the American University* (winter).

BRIBERY

The offering, giving, receiving, or soliciting of something of value for the purpose of influencing the action of an official in the discharge of his or her public or legal duties.

The expectation of a particular voluntary action in return is what makes the difference between a bribe and a private demonstration of goodwill. To offer or provide payment in order to persuade someone with a responsibility to betray that responsibility is known as seeking **UNDUE INFLUENCE** over that person's actions. When someone with power seeks payment in exchange for certain actions, that person is said to be *peddling influence*. Regardless of who initiates the deal, either party to an act of bribery can be found guilty of the crime independently of the other.

A bribe can consist of immediate cash or of personal favors, a promise of later payment, or anything else the recipient views as valuable. When the U.S. military threatened to cancel a Texas relocation company's contracts to move families to and from military bases, the company allegedly gave four representatives in Congress an all-expenses-paid weekend in Las Vegas in January 1989, and \$2,500 in speaking fees. The former president of the company was indicted by a federal **GRAND JURY** in 1994 on bribery charges for both gifts.

No written agreement is necessary to prove the crime of bribery, but usually a prosecutor must show corrupt intent. Bribery charges may involve public officials or private individuals. In the world of professional sports, for example, one boxer might offer another a payoff to "throw" (deliberately lose) an important fight. In the corporate arena, a company could bribe employees of a rival company for recruitment services or other actions at odds with their employer's interests. Even when public officials are involved, a bribe does not need to be harmful to the public interest in order to be illegal.

When a public official accepts a bribe, he or she creates a conflict of interest. That is, the official cannot accommodate the interests of another party without compromising the responsibilities of her or his position.

There is not always consensus over what counts as a bribe. For instance, in many states and at the federal level, certain gifts and campaign contributions are not considered bribes and do not draw prosecution unless they can be linked to evidence of undue influence. In this regard, negative public perception of private contributions to elected officials as payola has caused most states to establish legislative ethics committees to review the public-private relationships of house and senate members. Fur-

thermore, both houses of the U.S. Congress passed legislation in 1994 restricting gifts to no more than \$20 in value.

The Supreme Court further clarified the law by setting standards for federal bribery statutes in *United States v. Sun Diamond Growers*, 526 U.S. 398, 119 S.Ct. 1402, 143 L.Ed.2d 576 (1999). This case grew out of the prosecution of Mike Espy, secretary of agriculture in the Clinton administration, for allegedly accepting bribes. After Espy was acquitted of all charges, the **INDEPENDENT COUNSEL** charged Sun Diamond Growers, a trade association for a large agricultural cooperative, with violating a federal gratuities law that prohibits giving gifts to public officials in exchange for favorable government actions.

After Sun Diamond was convicted of the charges it took its case to the Supreme Court. The Court concluded that a person did not violate the law merely by giving a gift to a public official. Prosecutors must show that there was a connection between a specific official act in the past or future and the gift. Justice **ANTONIN SCALIA** noted that if the government did not have to prove this linkage then a token gift such as the presentation of a sports jersey by a championship team to the president could be regarded as a criminal act.

The Court also noted differences in various federal bribery statutes, which included broad prohibitions. In the present case, the language of the gratuities statute did not reveal a similar intent by Congress; instead, the Court viewed this law as one strand of a complicated web of laws and regulations addressing official behavior.

It is common for both the recipient and the provider of a bribe to be accused, although bribery is not a joint offense—that is, one person's guilt does not affect the other's. Such was the case when a popular Massachusetts state senator allegedly accepted monthly payments from an investment **BROKER** in exchange for trying to persuade state officials to send state **PENSION** business to the broker. The legislator and the broker were both indicted on misdemeanor charges in early 1995.

U.S. companies that engage in international bribery can become targets of investigation at home. In January 1995, a former sales director of Lockheed Corporation pleaded guilty to violating the federal Foreign Corrupt Practices Act, 15 U.S.C. § 78dd-1 et seq., Allen R. Love told a U.S.

district court that he had paid and helped to cover up a bribe to an Egyptian politician for arranging Egypt's 1989 purchase of three Lockheed transport planes.

Congress adopted the Foreign Corrupt Practices Act in 1977 to outlaw payments that are intended to win contracts from foreign officials. Ironically, the law's passage was triggered by testimony from a former vice president of the same Lockheed Corporation at a U.S. congressional hearing in 1976. In that case, the company's vice president admitted to bribing the prime minister of Japan with more than \$1.9 million in the early 1970s, so that Japan would buy Lockheed's TriStar wide-body jets.

The severity of bribery can reach the felony level, punishable by a fine or imprisonment, or both. However, charges are sometimes reduced in exchange for helping to convict accomplices. For instance, in June 1994, Love pleaded innocent to felony charges of bribery and conspiracy. Later, he pleaded guilty to one misdemeanor count of "indirectly" conspiring, as part of a plea agreement in which he agreed to testify against the corporation itself, which was also a defendant.

The international sports community was rocked by a bribery scandal involving the 2002 Winter Olympic Games in Salt Lake City, Utah. Two officials of the Utah committee that secured the games were indicted in 2000 on charges of wire and MAIL FRAUD, conspiracy, and interstate travel in aid of RACKETEERING. They were charged with paying an official of the U.S. Olympic Committee (USOC) to help influence the selection of Salt Lake City by the International Olympic Committee (IOC). The USOC official who received the bribes later pleaded guilty to several criminal charges including the accepting of a bribe.

Federal prosecutors contended that the two officials had paid \$1 million to influence votes of several IOC members. In addition, they had allegedly diverted some \$130,000 of the bid committee's income, and had altered books and created false contracts to conceal their actions. The two officials denied that they had done anything wrong, contending that the payments were intended as grants and scholarships for poor athletes. Following the indictments, ten members of the IOC either resigned or were expelled from the organization, and many reforms were undertaken to prevent bribery. The USOC also authorized an independent review of its practices.

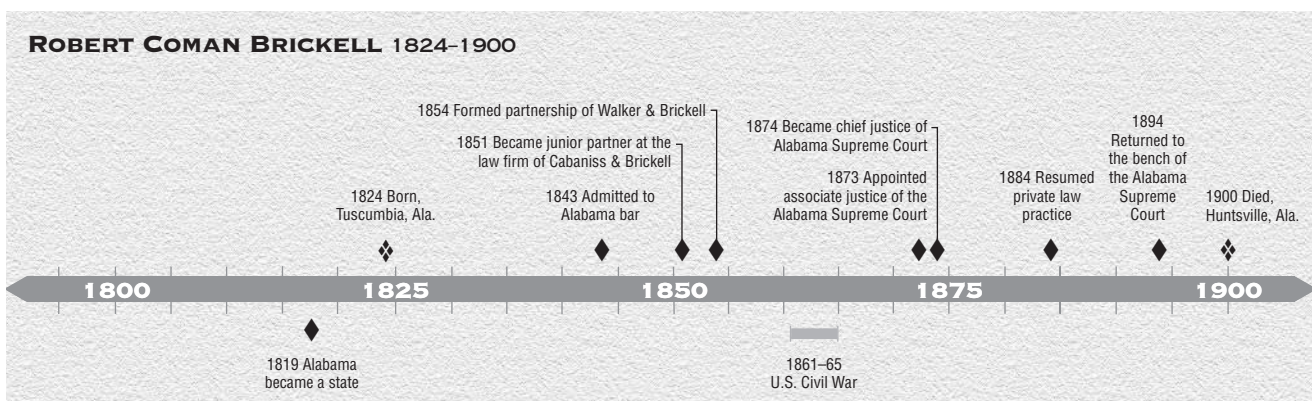
However, the two Utah officials successfully challenged the bribery charges. In July 2001, a federal judge dismissed the bribery charges, finding that a Utah bribery statute could not be applied to the defendants' actions. In December 2001, the judge dismissed the remaining criminal counts.

FURTHER READINGS

- McChesney, Fred S. 1997. *Money for Nothing: Politicians, Rent Extraction, and Political Extortion*. Cambridge, Mass.: Univ of Harvard Press.
- Noonan, John Thomas. 1984. *Bribes*. New York: Macmillan.
- PBS: Online NewsHour. February 11, 1999. "IOC: Cleaning House." Available online at <www.pbs.org/newshour/bb/sports/jan-june99/olympics_2-11.html> (accessed June 6, 2003).

◆ BRICKELL, ROBERT COMAN

Robert Coman Brickell was born April 4, 1824, in Tuscumbia, Alabama. He was admitted to the bar in 1843, began his law practice in Huntsville, Alabama, in 1851, and soon became a respected name in the legal system of that state. He gained a reputation as a supporter of STATES' RIGHTS



and believed in secession from the Union prior to the onset of the Civil War.

In 1873, Brickell served as associate justice of the Supreme Court of Alabama. He was selected to act as chief justice of the Alabama Supreme Court in 1874, an appointment he again accepted in 1880. He held this office until 1884.

Brickell resumed his law practice in Alabama in 1884 but in 1894 returned to the bench of the Alabama Supreme Court. He died November 20, 1900, in Huntsville.

BRIDGES

Structures constructed over obstructions to highways or waterways, such as canals or rivers, in order to provide continuous and convenient passages for purposes of transportation. A bridge includes the necessary abutments and approaches that make it accessible. A public bridge that spans obstructions to a public highway is built on land owned by the state government for public use, while a private bridge is built on private property for the use of particular individuals who own it.

The construction of public bridges is a function of the state government by virtue of statute and is limited only by contractual or constitutional provisions. A state may exercise its power directly or delegate it to governmental agencies, such as a state highway commission. Cities and municipalities may erect bridges within their borders if authorized to do so by the state legislature. If a bridge is to be built within the borders of a state, the state has control of the project; but if the bridge connects two states, both states share involvement in the venture but must yield to the power of the federal government to supervise matters that have an effect on interstate commerce.

The state determines the location of a bridge subject to public safety and convenience considerations. It may grant a franchise (special privilege) to erect the bridge to a private bridge company that is chartered to build and maintain bridges. Such a corporation is considered a business affected with a public interest. A state agency may be organized to receive a franchise to construct a bridge.

The money needed to finance the construction of a bridge is usually raised by appropriations designed for the project—the sale of bonds pursuant to statute, special assessments, or taxation. The legislature decides whether construction expenses will be borne by the entire state or

apportioned among its various subdivisions. It may create special taxing districts to finance the project as long as the district receives a proportional benefit from the bridge. State taxes cannot be used to defray the expense of purely local bridge obligations.

A reasonable toll may be charged for using the bridge when authorized by statute. The revenue collected can be used for governmental purposes as well as for the operating and maintenance expenses of the bridge.

The duty to maintain and repair bridges rests with the government agency or private company charged with their operation and maintenance. Statutes frequently require warning signs on guardrails and bridge approaches to caution drivers against known dangers. Civil or criminal liability may be imposed for damages resulting from the failure to maintain a bridge properly. No liability generally exists, however, for any damages incurred by an adjoining landowner from NEGLIGENCE or other wrongful conduct in the construction or maintenance of a bridge by a municipality or government agency unless provided by statute.

A government entity is often shielded from liability for general harm to persons or property caused by negligent construction, repair, or maintenance of bridges under the theory of SOVEREIGN IMMUNITY pursuant to statute. For example, in the case of *Hansen v. State Dept. of Transportation*, 1998 S.D. 109 (1998), plaintiff Hansen was seriously injured after driving her vehicle into an unmarked construction hole on an interstate highway bridge. The South Dakota Supreme Court affirmed a lower court's decision to dismiss the case on the basis that sovereign immunity barred Hansen from suing the state's department of transportation. Many states have modified their immunity statutes to permit claims premised on gross negligence; others draw a distinction between ministerial (bound by judicial command) and discretionary duties, allowing claims only for negligence in the performance of ministerial duties or functions.

Private companies may be liable for harm if the law in the jurisdiction so provides. When a pedestrian bridge over Interstate Highway 29 in North Carolina collapsed in May 2000 at Lowe's Motor Speedway, 107 persons were injured. More than half filed suits, many naming as defendants the speedway, the bridge builder (a private corporation), and the maker of a grout substance that corroded the steel supporting the

bridge. As of early 2003, none of the cases had yet completed trial.

FURTHER READINGS

Levy, James. 2003. "Corporate Defendants in Lowe's Motor Speedway Collapse Blame One Another." *Charlotte Observer* (February 1).

BRIEF

A summary of the important points of a longer document. An abstract of a published judicial opinion prepared by a law student as part of an assignment in the CASE METHOD study of law. A written document drawn up by an attorney for a party in a lawsuit or by a party himself or herself appearing pro se that concisely states the following: (1) issues of a lawsuit; (2) facts that bring the parties to court; (3) relevant laws that can affect the subject of the dispute; and (4) arguments that explain how the law applies to the particular facts so that the case will be decided in the party's favor.

A brief may also contain a synopsis of the evidence and name the witnesses to be presented during the trial. Copies of briefs must be submitted to the court where the case will be heard and to the opposing party.

An appellate brief is a writing that must be filed with an appellate court so that the court may evaluate whether the decision of the lower court should be reversed because of some error or impropriety that occurred during the trial. A statement of the issues presented for review, a summary of how pertinent laws affect the facts, and a statement of the relief being requested are essential elements of an appellate brief. The appellee's brief will argue that the lower court acted properly in its judgment and request its affirmance, while the appellant's brief will attempt to convince the court to reverse or

vacate the lower court's judgment because it acted improperly.

See also the *Milestones in the Law* and *Appendix* volumes for examples.

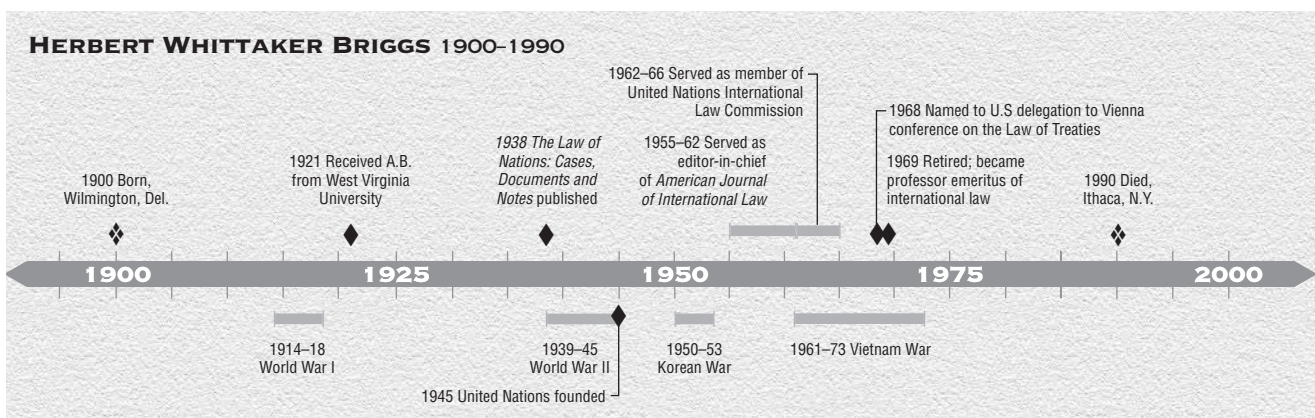
❖ BRIGGS, HERBERT WHITTAKER

Herbert Whittaker Briggs was a prominent figure in the field of INTERNATIONAL LAW where he made important contributions as a scholar and educator and served on the UNITED NATIONS International Law Commission.

Born in Wilmington, Delaware, in 1900, Briggs was one of a small group of American international lawyers in the twentieth century who did not hold a law degree. He received an A.B. from West Virginia University in Morgantown, West Virginia, in 1921 and a Ph.D. from Johns Hopkins University in Baltimore, Maryland, in 1925. Over the next four years, he studied international law in Brussels, Belgium, and at the Hague Academy of International Law; served as a research associate at the Foreign Policy Association; and taught at Oberlin College in Oberlin, Ohio, and at Johns Hopkins. In 1929, he joined the faculty at Cornell University in Ithaca, New York, where he remained until his retirement in 1969. At Cornell, Briggs taught international law, international organization, and international politics as a member of both the Department of Government and the law faculty.

Briggs had a distinguished career as a scholar and editor. His best-known work was *The Law of Nations: Cases, Documents and Notes* (first published in 1938), which became a standard text in international law courses throughout the country. In addition, he was the author of *The Doctrine of Continuous Voyage* (1926), *The*

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—HERBERT BRIGGS



International Law Commission (1965), two sets of lectures at the Hague Academy, and more than eighty articles on international law topics. Throughout most of his career, Briggs was closely associated with the *American Journal of International Law*, serving on the journal's board of editors from 1939 until his death and as editor in chief from 1955 to 1962. He was president of the American Society of International Law in 1959 and 1960.

In addition to his work as an educator and scholar, Briggs also had an active career as an international lawyer. From 1962 to 1966, he was a member of the United Nations International Law Commission. In 1968, he was named to the U.S. delegation to the Vienna Conference on the Law of Treaties. In addition, he served as counsel for Honduras, Spain, and Libya in four cases before the INTERNATIONAL COURT OF JUSTICE. He also served as counsel for Canada and Chile in international arbitral proceedings. In 1975, he was one of five persons appointed by the governments of Great Britain and France to serve as a court of ARBITRATION to delimit a portion of the continental shelf in the English Channel. Commenting on Brigg's career, Judge Stephen M. Schwebel of the International Court of Justice said that in all these activities "he was very much the advocate and architect of a more effective international law."

Briggs died January 6, 1990, in Ithaca.

BRIGHT LINE RULE

A judicial rule that helps resolve ambiguous issues by setting a basic standard that clarifies the AMBIGUITY and establishes a simple response.

The bright line rule exists to bring clarity to a law or regulation that could be read in two (or more) ways. Often a bright line is established when the need for a simple decision outweighs the need to weigh both sides of a particular issue.

In the case of *Knight v. Avon Products* 2003, SJC 08876, the Massachusetts Supreme Judicial Court established a bright line rule for AGE DISCRIMINATION. The plaintiff, who was over 40 years of age, was terminated from her position and claimed that her termination was the result of discrimination based on her age. The person who was hired to replace the plaintiff, however, was only 28 months younger. The defendant argued that the plaintiff's age played no role in the termination decision, adding that 28 months is an insignificant difference. A trial court disagreed, but the high court agreed with the

defendant. The court then went on to establish a bright line figure of five years or more for a valid age discrimination suit to be launched.

The court arrived at this figure because it realized that to do otherwise could leave employers open to lawsuits if they replaced a worker with someone who was only two years younger. To avoid endless argument, the five-year figure was established. If there was a pattern of discriminatory behavior toward an employee, it might be possible to see a two- or three-year difference as enough to tip the balance against that employee. In the general course of employment issues, however, the court felt that this particular bright line would set a useful guideline for both employees and employers.

In *Ohio v. Robinette* 519 U.S. 33, 117 S.Ct. 417, 136 L. Ed. 2d 347, 1996, the U.S. Supreme Court reversed a bright line rule established by the Ohio State Supreme Court. Robinette was stopped by a deputy sheriff for speeding. He complied with the deputy's instructions; he handed over his driver's license and stepped out of the car. A computer check of the license came up clean, and the deputy merely warned him not to speed again. Then he asked Robinette whether he had any drugs in his car. Robinette replied no and the deputy asked if he could search the car. Robinette agreed. The deputy found some marijuana and a pill that appeared to be a controlled substance, and he arrested Robinette.

Robinette pleaded no contest and was found guilty, but the Ohio Court of Appeals reversed his conviction because he had been unlawfully detained. The Ohio Supreme Court, citing the FOURTH AMENDMENT, agreed and established the bright line rule that claimed the police were required to tell a citizen he was free to go before they could obtain a voluntary search consent.

The U.S. Supreme Court reversed the decision, concluding that the Fourth Amendment had not been violated. Robinette had been lawfully detained for speeding, and the deputy had the right to ask him out of the car. As for the bright line rule, the Court rejected that as well. Under the Fourth Amendment, consent to a search must be voluntary, but being told one is free to go is not the sole criterion for determining whether the search is voluntary. Thus, the bright line established by the state court was not valid. Interestingly, one justice noted that the state court might have been able to establish a valid bright line rule if it had based the rule on state rather

than federal law, since states have the freedom to impose stricter restrictions on police activity than the federal government's restrictions.

The case of *Federal Election Commission v. Christian Action Network* 110 F. 3d. 1049 (4th Circuit 1997) upheld a bright line rule established earlier that protects free speech. The FEDERAL ELECTION COMMISSION sued the Christian Action Network for using its corporate funds to pay for a television commercial that attacked President BILL CLINTON and Vice President AL GORE for their support of GAY AND LESBIAN RIGHTS. Under the Federal Election Campaign Act of 1971, it is illegal for a corporation to use treasury funds to campaign for or against a specific presidential candidate. The U.S. Supreme Court later stated that to ensure the law did not violate free speech, it had to follow a bright line: As long as a corporation did not use certain words in its communications, those communications, were protected and lawful. The words include "vote for," "vote against," "cast your ballot," "defeat, reject," and "support."

None of the bright line words appeared in the Christian Action Network's commercial. It may have been unwelcome and, for many, offensive, but it did not violate any election campaign regulations. The bright line rules in this case were established to ensure that there would be no political CENSORSHIP. The Supreme Court differentiated between speech that advocated issues and speech that advocated election results.

FURTHER READINGS

O'Dell, Larry. 1996. "FEC Again Loses Case against Group That Ran Ads on Clinton." *Virginian Pilot Ledger-Star* (August 4).

Willing, Richard. 2000. "Police to Get Broader Authority on Stops." *USA Today* (January 13).

BRING SUIT

To initiate legal proceedings; to start an action for judicial relief.

Under federal and most state law, a suit is commenced upon the filing of the first paper, which is the complaint, with the court. STATUTES OF LIMITATIONS set forth time boundaries within which an action must be brought.

BROADCASTING

As a verb, to transmit programs or signals intended to be received by the public through radio, television, or similar means. As a noun, the

radio, television, or other program received by the public through the transmission.

In 1898 Guglielmo Marconi, a 24-year-old Italian, began the world's first commercial radio service. For citizens of the United States, radio—and later television—not only introduced an abundance of entertainment and information, it also raised many legal questions surrounding its implementation and regulation. In radio's earliest days, stations all broadcast at the same frequency; this situation posed problems because although some stations agreed to share their time, others attempted to broadcast stronger signals over those of their competitors. Problems continued even when stations began to broadcast on separate frequencies. Because broadcasting requires use of the airwaves for the transmission of its signals, and because the airwaves can carry only a limited number of signals, it soon became apparent that some form of regulation was necessary. In 1927, the Radio Act (47 U.S.C.A § 81 et seq.) became law and the Federal Radio Commission (FRC) was created to police the broadcasting industry. Two important tenets of broadcasting were introduced by the law. The first was that stations must broadcast "in the public interest, convenience, or necessity." The second was that the people, not the radio stations, owned the airwaves. In its efforts to see that the airwaves were used in the appropriate manner, government regulation faced obstacles as it attempted to ensure suitable government-funded programming, appropriate programming for children, and equal access to broadcasting for minorities. Additional challenges were created by changing technology as CABLE TELEVISION went underground and satellite television took to outer space.

The History of Radio

In its infancy, broadcasting was much less controversial. Experimental radio broadcasting began in 1910 when Lee De Forest produced a program from the Metropolitan Opera House in New York City. Other experimental radio stations were started at the University of Wisconsin in Madison in 1915 and another in Wilkinsburg, Pennsylvania, a suburb of Pittsburgh, in 1916.

Detroit radio station WWJ is considered the first commercial radio station in the United States. It began broadcasting on August 20, 1920. Pittsburgh station KDKA grew out of the Wilkinsburg experimental station. Its broadcast of the 1920 presidential election results on November 2, 1920, is generally considered to be

the beginning of professional broadcasting. Although fewer than one thousand receivers were tuned in, the excitement of the event created great publicity.

Stations soon started appearing in all parts of the United States. By the end of 1924, 583 radio stations were transmitting and more than 3 million receivers were tuned in. These stations transmitted radio signals using *amplitude modulation*, the abbreviation of the term becoming the general category AM radio. AM broadcasts can be received at great distances because the radio transmissions bounce off the atmosphere and reach beyond the curve of the earth. However, AM signals are affected by static, thus reducing sound fidelity.

Radio established itself as a national medium with the creation of the first radio network in 1926. In that year the National Broadcasting Company (NBC), led by David Sarnoff, head of its parent company, Radio Corporation of America, presented its first national broadcast. Radio stations around the country entered into contracts with NBC that allowed them to receive an audio feed through a telephone line, which was then broadcast by the station's radio transmitter. Apart from creating a national radio audience, NBC also introduced the financial cornerstone of commercial radio: networks and local stations would support themselves by selling advertising time. The success of NBC led to the creation of the Columbia Broadcasting System (CBS), led by William Paley.

The success of radio produced problems as well. There was competition for frequencies and increased transmission power. The strongest AM stations have a power of 50,000 watts. At this strength, a station can be heard at night up to 1,000 miles away. The least powerful AM stations operate at 250 watts, which usually limits their range to one or two towns. Unregulated growth of the radio industry led in 1934 to the passage of the Communications Act (40 U.S.C.A. § 791). This act created the **FEDERAL COMMUNICATIONS COMMISSION (FCC)**, which replaced the FRC. The FCC began regulating broadcasting content. In the 1930s it banned over-the-air advertisement of hard liquor and lotteries.

The period from 1925 to 1950 has been called the "Golden Age of Radio." During this period radio was a major source of family entertainment. Every night families would gather around the radio and listen to news, music,



comedies, and adventure dramas. Serialized stories aimed mainly at women, dubbed "soap operas," became popular. They were called soap operas because they were initially sponsored by soap companies. President **FRANKLIN ROOSEVELT** became the first president to understand the power of radio. He regularly conducted "fireside chats" over the radio between 1933 and 1945. These informal talks helped Roosevelt gain support for his policies.

The importance of radio as a national medium was reinforced during **WORLD WAR II**. Edward R. Murrow became a national figure when he broadcast from London during the early years of the war. Following the U.S. entrance into the war in December 1941, millions of Americans turned to the radio every day to hear the latest war news.

The popularity of radio continued into the late 1940s until the beginning of television signaled radio's rapid demise as the major source of home entertainment. The popularity of television was so great and so sudden that the FCC had to put a temporary freeze on the granting of licenses, as the number of available broadcast channels was limited. As soon as the freeze was lifted, radio began to lose advertisers to the new medium. Network radio was nearly dead by the early 1950s because all of its greatest stars had moved their programs to television. NBC and CBS quickly shifted their focus to the creation of television networks.

President Franklin Delano Roosevelt delivers a 1942 radio address, one of his numerous "fireside chats." The term was first used by a reporter to describe a Roosevelt radio address on May 7, 1933.

BETTMANN/CORBIS

Faced with this sudden change, AM radio developed new formats. Music stations began to specialize in top 40 hits in popular music, country music, and rhythm and blues music. By the 1990s, talk radio had become a popular and profitable format, making national celebrities of political commentator Rush Limbaugh and “shock jocks” Howard Stern and Don Imus. Stern and Imus received the shock jock designation as a result of their raunchy and outrageous behavior on the air. Pacifica challenged the FCC’s actions.

Radio broadcasting experienced new growth in the 1960s and 1970s with the licensing of many FM radio stations. FM stations transmit radio signals by *frequency modulation*, hence the initials, FM. FM waves do not travel as far as AM waves, but FM waves are not affected by static as much as AM waves. In addition, FM signals produce a much truer reproduction of sound. Since the late 1960s FM stations have had the ability of broadcasting in stereo. This development was a factor in the growth of the popularity of FM stations. Music from records and compact disks can be transmitted in high fidelity.

Despite the dominance of television, radio continues to play a major role in broadcasting. More than 10,000 radio stations were broadcasting in the United States in 1995.

As of 2003, the FCC was continuing to serve numerous roles in the radio broadcasting industry. It processes license applications, assigns frequencies and call signs, conducts hearings, enforces regulations, licenses radio operators, and carries out the provisions of the Communications Act.

The U.S. Supreme Court has upheld the FCC’s right to police the airwaves for obscene material. In *Federal Communications Commission v. Pacifica Foundation*, 438 U.S. 726, 98 S. Ct. 3026, L. Ed. 2d 1073 (1978), a New York radio station owned by the Pacifica Foundation broadcast comedian George Carlin’s monologue on the “seven dirty words you can’t say on the radio.” When a listener complained to the FCC that he had heard the monologue in his car while his young son was present, the FCC investigated. Although it imposed no formal sanction, the FCC indicated that the complaint would be placed in the station’s license file. If any subsequent complaints were received, the commission stated that it would then decide whether any sanctions would be applied. One potential sanction was the loss of the station’s

license, when it came up for renewal in three years.

Justice JOHN PAUL STEVENS, writing for the majority, noted that the “broadcast media have established a uniquely pervasive presence in the lives of all Americans.” Offensive material over the airwaves “confronts the citizen, not only in public, but also in the privacy of the home, where individuals’ right to be left alone plainly outweighs the FIRST AMENDMENT rights of an intruder.” In addition, broadcasting is “uniquely accessible to children, even those too young to read.” Thus, the Court ruled that the FCC had the constitutional right to take the action it did.

In 1987 the FCC demonstrated its continuing interest in preventing the radio broadcast of indecent or obscene language when it threatened not to renew the licenses of several radio stations in New York and California that were engaged in “shock radio.” The talk programs, including one by Howard Stern, were intentionally controversial and given to large doses of profanity and sexual innuendo. Although the FCC’s threats made headlines, there was little talk of challenging the agency’s regulations.

The FCC had a hand in the growth of political talk radio shows such as Rush Limbaugh’s when it repealed the “fairness doctrine” in 1987. Since 1934, the FCC had required broadcasters to devote a reasonable proportion of their airtime to discussion of important public issues. Until 1987, the FCC had interpreted this doctrine to require broadcasters who ran editorials that criticized specific persons to provide notice to the persons involved and airtime for rebuttal.

The Supreme Court upheld the FAIRNESS DOCTRINE as a reasonable balance between the public interest in hearing various points of view and the broadcaster’s interests in free expression. *Red Lion Broadcasting Co. v. Federal Communications Commission*, 395 U.S. 367, 89 S. Ct. 1794, 23 L. Ed. 2d 371 (1969). Nevertheless, the doctrine remained controversial until its repeal. Freed from this doctrine, radio show hosts such as Limbaugh were free to criticize public figures without having to give the person airtime to respond.

Although a radio license is considered property, a license does not have a constitutional right to a radio license, nor does a licensee obtain a vested interest in any frequency. The FCC continues to consider all applications for a licensee to use a radio frequency. Both new

applicants and applicants seeking to renew their licenses must demonstrate to the FCC that the issuance or renewal of the license will serve the public interest.

Congress has retained the right, through the FCC, to deny licenses or to eliminate existing radio stations. The FCC may eliminate a station upon a showing that the station engaged in misconduct, such as attempts to bribe an official of the FCC. The commission may also eliminate stations in order to allocate licenses fairly and equitably, as well as for considerations related to wavelengths, times of operation, and the relative power of stations among various states.

The History of Television

In 1928, General Electric (GE) displayed the first presentation on a television, but it was quite some time before the invention became a practical reality. The 1930s brought an excitement to those conducting experiments on the new technology. They predicted that television would be as much a part of the life of the United States as radio had become.

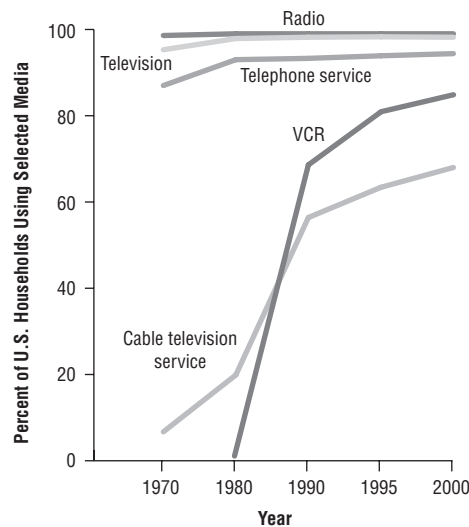
In 1939, the National Broadcasting Company (NBC) brought television to the world during the New York World's Fair, and on February 1, 1940, it conducted the first official network television broadcast in the United States. In 1941, the FCC officially authorized commercial television, transferred television sound from AM to FM, and increased the resolution standards for broadcasts. By 1948, a total of 36 television stations were broadcasting and over 1 million television sets were receiving. So many applications for new stations were coming in to the FCC that a freeze on requests was instituted. In 1952, the freeze was lifted and 70 *ultrahigh-frequency* (UHF) channels were added to those already available. By 1953, nearly 400 stations were providing coverage to nearly 90 percent of the United States; no medium in history could compare to television in its record-breaking implementation.

The Future of Radio and Television

As the popularity of television and radio continues to grow, controversy and concern continue to surround their implementation and worth. Issues range from government regulation to suitable or ethical content. The future of the broadcast industry is in the hands of the courts and the government as they seek to determine the best possible means of making the broadcast

Broadcasting

USE OF BROADCAST MEDIA, 1970 TO 2000



SOURCE: U.S. Bureau of the Census, *Statistical Abstract of the United States*, 2002.

media serve the needs of the society that has grown to depend on them.

Cable Television

Communications technology advanced again when cable television joined traditional broadcast radio and television. Cable television, or community antenna television (CATV), provides a means for otherwise inaccessible areas to receive broadcast signals that are in some way impeded. The FCC claimed authority over the regulation of cable television in 1966. The claim of this authority was challenged, but in 1968, it was upheld by the Supreme Court (*United States v. Southwestern Cable Co.*, 392 U.S. 157, 88 S. Ct. 1994, 20 L. Ed. 2d 1001).

Dealing with cable television has proved to be controversial. The standards that were originally established in the Communications Act apply to broadcast television; cable television is not broadcast across the airwaves—it is transmitted through coaxial cable that may be able to carry over 200 channels. Because of this fact, some argue that cable television should be treated more like print media such as newspapers and magazines, than like broadcast television. Since cable operators select the channels that they carry, they argue that they should be treated as “electronic publishers.”

Such distinctions are significant because the U.S. Supreme Court has held that the First Amendment will tolerate more government regulation of the broadcast media than of the print media because the physical capacity of the airwaves is limited and cannot accommodate all the existing demand (*FCC v. National Citizens Committee for Broadcasting*, 436 U.S. 775, 98 S. Ct. 2096, 56 L. Ed. 2d 697 [1978]). In other words, without regulation, the competing voices on the airwaves would drown each other out.

In one form or another, government regulation is involved in two issues concerning cable television. One issue is whether cities may limit access to all or part of their territory to a single cable supplier. Many cities have granted what are essentially **MONOPOLY** franchises, and this practice has been challenged by cable suppliers who argue that disallowing them a franchise interferes with their free speech rights.

The cable franchise system that exists for cable operators was approved by Congress in 1984 in the Cable Communications Policy Act (15 U.S.C.A. § 21; 18 U.S.C.A. § 2511; 46 U.S.C.A. §§ 484–487; 47 U.S.C.A. § 35 et seq.). This act attempted to balance the interests of cable operators, who wanted less regulation, with the public-policy concerns of the cities, which wanted guarantees that poorer neighborhoods would be wired for cable and that educational and government programming would not be neglected.

Under 47 U.S.C.A. §§ 541–543, a franchising authority—usually a city or county—may award one or more franchises within its jurisdiction; in practice, most have chosen one. Franchising authorities are authorized to require cable operators to reserve channel space for public, educational, and government use. Operators may also be required to make space available for lease for commercial use by persons not affiliated with the operator.

This system of franchising has been attacked from both sides. Some operators have become upset when their applications for franchises were denied in areas where other operators had established franchises. The public has also been concerned over the monopolistic nature of cable operators. Arguments often revolve around the issue of cable rates; competition among cable operators, it is argued, would also lead to competitive pricing of services. Despite this argument, very few franchising authorities choose to offer more than a single cable operator to an area's residents.

The second issue surrounding the regulation of cable television is whether the FCC's "must-carry" rules, which require a cable operator to carry all local television stations, violate the First Amendment. The must-carry rules were instituted in an effort to ensure that cable television would not undermine the financial viability of free community-oriented television by attracting so many viewers away from local broadcast television stations that the advertising revenues of those stations would plummet. In 1984, a federal appeals court held that the must-carry rules violated the First Amendment (*Quincy Cable TV v. FCC*, 768 F.2d 1434 [D.C. Cir. 1985]). The Supreme Court denied review of the case, and the FCC eliminated the must-carry rules.

The must-carry rules were problematic for one main reason: although most cable operators have the ability to carry many hundreds of channels, some can carry only a dozen. Requiring the latter to carry all local stations severely limited their ability to attract subscribers. Operators also argued that being forced to carry all local broadcasts caused cable systems to become saturated and deprived cable programmers of opportunities to sell their services.

Satellite Broadcasting

The new technology of direct-broadcast satellite television is replacing transmission over the airwaves with transmission by satellite signals beamed to the home from space. Like cable television, despite its separation from conventional airwave broadcasting, the new technology has generated legal controversy.

To maintain constant, direct contact between itself and the recipients of its signals, a satellite must hold a *geostationary orbit* directly above Earth's equator at an altitude of 22,300 miles. (A geostationary orbit is an orbit that keeps the satellite's position fixed with respect to Earth.) The controversy surrounding satellite broadcasting comes not from any limit on the number of signals it can send but instead from the physical limitation of these geostationary orbits.

The world saw its first geostationary satellite launched by the United States in 1963; as of 1992, the United States had 30 geostationary satellites orbiting Earth. By the mid-1980s, the United States and other developed countries were quickly filling the equatorial orbit with satellites. Many developing countries feared that by the time they had developed the technology

to put up their own satellites, the zone of geostationary orbit in space would be filled and they would be forced to buy broadcast time from countries owning satellites that were already in orbit. In 1985, the International Telecommunication Union (ITU), an agency of the UNITED NATIONS, established new procedures that would represent the interests of these developing countries.

The ITU originally established a first-come, first-serve policy regarding the assignment of geostationary orbits. The World Administrative Radio Conference of 1985 upheld the continuation of this policy but also voted to guarantee at least one geostationary orbit to each country that was a member of the ITU. The decisions of the 1985 conference were finalized by another session in 1988. Although these decisions supported the interests of the United States in part—it could continue filling geostationary orbits—they caused concern for the FCC. The satellite technology of the United States would not, after all, be allowed to grow unchecked. Orbits that the United States had once assumed would be its to use were reallocated to other countries. The decisions of the World Administrative Radio Conferences of the 1980s gave the FCC even greater cause for regulating the broadcast industry within the United States and for being more selective about who is granted geostationary orbits and a piece of a broadcast industry that by the year 2000 was expected to bring in more than \$10 billion annually.

Public Broadcasting

Besides investigating developing technologies, the government and the FCC find themselves revisiting issues that have received attention from Congress, the broadcasting industry, and the public. One such issue is public television.

The Corporation for Public Broadcasting (CPB) was established in 1967 as the official, nongovernment allocator of federal money to public television and radio stations across the United States. In 1992, less than 30 years after its creation, the corporation became a political issue for conservatives who objected to the content and perceived philosophy of public programming and to its partial reliance on U.S. tax dollars.

The attacks began after the House of Representatives approved a bill in December 1991 that would increase spending for the corporation

from \$825 million to \$1.1 billion in a three-year period (H.R. Res. 2977, 102d Congress, 1st Sess. [1991]). (The bill was also passed by the Senate and signed into law in August 1992.) Political conservatives claimed that public broadcasting had a liberal bias, a bloated budget, and offensive programming. Complaints ranged from protests about two frank Public Broadcasting Service (PBS) specials on homosexuality, *Tongues Untied* and *The Lost Language of the Cranes*, to a claim that the Children's Television Network program *Sesame Street* was educationally ineffective and no better than network cartoons.

Public broadcasting claimed that without federal funding through the CPB, its more than 1,000 television and radio stations would cease to exist. Most experts agree that this is not true. Only 14 percent of the operating costs for public broadcasting is supplied by the federal government; the remainder comes from corporations, member donations, and other sources. In 1995, the CPB allocated \$285.6 million to public broadcasting, and since 1968, Congress has budgeted more than \$4 billion to that concern. Yet, if these funds were cut off, public broadcasting, although wounded, probably would survive. Polls showed that most people like public television and want it to continue, but as opposition gathers in Congress and the Senate, it appears that if public broadcasting is to continue, it may have to do so without federal funding.

Children

There are other concerns surrounding children and television than whether Big Bird can make it without federal support. Radio and television reach no audience more impressionable than a country's youth, and many controversies surround the exposure of children to sex and violence on television.

Another perennial issue of concern for parents and others is the amount of exposure children have to television; time spent in front of the television might be better spent exercising the body and the mind. It is frequently argued that not enough educational programming is available to children. Since the inception of broadcast programming, education has always been considered an important aspect of it. The Children's Television Act (47 U.S.C.A. § 303a et seq.) was enacted in 1990 in an effort to put more educational programming on television. The response of broadcasters has been sluggish, prompting a

harsh hearing before Congress in 1993. Despite this legislation, some maintain that next to nothing has been done to remedy the quality of children's television, which House Telecommunications Subcommittee chairman Edward J. Markey (D-MA) referred to as "the video equivalent of a Twinkie."

Minorities

As of 1978, only one percent of all radio and television stations in the United States were run by minorities. In an attempt to diversify broadcasting, the FCC adopted rules that year giving preferential treatment to minorities regarding applications for new station licenses and in taking over failed stations (47 U.S.C.A. § 309). During the Reagan administration, this reform was nearly killed, but Congress saved it. Again, during the GEORGE H. W. BUSH administration, an attempt to stop the FCC was launched, this time when the JUSTICE DEPARTMENT asked the Supreme Court to rule against the new FCC guidelines. The effort to block reform met its final failure in 1990, when the Supreme Court ruled 5 to 4 to uphold the constitutionality of race-based licensing. The Court held that such AFFIRMATIVE ACTION is allowable in the broadcasting market if its purpose is to "serve important governmental objectives" (*Metro Broadcasting, Inc. v. F.C.C.*, 497 U.S. 547, 110 S. Ct. 2997, 111 L. Ed. 2d 445). Still, in 1990, fewer than five percent of all radio and television licenses were held by minorities.

Equal opportunity employment has also become a very important consideration in the process of renewing broadcasting licenses. The National Association for the Advancement of Colored People (NAACP) reviews all applications closely to ensure that radio and television stations have provided an opportunity for the employment of minority groups. If any party, such as the NAACP, calls into question the practices of a station, a petition to deny can be filed. If the station cannot provide proof of compliance with equal opportunity standards, it can be denied renewal of its license.

Telecommunications Act of 1996

Congress overhauled the telecommunications industry in 1996 with the enactment of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (47 U.S.C.A. §§151 et seq.). This statute made a number of major changes to laws governing the telecommunications industry. Among these were deregulatory measures,

including provisions allowing local phone companies, long-distance companies, and cable companies to compete over the same services. Another provision requires television manufacturers to include circuitry that allows parents to screen out programming they do not wish their children to view, such as programs featuring violence.

Congress intended for the act to facilitate competition in a variety of areas of the telecommunications market. Several of its provisions have failed. Rival telecommunications companies did not immediately enter each other's markets, so consumers did not receive cost-savings benefits caused by the competition. FCC deregulation rules, according to many commentators, have been obscure and ineffective, leading to several court challenges. Many of the problems have involved local and long-distance telephone companies, some of which have begun to offer "package" deals with local telephone use, long-distance plans, and INTERNET access. Nevertheless, the telecommunications industry between 2000 and 2003 has been in economic turmoil, with several companies ordering massive layoffs or filing for BANKRUPTCY.

The Telecommunications Act of 1996 has also been the subject of several court challenges. Title V of the Telecommunications Act, the Communications Decency Act of 1996, sought to protect minors from exposure to indecent materials transmitted over the Internet. The Supreme Court, in a highly debated case, struck down most of those provisions on First Amendment grounds in *Reno v. American Civil Liberties Union*, 521 U.S. 844, 117 S. Ct. 2329, 138 L. Ed. 2d 874 (1997). The Telecommunications Act also included so-called "signal bleed" provisions, requiring cable operators either to scramble channels containing sexually explicit materials or to limit programming on these channels to certain hours. The Supreme Court likewise struck down these requirements as impermissible content-based restrictions in violation of the First Amendment in *United States v. Playboy Entertainment Group, Inc.*, 529 U.S. 803, 120 S. Ct. 1878, 146 L. Ed. 2d 865 (2000).

FURTHER READINGS

- Carter, T. Barton et al. 2000. *Mass Communications Law in a Nutshell*. 5th ed. St. Paul, Minn.: West.
- Flint, Joe. 1993. "Congress' Message to Broadcasters: Get Your Children's Act Together (House Telecommunications Subcommittee Hearings)." *Broadcasting and Cable* (March 15).

Jessell, Harry A. 1995. "Compliance Pays Off at License Renewal Time, Lawyers Say." *Broadcasting and Cable* (April 17).

———. 1990. "FCC Begins to Implement Children's TV Law (Federal Communications Commission on Children's Television)." *Broadcasting and Cable* (October 29).

Lively, Donald. E. et al. 1997. *Communications Law: Media, Entertainment, and Regulation*. Cincinnati, Ohio: Anderson.

Straubel, Michael S. 1992. "Telecommunication Satellites and Market Forces: How Should the Geostationary Orbit Be Regulated by the FCC?" *North Carolina Journal of International Law and Commercial Regulation* 17 (winter).

CROSS-REFERENCES

American Civil Liberties Union; Cable Television; Censorship; Courtroom Television Network; Fairness Doctrine; Federal Communications Commission; First Amendment; Freedom of Speech; Mass Communications Law; Telecommunications; Television.

❖ BROADHEAD, JAMES OVERTON

James Overton Broadhead was born May 29, 1819, in Charlottesville, Virginia. He attended the University of Virginia from 1835 to 1836, studied law in St. Louis, Missouri, and received his license and established his law practice in Bowling Green, Missouri, in 1842.

In 1845, Broadhead began his political career as a member of the Missouri Constitutional Convention. In the following year he participated in the Missouri House of Representatives, and in 1850 became a member of the Missouri Senate, serving until 1853.

Broadhead returned to the PRACTICE OF LAW, becoming a partner in a St. Louis firm in 1859.

During the pre-Civil War era, Broadhead participated in activities that opposed the Southern cause. He was instrumental in the for-

mation of the Committee of Safety, which restricted the influence of pro-Southern factions in St. Louis, and in 1861 was a member of the Missouri Constitutional Convention, which declared the loyalty of Missouri to the Union.

In 1875, Broadhead attended the Missouri State Constitutional Convention, and in 1876, he gained prominence as government counsel for the Whiskey Ring cases, which involved **BRIBERY** and dishonesty in the collection of exorbitant liquor taxes.

From 1883 to 1885, Broadhead represented Missouri in the United States House of Representatives, and was a member of the Judiciary Committee. During his later years, he served abroad, acting first as special commissioner to France in 1885, and later as minister to Switzerland for a two-year period.

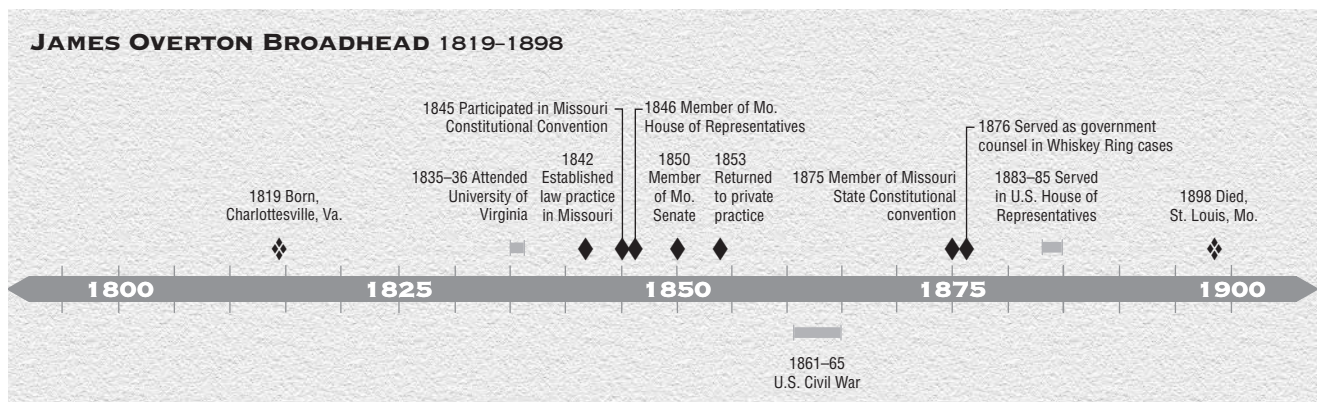
Broadhead died August 7, 1898, in St. Louis.

"IF EVERY ...
AMERICAN CITIZEN
WOULD PERFORM
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WOULD BE NO
OCCASION OF
INVOKING THE
STRONG ARM OF
ARBITRARY POWER
TO PROTECT A
PERSON OR HIS
PROPERTY."
—JAMES
BROADHEAD

BROKER

An individual or firm employed by others to plan and organize sales or negotiate contracts for a commission.

A broker's function is to arrange contracts for property in which he or she has no personal interest, possession, or concern. The broker is an intermediary or negotiator in the contracting of any type of bargain, acting as an agent for parties who wish to buy or sell stocks, bonds, real or **PERSONAL PROPERTY**, commodities, or services. Rules applicable to agency are generally relevant to most transactions involving brokers. The client is considered the principal and the broker acts as the client's agent. An agent's powers generally extend beyond those of a broker. A distinguishing feature between an agent and a broker is that a broker acts as a middleperson. When a



broker arranges a sale, he or she is an agent of both parties.

In order to determine whether or not an individual is acting as a broker in a transaction, the type of services that are performed must be examined.

Types of Brokers

There are several kinds of brokers, each of whom deals in specific types of transactions.

A bill-and-note broker negotiates the buying and selling of bills of exchange and promissory notes.

A commercial or merchandise broker is an individual who works with buyers and sellers by negotiating between them in the buying and selling of goods, without having personal custody of the property. He or she offers services on a commission basis to manufacturers as a sales representative for their product. Such a broker has no control or possession of the product that is sent directly to the buyer; he or she merely acts as a middleperson in all transactions.

An insurance broker acts as an intermediary between the insurer and the insured and is distinguishable from an insurance agent. While an insurance agent is employed by, and represents, a particular insurance company, an insurance broker is a representative of the insured only. An insurance agent is bound by company rules and responsibilities, whereas an insurance broker's only duty is to aid a client. He or she owes no obligation to any company.

Real estate brokers or agents are hired to transact the buying and selling, lease, or rental of real property on a commission basis. They can also be involved with the purchase and sale of lands, and the acquisition of mortgages for others. They may also counsel and advise people who wish to buy or sell real estate.

Stockbrokers buy and sell shares in corporations and deal in corporation stock and in other SECURITIES. A stockbroker's functions are generally broader than those of other brokers. As more than a mere negotiator, he or she makes a purchase in his or her own name and ordinarily pays the purchase price. A stockbroker is often responsible for the possession of the securities with which he or she deals. Conversely, an ordinary broker neither has title to, nor possession of, property that is being purchased or sold. As stockbrokers serve in a greater capacity, their responsibilities also extend beyond those of ordinary brokers.

Regulation and Conduct of Business

The business or occupation of a broker may be regulated by the state under its POLICE POWER. A MUNICIPAL CORPORATION has the power to regulate brokers who function within its boundaries if authority to do so is granted by the state.

In order for a broker to engage in business, he or she is generally required to acquire a license and pay a fee. Brokers who conduct business without a license can be fined by state licensing authorities. In some states it is illegal for any person other than a licensed broker to be paid for services concerning real estate transactions.

Laws exist that impose a license tax on brokers. Within the meaning of such laws, any individual who regularly works as a middleperson or negotiates business transactions for the benefit of others is ordinarily considered a broker. It has been held by a federal court that a statute requiring brokers to obtain a license was only applicable to those people regularly employed as brokers. An individual only casually involved in brokerage through the arrangement of only a few sales would not be considered to be engaged in the business of brokerage.

Revocation of License The state's concerns regarding brokers extend beyond initial licensing to the establishment of conditions for the maintenance of a license. The state may provide for the revocation or suspension of brokers' licenses for reasonable grounds.

The power to revoke a license may be vested in a specially designated commission that exists primarily to hear complaints about the fraudulent practices of brokers. Such proceedings are ordinarily informal, and technical court rules generally are not observed.

During a hearing, the commission is presented with evidence relating to the broker's conduct and must consider whether such conduct warrants denial of the privilege to engage freely in business.

Grounds for revocation of a license are generally based upon FRAUD, dishonesty, incompetence, or bad faith in dealing with the public. A real estate broker's license may be revoked or suspended because of MISREPRESENTATION used to effect a purchase or sale. Generally, the conduct of a broker in negotiating a real estate transaction on behalf of his or her principal is subject to strict fraud and deceit standards, equal to those imposed on his or her principal. It has been held by some courts that the failure

of a broker to disclose material facts within his or her knowledge will create liability. Within the meaning of fraud is the pretense of knowledge on the part of the broker while executing a real estate transaction where no knowledge actually exists—for example, while selling a house a broker states that there are no concealed defects in the house, although he or she does not actually know if such defects exist.

A real estate broker's license may be suspended or revoked if duties are performed unlawfully. In addition, a broker's license can be revoked or suspended if a broker is guilty of **RACIAL DISCRIMINATION** in the selling and leasing of property.

Stockbrokers may be liable for various unethical activities, such as churning, which is the unnecessary trading of stocks to gain additional commissions. A **CONSUMER PROTECTION** organization, the Securities Investor Protection Corporation (SIPC), has been established by Congress to aid customers of securities concerns that go out of business.

Bonds State regulations usually require that brokers, especially those engaged in the real estate business, deliver a bond to insure faithful performance of their duties. The liability of the surety guaranteeing such a bond extends only to transactions that arise during the normal course of the broker's business and that are intended to be included in the bond.

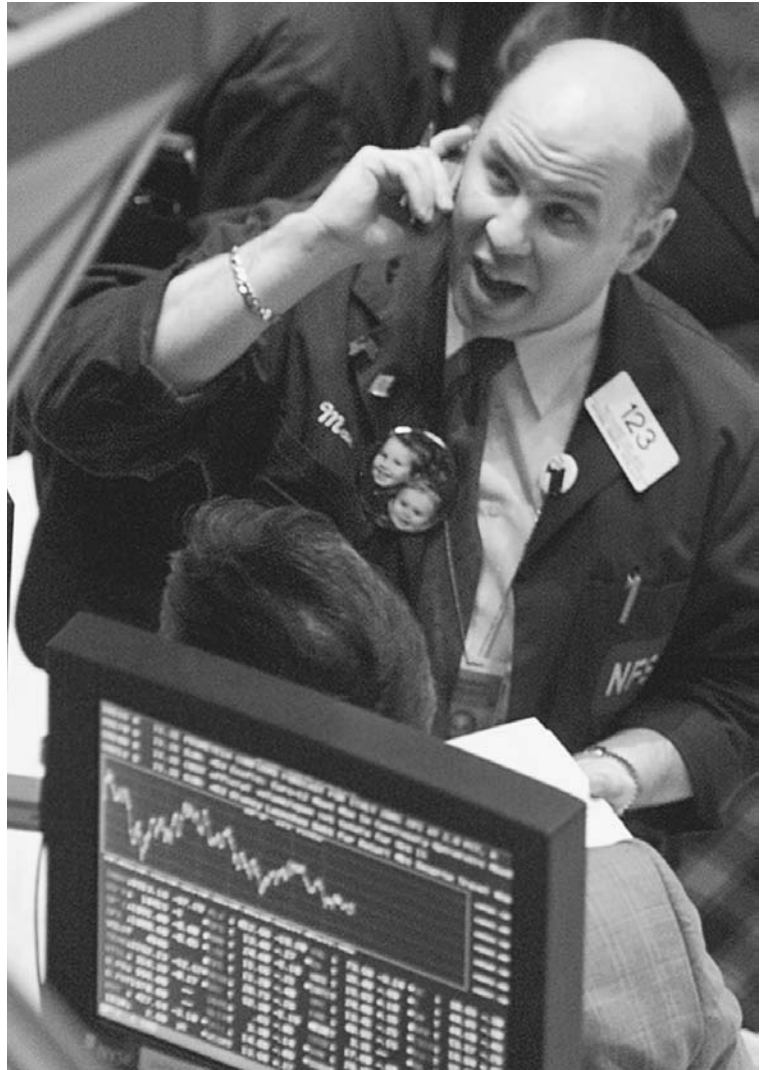
Commissions A broker is ordinarily compensated for services by the payment of a commission, based upon a portion of the value of the property in a particular transaction.

Generally, a commission is earned when negotiations between a buyer and seller are completed, and an agreement is reached. It is customary for a broker to deduct and reserve the amount of commission from funds obtained by him or her for a client. The ordinary basis for the calculation of a percentage commission is the total sale price of whatever is sold.

In order for a broker to be entitled to a commission, a sale must be completed for which the broker has been employed.

The broker's right to a commission is not dependent upon the finalization of the transaction unless otherwise agreed upon by the broker and by his or her client.

The compensation of a broker is based upon procurement of a client who is willing and able to purchase. The specific terms of the transaction must be satisfactory to the broker's client.



Of paramount importance is the prospective buyer's ability to provide the required funds at the suitable time. A broker who has properly performed his or her duties should not be denied a commission due to a failure by the parties to consummate the deal.

In the absence of any agreement to be employed by a client, a broker is not to be compensated for voluntary services. Similarly, compensation is not due a broker when a sale is made by an owner after the broker-client relationship has been terminated. A common type of termination is the expiration of a real estate listing. This rule against the payment of a commission is absolute—regardless of whether or not the sale is made to an individual whom the broker initially produced—provided the broker was given ample opportunity to complete the

A broker, such as this man buying and selling stocks on the New York Stock Exchange trading floor, acts as an intermediary in the contracting of any type of bargain.

AP/WIDE WORLD
PHOTOS

transaction and failed to do so. Once a broker has earned his or her commission, a client may not terminate the relationship and complete the transaction himself or herself in order to avoid paying the broker.

Any fraudulent misrepresentations or evidence of bad faith on the part of the broker will defeat his or her right to a commission. Mere NEGLIGENCE in the execution of duties, in the absence of bad faith, does not automatically defeat a broker's right to compensation.

Future Roles of Brokers

Technology affected the roles of practically all types of brokers. Probably the most significant developments have been related to communications, as new technologies have allowed brokers to communicate with their clients in a variety of means, thus enhancing the ability of the brokers to serve their clients' interests. Some changes were different methods in day-to-day communications, such as the common use of E-MAIL and fax machines. The rise in INTERNET usage in the 1990s also caused a number of changes, as registered brokers began to serve as online customer service representatives for prospective buyers. Economic problems in the early 2000s slowed the development of the role of the broker, but as new technologies continue to develop, the role of the broker was expected to continue to evolve.

FURTHER READINGS

- Hazen, Thomas Lee. 2003. *Broker-Dealer Regulation in a Nutshell*. St. Paul, Minn.: West.
- Waller, Mark L. 1999. *Selecting and Working with a Broker*. College Station: Texas Agricultural Extension Center.

CROSS-REFERENCES

Contracts; Fraud; Insured; Insurer; License; Principal; Securities.

BROOKINGS INSTITUTION

Founded in 1927, the Brookings Institution is a nonpartisan organization dedicated to research, education, and publication in the fields of economics, foreign policy, and government. It states as its principal purposes: "to aid in the development of sound public policies and to promote public understanding of issues of national importance."

Brookings maintains a 55,000-volume library. It is organized into the following divisions: Advanced Study, Economic Studies, Foreign Policy Studies, Governmental Studies (which includes some legal studies), Foreign Policy Studies, Governmental Studies, Publications, and a Social Science Computation Center.

The institution publishes the *Brookings Bulletin* (quarterly), the *Brookings Papers on Economic Activity* (twice a year), and an *Annual Report*. It also publishes its extensive research in books and reprints.

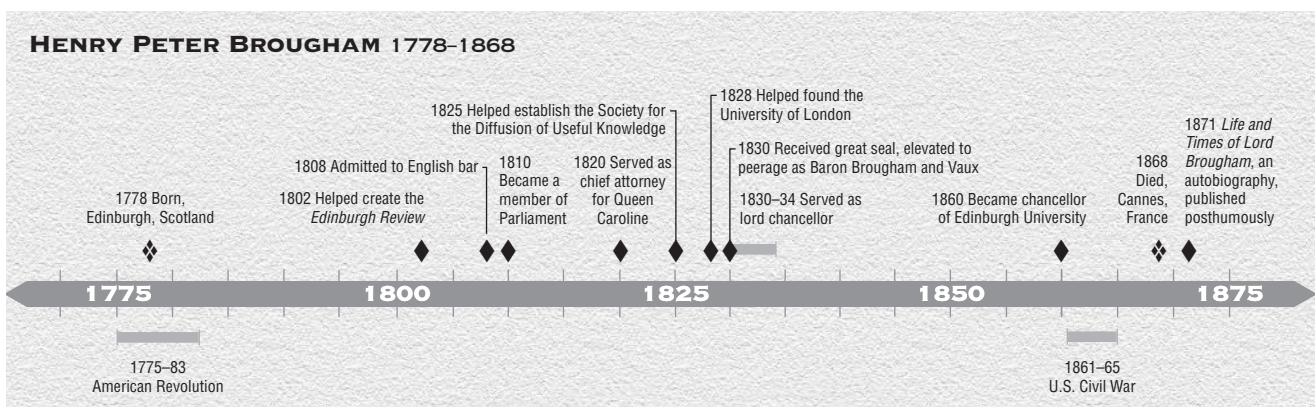
❖ BROUGHAM, HENRY PETER

Henry Peter Brougham, also known as Baron Brougham and Vaux, achieved prominence as a lawyer and statesman.

Brougham was born September 18, 1778, in Edinburgh, Scotland. In 1802, Brougham was instrumental in the creation of the publication the *Edinburgh Review*. He subsequently relocated to London and was admitted to the English bar in 1808. He became a member of Parliament in 1810, where he voiced his opposition to SLAVERY and trade restrictions.

Brougham gained fame in 1820 as chief attorney for Queen Caroline, also known as Caroline of Brunswick. Caroline had married George, Prince of Wales, in 1795, and after giv-

"ALTHOUGH THE PEOPLE MUST BE THE SOURCE OF THEIR OWN IMPROVEMENT, THEY MAY BE AIDED IN THEIR EFFORTS TO INSTRUCT THEMSELVES."
—HENRY BROUGHAM





Henry Peter Brougham. LIBRARY OF CONGRESS

ing birth to a daughter, they separated, and Caroline lived alone. In 1806, she was accused of giving birth to an illegitimate child, but was found innocent by an inquiry commission. George became king in 1820, and Caroline demanded her place as his queen. Caroline was sued for **DIVORCE** on grounds of **ADULTERY**, and the case was taken to the House of Lords; Brougham served as her attorney, and the charges were eventually dropped.

A leader in the field of educational reform, Brougham participated in the establishment of the Society for the Diffusion of Useful Knowledge in 1825, and of the University of London in 1828.

From 1830 to 1834, Brougham served as Lord Chancellor and drafted numerous legal reforms and helped to institute the central criminal court. He died May 7, 1868, in Cannes, France.

❖ **BROWN, ADDISON**

Addison Brown gained prominence as a jurist, botanist, and author.

He was born February 21, 1830, in West Newbury, Massachusetts. In 1855, Brown was admitted to the New York bar. From 1881 to 1901, he performed the duties of district judge for the Southern District of New York.

A respected name in the field of botany, Brown acted as one of the founders of the New York Botanical Garden in 1891.

From 1896 to 1898, Brown co-authored three volumes of botanical research with Nathaniel L. Britton. The series was titled *Illustrated Flora of the Northern United States, Canada and the British Possessions*.

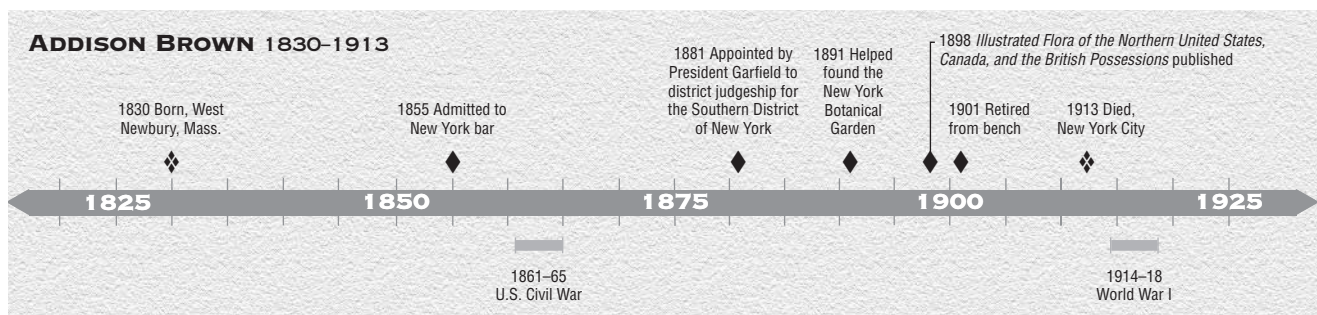
Brown died April 9, 1913, in New York City.

❖ **BROWN, HENRY BILLINGS**

Henry Billings Brown was an associate justice of the Supreme Court from 1890 to 1906.

Born to a wealthy family on March 2, 1836, at South Lee, Massachusetts, Brown attended private schools as a child. His father, a prosperous merchant and manufacturer, saw to it that Brown attended Yale University, where he graduated in 1856. After graduation, Brown traveled in Europe for a year, then returned to study law at Yale and Harvard. In 1859 he moved to Detroit and in 1860 he was admitted to the Wayne County bar in Michigan.

Brown was appointed deputy U.S. marshal in 1861. Detroit at that time was a bustling Great Lakes port, and he became involved in the many commercial and maritime legal disputes that arose. Two years later, he was named assistant U.S. attorney for the Eastern District of Michigan. He held this post until May 1868 when he was appointed to fill a short-term vacancy on the Wayne County Circuit Court.



Henry Billings
Brown.

THE GRANGER
COLLECTION, NEW
YORK



"THE UNDERLYING FALLACY OF THE PLAINTIFF'S ARGUMENT [RESTS] IN THE ASSUMPTION THAT THE ENFORCED SEPARATION OF THE TWO RACES STAMPS THE COLORED RACE WITH A BADGE OF INFERIORITY."
—HENRY BROWN

Recognized as the leading authority on ADMIRALTY LAW and maritime law, Brown lectured on the subjects at the University of Michigan Law School, and compiled and published *Brown's Admiralty Reports*. In 1890 President BENJAMIN H. HARRISON appointed him to the U.S. Supreme Court. As a Court member, Brown gained a reputation as a moderate but was a staunch defender of property rights. He was reluctant to extend constitutional protection in CRIMINAL PROCEDURE and civil liberties disputes, and concurred with the majority in *LOCHNER V. NEW YORK*, 198 U.S. 45, 25 S. Ct. 539, 49 L. Ed. 937 (1905), which struck down a statute calling for maximum work hours for bakers. *Lochner* was consistent with Brown's

unwillingness to allow governmental interference with contractual freedom.

Brown also concurred in the so-called *Insular* cases, which held that residents of U.S. territories such as Puerto Rico are not entitled to constitutional protections. However, he departed somewhat from his usual strict adherence to judicial precedence when he voted to uphold the federal INCOME TAX in *POLLOCK V. FARMERS' LOAN & TRUST CO.*, 158 U.S. 601, 15 S. Ct. 912, 39 L. Ed. 1108 (1895).

Brown is perhaps best remembered as the author of the Court's opinion in *PLESSY V. FERGUSON*, 163 U.S. 537, 16 S. Ct. 1138, 41 L. Ed. 256, the 1896 decision upholding state-mandated racial SEGREGATION in railway cars as long as the accommodations were equal. The "separate-but-equal" doctrine pronounced in *Plessy* became the constitutional foundation for JIM CROW LAWS and RACIAL DISCRIMINATION, particularly in the South. Later opinion condemned the *Plessy* decision, and indeed Brown has often been criticized for his role in it; however, the decision must be viewed in the historical context in which it was written. Also, the language in *Plessy*, requiring equality of treatment, later became the basis of legal challenges to segregation laws.

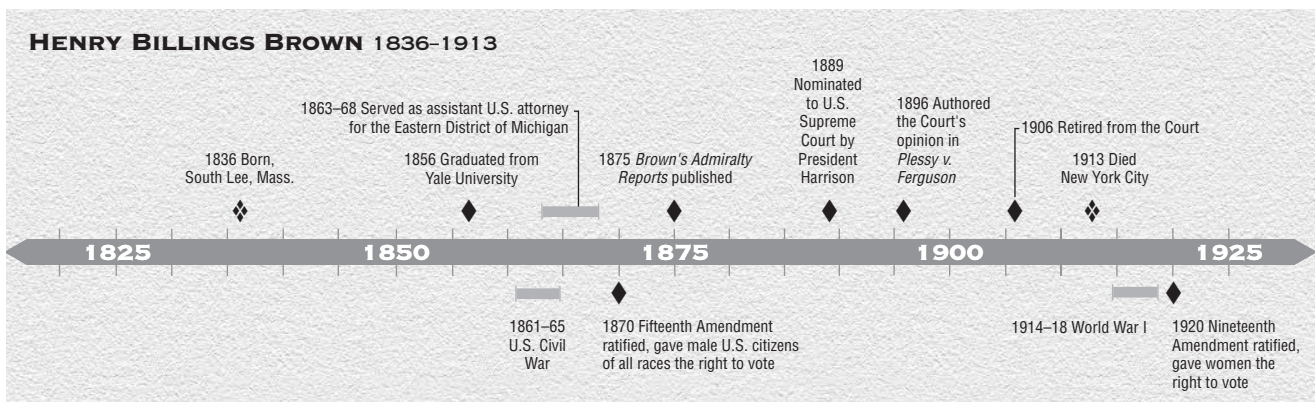
Failing eyesight forced Brown to retire from the bench in 1906. He died in 1913.

FURTHER READINGS

- Schwartz, Bernard. 1993. *A History of the Supreme Court*. New York: Oxford Univ. Press.
- Tribe, Laurence H. 1985. *God Save This Honorable Court*. New York: Random House.

CROSS-REFERENCES

Labor Law; *Brown v. Board of Education of Topeka, Kansas*; Equal Protection.



❖ BROWN, JOHN

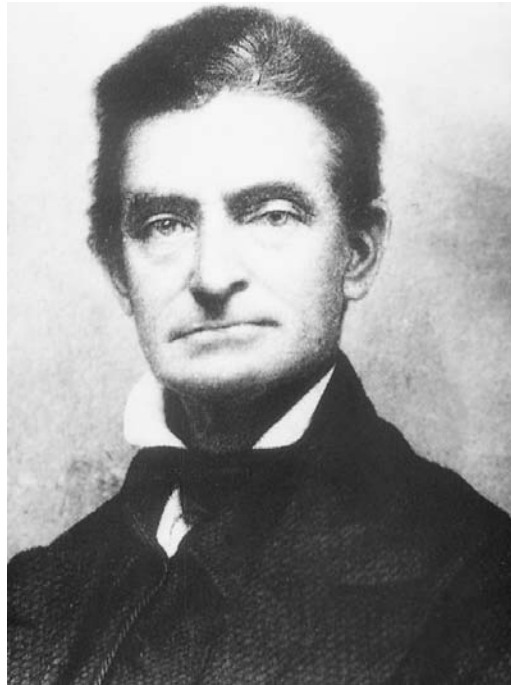
John Brown was a charismatic, stubborn abolitionist who failed at numerous business and commercial enterprises, yet succeeded in convincing men to join him in a cause for which they were willing to die. His abolitionist beliefs translated into violent actions in Kansas and Harpers Ferry, Virginia. Convicted of murder and **TREASON** for his raid on military facilities at Harpers Ferry, Brown was hanged for his crimes. Nevertheless, he galvanized the abolitionist cause, becoming a martyr in the fight against **SLAVERY**.

Brown was born in Torrington, Connecticut, on May 9, 1800, to Owen and Ruth Brown. His father, a strict Calvinist, despised slavery. When Brown was five years old, the family moved to Hudson, Ohio, a locale that was steeped in anti-slavery sentiment. Brown's fervor for the anti-slavery movement never waned and grew more vehement as he got older.

In 1820, Brown married Dianthe Lusk and six years later, they moved to Pennsylvania where he started a tannery. Lusk died in 1832, leaving Brown with five children. In 1833, he married 16-year-old Mary Ann Day who bore him seven more children. Brown and his growing family moved around the country while he tried his hand at a number of occupations, including tanner, farmer, cattle broker, and wool merchant.

In 1835, Brown's attempts to support his family and to repay money he had borrowed led to a disastrous "get rich quick" scheme. He convinced family members and friends to loan him money that he used to buy property where a canal was to be built. His timing proved unfortunate. In the wake of the Panic of 1837, plans for the proposed canal were changed and the properties bought up by Brown and his associates were rendered nearly worthless. Brown made numerous other attempts to reach financial solvency, but ultimately was forced to declare **BANKRUPTCY** in 1842.

Throughout his life Brown remained committed to the anti-slavery cause. Brown met the great abolitionist leader **FREDERICK DOUGLASS** in 1847 and impressed Douglass with his sympathy for African Americans—both slaves and freemen. In 1849, Brown moved his family to the black community of North Elba, New York. Brown proposed to show the residents of North Elba how to farm and to act as a mentor to them.



John Brown.

NATIONAL ARCHIVES
AND RECORDS
ADMINISTRATION

Brown was a participant in the Underground Railroad, an informal network of ex-slaves and sympathetic whites that helped slaves escape their masters and travel north to freedom. In 1851, he proposed the establishment of the League of Gileadites, an organization that would be used to protect escaped slaves.

In 1854, Congress passed the **KANSAS-NEBRASKA ACT**, which called for the residents of the new territories to decide the issue of slavery by popular vote. The area became known as "bloody Kansas" as competing groups fought violent skirmishes aimed at securing the territories for their side. Many pro-slavery residents of Missouri moved across the border in hopes of securing a victory at the election.

Five of Brown's sons had moved to Kansas and they entreated their father to join them. In 1855, Brown moved to Kansas and began to plan for the armed conflict he felt was inevitable. In 1856, in response to escalating incidents including the sacking of the anti-slavery town of Lawrence, Kansas, and the near-fatal beating of U.S. Senator **CHARLES SUMNER** who was attacked on the Senate floor by a pro-slavery congressman, Brown led a small band of men to Pottawatomie Creek, Kansas, where they killed five pro-slavery settlers. This violent action by Brown was hailed by a number of anti-slavery groups and universally reviled by pro-slavery forces.

"I BELIEVE TO HAVE
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SUBMIT: SO LET IT
BE DONE"

—JOHN BROWN

In December 1858, Brown and a small group of followers staged a raid on two pro-slavery homesteads in Missouri where they succeeded in confiscating property and freeing 11 slaves. Brown and his group then traveled more than a thousand miles to deliver the former slaves to a boat that would carry them to freedom in Canada.

Although many abolitionists were opposed to violence, others had begun to adopt Brown's view that armed conflict was necessary in order to achieve the **ABOLITION** of slavery. Between 1857 and 1859, Brown crisscrossed New England, giving rousing speeches to anti-slavery groups and raising money for the abolitionist cause. Among those who gave money were the Secret Six, a group of wealthy benefactors from Boston who helped Brown by funding the army he sought to lead in order to further conduct his war against slavery.

On October 16, 1859, the 59-year-old Brown led his Provisional Army, consisting of five black men and 21 whites (three of them his sons) in a nighttime raid on the town of Harpers Ferry, Virginia. Brown and his men cut telephone wires, took several hostages and gained control of the federal armory and arsenal. Brown's plan was to arm slaves with weapons from the arsenal, thus enabling them to fight for their freedom. However, he and his group found themselves pinned down by a group of local citizens and nearby militia groups who killed a number of his men including two of his sons.

On the morning of October 18, a contingent of U.S. marines led by Colonel Robert E. Lee joined the battle. Brown refused a chance to surrender and 36 hours after the raid had started, Brown and his remaining companions were cap-

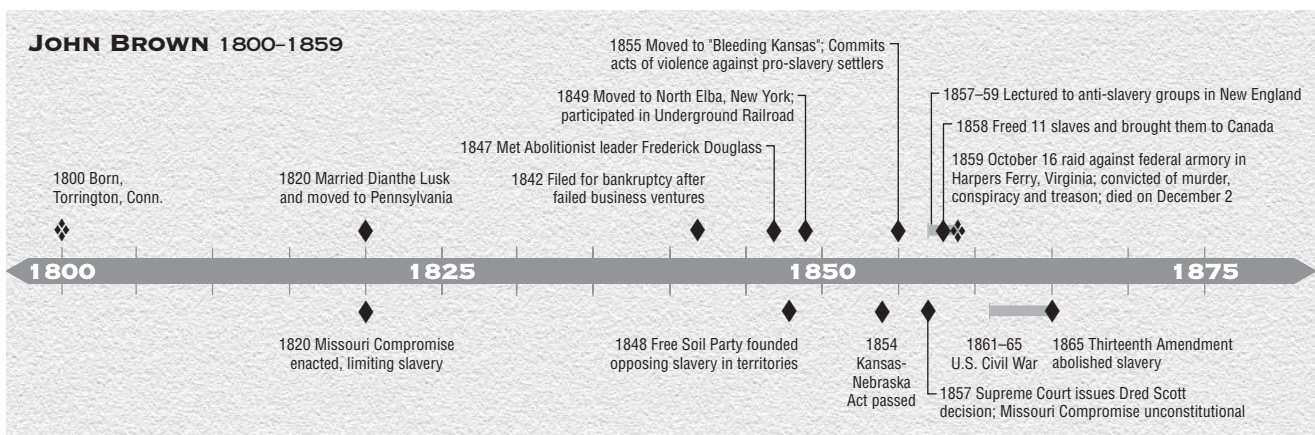
tured. Brown was taken to Charles Town, Virginia, (now West Virginia) to be tried. In a trial that lasted for nearly a month, Brown was charged with murder, conspiracy, and treason against the state. He was found guilty of all three charges. Before hearing his sentence, Brown gave a brief but passionate statement to the court:

... I believe to have interfered as I have done ... in behalf of His despised poor, was not wrong, but right. Now, if it be deemed necessary that I should forfeit my life to the furtherance of the ends of justice, and mingle my blood further with the blood of my children, and with the blood of millions in this slave country whose rights are disregarded by wicked, cruel, and unjust enactments, I submit: so let it be done.

Brown was hanged in Charles Town on December 2, 1859. On the day of his execution, guns were fired and bells tolled in many northern cities. Brown was hailed as a martyr of the abolitionist movement, which concluded that a peaceful solution could not be found. In April 1861, Confederate forces fired on Fort Sumter, an action that marked the beginning of the Civil War. In 1865, Congress passed the **THIRTEENTH AMENDMENT**, which abolished slavery throughout the United States.

FURTHER READINGS

- DeVillers, David. 2000. *The John Brown Slavery Revolt Trial: A Headline Court Case*. Berkeley Heights, N.J.: Enslow Publishers.
- "John Brown's Holy War." PBS: The American Experience. Available online at <www.pbs.org/wgbh/amex/brown> (accessed June 18, 2003).
- Lubet, Steven. 2001. "John Brown's Trial." *Alabama Law Review* 52 (winter): 425–466.
- Oates, Stephen B. 1984. *To Purge This Land With Blood*. Amherst: Univ. of Massachusetts Press.



Peterson, Merrill D. 2002. *John Brown: The Legend Revisited*. Charlottesville: Univ. of Virginia Press.

CROSS-REFERENCES

Abolition.

❖ BROWN, JOSEPH EMERSON

Joseph Emerson Brown was born April 15, 1821, in Pickens District, South Carolina. He was a graduate of the Yale Law School class of 1846, and was admitted to the Georgia bar.

In 1849 Brown entered politics and served in the Georgia Senate. In 1852 he was a presidential elector and in 1855 he served as a circuit judge.

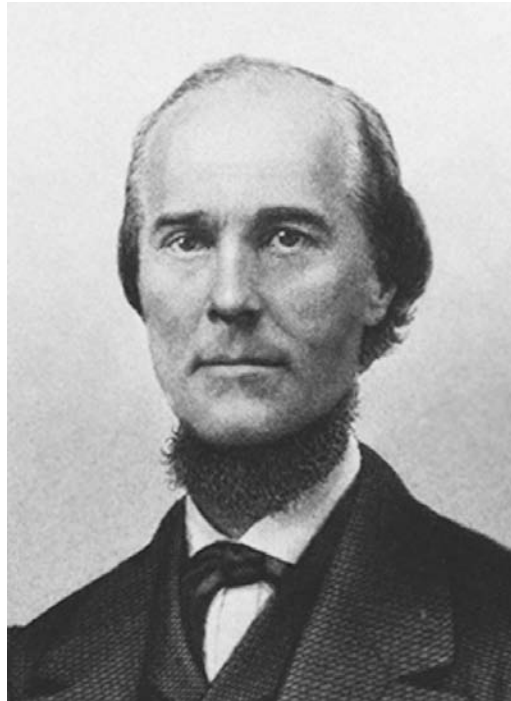
Brown became governor of Georgia in 1857 and, for the next eight years, voiced his opposition to Jefferson Davis, president of the Confederacy, concerning involuntary service in the ARMED SERVICES and the elimination of the writ of HABEAS CORPUS. He was a strong supporter of STATES' RIGHTS and often spoke out against the authority of a centralized government. In 1865 he was imprisoned but was released by President ANDREW JOHNSON shortly afterwards.

From 1868 to 1870 Brown again served in the judiciary, presiding as chief justice of the Georgia Supreme Court.

Brown entered federal government service in 1880, representing Georgia in the U.S. Senate for an eleven-year period, retiring in 1891. He died November 30, 1894, in Atlanta.

❖ BROWN, RONALD HARMON

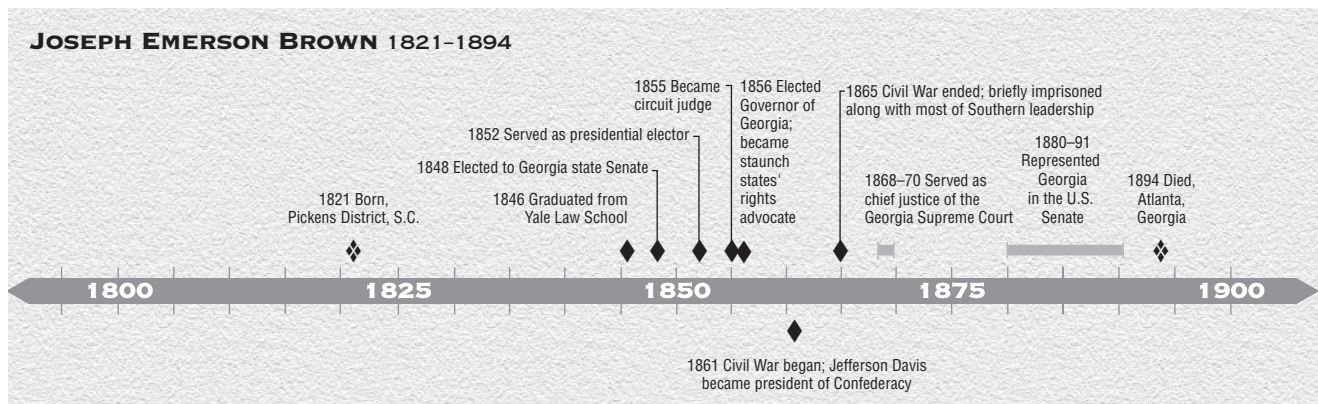
The career of Ronald Harmon Brown is a portrait of a consummate Washington, D.C., insider. As an African American attorney, Brown broke several color barriers during his rapid rise in politics from the 1970s to the early 1990s. He first entered the public eye as a CIVIL RIGHTS



Joseph Emerson Brown.

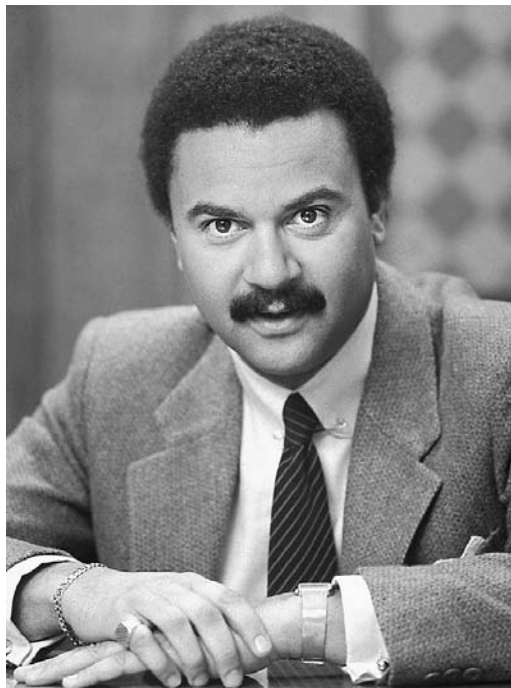
ARCHIVE PHOTOS, INC.

leader for the NATIONAL URBAN LEAGUE. Soon his reputation for persuasiveness and ingenuity led to a variety of assignments: political strategist to Senator EDWARD M. KENNEDY (D-Mass.) and JESSE JACKSON, chief counsel of the U.S. SENATE JUDICIARY COMMITTEE, and lobbyist for foreign governments. In the 1980s, Brown became the first black chairman of the Democratic National Committee (DNC). He steered the DEMOCRATIC PARTY toward a more centrist position, thus helping prepare the way for President Bill Clinton's election in 1992. Clinton picked him to head the DEPARTMENT OF COMMERCE. Although Brown had some notable successes in reviving the lifeless bureaucracy, allegations of corruption damaged his tenure.



Ron Brown.

LIBRARY OF CONGRESS



Born on August 1, 1941, in Washington, D.C., Brown was raised in the company of successful role models. His parents, William Brown and Gloria Brown-Carter, were both graduates of Howard University, and they moved the family to Harlem, where William managed the Hotel Theresa. Brown grew up in the hotel, surrounded by famous black entertainers and celebrities: it was a stopover for them after playing Harlem's Apollo Theater. As a young man, he attended Middlebury College, where he was the school's first black fraternity pledge. He married Alma Arrington in 1962, and then served in the Army from 1963 to 1967, attaining the rank of captain. Leaving the service, he joined the National Urban League as a WELFARE case-worker. Brown did not toil in the trenches for long. His skill at negotiation stood out, and, after adding a law degree from St. John's University, he became the organization's Washington, D.C., vice president and assumed the role of spokesman.

The give-and-take of politics suited Brown. "What I love most," he said, "is changing minds." In 1979 Brown's association with the Democratic party got a boost when Senator Kennedy named Brown his deputy campaign manager in an unsuccessful run at the presidency. The job marked the beginning of a stellar ascent through party politics. Kennedy chose Brown as chief counsel of the Senate Judiciary Committee—

and that position led to a stint as chief counsel of the DNC, the party's steering council. By the mid-1980s, Brown was an insider, well-known and highly regarded in the nation's capital.

Politics offers alluring choices to its best-connected practitioners, liberal and conservative, and Brown's next career move was perfectly in step with the ethos of Washington, D.C. Brown became a lobbyist. He joined the Washington, D.C., firm of Patton, Boggs, and Blow, known for its high-profile clients. The attorney had no shortage of these: the businesses he represented included the financial giant American Express and twenty-one different Japanese electronics firms. Yet what gained him notoriety was his representation of foreign nations. He worked for the interests of Zaire, Guatemala, and Haiti, and the last two affiliations, in particular, hurt him. While he lobbied on behalf of Haitian strongman Jean-Claude ("Baby Doc") Duvalier, Haitian citizens suffered political repression and saw their national treasury pillaged. Guatemalans were tortured and murdered. Later, when Brown prepared to assume the high position of secretary of commerce, critics would be quick to recall that he had supported dictators.

Democrats wanted Brown back, and he left LOBBYING to become chairman of the DNC. The job demanded much: Democrats, after all, had failed to capture the White House since 1976. He had to unify a party that had lost three consecutive presidential elections, seen massive defections of its traditional voters, and suffered from an identity crisis that split its moderate and left-wing members. He also had to soothe fears that he was too closely allied with one of the party's most liberal leaders, Jesse Jackson. "My chairmanship won't be about race," he told critics. "It will be about the races we win over the next four years." As it happened, Brown was everything the ailing party hoped for. He helped orchestrate a shift to the center in the Democrats' national agenda—abandoning traditional bullishness on taxation and welfare, for instance, and asserting a pro-business outlook—which paved the way for the centrist candidacy of Clinton. And as a party boss, he was decisive. Once Clinton emerged as the front-runner, Brown curtailed the primary process; he even secured Jackson's endorsement. "This party was ready," Mickey Kantor, Clinton's campaign manager, said after the election, "and it was because of Ron Brown . . . the best chairman we've ever had."

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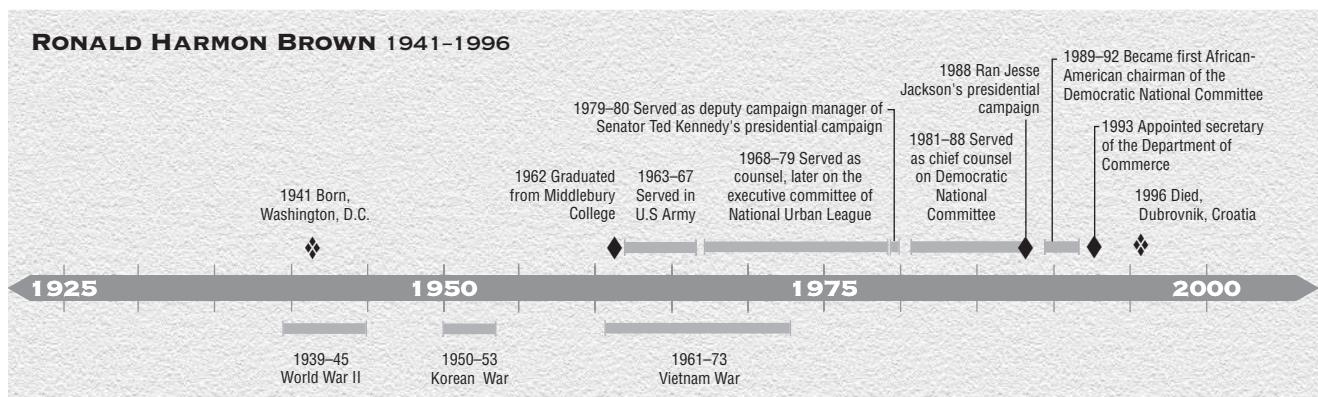
As a reward, Clinton nominated Brown for the cabinet role of secretary of the Department of Commerce. Originally conceived as a regulatory agency, Commerce had seen better days; by the 1990s, both liberal and conservative critics considered it to be an ineffective bureaucracy tied up in red tape. Despite his credentials and the reform-minded talk of the Clinton administration, Brown's nomination faced some fears and objections. Business worried about his being too tough on it with new regulations. Some critics, such as the Center for Public Integrity, worried about the opposite. This non-partisan watchdog group argued that Brown was too well connected to avoid potential conflicts of interest: he would have to regulate industries and foreign countries that he had once represented, seemingly in contradiction to Clinton's promise to clamp down on the selling of influence by political appointees. The group's December 1992 report, *The Torturer's Lobby*, hammered Brown for representing repressive governments. Brown called the Center's charges an attempt at implying "guilt by association." The Senate confirmed him with little difficulty.

As commerce secretary, Brown won praise for breathing new life into the department. He revived its export programs, winning lucrative multibillion-dollar contracts for U.S. aircraft and TELECOMMUNICATIONS firms. He also presided over a \$900 million annual budget for promoting high technology in small and medium-sized business, nearly double the amount spent during the administration of GEORGE H. W. BUSH. The *New Republic* called him "the most formidable Commerce secretary since Herbert Hoover" (1 May 1995). Business fears about his being too liberal proved to be wrong; he was utterly pro-business, even to the

point of attracting criticism for helping McDonnell Douglas Corporation secure contracts to build aircraft in China. The liberal Committee for Economic Organizing complained that he was "promoting companies, not jobs."

But scandals nearly sank Brown. In 1993, during Brown's first year as secretary of commerce, a Vietnamese businessman alleged that Brown had accepted a \$700,000 bribe from the government of Vietnam to remove a long-standing trade embargo. Brown denied the charge; the FEDERAL BUREAU OF INVESTIGATION conducted a year-long probe, and he was ultimately cleared. By late 1994, rumors spread in the press that he would resign to run Clinton's reelection campaign. In February 1995, new allegations emerged. U.S. attorney general JANET RENO opened another criminal probe into Brown's personal finances. This time, congressional Republicans accused him of violating disclosure requirements and evading taxes. Brown again denied any violation of law, but Republican critics began calling for his dismissal—as well as the elimination of the Department of Commerce itself, which they called irrelevant and outdated. In May 1995, fourteen Republican senators told Attorney General Reno that fairness required that the probe be conducted outside of the Clinton administration. Reno agreed; she requested the appointment of an INDEPENDENT COUNSEL to examine Brown's finances. Particularly troubling was one odd-looking business deal: Brown had earned nearly \$500,000 from selling his interest in a firm in which he had never invested.

Brown won high regard for his work in the law. He was the recipient of two American JURISPRUDENCE awards for outstanding achievement in jurisprudence and for outstanding scholastic achievement in poverty law. He



served as a trustee of Middlebury College, and as a board member of both the United Negro College Fund and the University of the District of Columbia. He was a fellow of the Institute of Politics, at the JOHN F. KENNEDY School of Government, at Harvard University.

On April 3, 1996, Brown was killed in a plane crash near the city of Dubrovnik, Croatia, with thirty-two other Commerce Department officials and U.S. business executives. They had planned to explore investment opportunities for the reconstruction of Croatia and Bosnia-Herzegovina.

FURTHER READINGS

Brown, Tracey L. 1998. *The Life and Times of Ron Brown: A Memoir*. New York: Morrow.

Holmes, Steven A. 2000. *Ron Brown: An Uncommon Life*. New York: John Wiley & Sons.

"Ron Brown Remembered" 1996. *The Washington Lawyer* 10 (May-June): 30.

BROWN V. BOARD OF EDUCATION OF TOPEKA, KANSAS

Brown v. Board of Education, 347 U.S. 483, 47 S. Ct. 686, 98 L. Ed. 873, was the most significant of a series of judicial decisions overturning segregation laws—laws that separate whites and blacks. Reversing its 1896 decision in *PLESSY V. FERGUSON*, 163 U.S. 537, 16 S. Ct. 1138, 41 L. Ed. 256, which established the "separate-but-equal" doctrine that found racial segregation to be constitutional, the Court unanimously decided in *Brown* that laws separating children by race in different schools violated the EQUAL PROTECTION CLAUSE of the FOURTEENTH AMENDMENT, which provides that "[n]o state shall . . . deny to any person . . . the equal protection of the laws." In making its decision, the Court declared that "separate educational facilities are inherently unequal." Moreover, the Court found that segregated schools promote in African American children a harmful and irreparable sense of inferiority that damages not only their lives but the welfare of U.S. society as a whole.

The principle expressed in *Brown* was used in later decisions of the Supreme Court and lower federal courts to reverse segregation in other fields as well. By the end of the 1960s, laws that had required racial segregation in buses, trains, bathrooms, and other public places had been overturned, as had many other laws that obstructed the rights of African Americans. *Brown* thus served as a milestone in the struggle

of African Americans to gain equal CIVIL RIGHTS in U.S. society. It also symbolized the judicial activism of the Supreme Court under Chief Justice EARL WARREN, who would go on to lead the Court until 1969 in a remarkable era of change with regard to civil rights.

Brown was actually the culmination of a decades-long struggle by both African Americans and sympathetic whites against segregation and other discriminatory laws. Though it is a given in the early 2000s that persons of all races should enjoy equality under the law in the United States, that has not been the case for most of the country's history. Even after the Civil War had ended and the Thirteenth and Fourteenth Amendments had outlawed SLAVERY and guaranteed the civil rights of "all persons born or naturalized in the United States" (U.S. Const. amend. XIV), southern states and localities established the racially discriminatory Jim Crow laws—also known as the Black Codes—to keep African Americans from enjoying legal equality with whites. The term *Jim Crow* derives from a popular minstrel song of the nineteenth century. These laws made it difficult or impossible for African Americans to vote, made it illegal for them to use the same public facilities as whites, restricted their travel, forbade interracial marriage, and otherwise attempted to keep African Americans in a state of dependence and inferiority with regard to whites. Most of these laws were passed after the Reconstruction period following the Civil War, when the military occupation of the South had ended and the radical wing of the REPUBLICAN PARTY, which under President ABRAHAM LINCOLN had been instrumental in dismantling slavery, had declined in power. By the mid-1870s, southern whites were again in political control of their region, and many quickly sought to return blacks to a position of legal inferiority through passage of discriminatory laws.

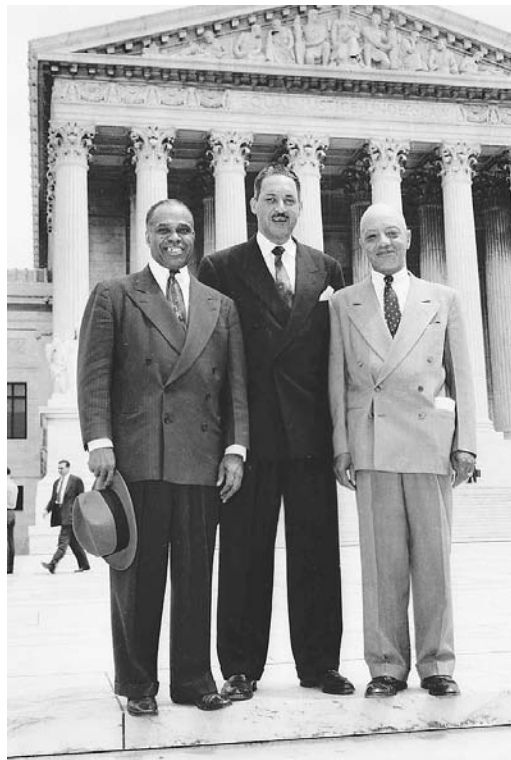
In 1896 the legal standing of the JIM CROW LAWS was strengthened when, in *Plessy v. Ferguson*, the Supreme Court upheld the constitutionality of a Louisiana statute requiring blacks and whites to occupy separate railway cars. The law in question, according to the Court, was not a violation of the Equal Protection Clause of the Fourteenth Amendment as long as the facilities provided for each race were separate but equal. Moreover, the Court voiced its disagreement with attempts to challenge segregation laws and with the ideas critics of segregation used to sup-

port those challenges. For example, in its opinion, the Court considered it a “fallacy” that “the enforced separation of the two races stamps the colored race with a badge of inferiority,” and it scoffed at the notion that “social prejudices may be overcome by legislation.” Ironically, the Court reinforced its decision to uphold the legality of segregation on rail cars by noting the existence of laws “requiring separate schools for colored children.” The *Plessy* decision and its SEPARATE-BUT-EQUAL doctrine were later used to uphold segregation in public schools and other public facilities.

African Americans and others who sympathized with their cause were bitterly disappointed by the *Plessy* decision. Over a decade later, in 1909, some blacks and whites joined together to form the National Association for the Advancement of Colored People (NAACP), which would eventually coordinate a successful legal challenge to the *Plessy* ruling. The NAACP brought together people of all races in an effort to improve the situation of people of color. Although the NAACP achieved some victories in the fight against Jim Crow laws in the first two decades of its existence, it was not until 1935 that the organization began actively to mount a campaign against segregation in schools. It did so assisted by legal counsels CHARLES HOUSTON and WILLIAM H. HASTIE, and a young assistant, THURGOOD MARSHALL, who would go on to be a member of the Supreme Court from 1967 to 1991.

By 1939, Marshall had become head of the NAACP legal branch, the NAACP Legal Defense Fund, and by the early 1950s, he and his organization had argued and secured significant legal victories before the Supreme Court that helped set the stage for *Brown*. In *Sweatt v. Painter*, 339 U.S. 629, 70 S. Ct. 848, 94 L. Ed. 1114 (1950), the Court sided with the NAACP Legal Defense Fund when it ruled that a separate law school for blacks in Texas could not provide an education equal to that available to whites at the more established University of Texas Law School. And in another case brought by Marshall’s organization, *McLaurin v. Oklahoma State Regents*, 339 U.S. 637, 70 S. Ct. 851, 94 L. Ed. 1149 (1950), the Court ruled that separate library and lecture hall seats for a single black graduate student were a violation of the Fourteenth Amendment. However, neither case addressed the separate-but-equal doctrine of *Plessy*.

In 1952 Marshall and the NAACP Legal Defense Fund brought two more significant cases



Three attorneys in *Brown v. Board of Ed.*: (l-r) George E.C. Hayes, Thurgood Marshall, and James M. Nabrit, on May 17, 1954, the day the Court issued its ruling.

AP/WIDE WORLD
PHOTOS

to the Supreme Court: *Bolling v. Sharpe*, 347 U.S. 497, 74 S. Ct. 693, 98 L. Ed. 884 (1954), which dealt with racial segregation of schools in the District of Columbia, and *Brown*, which was actually a consolidation of four CLASS ACTION suits (suits brought to court on behalf of a group of people) from federal district courts in Delaware, Kansas, South Carolina, and Virginia. The NAACP Legal Defense Fund brought the cases to court on behalf of African American children who were refused admission to schools attended by white children as a result of laws allowing or requiring racial segregation in schools. The plaintiff named in the case, Oliver Brown, had a daughter, Linda Brown, who had been denied admission to an all-white elementary school in Topeka, Kansas, because she was black. In all but the Delaware case, a three-judge federal district court had decided against the African American children and in favor of the school districts, citing as precedent the *Plessy* separate-but-equal doctrine. In the Delaware case, the state supreme court also upheld this doctrine but ordered that black children be sent to superior white schools until schools provided for blacks could be improved to an equal condition.

Brown was argued before the Court in 1952 and reargued in 1953. Marshall, in making his

Oliver Brown and the NAACP

As the man whose name appeared in the title of perhaps the most influential U.S. Supreme Court decision ever, *Brown v. Board of Education*, 347 U.S. 483, 74 S. Ct. 686, 98 L. Ed. 873 (1954), Oliver Brown was an unlikely hero for the **CIVIL RIGHTS MOVEMENT**. The African American welder, war veteran, and assistant pastor was a quiet, upstanding citizen of Topeka, Kansas, who had never been known to publicly oppose discrimination against his race. However, he took a decisive stand against **RACIAL DISCRIMINATION** when he joined one dozen other African American parents in filing suit for the right of their children to attend the elementary schools of Topeka alongside white children.

Brown's participation in the lawsuit was encouraged by the National Association for the Advancement of Colored People (**NAACP**), which provided necessary legal expertise and organization for the case. Long familiar with the practice of school **SEGREGATION** in Topeka and many other school districts, NAACP lawyers approached Brown and other parents in the summer of 1950 to see if they would join them in a case that challenged that practice.

It was precisely Oliver Brown's modest qualities that made the NAACP choose him as a plaintiff. His reputation for integrity could help mute criticism in a controversial case that stirred up angry emotions in both the white and black communities of Topeka. The city's white majority was largely content to remain with a school system that maintained eighteen all-white elementary schools and four all-black elementary schools. African Americans, meanwhile, feared the case would cause the white community to attack what few **CIVIL RIGHTS** they already possessed. Oth-

ers could not become involved in such a controversy without the fear of losing their jobs with white employers. For that reason, very few African Americans in Topeka actually belonged to the NAACP.

Like many other African American parents, Brown was upset that his daughter had to travel a long distance to an all-black school when an all-white school was located much nearer their home. He also could not help but notice that the all-white schools were in better repair than the all-black schools. Brown agreed to join in the NAACP's case, and in September 1950, he tried unsuccessfully to register one of his three daughters, Linda Brown, in an all-white school only seven blocks from their house. When the case first came to the U.S. District Court for Kansas in June 1951, Brown testified that his daughter had to travel twenty-one blocks to an all-black school, part of the way through a dangerous railroad switching yard.

In the end, African Americans did not seek to end the system of segregation in public schools merely to have their children travel fewer miles to class or sit in nicer buildings. At stake were much more important issues that affected their status in U.S. society. As expressed by NAACP attorneys in later testimony before the Supreme Court, African Americans had come to see segregated schools as inherently unequal. These schools relegated African Americans to an inferior class, instilled feelings of insecurity, diminished their opportunities, and retarded their mental development. The victory eventually achieved in *Brown* would go a long way toward eliminating those harmful effects of segregation and guaranteeing African Americans their full constitutional rights.



statement before the Court, argued that the statutes in question in this case were equivalent to the **BLACK CODES**. He pointed out the contradictions in allowing blacks and whites to vote in the same places and attend the same **COLLEGES AND UNIVERSITIES**, but not allowing black and white children to attend the same elementary schools. He also maintained that a decision in favor of segregation would effectively be a decision to keep African Americans as near as possi-

ble to their former state of slavery. According to Marshall, such a decision would be equivalent to saying that "Negroes are inferior to all other human beings."

JOHN W. DAVIS, who was legal counsel for the state of South Carolina, argued in his closing remarks that the state had honored *Plessy's* separate-but-equal doctrine through large investments in schools for black students. He claimed that the state had the intention of creating a

condition of equality for children of all races and that "the happiness, the progress and the welfare of these children is best promoted in segregated schools." He also maintained that it was not within the jurisdiction of the U.S. Supreme Court to decide how the state of South Carolina conducted its school system. He told the Court:

Your Honors do not sit, and cannot sit as a glorified Board of Education for the State of South Carolina or any other state. . . .

... Neither this Court nor any other court . . . can sit in the chairs of the legislature of South Carolina and mold its educational system, and if it is found to be in its present form unacceptable, the State of South Carolina must devise the alternative.

On the same day that the Court handed down its decision in *Brown*, it decided the related case of *Bolling*. Applying the same principles that it had used in *Brown*, the Court ruled in *Bolling* that racial segregation of schoolchildren in the District of Columbia was unconstitutional.

In the following year, the Supreme Court on reargument made another decision in *Brown* that was designed to establish the methodology by which to enforce desegregation of public schools. *Brown II*, 349 U.S. 294, 75 S. Ct. 753, 99 L. Ed. 1083 (1955), as it has come to be called, determined that school authorities had the principal responsibility for evaluating and solving local educational problems, including those resulting from segregation. The Court decided to remand (send back) the individual cases in *Brown* to lower courts in order that those courts might better assess the efforts of school authorities to desegregate the public schools and thereby provide to African American children their equal protection under the laws as promised by the Fourteenth Amendment. The lower courts were directed to take into account any problems concerning school administration, facilities, transportation, and personnel, and to consider any revision of local laws necessary to resolve the problems and achieve desegregation.

Brown v. Board of Education dealt only with government-mandated or government-authorized segregation. It did not apply to racial segregation or discrimination related to restaurants, theaters, employment, country clubs, or other parts of the private sector. However, *Brown* fostered changes in the legal and moral outlook of the country that greatly aided future efforts to end RACIAL DISCRIMINATION as related to



employment, housing, and places of public accommodation, and thus greatly affected U.S. race relations.

Despite the promise of *Brown*, desegregation of U.S. schools proceeded slowly. In the years immediately following the decision, many southern school districts resisted or delayed implementation of its desegregation requirements, thereby forcing the Supreme Court and other lower courts to oversee and supervise school administrative functions in many localities. As time went on and southern schools became more integrated, the Court shifted its focus to school districts all over the country, particularly those in cities. In the second half of the twentieth century, many African Americans moved from rural to urban areas, often in the northern states. School districts in many of those urban areas became separated into suburban white districts and urban black districts. In response to this challenge, courts imposed busing requirements during the 1970s: in the interest of creating more racially balanced schools, children were bused to different schools that were sometimes far from their home neighborhoods. In many cities, busing became highly controversial.

By the late 1980s, legal battles surrounding the legacy of the *Brown* decision changed when some school districts began to request that they be released from the court supervision of their operations that had been required by *Brown*. Accordingly, the Supreme Court began to focus

Spottswood Bolling and his mother, Sarah, read the newspaper report of the ruling in Bolling v. Sharpe (1954), which declared school segregation in the District of Columbia unconstitutional.

BETTMANN/CORBIS

on the issue of when a court order to desegregate a school district should be dissolved and autonomy returned to the local school officials and community. In *Board of Education v. Dowell*, 498 U.S. 237, 111 S. Ct. 630, 112 L. Ed. 2d 715 (1991), which dealt with a court-imposed desegregation plan in Oklahoma City, the Court ruled that a court-ordered desegregation decree may be dissolved when a school district shows that it has taken all “practicable” steps to end a state-imposed dual school system and demonstrates that it is unlikely to revert to its former ways. The ability to dissolve a court-ordered desegregation plan, the Court’s opinion stated, would enable a school district that had attempted to achieve the goal of desegregation to avoid “judicial tutelage for the indefinite future.”

Justice Marshall, now near the end of his career on the Court, dissented from the majority opinion in *Dowell*. He argued that, given the long history of segregation, it was too early to leave the Oklahoma City school district to its own devices. Though he agreed that perpetual federal judicial supervision of local schools had never been envisioned by the Court, he feared that the Court’s decision in this case would simply perpetuate an already unsatisfactory standard of INTEGRATION in the Oklahoma City school district and in other school districts.

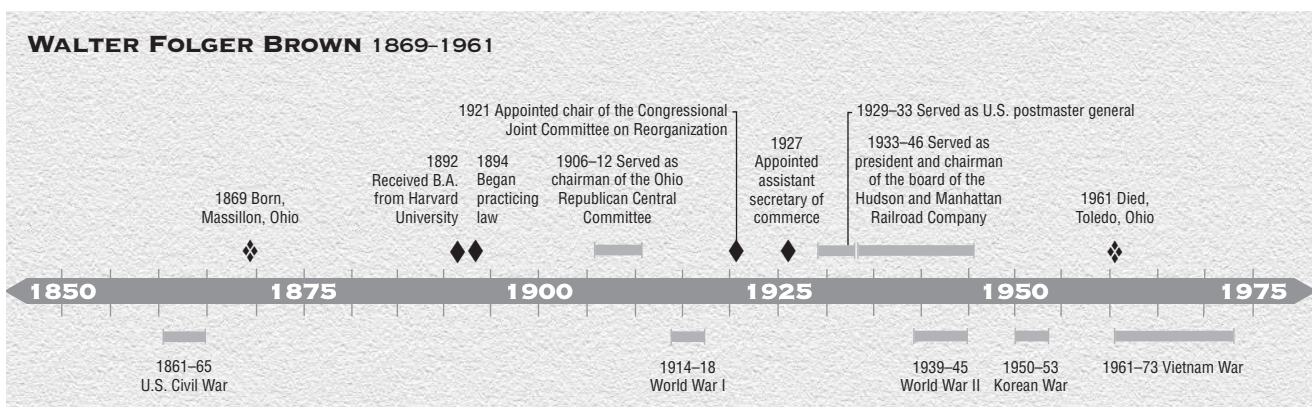
In another case, *Freeman v. Pitts*, 503 U.S. 467, 112 S. Ct. 1430, 118 L. Ed. 2d 108 (1992), the Supreme Court held that district courts may relinquish supervision and control of school districts in incremental stages, before full compliance has been achieved in every facet of school operations. The Court also ruled that once a school district corrects any racial imbalance that violates the Equal Protection Clause of the Fourteenth Amendment, the district has no

obligation to remedy a later imbalance caused by population shifts.

As these cases indicate, the issue of desegregation of public schools remained a vital public issue even several decades after the Supreme Court’s decision in *Brown*. As a means of both training and socialization, education is still a necessity for U.S. society as a whole and for any individual in particular, and it is expected to remain so in the future. Guided by *Brown*, the U.S. judicial system has decisively concluded that the constitutional provision of equal protection under the laws guarantees that children be entitled to an equal, not a separate, public education.

FURTHER READINGS

- Balkin, Jack M., and Bruce Ackerman, et al., eds., 2001. *What Brown v. Board of Education Should Have Said: The Nation’s Top Legal Experts Rewrite America’s Landmark Civil Rights Decision*. New York: New York Univ. Press.
- Hunt, James L. 2001. “Brown v. Board of Education After Fifty Years: Context and Synopsis.” *Mercer Law Review* 52 (winter).
- Irons, Peter H. 2002. *Jim Crow’s Children: The Broken Promise of the Brown Decision*. New York: Viking.
- Klein, Dora W. 2002. “Beyond Brown v. Board of Education: The Need to Remedy the Achievement Gap.” *The Journal of Law and Education* 31 (October).
- Kluger, Richard. 1975. *Simple Justice: The History of Brown v. Board of Education and Black America’s Struggle for Equality*. New York: Knopf.
- Levine, Ellen, ed. 1994. *Freedom’s Children*. New York: Avon Flare.
- Miller, LaMar P., ed. 1986. *Brown Plus Thirty: Perspective on Desegregation*. New York: Metropolitan Center for Educational Research, New York Univ. Press.
- Patterson, James T. 2001. *Brown v. Board of Education: A Civil Rights Milestone and Its Troubled Legacy*. New York: Oxford Univ. Press.
- Pollack, Jack. 1979. *Earl Warren: The Judge Who Changed America*. Upper Saddle, N.J.: Prentice-Hall.



Weinburg, Meyer. 1967. *Race and Place: A Legal History of the Neighborhood School*. Washington, D.C.: U.S. Dept. of Health, Education, and Welfare.

Whitman, Mark, ed. 1993. *Removing a Badge of Slavery: The Record of Brown v. Board of Education*. Princeton, N.J.: Wiener.

Wilkinson, J. Harvie III. 1979. *From Brown to Bakke: The Supreme Court and School Integration, 1954–1978*. New York: Oxford Univ. Press.

CROSS-REFERENCES

"Brown v. Board of Education of Topeka, Kansas" (Appendix, Primary Document); Civil Rights; Discrimination; Equal Protection; Jim Crow Laws; Marshall, Thurgood; NAACP; Republican Party; School Desegregation; Warren, Earl; Warren Court.

❖ BROWN, WALTER FOLGER

Walter Folger Brown was born May 31, 1869, in Massillon, Ohio. He received a bachelor of arts degree from Harvard University in 1892 and attended Harvard Law School from 1893 to 1894.

Brown practiced law from 1894 to 1927 and entered politics in 1921, serving for three years as chairman of the Congressional Joint Committee on Reorganization. In 1927 he became assistant secretary of commerce, and two years later performed the duties of U.S. postmaster general, acting in this capacity until 1933.

Brown's interests and activities in business were numerous and included service as president and chairman of the board of the Hudson and Manhattan Railroad Company.

Brown died January 26, 1961, in Toledo, Ohio.

❖ BROWNELL, HERBERT, JR.

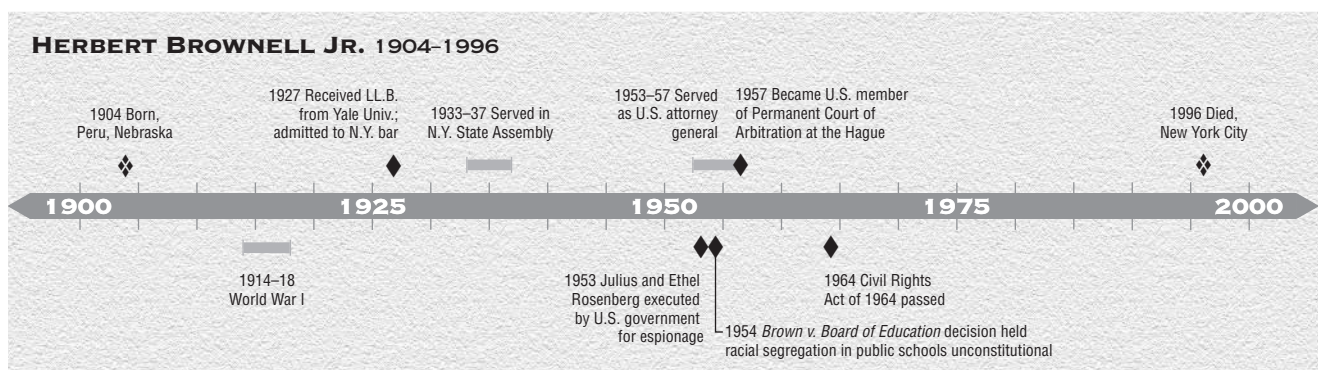
Herbert Brownell Jr. was the 65th attorney general of the United States. He served from 1953 to 1957 in the administration of President DWIGHT

D. EISENHOWER. Brownell's tenure as attorney general was marked by his advocacy of CIVIL RIGHTS, particularly concerning the enforcement of the landmark case **BROWN V. BOARD OF EDUCATION**, 347 U.S. 483, 74 S. Ct. 686, 98 L. Ed. 873 (1954) in which the U.S. Supreme Court ruled in favor of desegregation of public schools. Brownell also proposed landmark civil rights legislation.

Brownell was born in Peru, Nebraska, on February 20, 1904. In 1924, he graduated from the University of Nebraska and then attended Yale Law School. After receiving his law degree in 1927, Brownell was admitted to the New York State bar and worked for the noted law firm of Root, Clark, Buckner, Howland & Ballentine for two years. In 1929, he joined the law firm of Lord, Day & Lord.

Brownell served as a member of the New York State Assembly from 1933 to 1937, becoming an advisor to THOMAS E. DEWEY, a New York district attorney who had successfully prosecuted organized-crime syndicates. Dewey had run for governor in 1938 but lost to incumbent Herbert Lehman. Dewey also made an unsuccessful bid for the Republican presidential nomination in 1940. Brownell urged Dewey to run again for governor in 1942. With Brownell as his campaign manager and chief political strategist, Dewey was elected governor of New York.

With Brownell managing his campaign, Dewey ran again for president in 1944, only to lose to FRANKLIN ROOSEVELT. Having gained national prominence, Brownell served as chairman of the Republican National Committee from 1944 to 1946. He also functioned once more as the presidential campaign manager for Dewey, who had been re-elected governor in 1946. In 1948, HARRY TRUMAN narrowly defeated Dewey.



Herbert Brownell Jr.,
1952, New York.
UPI/CORBIS-BETTMANN



In 1952, Brownell encouraged WORLD WAR II hero General Dwight D. Eisenhower to run for president. Brownell helped the general to secure the Republican nomination and then worked closely with him in his successful run for the presidency. In 1953, a grateful Eisenhower appointed Brownell as U.S. attorney general.

Brownell was an influential advisor to the president and was involved in numerous controversial situations. Shortly after his appointment as attorney general, Brownell became involved in the case of JULIUS AND ETHEL ROSENBERG, who had been convicted of ESPIONAGE and sentenced to death. Supporters of the Rosenbergs, who had exhausted all their appeals, petitioned the president to commute their sentences to life imprisonment. In June 1953, U.S. Supreme Court Justice WILLIAM O. DOUGLAS granted the Rosenbergs a stay of execution in order to consider new evidence. Although the U.S. Supreme Court was recessed for the summer, Brownell convinced the justices to come back and hear the matter. The Court, in a special session on June 19, 1953, dissolved the stay, and the Rosenbergs were executed that same day.

Brownell raised the ire of many Southerners (as well as anti-integration forces throughout the country) when he used the JUSTICE DEPARTMENT to enforce the mandate of the *Brown* case in desegregating public schools in the South. The climax came when Arkansas Governor

Orville Faubus ordered the state's NATIONAL GUARD to bar black students who were seeking admittance to a high school in Little Rock. Eisenhower, at Brownell's urging, federalized the troops and used them to escort the students to and from the school.

Brownell, who had been a civil rights supporter since his days in the New York State legislature, drafted legislation that would give the U.S. attorney general unprecedented power to institute suits in the name of the United States to enforce civil rights in many public accommodations including housing, parks, theaters, restaurants, and hotels. The legislation, called the Brownell Bill, also sought the power to enforce injunctions to stop violations of civil rights in the same areas. The bill went through numerous permutations and ended up being greatly weakened in its enforcement efforts. Nevertheless, it was passed as the CIVIL RIGHTS ACT of 1957—the first civil rights legislation passed in 82 years.

After leaving his post as attorney general in 1957, Brownell served as the United States' member to the Permanent Court of ARBITRATION at the Hague. He remained associated with of the Lord law firm from 1977 to 1989. From 1985 to 1989, he served as a member of the U.S. Bicentennial Commission for the U.S. Constitution. In 1993, he published *Advising Ike: The Memoirs of Attorney General Herbert Brownell*. Brownell died in New York City on May 1, 1996.

FURTHER READINGS

- Attorneys General of the United States, 1789–1985*. 1985. United States Department of Justice. Washington, D.C.: Government Printing Office.
- Brownell, Herbert, with John P. Burke. 1993. *Advising Ike: The Memoirs of Attorney General Herbert Brownell*. Lawrence: Univ. Press of Kansas.
- Caro, Robert. 2002. *Master of the Senate: The Years of Lyndon Johnson*. New York: Knopf.

❖ BROWNING, JAMES ROBERT

James Robert Browning, a federal judge, is credited with holding the U.S. Court of Appeals for the Ninth Circuit together at a time when there was enormous pressure to split the nation's largest and busiest circuit into smaller, more manageable units. Browning's innovations in JUDICIAL ADMINISTRATION demonstrated that the federal courts, despite ever-increasing case-loads, could continue to provide speedy and effective justice. During his tenure, the Ninth Circuit court, which oversees justice in nine western states and two Pacific territories, grew

from a nine-judge panel, to a 28-judge tribunal that managed more than 5,500 appeals a year in the late 1980s.

Browning was born in Great Falls, Montana, on October 1, 1918. He grew up in and attended the public schools of Belt, Montana, a small town east of Great Falls, where his father was a blacksmith and, later, owner of the town's Ford dealership. Browning completed his undergraduate work at the University of Montana and entered that university's law school in 1938, becoming editor in chief of the law review and graduating with honors in 1941. After graduation, he joined the Antitrust Division of the JUSTICE DEPARTMENT in Washington, D.C. Two years later, he was inducted as a private into the U.S. Army Infantry. He served in military intelligence in the Pacific theater for three years, attaining the rank of first lieutenant and winning a Bronze Star.

Following WORLD WAR II, Browning returned to the Justice Department's Antitrust Division, first in Washington, D.C., and then in Seattle, Washington. In 1948, at the age of 30, he was named chief of the Northwest Regional Office of the division. Before long, he was called back to Washington, D.C., and named assistant chief, General Litigation Section, Antitrust Division. By 1951, he had joined the Civil Division as first assistant. In 1952, he was named executive assistant to the attorney general of the United States. Later that year, he organized the Executive Office of U.S. Attorneys and became its first chief.

Browning left the Justice Department in 1953 to enter private practice. For the next five years, he was a partner at Perlman, Lyons, and Browning, in Washington, D.C. In 1958, he was named clerk of the U.S. Supreme Court. From this position, he was appointed as a circuit judge

to the U.S. Court of Appeals for the Ninth Circuit, by President JOHN F. KENNEDY, on September 18, 1961.

As a circuit judge, Browning became involved with the JUDICIAL CONFERENCE OF THE UNITED STATES and started exploring the field of judicial administration. (The Judicial Conference is the principal machinery through which the federal courts operate and is responsible for establishing the standards and shaping the policies that govern the federal judiciary.)

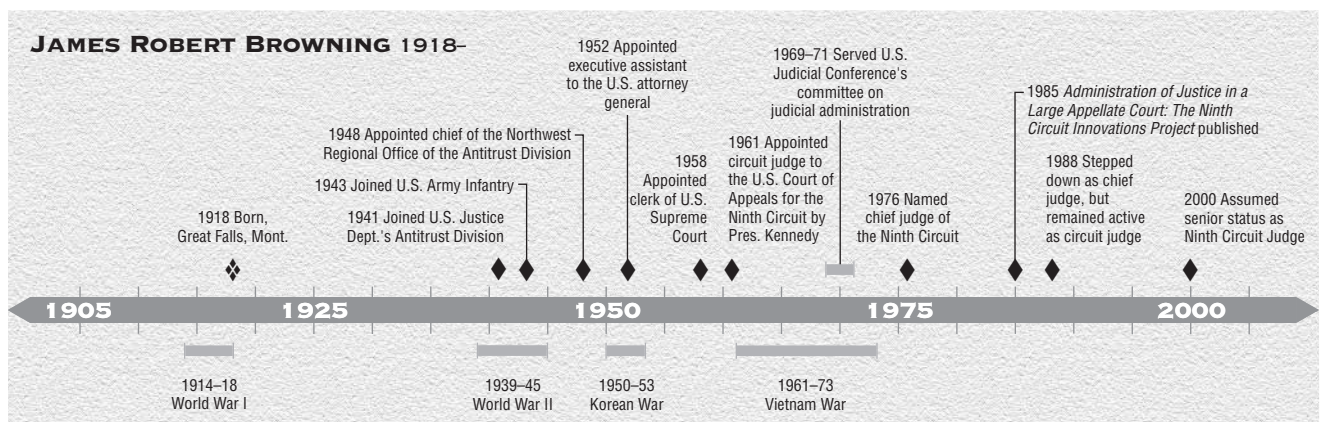
In the mid-1970s, there was no guarantee of speedy disposition of litigation in the federal courts. The courts of appeals, in particular, faced widespread crises because the volume of appeals far exceeded the capacity of the courts to decide them. The Ninth Circuit court was no exception, and, because of its enormous backlog of cases, was the subject of much discussion among scholars, Congress, and the judiciary. Studies to examine the problems of the Ninth Circuit usually presented one of two conclusions: reduce the size of the circuit, or add more judges to the court. There was strong opposition to dividing the circuit, but there was equally strong opinion that adding more judges would make the circuit even more unmanageable.

Browning was named chief judge of the Ninth Circuit on July 1, 1976, and found himself in a position to experiment with his ideas on judicial administration. As the new chief judge, Browning was instrumental in convincing Congress to give the judges of the Ninth Circuit an opportunity to demonstrate that a large circuit with a large court of appeals could perform effectively.

Under Browning's leadership, that challenge was met with remarkable success. Foremost among the innovations initiated by Browning

"THE NINTH CIRCUIT IS THE ONLY COURT IN WHICH, WITHIN OUR BOUNDARIES, IS REPRESENTED ALL THE POINTS OF VIEW, BASICALLY ALL THE PROBLEMS, SOCIAL AND ECONOMIC, OF THE WHOLE NATION. THAT KIND OF COURT CAN MAKE A VERY POSITIVE CONTRIBUTION TO THE DEVELOPMENT OF THE FEDERAL LAW AT THE NATIONAL LEVEL."

—JAMES BROWNING



and his colleagues were new methods of case processing and control, including the installation of the first completely computerized docketing (scheduling) system in a federal appellate court. Browning's innovations were later chronicled in a study published by the FEDERAL JUDICIAL CENTER (*Administration of Justice in a Large Appellate Court—The Ninth Circuit Innovations Project* [1985]). The court also created an executive committee to facilitate administrative decision making, assigned similar cases to the same three-judge panel, resolved panel conflicts with a "mini" en banc court of 11 judges (rather than with all 28 judges assigned to the circuit), and created a BANKRUPTCY panel to hear bankruptcy appeals exclusively.

These modifications and more, from decentralized staffing to fundamental changes in the way the court deliberates, turned the Ninth Circuit into a model for other courts around the country. In addition to speeding up justice, Browning's innovations also improved the Ninth Circuit's judicial record over time. In 1984, the Supreme Court reversed 27 of 28 decisions from the Ninth Circuit. By 1987, the circuit's reversal rate was down to 47 percent—and was the third lowest in the country.

On June 15, 1988, after a dozen years as chief judge, Browning stepped down, but remained an active circuit judge handling a full caseload. In September 2000, Browning took senior status. He retained his chambers in San Francisco and continued to hear court cases. As of 2002, Browning's 40-year tenure on the court was the second longest of any federal judge in the United States.

Browning helped establish the Ninth Judicial Circuit Historical Society in 1985 and in 1987 he became one of the founders and current board members of the Western Regional Justice Cen-

ter, a nonprofit group that focuses on the improvement of the judicial system. In 1991, he was awarded the prestigious Edward J. Devitt Award for Distinguished Service to Justice and in 2001, he received the Montana State Bar Association's William J. Jameson award. Also, in 2001, U.S. Senator Barbara Boxer (D-Calif.) introduced a bill calling for the Ninth Circuit Court's San Francisco headquarters to be named after Judge James R. Browning.

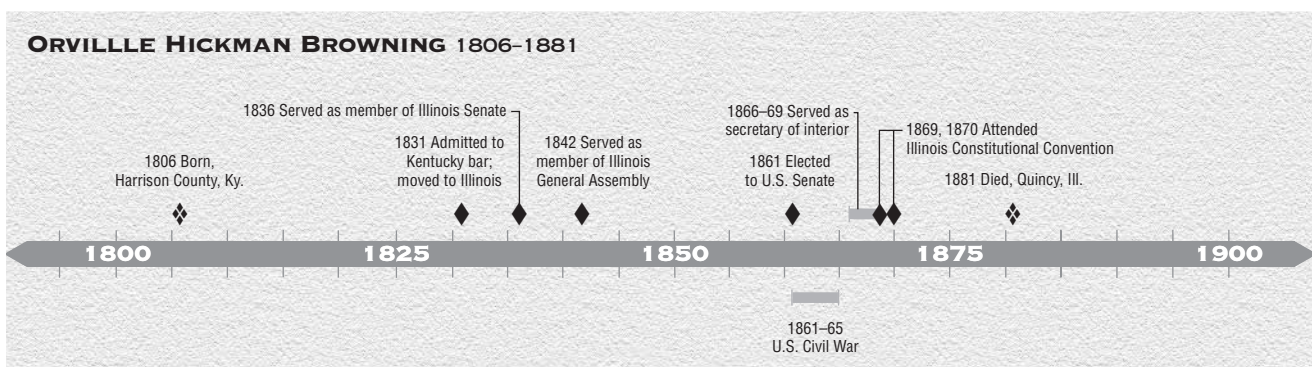
FURTHER READINGS

- Hursh, Jack. 1995. "Tribute to Judge James R. Browning." *Montana Law Review* 56 (winter).
- MacLean, Pamela A. 2001. "Judge Has Given Half a Lifetime to Improving Courts; Diplomat, Leader Has 40 Years' Practice at Shaping an Expanding 9th Circuit. (James R. Browning, 9th U.S. Court of Appeals Judge)." *The Los Angeles Daily Journal* 114 (September 27).
- . 1988 "Judge Browning's Legacy: the Ninth Circuit's Chief Judge is Leaving the Court More Efficient Than He Found It." *California Lawyer* 8 (June).
- "The State Bar's Highest Award Goes to Judge James Browning." August 2001. *Montana Lawyer Magazine*. Available online at <www.montanabar.org> (accessed June 19, 2003).

❖ BROWNING, ORVILLE HICKMAN

Orville Hickman Browning was born February 10, 1806, in Harrison County, Kentucky. He was educated at Augusta College and admitted to the Kentucky bar in 1831. In that same year, he relocated to Illinois and established his legal practice.

In 1836 Browning served as a member of the Illinois Senate, and in 1842 participated in the Illinois General Assembly. He entered the United States Senate in 1861, replacing STEPHEN A. DOUGLAS as senator from Illinois, and remained at this post until 1862. He gained a reputation for his adversity to several policies of ABRAHAM LINCOLN, including the emancipation of slaves.





Orville Hickman Browning. LIBRARY OF CONGRESS

From 1866 to 1869 Browning served as U.S. secretary of the interior and also acted as attorney general for a short period in 1868. He attended the Illinois Constitutional Convention during 1869 and 1870.

As a lawyer, Browning specialized in cases involving the Midwestern railroad system.

Browning died August 10, 1881, in Quincy, Illinois.

BRYAN TREATIES

Beginning in 1913, U.S. Secretary of State WILLIAM JENNINGS BRYAN negotiated a number of bilateral treaties for the "Advancement of Peace." The basic aim of these bilateral treaties was to prevent war by interjecting a conciliation process into a dispute between parties to the treaty. Each signatory nominated two members, one a national and one a foreign citizen, to a permanent commission. These four would then choose a fifth member who could not be a national of either state. The commission would review the underlying facts to the dispute and issue a report on the controversy within one year. Until the report was issued the parties agreed to refrain from resorting to hostilities. It was hoped that this process and the inherent delay in issuing a report would lessen tension and preclude resort to armed force to settle the dispute, although each was free to do so after the report was issued. Eventually forty-eight of these

treaties were concluded, but few disputes were ever submitted to any of the commissions.

❖ BRYAN, WILLIAM JENNINGS

William Jennings Bryan was a prominent figure in U.S. politics during the late nineteenth and early twentieth centuries, and is perhaps best known for his role as assistant to the prosecution in the famous *SCOPES MONKEY TRIAL* of 1925.

Bryan was born March 19, 1860, in Salem, Illinois. His was a devoutly religious family that prayed together three times a day and stressed strict adherence to a literal interpretation of the Bible. His parents, Silas Lilliard Bryan and Mariah Elizabeth Jennings Bryan, were firm believers in education. His mother schooled Bryan and his siblings in their home until they were old enough to be sent away to school. Bryan was an obedient and well disciplined child who was also idealistic. His favorite subject was math because of its orderly reason and logic. He showed early interest in politics and public speaking, and at the age of twelve delivered a campaign speech for his father, who ran unsuccessfully for Congress. It was the beginning of a distinguished career as an orator for Bryan.

In 1875, Bryan was sent to live in Jacksonville, Illinois, to attend the Whipple Academy and Illinois College. During college, he participated in debate and declamation and excelled at long jumping. He graduated from college in 1881 and went on to Union College of Law, in Chicago. In 1883 he returned to Jacksonville and on July 4 opened a law practice. He married his sweetheart of five years, Mary Elizabeth Baird, on October 1, 1884. Bryan's young wife proved to be an intellectual match for her husband. After the couple settled in Jacksonville, she took classes at Illinois College, a practice unheard of for a married woman at the time. She later studied law under Bryan's instruction, and was admitted to the bar in Nebraska in 1888.

Bryan had always yearned to go west, to test himself against the frontier. In 1887, he and his wife moved to Lincoln, Nebraska, where he entered a law partnership with a friend. The Bryans became active in civic affairs, and started separate discussion groups for men and women where the subject was often politics. Bryan also began lecturing on religious topics. In 1890, he succumbed to his interest in politics and entered his first campaign for public office. He was the

"THE HUMBLEST
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—WILLIAM
JENNINGS BRYAN

William Jennings
Bryan.

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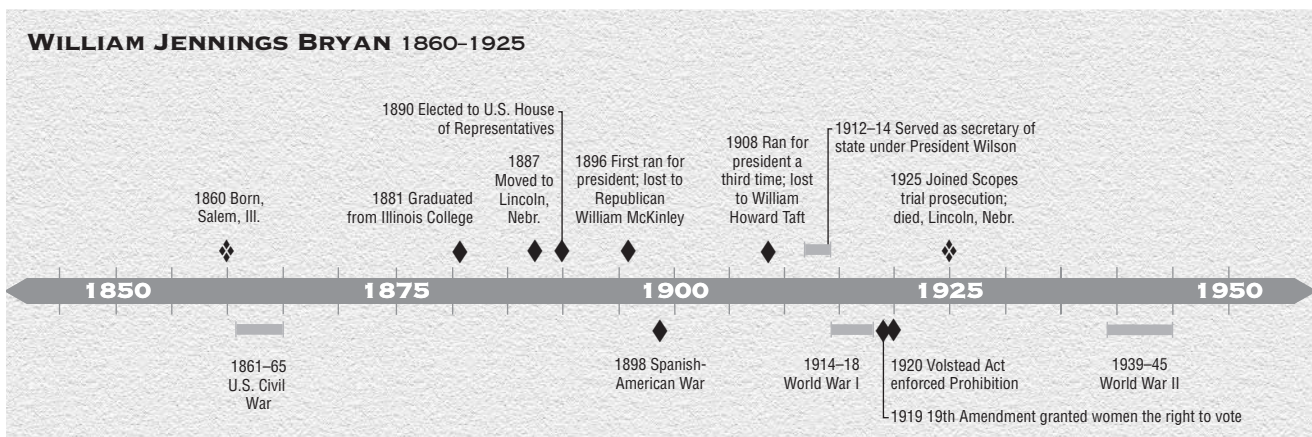


Democratic candidate for Congress from a staunchly Republican district in Nebraska, but he won the election by a comfortable margin and was reelected in 1892. He made a bid for the Senate in 1894 but was defeated. He then turned to journalism and became editor in chief of the *Omaha World-Herald*. By this time, he had developed a reputation as a compelling speaker and was in demand for the popular Chautauqua lecture circuit. (The Chautauqua movement combined education with entertainment, often offered outdoors or in a tent; it took its name from the Chautauqua Lake region in New York, where it originated.)

During his campaign for the Senate, Bryan took up the free silver cause, a political movement that advocated the free coinage of silver. Free silver advocates, mainly indebted farmers in the West and South, wanted the government to issue more money, backed by silver, to ease the debts they were unable to repay because of declining farm prices. The money interests in the East favored sound money and the gold standard. These opposing forces clashed in the 1896 presidential campaign. Bryan emerged as the nominee of four parties: the Democratic, Populist, Silver Republican, and National Silver parties. At the Democratic National Convention in Chicago, he made his famous “Cross of Gold” speech, in which he cast himself as a champion of the common person against the forces of the powerful and privileged. He passionately declared that those he referred to as the idle holders of money in Wall Street were responsible for the United States’ financial woes.

Bryan campaigned tirelessly, traveling over eighteen thousand miles to deliver his electrifying speeches. In the end, he lost to WILLIAM MCKINLEY by less than five percent of the popular vote. But the foundation had been laid for his lifelong themes: the people versus the power of wealth, the workers versus the powerful money holders, the farmers versus the industrial interests. These themes echoed throughout his later attempts to win the presidency.

After serving as a colonel in a noncombat position during the SPANISH-AMERICAN WAR, Bryan ran for president again in 1900, this time on an anti-expansion theme that was rejected by voters. By 1904, he was falling out of favor with Democrats. He waged a long and exhausting fight to be nominated for president that year,



but in the end was content that he had at least influenced the party platform enough so that it included nothing he found objectionable. Then the party nominated Alton B. Parker, who promptly announced that he was in favor of a gold standard. Parker lost the election to THEODORE ROOSEVELT. Bryan was bruised by the party's renunciation of his free silver position, but he rebounded and was nominated for president a third time, in 1908. He ran a strong campaign but lost to WILLIAM HOWARD TAFT.

After the 1908 election, Bryan realized he would never be president. Nevertheless, he continued to influence DEMOCRATIC PARTY policies, and in 1912 he supported Woodrow Wilson's candidacy for president. After Wilson was elected, he selected Bryan as his SECRETARY OF STATE, a position Bryan resigned after two years when his pacifist ideas conflicted with Wilson's policies on U.S. involvement in WORLD WAR I. After Bryan left the cabinet, his political influence declined rapidly.

During his later years Bryan continued his work in the newspaper business and was a popular lecturer on the Chautauqua circuit. He helped gain passage of the EIGHTEENTH AMENDMENT, which ushered in PROHIBITION, and helped the suffragette movement win the vote for women with passage of the NINETEENTH AMENDMENT.

During the last few years of his life, Bryan wrote numerous articles on religious topics. He felt that World War I was at least partly caused by a pervasive "godlessness" sweeping the world. To Bryan, this godlessness was nowhere more clearly reflected than in Darwin's theory of the evolution of the species. Bryan traveled around the United States preaching a literal interpretation of the Bible and campaigning for laws that banned the teaching of evolution. One such law, passed in Tennessee, prohibited teachers in state-supported schools and universities from teaching any theory of the origin of human life other than the creation story contained in the Bible. In 1925, a science teacher named John Thomas Scopes violated the law and was brought to trial. Hoping for publicity, the state asked Bryan to join the prosecution. He agreed, and found himself facing CLARENCE DARROW, a famous defense attorney who was a self-proclaimed atheist, an opponent of CAPITAL PUNISHMENT, and a defender of unpopular causes. The trial quickly took on the air of a circus, with reporters and photographers from all over the

world and the first live radio coverage of such an event broadcast by WGN in Chicago. The media cast the proceeding as a contest between science and the Bible. The defense tried to frame the issue as tolerance for new ideas. Ultimately, however, the prosecution persuaded the judge to confine the case to a question of the state's right to control public education.

Sensing that he was losing control of the trial, Darrow decided to try to unravel the state's case by calling Bryan as a witness. He intended to lead Bryan away from the prosecution's carefully framed issue into a defense of fundamental biblical interpretation. Bryan, whose trial experience had been limited, and who was feeling tired and ill, fell into Darrow's trap and was ridiculed and humiliated by the flamboyant attorney's searing and skillful questions. After Bryan's testimony, the trial was abruptly ended, depriving Bryan of the opportunity to answer Darrow's stinging offense. Nevertheless, the jury deliberated a mere eight minutes before returning a guilty verdict.

The Scopes trial was a victory for Bryan and his supporters, but he had been devastated by Darrow. He stayed in Tennessee to finalize and print the speech he had planned to use in closing argument before the court. Five days after the trial ended, on July 26, 1925, while still in Tennessee, Bryan died in his sleep. As a train bearing his body passed through the countryside on its way to Washington, D.C., thousands of the "common people" Bryan had championed gathered to pay their respects. The nation's capital was in official mourning as Bryan lay in state. At his request, he was buried with full military honors at Arlington National Cemetery, an ironic footnote to the life of a fervent pacifist.

Although Bryan never won the country's top office, he exerted a strong influence during his long career in public service. Many of the reforms he advocated were eventually adopted, such as INCOME TAX, prohibition, women's suffrage, public disclosure of newspaper ownership, and the election of Senators by popular rather than electoral vote. Although he is most often associated with the Scopes trial, his diligent devotion to the causes in which he believed is his most significant legacy.

FURTHER READINGS

- Anderson, David D. 1981. *William Jennings Bryan*. Boston: Twayne.
- Cherny, Robert W. 1994. *A Righteous Cause: The Life of William Jennings Bryan*. Norman: Univ. of Oklahoma Press.

Koenig, Louis W. 1971. *Bryan: A Political Biography of William Jennings Bryan*. New York: Putnam.

CROSS-REFERENCES

Scopes Monkey Trial.

❖ BRYANT, WILLIAM BENSON

William Benson Bryant is a federal judge whose decisions influenced the outcomes of several famous legal battles of the 1970s.

Bryant was born September 18, 1911, in Wetumpka, Alabama. He moved to Washington, D.C., with his family when he was a child and attended District of Columbia public schools. He graduated from Howard University with a bachelor of arts degree in 1932, and went on to earn his bachelor of laws degree from Howard University Law School in 1936. After law school, Bryant worked for the Works Progress Administration (WPA) and later for the Bureau of Intelligence at the Office of War Information. He joined the U.S. Army in 1943, and attained the rank of lieutenant colonel before his discharge in 1947.

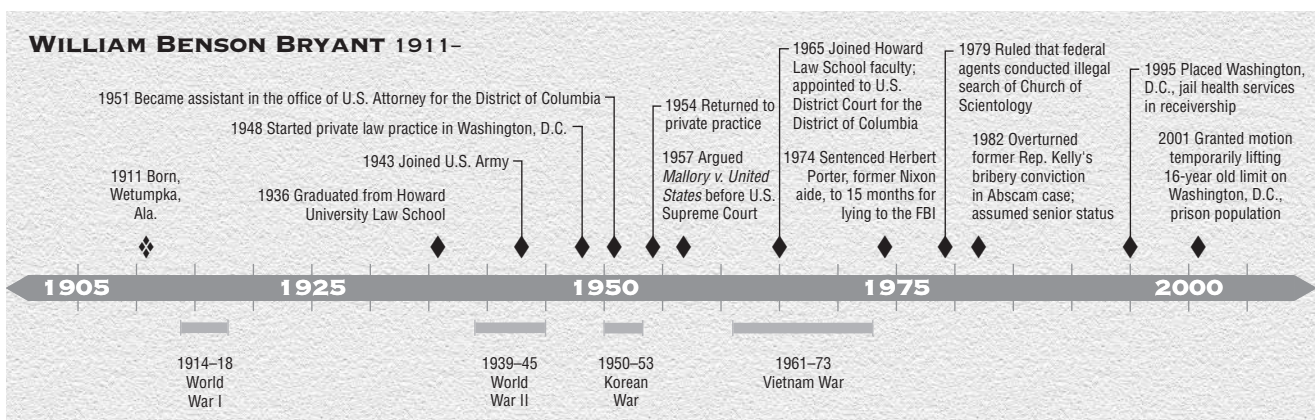
Bryant started a law practice in Washington, D.C., in 1948. He left private practice to become an assistant in the office of the U.S. attorney for the District of Columbia from 1951 to 1954. After resigning that post, he joined the law firm of Houston, Bryant, and Gardner, in Washington, D.C., where he worked from 1954 to 1965. As a criminal defense attorney, Bryant argued and won the Supreme Court case of *Mallory v. United States*, 354 U.S. 449, 77 S. Ct. 1356 (1957). Following *Mallory*, police could no longer use confessions of criminal defendants that were secured during long and unnecessary delays between arrest and ARRAIGNMENT.

Bryant became a law professor at Howard University in 1965, the same year President LYNDON B. JOHNSON appointed him to the federal bench. With his appointment, Bryant became the first African American to serve as a judge at the federal district court level.

During his tenure on the bench, Bryant presided over several high-profile trials. In May 1972, he overturned the election of W. A. ("Tony") Boyle as president of the United Mine Workers (*Hodgson v. United Mine Workers of America*, 344 F. Supp. 17 [D.D.C.]). Boyle's election was challenged by supporters of his opponent, Joseph A. Yablonski, who had been found murdered along with his wife and daughter three weeks after he lost the 1969 election to Boyle. Bryant found sufficient evidence of wrongdoing by Boyle and his supporters to nullify the election. He ordered the union to hold another election, to be conducted under court supervision. Boyle was subsequently defeated by Arnold Miller, a Yablonski supporter, and in 1974, was convicted of murder for having ordered Yablonski's killing.

Bryant also made several key decisions regarding participants in the scandals that devastated the administration of President RICHARD M. NIXON. In April 1974, he sentenced Herbert L. Porter, a former aide in Nixon's reelection campaign, to 15 months in prison for lying to the FEDERAL BUREAU OF INVESTIGATION (FBI) during its investigation of the WATERGATE break-in and subsequent cover-up. In November 1974, he ordered White House counsel Philip W. Bucher to produce audiotapes of Oval Office meetings that took place May 1–5, 1971. The order was part of a CLASS ACTION suit brought against the U.S. government on

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BRYANT



behalf of eight hundred antiwar protesters. The plaintiffs alleged that government officials violated their civil liberties and suspended DUE PROCESS when they ordered the arrest of nearly 12,000 protesters who marched on the White House on May 1. Most of the arrests in the so-called Mayday Rally were later found to be unlawful.

In 1982, after a long and distinguished career on the federal bench, Bryant attained the rank of senior judge. One of his best-known decisions since then was his 1989 ruling upholding a federal BANKRUPTCY judge's decision in a case involving the U.S. JUSTICE DEPARTMENT. The case centered on INSLAW, a software company that had contracted with the department to provide a case-management software program. INSLAW claimed that the department was using the software even though it had not paid for it—a situation that had forced the company into bankruptcy. A federal bankruptcy judge agreed and ordered the Justice Department to pay INSLAW \$8 million in damages. Bryant upheld this ruling on appeal; the ruling was also upheld by higher courts (although the Justice Department did get the \$8 million judgment set aside).

In the 2000s, Bryant continued to preside over noteworthy cases. In March 2003, he issued a ruling that ended the U.S. District Court's 32-year oversight of the D.C. jail. Overcrowding, building safety issues, and problems with the quality of medical services for inmates led to the filing of two cases that compelled the court to assume oversight in the 1970s: *Campbell v. McGruder*, 416 F.Supp. 106 (D.D.C., Nov. 5, 1975) (No. CIV. 1462-71; 2) and *Inmates of D.C. Jail v. Jackson*, 416 F.Supp. 119 (D.D.C. May 24, 1976) (No. CIV. 75-1668). The D.C. Department of Corrections worked to reverse problems at the jail by launching comprehensive programs

to improve environmental and safety conditions and raise the standards of medical and mental HEALTH CARE services. By 2002, conditions at the jail had improved significantly, and its medical and psychiatric services had achieved national accreditation. Bryant's ruling, noted D.C. mayor Anthony Williams, was proof that the jail had passed "the toughest muster of the federal court system."

FURTHER READINGS

- Ploski, Harry A., and James Williams, eds. 1989. *The Negro Almanac*. Detroit: Gale Research.
- Spradling, Mary M., ed. 1980. *In Black and White*. Detroit: Gale Research.
- Weisberg, Jacob. 1990. "Computer Trouble: Another Fine Meese Mess." *New Republic* (September 10).

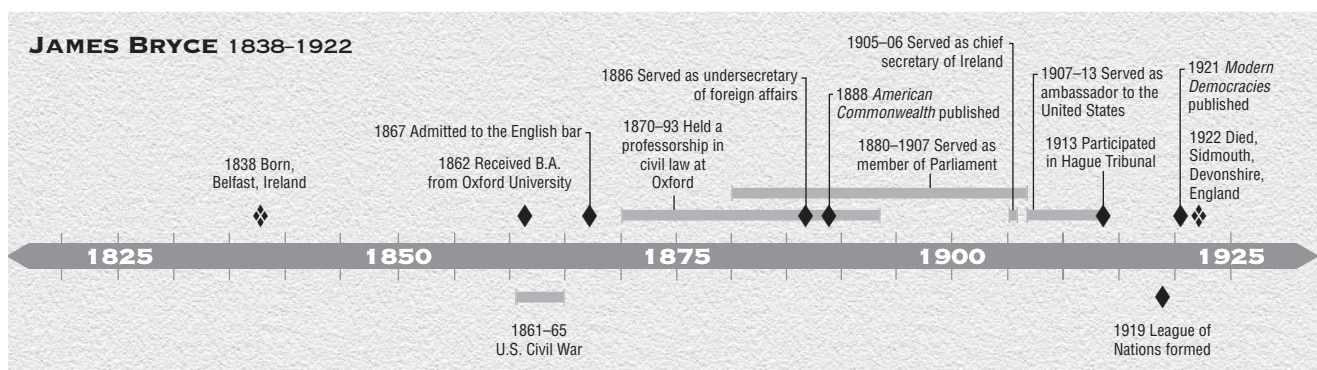
❖ BRYCE, JAMES

James Bryce, also known as the Viscount Bryce of Dechmont, was born May 10, 1838, in Belfast, Ireland. He attended Glasgow and Heidelberg Universities and received a bachelor of arts degree from Oxford University in 1862.

After his ADMISSION TO THE BAR in 1867, Bryce practiced law for the next fifteen years. He accepted a professorship at Oxford in 1870, where he taught CIVIL LAW until 1893.

Bryce entered Parliament in 1880 and remained a member until 1907. During this time, he also performed diplomatic duties—serving as undersecretary of foreign affairs in 1886 and chief secretary for Ireland from 1905 to 1906. From 1907 to 1913, he acted as ambassador to the United States.

In 1913, Bryce participated at the HAGUE TRIBUNAL, the international court of ARBITRATION established in the Netherlands. After WORLD WAR I, he was active in the formation of the LEAGUE OF NATIONS.



Bryce gained fame for his numerous publications, including *The Holy Roman Empire: The American Commonwealth*, which was published in 1888 and was an important work concerning American government; and *Modern Democracies*, published in 1921.

He died January 22, 1922, in Sidmouth, Devonshire, England.

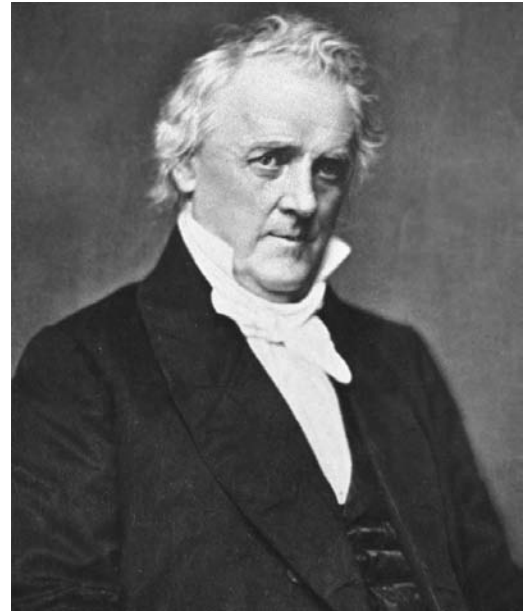
❖ BUCHANAN, JAMES

James Buchanan achieved prominence as a statesman and as the fifteenth president of the United States.

Buchanan was born April 23, 1791, near Mercersburg, Pennsylvania. A graduate of Dickinson College in 1809, Buchanan was admitted to the Pennsylvania bar in 1812 before serving a tour of duty in the militia during the WAR OF 1812. After the war, he entered politics and joined the Pennsylvania House of Representatives in 1814.

In 1821 Buchanan began his career in federal politics, representing Pennsylvania in the U.S. House of Representatives until 1831. Later that year, he extended his interests to the field of foreign service and performed the duties of U.S. minister to Russia for a two-year period. He returned to Congress in 1834 and represented Pennsylvania in the U.S. Senate for the next eleven years. From 1845 to 1849, he served as U.S. SECRETARY OF STATE and reentered foreign service in 1853 as U.S. minister to Great Britain until 1856.

Buchanan became unpopular in 1854 with his involvement in the creation of the Ostend Manifesto, which provided for the purchase by the United States of Cuba from Spain; if Spain refused to sell, the manifesto gave the United States the right to seize the country forcibly. Cuba would then become a slave state, which



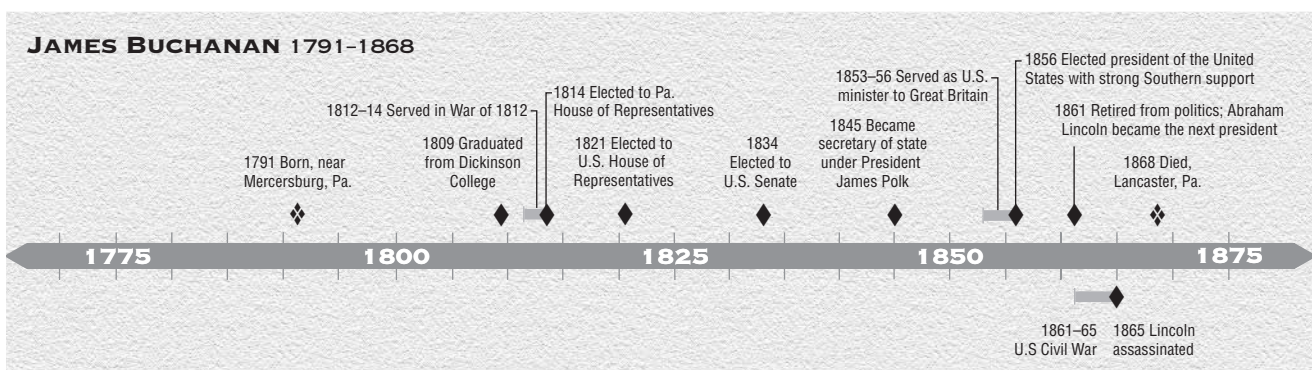
James Buchanan. LIBRARY OF CONGRESS

was viewed favorably by Southerners, but which met with vehement opposition by abolitionists. The manifesto was eventually rejected by the U.S. DEPARTMENT OF STATE.

As a presidential candidate in 1857, Buchanan adopted a moderate attitude toward SLAVERY and worked to establish a balance between the proslavery forces and the abolitionists. He believed that slavery was immoral, but that the Constitution provided for the protection of the practice in areas where it already existed. New states, he believed, should have the right to choose whether to be free or slave.

He won great support from the South, and after his election in 1857, Buchanan unsuccessfully attempted to reconcile the strife between the warring factions. He again advocated the

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—JAMES
BUCHANAN

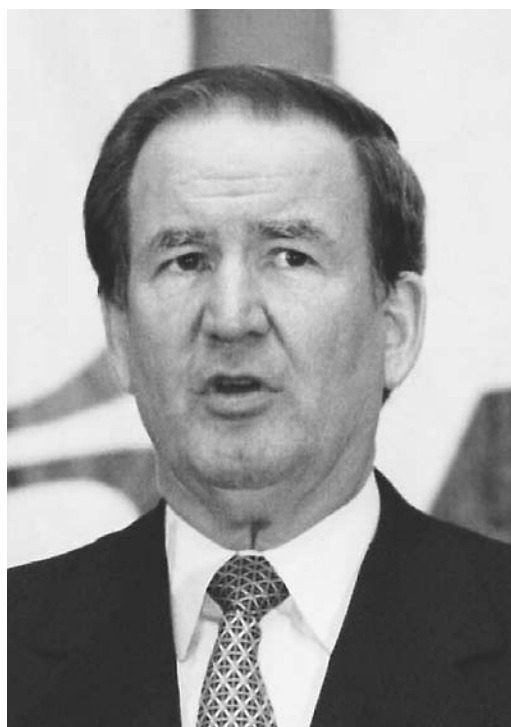


acquisition of Cuba and favored the admission of Kansas as a slave state, which earned him disfavor with the northern free states. The strife between North and South continued, and Buchanan was unable to prevent the secession of South Carolina that led to the outbreak of the Civil War. He opposed secession but believed that he did not possess the power to compel states to remain faithful to the Union. When ABRAHAM LINCOLN succeeded Buchanan as president in 1861 the country was ready for civil war. Buchanan retired to Pennsylvania where he died June 1, 1868, in Lancaster.

❖ BUCHANAN, PATRICK JOSEPH

Political commentator, White House appointee, and presidential candidate Patrick Joseph Buchanan is a leader of far-right conservatism. From modest beginnings as a journalist in the early 1960s, Buchanan became an influential voice in the REPUBLICAN PARTY. He served in a public relations capacity under three presidents—Richard M. Nixon, GERALD R. FORD, and Ronald Reagan—before running for president himself in 1992. His hard-line positions on ABORTION, immigration, and foreign aid, as well as his battle cry for waging a “cultural war” in the United States, failed to wrest the nomination from George H. W. Bush. Buchanan tried for the presidency twice more, in 1996 and 2000, but again failed to gain support of his party. Often the subject of controversy for his writings and speeches, Buchanan is the founder of a political organization called the American Cause, whose slogan is America First.

Born November 2, 1938, in the nation’s capital, Buchanan was the third of nine children of William Baldwin Buchanan and Catherine E. Crum Buchanan. He grew up under the resolute influences of Catholicism and conservatism, both the hallmarks of his father, a certified public accountant. Buchanan’s brilliance at the Jesuit Gonzaga College High School earned him the honor of class valedictorian and a scholarship to Georgetown University. In his senior year of college, the English and philosophy major was already developing the sharp, confrontational style that would mark his professional life. He broke his hand scuffling with police officers over a traffic incident and was suspended from Georgetown for a year. He nonetheless finished third in his class in 1961. He received a master’s degree in journalism from Columbia University in 1962.



Pat Buchanan.
AP/WIDE WORLD
PHOTOS

Like other conservative politicians of his generation, notably Senator JESSE HELMS (R-N.C.) and President Reagan, Buchanan began with a career in the media, which led into politics. He spent three years writing conservative editorials for the *St. Louis Globe-Democrat* before being introduced to Nixon at a dinner party. The politician soon hired the 28-year-old as an assistant in his law firm. Buchanan wrote speeches for Nixon’s 1968 presidential campaign, worked as his press secretary, urged him to choose Spiro T. Agnew as a running mate, and, after the election, became his special assistant. This last position involved reporting on what the news media said about the administration. It was an increasingly thankless job. Buchanan believed that bad news about the VIETNAM WAR, youth protest, and the WATERGATE scandal was the work of a biased liberal media. He fought back, and is widely thought to have written Vice President Agnew’s famous antipress speech in 1969 attacking the “small and unelected elite” whose opinions were critical of the president.

Buchanan escaped the taint that brought down Nixon, in part because he refused to help Nixon aides in their so-called dirty tricks campaign. Buchanan declined to smear Daniel Ellsberg—the former defense analyst who leaked

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—PATRICK
BUCHANAN

the classified documents known as the Pentagon Papers to the *New York Times*, and whose psychiatrist's office Nixon aides broke into, helping to set in motion the Watergate scandal. In fact, Buchanan later strongly defended the president and denounced the conspirators at U.S. Senate hearings. This testimony saved his career: he was seen as loyal and, more important, as evidently knowing little about the vast extent of the administration's illegalities. Unlike other Nixon insiders, he did not need to rehabilitate his reputation after Nixon left office. He remained in the White House under President Ford until 1975.

Between 1975 and 1985, Buchanan established a national reputation. He wrote a syndicated column that criticized liberals, gays, feminists, and particularly the administration of President JAMES (JIMMY) CARTER. He also made forays into radio and television broadcasting, founding what would later become the political debate program *Crossfire* on the Cable News Network (CNN). He rarely pulled punches; liberals and even some conservatives regarded him as a reactionary, but he won an audience with his appeals to traditional values.

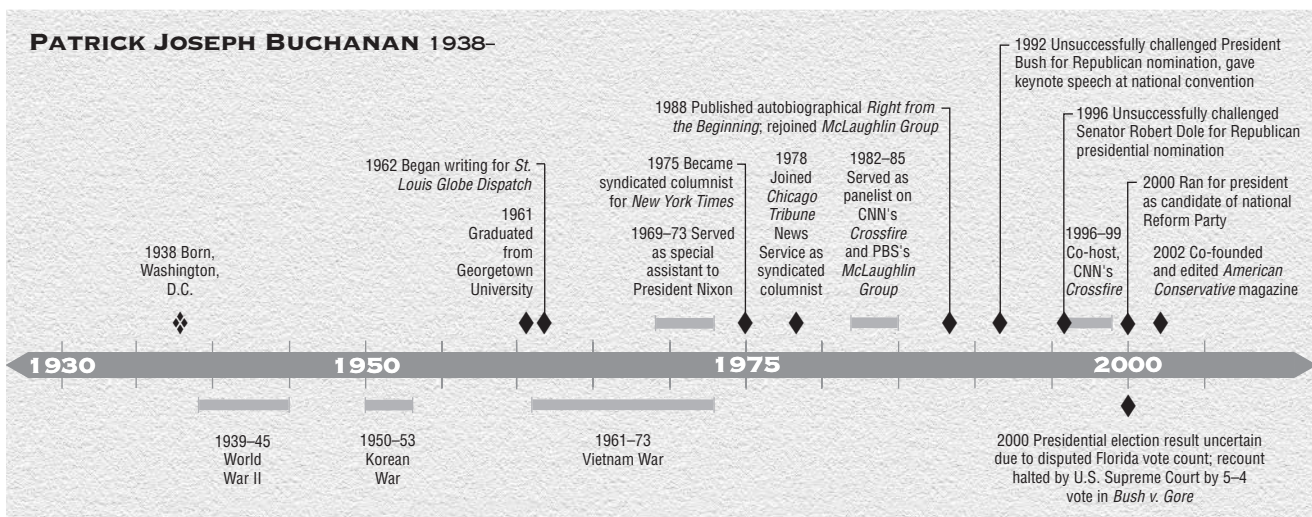
Although he was earning a reported annual income of \$400,000 for his writing and work in radio and television, Buchanan jumped at the offer to serve as director of communications during the second term of President Reagan. The job was a conservative activist's dream: besides shaping Reagan's public image, Buchanan had constant access to the president's ear. Buchanan reportedly used this access to spur Reagan on to taking tougher positions—

such as vetoing a farm bailout bill and lavishly praising the anti-Sandinista Contra rebels fighting in Nicaragua as “the moral equal of our Founding Fathers.”

Presidential aspirations drew Buchanan into the 1992 race. He was even better known than in the 1980s as the result of his nightly appearances on CNN's *Crossfire*, where he sparred with his liberal colleague Michael E. Kinsley. President George H. W. Bush's popularity among Republicans was waning, especially in light of a sluggish economy. Moreover, Buchanan offered a clearly tougher platform than Bush, whom he considered a tepid moderate. “It seemed to me that if we're going to stand for anything,” he told the *Washington Times*, “conservative leaders had to at least raise the banner and say, ‘This is not conservatism.’”

Buchanan's campaign combined populism, nationalism, and social conservatism: he advocated limits on immigration, restrictions on trade, and isolationism in foreign policy, while opposing abortion rights, GAY AND LESBIAN RIGHTS, and federal arts funding. As he always had in his role as a pundit, the candidate provoked. He ran TV ads featuring gay dancers, and he toured the South criticizing the VOTING RIGHTS ACT (42 U.S.C.A. § 1971 et. seq. [1965]) and reassuring southerners that hanging the Confederate flag from public buildings was acceptable free expression.

Buchanan's critics did not pull their punches. Liberals accused him of xenophobia, racism, and homophobia. Conservatives sometimes came to his defense, but not always. Michael Lind, editor of the conservative journal



the *National Interest*, wrote that Buchanan represented “conservatism’s ugly face.” Charges of anti-Semitism followed Buchanan’s use of the phrase “Israel and its amen corner” in attacking U.S. intervention in the Persian Gulf War, and among those critical of him was the prominent conservative author and Catholic William F. Buckley Jr. Buchanan denied the charges: he said he was being tarred for supporting John Demjanjuk, who was accused, then later cleared, of being the Nazi war criminal Ivan the Terrible.

Small flaps attended the Buchanan campaign regularly—one day he was announcing that English immigrants would assimilate better than Zulus, and the next calling for beggars to be removed from the streets. The most severe criticism came in August 1992 after his speech at the GOP national convention. First he knocked the Democratic Party’s convention as a gathering of “cross-dressers.” Then he called for a “cultural war” in which U.S. citizens, like the NATIONAL GUARD putting down the Los Angeles riots, “must take back our cities, and take back our culture, and take back our country.”

Typical of the liberal response was an editorial in the *New Republic* criticizing Buchanan for advocating “militarized race war” (*Washington Times* 19 July 1993). Mario M. Cuomo, former governor of New York, confronted Buchanan on the CBS program *Face the Nation*, asking, “What do you mean by ‘culture’? That’s a word they used in Nazi Germany.” William J. Bennett, former secretary of education, accused him of “flirting with fascism.” Buchanan defended himself, blaming secular humanism, Hollywood, the National Endowment for the Arts, and public schools for creating an “adversary culture” contrary to traditional values.

Despite Bush’s winning the nomination handily, Buchanan’s influence did not wane. Two years later, the themes of his candidacy found expression in the Contract with America’s insistence on a constitutional amendment allowing school prayer and in a call for a crack-down on immigration. Moreover, in 1995, his “cultural war” message could be heard from nearly every Republican presidential candidate, especially BOB DOLE. Meanwhile, Buchanan announced a second run for the White House campaigning on the same strong conservative positions he had advanced in his campaign in 1992. Though he stayed in the race until the end, Buchanan lost the Republican nomination for president to Dole by a large margin.

In 2000, Buchanan made a third run for the presidency running on the Reform ticket with Ezola Foster, an African American woman. Buchanan’s capture of the REFORM PARTY nomination caused a split with supporters of party founder Ross Perot who then ran their own candidate. Both candidates did poorly at the polls winning less than one percent of the votes.

Buchanan continues to be a prolific writer. He has written numerous articles and writes a nationally syndicated newspaper column. His books include *Right from the Beginning* (1988), *A Republic Not an Empire: Reclaiming America’s Destiny* (1999), and *The Death of the West: How Dying Populations and Immigrant Invasions Imperil Our Country and Civilization* (2001). Buchanan also remains a prominent figure in the media as a commentator, and as a cohost with liberal reporter Bill Press on their daily program, which airs on MSNBC.

FURTHER READINGS

The American Cause. Available online at <www.theamericancause.org> (accessed June 19, 2003).

“Patrick J. Buchanan.” MSNBC News. Available online at <www.msnbc.com/news/785140.asp> (accessed June 19, 2003).

BUCK V. BELL

In *Buck v. Bell*, 274 U.S. 200, 47 S.Ct. 584, 71 L.Ed. 1000 (1927), the U.S. Supreme Court upheld a Virginia state law that authorized the forced sterilization of “feeble-minded” persons at certain state institutions. The case has been all but expressly abrogated by later Supreme Court opinions. Justice OLIVER WENDELL HOLMES JR., considered by many to be a champion of civil liberties, wrote the majority opinion for the court.

In 1924 the state of Virginia passed a law that provided for the sterilization of “mental defectives” and “feeble-minded” persons who were confined to certain state institutions, when, in the judgment of the superintendents of those institutions, “the best interests of the patients and of society” would be served by their being made incapable of producing offspring. On January 23, 1924, a Virginia state court adjudged 18-year-old Carrie Buck to be “feeble-minded” within the meaning of the Virginia law and committed her to the Virginia State Colony for Epileptics and Feeble-Minded.

Nine months later, A.S. Priddy, then superintendent of the Virginia institution, petitioned the institution’s board of directors for an order

compelling Buck to be sterilized by a surgical operation known as salpingectomy (the cutting of the fallopian tubes between the ovaries and the womb, and the tying of the ends next to the womb). After giving Buck notice and the opportunity to be heard at a hearing in which evidence was presented supporting the requested order, the board of directors approved the superintendent's petition.

Buck, her guardian, and her attorney challenged the Virginia sterilization law in the Circuit Court of Amherst County, Virginia. Their lawsuit was filed against Dr. J.H. Bell, who had succeeded Priddy as superintendent of the institution. The lawsuit raised two principle arguments.

First, the suit maintained that the sterilization law violated Buck's **SUBSTANTIVE DUE PROCESS** rights guaranteed by the Fifth and Fourteenth Amendments to the U.S. Constitution. The suit did not challenge the procedures by which Buck was ordered sterilized. Instead, Buck and her representatives contended that the **DUE PROCESS CLAUSE** guarantees all adults the constitutional right to procreate and that the Virginia law violated this right.

Second, Buck's representatives argued that the Virginia law violated the **EQUAL PROTECTION CLAUSE** of the **FOURTEENTH AMENDMENT**, which guarantees that the law treat similarly situated people alike. The sterilization law failed to provide equal protection, they argued, because it singled out "feeble-minded" patients at only certain state institutions identified in the statute, while having no application to "feeble-minded" persons at other state institutions or to "feeble-minded" persons who were not committed or confined.

The county court upheld the Virginia law and affirmed the sterilization order, and Buck and her representatives appealed to the Virginia Supreme Court of Appeals, which also affirmed. *Buck v. Bell*, 143 Va. 310, 130 S.E. 516 (Va. 1925). In affirming the lower court, the Virginia Supreme Court of Appeals said that neither the Equal Protection Clause nor the Due Process Clause were designed to interfere with the state's **POLICE POWER** to prescribe regulations that promote the health, peace, morals, education, and good order of the people. The state's police power, said the Virginia high court, gives the state legislature authority to make laws that spur industrial growth, develop resources, and add to Virginia's wealth and prosperity.

When the case reached the U.S. Supreme Court, Chief Justice **WILLIAM HOWARD TAFT** assigned the job of writing the opinion to Associate Justice Oliver Wendell Holmes Jr., then 86-years old. Holmes began his opinion by detailing the procedural safeguards that were afforded Buck, though neither Buck nor her representative had taken issue with them. Holmes noted that Buck had received notice of the superintendent's petition for sterilization, Buck was given the opportunity to appear at a hearing where the propriety of her sterilization was determined based on the evidence presented, and Buck had the right to appeal all the way to the highest court in the United States. "There can be no doubt," Holmes concluded, "that so far as procedure is concerned, the rights of the patient [we]re most carefully considered."

Holmes next addressed Buck's substantive due process claim that she had a constitutional liberty to procreate. "Carrie Buck is a feeble-minded white woman. . . . She is the daughter of a feeble-minded mother . . . and the mother of an illegitimate feeble-minded child," Holmes wrote. Then Holmes, a Civil War veteran, compared Buck's sacrifice of procreative freedom to the sacrifice other U.S. citizens make when called into military duty for their county: "We have seen more than once that the public welfare may call upon the best citizens for their lives. It would be strange if it could not call upon those who already sap the strength of the State for these lesser sacrifices, often not felt to be such by those concerned, in order to prevent our being swamped with incompetence."

Noting that once sterilized, Buck could be released from the institution to become a productive member of society, Holmes reflected on what he thought to be the wider benefits of the Virginia sterilization law: "It is better for the entire world, if instead of waiting to execute degenerate offspring for crime, or to let them starve for their imbecility, society can prevent those who are manifestly unfit from continuing their kind. The principle that sustains compulsory vaccination is broad enough to cover cutting the Fallopian tubes. . . . Three generations of imbeciles are enough."

As to the equal protection argument, Holmes said that "so far as the [institution's] operations enable those who otherwise must be kept confined to be returned to the world, and thus open the **ASYLUM** to others, the equality aimed at will be more nearly reached."

Seven justices joined Holmes's majority opinion upholding the Virginia sterilization law. Only Associate Justice **PIERCE BUTLER** dissented, but he did so without filing an opinion. The dissenting voices of history have been much louder.

Historians and legal scholars have criticized Holmes's opinion for being unenlightened and unduly harsh, pointing to portions of the opinion where Holmes assumed that **DISABLED PERSONS** were not among the "best citizens," that the "degenerate offspring" of "feeble-minded" persons would either become criminals or starve, and that unless such persons were sterilized society would become swamped by incompetence. The Supreme Court itself has since rendered several opinions that have all but expressly abrogated Holmes's opinion in *Buck*, including one opinion that overturned a forced sterilization law on grounds that "[m]arriage and procreation are fundamental to the very existence and survival of the race." *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535, 62 S.Ct. 1110, 86 L.Ed. 1655 (1942).

In Holmes's defense, other historians and scholars have pointed out that the Virginia sterilization law was written by a democratically elected state legislature and upheld by three separate courts. They also note that compulsory sterilization was part of the Eugenics Movement, a popular but paternalistic reform movement that was based on the premise that the "lower classes" were too ignorant to practice **BIRTH CONTROL** or otherwise take care of themselves and that eradicating "feeble-minded" persons from the population was humane.

Scholars on both sides of the historical debate acknowledge that Holmes personally was an enthusiast for population control devices but question why Holmes's opinion in *Buck v. Bell* could not have been as prescient as his opinions on other subjects like the **FIRST AMENDMENT**, where his articulation and application of the "clear-and-present-danger" test revolutionized free speech **JURISPRUDENCE**. In the final analysis, *Buck v. Bell* serves as a striking counter example to Holmes's supporters who like to remember the former associate justice as an unyielding liberal champion of individual rights.

FURTHER READINGS

Berry, Roberta M. 1998. "From Involuntary Sterilization to Genetic Enhancement: The Unsettled Legacy of *Buck v. Bell*." *Notre Dame Journal of Law, Ethics & Public Policy* 12 (summer): 401–48.

Cynkar, Robert J. 1981. "*Buck v. Bell*: 'Felt Necessities' v. Fundamental Values?" *Columbia Law Review* 81 (Nov.): 1418–1461.

Estacio, Richard A. 1988. "Sterilization of the Mentally Disabled in Pennsylvania: Three Generations Without Legislative Guidance Are Enough." *Dickinson Law Review* 92 (winter): 409–36.

Leslie-Miller, Jana. 1997. "From Bell to Bell: Responsible Reproduction in the Twentieth Century." *Maryland Journal of Contemporary Legal Issues* 8 (spring-summer): 123–50.

Lombardo, Paul A. 1985. "Three Generations, No Imbeciles: New Light on *Buck v. Bell*." *New York Law Review* 60 (April): 30–62.

Mahowald, Mary B. 2003. "Aren't We All Eugenacists? Commentary on Paul Lombardo's 'Taking Eugenics Seriously.'" *Florida State University Law Review* 30 (winter): 219–35.

CROSS-REFERENCES

Civil Rights; Due Process of Law; Equal Protection; Fourteenth Amendment; Police Power; Sterilization.

BUGGERY

The criminal offense of anal or oral copulation by penetration of the male organ into the anus or mouth of another person of either sex or copulation between members of either sex with an animal.

Buggery is historically referred to as a "crime against nature." It is an offense under both **COMMON LAW** and statutes. Although prosecution for buggery is rare, the punishment upon conviction can be a fine, imprisonment, or both. The term is often used interchangeably with **SODOMY**.

BUILDING AND LOAN ASSOCIATION

An organization that exists to accumulate a fund, composed of subscriptions and savings of its members, to help facilitate the purchase or construction of real estate by such members by lending them the necessary funds.

CROSS-REFERENCES

Savings and Loan Association.

BUILDING CODES

A series of ordinances enacted by a state or local governmental entity, establishing minimum requirements that must be met in the construction and maintenance of buildings.

Building codes have been used by governmental units for centuries to ensure that buildings remain safe and sanitary. Early settlements in the United States drafted codes for such purposes

as restrictions on the use of wooden chimneys to prevent fire. The early codes were usually only a few sentences in length, specifying narrow restrictions in construction.

Today, home and business construction has become process governed by a complex series of rules. A building code is usually not one document, but rather it is usually a series of documents setting forth requirements for several aspects of construction, such as gas, mechanics, electricity, fire-alarm systems, and plumbing. Building codes generally regulate all aspects of a construction project, including the structural design of a building, sanitation facilities, environmental control, fire prevention, ventilation, light, materials used for the building, and conservation measures. State and local governmental entities are empowered to enact building codes as part of their **POLICE POWERS** under the **TENTH AMENDMENT** to the federal Constitution. That amendment has been interpreted to allow the states to enact legislation designed to protect public health, welfare, and safety.

The development of modern building codes began in the early twentieth century. Residents who lived in tenement houses during that time began a movement that demanded basic sanitation in their housing. Insurance companies also advocated the use of safety standards, due to the potential limitations on the liability of these companies. In 1905, the National Board of Fire Examiners, the predecessor to the American Insurance Association, approved the first National Building Code. It was designed to be used as a model by state and local governmental units when drafting their own building codes. This model code proved very popular among legislators because it provided a respected and comprehensive source for technical construction requirements without the burden and expense of researching and drafting a building code from scratch.

During the **NEW DEAL** era of the 1930s, the federal government sought to modernize the system of housing in the United States, and the use of building codes to ensure safety and sanitation became widespread. Studies during the late 1960s and early 1970s indicated that the vast majority of cities had adopted a building code of some form. As the use of building codes became more prevalent, the actual codes themselves became much more comprehensive and complex. Through the 1970s, the majority of building codes were enacted at the local level.

A number of model building codes were developed during the second half of the twentieth century. By the 1990s, four major building codes were produced, including the National Building Code, by the American Insurance Association (AIA); the Basic/National Building Code (sometimes called the BOCA Code), by the Building Officials Conference of America (BOCA); the Southern Standards Building Code, by the Southern Building Code Congress International, Inc. (SBCCI); and the Uniform Building Code, by the International Congress of Building Officials (ICBO). Most of these various organizations were formed during the first half of the twentieth century by code enforcement officials who wanted to provide a forum whereby they could exchange ideas about the implementation of building codes.

During the past 20 years, roughly half of the states have enacted legislation providing construction standards on a statewide basis. The states that enacted these laws generally have done so in order to provide uniformity in building regulations across the state, and also to ensure that building laws protected all of the citizens in the state equally. Local governments have retained much of the responsibility for the actual implementation of building regulations in these states. It is not uncommon for a state to draft statutes that govern buildings on a general level, while the local units of the state enact more specific regulations to apply to that locality. Local building codes often remain uniform because these local governments typically rely upon one of the available model building codes.

The various associations representing code enforcement officials have formed broader associations for the purposes of collaboration. In 1972, BOCA, SBCII, and ICBO formed the Council of American Building Officials (CABO), which has successfully drafted such model codes as the CABO One and Two Family Dwelling Code and the CABO Model Energy Code. In 1994, the three major model code organizations formed the International Code Council (ICC), which has produced several international model codes. As of 2003, the ICC had developed more than a dozen international model codes, including the International Building Code. The ICC estimates that 46 states, plus the District of Columbia, Puerto Rico, and some federal agencies, enforce or have adopted at least one of the international codes.

Building codes are directly affected by ongoing research regarding the performance of products, materials, or construction methods. Industry experts develop standards, which are documents that contain industry consensus regarding the methods by which the products, materials, or methods should be designed or employed. When an organization drafts a model building code, it typically refers to these standards in the text of the code. Since the standards are national in scope, the reference of these standards ensures that a local building code requires constructors to meet minimum national standards concerning details like safety and performance.

Few question that houses and other buildings are now designed to be much safer and more sanitary than were buildings constructed a century or longer ago, primarily as a result of the implementation of the various building codes throughout the United States. However, some commentators have noted that the requirements of these codes have caused construction prices to rise steadily, which in turn causes the costs of housing and other building usage to rise as well. Moreover, some critics maintain that the process of developing building codes is often as much of a process of negotiation between trade groups who are protecting their own interests as it is a completely scientific process.

Those who are involved in the drafting and implementation of building codes counter that building codes are designed with the health and safety of the public in mind. Results of testing performed during the development of standards are often readily available for inspection, so if questions of reliability arise, they often can be answered through a review of these testing procedures. Moreover, supporters note that state and local governmental entities are not bound to adopt the model building codes, and if a governmental unit disagrees with a provision in a model code, it is free to replace that provision with a requirement of its own creation. Accordingly, if a member of the public disagrees with a particular requirement, he or she generally may raise this issue with the appropriate governing body that decides whether a code or code provision should be adopted.

FURTHER READINGS

Council of American Building Officials. 1997. *An Introduction to Model Codes*. Falls Church, Va.: Council of American Building Officials.

Kelly, Eric Damian. 1996. "Fair Housing, Good Housing or Expensive Housing? Are Building Codes Part of the

Problem or Part of the Solution?" *John Marshall Law Review* 349.

Turner, Michael D. 2001. "Paradigms, Pigeonholes, and Precedent: Reflections on Regulatory Control of Residential Construction." *Whittier Law Review* 3.

BUILDING LINE

A line that a MUNICIPAL CORPORATION establishes, beyond which no building may extend to ensure that its streets will appear uniform.

A building line is also known as the "set back" requirement.

BUILDING OFFICIALS AND CODE ADMINISTRATORS INTERNATIONAL

The Building Officials and Code Administrators International (BOCA) is an association of professionals employed in the establishment and enforcement of BUILDING CODES, which are the rules and regulations that govern the design and construction of buildings. BOCA encourages cities and states to adopt uniform building codes, and promotes competence and professionalism in the enforcement of those codes.

The organization was established in 1915 by building officials from nine states and Canada. Their purpose was to provide a forum for the exchange of knowledge and ideas about building safety and construction regulation. In 1950, BOCA published the *BOCA Basic Building Code*. This was the organization's first model code. Within one year, the BOCA code had been adopted by fifty cities.

BOCA currently publishes a series of books called the *BOCA National Codes*, which contain detailed standards for all aspects of building construction. The section on stairways, for example, precisely describes the acceptable height, depth, and width of steps, and the proper placement and configuration of handrails necessary to ensure safety and ease of use. Separate volumes cover general construction, mechanical systems, plumbing, fire prevention, energy conservation, and other areas.

The codes published by BOCA do not in themselves have the force of law. They can be enforced only when they have been adopted by cities, states, or other government bodies with the authority to issue or withhold building permits. A city or state is free to adopt the BOCA codes in whole or in part.

BOCA's codes have been adopted by many states and cities in the eastern and midwestern



Contractors, manufacturers, architects, and engineers must follow the recommendations of BOCA when building in a municipality that has adopted BOCA's codes.

AP/WIDE WORLD
PHOTOS

United States. Other professional associations perform a similar function in other parts of the country, and publish their own building codes: the International Conference of Building Officials serves western states and publishes the *Uniform Building Code*, and the Southern Building Code Congress serves southern states and publishes the *Standard Building Code*. The three regional organizations are working together toward creating a single model code for the United States.

The publication of the codes is BOCA's most important function. The organization also publishes manuals, textbooks, and periodicals for its members. In addition, BOCA continually develops its model code to keep it up-to-date. It conducts regular training and education programs for its members and provides consultation services for local governments. BOCA disseminates information on the quality and acceptability of building materials and systems as well as on new construction techniques.

BOCA's membership consists largely of cities, towns, and government agencies. These "government members" are represented by individual officials who administer rules and regulations on construction, fire safety, property maintenance, development, and land use. A typical official of this kind is a building inspector with duties to examine building plans and make on-site inspections during construction. Contractors, manufacturers, and people in the architectural and engineering professions may also be members of BOCA.

BOCA is funded by the annual dues of its members and through the sale of its publica-

tions. It is based in Country Club Hills, Illinois, a suburb of Chicago.

FURTHER READINGS

Building Officials and Code Administrators (BOCA) International. "BOCA International Membership Application Form." Country Club Hills, Ill.: BOCA International.

Harkness, Albert. 1995. "Building Codes: A Historical Perspective." *Building Official and Code Administrator Magazine* (March–April).

BULK TRANSFER

A sale of all or most of the materials, supplies, merchandise, or other inventory of a business at one time that is not normally done in the ordinary course of the seller's business.

Bulk transfers, commonly called bulk sales, have, in the past, been governed by individual state laws, generally called Bulk Sales Acts, which imposed certain requirements on such transfers. These acts were aimed at preventing a seller from secretly selling his or her business and absconding with the proceeds in order to avoid the repayment of any outstanding debts. These laws have been superseded in most states by Article 6 of the **UNIFORM COMMERCIAL CODE (UCC)**, which shares the same purpose but establishes uniform requirements to simplify commercial transactions. A prospective buyer of a business must obtain a list of the creditors of the seller and notify them in advance of the sale so they can take steps to protect themselves against the seller's possible default on his or her debts. Failure of a bulk transfer to comply with the UCC neither makes the transfer void nor destroys the creditors' rights to repayment. Depending upon the jurisdiction, the buyer may become personally liable to the seller's creditors up to the value of the assets purchased or the property sold may be levied upon by the creditors for the outstanding debts.

A bulk transfer is not the same as a secured transaction.

BULLETIN

A printing of public notices and announcements that discloses the progress of matters affecting the general public and which usually includes provisions for public comment. A summarized report of a newsworthy item for immediate release to the public. The official publication of an association, business, or institution.

BURDEN OF GOING FORWARD

The onus on a party to refute or to explain evidence presented in a case.

The burden of going forward, also called the burden of producing evidence, burden of production, or the burden of proceeding, requires a party in a lawsuit to refute or explain each item of evidence introduced that damages or discredits his or her position in the action, as a trial progresses. Suppose a person is charged with the possession of stolen goods. After the prosecution has introduced evidence of the defendant's possession of such goods, the defense bears the burden of refuting or explaining the evidence. If the evidence appears unfavorable for the prosecution, it has the burden of going forward to produce more evidence to bolster its claim that the defendant committed the crime. The failure to produce more evidence may result in the judge's dismissing the charges against the defendant. If the prosecution produces such evidence, it shifts the burden of production back to the defendant, who then must refute the additional evidence.

The burden of going forward also shifts during a civil proceeding. It shifts to the defendant after the plaintiff rests its case, but it may shift even before that time. In a **WRONGFUL DEATH** case, for example, the plaintiff may, at a certain point in the trial, file a motion asking for a ruling (sometimes a motion for **SUMMARY JUDGMENT** or a motion for a directed verdict) in his or her favor by maintaining that he or she has presented sufficient evidence to show that the defendant's actions resulted in the victim's death. The burden then shifts to the defendant to produce additional evidence to refute the plaintiff's claim; otherwise, the judge may grant the plaintiff's motion, thus concluding the case in the plaintiff's favor.

BURDEN OF PERSUASION

The onus on the party with the BURDEN OF PROOF to convince the trier of fact of all elements of his or her case. In a criminal case the burden of the government to produce evidence of all the necessary elements of the crime BEYOND A REASONABLE DOUBT.

The burden of persuasion is the affirmative duty of a party to establish his or her right to judicial relief by convincing the trier of fact, the judge or the jury, that the facts asserted are true and support the allegations. Whereas the BUR-

DEN OF GOING FORWARD shifts from the prosecution to the defense in a criminal case, or from the plaintiff to the defendant in a civil case, as evidence is presented and disproved, the burden of persuasion remains with the plaintiff or the prosecution until the case is concluded. The phrase *burden of persuasion* is often used interchangeably with the phrase *burden of proof*.

The burden of proof varies depending on whether the proceeding is criminal or civil. In a criminal case, the burden of proof required of the state or government will be satisfied by evidence that demonstrates "beyond a reasonable doubt" that the defendant has committed the crime. Proof beyond a reasonable doubt does not require that the proof be so clear that no possibility of error can exist; no criminal prosecution would ever prevail if that were the standard. On the other hand, reasonable doubt will be found to exist (and the defendant found not guilty) if the evidence produced only demonstrates that it is slightly more probable that the defendant committed the crime than that she or he did not. The **REASONABLE DOUBT STANDARD** has been defined to mean that the evidence must be so conclusive and complete that all reasonable doubts are removed.

In a civil matter, a plaintiff is required to establish his or her case by "a preponderance of the evidence." A **PREPONDERANCE OF THE EVIDENCE** is a body of evidence that is of greater weight or is more convincing than the evidence offered in opposition—evidence that as a whole shows that the facts asserted by the plaintiff and sought to be proved are more probable than not.

Another burden of proof applied in some matters is that the evidence must be "clear and convincing." This standard of proof falls somewhere between the civil preponderance-of-the-evidence standard and the criminal beyond-a-reasonable-doubt standard. Clear and convincing evidence requires the trier of fact to have a "firm belief" that the facts have been established. The clear-and-convincing standard, though not used nearly as often as the other two standards, has been applied to some civil cases, including suits seeking the reformation of a contract. In addition, the **SUPREME COURT OF THE UNITED STATES** has held that the clear-and-convincing standard is the constitutionally required burden of proof in a civil commitment proceeding (*Addington v. Texas*, 441 U.S. 418, 99 S. Ct. 1804, 60 L. Ed. 2d 323 [1979]).

FURTHER READINGS

- Johnson, Calvin H. 1997. "IRS Restructuring: Burden of Persuasion vs. Burden of Production." *Tax Notes* 77 (November 3): 624.
- Rothstein, Paul F. 1981. *Evidence*. 2d ed. St. Paul, Minn.: West.
- Sprung, Marshall S. 1996. "Taking Sides: The Burden of Proof Switch." *New York University Law Review* 71 (November): 1301-37.
- Stratton, Sheryl. 1998. "Burden of Proof Shift—Making Sense of a Political Provision." *Tax Notes* 80 (August 24): 887-9.

BURDEN OF PLEADING

The duty of a party to plead a matter to be heard in a lawsuit. The onus on the defendant to introduce or raise the defense for consideration in the lawsuit. This concept is also referred to as burden of allegation.

The **PLEADING** burden concerns what a party must put in his or her pleading when a legal proceeding is first instituted. In a criminal proceeding, this initial pleading is an indictment or information, which alleges that a crime was committed. In a murder case, for instance, the prosecutor must plead that the defendant killed the victim. The prosecution thus has the burden of pleading on the issue of whether the defendant killed the victim. On other issues in the case, the burden of pleading may shift to the defendant. For example, if the defendant claims that she or he is insane and thus not responsible for the crime, the defendant has the burden of pleading insanity.

In a civil matter, the initial pleading is a complaint, which initiates a lawsuit. For instance, in a **NEGLIGENCE** action, the plaintiff has the burden of pleading that the defendant was negligent and that the plaintiff has been injured or damaged by the actions of the defendant. Likewise, in a contract claim, the plaintiff must allege that a contract existed and that the defendant breached the contract. Failure to meet the pleading burden can result in dismissal of the claim.

CROSS-REFERENCES

Burden of Proof; Insanity Defense.

BURDEN OF PROOF

A duty placed upon a civil or criminal defendant to prove or disprove a disputed fact.

Burden of proof can define the duty placed upon a party to prove or disprove a disputed fact, or it can define which party bears this bur-

den. In criminal cases, the burden of proof is placed on the prosecution, who must demonstrate that the defendant is guilty before a jury may convict him or her. But in some jurisdiction, the defendant has the burden of establishing the existence of certain facts that give rise to a defense, such as the insanity plea. In civil cases, the plaintiff is normally charged with the burden of proof, but the defendant can be required to establish certain defenses.

Burden of proof can also define the *burden of persuasion*, or the quantum of proof by which the party with the burden of proof must establish or refute a disputed factual issue. In criminal cases, the prosecution must prove the defendant's guilt **BEYOND A REASONABLE DOUBT**.

Judges explain the **REASONABLE DOUBT STANDARD** to jurors in a number of ways. Federal jury instructions provide that proof beyond a reasonable doubt is "proof of such a convincing character that a reasonable person would not hesitate to act upon it in the most important of his own affairs." State judges typically describe the standard by telling jurors that they possess a reasonable doubt as to the defendant's guilt if, based on all the evidence in the case, they would be uncomfortable with a criminal conviction. In giving the reasonable doubt instruction, judges regularly remind jurors that a criminal conviction imposes a variety of hardships on a defendant, including public humiliation, incarceration, fines, and occasionally the **FORFEITURE** of property. Reasonable doubt is the highest standard of proof used in any judicial proceeding.

Reasonable doubt is also a constitutionally mandated burden of proof in criminal proceedings. The U.S. Supreme Court has ruled that the **DUE PROCESS CLAUSE** of the **FIFTH AMENDMENT** and Fourteenth Amendments to the federal constitution prohibit criminal defendants from being convicted on any quantum of evidence less than proof beyond a reasonable doubt. **IN RE WINSHIP**, 397 U.S. 358, 90 S. Ct. 1068, 23 L. Ed. 2D 368 (1970). Although the reasonable doubt standard is not specifically mentioned anywhere in the Constitution, the Court observed that the standard is so deeply rooted in the nation's history as to reflect the fundamental value that "it is far worse to convict an innocent man than to let a guilty man go free."

In civil litigation the standard of proof is either proof by a **PREPONDERANCE OF THE EVIDENCE** or proof by clear and convincing evi-

dence. Both are lower burdens of proof than beyond a reasonable doubt. A preponderance of the evidence simply means that one side has more evidence in its favor than the other, even by the smallest degree. Clear and convincing evidence is evidence that establishes the truth of a disputed fact by a high probability. Criminal trials employ a higher standard of proof because criminal defendants often face the deprivation of life or liberty if convicted while civil defendants generally only face an order to pay money damages if the plaintiff prevails.

FURTHER READINGS

Scheibe, Benjamin D. 2003. "Claim of Reverse Engineering Doesn't Alter Burden of Proof." *The Los Angeles Daily Journal* 116 (October 2).

Twining, William and Stein, Alex, eds. 1992. *Evidence and Proof*. New York: New York University Press.

CROSS-REFERENCES

Burden of Persuasion; Due Process of Law; Evidence; Fifth Amendment; Fourteenth Amendment; Proof; Reasonable Doubt.

BUREAU OF INDIAN AFFAIRS

See INTERIOR DEPARTMENT.

BUREAUCRACY

A system of administration wherein there is a specialization of functions, objective qualifications for office, action according to the adherence to fixed rules, and a hierarchy of authority and delegated power.

Organizations such as the armed forces or administrative agencies are common examples of bureaucracies.

❖ BURGER, WARREN EARL

Warren Earl Burger was a self-made man who rose from modest origins to become the fifteenth chief justice of the U. S. Supreme Court.

Burger was born September 17, 1907, in St. Paul, Minnesota, the fourth of seven children of Charles Burger and Katharine Schnittger Burger. His father worked as a railroad cargo inspector and traveling salesman, and the family lived on his limited income. Burger began delivering newspapers at the age of nine to help with family finances. At Johnson High School in St. Paul, he participated in music, sports, student government, and the student newspaper. Princeton University offered him a partial scholarship, but because of his family's limited resources, he was

unable to accept it. Instead, he took extension courses through the University of Minnesota from 1925 to 1927 and then attended night classes at St. Paul College of Law (now WILLIAM MITCHELL College of Law). Throughout college and law school, Burger supported himself by working as an insurance agent. He earned his bachelor of laws degree, magna cum laude, in 1931.

Burger was admitted to the Minnesota bar in 1931, then entered private practice in St. Paul with Boyesen, Otis, and Faricy. He became a partner in 1935, and the firm was renamed Faricy, Burger, Moore, and Costello. Burger concentrated his practice in corporate law, real estate, and probate law. At the same time, he became involved in politics, and in 1934 he helped organize the Minnesota Young Republicans.

Burger was rejected for military service in WORLD WAR II because of a spinal injury and instead served on the Minnesota Emergency War Labor Board. After the war he returned to his law practice and became more active in politics. He had played an important part in Harold E. Stassen's successful campaigns for governor of Minnesota in 1938, 1940, and 1942, and acted as floor manager for Stassen's presidential bids at the 1948 and 1952 Republican conventions. These activities brought him to the attention of prominent Republicans. In 1952 he was named assistant attorney general in charge of the Justice Department's Civil Division, which handled all civil cases except antitrust and land litigation.

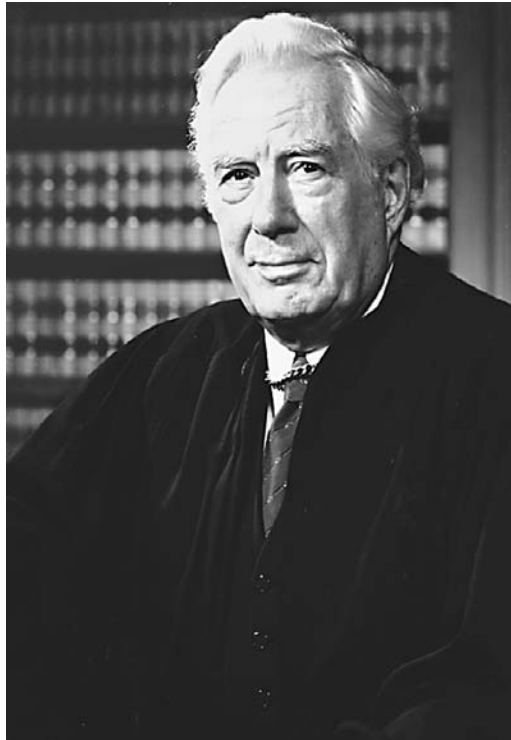
Burger's career as a jurist began when he was appointed to the U.S. Court of Appeals for the District of Columbia Circuit in 1956. He quickly established his credentials as a law-and-order judge, leading the conservative faction of the court to numerous decisions that favored police officers and prosecutors and curbed the rights of criminal defendants.

Burger served on the D.C. Circuit court until 1969 when President RICHARD M. NIXON appointed him chief justice of the Supreme Court. In choosing Burger to replace EARL WARREN, Nixon was fulfilling a campaign promise to restrain the Court, which was, according to him, favoring the criminals in U.S. society. Burger's ethical record was a major consideration in his nomination, and his opposition to judicial activism (a philosophy of judicial decision-making whereby judges allow their personal views about public policy, among other factors, to guide their decision, usually with the suggestion

"FREEDOM OF
SPEECH CARRIES
WITH IT SOME
FREEDOM TO
LISTEN."
—WARREN BURGER

Warren Burger.

PHOTOGRAPH BY
JOSEPH LAVENBURG,
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COLLECTION OF U.S.
SUPREME COURT



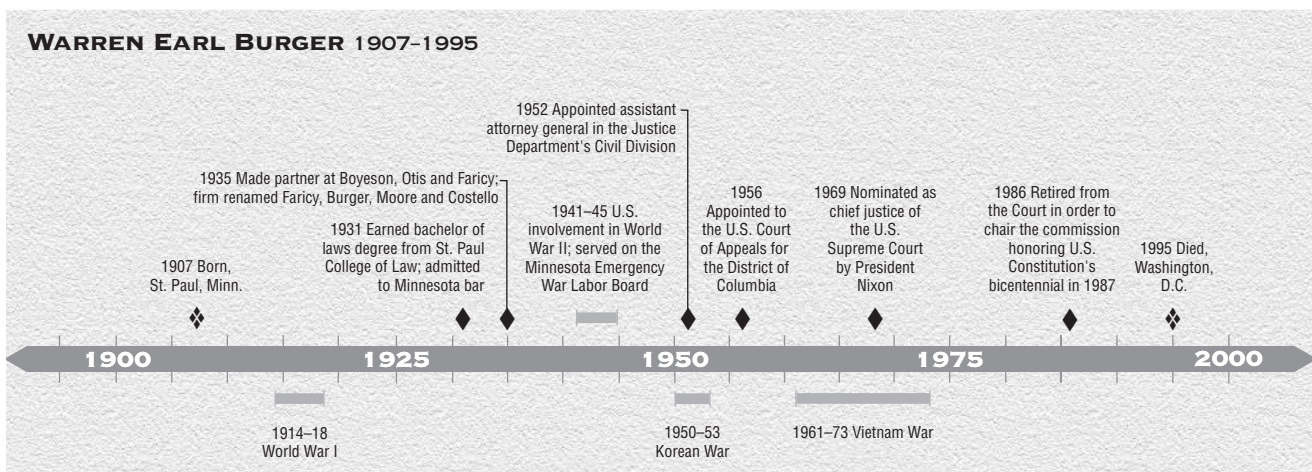
that adherents of this philosophy tend to find constitutional violations and are willing to ignore precedent), and the expansion of **CIVIL RIGHTS** and liberties made him what Nixon was looking for, a conservative antidote to the activist liberalism of the **WARREN COURT**.

However, the swift and certain counterrevolution that Nixon and others expected from the Burger Court never materialized. Although the Court diluted some earlier liberal decisions, particularly in the area of **CRIMINAL PROCEDURE**, it stopped far short of overruling them. And

although the Burger Court was far less sympathetic to the rights of criminal defendants than the Warren Court had been, it established no clear pattern of repudiating the earlier doctrines. In some areas, such as **AFFIRMATIVE ACTION** and desegregation, the Burger Court continued in the direction set by the Warren Court, and Burger often cast the swing vote that tipped the balance in favor of the liberals' position. The Burger Court's decision in *ROE V. WADE* (410 U.S. 113, 93 S. Ct. 705, 35 L. Ed. 2d 147 [1973]) established a constitutional right to privacy and made **ABORTION** legal. Yet Burger refused to support a movement to give gender classifications the same level of scrutiny used for **RACIAL DISCRIMINATION**. When viewed as a whole, the record shows that Burger was an enigmatic and unpredictable justice but that he generally stayed the course set by his predecessor. In fact, the Burger Court never directly overruled any major doctrine of the Warren years.

Burger was satisfied with his reputation as a centrist. "It's always been somewhat comforting to know," he once told an interviewer, "that I have been castigated by so-called liberals for being too conservative and castigated by so-called conservatives for being too liberal. Pretty safe position to be in."

Burger left his personal imprint on several important areas of the law. His 1973 opinion in *MILLER V. CALIFORNIA* (413 U.S. 15, 93 S. Ct. 2607, 37 L. Ed. 2d 419 [1973]) established the use of "contemporary community standards" in determining whether material is obscene. He authored key decisions interpreting the free speech and free press guarantees of the **FIRST AMENDMENT**, including *Nebraska Press Ass'n v.*



Stuart, 427 U.S. 539, 96 S. Ct. 2791, 49 L. Ed. 2d 683 (1976), a 1976 decision prohibiting prepublication restraints to protect criminal defendants from negative PRETRIAL PUBLICITY. Writing for the majority, Burger declared that “prior restraints on speech and publication are the most serious and least tolerable infringement on First Amendment rights.” Burger also delivered the opinion invalidating the legislative VETO (*I.N.S. v. Chadha*, 462 U.S. 919, 103 S. Ct. 2764, 77 L. Ed. 2d 317 [1983]), thus preventing Congress from blocking presidential action without passing a law.

Burger’s most famous criminal opinion was *UNITED STATES V. NIXON*, 418 U.S. 683, 94 S. Ct. 3090, 41 L. Ed. 2d 1039 (1974), in which he ordered the embattled president, then deeply enmeshed in the WATERGATE scandal, to release to Special Prosecutor LEON JAWORSKI the tape recordings that implicated the president in the Watergate cover-up. Nixon’s resignation was a direct result of Burger’s ruling.

One of Burger’s goals as chief justice was to modernize and streamline the courts to make them more accessible and functional, and he worked tirelessly toward that end. Burger originated the idea of employing professional court administrators, implemented continuing education for judges, and improved coordination between federal and state courts. In addition, he was noted for his outspoken criticism of ill-prepared litigators who use the courts for what he called on-the-job training.

Burger retired from the bench in 1986 to chair the commission honoring the two hundredth anniversary of the signing of the Constitution, which occurred on his eightieth birthday, September 17, 1987. He ended his last day on the bench without fanfare, simply announcing that the Court had completed its term and would recess until the first Monday in October. Asked about his future plans, he said, “I have a lot of other things I want to do. . . . I never had any ambition to be a judge. I loved practicing law. If tradition didn’t prohibit it, I’d love to go back to practicing law.” Upon his retirement, one of his law clerks commented that Burger’s most important legacy may be that “he kept most of society’s problems truly in balance.”

FURTHER READINGS

Matlz, Earl M. 2000. *The Chief Justiceship of Warren Burger, 1969–1986*. Columbia, S.C.: Univ. of South Carolina Press.

Reske, Henry J. 1995. “The Diverse Legacy of Warren Burger.” *ABA Journal* 81 (August).

Significant Supreme Court Opinions of the Honorable Warren E. Burger, Chief Justice of the United States. 1984. Manila, Philippines: Philippine Bar Association.

CROSS-REFERENCES

Criminal Procedure; Freedom of Speech; Freedom of the Press; Obscenity.

BURGLARY

The criminal offense of breaking and entering a building illegally for the purpose of committing a crime.

Burglary, at COMMON LAW, was the trespassory breaking and entering of the dwelling of another at night with an intent to commit a felony therein. It is an offense against possession and habitation. The common-law elements of the offense have been modified in most jurisdictions by statutes that tend to make the crime less restrictive.

Elements of the Offense

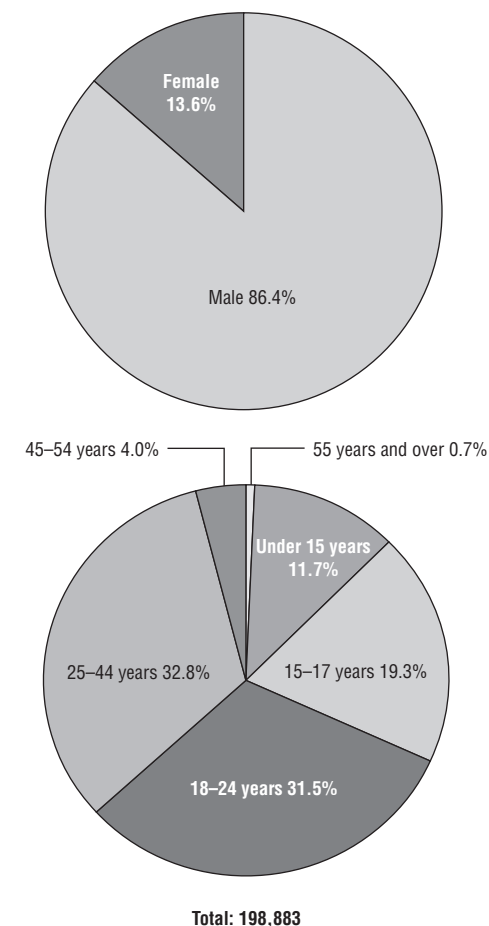
Trespass The TRESPASS element of the offense signifies that it must occur without the consent of the victim. If the thief gains entry by misrepresenting his or her identity, the element of trespass is satisfied, as there is no consent to entry.

Breaking Breaking consists of creating an opening for entry into the building. It can be accomplished by removing an object that is blocking an entry or by blasting open a wall. The use of force is not required. The breaking element is satisfied if access is obtained by opening a closed door or window, regardless of whether these are locked.

At common law, entering through a pre-existing opening did not constitute breaking. If one gained access through an open door or window, burglary was not committed. The same rule applied when a door or window was partially open even though it was necessary to open it further in order to enter. The rationale underlying this rule was that one who failed to secure his or her dwelling was not entitled to the protection of the law. A majority of states no longer follow this rule and consider breaking to be the slightest application of force to gain entry through a partially accessible opening.

When entry is gained by a MISREPRESENTATION of identity or by any other trick, it is called constructive breaking, which satisfies the breaking requirement of burglary. On the other hand,

Persons Arrested for Burglary,^a by Sex and Age, in 2001^b



^a Defined as "breaking and entering" in many jurisdictions.
^b Numbers may not add up to 100 due to rounding.

SOURCE: FBI, *Crime in the United States* annual, 2001.

if a person, such as a servant, has authority to enter, there is no breaking unless he or she breaks into and enters an unauthorized area.

Under the common law, the breaking had to occur immediately before the time of entry. Most jurisdictions that retain the breaking element are in agreement; in others, the breaking can occur during a reasonable time before the entry. Some jurisdictions have completely eliminated the element of breaking from the statutory definition of burglary, while others require it for one degree of burglary but not another.

Entry In the course of a burglary, entry is the act that follows the breaking. Literally, it

occurs when there is physical intrusion into another's dwelling or building by any part of the intruder's body. A momentary intrusion will suffice. When a thief kicks open a window to gain access to a dwelling, the momentary insertion of the foot constitutes an entry.

When an instrument is used to gain access to a dwelling, the intrusion of the instrument is not an entry unless it is used to accomplish the intended felony. If the instrument is used to take something from inside the building, there is an entry sufficient for burglary.

An entry may be constructive. In other words, it is not always required that the thief enter the dwelling. If he or she directs another person not legally capable of committing the offense, such as a child, to enter, then the entry is imputed to the thief.

In jurisdictions where breaking is an element of burglary, there must be causation between the breaking and entry. Although the acts may occur at separate times depending upon statute, the entry must follow from the breaking. Where a hole is drilled into a wall on one day and entry occurs a few days later, there is a causal link between the breaking and entry.

Dwelling At common law, the entry had to be into the dwelling of another to constitute the offense. A dwelling was defined as a house or mansion where one normally sleeps, although it was not necessary that it be occupied at the time of entry. Structures and premises immediately surrounding the dwelling, such as an outhouse or a yard, were also protected since they were considered part of the dwelling.

A dwelling had to be a place of human habitation and occupancy. A storehouse protected by a nightwatchman was not a dwelling even if he occasionally slept in it. If, however, it was within the immediate surroundings of a dwelling, it would be treated as a dwelling for purposes of burglary.

Today, most jurisdictions have expanded the common-law requirement that the offense take place in a dwelling. There is no jurisdiction that retains this requirement for all degrees of burglary. Under modern statutes, the offense can occur in any enclosed structure, regardless of whether it is used for habitation.

Nighttime The requirement that the breaking and entering occur at night was an essential element of the offense at common law. Sunrise and sunset were not the means of determining night and day. The proper test was whether the

countenance of a human could be discerned by natural light.

Many jurisdictions no longer require that the offense occur at night. Some states have retained it for higher degrees of the offense, but do not require it for all degrees. Under statutes retaining the nighttime element, it is defined as occurring 30 minutes before sunrise or 30 minutes after sunset. It is not necessary that all acts be done on the same night. If the breaking and entering is done one night and the felony is committed a few nights later, the offense is committed.

Intent Under the common law, an intent to commit a felony at the time of breaking and entering into the dwelling was an essential element of burglary. Since LARCENY was a felony at common law, an intent to commit a larceny would suffice. Statutes vary from one jurisdiction to another. An intent to commit a felony is no longer required for all grades of the offense. In some states an intent to commit any crime will suffice. Many states have retained the felony requirement for higher grades of the offense. Absent this intent element, a breaking and entry might be a trespass, but not be a burglary.

If a defense to the underlying crime or felony is sufficiently established, there can be no conviction for burglary. For example, if a person charged with burglary is accused of larceny and has a sufficient defense to the larceny charge, then there is no burglary.

Degrees of the Offense

Some jurisdictions have a statutory scheme under which the offense is divided into degrees. These types of statutes frequently impose heavier penalties when the offense involves the use of force or weapons. Under one such statute, burglary in the third degree is committed by a person knowingly entering or remaining unlawfully in a building with an intent to commit a crime therein. When the same offense is committed with explosives or deadly weapons, or when it results in physical injury to a person who is not a participant in the crime, it is burglary in the first degree, for which there is a greater penalty.

Imprisonment is the usual punishment for burglary. Under statutes in many states, the severity of the sentence is determined by the degree of the burglary.

FURTHER READINGS

Cromwell, Paul F., and James N. Olson. 2003. *Breaking and Entering: Burglars and Burglary*. St. Paul, Minn.: Wadsworth.

Thomas, D.A. 2003. "Domestic burglary—Sentencing Guidelines." *Criminal Law Review* (March): 209-214.

❖ BURKE, EDMUND

Edmund Burke was an orator, philosophical writer, political theorist, and member of Parliament who helped shape political thought in England and the United States during the late eighteenth and early nineteenth centuries.

Burke was born January 12, 1729, in Dublin, Ireland, to a Protestant father and a Roman Catholic mother. His father, a prosperous Dublin attorney, was cold and authoritarian, and the two did not enjoy a close relationship. After graduating from Trinity College, Dublin, in 1750, Burke traveled to England to study law in accord with his father's wishes. However, he did not progress in his legal studies, and he eventually abandoned the law in favor of a literary career.

In 1756 Burke published two philosophical treatises, *A Vindication of Natural Society* and *A Philosophical Enquiry into the Origin of Our Ideas of the Sublime and Beautiful*. These and other works launched Burke's career as a critic of social and political issues. Burke became a member of the literary circle headed by Samuel Johnson, the English author, scholar, and critic. In 1759, Burke founded the *Annual Register*, a yearly survey of world affairs to which he contributed until 1788.

Realizing that the literary life would not pay enough to support a family, Burke entered politics. In 1765, he was appointed private secretary to the Marquis of Rockingham, England's prime minister and a member of the WHIG PARTY, marking the beginning of a lifelong alliance between Burke and Rockingham and the Whigs. Burke was also elected to Parliament in 1765. In 1766, Rockingham lost the premiership. Burke was offered employment with the new administration, but chose to remain with the Whig opposition. "I believe in any body of men in England I should have been in the minority," he said. "I have always been in the minority."

Burke believed strongly in opposition politics. Having a party that acts as a watchdog for the incumbent party is the best way, he felt, to avoid corruption and abuse of power. As a member of the opposition, Burke could do what he did best: criticize the government for what he considered unjust or unwise policies. He disagreed with England's policies in North America and urged the government to abolish the tea

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—EDMUND BURKE

Edmund Burke.

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duty imposed on the colonies. “All government—indeed every human benefit and enjoyment, every virtue and every prudent act—is founded on compromise and barter,” he said in 1775, in his *Speech on Conciliation with America*. However, despite his dissatisfaction with English policy, he did not support the American revolutionaries. Although he believed that the British had been overly harsh and tyrannical, he also believed in the legislative superiority of the British Parliament over the colonies. In August, 1776, he expressed his despair over the conflict between England and its North American colonies: “I do not know how to wish success to those whose victory is to separate us from a large and noble part of our empire,” he wrote. “Still less do I wish success to injustice, oppression, and absurdity. . . . No good can come of any event in this war to any virtuous interest.”

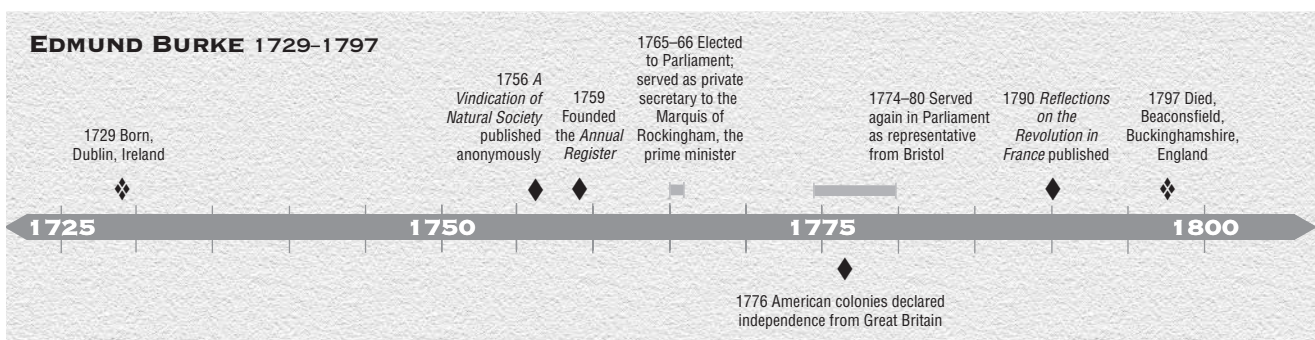
Burke vociferously criticized the British government’s policies in Ireland as well, and decried the poverty and persecution of Catholics there. Yet, although his sympathies were clearly with the oppressed and powerless in Ireland, he again opposed revolution and urged moderation on both sides. “I believe there are very few cases which will justify a revolt against the established government of a country, let its constitution be what it will,” he said.

Burke’s support for established order, even where it meant support for inequalities, was most evident in his harsh criticism of the French Revolution. “[T]he age of chivalry is gone,” he wrote in *Reflections on the Revolution in France*. “That of sophisters, economists and calculators has succeeded; and the glory of Europe is gone forever.” According to Burke, the French revolutionaries’ only purpose was to destroy all traditional authority and property rights. The result, he predicted, would be ANARCHY and the emergence of an autocratic ruler whose reign would be worse than any the revolutionaries had seen before. Burke’s prediction proved accurate: the revolution in France led to the Reign of Terror and the regime of Napoleon.

In his condemnation of the French Revolution, Burke presaged American thought on the importance of private property to the preservation of societal harmony. Stephen B. Presser, associate dean and professor at Northwestern University School of Law, wrote that

Burke’s attacks on the French, and his spirited defense of private property as a guarantee of order, stability, and prosperity have echoed through the arguments of American judges and statesmen.

Burke’s strongest criticism of British policy came in the 1780s when he instigated IMPEACHMENT proceedings against Warren Hastings, governor-general of India. Burke attacked the



British East India Company as unjust and oppressive in its treatment of the Indian people. In his *Speech on Opening the Articles of Impeachment of Warren Hastings* (1788), Burke asserted his belief that the exercise of **ARBITRARY** political power is never justified. "My Lords . . . the King has no arbitrary power to give him [Hastings], your Lordships have not, nor the commons, nor the whole Legislature. We have no arbitrary power to give, because arbitrary power is a thing, which neither any man can hold nor any man can give." Burke's view that political power is held in trust for the benefit of the people is reflected in the basic tenets of U.S. democracy and is at the core of the United States' republican form of government.

Burke has been claimed as a champion of both liberals and conservatives. His denunciation of oppression in India, Ireland, and North America and his staunch opposition to the exercise of arbitrary power endeared him to libertarians and proponents of individual rights. However, his strong faith in established political, religious, and social institutions, and his fear of reform beyond limitations on sovereign power, reverberate in contemporary conservatism. Likewise, his support for **CIVIL RIGHTS** was tempered with a strong belief in the necessity of individual responsibility. In 1791, he wrote, in *A Letter to a Member of the National Assembly*,

Men are qualified for civil liberty in exact proportion to their disposition to put moral chains upon their own appetites; in proportion as their love to justice is above their rapacity; in proportion as their soundness and sobriety of understanding is above their vanity and presumption; in proportion as they are more disposed to listen to the counsels of the wise and good, in preference to the flattery of knaves.

Burke was firmly opposed to the substitution of government assistance for individual initiative. In *Thoughts and Details on Scarcity*

(1795), he cautioned against "attempts to feed the people out of the hands of the magistrates." He seemed to predict the modern quagmire of **WELFARE** dependency when he wrote, "and having looked to government for bread, on the very first scarcity they will turn and bite the hand that fed them. To avoid that evil, government will redouble the causes of it; and then it will become inveterate and incurable."

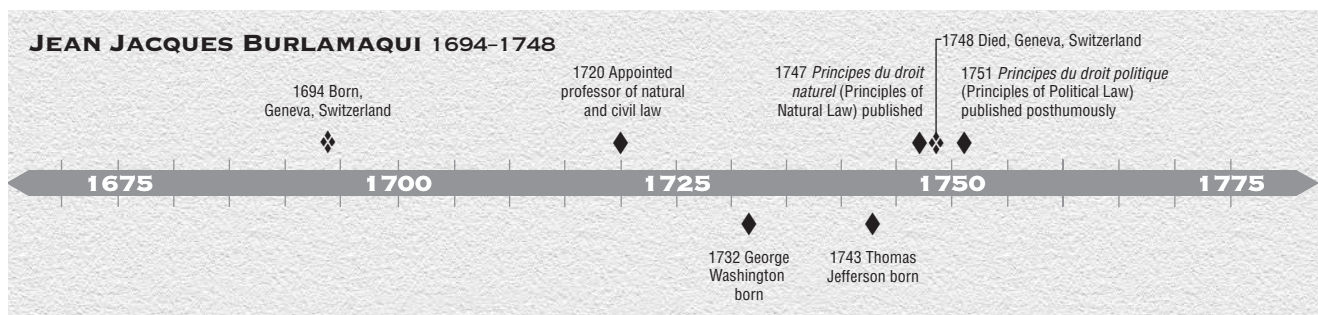
The last few years of Burke's life were marred by the death of his only son, Richard Burke, in 1794. With his wife, Jane Nugent Burke, whom he had married in 1757, Burke had established the harmonious family life he had never known as a child. The premature loss of his son, and the concomitant demise of Burke's dreams and plans for the young man's future, left Burke disconsolate. Although he continued his activities in politics, particularly in the formation of the Irish government, his personal life was clouded with disappointment and bitterness. Burke died three years after his son, on July 9, 1797; yet two hundred years after his death, his philosophies continued to resonate on both sides of the Atlantic.

FURTHER READINGS

- Crowe, Ian, ed. 1997. *Edmund Burke: His Life and Legacy*. Dublin, Ireland: Four Courts Press.
- Kirk, Russell. 1987. *The Conservative Mind from Burke to Eliot*. Chicago: Regnery Books.
- . 1967. *Edmund Burke: A Genius Reconsidered*. New Rochelle, N.Y.: Arlington House.
- Kramnick, Isaac, ed. 1974. *Edmund Burke*. Englewood Cliffs, N.J.: Prentice-Hall.
- Lambert, Elizabeth R. 2003. *Edmund Burke of Beaconsfield*. Newark: Univ. of Delaware Press.
- O'Brien, Conor C. 1992. *The Great Melody: A Thematic Biography of Edmund Burke*. Chicago: Univ. of Chicago Press.

❖ BURLAMAQUI, JEAN JACQUES

Jean Jacques Burlamaqui achieved prominence as a Swiss jurist and legal author.



Burlamaqui was born July 24, 1694. As an educator, Burlamaqui taught legal studies at Geneva; however, his fame is based primarily on his two publications relating to the law: *Principes du droit naturel*, translated as “Principles of natural law,” in 1747; and *Principes au droit politique*, or “Principles of political law,” in 1751. He believed in NATURAL LAW and its relationship to God, human intellect, and innate moral responses, and he viewed natural law as the foundation of domestic and INTERNATIONAL LAW.

Burlamaqui died April 3, 1748, in Geneva, Switzerland.

❖ BURNET, DAVID GOUVERNEUR

David Gouverneur Burnet centered his career efforts in Texas.

Burnet was born April 4, 1788, in Newark, New Jersey. Before entering politics, Burnet served under Francisco de Miranda in 1806 in an endeavor to liberate Venezuela from Spain. He also studied law and pursued careers in business and speculation.

Burnet relocated to Texas and presided as a Texas district judge in 1834. In 1836 he participated at the Washington-on-the-Brazos Convention, where he drafted the Texas Declaration of Independence; in 1836 he served as the president *ad interim* of the Republic of Texas. He subsequently resigned, but returned to perform the duties of vice president. From 1846 to 1847 he acted as the secretary of state of Texas, the first person to hold such a position in the newly formed state.

Burnet died December 5, 1870, in Galveston, Texas.

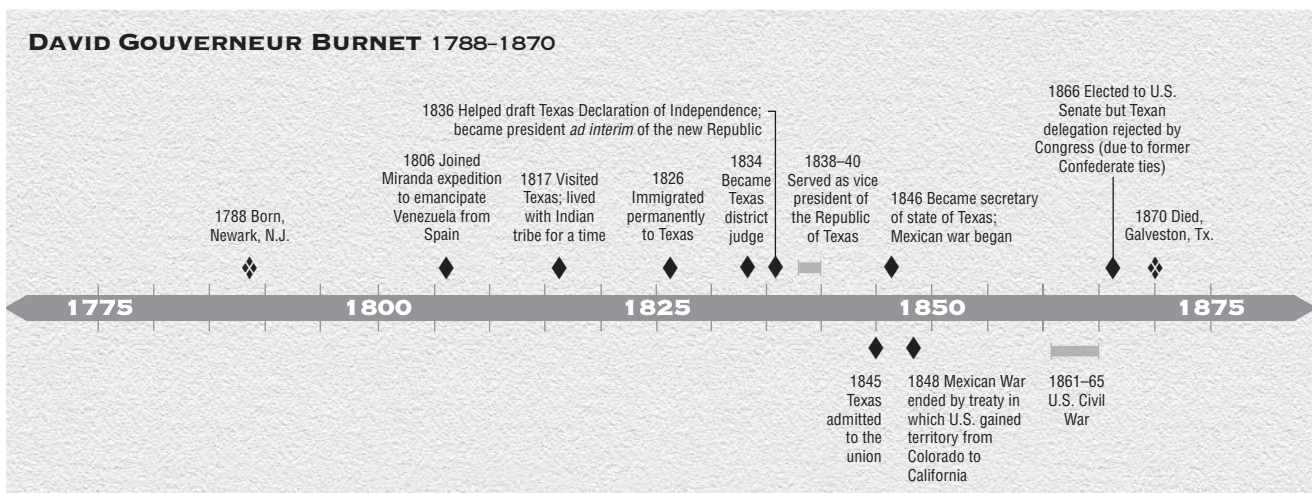
❖ BURR, AARON

Aaron Burr was a soldier, lawyer, and politician and the third vice president of the United States.

Burr was born February 6, 1756, in Newark, New Jersey. His family traced its ancestry to the Pilgrims and through hundreds of years of English gentry with many members who were prominent in government and politics. Both his parents died when he was young and he and his sister were raised in comfortable circumstances by their maternal uncle. Burr was a bright, charming, handsome, and witty boy who was gifted intellectually but decidedly mischievous and difficult to control. From earliest childhood he showed ambition, determination, and leadership.

Burr entered the College of New Jersey (now Princeton University) as a sophomore in 1769 at the age of thirteen and graduated summa cum laude three years later. He then enrolled in LITCHFIELD LAW SCHOOL (Connecticut), which was run by his brother-in-law and former tutor, Tapping Reeve. However, the Revolutionary War and his desire to be a part of it interrupted his studies.

Burr rose swiftly through the ranks of the revolutionary army, displaying daring, energy, courage, and imagination. His small stature and pampered upbringing belied an internal strength that surprised many who knew him. Accompanying Colonel Benedict Arnold's troops in their expedition to Quebec, he



endured cold, hunger, and illness. He was made an officer in the Continental Army and soon served with General **GEORGE WASHINGTON**.

Burr resigned his Army commission in 1779. He resumed the study of law in 1780 and was admitted to the bar in 1782. Later in 1782 he married Theodosia Prevost, a widow ten years his senior, and the following year their only child, a daughter also named Theodosia, was born.

In 1789 Burr was appointed attorney general of the state of New York and in 1791 he was elected a U.S. senator, defeating General Philip Schuyler, the father-in-law of **ALEXANDER HAMILTON**. This was the beginning of a bitter rivalry with Hamilton that would come to a ruinous conclusion years later.

Burr served in the Senate for six years. In 1797, the voters turned against him and elected his former antagonist, General Schuyler. Burr attributed his loss to Hamilton's assiduous efforts to undermine his support and reputation.

After losing his Senate seat, Burr served a short time in the New York assembly, before entering the presidential race of 1800. He and his opponent, **THOMAS JEFFERSON**, received the same number of votes in the **ELECTORAL COLLEGE**, and the election went to the House of Representatives for resolution. Burr and his supporters were unabashedly ambitious in their zeal to win the office. Burr's nemesis Hamilton stepped into the fray, announcing his support for Jefferson and criticizing Burr. Finally, through clever manipulation of the voting process, Hamilton secured the presidency for Jefferson and Burr automatically became vice president. As a result of this peculiar election Congress passed the **TWELFTH AMENDMENT**,



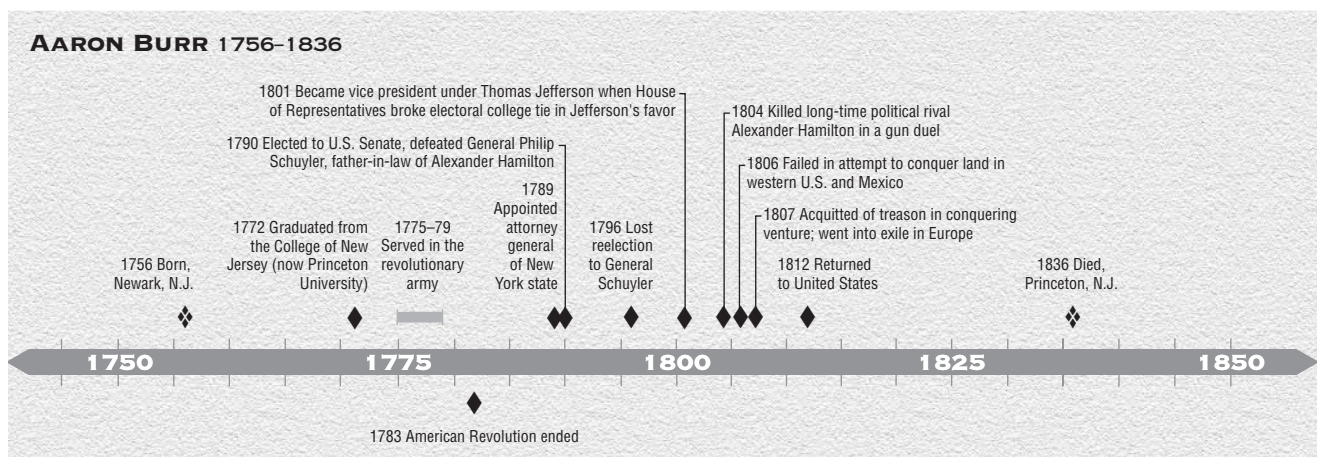
Aaron Burr.

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which mandated separate balloting for president and vice president.

Burr's ruthless and opportunistic ambition caused many of his colleagues to shun him both professionally and socially. President Jefferson held him at arm's length, and others in the administration treated him like an outsider. Burr blamed his failure to secure the top office largely on Hamilton and he brooded over perceived injustices. Having lost his beloved wife in 1794, Burr was left with only his daughter, whom he idolized. He devoted as much time and energy as possible to her education and her grooming. However, the young lady was moving into adulthood and a life of her own. In 1801,

"LAW IS
WHATEVER IS
BOLDLY ASSERTED
AND PLAUSIBLY
MAINTAINED."
—AARON BURR



United States v. Aaron Burr

In 1807 Aaron Burr was prosecuted for **TREASON** and high misdemeanor in the federal circuit court in Richmond, Virginia, with U.S. Supreme Court Chief Justice **JOHN MARSHALL** presiding as a trial judge. Despite evidence that Burr had been plotting to raise a rebellion and overtake a portion of the western territories in the United States and other evidence that Burr was planning to lead an unauthorized invasion of Mexico, the defendant was acquitted by a jury on both the treason and high misdemeanor charges.

Aaron Burr served as the nation's third vice president from 1801–1805, having lost the 1800 presidential election after the U.S. House of Representatives broke an electoral deadlock by naming **THOMAS JEFFERSON** president and Burr vice president. Although Burr contemplated running for president again four years later, those ambitions came to an end when he was indicted for murdering **ALEXANDER HAMILTON** in a duel on July 11, 1804.

Later that same month, Burr, now disaffected with American politics, met with Britain's minister to the United States, Anthony Merry, who subsequently reported to his government that Burr "was endeavoring to effect a separation of the western part of the United States" via military action. In early 1805 Burr, while still acting as the vice president of the United States, contacted Spanish minister, Marques de Casa Yrujo, to discuss the same subject. The governments of both Great Britain and Spain declined to offer Burr any financial or military assistance.

When his term as vice president expired, Burr headed west to raise a military force that would either invade Mexico or forcefully sever the southwestern United States into an independent nation led by Burr himself. The former vice president first met with another malcontent, Herman Blennerhassett, on Blennerhassett Island, located in the Ohio River, then part of Virginia. A year later Burr joined forces with General James Wilkinson on Blennerhassett Island, where they assembled a force of unknown size to carry out Burr's plan. Burr left the island before any actions were taken to implement the plan.

After Burr departed, Wilkinson had second thoughts about the plan and informed President Jefferson of their rebellious preparations. Jefferson issued a proclamation calling for the suppression of

the conspiracy. Federal authorities arrested Burr in March 1807 while he was trying to flee into Spanish Florida. The former vice president was brought back to Virginia where he stood trial before Chief Justice John Marshall (early Supreme Court justices performed double duty as appellate judges on the nation's high court and as trial judges in their designated circuit court) and state trial judge Cyrus Griffin. Bail was set at \$5,000.

After hearing testimony from Wilkinson, the **GRAND JURY** for the Virginia federal circuit court indicted Burr on June 24, 1807. The indictment charged him with one count of treason and one count of high misdemeanor for "unlawfully, falsely, maliciously, and traitorously . . . intending to raise and levy war" against the United States.

The trial began on August 10, 1807, and ended less than a month later, on September 1, 1807. Jefferson, motivated in part by personal vindictiveness against Burr, declared in a special message to Congress during the trial that Burr's guilt had been "placed beyond question." Jefferson then gave George Hay, the U.S. attorney in charge of the prosecution, incriminating evidence to offer against Burr. Jefferson also dangled pardons as enticements to any co-conspirators who agreed to turn state's evidence.

But the prosecution had two major problems. First, the linchpin of the treason charge was the alleged **OVERT ACT** of assembling a military force on Blennerhassett Island for the purpose of waging war against the United States. The indictment said this act occurred on December 10, 1806, a date on which all defense and prosecution witnesses agreed that Burr was not on the island, but instead hundreds of miles away.

Second, Chief Justice Marshall instructed the jurors that they could still convict Burr of treason for being a co-conspirator to the crime, so long as at least two witnesses provided testimony that some overt act was committed in furtherance of the conspiracy. But General Wilkinson was the only witness who testified as to Burr's involvement in the alleged crime. The jury returned a verdict of "not guilty" after deliberating for only 25 minutes.

On September 9, 1807, the trial for the high misdemeanor began, again with Chief Justice Marshall and



Cyrus Griffin presiding. Prosecutor Hay called more than 50 witnesses to testify against the defendant. But the jury again acquitted Burr. Hay then filed a motion to prosecute Burr for treason in Ohio, alleging that the defendant conspired to levy war against the U.S. government in that jurisdiction as well. Marshall listened to five weeks of testimony concerning the motion and then on October 20 ruled that Burr could only be tried for misdemeanor charges in Ohio. Finally, Hay ceased efforts at prosecuting Burr any further.

FURTHER READINGS

- Beirne, Francis. 1959. *Shout Treason: The Trial of Aaron Burr*. New York: Hastings House.
- Melton, Bucker F., Jr. 2001. *Aaron Burr: Conspiracy to Treason*. New York: Wiley.
- Vail, Philip. 1973. *The Turbulent Life of Aaron Burr: The Great American Rascal*. New York: Award Books.

CROSS-REFERENCES

Treason.



against her father's wishes, she married Joseph Alston, of South Carolina, and moved to the Palmetto State, leaving Burr alone in Washington, D.C.

Toward the end of his term as vice president, Burr ran for governor of New York but was defeated. During the campaign Hamilton again expressed his distrust of Burr and made other disparaging comments about him. Feeling that his honor had been impugned, Burr challenged Hamilton to a duel. Although Hamilton tried to defuse the conflict, Burr was determined to force a confrontation. The two men met at 7:00 A.M. on July 7, 1804. Burr was an excellent marksman, and he killed Hamilton with the first shot. In an ensuing public outcry, Burr was indicted for murder. He escaped to his daughter's home in South Carolina until the furor died down and eventually returned to Washington, D.C., to complete his term as vice president.

Burr came to realize that his aspirations to the presidency had been destroyed. His political career in ruins, he left Washington, D.C., and traveled west to explore frontier territory. He also concocted an elaborate conspiracy that was to be his final political undoing. Though complete details of the scheme have never been fully discovered, Burr apparently intended to lead the western states in an insurrection against the federal government. After the states seceded, he planned to install himself as the head of a newly created republic. He then intended to conquer Texas and Mexico. In October 1806, President Jefferson issued a proclamation denouncing Burr's venture. On January 14, 1807, Burr was arrested in Mississippi on a charge of TREASON.

He escaped, but was later apprehended in Alabama. Burr's trial began in May 1807, and lasted six months. He was eventually acquitted but his political life was over.

Burr spent the next several years in exile in Europe, where he endured poverty, humiliation, and degradation. In 1812, he quietly returned to the United States, slipping into Boston wearing a disguise and using an assumed name. After a time he resumed a somewhat normal life and opened a law office in New York. Burr's prospects seemed to be brightening when he was dealt two crushing personal blows. First, he learned that his only grandchild, Aaron Burr Alston, had died before Burr returned to the United States. A few months later his beloved daughter perished in a shipwreck while traveling from South Carolina to New York to visit Burr.

Burr was devastated by these losses. A wave of sympathy tempered public opinion toward him, but he was still shunned by those in prominence. He continued his law practice, enjoyed a small circle of supportive friends, and even remarried, though the union was short-lived and unhappy. He quietly and unobtrusively engaged in numerous altruistic and philanthropic ventures, including providing for the education of young men and women of limited resources and adopting an orphan who lived with him until late adolescence.

During the last few years of his life, Burr suffered a series of strokes. At first, he rebounded completely, but each successive episode left him weaker. He died September 14, 1836, and was buried beside his parents and grandfather in Princeton, New Jersey.

FURTHER READINGS

- Kennedy, Roger G. 2000. *Burr, Hamilton, and Jefferson: A Study in Character*. Oxford; New York: Oxford Univ. Press.
- Lomask, Milton. 1982. *Aaron Burr*. New York: Farrar, Straus & Giroux.
- Melton, Buckner F., Jr. 2001. *Aaron Burr: Conspiracy to Treason*. New York: Wiley.
- Vail, Philip. 1973. *The Great American Rascal*. New York: Hawthorn Books.

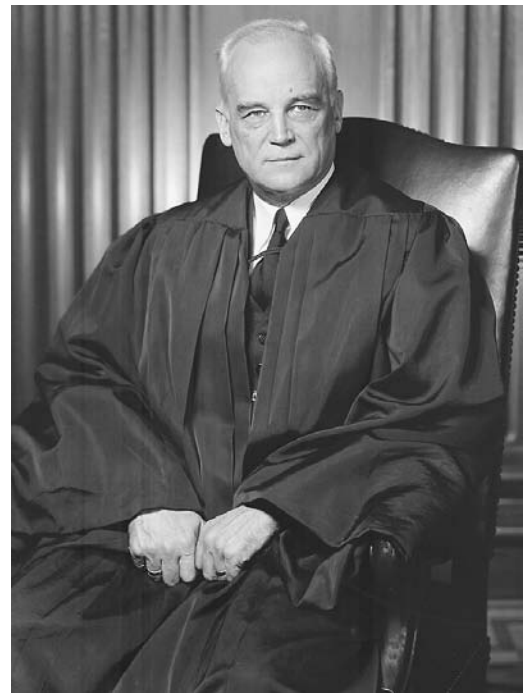
♦ **BURTON, HAROLD HITZ**

Harold Hitz Burton served as a Supreme Court justice during the years the Court outlawed SEGREGATION.

Burton was born June 22, 1888, in Jamaica Plain, Massachusetts. He attended Bowdoin College, where he was elected Phi Beta Kappa, and graduated summa cum laude in 1909. He then entered Harvard Law School where he received his bachelor of laws degree in 1912. He married Selma Florence Smith and the couple set out to take advantage of opportunity in the burgeoning Midwest. They settled in Cleveland where Burton established a successful law practice.

Burton served in the infantry in France during WORLD WAR I. He rose to the rank of captain and was awarded the Purple Heart. In 1923 he began teaching law at Western Reserve University (now Case Western Reserve University) and he remained on the faculty there until 1925.

Burton's political career began to take shape when he was elected to the Ohio legislature in 1929. He also acted as chief legal official of Cleveland from 1929 to 1932. In 1935 he was elected mayor of Cleveland and he was returned to office twice. By 1940 Burton's name and reputation for integrity were well estab-

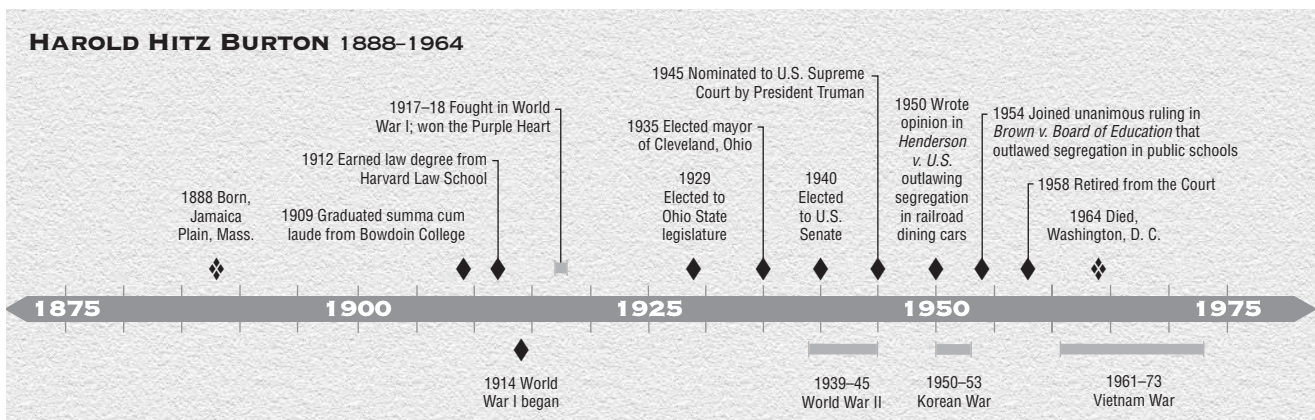


Harold Hitz Burton. PHOTOGRAPH BY OSCAR WHITE. CORBIS

lished and he easily won election to the U.S. Senate. He became known in Washington, D.C., as a moderate conservative who advocated U.S. membership in the newly formed UNITED NATIONS.

When a vacancy occurred on the Supreme Court in 1944, President HARRY S. TRUMAN, a Democrat, was under pressure to name a Republican to fill the slot. Truman did the politically expedient thing; he named Burton, a moderate Republican whom he admired and who would likely be replaced in the Senate by a

"THE
CONSTITUTION
WAS BUILT FOR
ROUGH AS WELL
AS SMOOTH
ROADS."
—HAROLD BURTON



Democrat. Burton was a popular choice. He was confirmed within a day of his nomination with no testimony heard by the SENATE JUDICIARY COMMITTEE and unanimous approval by the full Senate.

Burton was a hardworking, conscientious, dispassionate, and open-minded justice. His moderate conservatism was a unifying influence on a highly fractious court. He was noted for his ability to bridge conflicting factions with narrowly written opinions that settled an issue without taking a philosophical stand. He generally supported STATES' RIGHTS against interference by the federal government, except where his sensitivity to human suffering was aroused. In 1947 he wrote a vigorous dissent from the Court's decision to allow Louisiana to execute a prisoner after several previous attempts to execute him had failed. The Court held that the state's continued efforts to execute the man did not constitute "cruel and unusual" punishment. Burton wrote, "It is unthinkable that any state legislature in modern times would enact a statute expressly authorizing CAPITAL PUNISHMENT by repeated applications of an electric current separated by intervals of days or hours until finally death shall result" (*Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459, 67 S. Ct. 374, 91 L. Ed. 422 [1947]).

Burton's decisions in antitrust and labor disputes tended to favor corporations and management over unions. He was generally opposed to extending individual rights beyond the letter of the Constitution, but he digressed from that stance in matters of racial segregation and discrimination. A decision he authored in 1950 struck down the practice of confining black passengers in railway dining cars to a separate area. "The curtains, partitions and signs [used to mark that area]," he wrote, "emphasize the artificiality of a difference in treatment which serves only to call attention to racial classifications of passengers holding identical tickets and using the same public dining facility" (*Henderson v. U.S.*, 339 U.S. 816, 70 S. Ct. 843, 94 L. Ed. 1302 [1950]). Burton was also a member of the 1954 Court that unanimously declared that segregation in public schools is unconstitutional (*BROWN V. BOARD OF EDUCATION*, 347 U.S. 483, 74 S. Ct. 686, 98 L. Ed. 873).

Burton was compelled to retire in 1958 because of deteriorating health due to Parkinson's disease. He died October 28, 1964, in Washington, D.C.

FURTHER READINGS

- Schwartz, Bernard. 1993. *A History of the Supreme Court*. New York: Oxford Univ. Press.
- Tribe, Laurence H. 1985. *God Save This Honorable Court*. New York: Random House.

CROSS-REFERENCES

Warren Court.

❖ BUSH, GEORGE HERBERT WALKER

George Herbert Walker Bush capped a full and distinguished political career with his election in 1988 as President of the United States. Bush became the forty-first chief executive after serving for eight years as the nation's vice president under RONALD REAGAN. The most memorable events of his one-term presidency were the Desert Shield and Desert Storm Operations in the Persian Gulf in 1991.

Although Bush was enormously popular in the aftermath of the Persian Gulf War, his standing with the U.S. public plummeted as domestic problems and a sour economy took their toll. In 1992, Bush lost the presidential election to Democratic challenger BILL CLINTON, the governor of Arkansas. Clinton's campaign offered a promise of change and a "new covenant" between citizens and government.

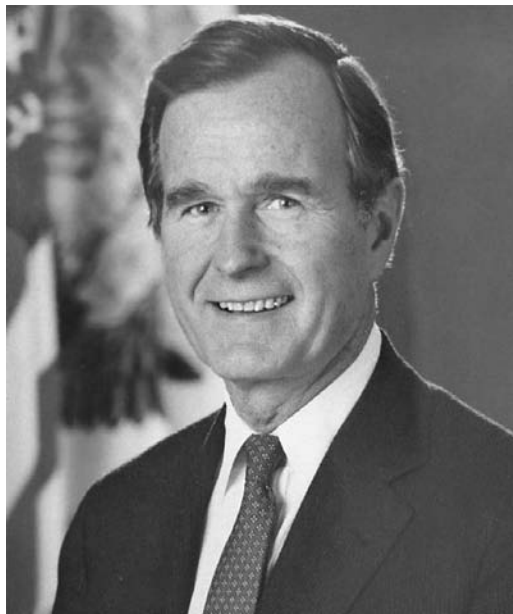
Born June 12, 1924, in Milton, Massachusetts, Bush was the son of Prescott Sheldon Bush, an international banker and U.S. senator from Connecticut, and Dorothy Walker Bush, the daughter of a wealthy St. Louis businessman. Both parents had a tremendous influence on Bush, who was unpretentious and hardworking despite his privileged background.

As a young boy, Bush attended Greenwich Country Day School, in Greenwich, Connecticut, and Phillips Academy, an elite prep school in Andover, Massachusetts. At Andover, Bush excelled academically and athletically. Nicknamed Poppy after his grandfather Walker, Bush was a popular student, serving as class president and captain of the basketball and soccer teams.

When WORLD WAR II broke out, Bush was determined to see military action. On June 12, 1942, shortly after graduation from Andover, he enlisted in the U.S. Navy. At the age of 20, he became the youngest commissioned pilot in Navy history. Bush was stationed in the Pacific theater and flew dozens of dangerous missions. On September 2, 1944, while Bush was assigned to the USS *Jacinto*, his plane was shot down near a Japanese island. Bush bailed out of the aircraft

"A FREE
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ISOLATION AND
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WANT."
—GEORGE H.W.
BUSH

George H.W. Bush.
LIBRARY OF CONGRESS



and was rescued at sea; his crewmen did not survive.

Bush returned to the United States after his tour of duty and entered Yale University, in New Haven, Connecticut. Not surprisingly, Bush had an outstanding college career. He played varsity baseball, was inducted into the Skull and Crossbones secret society, and in 1948 graduated Phi Beta Kappa with a degree in economics.

Before entering Yale in 1945, Bush married Barbara Pierce, the daughter of the publisher of *McCall's* and *Redbook*. Their first child, future President **GEORGE WALKER BUSH**, was born during Bush's senior year of college. The couple eventually had six children, including John (Jeb), Neil, Marvin, and Dorothy. Their second child, Robin, died of leukemia in 1953.

After graduating from Yale, Bush and his young family headed for Texas, determined to make their fortune in the oil business. In 1951, Bush started Bush-Overby Oil Development Company, and in 1954, he created Zapata Offshore Company, which designed and built offshore drilling platforms.

Bush's success in the oil business kindled his political ambitions. In 1964, Bush entered the race for U.S. senator from Texas but lost to Democrat Ralph Yarborough. Two years later, Bush made it to Washington, D.C., as a member of the U.S. House of Representatives from the Seventh District of Texas. Reelected to the House in 1968, Bush was a member of the influential House Ways and Means Committee. In

1970, he again ran for the Texas Senate seat, this time losing to Democrat Lloyd Bentsen.

Despite his defeat Bush's career in public service was far from over. During the 1970s he held a wide range of appointive posts and built up an impressive résumé. From 1971 to 1973 Bush served as the U.S. ambassador to the UNITED NATIONS. In 1974 he was the chair of the Republican National Committee. In 1974 and 1975 Bush traveled to the People's Republic of China as the U.S. liaison officer. And from 1976 to 1977 he was the head of the CENTRAL INTELLIGENCE AGENCY.

Confident in his experience and abilities, Bush announced his intention to run for president. From 1977 to 1980 he actively campaigned for the Republican nomination. Although he lost the 1980 GOP nod to Reagan, the conservative governor of California, Bush was chosen by Reagan as his vice presidential candidate. The Reagan-Bush ticket reached the White House easily in 1980, defeating incumbent president **JIMMY CARTER** and vice president Walter F. Mondale.

Bush was a late convert to Reagan's conservatism. As a U.S. representative in the 1960s Bush had been a political moderate, voting in favor of open housing, the abolishment of the military draft, and the vote for 18-year-olds. As vice president under Reagan, Bush became more conservative.

Bush was a loyal vice president and basked in the reflected glory of Reagan, a popular president. When Reagan and Bush ran again in 1984, they won in a landslide victory against Democratic candidate Mondale and his running mate, **GERALDINE FERRARO**.

In 1988 the REPUBLICAN PARTY rewarded Bush for his loyal service as vice president. Despite an early defeat in the Iowa caucuses, Bush won the GOP nomination for president. To the surprise of many, Bush chose Dan Quayle, a relatively unknown and inexperienced senator from Indiana, as his running mate. The choice puzzled many political experts who felt that Quayle's credentials were meager.

Bush and Quayle ran against Governor Michael Dukakis of Massachusetts and Bush's old nemesis from Texas, Senator Bentsen. During the campaign Bush resorted to some tactics that seemed out of keeping with his congenial personality. One Bush TV commercial focused on Willie Horton, an African American felon who committed additional crimes upon his release from prison in Massachusetts. Suggesting

that Dukakis was soft on crime, the ad capitalized on racial fears and prejudice. Also, despite the soaring deficit, Bush promised to give U.S. citizens a financial break, in the campaign pledge, "Read My Lips: No New Taxes." After the election Bush's pledge came back to haunt him: once in office, he agreed to tax increases to combat a \$140 billion budget deficit.

Bush and Quayle captured the vote in 40 states to win the 1988 election. At his inauguration Bush made an appeal for a "kinder, gentler nation" and shared his vision of volunteers, like "a thousand points of light," helping to solve problems.

The height of Bush's popularity came during Operation Desert Storm, a six-week display of technological warfare against Saddam Hussein in Kuwait and Iraq.

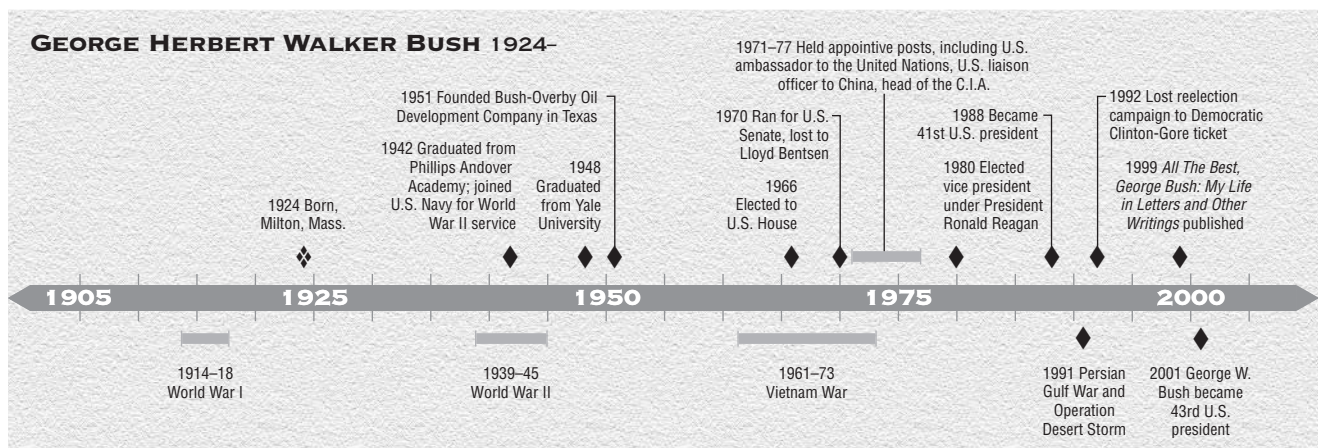
In 1992 Bush and Quayle squared off against Democratic challengers Clinton and AL GORE, a senator from Tennessee. The GOP incumbents won their party's endorsement after a bruising primary fight with conservative columnist PATRICK BUCHANAN. Independent candidate H. Ross Perot, a Texas multimillionaire businessman, also threw his hat into the ring, to further muddle the election scene. Despite Clinton's liabilities—rumors of infidelity, avoidance of the draft, and a "slick" image—Clinton was able to defeat Bush.

Commentators often argue over the reasons one politician wins or loses, but many agree that a sluggish economy and Bush's broken promise of no new taxes hurt his chances for reelection. Clinton and Gore, a generation younger than Bush, won the election with a promise of change and new beginnings.

Bush reentered the public consciousness as two of his sons pursued their own political careers. George W. Bush was elected governor of the state of Texas in 1995, a position he held until 2000. Younger son Jeb Bush served as governor of the state of Florida in 1998. George W. Bush ran for president in 2000 against then-Vice-President Al Gore in one of the most hotly contested races in U.S. history. The younger Bush's running mate was Richard B. (Dick) Cheney, who had served as secretary of defense under the elder Bush.

Although George H.W. Bush remained in the background of the 2000 presidential election, several of George W. Bush's advisors had ties to his father. For several weeks following the election, the country focused much of its attention on the election returns in the state of Florida. James A. Baker III, the former SECRETARY OF STATE under the elder Bush, served as an advisor and spokesperson for the younger Bush during the controversy. When George W. Bush assembled his cabinet after the election results had been resolved, several names tied to the elder Bush were nominated for positions. The most notable of these officials, Colin L. Powell, former chairman of the Joint Chiefs of Staff, was eventually nominated and sworn in as the secretary of state.

George H.W. Bush and George W. Bush are the first father and son to serve as presidents of the United States since JOHN ADAMS (1797–1801) and JOHN QUINCY ADAMS (1825–29). The elder Bush has largely remained in the background of his son's presidency. Naturally, the American press focused considerable attention on him during his son's candidacy and eventual



election. Bush's policies while he was in office also came into question once again because many viewed the election in 2000 as a repeat of the election between George H.W. Bush and Clinton in 1992. Several commentators agree that a sluggish economy and Bush's broken promise of no new taxes hurt his chances for reelection, and many have compared the policies of father and son as the economy slowed under the younger Bush.

The George Bush Presidential Library and Museum is located in College Station, Texas, on the campus of Texas A&M University. In addition to several speaking engagements, Bush and his wife divide their time between Texas and Kennebunkport, Maine, spending time with their children and 14 grandchildren.

FURTHER READINGS

Campbell, Colin, and Bert A. Rockman. 1991. *The Bush Presidency: First Appraisals*. Chatham, N.J.: Chatham House.

Levy, Peter B. 1996. *Encyclopedia of the Reagan-Bush Years*. Westport, Conn.: Greenwood.

Thompson, Kenneth W. 1997. *The Bush Presidency: Ten Intimate Perspectives of George Bush*. Lanham, Md.: Univ. Press of America.

CROSS-REFERENCES

Bush, George Walker.

◆ BUSH, GEORGE WALKER

The administration of George Walker Bush, the forty-third president of the United States, has been a study in contrasts. On the one hand, he has shown a fierce determination to protect the interests of the United States and its citizens following the SEPTEMBER 11TH ATTACKS, in which terrorists destroyed the World Trade Center in New York City and seriously damaged the Pentagon in Washington, D.C. On the other hand, his administration has been shrouded in controversy, beginning from the day of his election on November 7, 2000, and he has been heavily criticized for a slow economy in the early 2000s.

For years, Bush's public identity was inextricably tied to his famous father, GEORGE H.W. BUSH. They are the first father and son to be elected presidents since JOHN ADAMS and JOHN QUINCY ADAMS. In 1994, the son of the former Republican president established an identity of his own when he defeated incumbent Ann Richards in a hotly contested political race to become the forty-sixth governor of Texas. Convincing Texas voters that he was a strong politician in his own right, Bush claimed a victory

that he could call his own. Six years later, he was part of an extremely controversial presidential election when he defeated then-Vice-President ALBERT GORE to win the presidency.

Born in Connecticut on July 6, 1946, and raised in Texas, George Walker Bush has a well-documented lineage. His grandfather, Prescott Bush, a Connecticut resident who worked on Wall Street, was elected to the Senate. His father, George H.W. Bush, earned his fortune as an oilman in Texas, entered politics, became director of the CENTRAL INTELLIGENCE AGENCY, and eventually achieved the country's highest office as president. George W. Bush, the oldest of five Bush children, retraced his father's early career. Like his father, he attended Phillips Academy in Andover, Massachusetts, and Yale University.

After graduating from Yale, the young Bush continued to be his father's shadow. He learned how to fly a combat aircraft and then became an oilman. He completed a 53-week program with the Texas Air NATIONAL GUARD, learning to fly F-102s and earning the rank of lieutenant, and then he returned home looking for a new challenge when he was not called to fight in Vietnam. He spent time in Houston holding various short-term jobs, including a stint at a program called Pull for Youth for underprivileged kids. Possessing his father's drive and fierce determination to make something of himself, Bush attended Harvard Business School, returned to Texas with an M.B.A., became an oilman, and ventured into politics. At age 32, he ran for Congress in west Texas but was defeated by six points. He was successful in the oil business, however, and within ten years of working in the industry earned his first million dollars.

Bush's biggest oil venture, however, proved controversial. During the late 1970s, he built a small, thriving company called Bush Exploration. When the energy market turned soft in the early 1980s, Bush Exploration, like many oil enterprises, floundered. In 1983, Bush merged his outfit with Spectrum 7; three years later Spectrum 7 was bought by Harken Energy. Bush's supporters said the sale was the work of a shrewd dealmaker, while others—including journalists from conservative and liberal publications—suspected that the deal came about because of Bush's father's political contacts. "Many oil companies went belly-up during that time," reported Stephen Pizzo of *Mother Jones*. "But Spectrum 7 had one asset the others lacked—the son of the vice-president. Rescue

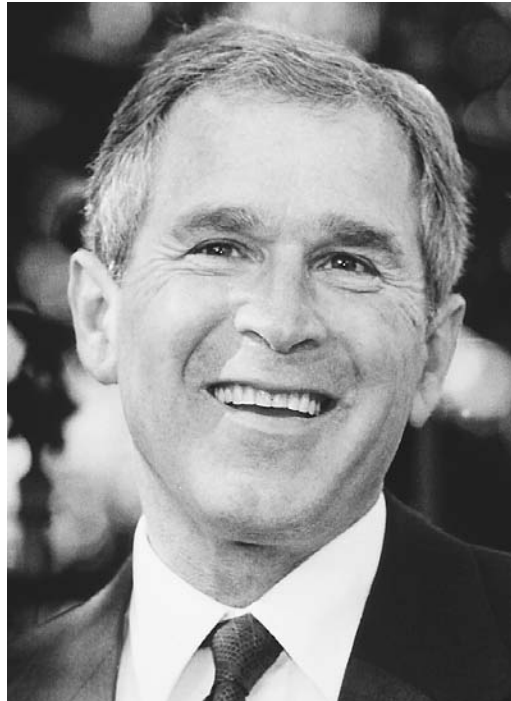
"FREEDOM AND
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THEM."
—GEORGE W. BUSH

came in 1986 in the form of Harken Energy. Harken absorbed Spectrum, and, in the process, Bush got \$600,000 worth of Harken stock in return for his Spectrum shares. He also won a lucrative consulting contract and stock options. In all, the deal would put well more than \$1 million in his pocket over the next few years—even though Harken itself lost millions.” Bush came under fire again in 1990. *Time* reported, “about a month before Iraq invaded Kuwait, young Bush sold 66 percent of his Harken stake (or 212,140 shares) at the top of the market for nearly \$850,000, which represented a 200 percent profit on his original stake.” President Bush balked at the allegations of impropriety. “The media ought to be ashamed of itself for what they’re doing,” he said. Meanwhile, the younger Bush dismissed the criticism “claiming something close to penury,” according to *Newsweek*.

While speculation swirled in the media about his oil dealings, Bush left business for politics. He helped manage his father’s 1988 presidential campaign, moving with his wife and twin daughters to Washington, where he worked closely with Lee Atwater. By all accounts, Bush did not enjoy the experience. “He remembers finding Washington a ‘hostile environment,’” reported *Time*. “The campaign operation was often a mud wrestle among contending egos.” Confessed the young Bush, “I was the loyalty thermometer.” But he gained respect for handling volatile diplomatic matters, such as the firing of chief of staff John Sununu, and for swiftly taking care of business.

After the election, Bush wasted no time getting back to Texas, where he promptly found a new venture—BASEBALL. The sport offered Bush the first honest chance at independence. In a matter of months, he successfully organized a coalition of wealthy investors to purchase American League’s Texas Rangers, and he assumed a role as managing partner. Not only did Bush rally support to bring major league baseball to Dallas, but he helped to promote the team and boost attendance. Riding the wave of popularity that arose from his success with the Rangers, Bush decided it was an ideal time to try his hand at local politics.

George H.W. and Barbara had both discouraged their oldest son from entering politics as a full-time career until he had first secured his financial future. Even after Bush earned a small fortune in the oil industry, and with the promise



George W. Bush.

PHOTOGRAPH BY
ADREES LATIF.
REUTERS/ARCHIVE
PHOTOS

of more to come from his baseball investments, his mother remained wary of his chances in the 1994 gubernatorial race. Like other political observers, Barbara Bush believed that Texans were not ready to retire their quick-witted Democratic governor Ann Richards. Nevertheless, Bush jumped into the race, while his younger brother, Jeb, did the same in Florida. The brothers were, of course, highly skilled campaigners, having served as aides to their father since the age of 18.

Bush’s strategy was to run an intensely focused and positive, issue-oriented campaign. When Richards attacked his credibility with barbs like “If he didn’t have his daddy’s name, he wouldn’t amount to anything,” Bush countered with pleasantries. “I don’t have to erode her likability,” he told the *New York Times*. “I have to erode her electability.” And when Richards called him “some jerk,” Bush replied, “The last time I was called a jerk was at Sam Houston Elementary School in Midland, Texas. I’m not going to call the Governor names. I’m going to elevate this debate to a level where Texans want it.” That debate focused on WELFARE reform, a crack-down on crime (especially concerning juveniles), increased autonomy and state financing for local school districts, and personal responsibility. As he campaigned, it was clear to observers that he was not the spitting political

image of his father. As he told local audiences, "Let Texans run Texas." It was a message that appealed to the proud Texans. And despite the popularity Ann Richards had enjoyed during her reign as governor, Bush, to the surprise of many, won with 53.5 percent of the vote. Twenty thousand people attended Bush's inauguration in Austin, including the famous preacher Billy Graham, legendary baseball pitcher Nolan Ryan, movie star Chuck Norris, and, of course, George H.W. and Barbara Bush.

After only a year in office, Bush was hailed as the most popular big-state governor in the country. In 1998 he won reelection in a landslide. His vote-getting among minorities impressed national Republicans. Bush entered the 2000 presidential election race in 1999, eventually raising the largest amount of money—more than \$100 million—for any presidential race in U.S. history. His support largely demoralized the field of potential Republican candidates. He later defeated Senator JOHN MCCAIN in a series of primary elections and became the GOP's candidate in 2000.

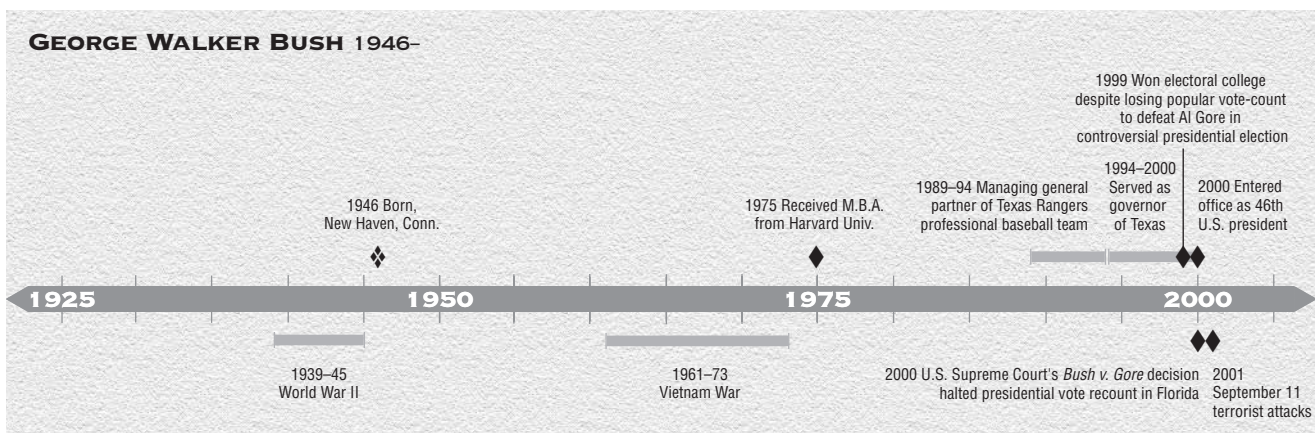
The race pitted Bush against Al Gore, who had served as vice president for two terms under WILLIAM JEFFERSON CLINTON. Bush, who did not have extensive experience in foreign policy, chose former Secretary of Defense Richard Cheney as his running mate. Despite early leads for the Bush camp, the race was largely deadlocked as the November 7 election date approached. On the day of the election, early results supported Gore, and late in the afternoon several media outlets pronounced Gore the probable victor. Late returns, however, supported Bush, and by the end of the day he had apparently won the election through the ELEC-

TORAL COLLEGE, despite the fact that Gore had won a majority of the popular vote.

Gore immediately contested the results, requesting a recount of votes in the state of Florida, where voting procedures caused a great deal of controversy. For a month after the elections, the nation observed high profile wrangling from both sides as politicians and the courts sought to sort out the election fiasco. The U.S. Supreme Court in *BUSH V. GORE*, 531 U.S. 98, 121 S. Ct. 525, 148 L. Ed. 2d 388 (2000) over-turned an order by the Florida Supreme Court requiring a recounting of ballots in several counties. The ruling, one of the most controversial ever, allowed Bush to be certified as the winner.

Bush's first nine months in office were largely unremarkable as he sought to pass education reform bills and new tax legislation. The events of September 11, 2001, however, irrevocably changed the Bush administration and the public's perceptions of him. On September 20, 2001, he delivered a speech to Congress regarding the U.S. response to the terrorist attacks, and several commentators likened the speech to President Franklin D. Roosevelt's speech following the Japanese attack on Pearl Harbor in 1941.

Months after the attack, U.S. forces, in conjunction with U.S. allies, toppled the Taliban regime in Afghanistan, which had been suspected of harboring terrorists. Bush initiated the largest reorganization of the federal government since WORLD WAR II in an effort to allow the United States to defend itself against terrorist attacks. In 2002, Congress approved the Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135 (codified as amended in scattered sections of 6 U.S.C.A.), which created the HOME-



LAND SECURITY DEPARTMENT and reorganized several existing agencies. Throughout 2002 and 2003, the Bush administration focused much of its attention on Iraq, which was also at the center of attention under the administration of the elder Bush. More than 250,000 troops had been amassed in the Persian Gulf by March 2003 in preparation with a possible showdown with Iraqi president Saddam Hussein. The United States attacked Iraq on March 19, 2003.

Bush has had less success addressing domestic issues. The United States had experienced economic growth under former President Clinton, but this trend came to an end during the Bush administration. Whether or not the cause of the economic problems were his administration's problems—his father's administration also suffered from a sluggish economy—the economic outlook of the nation throughout the early twenty-first century was bleak. Bush announced in 2003 a FEDERAL BUDGET deficit of \$304 billion, an all-time high. Moreover, he anticipated a deficit for 2004 of \$307 billion.

FURTHER READINGS

- Frum, David. 2003. *The Right Man: The Surprise Presidency of George W. Bush*. New York: Random House.
- Kettl, Donald F. 2003. *Team Bush: Leadership Lessons from the Bush White House*. New York: McGraw Hill.
- Lind, Michael. 2003. *Made in Texas: George W. Bush and the Southern Takeover of American Politics*. New York: Basic Books.

CROSS-REFERENCES

Bush v. Gore; Homeland Security Department; Terrorism.

BUSH V. GORE

Introduction

In *Bush v. Gore* 531 U.S. 98, 121 S.Ct. 525, 148 L.Ed.2d 388 (U.S. 2000), the U.S. Supreme Court ruled that the system devised by the Florida Supreme Court to recount the votes cast in the state during the 2000 U.S. presidential election violated the EQUAL PROTECTION CLAUSE of the FOURTEENTH AMENDMENT to the federal Constitution. Because there was no time to create a system that was fair to both candidates, the Supreme Court effectively stopped the recount process in its tracks, allowing GEORGE W. BUSH of Texas to become the 43rd president of the United States.

Bush v. Gore was more than just a lawsuit or a series of lawsuits about technical areas of Florida election law. Instead, *Bush v. Gore* represented a 36-day American drama of the highest

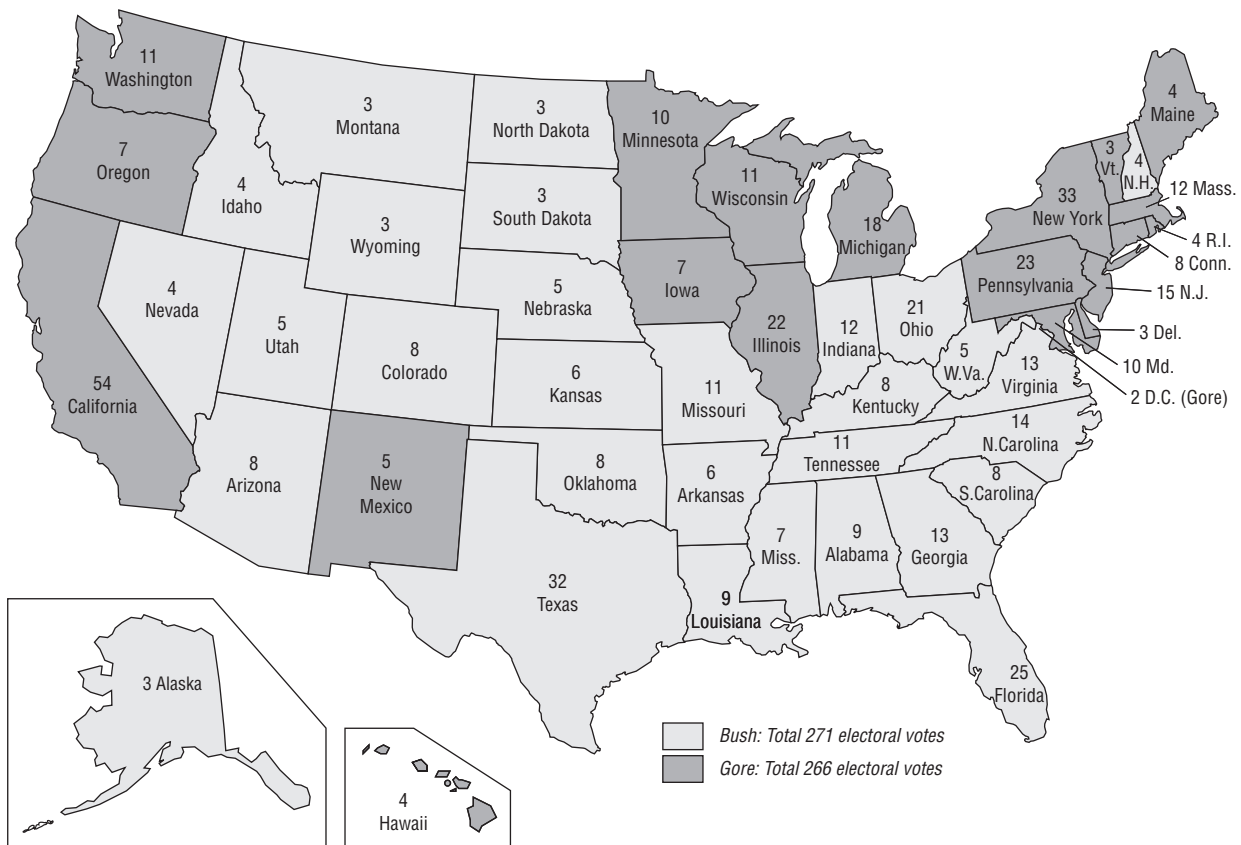
order, captivating the world's attention as the U.S. judicial system was ensnared by a whirlwind of power politics that saw the Republican presidential candidate clinging to a slim lead that seemed to dwindle by the day, if not by the hour, while the Democratic candidate kept forging ahead, trying to build momentum to eclipse his rival. At the same time, the nation witnessed the Bush and Gore legal teams doing whatever they could to secure what each candidate felt rightly belonged to him. Having lost the nationwide popular vote by approximately 500,000 votes, Bush defeated Gore in Florida by a mere 537 votes to capture that state's 25 electors, enough to win the ELECTORAL COLLEGE and the presidency.

Election Night

As daylight turned to twilight on the East Coast of the United States, it became evident that Florida's 25 electoral votes held the key to victory in the November 7, 2000, U.S. presidential race. Early returns combined with exit polling results indicated that Gore had a commanding lead in the state. By 8:00 P.M. EST, all of the major television networks projected that Gore had defeated Bush to become the nation's next president.

However, the polls had not yet closed in the Florida's panhandle, which is in the Central time zone. A few hours later, the lead swung to Bush, forcing the networks to retract their projections. By 2:15 EST, Bush appeared to have a decisive lead of about 50,000 votes, and all of the major networks were declaring Bush the winner. Gore even called Bush privately to concede. But while Gore was en route to Nashville, Tennessee, to make his public concession speech, Gore's aides informed him that Bush's lead had shrunk to a few thousands votes, at best. Gore immediately withdrew his concession, and the embarrassed networks announced the race was too close to call.

When the votes were finally tallied on November 8, minus the late-arriving overseas ballots, Bush was ahead of Gore by 1,784 votes, or less than .5 percent of the total number of votes tabulated for the U.S. presidency in Florida. Under Florida Election Law, a recount was automatic in these circumstances, unless Gore refused, which he did not. The recount was performed by machine and was designed to correct any errors in the first machine tabulation of the vote. On November 10 the first recount was complete. Bush's lead had dwindled to 327 votes.

Presidential General Election Results, 2000

SOURCE: U.S. Federal Election Commission web page.

The Controversy Begins

Before the results of the first recount were announced, two controversies had arisen. First, all Palm Beach County voters had cast their votes on confusing ballots known as “butterfly ballots,” which displayed candidates’ names on both sides of the ballot, one pair of candidates’ names on top of the other, with arrows pointing toward the middle of the ballot, where voters were required to mark their vote by using a stylus to punch through a small circular or rectangular “chad” (a perforated punchhole used to record votes). The poorly configured ballot had caused hundreds or more of elderly Jewish voters to mistakenly cast their vote for PAT BUCHANAN, a right-wing candidate for the REFORM PARTY, someone whom such voters are demographically unlikely to support.

Second, Gore’s legal team had discovered an unusually high number of “undervotes” (ballots

that the tabulating machines had not counted as a vote for any presidential candidate) in counties that used punchcard voting. Florida’s election law allows both candidates to “protest” an election by requesting a manual recount within seven days of the election, and the county canvassing boards “may” agree to authorize one, Fla. Stat. sections 102.112, 102.166. On November 9 Gore invoked these statutory provisions, asking the canvassing boards of Broward, Miami-Dade, Palm Beach, and Volusia Counties to authorize a manual recount. Gore had carried each of those counties by wide margins and expected to benefit from a manual recount of the ballots in those heavily Democratic counties.

Notwithstanding Republican opposition, all four counties authorized a manual recount of several “sample” precincts. Once the sample precincts had been manually recounted, state law authorized the canvassing boards to order a

full recount of all ballots cast in the county if the results from the sample precincts indicated “an error in the vote tabulation which could affect the outcome of the election,” Fla. Stat. section 102.166.

The problem was that Florida law required all counties in the state to submit their final counts by November 14, again minus the overseas votes, which could be submitted until November 18. Only Volusia County met the November 14 deadline, and Florida SECRETARY OF STATE Katherine Harris, the state’s highest election official, refused to extend the deadline so the manual recount could be completed in the other three counties. In making her decision, Harris was accused of being influenced by Republican Florida governor Jeb Bush, brother of presidential candidate George W. Bush, even though Harris was a prominent member of the state REPUBLICAN PARTY who had been elected to office and not appointed by the governor. On November 18 Harris announced that the overseas votes had increased Bush’s lead from 327 to 930 votes.

The Broward, Palm Beach, and Miami-Dade canvassing boards sued Harris to extend the deadline on which they had to submit their final counts, and though they lost in trial court, the Florida Supreme Court overruled the trial court and extended the deadline to November 26. The state high court authorized the canvassing boards to order countywide manual recounts if they concluded that the results from their sample precincts revealed “an error in the vote tabulation which could affect the outcome of the election.” Republicans had argued that “an error in vote tabulation” meant a machine error in tabulating the vote. But the Florida Supreme Court ruled that this phrase also included voter error in failing to fully dislodge the chad from the ballot, such that the chad was left “hanging” by one corner, “swinging” by two corners, attached by three corners (a “tri-chad”), or otherwise “dimpled” or “pregnant” (dimpled and pregnant chads referred to bulging, indented, or marked chads that remain attached to the ballot by all four corners).

On remand all three canvassing boards concluded that “an error in vote tabulation” had occurred and ordered countywide manual recounts of hundreds of thousands of votes across several hundred precincts. Only Broward County completed its recount by the newly extended deadline, and the Florida Supreme Court refused to extend the deadline further for

Palm Beach and Miami-Dade Counties. With Bush holding a lead of 537 votes after factoring in the manually recounted ballots from Broward County, Katherine Harris certified Bush the winner on November 27. Gore then sued Harris to contest the certification, again losing in the trial court but prevailing on appeal, where the Florida Supreme Court ruled that Harris had to include in her certified totals the untimely recounted votes from Palm Beach and Miami-Dade Counties, which whittled down Bush’s lead to 154 votes. The court also ordered a manual recount for all the 60,000 undervotes cast in the state but failed to specify the criteria by which those votes would be counted as having been made for Bush or Gore. The canvassing boards of each county were free to determine their own criteria.

The U.S. Supreme Court Steps In

Meanwhile, Bush had asked the U.S. Supreme Court to review the Florida Supreme Court’s decision extending the deadline by which the counties had to submit their final counts. On December 4 the U.S. Supreme Court vacated the state supreme court’s decision, remanding the case so the Florida high court could clarify the grounds of its decision. The U.S. Supreme Court expressed concerns that the Florida Supreme Court had usurped the state legislature’s authority to determine the manner in which a state’s presidential electors are appointed for the electoral college, an authority conferred by Article II of the federal Constitution. Five days later the U.S. Supreme Court, again at Bush’s request, stayed the Florida State Supreme Court’s decision ordering a statewide hand recount of the undervote, pending further review of that decision by the nation’s high court.

After further review, the U.S. Supreme Court announced its decision on December 12, 2000. The Court reversed the Florida Supreme Court’s decision ordering a statewide hand recount, declaring that the order violated Florida voters’ right to equal protection of the laws guaranteed by the Fourteenth Amendment. “When a court orders a statewide remedy,” the Supreme Court said in a per curiam opinion, “there must be at least some assurance that the rudimentary requirements of equal treatment and fundamental fairness are satisfied.” The Court said that these requirements were missing from the process by which the court-ordered manual recount was being conducted.

The Florida Supreme Court had provided the canvassing boards with no uniform standards to evaluate the ballots cast by Florida voters. To the contrary, the U.S. Supreme Court observed, “standards for accepting or rejecting contested ballots might vary not only from county to county but indeed within a single county from one recount team to another.” For example, the Court noted that Palm Beach County changed its standards three times during the manual recounting process, fluctuating from more strict standards that precluded counting pregnant chads to more relaxed standards that allowed hanging, swinging, or tri-chads to be counted. Broward County, by contrast, used a more forgiving standard throughout its entire recount process and uncovered almost three times as many new votes as Palm Beach County, a result “markedly disproportionate” to the difference in population between the counties,” the Court said.

The equal protection problems arising from the absence of uniform standards in evaluating a chad’s status primarily affected the undervotes, or those ballots in which the vote tabulating machines detected that no vote for the presidency had been cast. But the Court said there was also an equal protection problem with the overvotes, or those votes in which the ballot reflected more than one vote for the presidency. Voters who marked their ballot in a way that was not readable by the machine (the undervotes) stood to have their votes counted through the manual recount process, while those who marked two candidates in a way that was discernable by the machine would not have had their votes counted, even if a manual examination of the ballot would reveal the voter’s intent, because the Florida Supreme Court excluded the overvote from the statewide recount it had ordered.

While seven justices agreed that the court-ordered, statewide recount violated the Equal Protection Clause, only five justices agreed on the remedy. Chief Justice WILLIAM REHNQUIST and Associate Justices SANDRA DAY O’CONNOR, ANTONIN SCALIA, CLARENCE THOMAS, and ANTHONY KENNEDY noted that Florida law required the state to select its electors for the electoral college by December 12, which was the day the Court announced its decision in *Bush v. Gore*. Rehnquist, O’Connor, Scalia, Thomas, and Kennedy concluded that it was thus impossible to complete a statewide recount by day’s end.

For all intents and purposes, then, a majority of the Court ruled that the 2000 U.S. presidential election was over and George W. Bush had won.

Justices JOHN PAUL STEVENS, DAVID SOUTER, STEPHEN BREYER, and RUTH BADER GINSBURG dissented, with Stevens, Breyer, and Ginsburg each writing their own dissenting opinion. The December 12 deadline chosen by the majority was misleading, the dissenting justices asserted, since under federal law the electors had until December 18 to deliver their votes to Congress and until December 28 before Congress could request the electors to deliver their votes had they not already done so. “By halting the Florida recount in the interest of finality,” Justice Stevens wrote, “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.” In addition, Breyer stated: “An appropriate remedy would be to remand this case with instructions that, even at this late date, would permit the Florida Supreme Court to require recounting all undercounted votes in Florida ... and to do so in accordance with a single uniform standard.”

The Legacy of *Bush v. Gore*

On January 6, 2001, Congress met to count the electoral college votes. Bush was declared the winner by a 271-266 margin, with one of Gore’s electors abstaining in protest over the District of Columbia not having statehood. Fourteen days later George W. Bush was inaugurated as the 43rd president of the United States.

Following the inauguration, several news services set out to determine who “really” won the 2000 presidential race, attempting to conduct their own manual recounts of the ballots cast in the four contested counties. Most of the news agencies reported that Gore would not have picked up enough additional undervotes to have won the election. However, the *Palm Beach Post* reported that its examination of approximately 19,000 overvotes cast on the Palm Beach County “butterfly ballot” indicated that Gore lost as many as 6,600 votes.

In early 2003 it was probably too early to fully assess the legacy of *Bush v. Gore*. Immediately after the U.S. Supreme Court announced its decision stopping the recounts and effectively ending the election, liberal commentators condemned the five unelected conservative justices for having “hijacked” U.S. democracy by judicial

fiat. Earlier Florida Supreme Court decisions in the *Bush v. Gore* saga had been assailed by conservative commentators on similar grounds.

Even more temperate Americans were forced to confront the fact that the personal politics of court members may have influenced the outcome of a high-stakes legal controversy: five politically conservative justices on the U.S. Supreme Court issued a decision in favor of the Republican Party's presidential candidate, which overturned a decision made by the predominantly liberal judges on the Florida Supreme Court in favor of the Democratic Party's presidential candidate, demonstrating that the judiciary's ability to remain independent of partisan politics is compromised when the subject matter of the "legal" controversy involves a cutthroat political battle for the nation's highest office.

FURTHER READINGS

- Bugliosi, Vincent. 2001. *Betrayal of America: How the Supreme Court Undermined the Constitution and Chose Our President*. New York: Thunder's Mouth Press.
- Dershowitz, Alan M. 2001. *Supreme Injustice: How the High Court Hijacked Election 2000*. New York: Oxford Univ. Press.
- Gillman, Howard. 2001. *The Votes That Counted: How the Court Decided the 2000 Presidential Election*. Chicago: Univ. of Chicago Press.
- Posner, Richard A. 2001. *Breaking the Deadlock: The 2000 Election, the Constitution, and the Courts*. Princeton, N.J.: Princeton Univ. Press.

BUSINESS AFFECTED WITH A PUBLIC INTEREST

A commercial venture or an occupation that has become subject to governmental regulation by virtue of its offering essential services or products to the community at large.

A business affected with a public interest is subject to regulation by the **POLICE POWER** of the state to protect and to promote the **GENERAL WELFARE** of the community which it serves. Such a designation does not arise from the fact that the business is large, or that the public receives a benefit or enjoyment from its operation. The enterprise, as a result of its integral participation in the life of the community or by the privilege it has been granted by the state to serve the needs of the public, is regulated more strictly by the state than other businesses.

What constitutes a business affected with a public interest varies from state to state. Three classes of businesses have been traditionally regarded as affected with a public interest:

(1) those carried on pursuant to a public grant or privilege imposing a duty of making available essential services demanded by the public, such as common carriers and **PUBLIC UTILITIES**; (2) occupations considered from the earliest times in common law to be exceptional, such as the operation of inns or cabs; and (3) businesses that although not public at their inception have become such by devoting their activities to a public use, such as insurance companies and banks.

A business affected with a public interest remains the property of its owner, but the community is considered to have such a stake in its operation that it becomes subject to public regulation to the extent of that interest.

CROSS-REFERENCES

Regulation.

BUSINESS CLOSINGS

After advocating such measures for fifteen years, proponents of mandatory plant closing notification secured federal legislation in August 1988 with the Worker Adjustment and Retraining Notification Act, 100 P.L. 379. The measures were initially part of the Omnibus Trade and Competitiveness Act of 1988, P.L. 100-418, 102 Stat. 1159, which President **RONALD REAGAN** had vetoed. After failing to garner the two-thirds majority required for an override, Congress chose to make the plant closing notification provisions into a separate act. In July, the Senate approved the plant closing legislation by a vote of 72 to 23, and the House of Representatives passed it by a vote of 286 to 136. On August 2, 1988, perhaps sensing the popularity of the bill, President Reagan announced his intent to permit the bill to become law without his signature. The bill became automatically effective at midnight, August 3, 1988.

The law requires employers with one hundred or more employees to provide their workers with sixty days' layoff notice when fifty or more workers at a single site will lose their jobs and when affected workers will constitute at least one-third of that site's work force. If 500 or more employees are laid off, however, such notice is required regardless of the percentage of site workers involved. Companies failing to provide the requisite warning face penalties of compensating each dismissed employee for wages and fringe benefits for every day the notice should have been given. Additionally, a \$500

payment per day, up to a maximum of \$30,000, must be made to local communities when the act's provisions have not been met.

Analogous requirements exist in thirty-eight other countries and in five states. At least twenty other states have proposed such legislation. According to the federal government's GENERAL ACCOUNTING OFFICE (GAO) survey, prior to this legislation, the national median length of advance notice for the closing of large establishments was seven days. White collar and union blue collar workers averaged as much as fourteen days' termination notice while non-union blue collar workers only received two days' notice. Since 1981 more than five million Americans have lost their jobs because plants were shut down or their positions were eliminated.

Along lines similar to President Reagan's reservations, NATIONAL ASSOCIATION OF MANUFACTURERS president Alexander B. Trowbridge maintained that the legislation "damages the flexibility essential to run a successful business." Moreover, Trowbridge noted that advance notice was not always possible as financially troubled businesses may not be able to predict their status with the precision that the legislation required. To salvage their troubled businesses, these companies might find themselves in the midst of difficult debt financing, merging with another company, selling off assets, or bidding on a major contract, all of which could be hampered by the new law's requirements. He claimed that the required closing notices would discourage customers and jeopardize credit arrangements. A report compiled by the Congressional Office of Technology Assessment titled "Plant Closing: Advance Notice and Rapid Response" (DTA-ITE-321) found contentions such as Trowbridge's to be highly exaggerated because financial emergencies are rarely a factor in plant closings.

Other critics of the legislation cited an R. Nathan Associates study which claimed that the total annual costs for notification would run as high as \$1.8 billion, due to lost profits, penalties, and additional administrative costs. The Nathan study found further that about 460,000 lost jobs would be triggered by unnecessary closings as a direct result of the act.

The GAO, however, seriously questioned the Nathan report on the basis of what it claimed was inadequate and flawed analysis and methodology. The DEPARTMENT OF LABOR also stated in 1986 that "many of the fears regarding

advance notification have not been realized in practice." The National Science Foundation claimed to have found proof that, in most labor groups, advance notice significantly shortens joblessness, which in turn translates into better earnings for displaced workers and substantial savings in unemployment insurance. LABOR UNIONS, such as the AFL-CIO, uniformly acclaimed the Worker Adjustment and Retraining Notification Act, 29 U.S.C.A. § 2101 et seq., claiming that when advance notice is combined with severance pay, it improves morale and actually increases worker productivity.

CROSS-REFERENCES

Corporations; Employment Law; Labor Law; Unemployment Compensation.

BUSINESS JUDGMENT RULE

A legal principle that makes officers, directors, managers, and other agents of a corporation immune from liability to the corporation for loss incurred in corporate transactions that are within their authority and power to make when sufficient evidence demonstrates that the transactions were made in GOOD FAITH.

The directors and officers of a corporation are responsible for managing and directing the business and affairs of the corporation. They often face difficult questions concerning whether to acquire other businesses, sell assets, expand into other areas of business, or issue stocks and dividends. They may also face potential hostile takeovers by other businesses. To help directors and officers meet these challenges without fear of liability, courts have given substantial deference to the decisions the directors and officers must make. Under the business judgment rule, the officers and directors of a corporation are immune from liability to the corporation for losses incurred in corporate transactions within their authority, so long as the transactions are made in good faith and with reasonable skill and prudence.

The rule originated in *Otis & Co. v. Pennsylvania R. Co.*, 61 F. Supp. 905 (D.C. Pa. 1945). In *Otis*, a shareholder's derivative action alleged that corporate directors failed to obtain the best price available in the sale of SECURITIES by dealing with only one investment house and by generally neglecting to "shop around" for the best possible price, resulting in a loss of nearly half a million dollars. The federal district court ruled that although the directors chose the wrong

course of action, they acted in good faith and therefore were not liable to the shareholders. The court reasoned that “mistakes or errors in the exercise of honest business judgment do not subject the officers and directors to liability for NEGLIGENCE in the discharge of their appointed duties.”

Subsequently, the business judgment rule was applied to directors’ actions when corporations were faced with a hostile takeover. In *Unocal Corp. v. Mesa Petroleum Co.*, 493 A.2d 946 (Del. Super. 1985), the Delaware Supreme Court upheld the defensive actions taken by a board of directors during a takeover struggle with a minority shareholder. In this case Mesa Petroleum Company made an offer that would have made it the majority shareholder in Unocal Corporation. Under the offer, shareholders who sold their Unocal stock would receive \$54 a share until Mesa acquired the 37 percent it sought and then would receive highly speculative Mesa securities instead of cash for any stock sold beyond that 37 percent. To counteract the takeover bid Unocal’s directors announced that if Mesa obtained 51 percent of its shares, Unocal would purchase the remaining 49 percent for an exchange of debt securities (securities reflected as debt on the books of the corporation) with an aggregate par (or face) value of \$72 a share, but the offer would not be extended to the 51 percent of stock held by Mesa. Mesa filed suit, alleging that the directors had violated their fiduciary duty by excluding Mesa from the exchange. The court concluded that the directors’ actions were protected by the business judgment rule. The court recognized that in responding to hostile takeover bids the directors of a corporation can face a conflict between their own interests and the interests of the corporation and its shareholders. The court stated that the Unocal directors had reasonable grounds to believe that a danger to the corporation existed because of Mesa’s actions and that the defensive actions they took were reasonable in relation to the threat they “rationally and reasonably” believed the offer posed.

Despite the seemingly broad scope of the business judgment rule, corporate directors have not always been able to rely upon it as a way to escape liability for their actions. In *Smith v. Van Gorkom*, 488 A.2d 858 (Del. 1985), the Supreme Court of Delaware held that the directors of a corporation failed to exercise informed business judgment and instead acted in a grossly

negligent manner by agreeing to sell the company for only \$55 a share. The court looked to evidence indicating that the directors reached their decision to sell at that price after hearing only a 20-minute oral presentation concerning the sale. The court also noted that the directors had received no documentation indicating that the sale price was adequate and had not requested a study to help them determine whether the price was fair. Although the directors were not accused of acting in bad faith, the court stated that the directors’ fiduciary duty toward their shareholders required more than merely an absence of bad faith. The directors, according to the court, had an affirmative duty to protect the shareholders by obtaining and reviewing information necessary to help the directors make sound business decisions. By failing to inform themselves they were therefore liable to the shareholders for their bad business decision.

Even when a corporation faces a hostile takeover, the business judgment rule may not insulate its directors from liability. In *Revlon v. MacAndrews & Forbes Holdings*, 506 A.2d 173 (Del. 1985), the company attempting a takeover sought a preliminary injunction to prevent the corporation that was the target of the takeover from granting a lockup option, which gives a friendly third party the right to purchase part of the target company to help thwart a takeover. The Delaware Supreme Court held that the directors failed to fulfill their duty to preserve the company by not maximizing the sale value of the company for the benefit of its shareholders. According to the court, by instituting the lockup option and halting the bidding, the directors allowed “considerations other than the maximization of shareholder profits to affect their judgment” and thus acted to the detriment of the shareholders. Once the directors determined to sell the corporation, the court held, their role changed from that of “defenders of the corporate bastion to auctioneers charged with getting the best price for the stockholders at the sale of the company.” As a result, the court held that the directors were not entitled to the protection of the business judgment rule.

Courts have further held that the business judgment rule will cover the actions of directors only when the directors are disinterested and independent with respect to the action that is at issue. A director is independent when she or he is “in a position to base [her or his] decision on

the merits of the issue rather than being governed by extraneous considerations or influences"; conversely, a director is considered to be interested if she or he appears to be on both sides of a transaction or expects to derive personal financial benefit from it, as opposed to a benefit to be realized by the corporation or all shareholders generally (*Aronson v. Lewis*, 473 A.2d 805 [Del. 1984]). Thus, if one director stands to receive a substantial financial benefit from the issuance of stock nonetheless designed to counteract a takeover threat, the business judgment rule may not apply to the board of directors' actions. Such allegations of bias, lack of independence, or disinterest must be supported by tangible evidence.

FURTHER READINGS

- Balotti, R. Franklin, and Jesse A. Finkelstein. 1988. *The Delaware Law of Corporations and Business Organizations*. Englewood Cliffs, N.J.: Prentice-Hall.
- Baynes, Leonard M. 2003. "Racial Stereotypes, Broadcast Corporations, and the Business Judgment Rule." *University of Richmond Law Review* 37 (March): 819–99.
- Branson, Douglas M. 2002. "The Rule That Isn't a Rule—The Business Judgment Rule." *Valparaiso University Law Review* 36 (summer): 631–54.
- Brown, Meredith M., and William D. Regner. 2003. "What's Happening to the Business Judgment Rule?" *Insights: The Corporate & Securities Law Advisor* 17 (August).
- Clark, Frank, G. W. Dean, and K. G. Oliver. 1997. *Corporate Collapse: Regulatory, Accounting, and Ethical Failure*. New York: Cambridge Univ. Press.
- Gervurtz. 1994. "The Business Judgment Rule: Meaningless Verbiage or Misguided Notion?" *Southern California Law Review* 67.
- Velasquez, Manuel G. 1997. *Business Ethics: Concepts and Cases*. Paramus, N.J.: Prentice-Hall.

CROSS-REFERENCES

Immunity; Negligence.

BUSINESS RECORD EXCEPTION

A rule of evidence that allows routine entries made customarily in financial records, or business logs or files kept in the regular course of business, to be introduced as proof in a lawsuit when the person who made such notations is not available to testify.

This rule, also called the business entry rule, is an exception to the HEARSAY rule. Business records are considered to have a greater degree of reliability and trustworthiness than personal records because of the regular and systematic way in which they are kept and the reliance that a business places on them.

State and FEDERAL RULES OF EVIDENCE specify what records qualify for this exception to the hearsay rule.

BUSINESS ROUNDTABLE

The Business Roundtable is an association of chief executive officers (CEOs) representing the top corporations in the United States, joined together to examine and advocate for public policy that will "foster vigorous economic growth and a dynamic global economy." Established in 1972 by 200 leading executives from major U.S. corporations, the Roundtable was founded upon the idea that business executives should take an increased role in public policy that affects the economics of the American people. The belief is that the basic interests of business closely parallel the interests of average citizens, who are directly involved in the economy as consumers, employees, investors, and suppliers. Thus, business leaders have a responsibility to actively influence the economic well-being of the country.

As the Roundtable sees it, one of its principal strengths "is the extent of participation by the chief executive officers of the member companies." CEOs work in task forces on specific topics and issues that currently impact the social and economic well-being of the United States. For example, in 2003, task forces were in place to focus on such issues as civil justice reform, the digital economy, the environment, and security. Each task force is headed by a chief executive, and is assisted by a support staff composed of employees from task force member companies who are experts in the field. Task force members conduct research, craft policy recommendations, and create action plans. They also draft position papers on major issues, which are used in a variety of ways, including congressional testimony.

Activities of the task forces are reviewed by the Roundtable Policy Committee, which is the governing body of the organization. The Policy Committee is composed of all Roundtable CEOs. At the helm of the Roundtable is a chief executive who serves as chairman. The chairman is elected for a one-year term. He or she is assisted by between two to four cochairmen. These executive chairmen, combined with the task force chairmen make up the Planning Committee for the organization. The Planning Committee provides general strategy and guidance.

In an effort to ensure that a broad base of information is represented in all decision making, membership in the organization is diversified. Thus, CEOs come from all areas of business and all areas of the United States. Such diversity ensures a cross section of thinking on national issues. Roundtable members also have a continuing liaison with other organizations that are directly involved with the concerns at hand.

Since the millennium, the Roundtable carried out significant LOBBYING efforts before the U.S. Congress for passage of the presidential trade negotiating authority (2001); proposed to the GEORGE W. BUSH administration a \$300 billion incentive package for economic growth (2002); and announced an unprecedented Climate RESOLVE initiative calling for voluntary action by all businesses to reduce greenhouse gas emissions (2003).

FURTHER READINGS

- BRT. 2003. "The Business Roundtable Announces Its Resolve to Voluntarily Control Greenhouse Gas Emissions." Press Release, February 12, 2003.
- BRT. 2002. "The Business Roundtable Calls For \$300 Billion Growth Package." Press Release, November 21, 2002.
- Business Roundtable. Available online at <www.brtable.org> (accessed June 18, 2003).
- Koffer, Keith. 2001. "BRT Mobilizes Lobbyists, Funds for Trade Negotiating Authority." *CongressDaily AM* (May 9).

BUSINESS TRUST

An unincorporated business organization created by a legal document, a declaration of trust, and used in place of a corporation or partnership for the transaction of various kinds of business with limited liability.

The use of a business trust, also called a Massachusetts trust or a common-law trust, originated years ago to circumvent restrictions imposed upon corporate acquisition and development of real estate while achieving the limited liability aspect of a corporation. A business trust differs from a corporation in that it does not receive a charter from the state giving it legal recognition; it derives its status from the voluntary action of the individuals who form it. Its use has been expanded to include the purchase of SECURITIES and commodities.

A business trust is similar to a traditional trust in that its trustees are given legal title to the trust property to administer it for the advantage of its beneficiaries who hold equitable title to it. A written declaration of trust

specifying the terms of the trust, its duration, the powers and duties of the trustees, and the interests of the beneficiaries is essential for the creation of a business trust. The beneficiaries receive certificates of beneficial interest as evidence of their interest in the trust, which is freely transferable.

In some states, a business trust is subject to the laws of trusts while, in others, the laws of corporations or partnerships govern its existence. The laws of each state in which a business trust is involved in transactions must be consulted to ensure that the trust is treated as an entity whose members have limited liability. If the laws of a particular state consider a business trust to be a partnership, the beneficiaries may be fully liable for any judgments rendered against it. The trustees of a business trust are liable to third parties who deal with the trust unless there is a contract provision to the contrary, since they hold legal title to the trust property and may sue and be sued in actions involving the trust. They may, however, seek indemnity from the trust property and possibly from the beneficiaries.

The property of a business trust is managed and controlled by trustees who have a fiduciary duty to the beneficiaries to act in their best interests. In many states, the participation of the beneficiaries in the management of the property destroys their limited liability, and the arrangement will usually be treated as a partnership.

Profits and losses resulting from the use and investment of the trust property are shared proportionally by the beneficiaries according to their interests in the trusts.

A business trust is considered a corporation for purposes of federal INCOME TAX and similarly under various state income tax laws.

BUSING

See SCHOOL DESEGREGATION.

"BUT FOR" RULE

In the law of NEGLIGENCE, a principle that provides that the defendant's conduct is not the cause of an injury to the plaintiff, unless that injury would not have occurred except for ("but for") the defendant's conduct.

In order to be liable in negligence, the defendant's conduct must constitute the proximate cause, or direct cause, of the plaintiff's injury. The concept of proximate cause encompasses

both legal cause and factual cause, and the “but for” rule pertains to the latter. It is also referred to as the *sine qua non* rule, which means “without which not,” or an indispensable requirement or condition. The “but for” rule is a rule of exclusion, in that the defendant’s conduct is not a cause of the event, if the event would have occurred without it.

The “but for” rule explains most cases when limited solely to the issue of causation, but it does not resolve one type of situation: if two causes concur to bring about an event, and either one of them, operating independently, would have been sufficient to cause the identical result, some other test is required. This situation arises, for example, when the defendant sets a fire that unites with a fire from some other source, and the combined fires burn the plaintiff’s property, although either fire alone would have been sufficient to do so. In such cases, each cause has actually played so significant a role in achieving the result that responsibility must attach to it. Neither may be relieved from that responsibility on the basis that identical harm would have occurred without it, or no liability at all would ensue.

In order to rectify the frequently problematic application of the “but for” rule, some jurisdictions have applied a broader rule, which provides that the defendant’s conduct is a cause of the event if it was a material element and a substantial factor in bringing about the event. The jury ascertains whether such conduct constitutes a substantial factor, unless the issue is so unambiguous that it is appropriate for judicial determination. The prevailing view is that “substantial factor” is a phrase sufficiently comprehensible to the layperson to supply an adequate

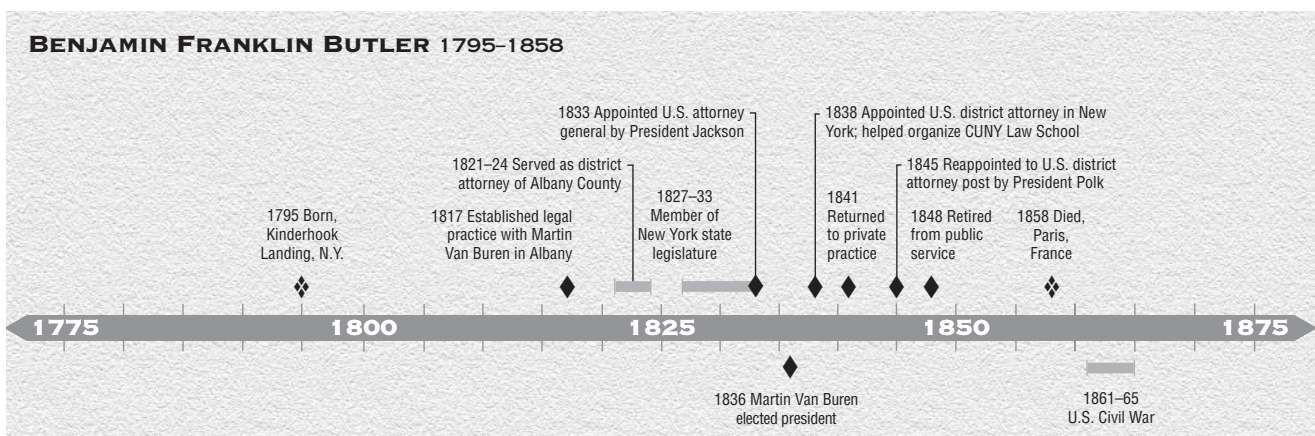
guide in instructions to the jury, and that it is neither possible nor beneficial to simplify it.

In addition to resolving the aforementioned case, the substantial factor test resolves two other types of situations that have proved troublesome, where a similar, but not identical, result would have followed the defendant’s act or where one defendant has made an obvious but insignificant contribution to the result. The application of the two rules can achieve the same result in some instances, since, except as indicated, no case has been encountered where the defendant’s act could be deemed a substantial factor when the event would have transpired without it. In addition, cases seldom arise where the defendant’s conduct would not be such a substantial factor yet was so indispensable a cause that the result would not have ensued without it.

If the defendant’s conduct was a substantial factor in causing the plaintiff’s injury, he or she will not be absolved from liability simply because other causes have contributed to the result, since such causes are always present. However, a defendant is not necessarily relieved of liability because the negligence of another person is also a contributing cause, and that person, too, is to be held liable for the harm inflicted. The principle of joint tortfeasors is based primarily upon recognition of the fact that each of two or more causes may be charged with a single result.

❖ BUTLER, BENJAMIN FRANKLIN

Benjamin Franklin Butler was born December 14, 1795, in Kinderhook Landing, New York. He was admitted to the New York bar in 1817, and established a legal practice with MARTIN VAN



BUREN in Albany, New York. From 1821 to 1824 Butler performed the duties of district attorney for Albany County.

Butler entered politics in 1827, serving in the New York State Legislature for six years. He subsequently acted as U.S. attorney general from 1833 to 1838; during this time he also fulfilled the duties of secretary of war from 1836 to 1837.

In 1838, Butler returned to New York and served as U.S. district attorney from 1838 to 1841 and from 1845 to 1848.

Butler died November 8, 1858, in Paris, France.

❖ BUTLER, BENJAMIN FRANKLIN

Benjamin Franklin Butler achieved prominence as a politician and military officer.

Butler was born November 5, 1818, in Deerfield, New Hampshire. After graduating in 1838 from Waterbury College, now known as Colby College, Butler was admitted to the Massachusetts bar in 1840. Elected to the Massachusetts House of Representatives in 1853 and the Massachusetts Senate in 1859, he also served a tour of military duty during the Civil War.

At the outbreak of the war, Butler entered the Massachusetts militia as a brigadier general. He participated in the capture of Baltimore, Maryland, in 1861 and led forces against New Orleans, Louisiana, in 1862. After the conquest of New Orleans, Butler became military governor of that city, but his administration was charged with severity, corruption, and graft. After six months, Butler was reassigned to the Eastern Virginia-North Carolina area and commanded the Army of the James in 1863.

Butler acted as administrator for the return of prisoners in 1864, and was assigned to New York to enforce order during the election held in that same year.



Benjamin Franklin Butler (the younger).

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After the war, Butler served in the federal government, representing Massachusetts in the U.S. House of Representatives from 1867 to 1875, and from 1877 to 1879. He returned to Massachusetts in 1882 to perform the duties of governor and in 1884 was an unsuccessful nominee for the U.S. presidency, representing two independent parties—the Anti-Monopoly party and the Greenback party.

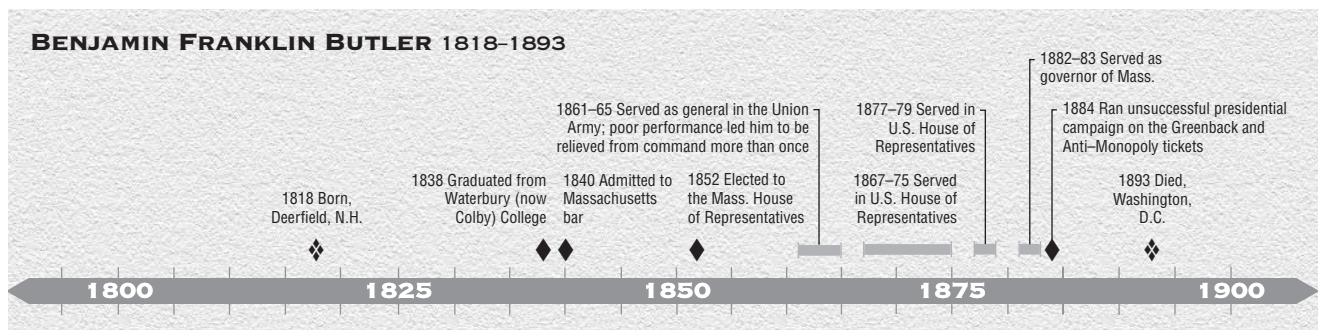
Butler died January 11, 1893, in Washington, D.C.

❖ BUTLER, CHARLES HENRY

Charles Henry Butler served as the Supreme Court reporter of decisions from 1902 to 1916.

Butler was born June 18, 1859, in New York City. He was the son of William Allen Butler, a lawyer, and the grandson of BENJAMIN F. BUTLER, U.S. attorney general during the administration of MARTIN VAN BUREN. Butler attended

“NEVER HOLD
OFFICE. HOLD
YOURSELF ABOVE
IT [BECAUSE] AN
OFFICER IS A
SERVANT.”
—BENJAMIN
FRANKLIN BUTLER
(B.1818)



"CITIZENS OF THIS COUNTRY ARE ESSENTIALLY LOYAL; BUT THEY ARE MORE LOYAL TO PRINCIPLES THAN THEY ARE TO MEN."
—CHARLES BUTLER

Princeton University but left school before graduating. He then studied law in his father's New York office for several years, and often accompanied his father to Washington, D.C., when the elder Butler appeared before the U.S. Supreme Court to argue cases. Butler was admitted to the New York state bar in 1882 and subsequently practiced law in New York City. In 1898, he served as the legal expert for the Fairbanks-Herschell Commission, which was convened to adjust the boundary of Alaska and Canada.

In December 1902, Butler left the PRACTICE OF LAW to accept an appointment as reporter of decisions for the U.S. Supreme Court, a position created by Congress in 1816. In the early days of the Court, the reporter had been primarily responsible for editing, publishing, and distributing the Court's opinions; beginning in 1874, however, Congress provided money for the government to publish the Court's opinions, and thus by the time Butler became reporter, his role was limited to editorial tasks.

While reporter, Butler edited and published volumes 187 to 241 of the *United States Reports*, the official publication of the opinions of the U.S. Supreme Court. During his tenure with the Court, he also was a delegate to the Hague Peace Conference in 1907. He later authored *A Century at the Bar of the Supreme Court of the United States* (1942), a sometimes lighthearted account of the Court's inner workings and his experiences as reporter. In the book, published two years after his death, Butler described his dealings with the justices as "delightful and congenial." He wrote that the work was "very interesting. It was not difficult and did not take all of my time. The salary ... afforded me a comfortable income." Butler also described in some

detail the various rules and customs of the Court, including the writ of certiorari and the social etiquette of the Court, and shared anecdotes about lawyers who had argued before the Court. With respect to the reporter's position, Butler discussed the process of preparing headnotes, the paragraphs that appear at the beginning of opinions to summarize the major points of law contained in the opinions. During Butler's tenure, the Court made clear that headnotes were not to be construed as part of the opinions and were instead only the expressions of the reporter about the holdings of the Court.

Butler eventually found his position to be "somewhat monotonous" and noted that "[t]here was nothing constructive about it so far as my part was concerned." In addition, Butler was frustrated by the anonymity of the post and by frequent misunderstandings about his role and duties; he wrote that he was once introduced as the "Head Stenographer of the United States Supreme Court." As a result, Butler resigned from the Court in October 1916, to return to private practice in Washington, D.C. He also wrote extensively about INTERNATIONAL LAW, including several works on U.S. relations with Spain and Cuba. He died in 1940, at the age of eighty-one.

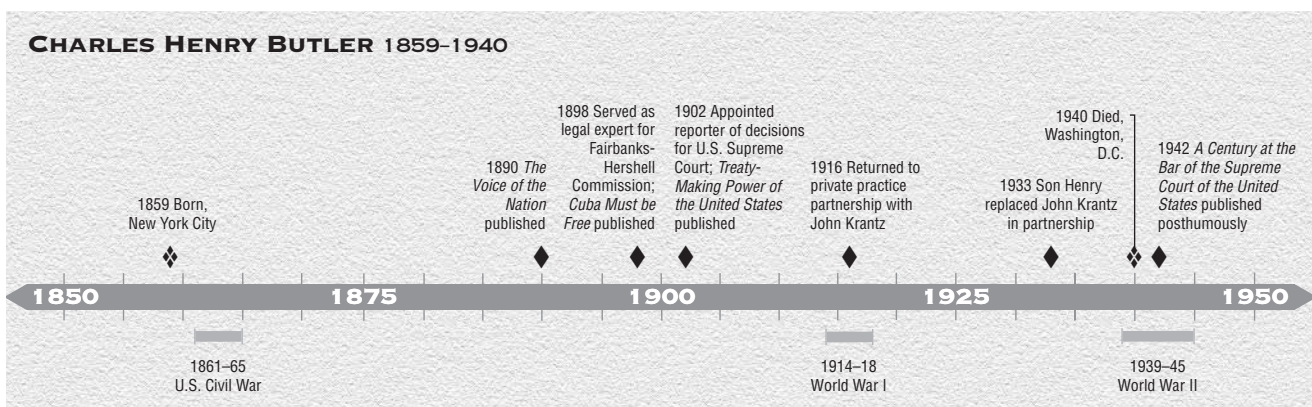
FURTHER READINGS

Butler, Charles Henry. 1942. *A Century at the Bar of the Supreme Court of the United States*. New York: Van Rees Press.

Congressional Quarterly. 1989. *Guide to the U.S. Supreme Court*. 2d ed. Washington, D.C.: Congressional Quarterly.

CROSS-REFERENCES

Law Reports.



❖ BUTLER, PIERCE

Pierce Butler served as associate justice of the Supreme Court from 1923 to 1939. Known for his conservative views, Butler advocated a *laissez-faire* (French for “let [people] do [as they choose]”) philosophy that sought to minimize government interference in the economy. In the 1930s, when FRANKLIN D. ROOSEVELT’S NEW DEAL policies sought to increase the power of government in U.S. life, Butler voted against the constitutionality of every New Deal measure that came before the Court. By the end of his tenure, Butler was one of the few conservatives on an increasingly liberal Supreme Court, and he became distraught by changes in the Court’s interpretation of the Constitution. “This is not government by law, but by caprice,” he wrote in a 1939 dissent. “Whimseys may displace deliberate action by chosen representatives and become rules of conduct. To us the outcome seems wholly incompatible with the system under which we are supposed to live” (*United States v. Rock Royal Co-op*, 307 U.S. 533, 59 S. Ct. 993, 83 L. Ed. 1446). Butler dissented in several Supreme Court decisions that overturned laws discriminating against African Americans, and he rarely supported the rights of those with dissenting or radical opinions in society. He did, however, argue consistently for the rights of those accused of crimes.

Those who knew him commented on Butler’s stubbornness and occasional bullying, traits that often made his relations with others on the Court less than amicable. Once, after persuading all on the Court but Justice OLIVER WENDELL HOLMES JR., of the rightness of his opinion on a particular matter, Butler said to Holmes, “I am glad we have finally arrived at a just decision.” “Hell is paved with *just* decisions,” Holmes responded. Commenting on Butler’s conservatism, Holmes characterized Butler as a “monolith” with “no seams the frost can get through.” Butler resolutely stuck to his conservative principles even in the depths of the Depression. Something of those views is found in remarks he made in 1916: “Too much paternalism, too much wet-nursing by the state, is destructive of individual initiative and development. An Athlete should not be fed on pre-digested food nor should the citizens of tomorrow be so trained that they will expect sustenance from the public ‘pap.’”

Many of Butler’s later views were shaped by his frontier childhood. Butler was born on St.



Pierce Butler.

LIBRARY OF CONGRESS

Patrick’s Day, March 17, 1866, in a log cabin in Dakota County, Minnesota. His parents had emigrated from County Wicklow, Ireland, to escape the potato famine of 1848, and eventually established their farm only a few miles from Carleton College, in Northfield, Minnesota, where Butler was admitted in 1883. To help pay his college expenses, he worked in a local dairy. He graduated from Carleton in 1887 with both a bachelor of arts degree and a bachelor of science degree.

After college, Butler moved to St. Paul and studied law at the firm of Pinch and Twohy. He passed the Minnesota bar in 1888 and established a law practice with an associate, Stan Donnelly. In 1891, Butler became assistant to the county attorney for Ramsey County, and in 1893 and 1895 he was elected, as a Democrat, to the office of county attorney, the only elective public office he ever held. While in office, he secured more criminal convictions than any county attorney had done before. Butler ran for the state senate in 1906 but was narrowly defeated. In 1908, he was elected president of the Minnesota State Bar Association. In St. Paul, Butler also met his future wife, Annie Cronin, whom he married in 1891. The couple had eight children.

In 1893, Butler helped establish a St. Paul law firm that evolved into Butler, Mitchell, and Doherty, one of the most successful corporate law firms of its time in what was then called the Northwest. The firm had several railroads as its major clients, including those of James J. Hill,

“ABHORRENCE,
HOWEVER GREAT,
OF PERSISTENT
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IN THE COURTS OF
THE LEGAL RIGHTS
OF THE WORST
OFFENDERS.”

—PIERCE BUTLER

one of the great rail barons. During his career, Butler earned a reputation as the foremost railroad lawyer in the Northwest. His work in railroad litigation eventually brought him to national attention, and allowed him to become friendly with President WILLIAM HOWARD TAFT, who served on the Supreme Court as chief justice from 1921 to 1930 and was later instrumental in securing Butler's nomination to the Court.

On November 23, 1922, President WARREN G. HARDING nominated Butler to succeed retiring justice WILLIAM R. DAY on the Supreme Court. Although Butler was a Democrat, the Republican Harding approved of his laissez-faire economic philosophy and conservative social views. Harding also believed that it would be politically astute to nominate the Roman Catholic Butler to the Court. The last Roman Catholic to serve on the Court had been replaced by Taft in 1921.

Butler's nomination caused a great outcry in liberal circles, particularly from Senators GEORGE W. NORRIS and ROBERT M. LA FOLLETTE, and senator-elect Henrik Shipstead, of Minnesota. They pointed to Butler's ties to big business during his legal career, claiming that these would bias his decisions on the bench. They also objected to Butler's actions as a regent of the University of Minnesota, a position he held from 1907 to 1924. Butler, they argued, had used his influence to have several faculty members dismissed. Despite the objections of La Follette and others, the SENATE JUDICIARY COMMITTEE unanimously confirmed Butler's nomination on December 13, 1922. On January 2, 1923, the Senate appointed Butler to the Court by a vote of 61–8.

While serving on the Court, Butler fulfilled predictions that he would become a pillar of conservatism. Butler often voted with three other conservatives, Justices JAMES C. MCREYNOLDS, GEORGE SUTHERLAND, and WILLIS VAN DEVANTER, himself a former railroad lawyer. Because they consistently voted as a conservative bloc, observers nicknamed this group the Four Horsemen.

Butler's conservatism manifested itself particularly in his emphasis on limiting the power of government. For example, he voted whenever possible against state and federal taxes. In *Coolidge v. Long*, 282 U.S. 582, 51 S. Ct. 306, 75 L. Ed. 562 (1931), writing the Court's opinion, Butler argued that a state inheritance tax was unconstitutional because it violated the Due

Process Clause of the FOURTEENTH AMENDMENT, which proclaims that the state shall not deprive a person of liberty without DUE PROCESS OF LAW.

Butler also consistently argued against the rights of government to regulate prices, particularly through his narrow interpretation of the phrase "business affected with a public interest." At the time, it was common for governments, when they sought to regulate prices charged by businesses, to argue that certain industries had more of the public interest involved in their affairs than others; businesses that were affected with a public interest could therefore be regulated by the government. In *Wolff Packing Co. v. Court of Industrial Relations*, 262 U.S. 522, 43 S. Ct. 630, 67 L. Ed. 1103 (1923), Butler voted with the Court in deciding that the packing industry was not affected with a public interest and therefore could not be made subject to price-control legislation. Butler and the Court made the same decision with regard to employment agencies in *Ribnik v. McBride*, 277 U.S. 350, 48 S. Ct. 545, 72 L. Ed. 913 (1928). In both *Wolff* and *Ribnik*, the Court found that the laws under consideration violated the Due Process Clause of the Fourteenth Amendment. In *Nebbia v. New York*, 291 U.S. 502, 54 S. Ct. 505, 78 L. Ed. 940 (1934), when an increasingly liberal Court decided to do without the phrase "affected with a public interest" in making its decision and ruled that the state may regulate milk prices, Butler, along with the rest of the Four Horsemen, dissented. This was just one of many dissents Butler and his conservative colleagues would make during the 1930s.

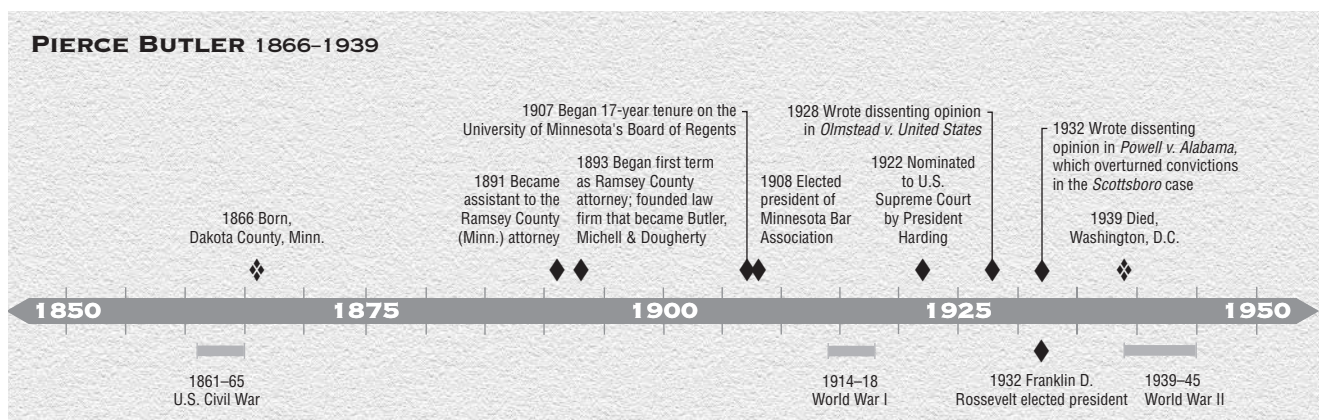
Butler's opinions in the area of civil liberties are less easy to categorize. He argued persuasively for the rights of those accused of crimes, arguing in one opinion, "Abhorrence, however great, of persistent and menacing crime will not excuse transgression in the courts of the legal rights of the worst offenders." He opposed national PROHIBITION and criticized federal agents several times for violating the FOURTH AMENDMENT in their SEARCHES AND SEIZURES. In a case involving WIRE TAPPING by Prohibition agents, *OLMSTEAD V. UNITED STATES*, 277 U.S. 438, 48 S. Ct. 564, 72 L. Ed. 944 (1928), Butler found himself in the unusual company of the more liberal justices LOUIS D. BRANDEIS, HARRIS F. STONE, and Holmes. In his dissenting opinion, Butler argued that during the transmission of messages, the exclusive use of any wire

belonged to the persons served by it. Law enforcement wiretapping therefore constituted an illegal search for evidence. In *Aldridge v. United States*, 283 U.S. 308, 51 S. Ct. 470, 75 L. Ed. 1054 (1931), Butler voted with the majority in holding that an African American being tried for the murder of a white man was entitled to have the prospective jurors asked whether they had a racial prejudice that would prevent a fair trial. Butler also supported the rights of **DISABLED PERSONS**, casting a lone dissenting vote, without opinion, in *BUCK V. BELL*, 274 U.S. 200, 47 S. Ct. 584, 71 L. Ed. 1000 (1927), which upheld a 1924 Virginia law allowing for the sterilization of mentally handicapped individuals.

When it came to the civil liberties and **FREEDOM OF SPEECH** of those in society with radical or dissenting opinions, Butler was less understanding. Ironically, Butler's dissenting opinions in many of these matters undermined the rights for dissent in the larger society. In his dissent against the majority opinion in *Stromberg v. California*, 283 U.S. 359, 51 S. Ct. 532, 75 L. Ed. 1117 (1931), Butler considered lawful the conviction of a young woman found guilty of displaying a red flag in public. The California law under consideration, Cal. Penal Code § 403a, made it a felony to display a red flag as "an emblem of opposition to organized government" or "an invitation . . . to anarchistic action." In *United States v. Schwimmer*, 279 U.S. 644, 49 S. Ct. 448, 73 L. Ed. 889 (1929), Butler wrote the opinion for a majority of six upholding the denial of citizenship to the sixty-year-old Rosika Schwimmer. In her petition for citizenship, Schwimmer had specifically stated that she would refuse to take up arms for the state in any possible circumstances. Writing the Court's opinion, Butler

interpreted her statement as opposition to the entire Constitution and therefore the laws of the country: "Taken as a whole it shows that her objection to military service rests on reasons other than mere inability because of her sex and age personally to bear arms . . . [S]he may be opposed to the use of military force as contemplated by our Constitution and laws." Butler dissented from the Court's decision again in *Hague v. Committee of Industrial Organizations*, 307 U.S. 496, 59 S. Ct. 954, 83 L. Ed. 1423 (1939), where he argued for the legality of a city ordinance regulating labor meetings in city parks.

In **CIVIL RIGHTS** and racial issues, Butler resisted changes in established interpretations of the Constitution. In the 1930s, when the Court became more liberal and more actively sought to strike down state laws—particularly racially discriminatory laws—it considered unconstitutional, Butler argued that the Court had overstepped its bounds and that state legislatures were the best judges of what was best for their citizens. In the 1932 decision *POWELL V. ALABAMA*, 287 U.S. 45, 53 S. Ct. 55, 77 L. Ed. 158, the High Court dealt with the *Scottsboro* case, involving African American men who had been convicted in 1931 in *Scottsboro*, Alabama, of raping two white women. The Court held that the accused men had been deprived of the right of counsel and had therefore been denied due process as guaranteed by the Fourteenth Amendment. Butler's dissenting opinion argued that no denial of due process had occurred and that the Court's decision was an unwarranted "extension of federal authority in a field hitherto occupied exclusively by the several states." In a 1938 case involving an African American denied access to law school by the state of Missouri,



Butler's dissenting opinion argued for the constitutionality of the state's action (*Missouri ex rel. Gaines v. Canada*, 305 U.S. 337, 59 S. Ct. 232, 83 L. Ed. 208).

Butler also dissented in several decisions in the 1930s in which the Court struck down JIM CROW LAWS that kept African Americans from voting. In *Breedlove v. Suttles*, 302 U.S. 277, 58 S. Ct. 205, 82 L. Ed. 252 (1937), Butler argued that a poll tax (a tax charged to voters at the time they cast their votes) did not violate the Fourteenth Amendment, and in *Lane v. Wilson*, 307 U.S. 268, 59 S. Ct. 872, 83 L. Ed. 1281 (1939), Butler disagreed with the majority's decision to strike down an Oklahoma law that made it difficult for African Americans to register to vote.

Butler and his conservative colleagues also opposed Franklin D. Roosevelt's New Deal social WELFARE legislation. In his last three terms in office, Butler dissented in seventy-three cases—constituting more than half of the total dissents in his seventeen-year career on the Supreme Court. He dissented in *Helvering v. Davis*, 301 U.S. 619, 57 S. Ct. 904, 81 L. Ed. 1307 (1937), in which the Court upheld the government's right to tax employers and employees to create pensions through the SOCIAL SECURITY ACT OF 1935, 42 U.S.C.A. § 401 et seq. "The Constitution," Butler wrote in his dissent, "grants to the United States no power to pay unemployed persons or to require the states to enact laws . . . for that purpose." Butler wrote the Court's opinion in *Morehead v. New York ex rel. Tipaldo*, 299 U.S. 619, 57 S. Ct. 4, 81 L. Ed. 456 (1936), which supported an earlier decision to strike down a MINIMUM WAGE law for women.

Butler died of a bladder ailment on November 16, 1939, in Washington, D.C., at age seventy-three. During his tenure, he wrote 323 majority opinions, forty-four dissenting opinions, and three concurring opinions. Butler clung to his dated ideals, even in a world that was fast finding fault with them. As one observer wrote after Butler's death, "he did not change as the frontiers changed; and perhaps this quality of steadfast resistance to a different world was what Justice Holmes had in mind when he spoke of him as a 'monolith.'"

FURTHER READINGS

Brown, Francis J. 1945. "The Social and Economic Philosophy of Pierce Butler." In *Catholic University of America Studies in Sociology*. Vol. 8. Washington, D.C.: Catholic Univ. of America Press. Dissertation, Catholic University.

Burner, David. 1969. "Pierce Butler." In *The Justices of the United States Supreme Court, 1789–1969: Their Lives and Major Opinions*, ed. Leon Friedman and Fred L. Israel. New York: Chelsea House.

Christianson, Theodore. 1935. *Minnesota: A History*. Chicago: American Historical Society.

Congressional Quarterly. 1989. *Guide to the U.S. Supreme Court*. Washington, D.C.: Congressional Quarterly.

Danielski, David J. 1964. *A Supreme Court Justice Is Appointed*. New York: Random House.

Frank, John P. 1940. *The Confirmation of Pierce Butler*. M.A. thesis, University of Wisconsin.

Reilly, William. 1993. "Pierce Butler." In *The Supreme Court Justices: Illustrated Biographies, 1789–1993*; ed. Claire Cushman. Washington, D.C.: Congressional Quarterly.

U.S. Supreme Court. 1940. *Proceedings of the Bar and Officers of the Supreme Court of the United States in Memory of Pierce Butler* (January 27).

BYLAWS

The rules and regulations enacted by an association or a corporation to provide a framework for its operation and management.

Bylaws may specify the qualifications, rights, and liabilities of membership, and the powers, duties, and grounds for the dissolution of an organization.

❖ BYRNES, JAMES FRANCIS

James Francis Byrnes, a self-taught lawyer, was briefly an associate justice of the U.S. Supreme Court during the 1940s and also served as SECRETARY OF STATE, the governor of South Carolina, a U.S. senator, and an influential member of President Franklin D. Roosevelt's cabinet.

Byrnes was born May 2, 1879, in Charleston, South Carolina. Economic circumstances forced him to quit parochial school at the age of 14 and go to work as a clerk in a Charleston law firm for \$2 a week to help support his family. He learned shorthand and eventually obtained a job in Aiken, South Carolina, as the official court reporter for the Second Judicial Circuit, a state court. He studied law in his spare time and was admitted to the South Carolina bar in 1903. He then purchased a newspaper in Aiken, the *Journal and Review*, and served as its editor for five years. Active in the DEMOCRATIC PARTY, Byrnes was elected district attorney for the Second Judicial Circuit in 1908, and two years later won a seat in the U.S. House of Representatives, where he served for 15 years. Following an unsuccessful bid for the U.S. Senate, he returned to South Carolina in 1925 to practice law in Spartanburg. In 1930, he again ran for the Senate, and this time he won election.

An example of bylaws

Bylaws

A set of bylaws that will adequately manage most **profit** corporations is presented on the following pages.

BYLAWS OF

ARTICLE I OFFICES

Section 1. REGISTERED OFFICE

The corporation shall maintain a registered office in the State of Alaska, as required by law.

Section 2. OTHER OFFICES

The corporation may have offices at such other places both within or without the State of Alaska as the Board of Directors may from time to time designate, or the business of the corporation may require.

ARTICLE II SHAREHOLDERS: MEETINGS AND VOTING

Section 1. PLACE OF MEETINGS

Meetings of the shareholders shall be held at the principal office and place of business of the corporation or at such other place, either within or without the State of Alaska, as the Board of Directors may designate.

Section 2. ANNUAL MEETING

The annual meeting of the shareholders shall be held on the first Monday in June of each year, if not a legal holiday then on the next succeeding business day, at the principal office of the corporation, or at such other place that the President of the corporation may reasonably designate. At the annual meeting, the shareholders shall elect by vote a Board of Directors, consider reports of the affairs of the corporation and transact such other business as may be properly brought before the meeting. In the event that the annual meeting is not held on the date herein provided for such meeting, the Directors shall cause a meeting in lieu thereof to be held as soon thereafter as may be convenient. Such meeting shall be called in the same manner as the annual meeting, and any business transacted or elections held at such meeting shall be as valid as if transacted or held at the annual meeting.

Section 3. SPECIAL MEETINGS

Special meetings of the shareholders may be called by the President or the Board of Directors and shall be called by the Secretary at the request in writing of holders of not less than one tenth of all the shares entitled to vote at such meeting. Such request shall state the purpose of the proposed meeting.

Section 4. NOTICE OF MEETINGS

(a) Written or printed notice stating the place, day and hour of the meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten (10) nor more than fifty (50) days before the date of the meeting, either personally or by mail, by or at the direction of the President, the Secretary or the officer or persons calling the meeting, to each shareholder of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the shareholder at his address as it appears on the stock transfer books of the corporation, with postage thereon prepaid.

(b) Notice of any regular or special meeting may be waived by written consent whether executed before or subsequent to such meetings. The attendance of any stockholder in person or his representation by proxy at any regular or special meetings shall be deemed a waiver of the notice hereby prescribed except where a stockholder attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

(c) When a meeting is adjourned for thirty (30) days or more, or when a redetermination of the persons entitled to receive notice of the adjourned meeting is required by law, notice of the adjourned meeting shall be given as for an original meeting. In all other cases no notice of the adjournment or of the business to be transacted at the adjourned meeting need be given other than by announcement at the meeting at which such adjournment is taken.

Section 5. QUORUM

(a) At any meeting of the shareholders the holders of a majority of the shares entitled to vote being present in person or represented by proxy shall constitute a quorum for the transaction of business. The shareholders present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough shareholders to leave less than a quorum.

(b) In the absence of a quorum a majority of those present in person or represented by proxy may adjourn the meeting from time to time until a quorum shall attend. Any business which might have been transacted at the original meeting may be transacted at the adjourned meeting if a quorum exists.

(c) If a quorum is present, the affirmative vote of a majority of the shares represented at the meeting shall be the act of the shareholders unless the vote of a greater number of shares is required by law or by the Articles of Incorporation.

Section 6. VOTING OF SHARES

(a) Each outstanding share is entitled to one vote on each matter submitted to a vote at a meeting of shareholders, except to the extent that the voting rights of the shares of a class are limited or denied by the Articles of Incorporation.

(b) A shareholder may vote his shares either in person or by proxy executed in writing by the shareholder or by his duly authorized attorney-in-fact and filed with the Secretary before being voted. No proxy shall be valid after eleven (11) months from the date of its execution, unless otherwise provided in the proxy.

[continued]

*An example of bylaws
(continued)*

Bylaws

(c) At all elections of Directors, each shareholder shall be entitled to cumulate as many votes as shall equal the number of shares of his stock, multiplied by the number of Directors to be elected and for which he is entitled to vote, and he may cast all of such votes for a single Director or he may distribute them among the candidates as he may see fit.

Section 7. VOTING RIGHTS

The persons entitled to receive a notice of and to vote at any shareholders' meeting shall be determined from the records of the corporation on the date of mailing of the notice or on such other date not more than fifty (50) nor less than ten (10) days before such meeting as shall be fixed in advance by the Board of Directors.

Section 8. VOTING OF SHARES BY CERTAIN HOLDERS

(a) Shares standing in the name of another corporation may be voted by such officer, agent or proxy as the Bylaws of such corporation may prescribe, or, in the absence of such provision, as the Board of Directors of such corporation may determine.

(b) Shares held by any administrator, executor, guardian or conservator may be voted by him, either in person or by proxy, without a transfer of such shares into his name. Shares standing in the name of a trustee may be voted by him, either in person or by proxy, but no trustee shall be entitled to vote shares held by him without a transfer of such shares into his name.

(c) Shares standing in the name of a receiver may be voted by such receiver, and shares held by or under the control of a receiver may be voted by such receiver without the transfer thereof into his name if authority to do so be contained in an appropriate order of the court by which such receiver was appointed.

(d) A shareholder whose shares are pledged shall be entitled to vote such share until the shares have been transferred into the name of the pledgee, and thereafter the pledgee shall be entitled to vote the shares so transferred.

(e) Neither treasury shares, nor shares of its own stock held by a corporation in a fiduciary capacity, nor shares held by another corporation if a majority of the shares entitled to vote for the election of Directors of such other corporation is held by the corporation shall be voted at any meeting or counted in determining the total number of outstanding shares at any given time.

Section 9. VOTING LISTS

The officer or agent having charge of the stock transfer books for shares of the corporation shall make, at least ten days before each meeting of shareholders, a complete list of the shareholders entitled to vote at such meeting, or any adjournment thereof, arranged in alphabetical order, with the address of and the number of shares held by each, which list, for a period of ten days prior to such meeting, shall be kept on file at the registered office of the corporation and shall be subject to inspection by any shareholder during the whole time of the meeting. The original stock transfer book shall be prima facie evidence as to who are the shareholders entitled to examine such list or transfer books or to vote at any meeting of shareholders. Failure to comply with the requirements of this section shall not affect the validity of any action taken at such meeting.

Section 10. ACTION WITHOUT A MEETING

Any action which the law, the Articles of Incorporation, or the Bylaws require or permit the shareholders to take at a meeting may be taken without a meeting if a consent in writing setting forth the action so taken is signed by all of the shareholders entitled to vote on the matter. The consent which shall have the same effect as a unanimous vote of the shareholders shall be filed in the records of minutes of the corporation.

ARTICLE III DIRECTORS: MANAGEMENT

Section 1. POWERS

The business and affairs of the corporation shall be managed by a Board of Directors who shall exercise or direct the exercise of all corporate powers except to the extent shareholder authorization is required by law, the Articles of Incorporation or these Bylaws.

Section 2. NUMBER

The Board of Directors shall consist of three members until the number be changed by the Board of Directors by amendment of these Bylaws. No reduction of the number of Directors shall have the effect of removing any director prior to the expiration of his term of office. Directors need not be residents of the State of Alaska nor shareholders of the corporation.

Section 3. ELECTION AND TENURE OF OFFICE

The Directors shall be elected at the annual meeting of the shareholders to serve for one year or until their successors are elected and qualified. Their term of office shall begin immediately after election.

The Directors may be removed at any time and without cause by a majority vote of the shareholders; provided, however, that no such removal shall be effective if the votes cast against such removal would have been sufficient to elect such Director if then cumulatively voted at an election of the entire Board of Directors.

Section 4. VACANCIES

(a) A vacancy in the Board of Directors shall exist upon the death, resignation or removal of any Director.

(b) Vacancies in the Board of Directors may be filled by a majority of the remaining Directors, though less than a quorum, or by a sole remaining Director. Each Director so elected shall hold office for the balance of the unexpired term of his predecessor and until his successor is elected and qualified.

(c) The shareholders may at any time elect a Director to fill any vacancy not filled by the Directors, and shall elect the additional Directors in the event an amendment of the Bylaws is adopted increasing the number of Directors.

(d) If the Board of Directors accepts the resignation of a Director tendered to take effect at a future time, a successor may be elected to take office when the resignation becomes effective.

[continued]

*An example of bylaws
(continued)*

Bylaws

Section 5. MEETINGS

- (a) Meetings of the Board of Directors shall be held at such place as may be designated from time to time by the Board of Directors or other such persons calling the meeting.
- (b) Annual meetings of the Board of Directors shall be held without notice immediately following the adjournment of the annual meetings of the shareholders.
- (c) Special meetings of the Board of Directors for any purpose or purposes may be called at any time by the President, or in his absence by the Vice President, or by any two Directors.

Section 6. NOTICE OF SPECIAL MEETINGS

- (a) Notice of the time and place of special meetings shall be given orally or delivered in writing personally or by mail or telegram at least 24 hours before the meeting. Notice shall be sufficient if actually received at the required time or if mailed or telegraphed not less than three (3) days before the meeting. Notice mailed or telegraphed shall be directed to the Director's actual address ascertained by the person giving the notice.
- (b) Notice of the time and place of holding an adjourned meeting need not be given if such time and place be fixed at the meeting adjourned.
- (c) Notice of any special meeting may be waived by written consent, whether executed before or subsequent to such meeting. Attendance of a Director at a meeting shall constitute a waiver of notice of such meeting except where a Director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

Section 7. QUORUM AND VOTE

- (a) A majority of the Directors shall constitute a quorum for the transaction of business. A minority of the Directors, in the absence of a quorum, may adjourn from time to time but may not transact any business.
- (b) The action of a majority of the Directors present at any meeting at which there is a quorum shall be the act of the Board of Directors, unless the act of a greater number is required by law, by the Articles of Incorporation or these bylaws.

ARTICLE IV OFFICERS

Section 1. DESIGNATION ELECTION QUALIFICATION

- (a) The officers of the corporation shall be a President, a Vice President, a Secretary and a Treasurer and such other officers as the Board of Directors shall from time to time appoint. The officers shall be elected by and serve at the pleasure of the Board of Directors. Two or more offices except the offices of President and Secretary, may be held by the same person.
- (b) The Board of Directors at its first meeting after each annual meeting shall elect a President from among the Directors, and shall choose a Vice President, a Secretary and a Treasurer, none of whom need be a member of the Board. No officer need be a stockholder.
- (c) The Board of Directors in its discretion may elect from among its members a chairman of the Board of Directors who, when present, shall preside at all meetings of the Board of Directors and who shall have such other powers as the Board may prescribe.
- (d) Any vacancy occurring in any office of the corporation shall be filled by the Board of Directors.

Section 2. COMPENSATION AND TERM OF OFFICE

- (a) The compensation and term of office of all the officers of the corporation shall be fixed by the Board of Directors.
- (b) Any officer may be removed, either with or without cause, by action of the Board of Directors.
- (c) Any officer may resign at any time by giving written notice to the Board of Directors, the President or the Secretary of the corporation. Any such resignation shall take effect upon receipt of such notice or at any later time specified therein. Unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective provided that the Board of Directors may reject any post-dated resignation by notice in writing to the resigning officer.
- (d) This section shall not affect the rights of the corporation or any officer under any express contract of employment.

Section 3. PRESIDENT

- (a) The President shall be the chief executive officer of the corporation and shall, subject to the control of the Board of Directors, have general supervision, direction and control of the business and affairs of the corporation. He shall preside at all meetings of the shareholders and, unless a chairman of the Board of Directors has been elected and is present, shall preside at the meetings of the Board of Directors. He shall be ex officio a member of all the standing committees, including an executive committee, if any, shall have the general powers and duties of management usually vested in the office of President of a corporation, and shall have such other powers and duties as may be prescribed by the Board of Directors or the Bylaws.
- (b) The President shall execute bonds, mortgages and other contracts requiring a seal, except where required or permitted by law to be otherwise signed and executed or where the signing and execution thereof shall be expressly delegated by the Board of Directors to some other officer or agent of the corporation.

Section 4. VICE PRESIDENTS

The Vice President, or if there shall be more than one, the Vice Presidents in the order determined by the Board of Directors, shall, in the absence or disability of the President and except as specially limited by vote of the Board of Directors, perform the duties and exercise the powers of the President. They shall perform such other duties and shall have such other powers as prescribed by the Board of Directors.

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*An example of bylaws
(continued)*

Bylaws

Section 5. SECRETARY

(a) The Secretary shall attend all meetings of Directors and shareholders and shall keep or cause to be kept a book of minutes of all meetings of Directors and shareholders showing the time and place of the meeting, whether it was regular or special, and if special, how authorized, the notice given, the names of those present at Directors' meetings, the number of shares present or represented at shareholders' meetings and the proceedings thereof.

(b) The Secretary shall keep or cause to be kept a share register, or a duplicate share register, showing the names of the shareholders and their addresses, the number and classes of shares held by each, the number and date of certificates issued for such shares, and the number and date of cancellation of certificates surrendered for cancellation.

(c) The Secretary shall give or cause to be given such notice of the meetings of the shareholders and of the Board of Directors as is required by the Bylaws. He shall keep the seal of the corporation and affix it to all documents requiring a seal, and shall have such other powers and perform such other duties as may be prescribed by the Board of Directors or by Bylaws.

Section 6. TREASURER

(a) The Treasurer shall have the custody of the corporate funds, shall keep full and accurate accounts of receipts and disbursements in books belonging to the corporation and shall deposit all moneys and other valuable effects in the name and to the credit of the corporation in such depositories as may be designated by the Board of Directors.

(b) The Treasurer shall disburse the funds of the corporation as may be ordered by the Board of Directors, taking proper vouchers for such disbursements, and shall render the President and the Board of Directors, at its regular meetings, or when the Board of Directors so requires, an account of all his transactions as Treasurer and of the financial condition of the corporation.

Section 7. ASSISTANTS

The Board of Directors may appoint or authorize the appointment of assistants to the Secretary or Treasurer or both. Such assistants may exercise the power of the Secretary or Treasurer, as the case may be, and shall perform such duties as are prescribed by the Board of Directors.

Section 8. GENERAL MANAGER

The Board of Directors may also appoint or authorize the appointment of a General Manager, who shall hold office at the pleasure of the Board. The Board of Directors may delegate to the General Manager such executive powers and authority as they may deem necessary to facilitate the handling and management of the corporation's property and interests.

ARTICLE V EXECUTIVE AND OTHER COMMITTEES

Subject to law, the provisions of the Articles of Incorporation and the Bylaws, the Board of Directors may appoint an executive committee and such other committees as may be necessary from time to time, consisting of such number of its members and having such powers as it may designate. Such committees shall hold office at the pleasure of the Board.

ARTICLE VI CORPORATE RECORDS AND REPORTS

Section 1. RECORDS

The corporation shall maintain adequate and correct books, records and accounts of its business and properties. All of such books, records and accounts shall be kept at its place of business as fixed by the Board of Directors, except as otherwise provided by law.

Section 2. INSPECTION

All books and accounts of the corporation shall be open to inspection by the shareholders in the manner and to the extent required by law.

Section 3. CERTIFICATION AND INSPECTION OF BYLAWS

The original or a copy of the Bylaws and any amendments thereto, certified by the Secretary, shall be open to inspection by the shareholders and Directors in the manner and to the extent required by law.

Section 4. CHECKS, DRAFTS, ETC.

All checks, drafts or other orders for payment of money, notes or other evidences of indebtedness, issued in the name of or payable to the corporation shall be signed or endorsed by such person or persons and in such manner as shall be determined by resolution of the Board of Directors.

ARTICLE VII CERTIFICATES AND TRANSFER OF SHARES

Section 1. CERTIFICATES FOR SHARES

(a) Certificates for shares shall be in such form as the Board of Directors may determine. The certificates shall designate the state in which the corporation was incorporated, the name of the record holder of the shares represented thereby, the number of the certificate, the date of issuance, the number of shares for which it is issued, the par value of such shares, if any, or that such shares are without par value, the rights, privileges, preferences and restrictions of the stock, if any, the provisions as to redemption or conversion, if any, and shall make reference to any liens or restrictions upon transfer or voting.

[continued]

*An example of bylaws
(continued)*

Bylaws

(b) Every certificate for shares must be signed by the President or a Vice President and the Secretary or an Assistant Secretary and may be sealed with the seal of the corporation or a facsimile thereof. If the certificate is countersigned by a transfer agent or registered by a registrar other than the corporation itself or an employee of the corporation, it may be authenticated by facsimiles of the signatures of such officers.

Section 2. REGISTERED SHAREHOLDERS

The corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares for all purposes, including distribution of dividends, voting and liability for assessments. The corporation shall not be bound to recognize any equitable or other claim to or interest in such shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by law.

Section 3. TRANSFER ON BOOKS

Upon surrender to the corporation or the transfer agent of the corporation of a certificate for shares duly endorsed or accompanied by proper evidence of succession, assignment or authority to transfer, the corporation or transfer agent shall issue a new certificate to the person entitled thereto, cancel the old certificate and record the transaction on its books.

Section 4. RESTRICTIONS ON TRANSFER

No securities of this corporation or certificates representing such securities shall be transferred in violation of any law or of any restriction on such transfer set forth in the Articles of Incorporation or amendments thereto, the Bylaws or any buy and sell agreement, right of first refusal, or other agreement restricting such transfer which has been filed with the corporation if reference to any such restrictions is made on the certificates representing such securities. The corporation shall not be bound by any restriction not so filed and noted. The corporation may rely in good faith upon the opinion of its counsel as to such legal or contractual violation with respect to any such restrictions unless the issue has been finally determined by a court of competent jurisdiction. The corporation and any party to any such agreement shall have the right to have a restrictive legend imprinted upon any such certificate and any certificates issued in replacement or exchange therefore or with respect thereto.

Section 5. LOST, STOLEN OR DESTROYED CERTIFICATES

In the event a certificate is represented to be lost, stolen or destroyed, a new certificate shall be issued in place thereof upon proof of the loss, theft or destruction and upon the giving of such bond or other security as may be required by the Board of Directors.

Section 6. TRANSFER AGENTS AND REGISTRARS

The Board of Directors may from time to time appoint one or more transfer agents and one or more registrars for the shares of the corporation who shall have such powers and duties as the Board of Directors shall specify.

Section 7. CLOSING STOCK TRANSFER BOOKS

(a) The Board of Directors may close the transfer books for a stated period not exceeding fifty (50) days to determine the shareholders entitled to notice of or to vote at a meeting of shareholders, or entitled to receive payment of a dividend, or in order to make a determination of shareholders for any proper purpose. If the stock transfer books are closed to determine shareholders entitled to notice of or to vote at a meeting of shareholders, they shall be closed for at least ten (10) days immediately preceding the meeting.

(b) In lieu of closing the stock transfer books, the Board of Directors may fix in advance a date as the record date for the determination of shareholders. This record date shall not be more than fifty (50) days and, in case of a meeting of shareholders, not less than ten (10) days before the date on which the particular action requiring the determination of shareholders is to be taken. If the stock transfer books are not closed and no record date is fixed for the determination of shareholders entitled to notice of or to vote at a meeting of shareholders, or shareholders entitled to receive payment of a dividend, the date on which notice of the meeting is mailed or the date on which the resolution of the Board of Directors declaring the dividend is adopted is, as the case may be, the record date for the determination of shareholders.

Section 8. CORPORATIONS OPTION TO PURCHASE STOCK OF TRANSFERRING SHAREHOLDER

No stock in the corporation shall be transferred to a person who is not already a stockholder unless the stocks shall have first been offered for sale to the other shareholders of the corporation on a pro rata basis so as to maintain the proportionate ownership of the nonselling shareholders, at the same price and on the same terms as would govern upon a transfer to a person and not a stockholder. The offer shall be made in writing, and shall set forth the price and terms and shall be sent by registered mail to each shareholder of the corporation at the address listed on the corporate books. The right to transfer this stock to a person not a stockholder shall not exist until the other shareholders refuse the offer made as provided above, or until the shareholders fail for a period of thirty (30) days after receipt of the written offer to the shareholders to accept same by compliance with the terms therein set forth. If the shareholders refuse to exercise this option, the shares shall then be offered to the corporation in the same manner as offered to the shareholders, and the right to transfer the stock shall not exist until the corporation, through its Board of Directors, have rejected the offer or failed to accept within the time limit above set forth. No sale for less than that amount set forth in the offer to the shareholders and the corporation shall be permitted until such time as the offer for this lower amount has been received and rejected in accordance with the provisions of this Bylaw.

ARTICLE VIII DIVIDENDS AND WORKING CAPITAL

Section 1. DIVIDENDS

Dividends may be declared by the Board of Directors from time to time out of the surplus or net profits of the corporation and shall be payable at such time or times as the Board of Directors shall determine, subject to preferences and provisions set forth in the Articles of Incorporation and statutes.

[continued]

An example of bylaws
(continued)

Bylaws

Section 2. WORKING CAPITAL

Before the payment of any dividends or the making of any distributions of the net profits, there may be set aside out of the net profits of the company such sum or sums as the Directors may from time to time in their discretion think proper, as a working capital or as a reserve fund to meet contingencies. The Board of Directors may from time to time increase, diminish or vary such capital or such reserve fund in their judgment and discretion.

ARTICLE IX GENERAL PROVISIONS

Section 1. FISCAL YEAR

The fiscal year of the corporation shall be fixed by resolution of the Board of Directors.

Section 2. SEAL

The corporate seal shall be circular in form, and shall have inscribed thereon the name of the corporation and the words "Corporate Seal" and "State of Alaska."

Section 3. AMENDMENT OF BYLAWS

(a) Except as otherwise provided by law, the Board of Directors may amend or repeal these Bylaws or adopt new Bylaws.

(b) Whenever an amendment or new bylaw is adopted, it shall be copied in the minute book with the original Bylaws in the appropriate place. If any bylaw is repealed, the fact of repeal and the date on which the repeal occurred shall be stated in such book and place.

Section 4. INDEMNIFICATION

The Board of Directors may provide generally or specifically for the indemnification, exoneration, reimbursement or defense of any present or former Director, officer, employee, affiliate agent or contractor of this corporation for expenses, claims, liabilities, indebtedness, penalties, damage or injury incurred by or caused by them in such capacity except for their own negligence, knowing unauthorized acts, or defalcations not ratified, confirmed or adopted or the benefit thereof received by this corporation.

Section 5. CONTRACTS

No contract or other transaction between this corporation and any other corporation or concern shall be invalid or avoidable merely by reason of the fact that one or more shareholders, Directors or officers of this corporation are interested in or are Directors or officers of such other corporation or concern, and any shareholder, Director or officer of this corporation may be a party to, interested in or profit from any contract or transaction with this corporation, provided that the relationship, interest or profit is disclosed to the Board of Directors of this corporation and the contract or transaction is duly approved by action of a majority of the Directors present when such action is taken, or consented to by a majority of the Directors (without counting the vote of any Directors interested or related if a vote is cast provided, that such Director may be counted for the purposes of determining the existence of a quorum); no such shareholder, acting as such, nor be liable for any loss incurred under or by reason of such contract or transaction, merely by reason of such relationship or interest. Where such Director's vote is necessary to the entering of such contract or transaction, the contract or transaction shall not be void or voidable if it is fair to this corporation or its shareholders at the time it is authorized or approved.

DATED this _____ day of _____.

Initially, Byrnes was a strong advocate of Franklin D. Roosevelt's NEW DEAL legislation and served as Roosevelt's legislative adviser, thus playing a crucial role in securing support in the Senate for Roosevelt's policies. Byrnes also helped the president successfully manage the furor surrounding the chief executive's "court-packing" plan, a bill proposed by Roosevelt to expand the Supreme Court so that he could nominate justices who would uphold New Deal legislation. Roosevelt heeded Byrnes's advice not to seek a vote on the bill after several 1937 decisions indicated that the Court would be more inclined than its members previously had been to hold Roosevelt's programs to be constitutional. Later in his second Senate term, Byrnes joined the Democratic opposition to pro-union New Deal legislation. Nevertheless, he remained close to Roosevelt and helped secure the repeal

of the Neutrality Act of 1935, 49 Stat. 1081, and the passage of the LEND-LEASE ACT of 1941, 22 U.S.C.A. § 411 et seq.

In June 1941, Roosevelt nominated Byrnes to fill the seat on the U.S. Supreme Court vacated by the resignation of Associate Justice JAMES C. MCREYNOLDS. Byrnes won confirmation easily but served on the Court for little more than a year, completing the shortest tenure in the history of the Court.

Byrnes wrote only 16 majority opinions, including *Edwards v. California*, 314 U.S. 160, 62 S. Ct. 164, 86 L. Ed. 119 (1941), in which the Court struck down a California law that made bringing indigents into the state a crime. In his opinion, Byrnes argued that the law posed an unacceptable burden upon interstate commerce. He also wrote the majority opinion in *Taylor v. Georgia*, 315 U.S. 25, 62 S. Ct. 415, 86 L. Ed. 615

(1942), where the Court held that a state penal law that required workers receiving advances to remain at their jobs until the advances were paid back violated the **THIRTEENTH AMENDMENT** prohibition against **INVOLUNTARY SERVITUDE**.

Despite these significant contributions, Byrnes was not happy on the Court. He wanted to be more actively involved in the country's war effort. In October 1942, after only sixteen months on the Court, Byrnes resigned his seat. He left the Court at the request of President Roosevelt to become director of the newly created Office of Economic Stabilization, established to help prevent wartime inflation. Less than a year later, Byrnes became head of the Office of War Mobilization, an agency created to manage the production of war and civilian goods. The range of authority and influence Byrnes wielded in both posts led Roosevelt to refer to him publicly as "assistant president."

In Roosevelt's 1944 campaign for a fourth term, Byrnes was considered for the vice presidential nomination when opposition to Henry A. Wallace, the current vice president, surfaced. But Byrnes's pro-management views proved to be unacceptable to labor leaders, and the nomination instead went to **HARRY S. TRUMAN**. Byrnes nevertheless remained a close adviser to Roosevelt, accompanying him in 1945 to the **YALTA AGREEMENT** with **JOSEPH STALIN** and Winston Churchill.

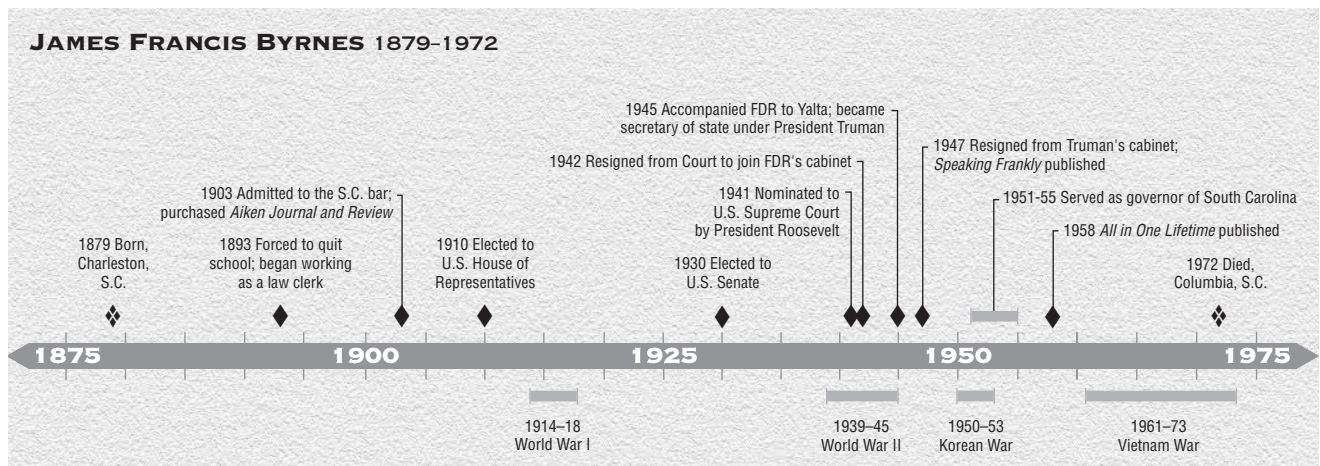
Byrnes continued to play a major role in government after Roosevelt's death, when President Truman, a longtime friend, appointed Byrnes secretary of state. Byrnes's service in the **STATE DEPARTMENT** was controversial. He took criticism for his recommendation that the



James Francis Byrnes.
ARCHIVE PHOTOS, INC.

atomic bomb be used to end the war with Japan. As secretary of state, Byrnes was the chief representative for the United States in a number of high-level international conferences held following the war, including the Potsdam Conference. In negotiations with the Soviet Union, Byrnes favored a settlement that greatly weakened Russia's control over Eastern Europe and increased the United States' **MONOPOLY** on atomic weapons. He also argued for the reunification of Germany. The Soviets strongly resisted

"POVERTY AND
IMMORALITY ARE
NOT
SYNONYMOUS."
—JAMES BYRNES



both proposals, and the failure of these negotiations helped to launch the COLD WAR.

Byrnes resigned from the cabinet in 1947 after a disagreement with Truman over his Fair Deal programs, which Byrnes saw as socialistic. After leaving the Truman administration, Byrnes practiced law in Washington, D.C., for several years. In 1947, he published *Speaking Frankly*, an account of his experiences with post-war diplomacy, which became a best-seller.

Byrnes returned to politics in 1950 when he was elected governor of South Carolina. He served for one term, during which he compiled a somewhat mixed record with respect to CIVIL RIGHTS. His administration suppressed the activities of the KU KLUX KLAN in the state, but Byrnes was a vocal opponent of SCHOOL DESEGREGATION.

After leaving office in 1955, Byrnes retired to Columbia, South Carolina, where he died in 1972. Byrnes was the only U.S. citizen in the

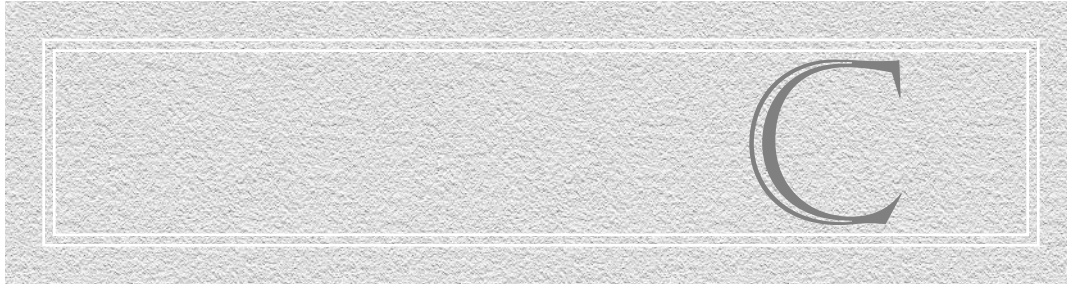
twentieth century to have served in prominent roles in all three branches of the government—legislative, judicial, and executive. His autobiography, which was published in 1958, is titled *All in One Lifetime*.

FURTHER READINGS

- Brown, Walter J. 1992. *James F. Byrnes of South Carolina: A Remembrance*. Macon, Ga.: Mercer Univ. Press.
- Byrnes, James. 1958. *All in One Lifetime*. New York: Harpers.
- . 1947. *Frankly Speaking*. New York: Harpers.
- Congressional Quarterly. 1989. *Guide to the U.S. Supreme Court*. 2d ed. Washington, D.C.: Congressional Quarterly.
- Messer, Robert L. 1982. *The End of an Alliance: James F. Byrnes, Roosevelt, Truman, and the Origins of the Cold War*. Chapel Hill: Univ. of North Carolina Press.
- Ward, Patricia Dawson. 1979. *The Threat of Peace: James F. Byrnes and the Council of Foreign Ministers, 1945–1946*. Kent, Ohio: Kent State Univ. Press.

CROSS-REFERENCES

New Deal; Roosevelt, Franklin Delano.



CABINET

The counsel or group of advisers of a king or other chief executive of a government. A group of individuals who advise the president of the United States.

The president's cabinet was created by custom and tradition and was instituted by the first president. The heads of each of the executive departments of the government, including the **SECRETARY OF STATE**, the secretary of the treasury, the secretary of defense, the attorney general, the secretary of the interior, the secretary of agriculture, the secretary of commerce, the secretary of labor, the secretary of **HEALTH AND HUMAN SERVICES**, the secretary of education, the secretary of **HOUSING AND URBAN DEVELOPMENT**, and the secretary of transportation, comprise the cabinet.

CROSS-REFERENCES

Executive Branch.

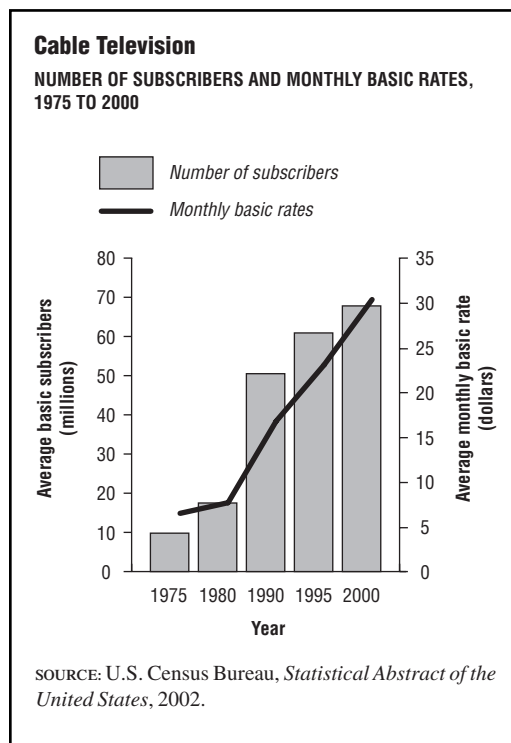
CABLE TELEVISION

The cable TV industry exploded from modest beginnings in the 1950s into a service that by 2003 reached 69 percent of all U.S. households that had television. Cable was initially a response to a need for improved transmission in areas where signals were weak or nonexistent. By the 1960s, consumers began to demand not only better reception but also more signals. This demand fueled the exponential growth of the industry. In 2003, almost ten thousand cable

systems provided services to 73 million household subscribers in the United States. The industry has faced many legal issues, including programming and rate regulation, lack of competition, and customer service complaints. In addition, deregulation of the industry in the late 1990s has led to the consolidation of major cable companies.

The most contentious issue in cable television arises from **FEDERAL COMMUNICATIONS COMMISSION** (FCC) regulations that require cable operators to allot up to one-third of their channels to local broadcast stations. Known as must-carry rules, these were first enacted in the 1960s in an effort to protect the interests of local broadcasters. In 1985 and 1987, the Court of Appeals for the District of Columbia Circuit held that must-carry rules, as promulgated at the time, violated the **FIRST AMENDMENT** (see *Quincy Cable TV v. FCC*, 768 F.2d 1434 [1985], *cert. denied*, 476 U.S. 1169, 106 S. Ct. 2889, 90 L. Ed. 2d 977 [1986]; *Century Communications Corp. v. FCC*, 835 F.2d 292 [1987], *cert. denied sub nom. Office of Communication of the United Church of Christ v. FCC*, 486 U.S. 1032, 108 S. Ct. 2014, 129 L. Ed. 2d 497 [1988]).

Congress addressed the must-carry issue in the Cable Television **CONSUMER PROTECTION** and Competition Act of 1992 (47 U.S.C.A. § 325 et seq.). The 1992 Cable Act, passed over President **GEORGE H.W. BUSH**'s **VETO**, required cable systems to carry most local broadcast channels and prohibited cable operators from charging



local broadcasters to carry their signal. These requirements were challenged on First Amendment grounds in *Turner Broadcasting System v. FCC*, 512 U.S. 622, 114 S. Ct. 2445, 129 L. Ed. 2d 497 (1994). Turner Broadcasting asked the Supreme Court to apply a STRICT SCRUTINY test, similar to the one used to evaluate the constitutionality of restrictions on printed material, to determine whether the FCC's regulations infringed the industry's FREEDOM OF SPEECH. The FCC urged the Court to apply the same relaxed standard it had applied to broadcast media in *Red Lion Broadcasting v. FCC*, 395 U.S. 367, 89 S. Ct. 1794, 23 L. Ed. 2d 371 (1969).

The Court took a middle ground on cable communications. Noting that cable television is neither strictly a broadcast medium nor a print medium, the Court held that the relaxed scrutiny test adopted in *Red Lion* was inappropriate, but declined to adopt the strict scrutiny protection given to print publications. The Court held that any regulations that are content neutral—in other words, that do not dictate the content of programming and that have an incidental burden on free speech—will be judged by an “intermediate level of scrutiny.” Any regulations found to be content based—in other words, that attempt to restrict programming based on its content—will receive the strict

scrutiny applied to print media. It returned the case to the district court for a full hearing under this ruling.

The case returned to the Supreme Court in 1997. In *Turner Broadcasting System v. Federal Communications Commission*, 520 U.S. 180, 117 S.Ct. 1174, 137 L.Ed.2d 369 (1997), the Court upheld the statute and rejected the cable operators' First Amendment claims. The court found that the law served an important and legitimate legislative purpose because it protected noncable households from losing regular local broadcasting service due to competition from cable companies. In addition, there was a legitimate governmental purpose in seeking to ensure public access to a variety of information sources. Finally, the government had an interest in eliminating restraints on fair competition even when the regulated parties were engaged in protective expressive activity.

The regulation of the rates charged by cable companies is another area of contention between the industry and the government. Before 1984, local franchising authorities regulated the rates charged by franchisees. The 1984 Cable Communications Policy Act (46 U.S.C.A. §§ 484-487, 47 U.S.C.A. § 35, 152 et seq.), which was designed to promote competition and allow competitive market forces to determine rates, deregulated rates for almost all franchisees. Although industry representatives had argued that competition would keep rates reasonable, after deregulation, average monthly cable rates increased far faster than the rate of inflation, in some cases as much as three times faster. During the same period, the average cable subscriber received only six additional channels, and competition from other operators was almost nonexistent. In 1991, only 53 of the more than 9,600 cable systems in the United States had a direct competitor in their service area.

The 1992 Cable Act provided a regulatory structure for basic and expanded programming, but exempted individually sold premium channels, such as HBO and the Disney Channel, and pay-per-view programming. The 1992 act authorized local governments to regulate programming, equipment, and service rates charged by companies in areas where there is no competition. Basic rates could be regulated but only under prescribed circumstances that indicate a lack of competition in the area. According to figures gathered in 1994, the new regulations led to average rate reductions of more than eight percent.

When Congress deregulated the cable industry with the 1984 Cable Act, its primary intent was to promote competition. The 1984 act sought to balance the government's dual goals of providing cable access to all areas and deregulating rates. The industry had argued that competitive market forces would produce competition and stabilize rates. However, competition did not occur in the ensuing years, and cable operators continued to enjoy a MONOPOLY in virtually all service areas. Before 1992, exclusive cable franchises were granted to the bidders who promised the widest access and most balanced programming. The government felt that this was the best way to ensure that cable's new and expensive technology was available to people in poor and rural areas as well as more affluent areas. As a result, bidders who promised more than they delivered were protected from competition. The 1992 Cable Act eliminated many of the barriers to competition that existed before. Most important, it abolished the exclusive franchise agreement, which had been a powerful monopolistic tool.

Although the 1992 act did much to encourage competition, it did not address the 1984 act's ban on ownership of cable companies by local telephone utilities. This ban was challenged in *Chesapeake & Potomac Telephone Co. v. United States*, 42 F.3d 181 (1994), in which the Fourth Circuit Court of Appeals held that it violated the telephone companies' First Amendment right to free speech. The ban was removed by the Telecommunications Act of 1996 (110 Stat. 56), which President BILL CLINTON signed in February 1996.

The 1996 act signaled a return to the pre-1992 act philosophy, as the FCC was again directed to deregulate the cable television industry. The industry, which lobbied hard for the changes, contended that deregulation would produce more competition and lower prices. In addition, cable operators believed they could move into the areas of broadband INTERNET service and local phone service. Critics raised concerns that deregulation would produce less competition, high prices, and the consolidation of cable services into the hands of a few powerful companies.

By 2002, the cable landscape had changed, with four companies controlling 80 percent of the national cable market. In addition, cable subscriber costs rose steadily. The FCC continued to advocate for a deregulated cable market

and has permitted companies to pass on external costs (those unrelated to the delivery of programming and maintenance of infrastructure) to their subscribers. Competition from satellite television providers also grew, but not enough to pose a serious threat to the cable industry.

The growth of cable television led to other issues, including litigation over the distribution of sexually explicit content on cable systems. For example, *United States v. Playboy Entertainment Group Inc.*, 529 U.S. 803, 120 S.Ct. 1878, 146 L.Ed.2d 865 (2000), involved a provision in the 1996 Cable Act that required cable TV systems to restrict sexually-oriented channels to overnight hours if they did not fully scramble their signal to nonsubscribers.

Even before the enactment of the 1996 provision, cable TV operators scrambled the signals of their programming so nonsubscribers could not view the channels. In addition, "premium" channels are scrambled so only those cable subscribers who pay an additional fee will gain access to the programming. However, scrambling technology is imperfect. A phenomenon known as "signal bleed" allows audio and video portions of scrambled programs to be heard and seen for brief periods. The federal law sought to prevent children from hearing or seeing sexually explicit content because of signal bleed. If a cable operator could not completely scramble the signal, it could only transmit sexually explicit programming between 10 P.M. and 6 A.M.

Playboy Entertainment Group, which owns and prepares programming for adult television networks, filed a lawsuit alleging the law was unconstitutional. The Supreme Court, although it acknowledged that many adults would find the material offensive, ruled that the law did violate the First Amendment because it sought to ban indecent rather than obscene material. Adults had a right to view such material. Moreover, the law only restricted signal bleed to sexually explicit content. This meant that the law was not content neutral and had to be judged using the strict scrutiny test. Although Congress had a compelling interest in preventing children from viewing sexually explicit cable programming, the method it had prescribed was too restrictive to the rights of adult subscribers. Therefore, the government had failed to justify a nationwide daytime speech ban. In so ruling, the Court found that another provision of the act, which permits cable customers to request

complete channel blocking, was a better and legal alternative.

FURTHER READINGS

- Arnesen, David W., and Marlin Blizinsky. "Cable Television: Will Federal Regulation Protect the Public Interest?" *American Business Law Journal* 32.
- Gustafson, Madie D. "Transfers of Cable Television Systems: Regulatory Concerns at Federal, State, and Local Levels." *Practising Law Institute/Patents, Copyrights, Trademarks, and Literary Property Course Handbook Series* 380.
- Lay, Tillman L., and J. Darrell Peterson. "Federal, State, and Local Regulation of Cable Television Franchise Transfers." *Practising Law Institute/Patents, Copyrights, Trademarks, and Literary Property Course Handbook Series* 405.
- Markey, Edward J. "Cable Television Regulation: Promoting Competition in a Rapidly Changing World." *Federal Communications Law Journal* 46.
- National Cable and Telecommunications Association. Available online at <www.ncta.com> (accessed June 4, 2003).
- Parsons, Patrick, and Robert Frieden. 1997. *The Cable and Satellite Television Industries*. Boston: Allyn and Bacon.
- Peritz, Marc. "Turner Broadcasting v. FCC: A First Amendment Challenge to Cable Television Must-Carry Rules." *William and Mary Bill of Rights Journal* 3.
- Robichaux, Mark. 2002. *Cable Cowboy: John Malone and the Rise of the Modern Cable Business*. New York: John Wiley.
- Sanders, Edmund. 2002. "FCC May Ease Cap on Cable Ownership." *Los Angeles Times* (December 12).

CROSS-REFERENCES

Broadcasting; Telecommunications; Television.

❖ CAHN, EDMOND NATHANIEL

Edmond Nathaniel Cahn was the author of numerous publications including *The Sense of Injustice* (1949), *The Moral Decision* (1955), and *The Edmond Cahn Reader* (1966).

Cahn was born January 17, 1906, in New Orleans, Louisiana. He received a bachelor of arts degree in 1925 and a doctor of JURISPRUDENCE degree in 1927 from Tulane University. He also received a doctor of laws degree from the Jewish Theological Seminary of America, located in New York City, in 1962.

After his admission to the Louisiana bar in 1927 and the New York bar in 1928, Cahn established a law firm in New York City where he practiced law from 1927 to 1950. He extended his career interests to the field of education and taught at New York University in 1945, accepting a professorship of law in 1948. In 1958 and 1962 he lectured on the philosophy of law at the Hebrew University in Jerusalem and on ethics at the Jewish Theological Seminary of America in New York City in 1961.

From 1948 to 1951 he was the director of the Conference on Social Meaning of Legal Concepts. He was awarded the Phillips Prize in Jurisprudence by the American Philosophical Society in 1955.

Cahn died August 9, 1964, in New York City.

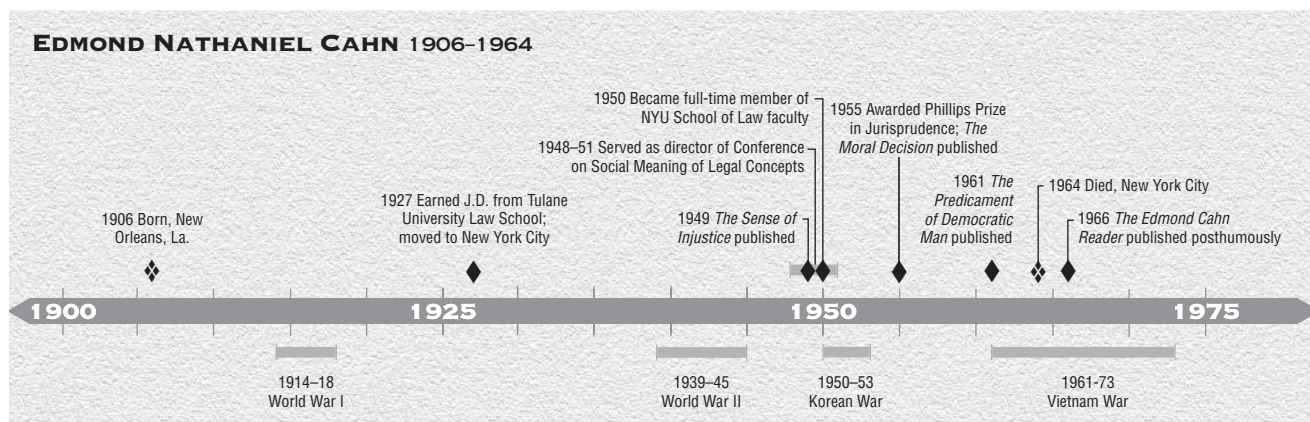
CALENDAR

A list of cases that are awaiting trial or other settlement, often called a trial list or docket.

A special calendar is an all-inclusive listing of cases awaiting trial; it contains dates for trial, names of counsel, and the estimated time required for trial. It is maintained by a trial judge in some states and by a court clerk in others.

Calendar call is a court session during which the cases that await trial are called in order to determine the current status of each case and to assign a trial date.

"IN EVERY
MATURE SOCIETY,
THERE IS
CONSIDERABLE
OVERLAP BETWEEN
LEGAL QUESTIONS
AND MORAL
QUESTIONS."
—EDMOND CAHN



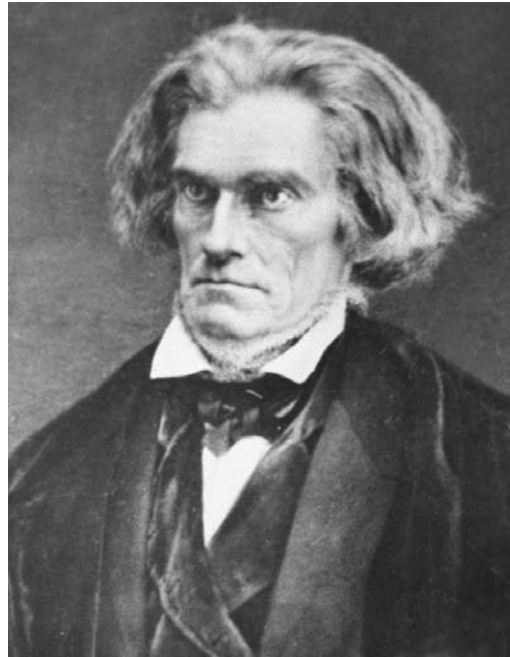
❖ **CALHOUN, JOHN CALDWELL**

John Caldwell Calhoun achieved prominence as a U.S. vice president, Southern politician, and a staunch defender of STATES' RIGHTS.

Calhoun was born March 18, 1782, in Abbeville County, South Carolina. After graduating from Yale University in 1804 and LITCHFIELD LAW SCHOOL in 1806, Calhoun was admitted to the South Carolina bar in 1807 and established a successful legal practice there.

In 1808, Calhoun entered politics, beginning as a member of the South Carolina legislature. Three years later, he began his career in federal government, representing South Carolina in the House of Representatives until 1817. During his tenure, he performed the duties of acting chairman of the Committee on Foreign Affairs and in 1811 was a member of the War Hawks, a group that advocated war with England in 1812.

Calhoun resigned from the House in 1817 and assumed the duties of secretary of war for the next eight years. In 1825, he began his first term as vice president of the United States, serving under President JOHN QUINCY ADAMS for four years. He remained in this office during the presidency of ANDREW JACKSON, but relinquished his post in 1832 after a disagreement with Jackson concerning states' rights. The dispute between Jackson and Calhoun resulted in the Nullification Controversy of 1832 and 1833. Calhoun was a proponent of the right of a state to declare a federal law null and void if the state deemed such a law unconstitutional. His attitude was a result of the passage of protective tariffs that Calhoun believed favored the interests of the North over those of the South. Calhoun expressed his beliefs in his work, *South Carolina Exposition*, in which he discussed his views of



John Caldwell Calhoun.

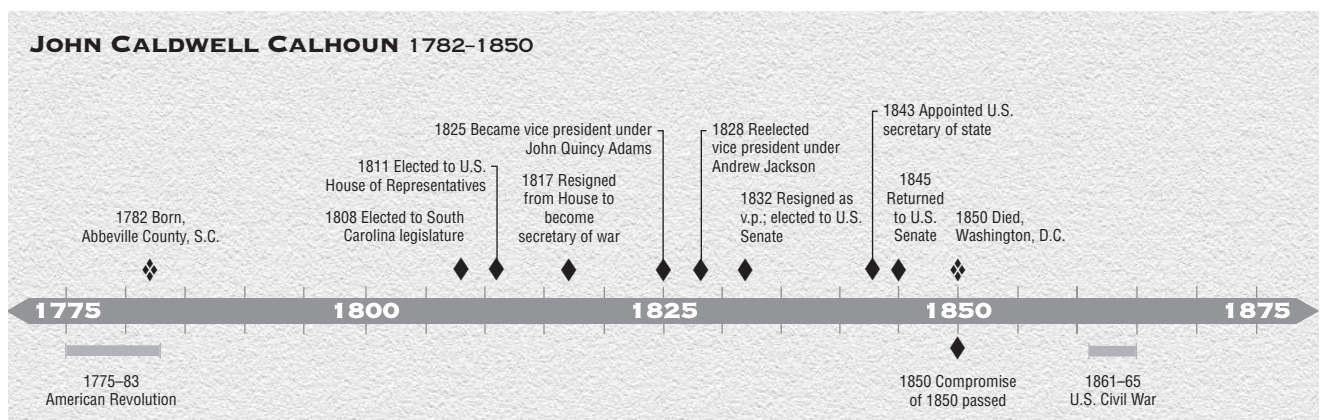
LIBRARY OF CONGRESS

sovereignty of the states. He believed that a state had the right to secede from the Union in order to keep the powers of the federal government in check. The Nullification Controversy finally ended with a compromise, and Calhoun emerged as the foremost speaker for the South during that era.

Calhoun represented South Carolina in the U.S. Senate from 1832 to 1843, and again from 1845 to 1850. He continued his campaign for states' rights, supported SLAVERY, and introduced a policy of "concurrent majorities," wherein every area of the United States would participate equally in the exercise of federal power. During the period between his two sena-

"THE RIGHT OF SUFFRAGE IS THE INDISPENSABLE AND PRIMARY PRINCIPLE IN THE FOUNDATION OF A CONSTITUTIONAL GOVERNMENT."

—JOHN CALHOUN



torial terms, Calhoun served as U.S. SECRETARY OF STATE from 1843 to 1845. Calhoun died March 31, 1850, in Washington, D.C.

As an author, Calhoun wrote many publications, including *Disquisition on Government* and *Discourse on the Constitution and Government of the United States*. A compilation of his works from 1851 to 1855 was published posthumously by R. K. Crallé in a six-volume set.

CALL

To convoke or summon by public announcement; to request the appearance and participation of several people—such as a call of a jury to serve, a roll call, a call of public election, or a call of names of the members of a legislative body.

In contract law, the demand for the payment of money according to the contract terms, usually by formal notice.

As applied to corporation law, the demand of the board of directors that subscribers pay an installment or portion of the amount that is still owed on shares that they have agreed to buy. A call price is the price paid by a corporation for the redemption of its own SECURITIES.

In securities, a contract that gives a person the right to demand payment of a certain specified number of shares of stock at a stated price or upon a fixed date.

CALVO CLAUSE

A provision in an agreement between a private individual and a foreign state that says, in effect, that “aliens are not entitled to rights and privileges not accorded to nationals, and that, therefore, they may seek redress for grievances only before local authorities.”

Under the Calvo Clause, a claimant waives the right to apply to his or her government or to another forum for protection if a claim is denied by local authorities.

CALVO DOCTRINE

The principle set forth by an Argentine jurist, Carlos Calvo, that a government has no duty to compensate ALIENS for losses or injuries that they incur as a result of domestic disturbances or a civil war, in cases where the state is not at fault, and, therefore, no justification exists for foreign nations to intervene to secure the settlements of the claims made by their citizens due to such losses or injuries.

CAMERA

A chamber, room, or apartment in old ENGLISH LAW. A judge's chamber. Treasury, chest, or coffer.

To be in camera is to be in private or in chambers.

CAMERAS IN COURT

Cameras and courtrooms have long had an uneasy relationship. Blaming cameras for disrupting trials, the AMERICAN BAR ASSOCIATION (ABA) led the drive for their removal in the mid-1930s. The effort succeeded: all but two state courts banned them, and Congress prohibited them from all federal trials. But the television era ushered in new problems, and courts eventually were forced to grapple with the constitutional question of whether TV cameras are injurious to a defendant's right to a fair trial. In 1965, the U.S. Supreme Court appeared to say they are, in *Estes v. Texas*, 381 U.S. 532, 85 S. Ct. 1628, 14 L. Ed. 2d 543, overturning a conviction because cameras had denied a defendant his DUE PROCESS rights. But the Court changed its mind in the 1981 case of *Chandler v. Florida*, 449 U.S. 560, 101 S. Ct. 802, 66 L. Ed. 2d 740. Reacting to the permissiveness of *Chandler*, many states passed legislation allowing televised trials. And from 1991 to 1994 some federal courts conducted an experiment with cameras.

Photographers lost their place in court in the early 1930s thanks to a highly sensational trial, and it would take four decades for them to regain it. In 1934, nearly 700 reporters and photographers descended on the New Jersey town where Bruno Hauptmann was on trial for KIDNAPPING and murdering the baby of famous aviator Charles A. Lindbergh and author Anne Morrow Lindbergh. The trial judge allowed still photography, but was unprepared for the barrage of flashbulbs and the presence of a newsreel camera that was smuggled inside the court. Decrying the media circus that resulted, the ABA in 1937 called for prohibiting photography in its Canons of Professional and Judicial Ethics. At the same time the U.S. Congress amended the Federal Rules of CRIMINAL PROCEDURE to ban cameras and any form of broadcasting from federal courts. All but two states—Texas and Colorado—gradually adopted the ABA ban. Later, Texas permitted television cameras and it was a Texas criminal case that led to the next stage of development in this area of U.S. law.

In 1965, the U.S. Supreme Court took up the constitutional issue in *Estes*. This case involved a

claim by a convicted swindler that the televising of his heavily publicized trial had deprived him of his right to due process under the FOURTEENTH AMENDMENT. The counterargument advanced by the state of Texas is still the one most pro-camera supporters continued to make into the early 2000s: cameras neither caused distractions nor prejudiced the trial and in fact served the public's right to know in a manner both educational and likely to promote respect for the courts. The Supreme Court sided with the defendant. Emphasizing the obtrusive technology used in the courtroom, from fat cables to the red light on cameras, the Court decided that the trial had not been fair and overturned the conviction. Yet, to many observers, *Estes* appeared to stop short of announcing that all photographic or broadcast coverage of criminal trials is inherently a denial of due process; it focused narrowly on the particulars in Billie Sol Estes's case. More important, observers noted, the decision looked to the future. "When the advances in these arts permit reporting by ... television without their present hazards to a fair trial," Justice TOM C. CLARK wrote for the majority in *Estes*, "we will have another case."

Developments in the 1970s changed the picture. Technology had improved, making TV cameras far less disruptive, and the electronic media was demanding the same access to trials enjoyed by the print media. The ABA became much more tentative about its hard-line position. Its Committee on Fair Trial-Free Press recommended that the ABA revise its standards. Encouraged to experiment, a number of states tried short-term pilot programs as a first step toward changing their laws. Then, in 1978, the Conference of State Chief Justices voted 44–1 to approve a resolution allowing the highest court of each state to set its own guidelines for radio, TV, and other photographic coverage. By 1980, 19 states permitted coverage of trial and appellate courts, three permitted coverage of trial courts only, six permitted coverage of appellate courts only, and 12 others were considering the issue.

The U.S. Supreme Court provided the decisive push with its ruling in *Chandler* in 1981. *Chandler* revisited the *Estes* decision of 16 years earlier and on quite similar terms: in Florida, two men convicted of BURGLARY claimed that televising their trial over their objections was a denial of due process. At the time Florida was following a pilot program for televising and per-



mitting still photography at state trials under canon 3A(7) of the Florida CODE OF JUDICIAL CONDUCT. The parties in *Chandler* read *Estes* differently: the appellants argued that *Estes* meant that the televising of criminal trials is inherently a denial of due process, whereas the state claimed that *Estes* did not establish any such constitutional rule. Seeking to clarify the earlier ruling, which had comprised no less than six opinions, the Supreme Court agreed with Florida. It held that states could provide access to the electronic media regardless of whether defendants wanted it. Moreover, the burden of showing how cameras have a prejudicial effect on a given trial would fall on the defendant. Chief Justice Warren E. Burger's majority opinion cautioned, "Dangers lurk in this, as in most experiments, but unless we were to conclude that television coverage under all conditions is prohibited by the Constitution, the states must be free to experiment."

The freedom to experiment brought cameras firmly into state courts. The ABA abandoned its prohibitive stance and more states began conducting experiments of their own. The launch on July 1, 1991 of COURT TV, a cable channel that provided televised trial coverage of newsworthy cases, sought to further legitimize the use of cameras in the courtroom. By 1995, 47 states permitted some form of televising of state trials. But in 1994, the federal court system chose otherwise. The federal JUDICIAL CONFERENCE OF THE UNITED STATES authorized a three-year experiment in 1991 that permitted camera coverage of federal civil trials. Most judges who participated in the experiment, which involved

The sensational 1934 trial of Bruno Hauptmann (center) for the Lindbergh kidnapping created such a disruption that cameras were banned from nearly all U.S. courtrooms in 1937.

AP/WIDE WORLD
PHOTOS

Judge Wapner and *The People's Court*

Before televised trials became commonplace, there was *The People's Court*. This highly popular syndicated TV program ran from 1981 through 1993 and featured retired judge Joseph A. Wapner, of the California Superior Court. Millions of viewers tuned in daily to watch Wapner hear actual cases from small-claims court. The parties agreed to submit to his judgment of their sometimes petty, and often quite funny, disputes, which included claims for fender benders, complaints about plumbing jobs, and even a plaintiff who sued when a liquor store that had sold him a flat can of beer refused to give him a fresh one. The ground-breaking *The People's Court* probably did more than any other program before it to open the way for the reality programming tide that swept civil and criminal trials onto television. It also popularized understanding of at least one kind of courtroom process, that of small claims.

The genius of *The People's Court* was its verisimilitude. The program operated by the rules of California's small-claims courts: no lawyers were allowed, aggrieved parties represented themselves, and the damage limit was \$1,500. To find participants for the show, Ralph Edwards Productions combed court dockets for cases that were essentially matters of principle and then invited the parties to appear on the program. On the show, as in real life, both parties told their sides of the story to the judge, whose decision was final. The show's 12-year run featured more than 5,000 cases.

The affably grumpy, no-nonsense Wapner certainly knew his profession. The former president of the California Judges Association had earned degrees in philosophy and the law from the University of Southern California in the late 1940s, had practiced law for a decade, and had tried civil and criminal cases for twenty years before retiring from the bench in 1979. His TV rulings were commonsensical, swift, and just. The victim of a bum can of beer, for instance, was awarded eighty cents. In another case, one man in a romantic love triangle had bitten off the ear of another rather than give up the woman in question; Wapner awarded the one-eared man \$1,500 for pain and suffering. As part of the show's terms, the production company paid all awards, and

the aggrieved parties merely agreed to call it a day after the judge passed sentence.

The effect of *The People's Court* has often been debated. The show may have encouraged litigiousness, according to such critics as noted attorney **ALAN M. DERSHOWITZ** and Judge Abner J. Mikva, of the U.S. Circuit Court of Appeals for the District of Columbia. It is undoubtedly true that the use of small-claims courts increased in the 1980s after the show began airing. Others found in Wapner a traditional model of fairness: in a 1989 essay in the *University of Chicago Law Review*, Justice **ANTONIN SCALIA**, of the U.S. Supreme Court, described Wapner as a descendant of Solomon and Louis IX of France. Wapner himself saw the program as educational.

To the public, which made *The People's Court* the fifth-highest-rated syndicated show in the mid-1980s, Wapner became the best-known judge in the United States. A 1989 *Washington Post* poll found that fewer than 10 percent of respondents knew the name of Justice **WILLIAM H. REHNQUIST**, of the U.S. Supreme Court, but more than half could identify Wapner. Wapner published the book *A View from the Bench* in 1987. After the show's cancellation in 1992, he served as president of the board of directors of the Brandeis-Bardin Institute, a Jewish cultural organization in California.

As tastes in daytime television changed in the 1990s, Wapner's descendants reflected the times. The era of no-holds-barred reality TV had dawned, and into it in 1996 barreled *Judge Judy*. If the betrayed and the broken-hearted went on *The Jerry Springer Show* to smash chairs, *Judge Judy* was where they settled their legal differences for the price of a tongue-lashing from retired New York City judge Judy Sheindlin. Averaging 9 million viewers per day, Sheindlin rarely failed to remind disputing parties of their shortcomings.

The huge success of *Judge Judy* spawned competition. In fact, a brief revival of *The People's Court* between 1998 and 1999 featured former New York City mayor Ed Koch hamming it up at the gavel. Similarly, *Divorce Court*, originally a 1960s show with actors, reappeared with real couples ready to untie



the knot on camera. Other shows, such as *Judge Mills Lane*, covered the familiar territory of small claims cases being tried by humorous grumps.

The 2000s breathed fresh air into the format with African American judges and new thematic approaches. *Divorce Court* and *Judge Mathis* featured attorney Mablean Ephriam and former state judge Greg Mathis, respectively. As a former teenage dropout and gang member who became a Michigan judge, Mathis promoted the theme of self-redemption while citing his life as an example for young offenders. Following their lead was noted former Georgia juvenile court judge Glenda Hatchett, whose *Judge Hatchett* also sought to balance entertainment with a social message.

FURTHER READINGS

- Frankel, Bruce. 2000. "Past Imperfect; In re jurisprudence, TV's Judge Mathis Had Two Good Teachers: Law School and Jail." *People* (October 2).
- Holston, Noel. 1999. "Fall TV Preview." *Minneapolis Star Tribune* (September 13).
- "Judge Glenda Hatchett Bio." 2003. Available online at <www.sonypictures.com/tv/shows/judgehatchett/about4.phtml> (accessed on November 20, 2003).
- "Judge Mills Lane TV Show Canceled." 2001. *AP Online* (April 11).
- Zurawik, David. 1999. "Tough Justice: TV Judges Deal in Black and White." *Newsday* (April 21): B3.

CROSS-REFERENCES

Small Claims Court; Television.



six trial court districts and two appellate districts, viewed the experience favorably; in fact, a report prepared by the Judicial Conference recommended extending camera coverage to all federal district and appellate courts. But in 1994, the conference voted to end the experiment without explanation. Many advocates of televising federal trials blamed this decision on the excessive publicity from the 1994 pretrial hearings in the case of O. J. SIMPSON, a popular sports and entertainment personality who was accused and later acquitted of murdering his former wife Nicole Brown Simpson and her friend Ronald Lyle Goldman.

By the beginning of the twenty-first century, all 50 states allowed some level of camera presence in their courts (only the District of Columbia prohibited cameras in trial and appellate proceedings), but the rules governing when and where cameras are allowed varied enormously. In New York, for example, cameras have been banned from criminal trials since 1952 under Section 52 of the state's CIVIL RIGHTS Law. A 2001 challenge to the law by Court TV argued that Section 52 was unconstitutional because it violates the FIRST AMENDMENT. But in 2003, Manhattan Supreme Court Justice Shirley Werner Kornreich upheld the ban on cameras, noting that televising trials could disrupt the proceedings enough to have an impact on the fairness of those trials.

In 2001 the U.S. Senate and House of Representatives examined the issue of whether cameras should be allowed in federal court. An effort to enact legislation had failed in Congress a year earlier. In November 2001 the SENATE JUDICIARY COMMITTEE voted 12–7 to bring a proposed bill to the full Senate; action on that legislation, as well as similar legislation in the House, is pending.

The U.S. Supreme Court does not allow cameras in its proceedings; transcripts are made available, but not immediately. In a move that surprised many, the Court allowed the release of audiotapes of its proceedings in the Florida presidential election results late in 2000. The Court deemed those hearings to be important enough to warrant a special dispensation of its normal procedures. In 2003, the Court again allowed audiotapes to be released in the University of Michigan Law School's AFFIRMATIVE ACTION case, as well as the hearings on the constitutionality of the McCain-Feingold campaign finance reform law. The Court has emphasized that such access will only be allowed in rare instances and only for cases it deems crucial enough. As for televised Supreme Court proceedings, Chief Justice WILLIAM REHNQUIST wrote to Senator Arlen Specter of Pennsylvania, a proponent of television coverage, that "a majority [of the Justices] are of the view that it would be unwise to depart from our current practice." Rehnquist has stated that

“RAISE YOUR RIGHT HAND AND TRY TO LOOK NATURAL”: THE COURTROOM CAMERA DEBATE

Is allowing television cameras in courtrooms a good idea? U.S. law never tires of debating the question. Widely banned after the sensational 1934 Bruno Hauptmann KIDNAPPING and murder trial, cameras in the courtroom have fluctuated for decades in their acceptability. The courts, the media, lawyers, and scholars have often heralded the camera as if it were democracy's own eye—or railed at it as a leering Peeping Tom. Supporters claim that cameras enlighten the public, while opponents counter that cameras corrupt the trial process and yield bad journalism. Only since the mid-1970s has the pro-camera lobby been ascendant. By 1995, with 47 states leaving the decision to permit cameras up to judges, and the CABLE TELEVISION network COURT TV broadcasting nearly as fast as courts can be called to session, televised trials were routine affairs. But despite complaints, federal trials remained largely off-limits. Moreover, controversy over the media's treatment of the O. J. SIMPSON murder trial brought new calls for pulling the plug altogether.

In 1934, Hauptmann was tried for kidnapping and murdering the young son of aviator Charles A. Lindbergh and author Anne Morrow Lindbergh. The trial excited the nation, obsessed the news media, and created a circus atmosphere of “expert” commentators, tabloid inter-

views, souvenir hawkers, and courtroom grandstanding. In 1995, the trial of Simpson, who was accused and ultimately acquitted of the murders of his former wife Nicole Brown Simpson and her friend Ronald Lyle Goldman, caused similar excitement, obsession, and atmospherics. Of course, the camera's role in each case was quite different. One 145 journalists crammed into the *Hauptmann* courtroom, and flashbulbs popped and a smuggled newsreel camera turned, all in violation of the trial judge's orders. Afterward, critics deplored the media's behavior. Sixty-one years later, a single television camera was permitted to follow the *Simpson* trial. Critics decried the media “circus,” “frenzy,” “orgy,” and so forth. In both instances, it was said that cameras skewed the proceedings and gave a distorted view of the justice system. Some said the media got Hauptmann convicted; some believe the media got Simpson off.



On the simplest level, then, the debate is about the press. Critics believe journalists are only barely capable of behaving themselves in court. After the *Hauptmann* experience, the AMERICAN BAR ASSOCIATION (ABA) reacted furiously. It swiftly passed judicial canon 35 of its Canons of Professional and Judicial Ethics:

Proceedings in court should be conducted with fitting dignity

and decorum. The taking of photographs in the courtroom, during sessions of the court or recesses between sessions, and the broadcasting of court proceedings are calculated to detract from the essential dignity of the proceedings, degrade the court and create misconceptions with respect thereto in the mind of the public and should not be permitted.

This 1937 rule led the majority of states to ban still cameras and was amended in 1952 to include TV cameras. Although the ABA has long since changed its views, distrust of the media's intentions survives in the early 2000s in state rules governing courtroom proceedings. These guidelines strictly dictate how many cameras are allowed (usually, one), what they may do (remain stationary), whom they may film (never jurors and sometimes not witnesses), who may operate them (one person), what that operator may wear (appropriate dress), and when she or he may leave the courtroom (only during recess). It is hardly accidental that the guidelines resemble a teacher's orders to a class.

While generally accepting limits as necessary to the proper administration of justice, supporters of courtroom journalism chafe at the idea that cameras get in the way. In the *Simpson* trial, for example, when Judge Lance Ito threatened to have the camera removed, Floyd Abrams, a

he would not allow camera coverage if even one justice was opposed.

FURTHER READINGS

ABA Journal. 74 (November): 52.

“Are We Being Fed a Steady Diet of Tabloid Television?” 1994. ABA Journal (May).

Caher, John. 2003. “Court TV effort to End Camera Ban Sparks Debate on Civil Rights Law.” *New York Law Journal* 229 (April 23).

“Cameras in the Courtroom: Should Judges Permit High-Profile Trials to Be Televised?” 1995. *American Bar Association (ABA) Journal* (September).

“Court TV: Frequently Asked Questions.” Available online at <www.courtstv.com/about/ctvfaq.html> (accessed October 13, 2003).

Fong, Liz. 2002. “Judges Restrict Camera Access in Courtrooms.” *News Media & the Law* 26 (fall): 12.

“Mass Media's Impact on Litigation, Lawyers, and Judges.” 1995. *Review of Litigation* (February 24).

noted **FIRST AMENDMENT** attorney, entered a plea to have it remain: the camera, Abrams said, was “absolutely, positively, 100 percent not guilty.” Not surprisingly, this is also the view of Court TV. In its 1995 report called *Facts and Opinions about Cameras in the Courtrooms*, the network noted approvingly that states require shielding witnesses, children, and others from the camera. Exactly, respond opponents. “The first thing to note about such options is that their very existence affirms the adverse effects of cameras on witnesses,” wrote Professor Rory K. Little, of the Hastings College of the Law.

This aspect of the debate—the effect on a witness of being filmed—is contentious. Few people are perfectly comfortable on television; even actors and reporters are prone to stage fright. But trials themselves can be tense events. One view is Court TV’s, which attributes nervousness to publicity and speaking in front of a group: “There is no evidence that it is related to the camera, or that [witnesses] would be less nervous in the presence of the judge, jury, defendant and three dozen furiously-scribbling reporters.” The network backs up its claim with state court research. But even if the majority of states are satisfied, not every observer is. In 1993, the Washington, D.C., Public Defender Service noted that a substantial percentage of witnesses feel uncomfortable on camera, and the district’s U.S. attorney’s office has expressed fears about cameras’ chilling witness cooperation and even endangering witnesses. The media and tourists may hound witnesses who have appeared on television, and so may others with frightening motives. After Pablo Fenjves testified in the *Simpson* case about noises

made by Nicole Brown Simpson’s dog, he told *Time* magazine that he received death threats.

Lawyers and judges can also be affected by the camera. Critics say the temptation to grandstand is overwhelming—lawyers will show off, aware that their reputation can be bolstered by flights of impressive speech. Supporters respond that lawyers had big egos long before cameras were there to record them. Yet, can judges keep order, let alone resist the temptation themselves? This old question in the debate drew comment by the U.S. Supreme Court in *Estes v. Texas* (381 U.S. 532, 85 S. Ct. 1628, 14 L. Ed. 2d 543 [1965]). In his concurring opinion in that case, Chief Justice **EARL WARREN** looked scathingly on a Texas trial judge who said that he had sworn to uphold the state constitution—not the federal Constitution. (Of course, state judges must uphold both.) “One is entitled to wonder,” Warren wrote, “if such a statement would be made in a court of justice by any state trial judge except as an appeal calculated to gain the favor of his viewing audience.” And, in 1995, much commentary in the *Simpson* case asked whether Judge Ito had succumbed to the allure of the camera when he allowed prosecutors and defense attorneys to bicker endlessly. No, said supporters, cameras can actually be a corrective for these problems. As attorney Abrams put it, “A single, silent courtroom camera serves as an antidote to such behavior by truthfully showing the public how attorneys and judges actually behave.”

The effect on juries concerns critics in a special way. Since juries are not televised, there would seem to be little reason to worry about what they will do in the jury box. Not so. It is what they may do after-

ward—especially in high-profile cases—and how that may affect their performance in the box that bothers critics. “[W]orst of all,” wrote attorney, author, and camera-opponent Wendy Kaminer, “juries will play to the prospect of appearing on talk shows when the trial is over . . . we can’t expect jurors not to be corrupted by publicity.” Book deals present another problem. There is the real possibility that people will try to get on juries simply to turn a buck; in fact, one person was dismissed from the *Simpson* jury for allegedly taking notes for this very reason. Thus, opponents argue, cameras can jeopardize the quality of justice: not only can they result in bad juries, but the dismissal of jurors can threaten to sink an entire trial. Against this argument, supporters can say little except words of regret about human nature. “Maybe we should, at long last, learn a lesson from Snow White’s stepmother,” Abrams advised. “Our mirrors are not our problem.”

Given its length, notoriety, and multiple problems, the *Simpson* case produced a backlash against televising trials. Afterward, some judges barred cameras, and others put new restrictions on them. Vowing that “nothing like the O.J. Simpson case is going to happen in my courtroom,” Judge Lawrence Antolini of the California Superior Court limited filming to five minutes a day. Critics mocked supporters’ claims that cameras help educate the public. As attorney Kaminer quipped in the *ABA Journal*, “People who claim they watch the *Simpson* case to educate themselves remind me of people who say they buy Playboy for the articles.” Court TV took much of the blame for its choice of what to broadcast—not only the *Simpson* case, but the previous trials of Lorena
(continued)

- Moyer, Bruce. 2000. “House OKs Court Improvements and Cameras in Court.” *The Federal Lawyer* 47 (July): 12–13.
- “Senate Passes Cameras-in-Court Bill.” 2001. *Associated Press* (November 30).
- “That’s Entertainment! The Continuing Debate over Cameras in the Courtroom.” 1995. *Federal Lawyer* (July).

CROSS-REFERENCES

Courtroom Television Network; Freedom of the Press; Lindbergh Kidnapping.

CAMPAIGN FINANCE REFORM

See **ELECTION CAMPAIGN FINANCING**.

❖ **CAMPBELL, BEN NIGHTHORSE**

In 1992, Ben Nighthorse Campbell, a rancher, teacher, judo champion, and jewelry designer became the first Native American to serve in the U.S. Senate in more than 60 years.



“RAISE YOUR RIGHT HAND AND TRY TO LOOK NATURAL”: THE COURTROOM CAMERA DEBATE

(CONTINUED)

Bobbitt for the castration of her husband and of brothers Erik Menendez and Lyle Menendez for the murder of their parents. One of the network's sharpest scourges, attorney ALAN M. DERSHOWITZ, proposed an alternative: a nonprofit channel to be modeled on the cable network C-SPAN that would broadcast trials of a more illuminating nature. News programs were criticized, too, for carrying too little footage during a brief experiment in broadcasting federal trials; the FEDERAL JUDICIAL CENTER determined that the average length of coverage in a newscast was only 17 seconds.

In the wake of the backlash, supporters backpedaled as quickly as possible. “The obsession with this particular television trial [Simpson’s] should not lead to a rejection of televised trials,” the *New York Times* declared in an editorial (June 11, 1995). *USA Today* editorialized, “As aberrant as the *Simpson* case is, it has become a civics lesson in the rights against SEARCH AND SEIZURE, the role of judges and the duties of jurors” (May 5, 1995). Trotting out statistics that showed that its viewers come away with greater understanding and respect for the courts, Court TV argued that “in-court camera coverage is, by definition, as dignified as the process and arguably more ‘tasteful’ than out-of-court tabloid coverage.” And when confronted with the charge that cameras had dragged out the length of the *Simpson* trial, supporters pointed to earlier trials that had lasted much longer without cameras.

One venue in which there seems virtually no chance of televised court proceedings any time soon is the U.S. Supreme Court. Supreme Court justices have assiduously shunned publicity surrounding the cases they hear. Over the years, justices have felt that such publicity could detract from the serious nature of the Court’s business. The common practice is for transcripts of proceedings to be issued after a case has been decided. On rare occasions, the Supreme Court has allowed audiotapes of proceedings to be released to the public. The hearings surrounding the 2000 presidential contest between GEORGE W. BUSH and AL GORE were deemed sufficiently important by the Court to warrant this, as were the 2003 hearings for the University of Michigan Law School AFFIRMATIVE ACTION case and the constitutionality of the McCain-Feingold campaign finance reform law. Chief Justice WILLIAM REHNQUIST stated that he would not allow cameras in the Supreme Court if even one justice objects. Judging from the comments of Justice DAVID SOUTER, who has testified before Congress twice in opposition of cameras in the court—and who has said that

cameras will come in over my dead body—

chances are the Supreme Court will be camera-free for quite some time.

The future of cameras in courtrooms is anyone’s guess. Eager to expand its business, Court TV invites its viewers to help it lobby states for greater access. The

network and other supporters especially want the Federal Judicial Conference to reopen federal trials to cameras. Critics shudder at the thought, and after *Simpson*, many proponents concede that this is unlikely. Also unlikely is that camera opponents will get their way in state courtrooms, unless the effect of *Simpson* is so great that it can undo fifty years of legal reforms. As for federal trials, as of the early 2000s cameras are permitted in only two federal courts, the Second U.S. Circuit Court of Appeals in New York and the Ninth Circuit Court of Appeals in San Francisco. Legislation is pending in both houses of Congress that would give all federal judges the option of allowing television cameras to broadcast trials. Despite continued strong opposition, the camera fought a long battle to become a fixture in court, and it will be quite difficult to send the camera away.

FURTHER READINGS

Court TV: Frequently Asked Questions, 2003. Available online at <www.courtstv.com/about/ctvfaq.html> (accessed October 21, 2003).

“Senate Passes Cameras-in-Court Bill.” 2001. Associated Press. (November 30).

West, Woody. 2003. “Will TV Cameras turn Trials into Survivor?” *Insight on the News* 19 (April 1).

Wolf, Dick, and Bill Guttentag. 2003. “Cameras in camera.” *The Wall Street Journal* (July 9).

CROSS-REFERENCES

Dershowitz, Alan Morton; Simpson, O. J.; Souter, David Hackett.

Campbell was born April 13, 1933, in Auburn, California, the son of Albert Valdez Campbell, who was part Northern Cheyenne Indian, and Mary Vierra, a Portuguese immigrant. His mother was a patient and occasional employee at a tuberculosis sanatorium when she met his father, who also worked there. They were married in 1929 and had two children, Campbell and his sister, Alberta Campbell, who died at the age of 44, an apparent suicide.

Campbell’s father was an alcoholic who frequently disappeared, leaving Campbell’s mother to support and care for the children. Campbell and his sister spent time in orphanages and foster homes when their mother was too sick to work and provide for them. Eventually, his father was able to work and the family opened a small grocery store, which prospered later when a freeway was built with an exit ramp at the location of the store.

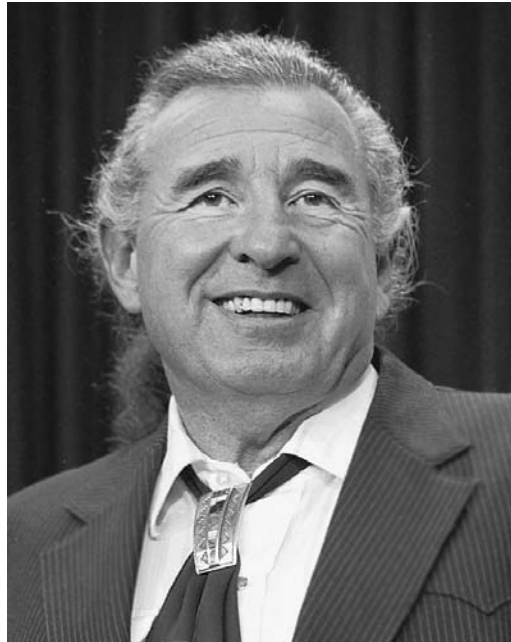
When Campbell entered high school he had little sense of enthusiasm or direction concerning his education. In 1950, he dropped out and joined the U.S. Air Force. He served in the KOREAN WAR and was discharged from the service with the rank of airman, second class. He passed the high school equivalency test to receive his general equivalency diploma, and in 1957 graduated from San Jose State University with a bachelor's degree in physical education and fine arts.

When he was a teenager Campbell became interested in judo and it became a driving force in his life. "Judo teaches you to persevere, to never give up," he said. "That skill is transferable to business, to school, to politics." Campbell continued to develop his judo skill while he was in the service, and after completing college, he moved to Tokyo, where he lived for four years, studying at Meiji University and perfecting his abilities. In 1963, he won a gold medal at the Pan-American Games and, in 1964, he was captain of the U.S. Olympic Judo Team at the Tokyo Olympic Games.

Campbell's interest in judo continued throughout his life. After the 1964 Olympics he returned to California to teach high school physical education. During the summers he conducted judo camps for children. He also pioneered judo instruction in physical education programs at California high schools. During this period he met Linda Price—they were married in 1966 and had two children, Shanan, also known as Sweet Medicine Woman, and Colin, whose Indian name is Takes Arrows.

Eventually, Campbell left his job as a physical education teacher and set up an industrial arts program at an alternative high school for troubled students. He also developed a jewelry-making class for adult Native American students, which fueled his interest in his Native American heritage. When Campbell was growing up, his father hesitated to talk about his ancestry because of his fear that the family would be subjected to discrimination. But Campbell persisted, and his father finally gave him information that led him to relatives on the Northern Cheyenne reservation in Montana. There, in 1980, he was officially enrolled as a member of the Black Horse family and of the Northern Cheyenne tribe. Currently he is one of 44 chiefs of the Northern Cheyenne.

Campbell entered the world of politics by chance. He attended a Colorado DEMOCRATIC



Ben Nighthorse Campbell.

AP/WIDE WORLD
PHOTOS

PARTY meeting in May 1982 hoping to see a friend whom he thought might be there. Party officials were trying to find someone willing to run for state representative from Campbell's district against a Republican who was considered a certain winner. No one but Campbell was willing to take on the challenge. To everyone's great surprise, he not only won but carried 57 percent of the vote, including 15 percent of the crossover vote from the Republican side.

Campbell was a Democrat whose blend of fiscal conservatism and social liberalism made him an enigma. During his two terms in the Colorado legislature he was instrumental in the passage of landmark legislation to settle disputes over Native American WATER RIGHTS. Early in his political career, he learned that his positions angered extremists on both ends of the political spectrum. He has little tolerance for single-issue zealots. "I learned early on that the more extreme their position or ideology, the less they have in common with the majority of the electorate," he said. "[They] reduce everything in America to a single issue. They do not judge a legislator on total performance, on what that representative is doing for everybody. They are concerned only with what a legislator does for them on that one single issue."

In 1986, Campbell decided to run for the U.S. House of Representatives from Colorado's third district. Since Native Americans constitute only two percent of the population of the dis-

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—BEN CAMPBELL

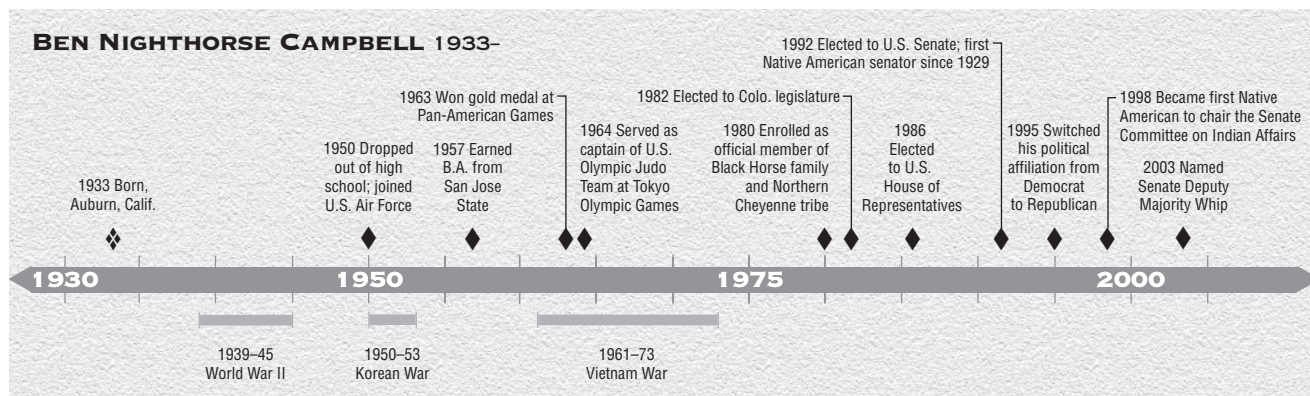
trict, Campbell and his campaign manager decided to downplay his heritage. However, his Native American background along with his diverse credentials—high school dropout, Korean War veteran, small-business owner, Olympic athlete, artist, truck driver, teacher, rancher, and state legislator—was a potent and irresistibly novel combination for both voters and the media. Ordinary people could identify with him as “one of them.” The result was a 52–48 percent win for Campbell, making him one of only six challengers nationwide to unseat an incumbent in 1986. On January 6, 1987, he stood proudly between Joseph P. Kennedy II, son of the late **ROBERT F. KENNEDY**, and **JOHN LEWIS**, son of an African American Georgia sharecropper, to be sworn in and take his seat in the One Hundredth Congress.

During his three terms as a U.S. representative, Campbell acted as a spokesman for all Native Americans, not just those he represented from Colorado. He cosponsored legislation to establish the Museum of the American Indian at the Smithsonian Institution. He also fought to have the Custer National Battlefield Monument renamed the Little Big Horn National Battlefield Monument. The Montana monument, which honors the 1876 battle between General George Armstrong Custer’s Seventh Cavalry and a group of Sioux, Cheyenne, and Arapaho Indians camped on the banks of the Little Big Horn River, memorialized and glorified the two hundred soldiers, including General Custer, who perished there. Until 1991 only a wooden marker commemorated the loss of Indian lives. In 1991, largely through Campbell’s efforts, Congress changed the monument’s name and authorized a more prominent memorial to the Indians who fought and died there.

Toward the end of his third term as a U.S. representative, Campbell expected to retire from politics. However, in April 1992, when Senator Timothy E. Wirth (D-Colo.) unexpectedly announced he would not run for reelection, Campbell decided to run for Wirth’s seat. He defeated three-term governor Richard D. Lamm to gain the Democratic Party nomination, but the campaign turned out to be an uphill struggle. Campbell at one point had a ten-point lead over his Republican opponent, but it began to slip. He became discouraged and turned to friends for advice. Their prescription was unorthodox: they prayed for him and performed rituals on his behalf, and advised him to paint his body with red war paint and carry an eagle feather at all times. Campbell did not question their wisdom; he did as they advised, and almost immediately his ratings in the polls improved. Campbell won the election by nearly ten percent and returned to Washington to become the first Native American senator in over 60 years.

During his first term in the Senate, Campbell was appointed to five key committees: Energy and Natural Resources; Banking, Housing and Urban Affairs; Democratic Policy; Veterans Affairs; and Indian Affairs.

In March 1995, barely two years into his Senate term, Campbell surprised and angered the Democratic Party by announcing that he was switching affiliation and aligning himself with the Republicans. The Democratic Party responded by calling Campbell a turncoat and Benedict Campbell, and demanding the return of \$255,000 in donated funds used to help elect him to the Senate. Campbell replied that his record of voting with the Democratic leadership on most issues should be repayment for the party’s support.



In the 1998 elections, Campbell was reelected by a wide margin over long-time ABORTION rights supporter Dottie Lamm who, like Campbell, described herself as a fiscal conservative who is socially progressive. Campbell is a member of four major Senate committees: the Appropriations Committee, the Energy and Natural Resources Committee, the Veterans' Affairs Committee; and the Senate Indian Affairs Committee. He also chaired the Commission on Security and Cooperation in Europe (Helsinki Commission).

Campbell has continued to portray himself as a jewelry-making, Harley-riding, maverick member of Congress, but his legislative agenda has become increasingly aligned with big business. Environmentalists have criticized Campbell for taking campaign contributions from groups that are financed by timber, mining, gas, and oil companies. Campbell also generated controversy after sponsoring legislation to transfer a federally-owned dam and reservoir to a privately owned land consortium. He failed to disclose that he was one of the group's largest landholders.

FURTHER READINGS

U.S. Senator Ben Nighthorse Campbell. Available online at <campbell.senate.gov> (accessed June 19, 2003).

Viola, Herman J. 1993. *Ben Nighthorse Campbell: An American Warrior*. New York: Orion Books.

❖ CAMPBELL, JOHN

John Campbell, also known as First Baron Campbell, was born September 15, 1779, in Scotland. He was admitted to the bar in 1806 and pursued a career in British law and politics.

In 1830, Campbell entered Parliament and advocated legal reforms in real property and local government. Two years later he served as

SOLICITOR GENERAL, and from 1834 to 1841, he was attorney general. In 1850 he performed the duties of Chief Justice of the Queen's Bench and in 1859 became Lord Chancellor.

Campbell is credited with the passage of three important pieces of legislation: the LIBEL Act, in 1843; the Copyright Act, in 1846; and the Obscene Publications Act, in 1857.

As an author, Campbell is famous for *Lives of the Lord Chancellors*, published from 1845 to 1847, and for *Lives of the Chief Justices*, published from 1849 to 1857.

Campbell died June 23, 1861, in London, England.

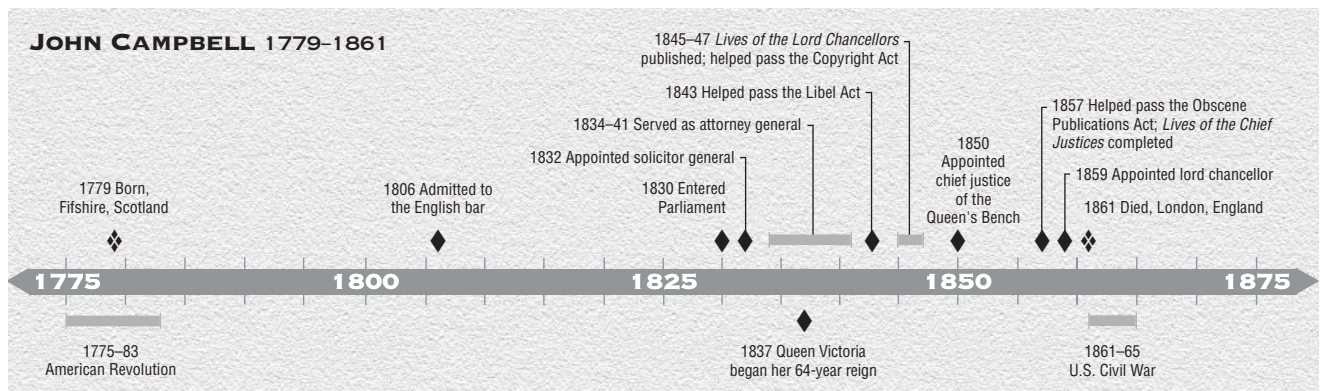
❖ CAMPBELL, JOHN ARCHIBALD

John Archibald Campbell was a politician, a statesman, and an associate justice on the U.S. Supreme Court during the turbulent years preceding the outbreak of the Civil War.

Born June 24, 1811, in Washington, Georgia, the son of a prominent landowner and lawyer, Campbell was a child of exceptional intellectual ability. He entered Franklin College (now the University of Georgia) at the age of eleven and graduated at fourteen with high honors. He then entered West Point but he withdrew after three years to return home and support his family following the death of his father. He also studied law privately and in 1828, at the age of eighteen, he was admitted to the Georgia bar by a special act of the Georgia legislature. He then moved to Alabama, married, and practiced law, first in Montgomery and then in Mobile.

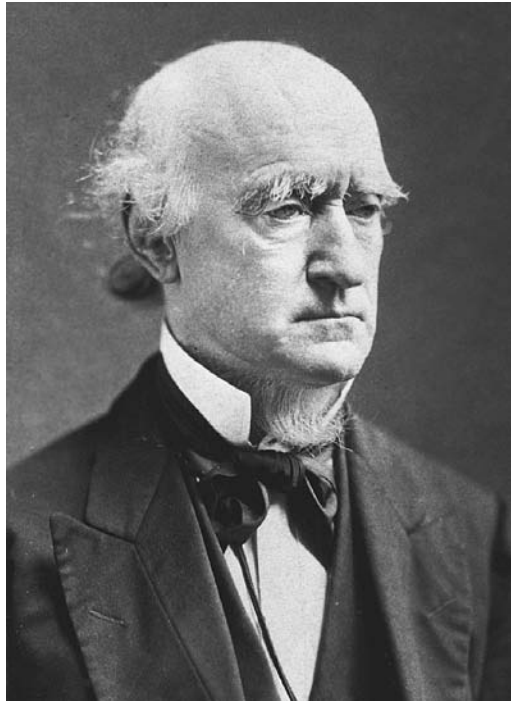
Widely known for his skilled arguments and his extensive knowledge of the law, Campbell quickly became a leading lawyer in Alabama. He turned down two appointments to the state supreme court, the first one offered to him when

"THE SUPREME COURT IS A VENERABLE TRIBUNAL THAT DESERVES WELL OF THE COUNTRY. IT OUGHT NOT . . . BE AFFECTED BY REVOLUTIONARY POLITICS AND I SHALL TAKE CARE THAT THROUGH ME THIS SHALL NOT BE DONE."
—JOHN CAMPBELL



John Archibald Campbell.

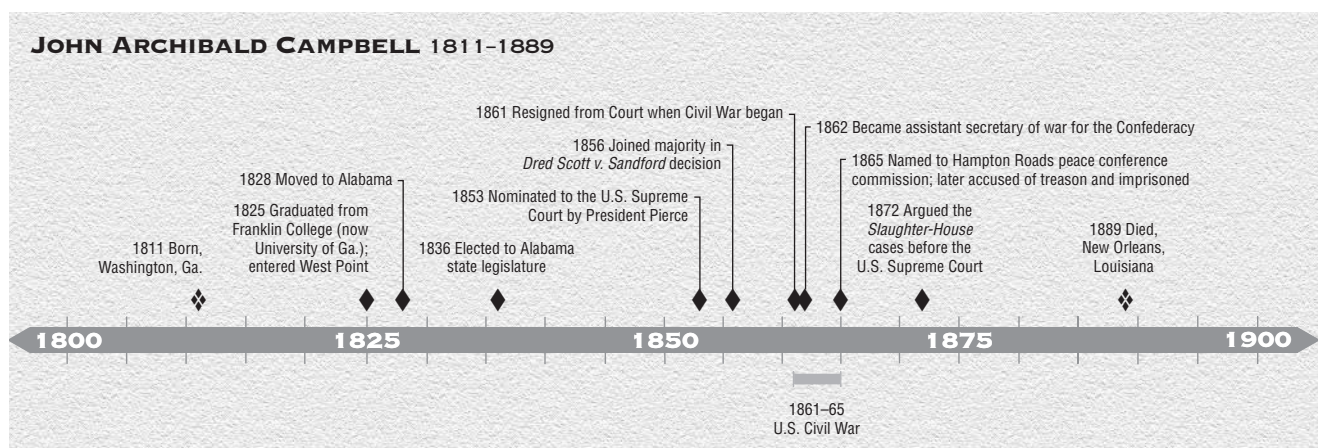
ETCHING BY MAX ROSENTHAL. THE GRANGER COLLECTION, NEW YORK



he was only twenty-four. An active Democrat, Campbell also found time for politics and, in 1836, he was elected to the first of two terms in the Alabama state legislature. He was a delegate to the Nashville Convention of 1850 which was convened to protect southern rights against what was viewed as the growing encroachment of the North, especially with respect to **SLAVERY**. Campbell, known for his moderate views, prepared many of the resolutions adopted by the convention, which were conciliatory in nature and designed to avoid inflaming passions on the slavery issue.

Campbell was nominated to the U.S. Supreme Court in March 1853 by President **FRANKLIN PIERCE**, the new Democratic president, after the Senate had previously refused to act on three candidates offered by the lame-duck president **MILLARD FILLMORE**. The sitting justices of the Court had taken the unprecedented step of sending a delegation to the president to request that Campbell be nominated to the Court. Campbell, only forty-one at the time, was confirmed unanimously.

Campbell was, for the most part, a vigorous **STATES' RIGHTS** advocate while on the Court. In his dissent in *Dodge v. Woolsey*, 59 U.S. 331, 18 How. 331, 15 L. Ed. 401 (1855), for example, he argued against the Court's extension of federal jurisdiction over state-chartered corporations. Campbell believed that state legislatures should regulate such matters. However, Campbell displayed somewhat more moderate views with respect to slavery. He opposed secession and argued that slavery would eventually disappear on its own and be replaced by free labor if the South were left undisturbed. Upon his appointment to the Court, he freed all his own slaves and then hired only free blacks as servants. But Campbell was nevertheless widely criticized for his views, especially by northern abolitionists, when he joined the majority of the Court in the controversial *Dred Scott* decision. In **DRED SCOTT V. SANDFORD**, 60 U.S. 393, 19 How. 393, 15 L. Ed. 691 (U.S. Mo. Dec. Term 1856), the Court held that blacks were not citizens of the United States, with the right to sue in federal court. In his concurring opinion, Campbell contended that the federal government had no choice but to recognize as property whatever the



laws of the individual states determined to be property, including slaves.

In 1861, Campbell served as an unofficial mediator between the federal government and southern commissioners seeking a resolution to the conflict over secession and slavery. SECRETARY OF STATE William H. Seward, acting through Campbell but without the authority of the president, promised that Fort Sumter, South Carolina, then occupied by federal troops, would be evacuated. When it was instead reinforced, Campbell was accused of treachery by the southern commissioners.

When the Civil War later broke out and Alabama seceded from the union, Campbell remained loyal to his home state and resigned from the Court in April 1861. After returning to the South, he was appointed assistant secretary of war for the Confederacy. When the Confederacy collapsed in 1865, he was named to the commission at the Hampton Roads peace conference, which was convened to help bring about peace between the North and South. The commission failed to reach any agreement. Campbell again attempted to intervene to bring about peace, this time through a private meeting with President ABRAHAM LINCOLN, which resulted in an order allowing the Virginia legislature to convene to consider Lincoln's terms for reconstruction. Within a few days the South surrendered and Lincoln withdrew his approval of the meeting, claiming that Campbell had misconstrued the terms of the plan. After Lincoln's assassination Campbell was accused of TREASON and imprisoned for several months.

Virtually all Campbell's property and belongings in Alabama were destroyed during the war and after his release from prison he faced the prospect of starting over. He decided to settle in New Orleans, where he soon established another successful law practice along with a nationally renowned private law library. He appeared before the U.S. Supreme Court in a number of significant cases, including the SLAUGHTER-HOUSE CASES, 83 U.S. 36, 16 Wall. 36, 21 L. Ed. 394 (1872). In the *Slaughter-House cases*, the Court considered the legality of a statute that granted a corporation chartered by the state of Louisiana the exclusive right to maintain within New Orleans all butcher shops, slaughter pens, stockyards, and stables. Campbell, though previously known for favoring the rights of states, argued that the law created a MONOPOLY in violation of the recently adopted

Fourteenth and Fifteenth Amendments of the Constitution. The Court, in construing the FOURTEENTH AMENDMENT for the first time in its history, narrowly rejected Campbell's argument in a 5–4 decision that would be reversed twenty years later.

Campbell continued to practice law for another quarter century before withdrawing to a reclusive retirement in New Orleans. He died in 1889 at the age of seventy-seven.

FURTHER READINGS

Congressional Quarterly. 1989. *Guide to the U.S. Supreme Court*. 2d ed. Washington, D.C.: Congressional Quarterly.

Elliott, Stephen P., ed. 1986. *A Reference Guide to the United States Supreme Court*. New York: Facts on File.

Saunders, Robert, Jr. 1997. *John Archibald Campbell, Southern Moderate, 1811–1889*. Tuscaloosa: Univ. of Alabama Press.

Swisher, Carl B. 1974. *The Taney Period, 1836–64*. Vol. 5 of *History of the Supreme Court of the United States*. New York: Macmillan.

❖ CAMPBELL, WILLIAM JOSEPH

When he was named to the federal bench at age thirty-five in 1940, William J. Campbell was the youngest judge ever appointed; at the time of his death, he was the longest-tenured federal judge in the United States, with almost fifty years of service to his credit.

William Joseph Campbell was born in Chicago on March 19, 1905. The son of a Scottish wool merchant, he grew up in a middle-class neighborhood on the city's west side. There, he attended St. Rita High School and St. Rita College. After graduation, he worked as an insurance claims adjuster while enrolled in a night program at Chicago's Loyola University law school. Campbell earned his doctor of JURISPRUDENCE degree in 1926 and was admitted to the Illinois bar in 1927. He returned to Loyola in 1928 to complete a master of laws degree.

Shortly after passing the bar in 1927, Campbell partnered with a longtime friend to open the law firm of Campbell and Burns. The new firm's first major client, the Roman Catholic Archdiocese of Chicago, would have a profound influence on Campbell's professional life, introducing him to the world of Chicago Democratic politics.

With the help of church leaders and prominent Chicago Catholics, Campbell formed the

"THE CRIME OF TREASON . . . IS THE ONLY CRIME DEFINED BY THE CONSTITUTION. . . . THE REASON FOR THIS, NO DOUBT, WAS THAT ITS AUTHORS AND ADOPTERS CONSIDERED TREASON THE HIGHEST OF ALL CRIMES."
—WILLIAM CAMPBELL

Young Democrats for Roosevelt in 1932, when FRANKLIN D. ROOSEVELT was governor of New York and a presidential hopeful. The powerful Chicago Democratic political machine shunned Roosevelt and used its power to thwart Roosevelt's efforts to secure permits for his campaign events. Undaunted, Campbell put a bishop in front of a Catholic Youth Organization band and had them march through the streets of Chicago in an "illegal parade" that brought considerable attention to the candidate. Years later, Campbell said, "Naturally, when all those Irish policemen saw the bishop, they weren't about to do anything but say hello and salute."

After Roosevelt's election, Campbell continued to be an outsider in Chicago Democratic politics, but he had clearly earned Roosevelt's attention and admiration. In 1935 Campbell was named Illinois administrator for the president's National Youth Administration.

In 1938 Campbell was named U.S. attorney for the Northern District of Illinois. Appointed by Roosevelt to fight the Chicago Democratic political machine, Campbell made the most of the job. As a young federal prosecutor, he crossed paths with many of the city's more colorful citizens, including notorious gangster AL CAPONE, and he continually challenged the city's political leaders and their system of influence.

Two years later, in an effort to appease those leaders during an election year, Roosevelt removed Campbell as prosecutor—and appointed him to a federal judgeship. "I got kicked upstairs," Campbell said. "[Roosevelt] needed the machine for the election." Campbell was appointed U.S. district judge for the Northern District of Illinois on October 10, 1940, and he began his long judicial career on October 22.

As a prosecutor, Campbell had been part of the team that convicted Capone of TAX EVASION; in his early years as a judge, he supervised Capone's PAROLE. "I insisted that . . . he never set foot in Cook County [Illinois], and he agreed to it," said Campbell. "I also insisted that he pay every last nickel in taxes he owed the government." Capone protested by paying his millions of dollars in back taxes in pennies. Though a Chicago bank actually counted and verified the amount in a day, Campbell initially threatened to do the job himself, one penny at a time—and to make Capone sit in jail until he had finished.

Only two years into his federal judgeship, Campbell conducted one of the few TREASON

trials ever held in the United States (*United States v. Haupt*, 47 F. Supp. 832 [N.D. Ill. 1942], *opinion supplemented by* 47 F. Supp. 836 [N.D. Ill. 1942]). He sentenced three men to death after they had been convicted in a Nazi plot to poison Chicago's water supply. "We had to blaze a trail" in that case, he said, because there were no statutes governing such matters. Campbell said the only guidelines available were in the U.S. Constitution. Though an appellate court later overturned the death sentences (*United States v. Haupt*, 136 F.2d 661 [7th Cir. 1943]), Campbell often called the case a highlight of his career.

Campbell was named chief judge of the U.S. District Court in Chicago on April 6, 1959. In his years on the federal bench, he earned a reputation as an innovative, courageous, and practical jurist. Fellow U.S. district judge James C. Paine said Campbell was "the kind of judge each of us would like to be."

When asked to hear politically charged Illinois reapportionment cases in the late 1950s, Campbell called a historic joint session between the federal court and the Illinois Supreme Court to resolve the issues. Even though the state legislature had been unwilling or unable to act, Campbell's unique team was able to reapportion Illinois's state and federal legislative districts to the satisfaction of most parties.

In the early 1960s, Campbell summoned a group of private attorneys to a luncheon. There, he pointed out the financial benefit they were realizing from U.S. BANKRUPTCY court case assignments. He asked the group to return the favor by contributing money so that the city might provide lawyers for indigent defendants. They did. "A word from the chief judge went a long way," said HUBERT WILL, another federal district judge in Chicago. Campbell also had a knack for appropriating money for the federal judiciary. Owing in large part to his efforts, the budget for the judiciary between 1960 and 1970 increased from \$51 million to \$117 million.

Chicago's federal defender program, resulting from Campbell's luncheon and gentle arm-twisting, was launched in 1965. It became a model for the nation long before programs offering free representation for indigent clients accused of committing federal crimes were mandated and funded by Congress. Also in 1965, Campbell set up an internship program for law school students. A novel idea in 1965, it is now commonplace.

Campbell was equally committed to the continuing professional education of judges and supporting personnel. He was a force in the establishment of the **FEDERAL JUDICIAL CENTER**, which is the federal courts' agency for research and continuing education. It was established by statute in 1967 as a separate organization within the federal judicial system (28 U.S.C.A. 620-629). Through the Federal Judicial Center, Campbell participated in hundreds of seminars and workshops in all parts of the United States in order to give new district judges, magistrates, bankruptcy judges, clerks of court, **PROBATION** officers, and other judicial personnel the benefit of his wisdom and experience.

Campbell served as First District judge representative of the Seventh Circuit on the **JUDICIAL CONFERENCE OF THE UNITED STATES** (1958–1962); member of the Committee on Pretrial and Protracted Case Procedures (1941–1960); and chairman of the Judicial Conference Committee on the Budget (1960–1970). He was the author of numerous publications, including the first manual on protracted case procedures. Among the many honors accorded him were degrees from Loyola University (doctor of laws, 1955), Lincoln College (doctor of laws, 1960), Duquesne College (doctor of letters, 1965), and Barat College (doctor of **CANON LAW**, 1966).

Twice during Campbell's first thirty years as a federal judge, he turned down an offer to sit on an appellate court as well as an offer to return to a lucrative private law practice. The appellate court was, for him, too far removed from the daily hustle of trial court.

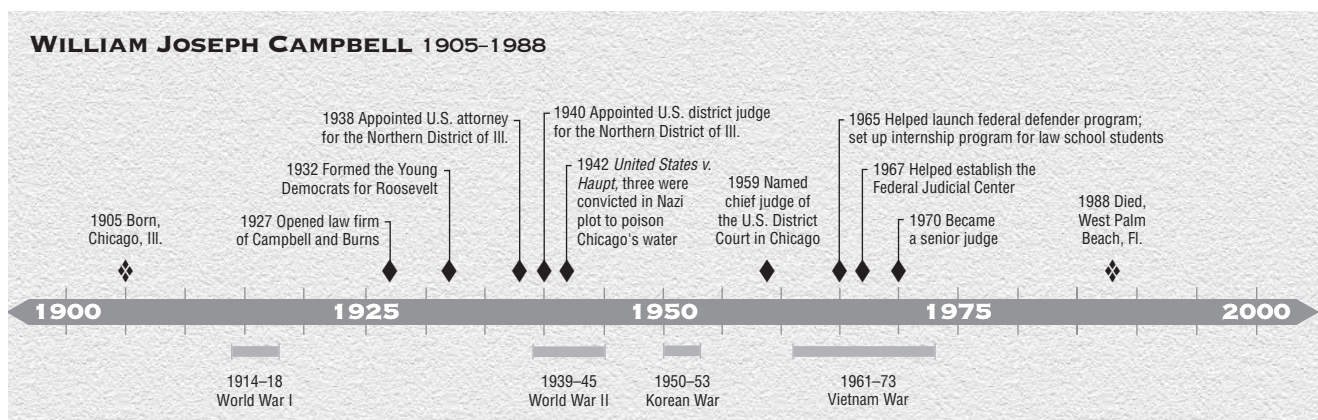
When Supreme Court justice **FELIX FRANKFURTER** died in 1965, many thought Campbell

was certain to be appointed to the Court by President **LYNDON B. JOHNSON**. But Johnson chose **ABE FORTAS**, who resigned under pressure four years later. When asked about the missed opportunity many years later, Campbell said, "Although I knew Johnson intimately and personally, he was bigoted enough not to want two Catholics on the Supreme Court." Justice **WILLIAM J. BRENNAN JR.** was the one Catholic already on the Court.

Campbell spent little time lamenting the lost Supreme Court nomination. Late in 1965, he decided to take on Chicago syndicate kingpin Sam Giancana. When Giancana was asked to testify before a Chicago **GRAND JURY**, he invoked his **FIFTH AMENDMENT** right to remain silent. Campbell did something never done before: he gave Giancana **IMMUNITY** from prosecution and ordered him to testify. After Giancana refused, he spent the next year in jail on **CONTEMPT** charges.

In spite of his toughness on **ORGANIZED CRIME** and career criminals, Campbell showed compassion for men who refused to fight in the nation's wars. When handing out sentences for draft cases during **WORLD WAR II** and the **VIETNAM WAR**, he often ordered the defendants to perform community service. He did not see draft evaders as criminals and refused to treat them as such.

Campbell became a senior judge on March 19, 1970, his sixty-fifth birthday. Though he was eligible to retire with full pay for the rest of his life, he could not accept the thought of leaving the workforce. As a senior judge, he heard cases first in Chicago, and then in the Southern District of Florida, following a move to West Palm Beach in the mid-1970s. In his last years, he devoted his time to writing opinions for the



Chicago-based U.S. Seventh Circuit Court of Appeals. He traveled to Chicago from West Palm Beach twice a year to sit on cases there.

Campbell, who was seen pushing a wheelchair full of legal briefs and court opinions into his chambers well into his eighty-second year, died on October 19, 1988, in West Palm Beach, at the age of eighty-three.

CANADA AND THE UNITED STATES

The United States and Canada share a unique legal relationship. U.S. law looks northward with a mixture of optimism and cooperation, viewing Canada as an integral part of U.S. economic and environmental policy. The two nations' mutual, largely unguarded 5,000-mile border does much to explain why: each is the other's largest trading partner, amassing \$218 billion in trade in 1992; cross-border travel is easy; and they work together on common concerns about the quality of water and air. However, the relationship has not always been so cooperative. Although environmental treaties date to 1902, economic pacts have taken nearly a century to come to fruition. Traditionally, both countries warily put protectionism ahead of mutual interest, and they have retaliated in kind against tariffs, duties, and other barriers to free trade. Only in 1988 did the two enter into the U.S.-Canada Free Trade Agreement (FTA) (Pub. L. No. 100-449, 102 Stat. 1851), a groundbreaking pact designed to eliminate these barriers. It paved the way for the historic NORTH AMERICAN FREE TRADE AGREEMENT (NAFTA) in 1993.

Early relations between the two countries were rocky. In the mid-nineteenth century, trade foundered on stubborn protectionist policies; each country feared the economic success of the other at its own expense. The 1854 Elgin-Marcy Reciprocity Treaty (10 Stat. 1089) was intended to open up trade in natural resources but it barely lasted a decade. Its failure prompted Canada to spend fruitless years trying to loosen U.S. trade restrictions before formulating, in 1879, a national policy of high tariffs by which it hoped to force the United States back to the negotiating table. But the table remained empty for nearly a century. The only trade agreement between the two nations was the GENERAL AGREEMENT ON TARIFFS AND TRADE (GATT), a 100-nation agreement first reached in 1947. The generality of the GATT accords did little to address the specific issues facing these two trad-

ing partners and it caused Canada, in particular, frustration. But U.S. prosperity throughout the mid-twentieth century meant it could afford to ignore Canadian complaints.

The two were more willing to negotiate on environmental concerns. The landmark agreement in this area is the Boundary Waters Treaty of 1909. It established the International Joint Commission (IJC) to deal with the issues of water resource management, a set of concerns referred to as transboundary issues because of the two nations' common border. Made up of technical specialists from various federal, state, and provincial governments of the United States and Canada, the IJC has authority to approve joint projects and to investigate complaints. Since the 1970s its duties have expanded as the result of the Great Lakes Water Quality Agreements that established goals for restoring the damaged ecosystem of the Great Lakes. Contemporary concerns facing the IJC include water levels, POLLUTION, acid rain, and climate changes, with a growing emphasis on the use and maintenance of river systems. Critics generally agree that the success and innovation of this commission represent a model for international cooperation.

Despite progressive solutions to environmental problems, it took the United States and Canada until the late 1980s to forge better economic ties. The slow progress toward open trade was due to mutual suspicions, greed, and a long history of retaliatory actions. This hindrance stood in stark contrast to the countries' cultural similarities and cooperation in other areas. They had been allies in both world wars and both remained key members of the NORTH ATLANTIC TREATY ORGANIZATION (NATO). But war is an unusual circumstance; military allies can still be less than friends in trade. Then, the last half of the twentieth century unexpectedly changed everything—domestic industrial decline, brought on by a rise in international competition, toppled the United States from a position of preeminence and made Canada more important to its plans for long-range prosperity. Canada underwent a great change in its historically isolationist outlook as it too suffered economically. The 1984 election of a conservative Canadian government led by Prime Minister Brian Mulroney was a watershed event. Mulroney's victory was based on promises of opening U.S. markets to Canadian business. Both sides wanted to remove the barriers of high tar-

iffs, antidumping fees, and countervailing duties (forms of protectionism that limited the expansion of each nation's markets) in order to create new jobs and wealth.

On January 2, 1988, negotiations between the administrations of President RONALD REAGAN and Prime Minister Mulroney resulted in the signing of the FTA. In succeeding where previous generations had failed or not even tried, Reagan declared that the FTA would remove an "invisible barrier of economic suspicion and fear." The pact had five broad goals: (1) eliminate barriers to trade in goods and services, (2) improve fair competition, (3) liberalize investment conditions, (4) establish procedures for a joint administration of the agreement, and (5) lay the foundation for future cooperation. The FTA also relaxed U.S. immigration rules for Canadians, allowing freer travel across the border for businesspersons.

On the administrative level it created a temporary body for resolving disputes, the binational Extraordinary Challenge Committee, which was given a seven-year commission to hear appeals. Not surprisingly, this issue had been the most troublesome during the negotiations preceding the FTA; it proved slightly problematic in practice, too, with the United States generally losing its complaints. Nonetheless, the FTA was seen as a boon for U.S. business as a whole, removing Canadian

restrictions that had long been a sore point and emphasizing the resolution of disputes outside courtrooms.

The FTA's success laid the groundwork for an even more ambitious trade agreement between the United States, Canada, and Mexico, the much-anticipated NAFTA, enacted in 1993. NAFTA's changes were to be phased in over 15 years, and its purpose is to liberalize trade between the three countries in hopes of emulating the economic cooperation long enjoyed by European nations. In practice, its broad aims proved highly controversial.

Just looking at the numbers, however, suggests that NAFTA has been an unqualified success in expanding trade between the United States, Canada, and Mexico. The United States has nearly doubled its trade to its NAFTA partners in the time since the agreement was signed. As for Canada, its merchandise exports to its NAFTA partners since the implementation of NAFTA increased 95 percent, from \$117 billion to \$229 billion.

This is not to say that NAFTA has resolved all trade issues between the United States and Canada. A good example is a recent dispute over softwood lumber. U.S. lumber producers claim Canadian softwood lumber is subsidized by Canada illegally and that companies sell at below production costs. Because of these complaints, the United States placed a tariff of up to



On December 12, 2001, the Canada-U.S. Smart Border Declaration was signed with the intention of addressing security risks at crossings along the 5,525 mile border.

AP/WIDE WORLD
PHOTOS

29 percent on Canadian softwood lumber exports. The results have costs jobs in Canada and driven up home building prices in the United States. As of 2003, it was expected that only the World Trade Organization could resolve the dispute.

Relationships between the United States and Canada are not just about trade. Particularly in the days since September 11, 2001, they have been about security issues as well. After the attack on the United States, many Americans expressed concern about what they viewed as the lax security and border enforcement on the Canadian side of the border. At the same time, Americans recognized the immediate assistance Canada provided the United States during the post-attack period when the area of the continental states constituted a no-fly zone and many planes were rerouted to Canadian airports.

In response to those concerns, in December of 2001 the Canadian and United States governments signed a "smart border" accord. The accord featured an action plan with 30 points designed to secure the cross-border flow of goods and people, protect infrastructure, and improve information sharing and coordination to enhance these objectives. Among other items, the accord includes development of a system for pre-approving goods, factories, carriers, drivers and trucks for electronic pass-through clearance at border checkpoints. While the accord has not succeeded in quieting all security complaints from the United States, it has helped smooth things out.

Security is not the only concern regarding cross border traffic. In mid-2003 Canada was considering the decriminalization of marijuana which caused American law officials to worry about whether the drug trade would increase as a result on the Canadian side of the border. U.S. Drug czar John Walters has warned that Canadian laxity on marijuana could lead to tighter control being placed on the cross-border flow of people and goods.

There have been other tensions over the Canadian government's refusal to support the war in Iraq. Yet despite these problems it seems clear that Canada and the United States have more common interests than disputes. At the beginning of the twenty-first century, Canada and the United States continued the economic integration that NAFTA put on the fast track, and seemed likely in the future to become more interdependent than ever.

FURTHER READINGS

- "Dispute Resolution under Chapter 19 of the United States–Canada Free-Trade Agreement: Did the Parties Get What They Bargained For?" 1995. *Stanford Journal of International Law* (winter).
- "The Effect of the United States–Canada Free Trade Agreement upon United States Immigration Law." 1988. *Practicing Law Institute* (October 1).
- "From Customary Law to Environmental Assessment: A New Approach to Avoiding Transboundary Environmental Damage between Canada and the United States." 1995. *Boston College Environmental Affairs Law Review* (winter).
- McKenna, Barrie. February 3, 2003. "Canada Turns on the Charm to Woo the U.S." *The Globe and Mail*.
- "The North American Experience Managing Transboundary Water Resources: The International Joint Commission and the International Boundary and Water Commission." 1993. *Natural Resources Journal* (spring).
- Rae, Robert K. 2000. "The Politics of Cross Border Dispute Resolution." *Canada United States Law Journal*.
- "United States–Canadian Free Trade: Economic Repercussions of the CFTA and NAFTA on the United States, Canada, and the Great Lakes Region." Great Lakes Symposium 1994. *University of Toledo Law Review*.

CROSS-REFERENCES

General Agreement on Tariffs and Trade; North Atlantic Treaty Organization.

CANALS

Artificial channels for the conveyance of water, used for navigation, transportation, drainage, or irrigation of land.

As a general rule, states supervise the construction and operation of canals by private canal companies. The site of the canal is selected by the state. State law determines the manner of acquiring property used for construction or maintenance of canals. Condemnation or appropriation and contract or grant are the usual methods of acquisition. Additional methods include accretion—the gradual accumulation of land by natural causes—and dedication—the gift of land to the government by its owner for public use.

The state has authority to supervise the construction of bridges over public canals. A city may build bridges over canals within its limits, but it cannot interfere with one constructed and managed by the state on its own property.

State law can confer the power to charge tolls for use of a canal. Rates can be neither discriminatory nor in excess of the amount authorized by law.



A ship travels through the Gatun Locks of the Panama Canal. Completed in 1914, the Panama Canal connects the Atlantic and Pacific oceans. AP/WIDE WORLD PHOTOS

CANCELLATION OF AN INSTRUMENT

An equitable remedy by which a court relieves both parties to a legal document of their obligations under it due to FRAUD, duress, or other grounds.

Cancellation is a term often used interchangeably with **RESCISSION**, but whereas only a document can be canceled, any agreement—whether oral or written—can be rescinded. Cancellation is distinguishable from reformation, which is an action by a court to enforce a document after its terms have been reframed in accordance with the intent of the parties, in that cancellation abrogates the duties of the parties under the instrument.

Any instrument by which two or more parties agree to exchange designated performances, such as a contract, deed, lease, insurance policy, **COMMERCIAL PAPER**, or a mortgage, may be canceled if the circumstances of the case warrant it.

The judicial remedy of the cancellation of an instrument is granted by a court in its sound discretion exercising its **EQUITY** powers to do justice. If it is apparent that no injustice will result from restoring both parties to the positions they had prior to the execution of the instrument, an instrument may be set aside.

If the party seeking the cancellation has an adequate remedy at law, for example, and can recover damages that will give complete relief, cancellation will be denied. It is available, however, if the defendant is judgment-proof or financially unable to pay damages awarded against him or her. Statutes, too, may provide this equitable remedy as concurrent relief, in addition to damages, in particular cases. The

UNIFORM COMMERCIAL CODE permits merchants in sales transactions to seek the cancellation of a contract, in addition to an award of damages in a breach of contract suit.

A plaintiff is entitled to have an instrument canceled only if he or she has acted equitably in dealings with the defendant. The principles of equity apply to any case in which this equitable remedy is sought.

Grounds

The cancellation of an instrument must be based upon appropriate grounds, the gist of which makes the enforcement of the instrument inequitable. Such grounds must be proven by a **PREPONDERANCE OF THE EVIDENCE** presented in the civil action. A term of a document may provide for its cancellation, and courts will usually act accordingly when the facts warrant it. The setting aside of an instrument that appears to record the agreement of the parties to it is considered a significant intervention by a court, which will not be done for a trivial reason or merely because of a change of mind by one party. The primary grounds for cancellation involve the validity of the instrument itself and the agreement that it embodies.

Duress An instrument that was obtained by duress, the use of threats or physical harm to compel one party to enter an agreement that he or she would not have made otherwise, can be canceled at the request of the victimized party. If duress was present at the time the contract was entered, the agreement of the parties is a sham, as the victim was forced to act against his or her will. It would be inequitable for a court to enforce such an agreement.

Fraud An instrument may be set aside if it was induced by fraud—an intentional deception of another—to gain an advantage over him or her. To justify cancellation, it must be clearly established that the representations made to the victim were untrue and of such a material nature that without them the victim would not have agreed to the transaction. In addition, it must be shown that such statements were made intentionally to defraud the victim and that the statements were relied upon by him or her in the decision to enter the agreement. Fraud vitiates an agreement, which makes it unjust to enforce a document embodying its terms.

If, however, a material **MISREPRESENTATION** is made innocently by one party, the victim is still entitled to have the instrument set aside, as

it does not reflect the mutual assent of the parties.

Mental Incapacity If an agreement has been made by one party who, at the time of its execution, was mentally incapable of understanding the nature of the transaction, it may be canceled at the request of the victim or the victim's legal representative. This is particularly true when the other party has taken advantage of the victim's incompetence in drawing the terms of the agreement.

Courts frequently cancel an instrument entered by a person so intoxicated at the time of executing the document that he or she does not comprehend its legal ramifications. Cancellation is justified particularly when the intoxication is brought about by the other party in order to deceive the victim about the nature of their agreement.

Mistake When the parties have both made a mutual **MISTAKE OF FACT** concerning the agreement entered, an instrument may be canceled, since there is no real agreement between them. If a unilateral mistake exists, that is, a mistake by one party, a court may set aside the document and restore the parties to their position prior to its execution. In order to justify cancellation, a mistake must be material and involve a significant part of the agreement without which the contract would not have been entered into. If the mistake is the result of the carelessness of one or both parties, a court may deny a request for cancellation.

Undue Influence **UNDUE INFLUENCE**, which is the unfair use of pressure on the will of another to gain an advantage over him or her, is a ground for the cancellation of an instrument because one party's will is so overcome by pressure that the person is effectively deprived of freedom of choice. Undue influence is usually established when there is a confidential relationship between the parties and one of them has a greater bargaining power or influence on the other.

Forgery or Alteration The cancellation of an instrument is justified when it has been forged. Moreover, if an instrument has been materially altered without the consent or knowledge of the party against whom the change is effective, the instrument may be set aside.

Preclusion of Relief

A person seeking the equitable relief of the cancellation of an instrument might be precluded from it by waiver or **ESTOPPEL**. The right

to such relief may be waived or relinquished by a plaintiff's conduct, such as by failing to pursue a remedy within a reasonable time from the execution of the document, a form of **LACHES**. The doctrine of equitable estoppel—by which a person is precluded by conduct from asserting his or her rights because another has relied on that conduct and will be injured if the relief is not precluded—may also operate in a case in which cancellation of an instrument is sought.

The ratification of a document by a party prevents its subsequent abrogation. If a party knowingly affirms or ratifies an instrument—whether by stating so, or by using the property received under it—he or she is precluded from having it set aside.

FURTHER READINGS

Ruff, Anne. 1999. *Contract Law*. London: Sweet and Maxwell.

CROSS-REFERENCES

Duress; Fraud; Sham.

CANON LAW

Any church's or religion's laws, rules, and regulations; more commonly, the written policies that guide the administration and religious ceremonies of the Roman Catholic Church.

Since the fourth century, the Roman Catholic Church has been developing regulations that have had some influence on secular (non-church-related) legal procedures. These regulations are called canons and are codified in the Code of Canon Law (in Latin, *Codex juris canonici*).

The law of England, which inspired much of the law formed in the United States, was a mixture of canon law and **COMMON LAW** (principles and rules of action embodied in case law rather than legislative enactments). Canon law and English common law borrowed heavily from each other throughout medieval times and together formed the basis for many of the legal procedures used in the United States. For example, canon law's influence is still visible in the concepts of the **GRAND JURY**, presentment (a description of a criminal offense that is based on the jury's own knowledge), and some characteristics of U.S. marriage law.

Canon law has its origins in ancient church writings, decisions made by the general councils of local bishops, and rulings issued by the pope. These ideas were organized in the mid-twelfth

century by an Italian law teacher, Gratian. He sorted the collection into religious law, penal law, sacramental law, and other categories. Along with a set of decisions by the pope called Decretals of Gregory IX, Gratian's work formed the main body of canon law for nearly eight hundred years. In 1917, Pope Benedict XV recodified (revised) the canons. Pope John Paul II reissued the Code of Canon Law in 1983—authorizing increased participation of laity in the church, recognizing the needs of disabled people, and making other changes. A related text, the Code of Canons of the Eastern Churches, was reissued by the Holy See (the seat of papal government) in 1990.

In the Middle Ages, canon law was used in ecclesiastical courts (church) to decide many types of cases that in modern times are decided by civil courts, including criminal offenses. This was because most English Christians did not make a great distinction between secular and spiritual offenses. Crimes that were tried by the church included ADULTERY, blasphemy, slander, heresy (opposition to official religious views), money lending, and gambling. From the late fourteenth to the early sixteenth centuries church courts also heard many breach-of-faith cases concerning contracts, as well as inheritance and marriage-related cases.

Criminal trial procedures in medieval church courts were the source of some features that found their way into common law. Although witnesses were considered the best source of proof of a crime under canon law, suspected offenders could also be tried because of public fame (suspicion in the community that they had committed a crime). An inquest made up of twelve men—a forerunner of royal courts' grand juries—said under oath whether public suspicion existed. If none did, then a judge had no authority to proceed. After establishing public fame, the court's next step was canonical purgation, in which the accused person swore an oath that she or he was innocent. Proof of innocence was accomplished by compurgation, in which several oath helpers would swear that they believed the oath was true. People who objected to the purgation of an accused person had the chance to prove their accusation of guilt.

The use of canon law in governmental decisions is not well documented. In the early fifteenth century, commissions of the English Parliament made use of canonical procedures and canon law experts to decide issues involving

laws of war, diplomacy, and other questions. For example, Parliament's justification for deposing King Richard II seems to have been based on papal bulls (decrees).

In modern times, the creation, interpretation, and use of the canons closely resemble those of secular law. The Episcopal Conference of Local Bishops and the National Conference of Catholic Bishops are voting bodies that set policy for the church. When policy has been codified, it is used by judges in Catholic tribunals in determining whether certain practices or requests are acceptable according to the canons. (Catholic tribunals make up the Church's own court system, which interprets canonical policy to resolve questions of church practice.) Case law (previous rulings) is published in *Roman Replies* and has precedential value. Judges may also request assistance from the CANON LAW SOCIETY OF AMERICA, a research organization, in interpreting the canons.

Catholics who appear before a tribunal may consult canon lawyers, who are not usually secular lawyers. A canon lawyer typically completes at least two years' worth of course work in the canons. North American canon lawyers receive their degree in canon law from one of two institutions: the Catholic University of America, in Washington, D.C., or St. Paul University, in Ottawa, Ontario, Canada.

By the end of the twentieth century secular law had eclipsed canon law in most aspects of public life. Interbody disagreements within the church are now often handled administratively rather than by a tribunal, but within the confines of canon law. However, the tribunal is still the only place where Catholics can secure a marriage ANNULMENT, and each diocese must maintain a tribunal for this purpose. Divorced Catholics who have been denied an annulment can appeal as far as the Sacred Roman Rota, whose international membership is selected by the pope.

In the 1990s, some dioceses—notably the Archdiocese of Denver—have sought to reduce involvement by civil courts in church disputes by creating dispute resolution mechanisms and other internal mechanisms that make use of the written policies of canon law.

FURTHER READINGS

Beal, John P., James A. Coriden, and Thomas J. Green, eds. 2000. *New Commentary on the Code of Canon Law*. New York: Paulist Press.

- Buelt, Edward L., and Charles Goldberg. 1995. "Canon Law and Civil Law Interface: Diocesan Corporations." *Catholic Lawyer*.
- Donahue, Charles, Jr. 1992. "IUS Commune, Canon Law, and Common Law in England." Paper presented at symposium, Relationships among Roman Law, Common Law, and Modern Civil Law. *Tulane Law Review* (June).
- Gerosa, Libero. 2002. *Canon Law*. London, New York: Continuum.
- Helmholz, R.H. 1983. "The Early History of the Grand Jury and the Canon Law." *University of Chicago Law Review* (spring).
- Jirik, Paulissa, member, Canon Law Society of America. 1995. Telephone conversation, July 31.

CANON LAW SOCIETY OF AMERICA

The Canon Law Society of America is a non-profit research association of canon lawyers that helps the Roman Catholic Church to address contemporary issues and internal conflicts within the framework of the church's system of CANON LAW. The society drafts opinions on topics at the request of bishops and other persons within the church.

Canon law is the set of rules a church or religion establishes for itself in order to make administrative and ecclesiastical (religious) decisions. The Roman Catholic Church has an elaborate body of canon law that has been evolving since the fourth century and which has played a historical role in the development of public law.

The Canon Law Society of America helps Catholic decision makers, especially bishops and tribunal judges, to evaluate and set policy. The church's tribunal courts were the model for secular court systems and operate similarly. Tribunal judges decide cases such as marriage ANNULMENTS based on the facts of each case. When a tribunal judge wants more information before ruling on an unusual or difficult case the judge may request research or an ADVISORY OPINION from the Canon Law Society.

The society's written opinions are advisory only and carry no authority in the church. However, the society's position has influenced the church's stand on such controversial topics as whether females may serve as altar attendants (now they may). Other issues addressed by the society in the 1990s include questions about the scope of ordained ministers' duties, the role of lay ministers, and how Mass should be celebrated.

Another activity of the society is to promote the use of codes of canon law issued by the Vat-

ican (the seat of Roman Catholic administration) in 1983 and 1990.

Periodicals produced by the society include the *Canon Law Digest*; *Proceedings*, which recaps the society's annual meeting; and *Roman Replies and CLSA Advisory Opinions*, which tracks tribunal case law. The society also has published studies on marriage annulment, confidentiality, and DUE PROCESS for persons in the church, a procedural handbook for the clergy, and other materials.

Established in 1939 and based at the Catholic University of America, in Washington, D.C., the society is supported by annual membership dues. In 1995, it consisted of 1,550 members internationally. Membership is open to non-Catholics. Institutions and interested individuals may join as associate members.

FURTHER READINGS

- Canon Law Society of America. Available online at <www.clsa.org> (Accessed November 20, 2003).
- Green, Thomas J. 1993. "The Canon Law Society of America and the Revision of the Code: Historical Reflections and Continuing Concerns." *The Jurist* 53 (winter).

CANONS OF CONSTRUCTION

The system of basic rules and maxims applied by a court to aid in its interpretation of a written document, such as a statute or contract.

In the case of a statute, certain canons of construction can help a court ascertain what the drafters of the statute—usually Congress or a state legislature—meant by the language used in the law. When a dispute involves a contract, a court will apply other canons of interpretation, or construction, to help determine what the parties to the agreement intended at the time they made the contract.

Statutory Construction

When considering a statute, a court will apply rules of construction only when the language contained in the statute is ambiguous. Under the "plain-meaning" rule, if the intention of the legislature is "so apparent from the face of the statute that there can be no question as to its meaning, there is no need for the court to apply canons of construction" (*Overseas Education Ass'n v. Federal Labor Relations Authority*, 876 F.2d 960 [D.C. Cir. 1989]). Thus, before even considering what canons to apply, the court must first determine whether the statute in question is ambiguous. Courts have generally held that a statute is ambiguous when reason-

ably well-informed persons could understand the language in either of two or more senses (*State ex rel. Neelen v. Lucas*, 24 Wis. 2d 262, 128 N.W.2d 425 [1964]).

If a statute is found to be ambiguous, the court then applies a variety of canons, or rules, to help it determine the meaning of the statute. Issues of statutory construction are generally decided by the judge and not by the jury. In interpreting statutes, a judge tries to ascertain the intent of the legislature in enacting the law. By looking to legislative intent, the court attempts to carry out the will of the lawmaking branch of the government. This philosophy has its origins in the English COMMON LAW first established over four hundred years ago. As the legal philosopher SIR EDWARD COKE wrote in 1584, “[T]he office of all judges is always to make such construction as shall suppress the mischief, advance the remedy, and to suppress subtle invention and evasions for CONTINUANCE of the mischief . . . according to the true intent of the makers of the act” (*Heydon’s Case*, 3 Co. Rep. 7a, 76 Eng. Rep. 637 [King’s Bench 1584]). In more contemporary terms, courts consider the history and nature of the subject matter of the statute; the end to be attained by the law; the “mischief,” or wrong, sought to be remedied; and the purpose to be accomplished by the law (*Crowder v. First Federal Savings & Loan Ass’n of Dallas*, 567 S.W.2d 550, Tex. App. 1978). In determining legislative intent courts usually turn to a variety of sources: the language of the statute itself; the LEGISLATIVE HISTORY of prior enactments on a similar subject; the proceedings surrounding the passage of the law, including debates and committee reports; and, if they are available, interpretations of the law by administrative officials.

To aid in the interpretation of an ambiguous law, a court may also look to more “intrinsic” rules not related to the activities preceding the passage of the statute. These rules are applied to help the court analyze the internal structure of the text and the conventional meanings of the terms used in the law. In addition, intrinsic rules may be used when the court has little or no existing legislative history, such as that provided by committee reports or records of other proceedings, to draw on in interpreting the statute.

Some of these canons of construction are expressed in well-known Latin phrases or maxims. Under *ejusdem generis* (of the same kind, class, or nature), when general words follow spe-

cific words in a statute in which several items have been enumerated, the general words are construed to embrace only objects similar in nature to the objects enumerated by the preceding specific words of the statute. *Ejusdem generis* saves the legislature from having to spell out in advance every contingency to which the statute could apply. For example, in a statute granting a department of conservation the authority to sell “gravel, sand, earth or other material,” a court held that “other material” could only be interpreted to include materials of the same general type and did not include commercial timber (*Sierra Club v. Kenney*, 88 Ill. 2d 110, 57 Ill. Dec. 851, 429 N.E.2d 1214 [1981]). In the opposite situation, where specific words follow general ones, *ejusdem generis* is also applied; again, the general term embraces only things that are similar to those specifically enumerated.

Another MAXIM of statutory construction is *expressio unius est exclusio alterius*. Roughly translated, this phrase means that whatever is omitted is understood to be excluded. Thus, if a statute provides for a specific sanction for non-compliance with the statute, other sanctions are excluded and cannot be applied (*Sprague v. State*, 590 P.2d 410 [Alaska 1979]). The maxim is based on the rationale that if the legislature had intended to accommodate a particular remedy or allowance, it would have done so expressly; if the legislature did not provide for such an allowance or event, it should be assumed that it meant not to. The maxim has wide application and has been used by courts to interpret constitutions, treaties, wills, and contracts as well as statutes. Nevertheless, *expressio unius est exclusio alterius* does have its limitations. Courts have held that the maxim should be disregarded in cases in which an expanded interpretation of a statute will lead to beneficial results or will serve the purpose for which the statute was enacted.

Contract Construction

Judges face different challenges when interpreting the terms of a contract. As a result, different canons exist to aid a court in resolving a dispute between the parties to a contract.

As in statutory construction, in a contract dispute the court gives contract terms their plain and ordinary meaning, interpreting them as ordinary, average, or reasonable persons would understand them (*Rains v. Becton, Dickinson & Co.*, 246 Neb. 746, 523 N.W.2d 506 [Neb. 1994]). If the language of the contract is clear and

unambiguous, there is no room for further interpretation and the court will enforce the contract as written. By doing so, the court gives effect to the parties' intentions in making the contract and avoids adding its own interpretation to the agreement.

If the contract contains ambiguous terms, however, they are strictly construed against the party who drafted the contract. This rule of **STRICT CONSTRUCTION** is often applied in contracts containing *exculpatory clauses*, or provisions that attempt to insulate a party, usually the party who drafted the contract, from liability. Thus, when a clause in a contract between a health club and a member, in which the member waived her right to bring legal action for injuries she suffered at the health club, was held to be ambiguous, it was construed strictly against the health club and it was found to be invalid (*Nimis v. St. Paul Turners*, 521 N.W.2d 54 [Minn. App. 1994]).

A court may look to other canons of construction or interpretation if it determines that the terms of a contract are ambiguous. In business situations, the court may consider the course of dealing or **COURSE OF PERFORMANCE**, that is, the pattern of conduct observed in previous transactions between the parties. Such evidence can help the court determine the intent of the parties at the time they entered the contract and provides additional terms that, though they are not expressly contained in the agreement, the court can use to interpret the contract. Thus, where one party to the contract alleges that the other breached the contract by failing to make payment in the proper manner, and the contract contains no express provisions concerning payment, the court can consider how the parties handled the issue of payment in previous transactions to resolve the issue (*AROK Construction Co. v. Indian Construction Services*, 174 Ariz. 291, 848 P.2d 870 [Ariz. App. 1993]).

A court can also look to usage of trade to aid its interpretation of an ambiguous agreement. A *usage of trade* is a commercial practice or industry custom "having such regularity of observance in a place, vocation, or trade as to justify an expectation that it will be observed with respect to a particular agreement" (Restatement [Second] of Contracts § 222 [1981]). As a result, if a contract is unclear about how shipment of a specific type of goods is to be handled, the court can consider evidence of general industry practice in the area to help determine what the parties intended with respect to shipment.

FURTHER READINGS

- Ruff, Anne. 1999. *Contract Law*. London: Sweet and Maxwell.
- Spiropoulos, Andrew C. 2001. "Making Laws Moral: A Defense of Substantive Canons of Construction." *Utah Law Review* (fall): 915–63.

CROSS-REFERENCES

Course of Dealing; Course of Performance; Exculpate; Strict Construction; Trade Usage.

CANONS OF ETHICS

Rules that govern the PRACTICE OF LAW.

The canons of ethics have been replaced by the code of Professional Responsibility which sets forth the standards of professional conduct prescribed for lawyers in their professional dealings.

CANONS OF JUDICIAL ETHICS

See **CODE OF JUDICIAL CONDUCT**.

CAPACITY

The ability, capability, or fitness to do something; a legal right, power, or competency to perform some act. An ability to comprehend both the nature and consequences of one's acts.

Capacity relates to soundness of mind and to an intelligent understanding and perception of one's actions. It is the power either to create or to enter into a legal relation under the same conditions or circumstances as a person of sound mind or normal intelligence would have the power to create or to enter.

A person of normal intelligence and sound mind has the capacity to dispose of his or her property by will as he or she sees fit.

A *capacity defense* is used in both criminal and civil actions to describe a lack of fundamental ability to be accountable for one's action that nullifies the element of intent when intent is essential to the action, thereby relieving a person of responsibility for it.

An individual under duress lacks the capacity to contract; a child under the age of seven accused of committing a crime lacks criminal capacity.

CAPIAS

[Latin, That you take.] *The name for several different kinds of writs, or court orders, all of which require an officer to take the defendant into custody.*

For example, a *capias ad audiendum judicium* is a writ that orders the defendant brought back before the court after an appearance in which the person has been found guilty of a misdemeanor. A *capias ad satisfaciendum* orders the sheriff to take the defendant into custody until a judgment is paid or a discharge is granted on the ground that the defendant is an insolvent debtor. This is a body execution.

CAPITAL ASSET

Property held by a taxpayer, such as houses, cars, stocks, bonds, and jewelry, or a building owned by a corporation to furnish facilities for its employees.

Excluded from capital assets are certain items stated in the INTERNAL REVENUE CODE, for example (1) trade or business property subject to depreciation allowance under the tax laws; (2) real property used in trade or business; (3) certain categories of copyrighted materials and LITERARY PROPERTY; and (4) accounts or notes receivable acquired in the ordinary course of business.

The determination of what constitutes a capital asset is essential to the tax treatment of the profits from the sale of property as capital gains, which are taxed at a lower rate than ordinary income.

CAPITAL PUNISHMENT

The lawful infliction of death as a punishment; the death penalty.

Capital punishment continues to be used in the United States despite controversy over its merits and over its effectiveness as a deterrent to serious crime. A sentence of death may be carried out by one of five lawful means: electrocution, hanging, lethal injection, gas chamber, and firing squad. As of 2003, 38 states employed capital punishment as a sentence; 12 states—Alaska, Hawaii, Iowa, Maine, Massachusetts, Michigan, Minnesota, North Dakota, Rhode Island, Vermont, West Virginia, and Wisconsin—and the District of Columbia did not.

The first known infliction of the death penalty in the American colonies occurred in Jamestown Colony in 1608. During the period of the Revolutionary War, capital punishment apparently was widely accepted—162 documented executions took place in the eighteenth century. At the end of the war, 11 colonies wrote new constitutions, and, although nine of them

did not allow CRUEL AND UNUSUAL PUNISHMENT, all authorized capital punishment. In 1790, the First Congress enacted legislation that implemented capital punishment for the crimes of ROBBERY, rape, murder, and forgery of public SECURITIES. The nineteenth century saw a dramatic increase in the use of capital punishment with 1,391 documented executions. The death penalty continued as an acceptable practice in the United States for some time.

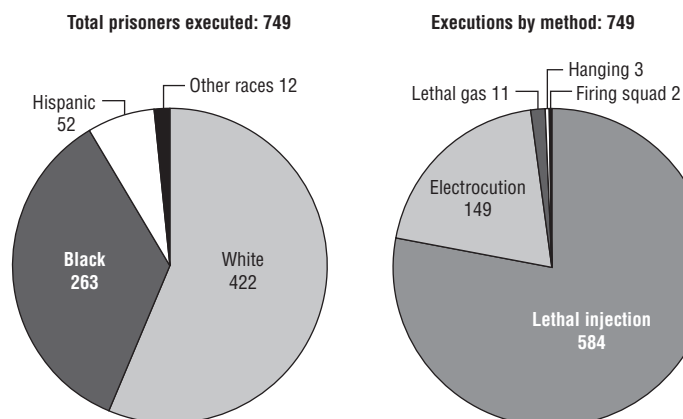
In 1967, a national MORATORIUM was placed on capital punishment while the U.S. Supreme Court considered its constitutionality. In 1972, it appeared that the Court had put an end to the death penalty in the case of FURMAN V. GEORGIA, 408 U.S. 238, 92 S. Ct. 2726, 33 L. Ed 2d 346, declaring certain capital punishment laws to be unconstitutionally cruel and unusual because juries were applying them arbitrarily and capriciously. It seemed as if *Furman* would mark the passing into history of capital punishment in the United States.

By 1976, Georgia, Florida, and Texas had drafted new death penalty laws, however, and the U.S. Supreme Court upheld them. Of the nine justices, only two, WILLIAM J. BRENNAN JR. and THURGOOD MARSHALL, persisted in the belief that capital punishment is unconstitutional per se. Capital punishment had survived, and so had the controversies surrounding it.

Although the U.S. Supreme Court has held that the Constitution permits the use of capital

Capital Punishment

PRISONERS EXECUTED UNDER CIVIL AUTHORITY IN THE UNITED STATES, 1977 TO 2001



SOURCE: U.S. Bureau of Justice, *Capital Punishment*, 2001.

THE COSTS OF CAPITAL PUNISHMENT

In 1989, the state of Florida executed 42-year-old Ted Bundy. Bundy confessed to 28 murders in four states. During his nine years on death row, he received three stays of execution. Before he was put to death in the electric chair, Bundy cost taxpayers more than \$5 million.

In a country where some 70 percent of the population favors the death penalty, many people may feel that Bundy got what he deserved. A further question, however, is whether U.S. taxpayers got their money's worth. When a single sentence of death can cost millions of dollars to carry out, does it make economic sense to retain the death penalty?

At first glance, the costs involved in the execution of an inmate appear simple and minuscule. As of 2003, the state of Florida paid \$150 to the executioner, \$20 for the last meal, \$150 for a new suit for the inmate's burial, and \$525 for the undertaker's services and a coffin. In Florida, the cost of an execution is less than \$1,000.

The actual execution of an inmate is quick and simple; the capital punishment system is far more complex. To resolve

issues of unconstitutionality that the Supreme Court found in *FURMAN V. GEORGIA*, 408 U.S. 238, 92 S. Ct. 2726, 33 L. Ed. 2d 346 (1972), states found it necessary to introduce a complex appeals process that would guarantee the rights of death row inmates. Capital trials are much more expensive to carry out than are their noncapital counterparts because of the price at stake, the life of the accused. Evidence gathering is also more expensive: evidence must be collected not only to determine the guilt or innocence of the accused but also to support or contradict a sentence of death. All sentences of death face a mandatory review by the state supreme court, at an additional cost of at least \$70,000. If a case advances further in the state or federal appeals process, the costs are likely to jump to \$275,000 or more for each appeal.

Appeals of a death sentence guarantee great expense to the taxpayer, as the state pays both to defend and to prosecute death row inmates. Public defenders in such appeals openly admit that their goal is delay, and prosecutors and state attorneys slow the process by fighting access to public records and

allowing death row defendants to sweat out their cases until the last minute.

Abolitionists believe that the existing system cannot be repaired and must be abandoned. The alternative sentence, life imprisonment without **PAROLE**, achieves the same result as capital punishment, they argue. Like the death penalty, a life sentence permanently removes the convict from the community against which he or she committed crimes. And it is far less expensive.

According to a 1990 study, the total cost to build a maximum-security prison cell is \$63,000, which breaks down to approximately \$5,000 a year in principal and interest. The annual cost to maintain an inmate in this cell is approximately \$20,000 a year. Together, these costs mean an annual expenditure of \$25,000 to incarcerate an inmate. Based on a sentence term of 40 to 45 years, one inmate would cost the taxpayer only slightly more than \$1 million—less than a third of what it would take to pay for the process that culminates in execution. A twenty-five-year-old woman convicted of first-degree murder would need to serve a life term to the age of 145 before the costs of incarcerating her would surpass those of executing her.



punishment, decisions on this issue have divided the Court and have done little to convince opponents of the death penalty that it is fair. Critics have argued that the death penalty is a form of cruel and unusual punishment, that it is applied in a racially discriminatory manner, that it lacks a deterrent effect, and that it is wrong.

Cruel and Unusual Punishment

The **EIGHTH AMENDMENT** of the U.S. Constitution prohibits the government from inflicting "cruel and unusual punishments." The controversy over the constitutionality of the death penalty lies in the **AMBIGUITY** of the phrase "cruel and unusual." The first meeting of Congress addressed the phrase for only a few minutes. Congressman **WILLIAM SMITH** of South Carolina foreshadowed the controversy to

come when he stated that the wording of the Eighth Amendment was "too indefinite."

Whereas some argue that the phrase "cruel and unusual" refers to the type of punishment inflicted (such punishments as the severing of limbs, for example, would almost certainly be considered cruel and unusual), others feel that the phrase refers to the degree and duration of the punishment. The U.S. Supreme Court has rejected both interpretations, leaving the death penalty a legal means of punishing certain criminals.

The **FIFTH AMENDMENT** seems to supply a clearer basis for assuming the constitutionality of the death penalty. This amendment states that no one shall be "deprived of life, liberty, or property, without due process of law." From this lan-

Other studies have reached similar conclusions. According to a study by the Indiana Criminal Law Study Commission released in 2002, executions cost the state 38 percent more than the costs of keeping an inmate incarcerated for life. Similarly, a 1993 study at Duke University showed that between 1976 and 1992, the state of North Carolina spent in excess of \$1 billion on executions or \$2.16 million per execution. Moreover, in January 2003, the California governor approved the construction of a \$220 million state-of-the-art death row.

Not only are the costs of execution excessive but so too are the time delays. It is not unusual for an individual to wait on death row for more than ten years. In the 1995 case *Lackey v. Texas*, 514 U.S. 1045, 115 S. Ct. 1421, 131 L. Ed. 2d 304, Clarence Allen Lackey, who had been on death row for seventeen years, claimed that such a duration constituted **CRUEL AND UNUSUAL PUNISHMENT**. Although his motion was denied, Justices **JOHN PAUL STEVENS** and **STEPHEN BREYER** admitted that the concern was not without warrant.

Opponents of capital punishment point out that abandoning the death penalty would make available many millions of dollars as well as thousands of hours that the courts could allocate to other aspects of the criminal justice sys-

tem. The amount of money necessary to execute a single inmate might be used to put several criminals behind bars for the remainder of their lives.

Supporters of capital punishment agree with detractors on one issue: the death row appeals process is far too complex and expensive. However, while opponents of the death penalty use this as a reason to reform sentencing, supporters use it as a reason to reform the system of appeals. Supporters argue that thorough reform of the appeals process would free up as much money as abolishing the death penalty; expenses could be cut while capital punishment is retained.

Immediately following the execution of Bundy, Chief Justice **WILLIAM H. REHNQUIST** called for changes in the procedure for appealing death sentences. Noting that the Supreme Court had turned down three emergency appeals by Bundy in the hours just prior to his execution, the chief justice said, "Surely it would be a bold person to say that this system could not be improved."

In a 1995 interview, President **BILL CLINTON**, a staunch supporter of capital punishment, called the appeals process ridiculous and in need of reform. Clinton, like other supporters of the death penalty, saw appeals reform as paramount if capital punishment is to be efficiently and effectively carried out.

Supporters also argue that too many rights are provided to death row inmates. The appeals process is too kind to convicts, they argue, and ignores the pain that persists in the aftermath of the criminals' actions. Family members of victims of capital crimes are expected to wait years, while perpetrators abuse the system to forestall execution of the sentence imposed.

In addition to the president, the nation's highest court sides with those who support capital punishment. Under the leadership of Chief Justice Rehnquist, the Supreme Court has moved to limit the number of appeals a death row inmate may file, arguing that endless appeals serve only to undermine the ability of the state to carry out its constitutionally sanctioned punishment.

FURTHER READINGS

- Gold, Russell. 2002. "Counties Struggle with High Cost of Prosecuting Death-Penalty Cases; Result is Often Higher Taxes, Less Spending on Services; 'Like Lightning Striking.'" *The Wall Street Journal* (January 9).
- "Judge Changes Mind on Murder Case Costs." 2002. *The New York Times* (August 25).
- Streib, Victor L. 2003. *Death Penalty in a Nutshell*. St. Paul, Minn.: Thomson/West.

CROSS-REFERENCES

Cruel and Unusual Punishment; Due Process.

guage, one can conclude that with **DUE PROCESS OF LAW**, capital punishment may be imposed.

In *Furman*, the justices who found the death penalty to be unconstitutional pointed to the language of the Eighth Amendment as the basis of their decision. Chief Justice **WARREN E. BURGER**, who filed a dissenting opinion, relied heavily upon the language of the Fifth Amendment to support his argument that the death penalty was constitutional.

Evolving Standards of Decency

However, administration of capital punishment is not necessarily constitutional under all circumstances, against all classes of defendants, or for all types of crimes. The U.S. Supreme Court has recognized that what may have been constitutionally permissible when the Eighth

Amendment was ratified in 1791 might be cruel and unusual now, if application of the death penalty in particular cases offends the "evolving standards of decency" test. Under this test, courts will examine prevailing opinions among state legislatures, sentencing juries, judges, scholars, the American public, and the international community to determine whether a particular application of the death penalty is cruel and unusual. For example, in *Penry v. Lynaugh*, 492 U.S. 302, 109 S. Ct. 2934, 106 L. Ed. 2d 256 (1989), the Court examined many of these factors and determined that there was no clear consensus against executing mentally retarded defendants who had been convicted of murder.

However, just 13 years later, the Court found that "standards of decency" had evolved to a

point where mentally retarded defendants could no longer be made subject to capital punishment without violating the Cruel and Unusual Punishment Clause of the Eighth Amendment. *ATKINS v. VIRGINIA*, 536 U.S. 304, 122 S. Ct. 2242, 153 L. Ed. 2d 335 (U.S. 2002). The Court emphasized the fact that since *Penry* 18 states had passed legislation excluding the mentally retarded from the class of defendants who are eligible for capital punishment. Applying the same type of analysis in *Stanford v. Kentucky*, 492 U.S. 361, 109 S. Ct. 2969, 106 L. Ed. 2d 306 (1989), the Court found that there was no national consensus prohibiting the execution of juvenile offenders over age 15. But the Court did find sufficient proof of consensus against making rape defendants as a class that was eligible for capital punishment, stressing that only one jurisdiction in the country at the time of its decision allowed capital punishment for the rape of an adult woman. *Coker v. Georgia*, 433 U.S. 584, 97 S. Ct. 2861, 53 L. Ed. 2d 982 (2002).

Death by electrocution has been challenged several times as being inconsistent with “evolving standards of decency”. In a series of Florida cases, the U.S. Supreme Court denied certiorari in appeals where the petitioner offered proof that during the execution the electric chair was engulfed by flames and that smoke had emanated from the inmate’s head. But the Florida Supreme Court ruled that death by electrocution does not violate the Eighth Amendment’s prohibition of cruel and unusual, citing evidence that execution by electrocution renders an inmate instantaneously unconscious, thereby making it impossible to feel pain when the electrical current is properly maintained. *Provenzano v. Moore*, 744 So. 2d 413 (Fla. 1999), *cert denied*, 528 U.S. 1182, 120 S. Ct. 1222, 145 L. Ed. 2d 1122 (2000).

Capital Punishment for DWI-Related Offenses

Many observers expected the “evolving standards of decency” test to be invoked by a North Carolina defendant when prosecutors sought to impose the death penalty for crimes he committed during a 1996 drunk-driving incident that left two college students dead. Thomas Richard Jones was charged and convicted on one count of driving while impaired, one count of assault with a deadly weapon, three counts of assault with a deadly weapon inflicting serious injury, and two counts of first-degree murder under the

FELONY-MURDER RULE. During the penalty phase, the jury rejected the prosecution’s arguments for capital punishment, instead sentencing Jones to life in prison.

When Jones appealed his conviction, the North Carolina Supreme Court did not review his sentence under an Eighth Amendment analysis. Rather, the state’s high court ruled that any sentence that Jones might have received for first-degree murder would not have been justified, because a first-degree murder charge can only be supported by proof that the defendant possessed a “specific intent” to commit the crime. At a minimum, the court said, proof of **SPECIFIC INTENT** requires evidence that the defendant had “an actual intent to undertake the conduct resulting in death; thus, even if the killing itself was not intended, the actual intent to torture, poison, starve, or imprison the victim must be present . . . for the killing to qualify as first-degree murder.” The North Carolina Supreme Court rejected the state’s argument that specific intent could be “implied” from the defendant’s reckless conduct. *State v. Jones*, 538 S.E. 2d 917 (N.C. 2000). No state court since *State v. Jones* has successfully prosecuted a defendant for first-degree murder arising out of a drunk-driving-related offense.

Racial Bias

In 1983, Professor David C. Baldus, of the University of Iowa College of Law, published a study on the capital punishment system in the state of Georgia. The figures he assembled showed that between 1973 and 1979, killers whose victims were white were 11 times more likely to be sentenced to death than were killers whose victims were black.

Baldus’s study was used by death row inmate Warren McClesky in an appeal that came before the U.S. Supreme Court (*McClesky v. Kemp*, 481 U.S. 279, 107 S. Ct. 1756, 95 L. Ed. 2d 262). Although the Court accepted the validity of the study, it found the statistics “insufficient to demonstrate unconstitutional discrimination” or “to show irrationality, arbitrariness, and capriciousness.”

Other studies have yielded equally staggering numbers regarding the statistical differences between the system’s treatment of blacks and whites. For example, between 1976 and 1995, a total of 245 convicts were executed; 84 percent of their victims were white, although fewer than 50 percent of all murder victims are white. Many

critics argue that statistics demonstrating racial bias in the administration of capital punishment prove that the death penalty, even if constitutional in concept, is unconstitutional as applied in the United States—violating at least the EQUAL PROTECTION CLAUSE of the FOURTEENTH AMENDMENT.

Justice LEWIS F. POWELL JR., who voted with the majority in *McClesky* to deny a racial-bias challenge to the capital punishment system, later informed a biographer that he since had come to regret his vote.

Consideration of Mitigating Factors

In general, the jury may not be precluded from considering, and may not refuse to consider, any relevant mitigating evidence in determining whether capital punishment is the appropriate sentence for a particular defendant. However, the Eighth Amendment does not require courts to instruct a jury during the penalty phase that it has both an obligation and the authority to consider the mitigating factors deemed relevant by state law. *Buchanan v. Angelone*, 522 U.S. 269, 118 S. Ct. 757, 139 L. Ed. 2d 702 (1998). Instead, it is sufficient for a court to instruct the jury that it must impose a life sentence if, after considering “all the evidence,” the jury does not believe that capital punishment is justified.

Once convicted and sentenced to death, death row inmates may again cite mitigating factors in making an appeal for leniency or clemency from the state’s PAROLE board or another EXECUTIVE BRANCH department. Such appeals often cite mitigating factors that existed either before, after, or at the time the crime was committed. However, parole boards and related executive branch departments are under no obligation to give mitigating evidence any weight, and may typically reject a death row inmate’s request for clemency without providing any reason for doing so.

For example, the Texas Parole Board was flooded with requests to grant clemency to Karla Faye Tucker, a death row inmate who had been convicted of brutally killing two people with a pickax during a 1983 robbery. Despite evidence that Tucker was 23 years old and high on drugs at the time of the crime, that she had been addicted to drugs since she was eight years old, and that she had been a prostitute since age 14, the sentencing jury found more compelling other evidence showing that Tucker had a his-

tory of violent behavior, that she had received sexual gratification every time she struck one of the victims with the pickax, that she had talked of killing two others to prevent them from telling police about the murders, and that she had planned future crime sprees to raid drug labs, kill the people who worked there, and steal their property.

During her 14 years on death row, however, Faye underwent a religious conversion to Christianity that many people believed was sincere. In fact, religious leaders from around the world, including Pope John Paul II, made personal appeals to have Tucker’s sentence commuted to life in prison. The European Parliament and the UNITED NATIONS also publicly sought clemency for Tucker. The Karla Faye Tucker who was on death row, they all said, was not the same person who had committed the gruesome murders more than a decade earlier.

The Texas BOARD OF PARDONS & Pardoles refused to stay the execution, finding that neither Tucker’s gender nor her religious conversion were sufficient grounds to commute her sentence. “Mercy was already considered by the jurors when they sentenced her to die,” the chairman of the pardons and parole board said. Then-Texas Governor GEORGE W. BUSH also rejected Tucker’s requests for clemency. Tucker challenged the adequacy of the Texas executive-clemency procedures, but the Texas Court of Criminal Appeals concluded that “[a]n inmate has no constitutional or inherent right to commutation of her sentence.” *Ex parte Tucker*, 973 S.W. 2d 950 (Tex. Crim. App. 1998). Clemency, the court wrote, is a matter that rests solely within the “unfettered discretion” of the executive branch of the state government. On February 3, 1998, Tucker became the first woman to be executed in Texas since the Civil War.

Deterrent Effect

Since the turn of the twentieth century, many studies have been conducted on the deterrent effect of capital punishment. More often than not, the results have proved inconclusive; no hard evidence exists to verify the theory that the threat of such a harsh punishment will sway criminals from their actions. In fact, some statistics indicate that the opposite is true; in some instances, states that employ capital punishment have a higher incidence of HOMICIDE than neighboring states that do not employ the death penalty.

The execution chamber at California's San Quentin State Prison.

AP/WIDE WORLD
PHOTOS



The U.S. Supreme Court justices in the *Furman* case, both concurring and dissenting, often referred to studies that showed no conclusive correspondence between capital punishment and the frequency with which capital crimes were committed. A later accounting revealed that during the moratorium on capital punishment, from 1967 to 1976, the national homicide rate nearly doubled. Since then, depending on the study conducted, evidence has been presented to show that capital punishment has no deterrent effect; that the implementation of the death penalty is directly related to a decrease in capital crime; and that the implementation of the death penalty is directly related to an increase in capital crime.

Although some opponents of the death penalty are quick to argue that capital punishment has no deterrent effect, many supporters feel that the purpose of capital punishment is retribution, not deterrence. Many individuals, especially those with close ties to the victims, are more often concerned that the particular convicted criminal pay for the crime than that other persons be deterred through punishment of the perpetrator.

Morality and Emotion

Emotions might have played a part in the *Furman* decision. Burger, in his dissent, warned that the Court's "constitutional inquiry . . . must be divorced from personal feelings as to the morality and efficacy of the death penalty." Justice HARRY A. BLACKMUN, who joined Burger in his dissent, later renounced his belief in the

death penalty for reasons that another justice saw as partly personal.

In 1994, in *Callins v. Collins*, 510 U.S. 1141, 114 S. Ct. 1127, 127 L. Ed. 2d 435, Blackmun wrote a dissenting opinion in which he condemned the practice of capital punishment in the United States. He argued that "no combination of procedural rules or substantive regulations ever [could] save the death penalty from its inherent constitutional deficiencies"—"arbitrariness, discrimination, caprice, and mistake." Justice ANTONIN SCALIA criticized Blackmun's position, writing that Blackmun had based his dissent on intellectual, moral, and personal reasons, rather than on the authority of the Constitution.

Other Issues

Other controversial aspects of capital punishment disturb the public. Between 1976, when the moratorium on capital punishment was lifted, and 1995,

- More than 50 mentally ill or mentally impaired individuals were put to death
- Nine juveniles were executed
- The cost of executing a death row inmate was three to six times as high as incarcerating him or her for life without parole.

Despite the controversy, the constitutionality of capital punishment has been upheld and continues to be an acceptable practice in thirty-eight states, where nearly 3,500 inmates waited on death row throughout the United States by the end of 2001.

FURTHER READINGS

- Banner, Stuart. 2002. *The Death Penalty: An American History*. Cambridge, Mass.: Harvard Univ. Press.
- Bedau, Hugo Adam, and Paul G. Cassell, eds. 2004. *Debating the Death Penalty: Should America Have Capital Punishment?* New York: Oxford Univ. Press.
- Bigel, Alan I. 1994. "Symposium on Capital Punishment—Justices William J. Brennan, Jr., and Thurgood Marshall on Capital Punishment: Its Constitutionality, Morality, Deterrent Effect, and Interpretation by the Court." *Notre Dame Journal of Law, Ethics, and Public Policy* (Thomas J. White Center on Law and Government).
- Foley, Michael A. 2003. *Arbitrary and Capricious: The Supreme Court, the Constitution, and the Death Penalty*. Westport, Conn.: Praeger.
- Rodriguez, Roxanne. 2001. *The Modern Death Penalty: A Legal Research Guide*. Buffalo, N.Y.: W.S. Hein.
- Von Drehle, David. 1995. *Among the Lowest of the Dead: The Culture of Death Row*. New York: Times Books.

CROSS-REFERENCES

Witherspoon v. Illinois.

CAPITAL STOCK

All shares constituting ownership of a business, including common stock and preferred stock. The amount of shares that a corporate charter requires to be subscribed and paid, or secured to be paid, by shareholders. The amount of stock that a corporation may issue; the amount actually contributed, subscribed, or secured to be paid on. The liability of the corporation to its shareholders after creditors' claims have been settled. The valuation of the corporation as a business enterprise.

Capital stock is distinguishable from the property and assets of the corporation. The property of a corporation fluctuates and may be greater or less than the original capital invested, but the capital stock remains intact and unaffected by the vicissitudes of business.

Undivided profits, or surplus, are not part of the capital stock, although they are included in the general capital or assets of the corporation.

The capital stock of a corporation serves only corporate purposes. It functions as security for the creditors of the corporation who have relied on its existence, since it cannot be diverted or withdrawn to the detriment of corporate creditors. Capital stock is sometimes regarded as a trust fund.

CAPITALIZE

To regard the cost of an improvement or other purchase as a capital asset for purposes of determining INCOME TAX liability. To calculate the net worth upon which an investment is based. To issue company stocks or bonds to finance an investment.

The owner of a business may capitalize the expense of renovating a factory to maximize his or her after-tax profits, since such expenses may be used to decrease the pretax profits, thereby reducing the amount of profits subject to taxation.

An individual may compute the net worth of shares of stock, in order to treat them as capital assets for income tax purposes. Such treatment often results in more favorable rates of taxation on the profits made when assets are sold because they are considered capital gains.

CAPITATION TAX

An assessment levied by the government upon a person at a fixed rate regardless of income or worth.

Since it is a tax upon the individual, and not upon merchandise, a capitation tax is frequently labeled a *head tax*. A poll tax is a capitation tax.

❖ CAPONE, ALPHONSE

AL CAPONE was a gangster leader who controlled much of Chicago from 1920 to 1931. Chicago in the 1920s was a city of vice, corruption, and gangland killings, and synonymous with the evildoings of this era is the name of Al Capone.

Capone was born January 17, 1899, in Naples, Italy. His family emigrated from Naples, Italy, to New York and Capone was raised in the Brooklyn slums. During his early years in New York he made strong gangland contacts and in 1920, he became a member of the John Torrio gang. Torrio, originally from New York, relocated his operation to Chicago, with Capone at his side.

The passage of the VOLSTEAD ACT in 1919 (41 Stat. 305), which prohibited the manufacture, sale, or transportation of liquor, ushered in an era of big business for gangsters. Capone and Torrio were no exception; they operated and organized speakeasies, secret nightclubs that sold the banned liquor. Capone began to gain more power and by the time Torrio retired in 1925, Capone's control had extended to gambling, brothels, and politics. He was responsible for the gangland murders of his rivals and for forcibly controlling election results in certain precincts of Chicago; through these maneuvers, he increased his power and received protection and political favors.

Capone was at the peak of his power in 1931, when he was arrested—ironically—for income TAX EVASION. The INTERNAL REVENUE SERVICE succeeded where other authorities had failed: uncovering concrete evidence against Capone for tax evasion. It investigated Capone's earnings and discovered that—despite his huge income, which was judged to be approximately \$105 million in 1927—Capone had never filed an income tax return. In October 1931 Capone was tried in a federal court and found guilty. He was required to pay a penalty of \$50,000 and to serve eleven years in jail.

An appeal was pursued and Capone spent his first days of captivity in Chicago's Cook County Jail. There he was still awarded the privileges of an underworld king. Warden David Moneypenny allowed him to visit with his gangland associates, including Salvatore "Lucky" Luciano. Capone had requested and was given an isolated place—the death chamber of the Cook County Jail—to meet and conduct business with fellow mobsters.

Al Capone was fined \$50,000 and sentenced to 11 years in prison for income tax evasion in 1931.

AP/WIDE WORLD
PHOTOS



The appeal was denied, and Capone was sent to a federal jail in Atlanta, Georgia. There he performed the duties of a shoemaker until 1934, at which time he was transferred to Alcatraz in California.

At Alcatraz Capone was not treated with the respect and fear to which he was accustomed. He spent his days as a laundry worker and was harassed by inmates who took pleasure in persecuting the once powerful mob king. Capone's mental capacities dwindled due to an untreated attack of syphilis and in 1939 he was released to the care of his wife and brother. He died January 25, 1947, in Miami Beach, Florida.

CAPTION

The standardized heading of a legal instrument, such as a motion or a complaint, which sets forth the names of the parties in controversy, the name of the court, the docket number, and the name of the action.

❖ **CARDOZO, BENJAMIN NATHAN**

Benjamin Nathan Cardozo was a New York state court judge, an associate justice on the U.S. Supreme Court, and an influential legal scholar.

Cardozo was born May 24, 1870, in New York City, the youngest son in a family of six children. His parents were descendants of Portuguese and Spanish Jews who had settled in

New York before the Revolutionary War. His father, ALBERT CARDOZO, was a trial court judge who was forced to resign his seat because of allegations, which were never proved, of improper conduct involving the then corrupt New York City government. Cardozo was tutored during his early life by well known clergyman and teacher Horatio Alger and entered Columbia College at the age of fifteen. He earned a bachelor's degree in 1889 and a master's degree in 1890, then enrolled at Columbia Law School. He was granted admission to the New York state bar in 1891 without having received his law degree.

After completing his legal training and passing the bar examination, Cardozo began practicing appellate law with his brother. He soon became a prominent practitioner in his own right in the fields of corporate and COMMERCIAL LAW. He often acted as consultant to other law firms, writing appeal briefs for other lawyers and appearing frequently before the New York Court of Appeals, the state's highest court. His extensive appellate experience led him to write his first book, *Jurisdiction of the Court of Appeals of the State of New York*, published in 1903. In addition, judges often appointed him to act as referee in complicated matters of commercial law, one of his areas of specialty.

In 1913, after twenty-three years in private practice, Cardozo was nominated and elected as a judge on the New York Supreme Court, the state's trial-level bench. Only six weeks later, he was designated to serve temporarily as an associate judge on the Court of Appeals. He remained a temporary judge of the Court of Appeals until 1917, when he was appointed to fill a vacant and permanent seat, and in 1926 he was elected chief judge.

During his tenure on the Court of Appeals, Cardozo made his mark as an influential and celebrated jurist and moved the New York court to the forefront of the nation's state courts. With respect to TORT LAW, the court under Cardozo greatly expanded the protection offered to individuals injured by the NEGLIGENCE of others. In *MACPHERSON V. BUICK MOTOR CO.*, 217 N.Y. 382, 111 N.E. 1050 (1916), perhaps Cardozo's most influential tort opinion, the court held Buick liable for the negligent construction of a defective wheel that injured a purchaser who had bought the car not from Buick but from an automobile dealer. Cardozo's decision to look beyond the contractual relationship between the buyer and seller to the manufacturer for redress

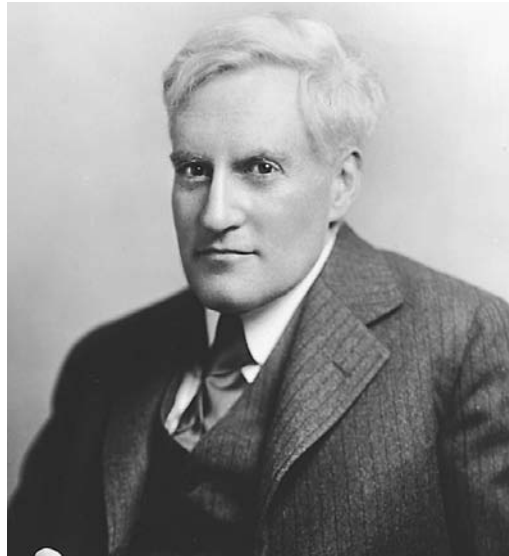
"THE GREAT TIDES
AND CURRENTS
WHICH ENGULF
THE REST OF MEN
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ASIDE IN THEIR
COURSE AND PASS
THE JUDGES BY."

—BENJAMIN
CARDOZO

helped lay the groundwork for the development of **PRODUCT LIABILITY**, now a common feature of the law, which allows for recovery for injuries even if the consumer had no contractual relationship with the manufacturer. But Cardozo was also willing to impose some commonsense limits on tort liability. In the classic decision **PALSGRAF V. LONG ISLAND RAILROAD**, 248 N.Y. 339, 162 N.E. 99 (1928), he authored the majority opinion establishing that a person can be held negligent only for a harm or injury that is foreseeable and not for every injury that follows from the negligence. As Cardozo put it, “[T]he orbit of the danger as disclosed to the eye of reasonable vigilance would be the orbit of duty.”

Cardozo’s influence was also strongly felt in the law of contracts. He wrote the majority opinion in *Wood v. Duff-Gordon*, 222 N.Y. 88, 118 N.E. 214 (1917), perhaps his best known and most widely quoted decision concerning the implied elements of a contract. In *Wood* and his other contract law decisions, Cardozo made clear his views that, whenever possible, courts should attempt to instill fairness in an ambiguous contract by analyzing and interpreting its implicit terms to cover situations that the parties may not have provided for explicitly.

In 1932, when ninety-year-old **OLIVER WENDELL HOLMES JR.**, announced his retirement from the U.S. Supreme Court, politicians, lawyers, and legal scholars publicly campaigned for Cardozo to succeed him. President **HERBERT HOOVER**, though impressed with Cardozo’s credentials and intellect, was initially lukewarm about nominating him to the Court. Two other New Yorkers, Chief Justice **CHARLES E. HUGHES** and Justice **HARLAN F. STONE**, were already on the Court and others in Hoover’s administration were concerned about appointing a second Jew-

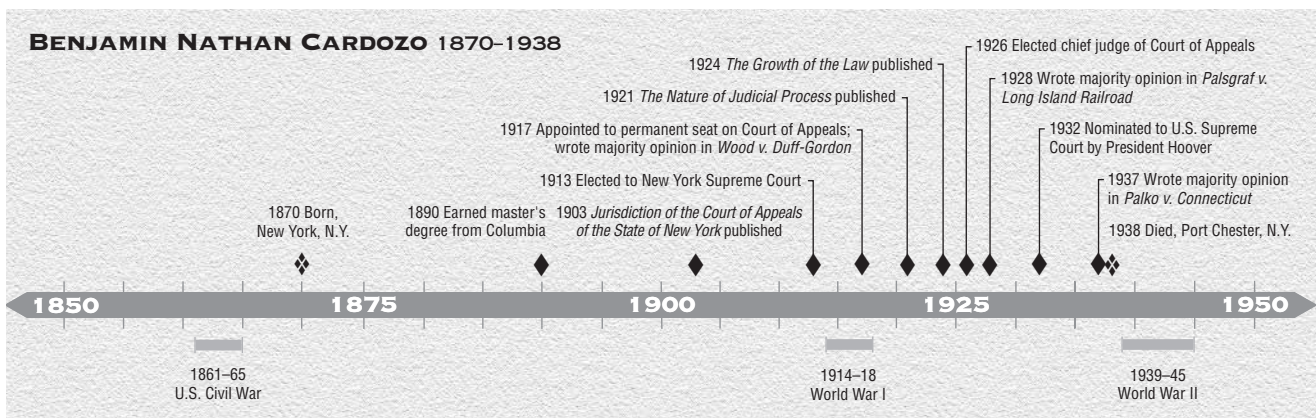


Benjamin N. Cardozo.

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SUPREME COURT

ish justice to serve in addition to Justice **LOUIS D. BRANDEIS**. After Stone offered his resignation (which was not accepted) to make room for Cardozo, Hoover was eventually persuaded to ignore the politics of geography and anti-Semitism and named Cardozo to the Court. On February 24, 1932, Cardozo was confirmed unanimously by a voice vote of the Senate, though he was said to be reluctant to leave his family and friends in New York and move to Washington, D.C., to accept the seat.

Though he served on the Court for only six years, Cardozo authored a number of significant decisions. He authored the majority opinion in the **CIVIL RIGHTS** case *Nixon v. Condon*, 286 U.S. 73, 52 S. Ct. 484, 76 L. Ed. 984 (1932). *Condon* held that a resolution by a state party executive committee, under purported authority of a Texas statute (Vernon’s Ann. Civ. St. Tex. art.



3107), which excluded blacks from primary elections, violated the EQUAL PROTECTION CLAUSE of the FOURTEENTH AMENDMENT. Cardozo, for the most part, supported President FRANKLIN D. ROOSEVELT'S NEW DEAL legislation, writing the majority opinions in *Helvering v. Davis*, 301 U.S. 619, 57 S. Ct. 904, 81 L. Ed. 307 (1937), and *Steward Machine Co. v. Davis*, 301 U.S. 548, 57 S. Ct. 883, 81 L. Ed. 1279 (1937), which upheld the constitutionality of the UNEMPLOYMENT COMPENSATION (Social Security Act § 901–910, 42 U.S.C.A. § 1101–1110) and old-age benefits programs (Social Security Act § 201 et seq., 42 U.S.C.A. § 401 et seq.) of the SOCIAL SECURITY ACT OF 1935. Cardozo also authored a number of significant CRIMINAL LAW decisions while on the Court, including *Palko v. Connecticut*, 302 U.S. 319, 58 S. Ct. 149, 82 L. Ed. 288 (1937). In *Palko*, the Court held that the DUE PROCESS CLAUSE of the Fourteenth Amendment of the Constitution did not require that the DOUBLE JEOPARDY Clause contained in the FIFTH AMENDMENT be applied to the states. Cardozo favored a “selective incorporation” approach to the Fourteenth Amendment, writing that only select protections of the first eight amendments that “represented the very essence of a scheme of ordered liberty, . . . principles of justice so rooted in the traditions and conscience of our people as to be ranked fundamental,” should be imposed upon the states. *Palko* represented the beginning of the Supreme Court's long struggle to formulate a test for applying the Due Process Clause of the Fourteenth Amendment as a limit on states' powers.

Cardozo, though remembered for his majority opinions, was not afraid to disagree with the majority and wrote some equally significant and stirring dissents while on the Court. In *Carter v. Carter Coal Co.*, 298 U.S. 238, 56 S. Ct. 855, 80 L. Ed. 1160 (1936), one of many cases arising out of constitutional challenges to Roosevelt's New Deal legislation, the Court in a 6–3 vote struck down the 1935 Bituminous Coal Conservation Act (15 U.S.C.A. §§ 801–827), which authorized fixed prices to help stabilize the coal industry. Cardozo maintained that the law was constitutional and necessary to combat the economic problems created by the Great Depression. He wrote that “[a]fter making every allowance for differen[ces] of opinion as to the most efficient cure, the student of the subject is confronted with the indisputable truth that there are ills to be corrected, and ills that had a direct relation to

the maintenance of commerce among the states. . . . An evil existing, and also the power to correct it, the lawmakers were at liberty to use their own discretion in the selection of the means.”

Cardozo's body of legal scholarship is not limited to the many important judicial opinions he authored as a state court judge and U.S. Supreme Court justice. He also wrote a number of books which have become classics of legal thought and judicial philosophy. His lectures on the decision-making process that he delivered at Yale Law School and Columbia University early in his career were published in 1921 as a group of essays in *The Nature of the Judicial Process*, which is still widely used as a textbook for first-year law students. He also wrote *The Growth of the Law* (1924), *The Paradox of Legal Science* (1928), and *Law and Literature* (1931). In all his books, Cardozo sought to define the difficult issues faced by a judge in deciding cases, as well as his beliefs about how the entire legal system could function most effectively.

Cardozo, who never married and remained close to his family throughout his life, was a shy and reclusive man described in one book about the history of the Court as “the hermit philosopher.” He remained on the Supreme Court until 1938 when he died of heart trouble at the age of sixty-eight. He is buried in the Cardozo family plot in the cemetery of Shearith Israel congregation at Cypress Hills, Long Island.

FURTHER READINGS

- Congressional Quarterly. 1989. *Guide to the U.S. Supreme Court*. 2d ed. Washington, D.C.: Congressional Quarterly.
- Elliott, Stephen P., ed. 1986. *A Reference Guide to the United States Supreme Court*. New York: Facts on File.
- Kaye, Judith S. 1999 “Poetic Justice: He Was a Great Common Law Judge, Responsive To his Times; As Business Relationships Became More Complex and Attenuated, Benjamin Nathan Cardozo Created New—and Lasting—Standards.” *American Lawyer* 21 (December).
- Levy, Beryl H. 1938. *Cardozo and Frontiers of Legal Thinking*. Port Washington, N.Y.: Kennikat Press.
- Pollard, Joseph P. 1970. *Mr. Justice Cardozo: A Liberal Mind in Action*. Westport, Conn.: Greenwood Press.

CARE

Watchful attention; custody; diligence; concern; caution; as opposed to NEGLIGENCE or carelessness.

In the law of negligence, the standard of reasonable conduct determines the amount of care

to be exercised in a situation. The care taken must be proportional to the apparent risk. As danger increases, commensurate caution must be observed.

Slight care is the care persons of ordinary prudence generally exercise in regard to their personal affairs of minimal importance.

Reasonable care, also known as ordinary care, is the degree of care, diligence, or precaution that may fairly, ordinarily, and properly be expected or required in consideration of the nature of the action, the subject matter, and the surrounding circumstances.

Great care is the degree of care that persons of ordinary prudence usually exercise with respect to their personal affairs of great importance.

Another type of care is that which a fiduciary—a person having a duty, created by his or her undertaking, to act primarily for another's benefit—exercises in regard to valuable possessions entrusted to him or her by another.

CARJACKING

The criminal taking of a motor vehicle from its driver by force, violence, or intimidation.

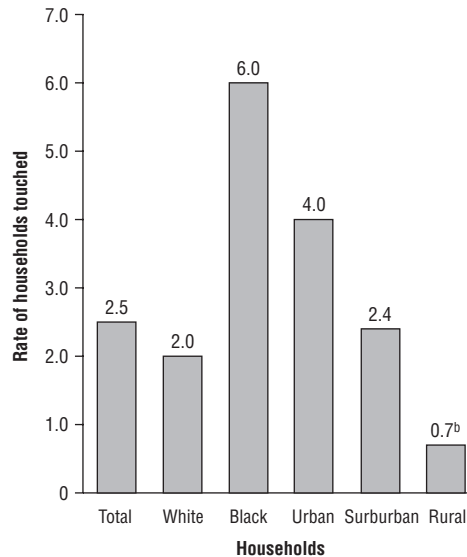
The U.S. JUSTICE DEPARTMENT categorizes the crime of carjacking as a “completed or attempted ROBBERY of a motor vehicle by a stranger to a victim.” Carjacking incidents emerged in increasing numbers in the 1980s and 1990s, after their initial appearances in Detroit. According to a report filed with the Bureau of Justice Statistics in 1999, an average of 49,000 carjackings occurred in the United States each year between 1992 and 1996. During this time, about half of all attempted carjackings were successful, though the most carjackings (84 percent) did not result in injuries to the victims.

Carjackers are often thought by the public to target older persons, women, and tourists—groups of conspicuous vulnerability. However, statistics from 1992 to 1996 show that individuals between the ages of 25 and 49 were more likely to be the victims of such a crime (3.6 out of every 10,000 persons) than individuals ages 50 or older (0.9 out of every 10,000 persons). Moreover, males during this time span were more likely to be victims (3.1 out of every 10,000 persons) than females (1.9 out of every 10,000 persons).

The makes and models of the cars targeted for carjacking vary from city to city, and it is not

Carjacking

U.S. HOUSEHOLDS TOUCHED BY MOTOR VEHICLE THEFT, 1992 TO 1996^a



^aAverage number of crimes reported per year: 48,787

^bBased on fewer than 10 sample cases.

Note: Based on National Crime Victimization Survey data. Does not include carjackings involving murder.

SOURCE: U.S. Department of Justice, Bureau of Justice Statistics, *Carjacking in the United States, 1992–96*.

only the expensive, top-of-the-line cars that are taken but also older and less pricey automobiles. This may be because carjackings are more crimes of opportunity than of premeditation. Carjackers simply wait for an unaware driver, an open window, or an unlocked door. According to the Bureau of Justice Statistics report in 1999, persons with an average annual income of between \$35,000 and \$49,999 were more likely to be victims (3.2 out of every 10,000) than those who made \$50,000 or more per year (2.4 out of every 10,000).

Carjacking was formally introduced to Congress during its spring 1992 session by Representative Charles E. Schumer (D-NY). Over the next several months, a new law involving the crime was discussed and developed into the Anti-Car Theft Act of 1992 (18 U.S.C.A. § 2119). The focus was not entirely on carjacking, but rather on car theft, which had become the number one property crime in the United States, with automobiles constituting more than 50 percent of the property U.S. citizens lost to theft.

In the fall of 1992, Pamela Basu and her 22-month-old daughter were carjacked in Maryland. Basu was forced from her car by two men and, in a struggle to keep her daughter from being hurt, became caught in the seat belt outside the car. She was dragged almost two miles before she was freed from the seat belt; her daughter, still in her car seat, was thrown from the vehicle a short time later. Basu died of massive internal injuries; her daughter was physically unharmed. The publicity surrounding this crime helped fuel the movement that led to the passage of a provision in the Anti-Car Theft Act of 1992 that made carjacking a federal offense.

President **GEORGE HERBERT WALKER BUSH** signed the act into law on October 25, 1992. The statute's provision regarding carjacking was as follows:

Whoever, possessing a firearm, as defined in section 921 of this title, takes a motor vehicle that has been transported, shipped or received in interstate or foreign commerce from the person or presence of another by force and violence or by intimidation, or attempts to do so, shall—1) be fined under this title or imprisoned not more than 15 years, or both. 2) If serious bodily injury . . . results, be fined under this title or be imprisoned not more than 25 years, or both, and 3) if death results, be fined under this title or imprisoned for any number of years up to life, or both.

Within a few months of its passage, the federal carjacking statute was challenged under the **DOUBLE JEOPARDY** Clause of the U.S. Constitution. According to the **FIFTH AMENDMENT**, no person shall "be subject for the same offence to be twice put in jeopardy of life or limb," meaning that no one can be tried twice for the same crime. After the carjacking statute was passed, people who used a firearm during the commission of a carjacking were not only subject to punishment under that statute but also faced mandatory punishment under 18 U.S.C.A. § 924(c), which outlaws the use or carrying of a firearm in relation to a violent crime. The issue came to a head in *United States v. Singleton*, 16 F.3d 1419 (5th Cir. 1994), when the presiding judge ruled that both the firearm portion of the carjacking statute and the gun statute proscribed the same conduct, and Congress had not shown that it would impose cumulative punishment under these two statutes. Therefore, the gun count in the carjacking statute violated the **Double Jeopardy Clause**.

Within several months of *Singleton*, amendments to the carjacking portion of the Anti-Car Theft Statute were debated in the House of Representatives and Senate. The result was a provision in the **VIOLENT CRIME CONTROL AND LAW ENFORCEMENT ACT OF 1994**, Pub. L. No. 103-322, 108 Stat. 2119, which was signed by President **BILL CLINTON**. The provision made two significant amendments to 18 U.S.C.A. § 2119. The first was that a death sentence can be handed down in cases in which a carjacking victim is killed. The second was that "possessing a firearm, as defined under section 921 of this title" was deleted and replaced with "with the intent to cause death or serious bodily harm." This removed the double jeopardy problem identified in *Singleton*.

Although carjacking has been made a federal crime, several states also have legislation on the subject. One is Florida, which has a big tourist industry. In the late 1980s and early 1990s, an increasing number of tourists, most of them foreign, were victims of carjackings in Florida. Because tourists in well-marked rental cars were common carjacking victims, Florida passed legislation in 1993 (F.S.A. § 320.0601) that outlawed company logos and license plates that made rental and leased cars obvious. Florida's legislators felt that tourists warranted this extra protection for three main reasons. First, tourists are, more often than not, unfamiliar with the area and are more likely to become lost or end up in a high-crime area. Second, tourists often carry more cash than natives, which makes them prime robbery targets. And finally, fewer tourists are likely to return and testify in court about a crime. By granting tourists the right to drive unmarked rental cars, Florida made them less vulnerable to the crime of carjacking.

FURTHER READINGS

- Bodette, David C. 2001. "The Sixth Circuit Interprets the 'Person or Presence' Requirement of the Federal Carjacking Statute." *The University of Memphis Law Review* 32 (fall): 197–209.
- Bureau of Justice Statistics. 1999. *Carjackings in the United States, 1992–96*. Available online <www.ojp.usdoj.gov/bjs/abstract/cus96.htm> (accessed October 13, 2003).
- Kretzmar, Allan Jon. 1998. "I Would Rather Face a Carjacker in Court Than Have a Carjacker Come to My Funeral! The debate over Carjacking, Legislation, and Anti-Theft-Anti-Carjacking Devices." *University of West Los Angeles Law Review* 29 (annual): 291–325.
- Michenfelder, Mary C. 1995. "The Federal Carjacking Statute: To Be or Not to Be? An Analysis of the Propri-

ety of 18 U.S.C. §2119." *Saint Louis University Law Journal* 39 (spring).

Norborg, Chris. 2000. "Conditional Intent to Kill is Enough for Federal Carjacking Conviction." *Journal of Criminal Law and Criminology* 90 (spring): 985.

Rand, Michael R. 1994. *Carjacking: National Crime Victimization Survey*. Washington, D.C.: U.S. Department of Justice.

Wing, F. Georgann. 1994. "Putting the Brakes on Carjacking or Accelerating It? The Anti Car Theft Act of 1992." *University of Richmond Law Review* 28 (April).

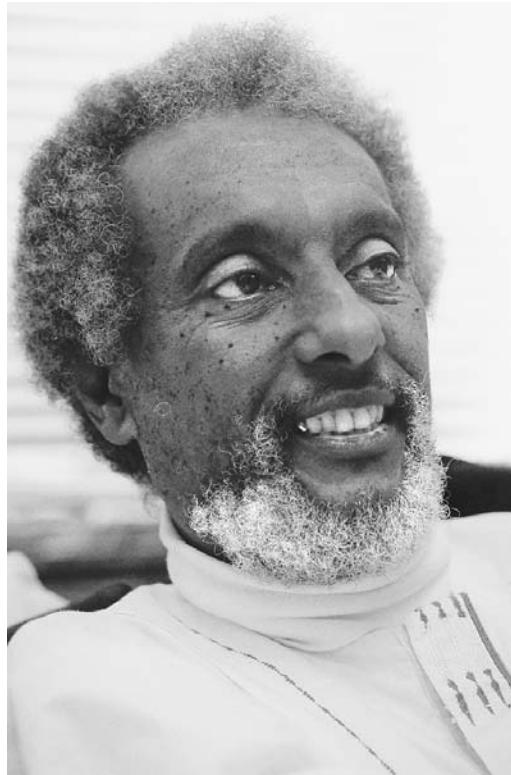
CROSS-REFERENCES

Automobiles; Double Jeopardy.

❖ CARMICHAEL, STOKELY

African American activist, leader, and militant STOKELY CARMICHAEL is known for the galvanizing cry "Black Power!" which helped transform the later years of the CIVIL RIGHTS MOVEMENT. The raised fist that accompanied the slogan was a rallying point for many young African Americans in the late 1960s. Carmichael's forceful presence and organizing skill were compelling reasons to join. In 1966, he was elected chairman of the STUDENT NONVIOLENT COORDINATING COMMITTEE (SNCC), a CIVIL RIGHTS organization popularly called Snick. Leaving Atlanta-based SNCC in 1967 with a more radical vision, Carmichael became prime minister of the Oakland-based BLACK PANTHER PARTY FOR SELF-DEFENSE (BPP), perhaps the most militant of 1960s African American groups. Members of Congress denounced him for allegedly seditious speeches, other politicians and civic leaders blamed him for causing riots, and the FEDERAL BUREAU OF INVESTIGATION (FBI) matched this fervor with counterintelligence activities. Bitterly severing his ties with the BLACK POWER MOVEMENT in 1969, Carmichael announced that he would work on behalf of Pan-Africanism, a socialist vision of a united Africa. He moved to Guinea, West Africa, where he lived and worked until his death in 1998.

Carmichael was born in Port of Spain, Trinidad, on June 29, 1941. Two years later, he was placed in a private school, as his father, mother, and two sisters immigrated to the United States. At school he earned the nickname Little Man for his quick intelligence and precocious awareness, traits that had him urging his aunt to vote when he was turned away from polling booths at the age of seven. He received a British education at the Tranquillity Boys School, a segregated institution, from the age of



Stokely Carmichael
(Kwame Toure).

AP/WIDE WORLD
PHOTOS

ten to eleven, before nearly dying of pneumonia. As an adult, he would recall the Tranquillity School experience with bitterness for "drugging" him with white European views. His parents brought him and three sisters to live with them in Harlem in June 1952.

In Harlem, he found conditions disappointingly different from those in Trinidad, where the black majority had found access to positions in elective government and professional employment. His mother, Mabel Carmichael, worked as a maid. His father, Adolphus Carmichael, who had been successful enough as a skilled carpenter to build a large house in Port of Spain, struggled at driving a cab to make ends meet but remained optimistic about the United States. For this dream, Carmichael later said, his father paid a high price, working himself to death, and dying the same way he began, poor and black.

By junior high school, Carmichael's disillusionment revolved around a life of marijuana, alcohol, theft, and a street gang of which he was the only nonwhite member. However, when he entered the respected Bronx High School of Science, his scholastic interests blossomed, and he began to read widely in politics and history. Social opportunities began to appear for him,

"AN
ORGANIZATION
WHICH CLAIMS TO
SPEAK FOR THE
NEEDS OF A
COMMUNITY . . .
MUST SPEAK IN
THE TONE OF THAT
COMMUNITY."

—STOKELY
CARMICHAEL

too. Yet, later, he could not dispel a sense of alienation and anger. "I made the scene in Park Avenue apartments," he recalled in a 1967 interview. "I was the good little nigger and everybody was nice to me. Now that I realize how phony they all were, how I hate myself for it."

Social and political change were in the air as Carmichael was finishing high school. The civil rights movement was in full swing and a new generation of young African Americans began holding lunch counter sit-ins in segregated cafés and restaurants in the South. At first skeptical about these "publicity hounds," Carmichael changed his mind when he saw televised images of white students pouring sugar and ketchup on the heads of the peaceful protesters. By mid-1960 he was in Virginia taking part in a sit-in organized by the CONGRESS OF RACIAL EQUALITY (CORE), a civil rights group founded nearly two decades earlier. Beaten up during his first demonstration, Carmichael was undeterred. He attended more sit-ins and pickets, notably against the F.W. Woolworth Company in New York, as such demonstrations spread widely across the country, resulting in integrated businesses in several states.

Several scholarship offers awaited Carmichael, including one from Harvard. His decision to reject them in favor of attending Howard University in Washington, DC, marked a turning point in his life. In 1961, CORE sponsored trips by young activists to the South. Known as the Freedom Rides, these journeys were intended to fight SEGREGATION. As a freshman, Carmichael went along. He escaped the violent mob beatings that many of the activists suffered while white police officers watched and did nothing, but he and several other CORE activists were arrested in Mississippi, jailed for 53 days, zapped with cattle prods, and forced to sleep on hard cell floors. Such treatment was not the worst inflicted on the Freedom Riders: three were murdered. Released finally, he returned to the university and changed his major from medicine to philosophy, in which he took a bachelor's degree upon graduation in 1964.

Leaving Howard, Carmichael became an organizer with SNCC. Founded during his final year in high school, the group had emerged from meetings organized by ELLA J. BAKER, the associate executive director of the SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE (SCLC)—the civil rights organization of which MARTIN LUTHER KING JR. was president. SNCC con-

tained the seeds of a major change in direction for the civil rights movement. As it grew in the early 1960s, SNCC attracted young volunteers who were impatient with the progress of older organizations such as CORE and the SCLC. It sent black and white young people from predominantly northern, middle-class backgrounds into rural areas of the Deep South, their goal being to educate illiterate farmers, increase voter registration, and set up health clinics. A field organizer for a SNCC task force in Lowndes County, Mississippi, Carmichael brought about noteworthy successes: the number of registered black voters increased from 70 to 2,600, a dramatic rise for a county in which African Americans outnumbered whites but had no share in political power.

In 1966, Carmichael was elected chairman of SNCC. The group's goal was evolving from INTEGRATION to liberation. In Mississippi, he had organized a political party called the Lowndes County Freedom Organization. Its symbol, a black panther leaping with a snarl, would become nationally recognized in the years to follow. So would the words Black Power! that Carmichael shouted to black sharecroppers as he and other participants in the JAMES MEREDITH Freedom March passed them in June 1966. The cross-state march was a project launched by Meredith, who had been the first African American to attend Mississippi University, to prove that black citizens could enjoy their rights in the state without fear. Such fear was well placed. On the second day, shotgun blasts badly wounded Meredith. As another march took place and more violence followed, "Black Power!" became the marchers' chant.

In Carmichael's view, black power meant several things: political power, economic power, and legal power. It was both local and international in scope. "We want control of the institutions of the communities where we live, and we want control of the land, and we want to stop the exploitation of non-white people around the world," he said. This control would be achieved by any means necessary, he promised, drawing on the famous words of the activist MALCOLM X. SNCC members carried guns for SELF-DEFENSE, a practice defended by Carmichael this way: "We are not [Martin Luther] King or SCLC. They don't do the kind of work we do nor do they live in the same areas we live in." In contrast to the harmonious message of King, Carmichael's rhetoric stirred fear and antagonism in many

members of the mass media, who quickly accused him of reverse racism. *Time* magazine dubbed him a black powermonger. As riots tore through major U.S. cities in the summers of 1966 and 1967, Carmichael was condemned for making inflammatory speeches that his critics said sparked them.

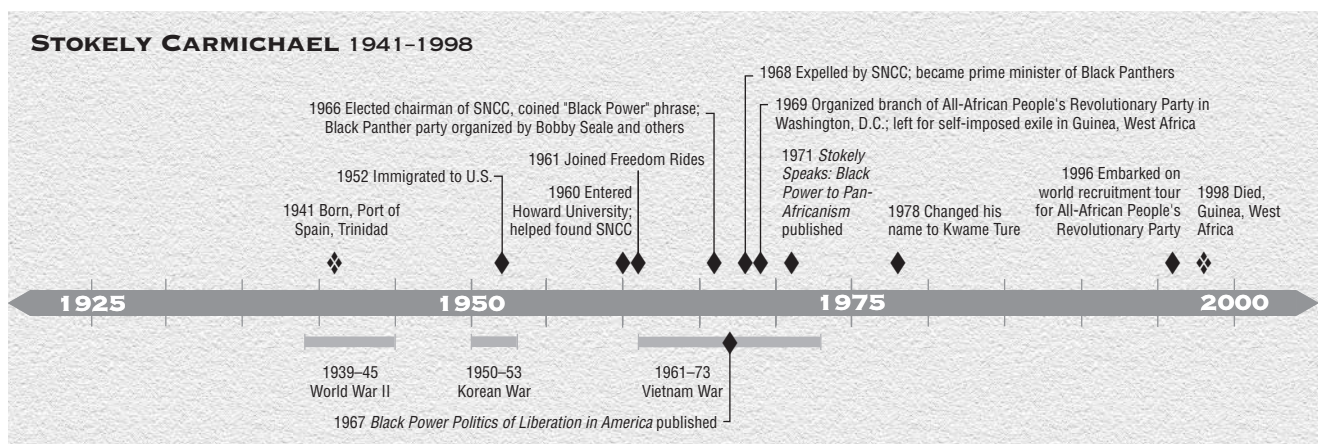
Within SNCC, more than rhetoric was changing. As the organization began to speak of oppressors and the oppressed, it also took practical steps that distanced it from older civil rights groups. Carmichael had SNCC pull out of the White House Conference on Civil Rights, a move that brought condemnation from the SCLC, the National Association for the Advancement of Colored People (NAACP), and the Urban League; CORE, however, was moving in the same direction. Support for SNCC began to dry up. Older black activists deserted the organization; white supporters withdrew funding. In late 1966, SNCC purged all white members from its ranks.

Law enforcement agencies turned their sights on the increasingly militant group. Fights between the group's members and police officers broke out in several cities. In August 1966, a raid by 80 Philadelphia police officers on a SNCC office resulted in several arrests and charges that dynamite was stored there. As a result, the city's mayor and chief of police tried to bar Carmichael from speaking in Philadelphia. He was soon arrested and convicted in Atlanta of inciting a riot. Federal authorities also became concerned. The FBI had begun surveillance of SNCC in 1960; now it stepped up the supervision. In the summer of 1967, COINTELPRO, the FBI's Counterintelligence Program, officially added SNCC to its list of revolutionary

groups to monitor, infiltrate, and, if possible, discredit.

Stepping down from the SNCC chairmanship, Carmichael gave lectures on college campuses and traveled worldwide. To an international audience that viewed him as a revolutionary leader, he gave speeches in Europe, Africa, and North Vietnam. In a talk given in London in July 1967, he so enraged British political leaders that he was barred from entering more than 30 countries in the British Commonwealth. Harsh criticism in the U.S. press followed an appearance in Havana where he said, "We are preparing groups of urban guerrillas for our defense in the cities. . . . It is going to be a fight to the death." President Fidel Castro of Cuba offered Carmichael political ASYLUM, which he declined. Upon Carmichael's return to the United States on December 12, 1967, U.S. MARSHALS seized his passport. Lawmakers in Congress denounced him for TREASON and SEDITION, and, as a result, considered legislation favoring bans on travel by U.S. citizens to countries deemed enemies of the United States.

Overseas, Carmichael had espoused his view of Pan-Africanism. This political movement favored uniting African countries under a common socialist leadership. SNCC expelled Carmichael in August 1968, disagreeing with his political turn, but by this time he had already joined the BPP. Organized to prevent police brutality toward African Americans, the Black Panthers had adopted the symbol Carmichael popularized in Lowndes County, a leaping, snarling black panther. The BPP's members carried guns, demanded equality and justice, and occasionally exchanged gunfire with police officers, leading to the conviction of one of its



founders, HUEY P. NEWTON. As honorary prime minister of the BPP, Carmichael organized over two dozen chapters across the country.

Black power's growing appeal—and, in the eyes of many white U.S. citizens, its danger—seemed to reach a symbolic height at the 1968 Olympics. There, two medal-winning members of the U.S. Olympic Team raised their fists in expression of their solidarity with the movement, a protest that ended in U.S. officials stripping them of their medals.

Events during this period increased Carmichael's sense of alienation from the United States. He alleged that the FBI harassed him and his wife, Miriam Makeba, a South African-born singer, by following them wherever they went. Carmichael and Makeba felt that Makeba lost singing jobs and recording contracts because of Carmichael's notoriety. When the Black Panthers allied themselves with white radicals he broke with the organization. "The history of Africans living in the U.S. has shown that any premature alliance with white radicals has led to complete subversion of the blacks by the whites," he said in July 1969. He called upon all Africans "as one cohesive force to wage an unrelenting armed struggle against the white Western empire for the liberation of our people." His departure sounded a death knell for the black power movement; by the early 1970s it had all but vanished.

In 1969, Carmichael prepared to leave for self-imposed exile in Africa. Before going, he organized a branch of the All-African People's Revolutionary Party (AAPRP) in Washington, DC, a Pan-Africanist group established the previous year in Guinea, West Africa. After settling in Africa, he briefly returned to the United States in March 1970, and appeared before a congressional subcommittee on national security matters. Questioned about revolutionary groups in the United States, he pleaded the FIFTH AMENDMENT throughout the hearing. Back in Guinea, he worked for the AAPRP, taught at the university in Conakry, and, in 1978, changed his name to Kwame Ture, partly in honor of Sékou Touré, former president of Guinea, who was his friend and benefactor. Following the death of President Touré and the rise of the MILITARY GOVERNMENT in Guinea, he was jailed several times for unknown reasons.

Carmichael traveled and spoke in a number of countries since the 1980s. In 1982, the British Commonwealth briefly lifted its ban on his

crossing its borders, but it quickly renewed the prohibition after he made a 1983 visit to Britain advocating international black solidarity and the overthrow of capitalism. British officials claimed that he urged black lawyers to throw bombs. Later, he paid several visits to the United States. In 1989, looking back on the accomplishments of the civil rights and black power movements, he expressed skepticism. Citing the 304 African American mayors then in office in the United States, he dismissed them as impotent to effect real change. "All of them singularly and in block are powerless inside the racist political structure of the U.S.A.," he said. "These African mayors represent the biggest cities . . . yet the conditions of the masses of our people are worse today in these very cities than before the advent of African mayors."

Carmichael and Makeba divorced in 1978 and he later remarried. He received an honorary doctor of law degree from Shaw University, in North Carolina, and authored two books, *Black Power: Politics of Liberation in America* (1967) and *Stokely Speaks: Black Power to Pan-Africanism* (1971).

In June 1998, Carmichael donated his papers to the Moorland-Spingarn Research Center of Howard University. He died on November 15, 1998, at the age of 57, of prostate cancer. In May 1999, Carmichael was posthumously awarded an honorary doctorate by Howard University and his friends and supporters began a drive to establish the Kwame Toure Work-Study Institute and Library in Conakry, Guinea.

FURTHER READINGS

- Carmichael, Stokely. 1971. *Stokely Speaks: Black Power to Pan-Africanism*. New York: Random House.
- Johnson, Jacqueline. 1990. *Stokely Carmichael: The Story of Black Power*. Parsippany, N.J.: Silver Burdett Press.
- Kaufman, Michael T. November 16, 1998. "Stokely Carmichael Dies at 57." *New York Times*. Available online at <www.interchange.org/Kwamature/nytimes/111698.html> (accessed June 13, 2003).
- Makeba, Miriam. 1987. *Makeba: My Story*. New York: New American Library.

CARNAL KNOWLEDGE

Copulation; the act of a man having sexual relations with a woman.

Penetration is an essential element of sexual intercourse, and there is carnal knowledge if even the slightest penetration of the female by the male organ takes place. It is not required that the hymen be ruptured or the vagina entered.

CAROLENE PRODUCTS FOOTNOTE

See FOOTNOTE 4.

❖ CARPENTER, MATTHEW HALE

Matthew Hale Carpenter was born December 22, 1824, in Moretown, Vermont. He attended the U.S. Military Academy from 1843 to 1845 and was admitted to the Vermont bar in 1847. His real name was Decatur Merritt Hammond Carpenter and although he was educated in Vermont, he established his public career in Wisconsin.

In 1861 Carpenter served as JUDGE ADVOCATE general. He participated in the U.S. Senate, serving as senator from Wisconsin during the years 1869 to 1875 and 1879 to 1881.

His legal skills were displayed in his representation of Secretary of War William W. Belknap at the latter's IMPEACHMENT trial. In 1877 Carpenter acted as legal counsel to Democratic presidential candidate SAMUEL TILDEN during an inquiry held by the electoral commission concerning the contested election results. Tilden lost to RUTHERFORD B. HAYES by one electoral vote.

Carpenter died February 24, 1881, in Washington, D.C.

CARPETBAG JUDGES

Colloquial term used to describe northern judges during the post-Civil War era who traveled to the South to serve on southern courts, typically for personal gain. "Carpetbag" refers to the judges's practice of carrying their possessions with them in carpetbags.

During the mid-1800s, judges were elected, and IMPEACHMENT proceedings were at that time an increasingly popular method for their removal. After the Civil War and the Reconstruction period, many judges—both black and white—served on the judiciary in the South. A

large number of these judges were known as "carpetbagging" judges because they were northerners who had relocated to the South for personal gain, carrying all their possessions in a carpetbag. They were reputed to be dishonest and incompetent.

Threatened with impeachment, many of these judges left the bench. Not all the charges against the carpetbag judges were accurate, however, and a good number were not any worse than the judges who lived in the area. Several earned prominence, such as Moses Walker—a transient from Ohio—who contributed to the prestige of the Texas Supreme Court. Albion W. Tourgee, another carpetbagger, wrote several books about his years in the South. His most popular book was *A Fool's Errand*, published in 1879. Tourgee was highly regarded for his presentation of liberal opinions concerning interrelationships between blacks and whites.

FURTHER READINGS

"Carpetbaggers." *Handbook of Texas Online*. Available online at <www.tsha.utexas.edu/handbook/online/articles/view/CC/pfc1.html> (accessed June 14, 2003).

Carrington, Paul D. 1999. "Lawyers Amid the Redemption of the South." *Roger Williams University Law Review* 41.

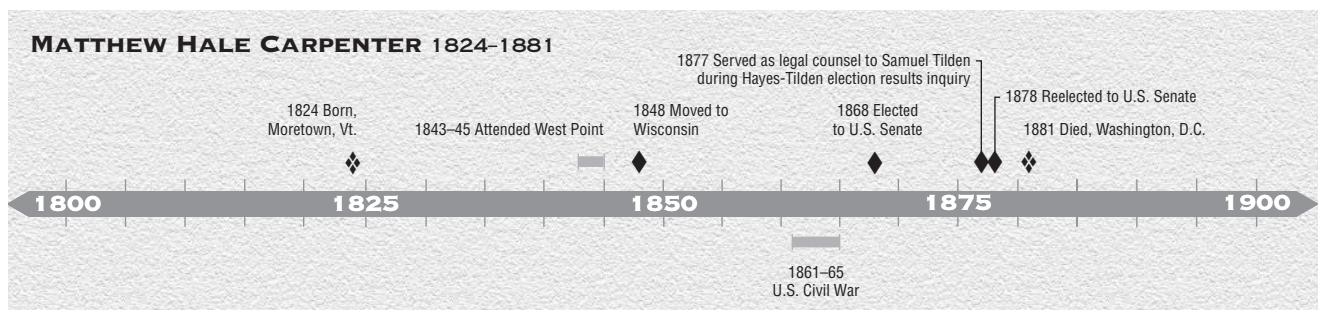
CROSS-REFERENCES

Elections; Impeachment; Reconstruction.

CARRIERS

Individuals or businesses that are employed to deliver people or property to an agreed destination.

The two main types of carriers are common carriers and private carriers. A *common carrier*, such as a railroad, airline, or business that offers public transportation, customarily transports property and individuals from one location to another, thus offering its services for the hire of the general population. A *private carrier* is employed by special agreement only and



reserves the right to accept or reject employment as a carrier. Private carriers include chartered cargo planes, ships, and buses and are generally not subject to the same regulatory restrictions as common carriers.

Common carriers engaged in interstate transportation are regulated on the federal level pursuant to the **COMMERCE CLAUSE** of the U.S. Constitution, which provides that “[t]he Congress shall have Power . . . [t]o regulate Commerce . . . among the several States” (art. I, § 8, cl. 3). The government, through the **INTERSTATE COMMERCE ACT** (49 U.S.C.A. § 10101 et seq.), traditionally regulated charges for interstate transportation by common carriers. Beginning in the late 1970s and early 1980s, however, deregulation of the trucking industry reduced government involvement in establishing rates. Unless a statute states otherwise, a common carrier has broad authority to fix transportation rates so long as the rates are reasonable. In determining whether a rate is reasonable, a number of elements are considered. The most essential is the cost of transportation to the carrier, and others include the character and value of the items to be shipped; their weight, bulk, and ability to be handled; and the mileage to be covered. Though common carriers have a great deal of freedom to set interstate rates, they must follow procedures set forth by the **INTERSTATE COMMERCE COMMISSION**, including filing rates with the commission and publishing them.

A state possesses the authority to monitor and control the management and functions of common carriers operating within its borders and may set the prices charged by carriers doing business within the state. Most state laws require common carriers to file rate schedules with a state regulatory commission.

A common carrier is obligated to provide the necessary facilities to transport the volume of goods expected and to exercise the reasonable care needed to transport the goods safely. In the case of perishable goods, such as frozen or fresh foods, the common carrier must provide refrigerated or ventilated cars to ensure their safe transportation. Likewise, when transporting livestock, a common carrier is required to provide adequate ventilation, bedding, and partitions. The common carrier may be liable for loss or injury to the livestock resulting from defects in the cars it uses to transport the animals.

The carrier must follow any specific shipping directives provided by the shipper and if

any instructions are ambiguous, the carrier must hold the goods until the shipper provides clarification. The shipper can select the route and manner by which the goods can be transported, but if no route is specified, the carrier is free to choose any convenient route that does not result in delay to the shipper.

Subject to some exceptions, a common carrier is absolutely liable for loss or damage to the goods it receives for shipment. A common carrier is not liable for loss or injury to goods brought about by an act of God, an event such as an unforeseeable flood that could be neither caused nor prevented through the exercise of proper care on the part of the carrier. A carrier could, however, be liable for an act of God if it is guilty of **NEGLIGENCE** after the discovery of an accident. For example, a fire started by lightning would ordinarily be considered an act of God, but if the carrier discovered it early and did nothing to abate it, the carrier could still be liable for failing to exercise due diligence.

In addition, a common carrier is not liable for a loss of goods when the loss is caused by the destruction or appropriation of the goods by the military forces of a “public enemy” at war with the domestic government. However, merely a declaration of **MARTIAL LAW** will not relieve the common carrier of liability, and groups who are not functioning as military forces against the government are not considered public enemies. Thus, a common carrier remains liable for a loss of goods resulting from the acts of a mob, rioters, and strikers, even if the carrier was not negligent and took all possible precautions to prevent the loss.

A carrier will not be held liable for injuries to goods that occur as a result of the shipper’s negligence or misconduct. Furthermore, when the nature or value of the goods to be shipped is fraudulently concealed or misrepresented by the shipper, whether to obtain a lower shipping rate or for any other purpose, the carrier is not liable for any losses incurred. **FRAUD** can be established by the shipper’s silence regarding the value of the goods or by untruthful statements made by the shipper. If the shipper failed to notify the carrier about the nature of the contents of a particular shipment, the carrier is ordinarily exempt from liability if a loss occurs, even if the loss is due to negligence on the part of the carrier.

A common carrier can restrict its liability for damages by clear and unambiguous terms con-

tained in its contract with the shipper. Questions concerning the validity of such agreements are resolved by state law when shipments within a state are involved and federal law is applied to contractual disputes concerning interstate shipments. A contractual provision releasing the carrier from liability must not contravene public policy and a carrier that departs from the usual method or route for shipment may not rely upon any limitations on liability contained in the contract.

Some common carriers, like public buses and taxis, transport people from one place to another. A common carrier of passengers, also known as a *public carrier*, transports for hire all persons (within certain limitations) as a regular business and represents itself as being engaged in such a business. A public carrier can deny carriage to people who refuse to comply with its reasonable regulations, who are likely to present danger to other passengers, or who in some way interfere with the safe carriage of passengers.

Common carriers of passengers are subject to extensive regulation by state and federal governments. Many states, for example, require by law that common carriers be inspected annually in order to protect people from the hazards of riding in vehicles that are poorly maintained. A common carrier that transports passengers may also make its own rules and regulations provided they are reasonable and will protect the interests of both the carrier and the passengers.

A carrier of passengers is liable for injuries suffered by passengers as a result of its negligence but is not an insurer of its passengers' safety. Instead, a common carrier is required to act with the utmost care, skill, and diligence to protect the safety of its passengers as may be mandated by the type of transportation provided and the risk of danger inherent in it. Conversely, a private carrier of passengers must act with only reasonable care and diligence unless the contract for carriage provides otherwise, though some jurisdictions hold a private carrier to the same duty as that applied to common carriers.

Determining whether a carrier is a common carrier, and thus subject to a higher standard of care, was the subject of some litigation in the late 1990s. For example, a California federal district court held in early 1995 that Disneyland, as the operator of an amusement park ride, qualified as a common carrier and thus should be held to a duty of utmost care and diligence for

the safety of its passengers even though the chief purpose of the ride was to entertain and not transport travelers (*Neubauer v. Disneyland*, 875 F. Supp. 672 [C.D. Cal. 1995]). As a result, Disneyland was held liable for injuries the plaintiffs suffered when their boat on an amusement ride was rammed from behind by another boat. The court looked to the broad definition of a common carrier contained in state law and held that any narrowing of the term *carrier* should take place in the legislature and not in the court.

Some courts have considered whether the age of the passenger affects the duty owed by a common carrier. The Iowa Supreme Court, for example, in 1995 considered whether a school bus owed an additional duty to a child injured as he was struck by a car after safely alighting the bus (*Burton ex rel. Hawkeye Bank of Des Moines v. Des Moines Metropolitan Transit*, 530 N.W.2d 696 [Iowa]). The court declined to extend the duty owed by drivers of school buses to ensure the safety of children alighting the vehicles, holding that the bus company had no duty beyond that owed by a common carrier to protect child passengers from dangers that may reasonably and naturally be anticipated. According to the court, once a passenger alights safely, the passenger (even when he or she is a child) is better able to guard against the danger of moving vehicles; thus, public policy did not support extending a carrier's duty of care to include ensuring that the passenger safely crosses the street.

Unless the carrier is negligent, it is not responsible to a passenger for injuries due to natural causes and due to causes beyond the carrier's control. A common carrier of passengers cannot ordinarily release itself from liability for injuries to a passenger caused by either willful, wrongful conduct or negligence on the part of the carrier. In some jurisdictions, though, a carrier can limit its liability for negligence in exchange for providing a reduced fare or free pass. However, such limitations on liability may be invalid if the reduced fare is not made optional and if passengers are not permitted to buy tickets that provide that the carrier's liability is not limited.

Like common carriers that transport goods, carriers of passengers have also been subject to deregulation by the federal government. The Airline Deregulation Act of 1978 (49 U.S.C.A. § 334, 1301 et seq.) gave airlines almost complete discretion over rates, routes, and services

offered. Prior to passage of the act, the Civil AERONAUTICS Board, a federal agency, exercised exclusive control over pricing in the airline industry.

Subsequent federal legislation also affected the responsibilities of carriers to their employees and passengers. In 1990 Congress enacted the Americans with Disabilities Act (ADA) (42 U.S.C.A. § 12201 et seq.), which prohibits employment discrimination against a qualified individual with a disability. The ADA further prohibits a carrier covered by the act from discriminating against a qualified individual with a disability because of that disability in regard to job application procedures, hiring, advancement, discharge, compensation, training, and other terms and conditions of employment. The ADA then sets forth in some detail the procedures that the carrier must follow in screening, interviewing, and hiring employees to ensure that individuals with disabilities are not subject to discrimination. In particular, the ADA requires that a carrier provide "reasonable accommodation" for the physical or mental limitations of a qualified applicant or employee with a disability unless the carrier can show that the accommodation would impose an "undue hardship" on business. According to the EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, a reasonable accommodation is a modification or adjustment to a job, practice, or work environment that makes it possible for an individual with a disability to enjoy an equal employment opportunity. An undue hardship has been defined as an action that is unduly costly, extensive, substantial, or disruptive or that would fundamentally alter the nature or operation of the carrier's business.

The ADA has also affected the scope of a carrier's responsibility to its passengers. Under the ADA, carriers of passengers such as buses and rail systems must ensure that their facilities are readily accessible to and usable by individuals with disabilities by providing lifts, ramps, or other mechanisms. Airlines, which are not specifically covered by the ADA, are prohibited from discriminating against disabled individuals under the Air Carrier Access Act (ACAA), 49 U.S.C.A. § 1301 note, 1374, 1374 note, which was enacted in 1986. The ACAA provides that "[n]o air carrier may discriminate against any ... handicapped individual, by reason of such handicap, in the provision of air transportation" (42 U.S.C.A. § 1374). Like the ADA, it further

provides that air carriers must make "reasonable accommodations" for disabled individuals traveling by air.

FURTHER READINGS

- Astle, W. E. 1980. *Shipping and the Law*. London: Fairplay Publications.
- Lebedoff, David. 1997. *Cleaning Up: The Story behind the Biggest Legal Bonanza of Our Time*. New York: Free Press.
- Hegedus, L.E. 1992. "Shinault v. American Airlines, Inc.: Compensatory and Emotional Distress Damages under the Air Carrier Access Act." *Tulane Law Review* 66.
- Murphy, Betty Southard. 1993. "The Americans with Disabilities Act: How It Affects the Airline and Railroad Industries." *American Law Institute* (April).

CROSS-REFERENCES

Airlines; Diligence; Disability Discrimination; Negligence; Railroad; Shipping Law.

CARRIER'S LIEN

The right of an individual or organization that publicly advertises itself for hire for the transportation of goods to keep possession of the cargo it has delivered to a destination until the person who is liable to pay the freight charges plus any other expenses incurred by its shipment has done so.

Not all carriers are automatically entitled to have a lien for nonpayment of freight charges. A private carrier, one that does not offer its services to the public but transports goods pursuant to a special agreement, does not have a lien on property shipped unless provided by statute or under the terms of the carriage contract.

When a carrier retains goods under a lien it must exercise reasonable care to protect the cargo. It will be liable for any damage to such property that might have been avoided if ordinary precautions had been taken. Damages resulting solely from the detention of the property are the responsibility of the person who has failed to pay the freight charges; he or she must absorb that loss.

❖ CARRINGTON, EDWARD CODRINGTON

Edward Codrington Carrington was born April 10, 1872, in Washington, D.C. He was admitted to the Maryland bar in 1894 and established his legal practice in Baltimore, specializing in corporation law.

A supporter of the Progressive faction of the REPUBLICAN PARTY, Carrington served as campaign manager in Maryland for THEODORE

ROOSEVELT in the primary election of 1912 while a member of the Republican National Convention. During the same year, he advocated a Progressive National Convention and acted as a delegate to this convention. Carrington also served on the Progressive National Committee and headed the Progressive State Committee of Maryland.

Carrington initiated proceedings in Maryland to combine the Progressives once again with the Republicans, and in 1914 he was nominated by the Republicans for a seat in the U.S. Senate, but was defeated. He spent the remainder of his life as a participant in business activities, which included his service as president of the Hudson River Navigation Corporation.

On December 30, 1938, Carrington died in Baltimore.

CARRINGTON REPORT

A report delineating proposed changes in LEGAL EDUCATION submitted by Professor Paul D. Carrington of the University of Michigan School of Law, chairman of the Curriculum Study Project Committee of the Association of American Law Schools (AALS), to the AALS on September 7, 1971.

The Carrington Report represented the combined efforts of a committee of legal scholars, but Professor Carrington, due to his role as chairperson, was instrumental in compiling the report. It aroused some controversy among legal educators and commentators at the time of its publication because of the extensiveness of its proposed changes in legal education, particularly in terms of revisions of law school curricula.

The Carrington Report challenges the traditional requirements for a law degree: four years

of undergraduate study and three years of law school. The report indicates that the contents and length of the traditional program inhibit the prompt, competent, and efficient delivery of necessary legal services to society.

CARRY-BACK

The name given to the method provided under federal tax law that allows a taxpayer to apply net operating losses incurred during one year to the recomputation of INCOME TAX owed to the government for three preceding taxable years.

CARRY-OVER

The designation of the process by which net operating loss for one year may be applied, as provided by federal tax law, to each of several taxable years following the taxable year of such loss.

CARRYING CHARGES

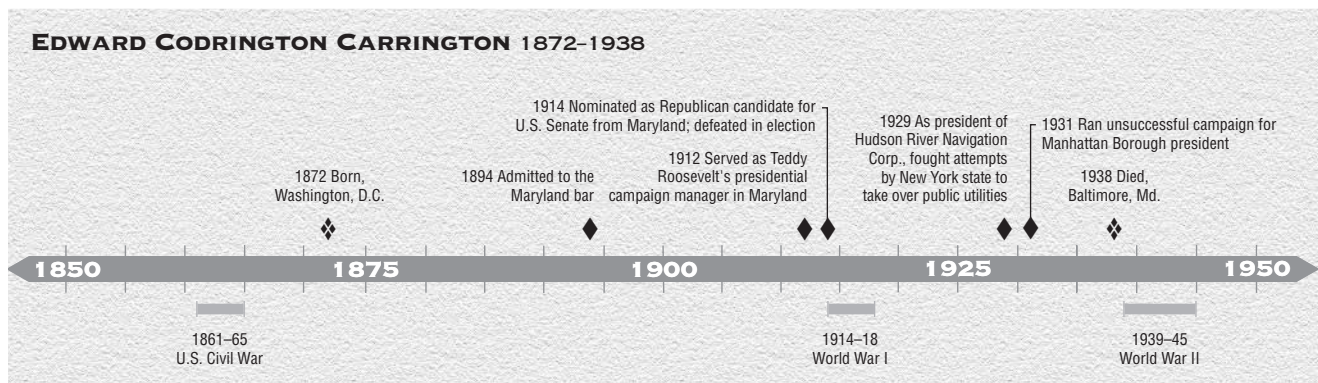
Payments made to satisfy expenses incurred as a result of ownership of property, such as land taxes and mortgage payments. Disbursements paid to creditors, in addition to interest, for extending credit.

CONSUMER PROTECTION laws require full disclosure of all carrying charges.

❖ CARSWELL, GEORGE HARROLD

Through an unexpected appointment, G. Harold Carswell secured nomination on January 19, 1970, to serve on the U.S. Supreme Court. The appointment by President RICHARD M. NIXON came a mere six months after Carswell was named to the federal appeals court. During highly politicized Senate confirmation hearings, the Republican nominee faced skepticism and concern over his qualifications for the Supreme

"I AM A
SOUTHERNER BY
ANCESTRY, BIRTH,
TRAINING,
INCLINATION,
BELIEF, AND
PRACTICE."
—GEORGE
CARSWELL



Court. In the end, Carswell was unable to overcome the opposition to his appointment. On April 8, 1970, he became the second Nixon-appointed candidate to be rejected for the U.S. Supreme Court by the U.S. Senate.

Carswell was born December 22, 1919, to a prominent family in Irwinton, Georgia. After graduating from Duke University in 1941 and from Mercer Law School in 1948, Carswell became a trial attorney in private practice. In 1953, he was appointed by President DWIGHT D. EISENHOWER as U.S. attorney for northern Florida. Carswell held that post until 1958 when he was appointed by Eisenhower to the U.S. District Court for the Northern District of Florida. At age thirty-eight, he was the nation's youngest federal judge. In 1969 Carswell was appointed by Nixon to the U.S. Court of Appeals for the Fifth Circuit.

Carswell's ascent to the U.S. Supreme Court came on the heels of Nixon's ill-fated nomination of CLEMENT F. HAYNSWORTH JR. of South Carolina. Nixon had nominated Haynsworth to fill the associate justice seat vacated by ABE FORTAS, who had resigned from the High Court in 1969 under a cloud of ethical violations. Haynsworth, a conservative southerner and a judge on the U.S. Court of Appeals for the Fourth Circuit, had failed to win Senate confirmation by ten votes.

By most standards Carswell was a jurist of marginal talents. In addition, evidence of racist conduct during the 1940s and 1950s brought Carswell's fitness for the bench into serious question. His critics noted that as a lower-court judge Carswell had demonstrated a marked bias against African Americans. In addition, Carswell had made white supremacist comments during a 1948 campaign speech and had attempted as a

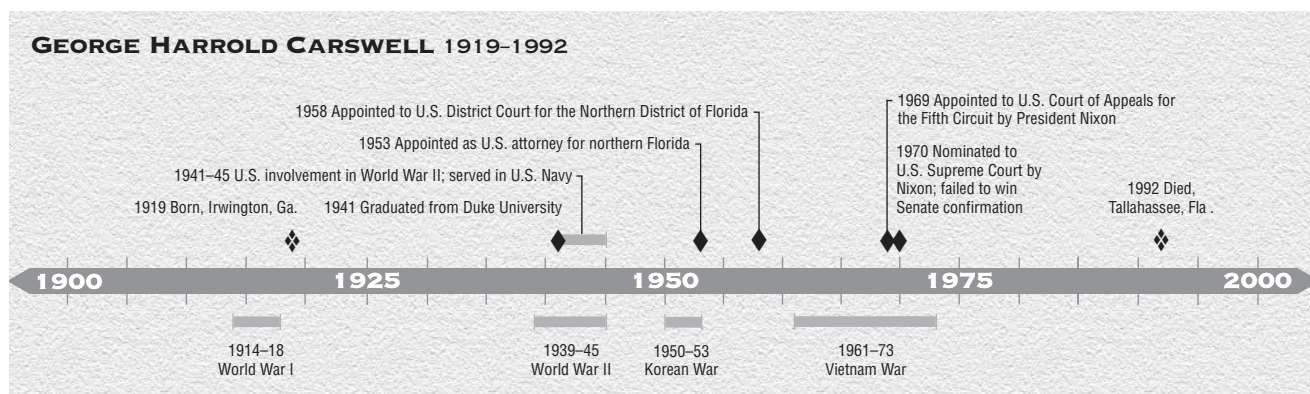
U.S. attorney to prevent the INTEGRATION of a public golf course. Although Carswell renounced the bigotry of his past, the damage to his reputation was irreparable.

Carswell also suffered a reputation as a legal lightweight. His opponents noted that a dismal 58 percent of Carswell's judicial decisions had been overruled by higher courts. In a vote of no confidence, the Ripon Society, a Republican group, rated Carswell's performance as a federal judge well below the average level of competence.

Carswell performed poorly during the SENATE JUDICIARY COMMITTEE hearings, reinforcing the assertion of his critics that he was an inept nominee. His confirmation chances were further weakened by a much-quoted observation offered in his support by Republican senator Roman Hruska, of Nebraska. The Midwestern politician argued that even if Carswell was mediocre, there were lots of mediocre judges, lawyers, and citizens who were entitled to some representation. Hruska went on to note that not all Supreme Court judges could be Brandeises, Frankfurters, and Cardozos.

A slim majority of senators refused to support a jurist who failed to meet high standards. On April 8, 1970, the Senate voted 51–48 to reject Carswell's nomination. Despite Nixon's dogged insistence that Carswell was a qualified candidate, thirteen Republican senators voted against his confirmation.

Nixon defended his unsuccessful nominee. Refusing to admit his candidate's shortcomings, the president claimed that Carswell was opposed by the Senate because he was a conservative southerner and a believer in the "strict construction," or literal interpretation, of the U.S. Constitution. Nixon's third nominee, HARRY A.



BLACKMUN, of Minnesota, met with Senate approval and was confirmed without major incident.

Shortly after his defeat Carswell resigned from the federal appeals court and announced his candidacy for U.S. senator from Florida. Carswell's senatorial bid did not succeed and he returned to private law practice in Tallahassee.

Carswell died in 1992.

FURTHER READINGS

Levy, Leonard W. 1974. *Against the Law: The Nixon Court and Criminal Justice*. New York: Harper & Row.

CARTEL

A combination of producers of any product joined together to control its production, sale, and price, so as to obtain a MONOPOLY and restrict competition in any particular industry or commodity. Cartels exist primarily in Europe, being illegal in the United States under ANTITRUST LAWS. Also, an association by agreement of companies or sections of companies having common interests, designed to prevent extreme or UNFAIR COMPETITION and allocate markets, and to promote the interchange of knowledge resulting from scientific and technical research, exchange of patent rights, and standardization of products.

In war, an agreement between two hostile powers for the delivery of prisoners or deserters, or authorizing certain nonhostile intercourse between each other that would otherwise be prevented by the state of war, for example, agreements between enemies for intercommunication by post, telegraph, telephone, or railway.

Although illegal in the United States, foreign cartels influence prices within the United States on imported and smuggled goods that they control. The United States has sued the De Beers

diamond cartel several times, and works to stop the flow of illegal narcotics, whose production and distribution are largely controlled by drug cartels.

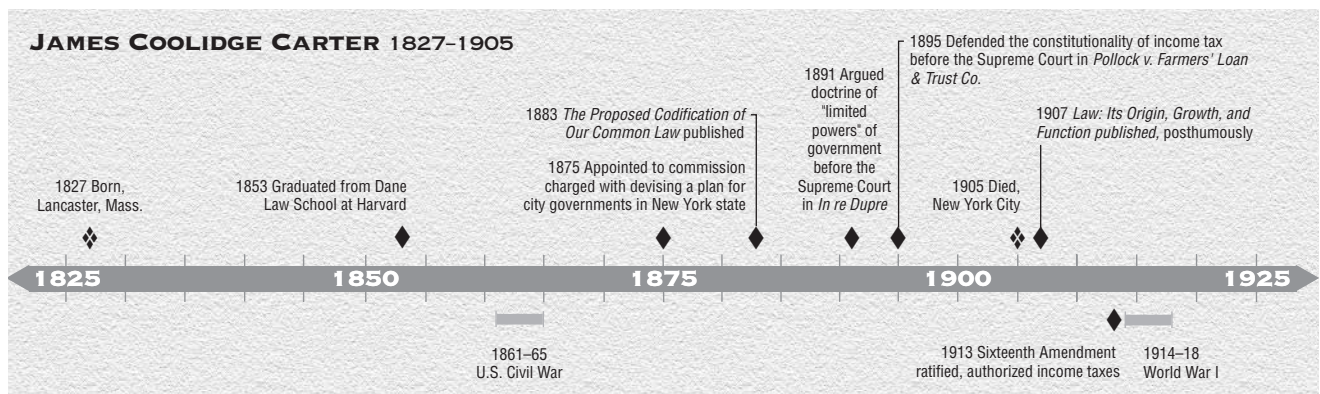
❖ CARTER, JAMES COOLIDGE

James Coolidge Carter was a lawyer and leading legal scholar and philosopher of the late nineteenth century.

Born into a poor family on October 14, 1827, in Lancaster, Massachusetts, Carter attended Derby Academy in Hingham, Massachusetts. In 1846 he entered Harvard College. An outstanding student, he graduated fourth in his class in 1850. He then moved to New York City to work as a private tutor and to study law. He returned to Cambridge a year later and enrolled in what was then known as the Dane Law School at Harvard, graduating in 1853. Carter was then admitted to the New York state bar and clerked briefly before founding the firm of Scudder and Carter. He remained associated with the firm for the next fifty-two years.

Carter quickly emerged as a highly skilled and sought-after lawyer. He also became a prominent leader of the New York bar, helping to form the Association of the Bar of the City of New York and serving as the association's president for five terms. He had a strong interest in municipal reform and in 1875 he was appointed by the governor to a commission charged with devising a plan of government for the cities of New York State. He also helped found the National Municipal League and was its president for nine years. Later in his career Carter achieved national prominence as president of the AMERICAN BAR ASSOCIATION from 1894 to 1895 and for his appearance as counsel for the United States before the Bering Sea Fur-Seal Tribunal of

"THE FUNCTION OF LAW [IS] THE MARKING OUT OF THE LARGEST AREA WITHIN WHICH EACH INDIVIDUAL COULD MOVE FREELY AND ACT WITHOUT INVADING THE LIKE FREEDOM IN EVERY OTHER—THAT IS, TO INSURE THE LARGEST POSSIBLE FREEDOM."
—JAMES COOLIDGE CARTER



Arbitration in 1893. Carter's opening argument before the tribunal in Paris reportedly lasted seven days.

In addition to his involvement in municipal affairs, Carter devoted his energies to organizing opposition to a proposed civil code for the state of New York. Carter had long been an opponent of the code of procedure, which had been part of the law since 1846, calling it an embarrassment to the practicing bar. In 1883, he authored *The Proposed Codification of Our Common Law*, a widely distributed pamphlet outlining his views, which was influential in the code's eventual defeat in the state legislature. Carter believed that any scheme to reduce the law to statutes was fundamentally unsound and simply could not be carried out. Even if it could be accomplished, he argued, CODIFICATION was undesirable because "[l]aw is not a command or body of commands, but consists of rules springing from the social standard of justice or from the habits and customs from which that standard has itself been derived." He went on to write and speak extensively on the issue of codification throughout his life and his lectures were published after his death as *Law: Its Origin, Growth, and Function* (1907).

Carter strongly believed in restraints on legislative powers and he applied his legal philosophy to important cases he argued before the U.S. Supreme Court. In *In re Dupre*, 143 U.S. 110, 12 S. Ct. 374, 36 L. Ed. 93 (1891), Carter argued that Congress lacked the authority to prohibit as criminal the use of the mails for the circulation of lottery tickets. According to Carter, the federal government could use the powers granted to it by the Constitution for only limited purposes, and to exceed such limits through the law in question usurped the powers reserved to the states under the TENTH AMENDMENT. Carter's doctrine of "limited powers" would be used by other lawyers and scholars to restrict congressional control over interstate commerce and taxes.

Carter again argued for a limited government role in *Smyth v. Ames*, 169 U.S. 466, 18 S. Ct. 418, 42 L. Ed. 819 (1898), in which the U.S. Supreme Court considered whether Nebraska could force its railroads to lower their shipping rates in an attempt to ease economic conditions for farmers. Carter, one of several prominent lawyers representing the railroads, maintained that the shipping charges should be determined not by the state but by "laissez-faire" economics

and free competition, which would prevent the imposition of high rates. The Court struck down the law at issue as unconstitutional, but also set guidelines for rate regulation by the states so that future court challenges could be avoided.

Carter created somewhat of a stir among his fellow legal scholars when, in what initially appeared to be a drastic departure from his usual views, he joined a team of other prominent lawyers to defend the constitutionality of an INCOME TAX before the U.S. Supreme Court in *POLLOCK V. FARMERS' LOAN & TRUST CO.*, 158 U.S. 601, 15 S. Ct. 912, 39 L. Ed. 1108 (1895). Carter argued that the legislature's action in passing the tax must be given due weight and should not be subject to review by a judicial tribunal. Just as government should play a limited role, he contended, the courts' role should be likewise restricted. He argued that the courts should refrain from engaging in "judicial law-making" and said, "nothing could be more unwise and dangerous—nothing more foreign to the spirit of the Constitution—than an attempt to baffle and defeat a popular determination by a judgment in a lawsuit . . . the only path to safety is to accept the voice of the majority as final." The Supreme Court went on to strike down the general income tax enacted by Congress and held that taxes on income derived from real estate and PERSONAL PROPERTY constituted direct taxes and thus must be apportioned among the states according to population. The decision was effectively negated by the adoption and ratification in 1913 of the SIXTEENTH AMENDMENT, which exempted income taxes from the Constitution's APPORTIONMENT requirement, but *Pollock* was nevertheless long remembered because of the fervor with which it was argued by Carter and the other attorneys involved.

After his retirement from the PRACTICE OF LAW, Carter devoted his time to writing and studying and remained a popular lecturer until his death in 1905 at the age of seventy-eight.

FURTHER READINGS

- Congressional Quarterly. 1989. *Guide to the U.S. Supreme Court*. 2d ed. Washington, D.C.: Congressional Quarterly.
- Elliott, Stephen P., ed. 1986. *A Reference Guide to the United States Supreme Court*. New York: Facts on File.
- Grossman, Lewis A. 2002. "James Coolidge Carter and Mugwump Jurisprudence." *Law and History Review* (fall): 20 577–629.

Johnson, John W., ed. 1992. *Historic U.S. Court Cases, 1690–1990*. New York: Garland.

❖ CARTER, JAMES EARL, JR.

As the 39th president of the United States, Jimmy Carter represented a historical change in national politics. He was the first modern president to be elected from the Deep South. Following a successful career in Georgia—where he was a peanut farmer, state senator, and then governor—Carter entered the White House in January 1977 as a political outsider at a time of distrust in elected officials. His Baptist upbringing guided him in his vision of the office as a post to be used for the nation's moral leadership. However, his presidency was one of only limited success in both its domestic and international endeavors, and voters rejected him for a second term in 1980 by electing RONALD REAGAN in a landslide that marked a new era of Republican control of the EXECUTIVE BRANCH. After leaving Washington, D.C., Carter began a revitalized public life as a prominent HUMAN RIGHTS activist and diplomat, addressing problems of war, famine, and repression around the globe.

The small farming town of Plains, Georgia, was Carter's birthplace on October 1, 1924. James Earl Carter Sr., a veteran of WORLD WAR I, farmed cotton and had a general store. He was conservative, strict, and a firm believer in his son, whom he nicknamed "Hot," for Hotshot—because, Carter said, "Daddy never assumed I would fail at anything." Lillian Gordy Carter was a registered nurse. As devout Baptists, the parents expected much from Carter and their three other children. Religion meant steadfastness and a call to charity, as Carter's mother demonstrated by caring for patients without charge. Archery, their community, was predominantly African American. The young Carter worked and played with his black neighbors and, like them, lived without household plumbing or electricity. The experience, along with the virtues of hard work, frugality, and aspiration taught by his parents, shaped the politician he later became. After graduating at the top of his high school class, Carter paid for college with money he had earned and invested by selling peanuts as a boy.

Carter's ambition was naval service. Preparing to enter the U.S. Naval Academy at Annapolis, Maryland, he studied mathematics at Georgia Southwestern College and then the Georgia Institute of Technology. In 1943, he



Jimmy Carter.

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entered Annapolis; he graduated in the top tenth of his class with a bachelor of sciences degree. Soon he married a long-time acquaintance, Rosalynn Smith, and began in earnest to pursue his career in the U.S. Navy. He worked as an instructor, saw battleship and submarine duty, and ultimately qualified as a sub commander. He served as senior officer aboard the *Sea Wolf*, the navy's second atomic submarine. He left the service in 1953 after attaining the rank of lieutenant.

The decision to walk away from a promising career came when Carter faced a personal crossroads. His father had died, leaving a powerful legacy: the one-time cotton farmer had become a successful warehouse operator, peanut seed seller, and, finally, member of the Georgia House of Representatives. Carter now followed his father's example in business and politics. In his first year as a peanut farmer, he scratched out an income of \$200, yet soon the business flourished. Success in political life took longer. Carter quickly became active in civic affairs. He opposed SEGREGATION, scorned the local White Citizen's Council, and tried to integrate his church. In the 1950s South, such views spelled trouble. When he ran for the Democratic nomination for the state senate in 1962 his opponents stuffed ballot boxes to defeat him. Only after a long legal fight did a court invalidate the nomination because of FRAUD and turn it over to Carter. He won the election.

"AMERICA DID
NOT INVENT
HUMAN RIGHTS.
IN A VERY REAL
SENSE . . . HUMAN
RIGHTS INVENTED
AMERICA."

—JIMMY CARTER

State politics established Carter nationally. In two terms as a state senator, from 1962 to 1966, his political philosophy was traditionally liberal yet also bore the mark of a technocrat: he advocated **CIVIL RIGHTS**, **WELFARE**, and open government, while insisting on careful budgeting to ensure fiscal responsibility. In 1966, his first run for the governor's office failed but he won the election in 1971. Representing broad political and social changes shaping the region, Carter's governorship helped shake Georgia out of its segregationist past; he appointed African Americans to state government and fostered biracial cooperation through citizens groups. As an administrator he specialized in micro-management, ordering frequent, strict review of all publicly funded programs. By 1974 Carter was rising within the national **DEMOCRATIC PARTY**. His exposure grew as he served as chairman of its campaign committee, and, fulfilling an ambition that began with his election as governor, announced his candidacy for president.

Carter's campaign message was integrity. The United States had just suffered through the **VIETNAM WAR** and the **WATERGATE** scandal, producing widespread cynicism concerning elected officials. Carter's opponent, **GERALD R. FORD**, had pardoned Nixon, the man behind Watergate. Carter positioned himself as an honest, openly religious man beyond the political intrigues of Washington. The peanut-farmer-turned-governor seemed to promise a new voice in government and a new set of ideals. At the start of the campaign voters responded eagerly: Carter and his running mate, Walter F. Mondale, led the incumbent, Gerald Ford, and his running mate, **BOB DOLE**, by 30 percentage points. By election day, however, the race was a dead heat. Carter won by the smallest margin since the first World War—57 **ELECTORAL COLLEGE** votes. The new president walked along Pennsylvania Avenue in his inaugural parade, making a symbolic gesture that would be repeated in the thoroughly populist trappings of the Carter White House—fireside chats and radio call-in shows, simple furnishings, and fewer limousines. "We must adjust to changing times," he said in his inaugural speech, "and still hold to unchanging principles."

Carter's domestic policies focused on civil rights, welfare, tax reform, and budgetary control. Almost immediately, however, two major domestic concerns began to dictate his agenda.

One was the nation's energy supply. In the late 1970s a severe energy crisis produced the worst fuel shortage in U.S. history coupled with rising international prices for oil. Congress cooperated with Carter's remedies by approving fuel conservation policies, deregulating natural gas prices, and passing a windfall tax on oil company profits. He did not get everything he wanted: a federal court blocked his attempt to decontrol domestic oil prices and Congress denied him authority for gasoline rationing. The second major problem was the economy, which worsened over the course of his term. His efforts to fight inflation—especially controls on consumer credit—produced a recession. Voters grew disgruntled. His approval rating fell and a July 1979 speech in which he blamed the nation's problems on a spiritual "malaise" was disastrous: afterward, a *New York Times* poll showed that for the first time ever, U.S. citizens, who traditionally had responded 2–1 that they were optimistic about the future, now said nearly 2–1 that they were pessimistic.

Foreign policy gave Carter triumphs and failures. He made human rights a top priority in the relationships between the United States and foreign nations, directing **SECRETARY OF STATE** Cyrus R. Vance to set a new standard: social and economic rights were to be as important as political and civil rights. Liberals praised the policy; conservatives attacked it as muddled and inconsistently applied. Critics were divided over a controversial treaty with Panama to relinquish control of the Panama Canal by 2000, a move the U.S. Senate barely approved. Carter's indisputable triumph was a peace treaty he secured between long-time enemies Israel and Egypt. But he took much of the blame for a seizure of the U.S. Embassy in Tehran by Iranian militants in November 1979. A military rescue mission in 1980 failed and the 52 U.S. hostages were released only after Carter left office.

Further weakening the presidency were scandals within the administration. Andrew Young, his ambassador to the **UNITED NATIONS**, resigned amid revelations that he had secretly met members of the Palestine Liberation Organization, in violation of U.S. policy. Bert Lance, director of the **OFFICE OF MANAGEMENT AND BUDGET**, also resigned in disgrace; he was charged with unethical conduct in his former banking career. And Carter's brother, Billy Carter, caused the president embarrassment. Often seen as a comical figure who had cashed

in on Carter's fame by lending his name to a drink called "Billy Beer," Billy was revealed to have conducted business with Libya, an enemy nation. A Senate subcommittee report on the incident blamed Carter for not reining in his brother.

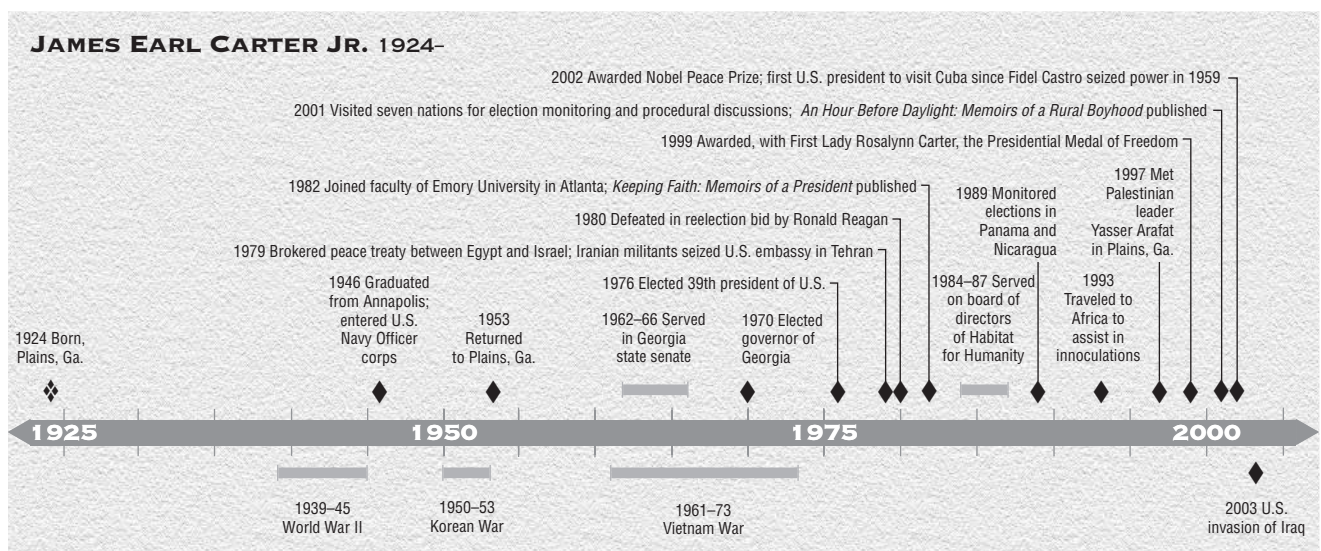
By late 1980, Carter had the lowest approval rating of any U.S. president in modern history. Even after an extensive cabinet shake-up, his administration was in disarray. Critics lambasted his policies and, particularly, his methods: he was considered to be too mired in details to execute bold decisions. Editorial cartoonists frequently lampooned him as either a country bumpkin or a hapless, childlike figure, echoing the prevailing sentiment that Carter was incapable of running the country. To make matters worse the Democratic Party effectively deserted him. Senator EDWARD M. KENNEDY (D-Mass.) nearly captured the party's presidential nomination and his supporters gained control of the party's platform over Carter's objections. Republicans sensed a bloodbath, and they got it in Ronald Reagan's landslide victory.

Typical of the post-Carter-era assessments was that of historian Burton I. Kaufman, whose 1993 book, *The Presidency of James Earl Carter*, scathingly judged Carter as "lacking in leadership, ineffective in dealing with Congress, incapable of defending America's honor abroad, and uncertain about its purpose, priorities and sense of direction." Carter's defenders have largely chosen to blame his 1980 loss on intractable national problems that he did not create as well

as on the overwhelming popularity of his opponent. "He didn't have the charisma of a Reagan," THOMAS P. "TIP" O'NEILL JR., former Democratic Speaker of the House, observed. "He couldn't pull it off." Some inside observers saw Carter's presidency as less a failure than a poor match of his abilities. The author Hendrik Hertzberg, a former Carter speechwriter, argued, "He was, and is, more of a moral leader than a political leader."

Although Carter's return to Georgia after his 1980 defeat might have been ignominious, it proved otherwise. After his departure from Washington, Carter immersed himself in scholarly and humanitarian pursuits. He worked at Emory University as a professor and later as a visiting lecturer. In conjunction with Emory he established the Carter Center which is a non-profit organization dedicated to advocating for human rights, conflict resolution, and the enhancement of democracy, along with the creation of initiatives to improve health.

Carter and his wife, Rosalynn, are particularly committed to providing housing for those who are in need, both in the United States and abroad. They work closely with the nonprofit group Habitat for Humanity, and they established the Jimmy Carter Work Project, which has built homes in the United States as well as in the Philippines, South Korea, and South Africa. "This is the kind of thing I enjoy doing. The alternative is to loaf around the house and spend my time playing golf or fishing," Carter told a Canadian newsworthy.



Always the diplomat, Carter remained a force in world affairs with human rights as his focal point. He monitored elections in Central America; negotiated further peace in the Middle East; supervised inoculation programs for children in Africa and elsewhere; and traveled on diplomatic missions to North Korea, Bosnia, Haiti, and the Sudan. In 1999, President **BILL CLINTON** presented Carter and former first lady Rosalynn Carter with the nation's highest civilian award, the Presidential Medal of Freedom.

Traveling as a private citizen, Carter visited Cuba in May 2002 and met with President Fidel Castro. Carter, who had voiced his opposition to the continuing embargo of Cuba by the United States, expressed his interest in meeting with religious groups and human rights activists. His efforts to mend relations with Cuba did not prevent Carter from criticizing Cuba's communist system. He openly promoted the Valera Project, a reform movement proposed by Cuban dissidents calling for social change and such basic rights as free speech.

Carter also continues to be a prolific author. While teaching at Emory, he wrote several books whose topics ranged from politics to poetry. In 2001, Carter published a well-received autobiography titled *An Hour Before Daylight: Memories of a Rural Boyhood*, which was nominated for the Pulitzer Prize. With the release of his historical novel *The Hornet's Nest*, in 2003, Carter became the first president to publish a work of fiction.

In December 2002, Carter was presented with the Nobel Peace Prize. The selection committee noted Carter's tireless efforts to help bring about the 1979 Camp David peace accord between Israel and Egypt as well as his consistent attempts to mediate and ameliorate international problems. In his acceptance speech, Carter explained that he has come to see the concept of peace as one that embraces the need for shelter, food, **HEALTH CARE**, and the opportunity for economic development.

FURTHER READINGS

The Carter Center. Available online at <www.cartercenter.org> (accessed June 17, 2003).

"Jimmy Carter Says Adios to Cuba." May 17, 2002. CBSnews.com: World. Available online at <www.cbsnews.com/stories/2002/05/12/world/main508729.shtml> (accessed June 17, 2003).

Jimmy Carter Work Project. Available online at <www.habitat.org/jcwp/2003> (accessed June 17, 2003).

❖ CARTER, ROBERT LEE

Robert Lee Carter is a federal district court judge who, as counsel for the National Association for the Advancement of Colored People (NAACP), played a pivotal role in the **SCHOOL DESEGREGATION** cases of the 1950s. Carter argued **BROWN v. BOARD OF EDUCATION**, 347 U.S. 483, 74 S. Ct. 686, 98 L. Ed. 873 (1954), before the U.S. Supreme Court.

Carter was born March 11, 1917, in Careyville, Florida. As a child he moved to New Jersey, where he attended public schools in Newark and East Orange. He received his bachelor of arts degree from Lincoln University, in Pennsylvania, in 1937, then went on to earn a bachelor of laws degree from Howard University Law School, graduating magna cum laude in 1940. He also earned a master of laws degree from Columbia University in 1941.

With **WORLD WAR II** heating up, Carter entered the Army Air Force where he encountered racism and **SEGREGATION**. During his time in the army he pressed charges against two white soldiers who had harassed him with racial slurs. He also refused to live off base as black soldiers were required to do. Because of his outspoken defiance of segregation he was transferred to a different base. Later he successfully defended a black soldier charged with raping a white woman. In retaliation for his participation in the case he was given an administrative discharge, which is neither honorable nor dishonorable and leaves the recipient open to being drafted. He enlisted the help of his mentor and former law professor, **WILLIAM H. HASTIE**, who would later become the first African American to sit as a lifetime federal judge outside the Virgin Islands. Hastie represented Carter in a petition before the discharge review board, which finally granted Carter an honorable discharge. When Carter left the army, he had achieved the rank of second lieutenant.

After leaving military service, Carter became assistant special counsel with the NAACP Legal Defense Fund (LDF), a position he held from 1945 to 1946. In 1948, he became director of veterans' affairs for American Veterans (AMVETS), where he served until 1949.

In 1950, Carter returned to the NAACP and joined the fight for **CIVIL RIGHTS**. In 1951, he brought an innovative challenge to the **SEPARATE-BUT-EQUAL** doctrine when he summoned social scientist Kenneth B. Clark as a witness for the plaintiffs in *Briggs v. Elliott* (98 F. Supp. 529

[E.D.S.C. 1951]). Clark testified that his research with black children indicated that their self-image and self-esteem were damaged by any system that separated them from their white peers, whether the system was equal or not. At the time, this was highly unorthodox evidence to present at trial. Although the court ruled against the plaintiffs in *Briggs*, "by holding that segregation of the races in the public schools, as required by the federal constitution and South Carolina state law, was not of itself a denial of the EQUAL PROTECTION of the laws guaranteed by the Fourteenth Amendment," Clark's testimony had set the stage for the arguments that would be presented in *Brown* and other school desegregation cases. *Briggs* was later appealed with several other cases, including *Brown*, which Carter argued and won. His victory in *Brown* established him as a preeminent civil rights attorney and he went on to participate in the appeals of scores of other cases.

Carter continued as an assistant special counsel with the NAACP until becoming general counsel in 1956. He remained with the NAACP for 13 more years before leaving to enter private practice. During his years of practice Carter argued 22 cases before the Supreme Court, winning all but one.

In 1972, President RICHARD M. NIXON appointed Carter to be a U.S. district judge for the Southern District of New York. During his long and distinguished career, Carter has received numerous awards and recognitions. He was named a Columbia University Urban Fellow (1968–69) and has served as an adjunct professor at New York University Law School (1965–70), Yale University (1975–77), and the University of Michigan Law School (1977). In 1991, he served as a Shikes Fellow at Harvard University. He holds honorary degrees from numerous institu-

tions including Howard University School of Law; Lincoln University, in Pennsylvania; Northeastern University; and the College of the Holy Cross. Carter was a recipient of Howard University's Alumni Award for Distinguished Postgraduate Achievement. In 1995, the Federal Bar Council awarded its Emory Buckner Medal for Outstanding Public Service to Judge Carter.

In December 1986, Carter became a senior judge on the court and since then, has continued to be actively involved in a number of important cases. One example included a 25-year-old discrimination case where a New York City sheet metal workers union was ordered to make millions of dollars in back pay to minority workers who claimed that they were denied work opportunities. In 2001, Carter presided over the four-week trial of former Teamster president Ron Carey on federal perjury charges. The trial, which was interrupted by the September 11, 2001, attack on the World Trade Center, ended in an acquittal for Carey.

Along with his work on the bench, Carter also continued to lecture in the United States and abroad, publish articles and essays in numerous publications, and sit on boards, committees, and task forces devoted to ending discrimination and furthering social justice.

FURTHER READINGS

"Carter, Robert L." Just the Beginning Foundation. Available online at <www.jtbf.org/article_iii_judges/carter_r.htm> (accessed June 13, 2003).

Kohn, Alan. 1987. "Judge Carter's Career Marked By Principle Over Pragmatism." *New York Law Journal* 197 (January 2).

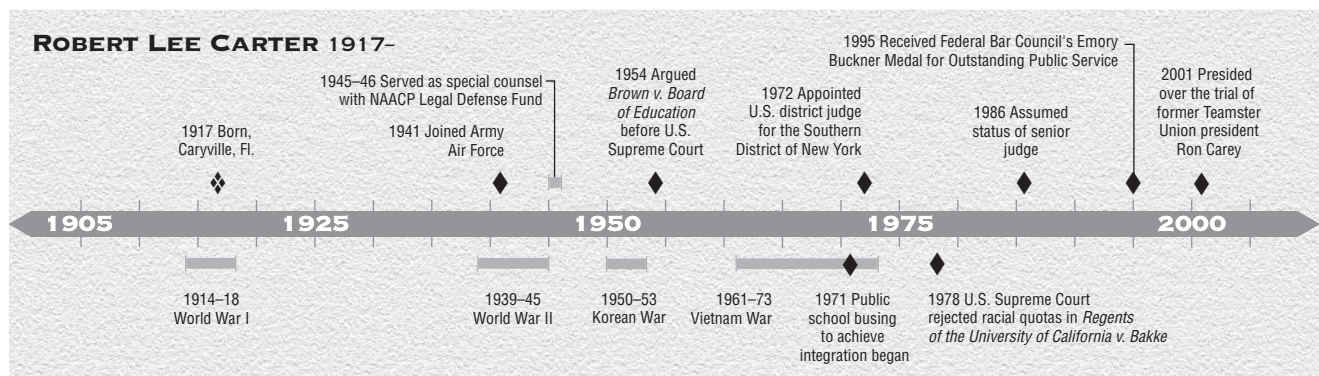
Wise, Daniel. 1989. "Judge in Princeton-Newport: 'Flinty, With Keen Moral Sense.'" *New York Law Journal* 201 (June 19).

CROSS-REFERENCES

Marshall, Thurgood; Warren Court.

"THE *BROWN* DECISION WAS HISTORIC, NOT BECAUSE OF WHAT IT HAS ACCOMPLISHED IN THE FIELD OF EDUCATION, BUT BECAUSE OF THE TRANSFORMATION IT HAS MADE IN THE WHOLE COMPLEX OF RACE RELATIONS IN THIS COUNTRY."

—ROBERT CARTER



❖ CARTER, THOMAS HENRY

Thomas Henry Carter, born October 30, 1854, in Scioto County, Ohio, concentrated his career efforts in Montana. He pursued legal studies and relocated to Helena in 1882 where he established a successful law practice.

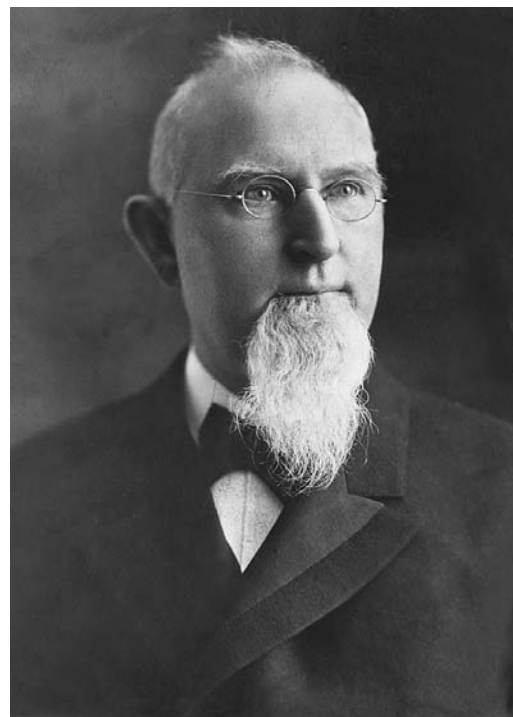
In 1889 Montana was admitted as a state to the United States, and Carter became its first representative to participate in Congress. In this capacity he favored less stringent laws concerning homesteaders. In 1890 he became commissioner of the general land office and was able to put his views into effect, to the advantage of the Western settlers. In 1892 he was the presiding officer of the Republican National Committee and directed the unsuccessful reelection campaign of President BENJAMIN HARRISON.

Carter entered a new phase of his career in 1895 when he became a U.S. senator. He represented Montana until 1901 and again from 1905 to 1911. During his tenure he supported various policies, including bimetallism—the use of both gold and silver as the foundation of the currency system; civil service legislation; a protective tariff on raw materials—such as wool, lumber, and lead; and a postal savings system. He also worked extensively in the field of conservation and was instrumental in the establishment of Glacier National Park.

Carter died September 17, 1911, in Helena.

CASE

A general term for any action, CAUSE OF ACTION, lawsuit, or controversy. All the evidence and testimony compiled and organized by one party in a lawsuit to prove that party's version of the controversy at a trial in court.



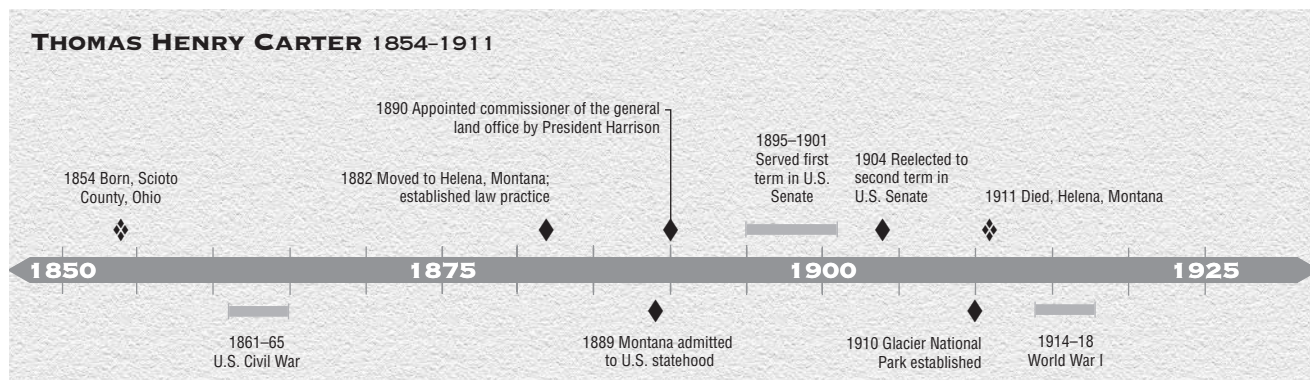
Thomas Henry Carter. LIBRARY OF CONGRESS

CASE AGREED ON

An action in which the parties submit a formal written enumeration of facts that they both accept as correct and complete so that a judge can render a decision based upon conclusions of law that can be drawn from the stated facts.

The parties must agree on all material facts upon which their rights are to be determined. They do not, however, agree upon the legal effects of those facts; therefore, the action presents a JUSTICIABLE controversy, which makes it a matter for judicial determination. The need for

"OUR
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BUSINESS AND
ARE DETERMINED
TO HAVE THEIR
RIGHTS."
—THOMAS CARTER



a jury trial is obviated because there are no **QUESTIONS OF FACT** presented for resolution.

A case agreed on is also known as an amicable action, a case stated, or a friendly suit.

CASE IN CHIEF

The portion of a trial whereby the party with the BURDEN OF PROOF in the case presents its evidence. The term differs from a rebuttal, whereby a party seeks to contradict the other party's evidence. Case in chief differs from "case" in that the latter term encompasses the evidence presented by both the party with the burden of proof and the party with the burden of rebutting that evidence.

FURTHER READINGS

- Glannon, Joseph W. 2001. *Civil Procedure: Examples and Explanations*. Gaithersburg, VA: Aspen Law & Business.
- Kane, Mary Kay. 1996. *Civil Procedure in a Nutshell*. 4th ed. St. Paul, Minn.: West Group.

CROSS-REFERENCES

Burden of Proof; Rebut.

CASE LAW

Legal principles enunciated and embodied in judicial decisions that are derived from the application of particular areas of law to the facts of individual cases.

As opposed to statutes—legislative acts that proscribe certain conduct by demanding or prohibiting something or that declare the legality of particular acts—case law is a dynamic and constantly developing body of law. Each case contains a portion wherein the facts of the controversy are set forth as well as the holding and dicta—an explanation of how the judge arrived at a particular conclusion. In addition, a case might contain concurring and dissenting opinions of other judges.

Since the U.S. legal system has a common-law system, higher court decisions are binding on lower courts in cases with similar facts that raise similar issues. The concept of precedent, or **STARE DECISIS**, means to follow or adhere to previously decided cases in judging the case at bar. It means that appellate case law should be considered as binding upon lower courts.

CASE METHOD

A system of instruction or study of law focused upon the analysis of court opinions rather than lectures and textbooks; the predominant method of teaching in U.S. law schools today.

CHRISTOPHER COLUMBUS LANGDELL, a law professor, often receives credit for inventing the case method although historians have found evidence that others were teaching by this method before him. Regardless, Langdell by all accounts popularized the case method.

Langdell viewed the law as a science and believed that it should be studied as a science. Law, he said,

consists of certain principles or doctrines. To have such a mastery of these as to be able to apply them with constant facility and certainty to the ever-tangled skein of human affairs, is what constitutes a true lawyer; and hence to acquire that mastery should be the business of every earnest student of law.

Each doctrine, Langdell said, arrived at its present state by slow degrees, growing and extending through centuries. Langdell's beliefs differed from those of his law professor colleagues. Throughout the 1800s, the prevalent approach for teaching law school classes was the lecture method. Although professors and textbooks interpreted the meaning of various court decisions, they did not offer a significant opportunity for students to do so on their own. The case method, on the other hand, forced students to read, analyze, and interpret cases themselves. It was Langdell's opinion that law students would be better educated if they were asked to reach their own conclusions about the meaning of judicial decisions.

Langdell's ideas were, at first, overwhelmingly rejected by students, other law professors, and attorneys alike. These critics viewed the case method as chaotic compared with organized lectures. They believed that instead of soliciting law students' opinions regarding cases, professors should simply state their own interpretations. Law students, afraid that they were not learning from Langdell's method, dropped out of his class, leaving him with only a few pupils. Enrollment in the Harvard Law School decreased dramatically because of concern over Langdell's case method and alumni called for his dismissal.

But the president of Harvard University, Charles W. Eliot, supported Langdell and his case method. This backing allowed Langdell to withstand the criticism long enough to prove the case method's success: Langdell's students were becoming capable, skilled attorneys. In 1870 Langdell became law school dean. As time passed he replaced his critics on the Harvard faculty with professors who believed in his sys-

tem of teaching and the case method soon became the dominant teaching method at Harvard. Other U.S. law schools took note. By the early 1900s, most had adopted the case method, and it remained the primary method of legal instruction throughout the twentieth century and beyond.

The case method is usually coupled with a type of classroom teaching called the Socratic method. Through the Socratic method students orally respond to an often difficult series of questions designed to help them gain further insight into the meaning of the law. Students learn the skill of critical analysis this way: they learn to discern relevant from irrelevant facts; they learn to distinguish between seemingly similar facts and issues; and they learn to analogize between dissimilar facts and issues.

The case method offers certain benefits. For one, cases are usually interesting. They involve real parties with real problems and therefore tend to stimulate students more than do textbooks with only hypothetical problems.

The case method also helps students develop the ability to read and analyze cases, which is a crucial skill for attorneys. Students learn to reduce cases to four basic components: the *facts* of the controversy; the legal *issue* that the court decides; the *holding*, or legal resolution, that the court reaches; and the *reasoning* that the court uses to explain its decision. Students, especially in their first year of legal study, often outline these components in written case briefs, to which they can refer during classes and while they prepare for exams.

Another advantage of the case method is that it teaches, by example, the system of legal precedence. By reading cases, students learn how and why judges adhere, or do not adhere, to law developed in previous cases. Students also learn how judges have the discretion to create law by construing statutes or constitutions.

The case method continues to have critics. One criticism focuses on law school examinations. Typically, law students are tested only once in each class. They face enormous pressure to perform well on this examination since their single score on it usually constitutes their entire grade for the class. It is difficult to test analysis skills, so often these examinations test the students' ability to spot legal issues and apply legal rules. Therefore, although professors try to teach case analysis skills, students tend to focus on simply learning RULES OF LAW in the hope of

getting good grades. This diminishes the case method's intended result.

The case method may be unpopular with law students owing to the amount of reading it requires. It is not uncommon for law professors to assign twenty to thirty pages of reading, containing excerpts from four or five cases, each night for each class. Some law professors have argued that pupils learn to analyze cases within the first few months of law school, and that thereafter the case method becomes ineffective because students lose enthusiasm and interest in reading cases.

Another complaint concerns the role of casebooks. Casebooks commonly contain cases or case excerpts as well as some explanatory text. They are most often compiled by law professors, who arrange the cases to show legal development or illustrate the meaning of legal principles. These casebooks provide only a small sample of cases, the vast majority of them appellate-level decisions. Thus, law students usually receive little or no exposure to decisions of trial courts. Some commentators suggest that students therefore miss critical elements of a lawyer's initial role: discovering and shaping facts and determining legal strategies to present to the court at the trial level.

Frequently, students do not see legal conflicts in their undeveloped form until they graduate and begin practicing law. Law schools increasingly are trying to remedy that problem by offering instruction in basic lawyering skills. For example, classes in trial advocacy allow students to conduct mock jury trials. Other courses teach client-counseling skills, document-drafting skills, and oral argument skills. The idea is not to abandon the case method entirely but to balance it with other teaching methods.

FURTHER READINGS

- Marks, Thomas C., Jr. 2000. "Understanding the Process of Judicial Policymaking Through Case Analysis." *Stetson Law Review* 29 (spring): 1155–80.
- Rand, Joseph W. 2003. "Understanding Why Good Lawyers Go Bad: Using Case Studies in Teaching Cognitive Bias in Legal Decision-Making." *Clinical Law Review* 9 (spring): 731–82.
- Weaver. 1991. "Langdell's Legacy: Living with the Case Method." *Villanova Law Review* 36.

CROSS-REFERENCES

Case Law; Court Opinion; Legal Education; Precedent.

CASE OR CONTROVERSY

A term used in Article III, Section 2, of the Constitution to describe the structure by which actual,

conflicting claims of individuals must be brought before a federal court for resolution if the court is to exercise its jurisdiction to consider the questions and provide relief.

A case or controversy, also referred to as a JUSTICIABLE controversy, must consist of an actual dispute between parties over their legal rights that remain in conflict at the time the case is presented and must be a proper matter for judicial determination. A dispute between parties that is moot is not a case or controversy because it no longer involves an actual conflict.

CASE STATED

An action that is brought upon the agreement of the parties who submit a statement of undisputed facts to the court but who take adversary positions as to the legal ramifications of the facts, thereby requiring a judge to decide the QUESTION OF LAW presented.

A case stated is also called an amicable action, a case agreed on, or a friendly suit.

CASEBOOK

A printed compilation of judicial decisions illustrating the application of particular principles of a specific field of law, such as TORTS, that is used in LEGAL EDUCATION to teach students under the CASE METHOD system.

❖ CASEMENT, SIR ROGER DAVID

Sir Roger David Casement pursued an illustrious career in the British Foreign Service. His achievements were overshadowed by his campaign for Irish nationalism, which eventually led to his trial and execution.

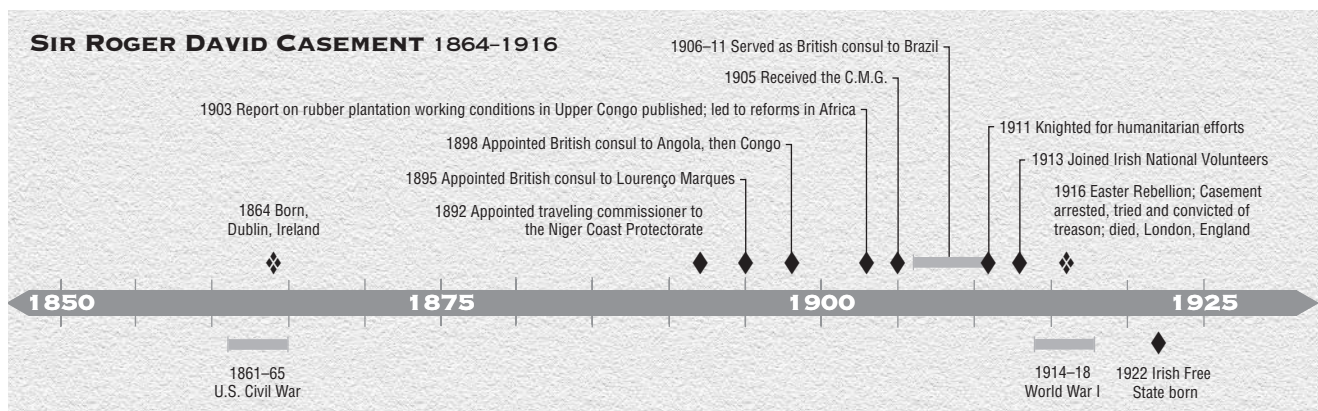


Sir Roger Casement.

Casement was born September 1, 1864, in Dublin, Ireland. From 1892 to 1904 and from 1906 to 1911, Casement made several noteworthy contributions to the field of British consular service. His investigation of the brutal working conditions of the Congolese on rubber plantations owned by Belgium led to drastic reforms in Africa. He subsequently performed a similar service for workers on British rubber plantations in South America. In 1911 he was knighted for his humanitarian efforts and in 1912 he resigned from foreign service due to illnesses contracted during his work in foreign countries.

Casement returned to Ireland and became interested in the movement for Irish freedom from British rule. He journeyed to Germany and the United States seeking support for an Irish insurrection. In April 1916 Casement received a

"LOYALTY IS A
SENTIMENT, NOT A
LAW."
—SIR ROGER
CASEMENT



pledge of aid from Germany but it proved inadequate. He returned to Ireland hoping to curtail the planned Easter Rebellion, but British authorities apprehended him upon his arrival.

Accused of TREASON, Casement was put on trial. To add to the sensationalism of the proceedings and the case against him, several of Casement's diaries were publicly distributed. These diaries contained accounts of practices considered to be homosexual in nature. Casement was not given the opportunity to confirm or deny the validity of the diaries and the genuineness of the papers is still in question today.

The evidence against Casement was sufficient for a conviction and he was sentenced to be executed. Originally a Protestant, Casement converted to Roman Catholicism shortly before his death. On August 3, 1916, he was hanged in Pentonville Jail in London, England.

❖ CASEY, WILLIAM JOSEPH

William Joseph Casey was a lawyer with a long and distinguished career in business and public service who later became the controversial director of the CENTRAL INTELLIGENCE AGENCY (CIA) during the Reagan administration.

Casey was born March 13, 1913, in Elmhurst, New York. He received his bachelor's degree from Fordham University in 1934, did graduate work at the Catholic University of America, and then entered St. John's University Law School, graduating with a bachelor of laws degree in 1937. Following his admission to the New York state bar he moved to Washington, D.C., to work for the Research Institute of America, a private organization involved in analyzing economic and political data concerning the NEW DEAL.

During WORLD WAR II Casey served with Army Intelligence and the Office of Strategic Services (OSS) and, from London, directed the activities of OSS spies. After the war Casey returned to Washington, D.C., and served for two years as special counsel to the Small Business Committee of the U.S. Senate. He remained interested in international relations as a result of his wartime activities, however, and in 1948 he returned to Europe to become associate general counsel for the MARSHALL PLAN. Following his war-related service, he started practicing law and became a partner in a large New York law firm. He also began teaching at New York University, where he lectured on tax law from 1948

to 1962, and taught periodically at the Practising Law Institute. While practicing and teaching, he wrote a number of highly successful books on taxes, real estate, and investments, including *Tax Shelter Investments* (1952) and *Accounting Desk Book* (1956), and a book on U.S. history titled *Where and How the War Was Won: An Armchair Guide to the American Revolution* (1976). The profits from his books, in addition to his income from his law practice and his investments, helped to make him a multimillionaire.

In the 1960s, Casey moved from business to politics, running in 1966 for a seat in the U.S. House of Representatives. Though he lost the primary to a more conservative Republican opponent, Casey remained active in the REPUBLICAN PARTY, writing and conducting research for Richard M. Nixon's 1968 presidential campaign. In 1969 he helped the new president set up the Citizens Committee for Peace with Security, which was organized to back Nixon's policy on antimissile weapons, and served on the advisory council of the ARMS CONTROL AND DISARMAMENT Agency.

In 1971 Nixon appointed Casey chairman of the SECURITIES AND EXCHANGE COMMISSION (SEC), where he quickly became known as a tough administrator who favored strict regulation of stockbrokers. Casey also became unpopular with his fellow SECURITIES lawyers when he named them as defendants in connection with their clients' alleged frauds. While head of the SEC, he persuaded Congress to increase the agency's budget by \$1.5 million, which he used to hire more lawyers, accountants, and other specialists to improve the agency's efficiency. In 1974, Casey moved from the SEC to the STATE DEPARTMENT, where he served as undersecretary of state for economic affairs for two years. He then became president and chairman of the EXPORT-IMPORT BANK, an independent government agency charged with facilitating the export of U.S. goods and services. In 1976 he left government to return to private law practice in New York and Washington, D.C., though he did return to accept an appointment to President Gerald R. Ford's Foreign Intelligence Advisory Board.

In 1981 Casey embarked on what was to be the final and most controversial chapter of his career when President RONALD REAGAN appointed him director of the CIA. The nomination was criticized by some members of Congress as blatantly political because Casey had

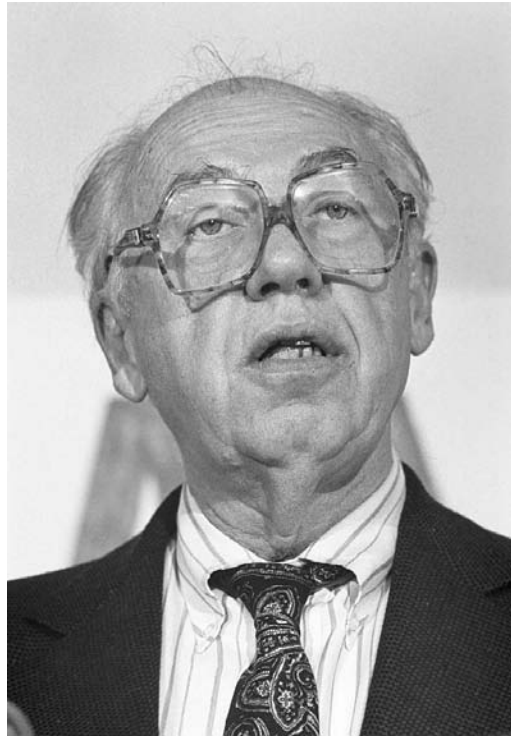
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—WILLIAM CASEY

run Reagan's 1980 presidential campaign. Nevertheless, Casey eventually won congressional approval and became the first director of the agency to be given cabinet-level rank.

Known for his hard-driving and sometimes confrontational management style, Casey won early praise for improving the CIA's analytical work. But he also drew heavy criticism for the agency's political activity outside the United States when the CIA stepped up its support for anti-Communist organizations in developing countries. Under Casey the agency engaged in intelligence operations in Central America, where it mined Nicaraguan harbors and provided textbooks for the Nicaraguan contras (the rebels fighting the Marxist government of Nicaragua) on how to use violence against civilian officials.

Congress, angered by reports of the operations, voted in 1984 to make aid to the contras illegal. When a diversion of funds to the contras from arms sales to Iran came to light—in a scandal that became known as the **IRAN-CONTRA AFFAIR**—Casey denied that he had any knowledge or involvement of such sales. Critics charged that as CIA director, Casey should have known about the affair, and suspected that Casey had played a larger role than he acknowledged. In addition, members of Congress criticized Casey for allowing CIA staff members wide latitude to circumvent the prohibition against giving aid to the contras.

Casey was to testify before a Senate panel about the CIA's role in the sale of arms to Iran in December 1986 but became ill and was hospitalized the day before he was to appear. He then underwent surgery for removal of a malignant brain tumor and it was also reported that he was suffering from prostate cancer. In February 1987, after several weeks in the hospital, Casey

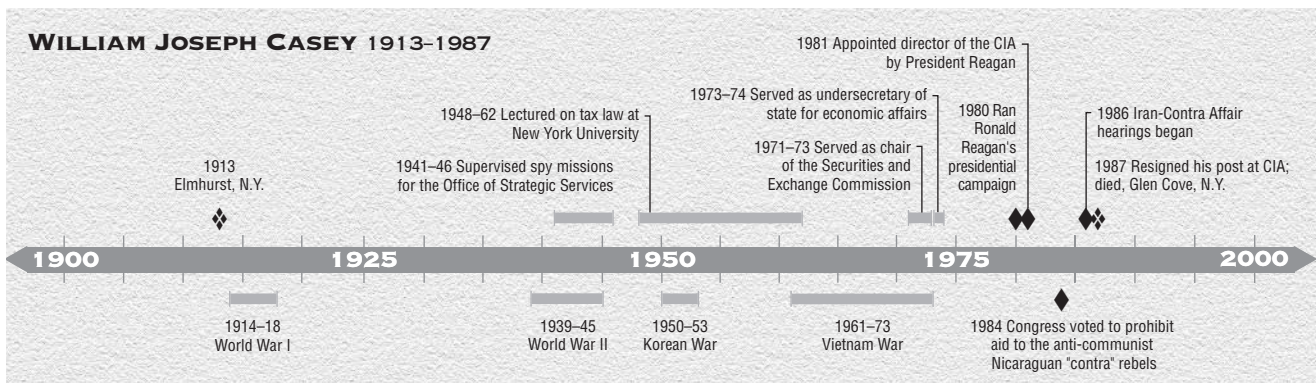


William Joseph Casey.

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resigned his post at the CIA. Later that spring congressional hearings on the Iran-Contra Affair commenced. The first witness, retired Air Force major general Richard V. Secord, testified that Casey was involved in providing arms to the Nicaraguan rebels after Congress had outlawed such activity. However, the nature and extent of any involvement by Casey remained unclear. On May 7, 1987, Casey died of pneumonia.

Casey's death left many unanswered questions about the Iran-Contra Affair. However, both Republicans and Democrats praised Casey for his patriotism, intellect, and commitment to public service.



CASH BASIS

A method of accounting that considers only money actually received as income and only money actually paid out as expense.

For INCOME TAX purposes, taxable income is computed under cash basis accounting as the difference between income received and expenses paid out within the tax year.

Cash basis accounting is not the same as ACCRUAL BASIS accounting.

CASH SURRENDER VALUE

The amount of money that an insurance company pays the insured upon cancellation of a life insurance policy before death and which is a specific figure assigned to the policy at that particular time, reduced by a charge for administrative expenses.

The cash surrender value of an insurance policy is not based upon its actual value, but upon its reserve value—the face amount of the contract discounted at a specific rate of interest according to the insured's life expectancy. Not all life insurance policies have cash surrender values; the terms of the policy must so provide.

CASUAL

Irregular, occasional, or accidental; happening without being planned or foreseen.

The term is used to describe an event that is unanticipated or unusual. A *casual sale* is one that is not customary, or done in the usual course of business—such as a jeweler occasionally selling vacuum cleaners.

Casual employment is irregular, periodic, or seasonal employment, such as someone selling ice cream only during the summer. WORKERS' COMPENSATION laws in many states do not apply to casual employment.

CASUAL EJECTOR

A fictitious and nominal defendant in an action of EJECTMENT.

Ejectment was one of the old common-law FORMS OF ACTION. It could be used to oust an intruder on the plaintiff's land, such as a holdover tenant. It could also be used when there was no intruder, but the owner wished to remove any doubt about his or her right to the land without waiting for someone to sue him or her. In such a case, the strict form of procedure required that the plaintiff name a defendant

even when none actually existed. The action was brought against a fictitious person called the casual ejector. The name JOHN DOE was used often for this nonexistent defendant.

CASUALTY

A serious or fatal accident. A person or thing injured, lost, or destroyed. A disastrous occurrence due to sudden, unexpected, or unusual cause. Accident; misfortune or mishap; that which comes by chance or without design. A loss from such an event or cause, as by fire, shipwreck, lightning, etc.

An *inevitable casualty* is one that occurs through no fault of anyone. It happens totally without design, as in the case of an accident resulting from an act of God, such as a house struck by lightning or flooded by a storm.

A *casualty loss* is a tax deduction that can be taken for an accident that is incurred in a trade or business, in a transaction entered into for profit, or for the complete or partial loss or destruction of property owned by the taxpayer. It arises from certain specific events such as a fire, an auto accident, or a flood. Casualty losses are computed subject to special rules and are treated as itemized deductions.

Many people purchase *casualty insurance* so that they will be protected or covered in the event of specific misfortune or accident. It is a type of insurance that covers losses resulting from injuries to people.

CASUS BELLI

[Latin, Cause of war.] A term used in INTERNATIONAL LAW to describe an event or occurrence giving rise to or justifying war.

CROSS-REFERENCES

War.

CATEGORICAL

That which is unqualified or unconditional.

A *categorical imperative* is a rule, command, or moral obligation that is absolutely and universally binding.

Categorical is also used to describe programs limited to or designed for certain classes of people. Categorical assistance plans are social WELFARE programs extending benefits to members of a particular group, such as Aid to the Elderly, Aid to the Blind, or Aid to Families with Dependent Children.

❖ CATON, JOHN DEAN

John Dean Caton was born March 19, 1812, in Monroe, New York. He was admitted to the Illinois bar in 1835. He achieved success in various fields of public service and received an honorary doctor of laws degree from Hamilton College in 1866.

In 1834 the first political convention was held in Illinois and Caton participated as its secretary as well as a member. He served on the Illinois Supreme Court, beginning as an associate justice from 1842 to 1864, and acting as chief justice in 1855 and again from 1857 to 1864.

In addition to his legal and political careers, Caton served as president of the Illinois and Mississippi Telegraphic Company from 1852 to 1867, performed the duties of *JUSTICE OF THE PEACE* in Ottawa, and gained recognition as an author. His most famous works are *A Summer in Norway*, written in 1875, and *The Antelope and Deer of America*, published in 1877. Caton also contributed numerous articles on nature to the Ottawa Academy of Science.

Caton died July 30, 1895, in Chicago, Illinois.

❖ CATRON, JOHN

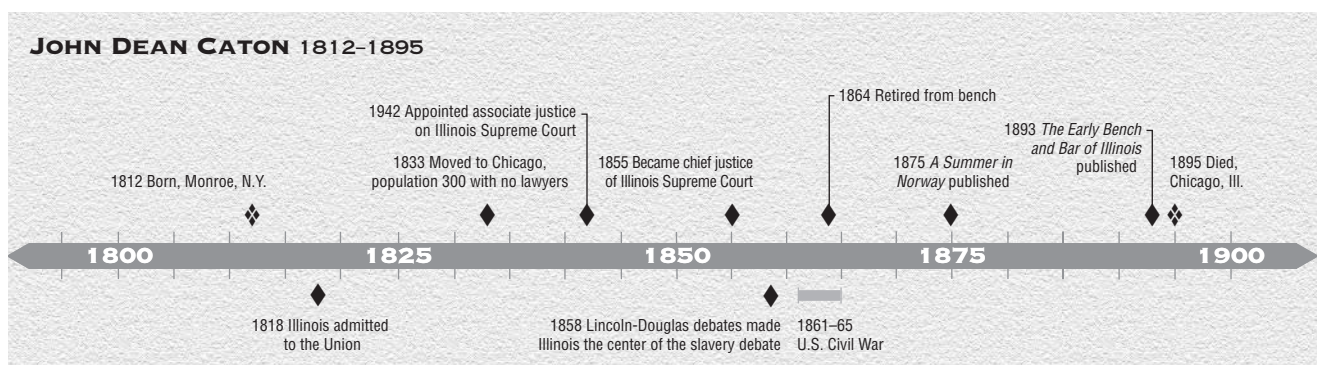
John Catron served as an associate justice of the U.S. Supreme Court from 1836 to 1865. During his career on the Court, Catron was a staunch defender of *STATES' RIGHTS* and the institution of *SLAVERY*. He participated in the landmark decisions upholding the power of state governments to regulate local aspects of interstate commerce and, in *DRED SCOTT V. SANDFORD*, 60 U.S. (19 How.) 393, 15 L. Ed. 691 (1856), he voted with the Court in deciding that an ex-slave had no rights as a citizen. Despite personal Southern affiliations and his own support of slavery, Catron backed the Union during the

Civil War. A close friend of Andrew Jackson's as early as the *WAR OF 1812* and a fellow resident of Nashville, Catron was a true Jacksonian in his outlook. His judicial career and opinions—from a suspicion of large corporations to a fervent support of states' rights—bear all the marks of Jacksonian democracy.

Catron was the descendant of poor, German immigrants. He was probably born in Pennsylvania around 1786—some sources cite his birth as early as 1779, however. His father, Peter Catron, worked with horses in Pennsylvania and Virginia, and moved to Kentucky in 1804, hoping to establish his own horse farm. Catron grew up with little formal education. He supported himself and his family by herding cattle and grooming horses, but he found time to read the classics as well. Around 1812, Catron moved to Sparta, in Tennessee's Cumberland Mountains region. At about the same time, he married Matilda Childress; the couple had no children.

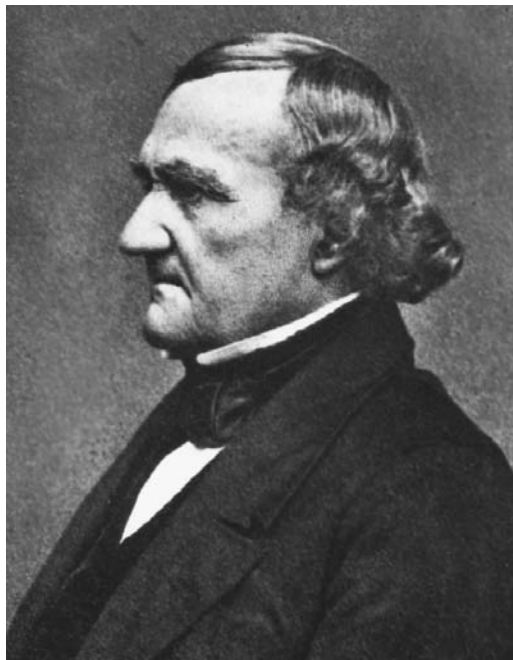
Catron read law briefly in Sparta and then joined the Second Tennessee Regiment, a group of local volunteers who sought to avenge the massacre of Fort Mims by the Creek Indians. This unit eventually joined General Andrew Jackson's army in Alabama and fought in the War of 1812. Catron became friendly with Jackson, who had passed the bar exam and served as a judge, and the two corresponded frequently in subsequent years.

After the war, Catron returned to the Cumberland Mountains and resumed his legal studies. He was admitted to the Tennessee bar in 1815 and worked both as an attorney in a general legal practice and as a prosecutor in a circuit court. In 1818, Jackson suggested that Catron move to Nashville, then a growing frontier town, where Jackson himself lived and had a plantation. Catron took his advice and developed a



John Catron.

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"POLITICAL
SOVEREIGNTY, IN
ITS TRUE SENSE,
EXISTS ONLY WITH
THE PEOPLE. . . .
AND IS [THE]
POLITICAL AXIOM
UPON WHICH THE
AMERICAN
GOVERNMENT
[HAS] BEEN
BASED."
—JOHN CATRON

lucrative practice in Nashville, with much of his work involving land titles, a busy area of the law on the rapidly growing frontier. By 1824, he was elected to the bench of Tennessee's highest court, the Court of Errors and Appeals. In 1831, the Tennessee legislature created the office of chief justice of the Supreme Court of Errors and Appeals and elected Catron to serve in it. Catron held the position until 1834.

As a judge, Catron worked principally to resolve the morass of conflicting land claims then before the courts, but he addressed other issues as well. In separate 1829 rulings, Catron denounced both gambling and DUELING, calling the latter no more than "honorable homicide." "The law knows it as a wicked and willful murder, and it is our duty to treat it as such," wrote Catron in his decision for *Smith v. State*, 9 Tenn. 228. "We are placed here firmly and fearlessly to execute the laws of the land, not visionary codes of honor, framed to subserve the purposes of destruction." In an 1834 case, *Fisher's Negroes v. Dabbs*, 14 Tenn. 119, Catron ruled on the issue of freeing slaves. Slave owners would often grant manumission, or freedom, to their slaves through their wills. Catron argued that the state must approve such instruments before they can be valid, because, he wrote, "free negroes are a very dangerous and most objectionable population where slaves are numerous." Nor would it do to send freed slaves to states where slavery

was not practiced, according to Catron. Whether in a slaveholding or nonslaveholding society, the freed African-American is "a degraded outcast, and his fancied freedom a delusion." Slaves could only be freed, Catron wrote, if they were sent to the African nation of Liberia.

American Indian affairs, particularly relating to the Cherokee nation, were also were pressing issues during Catron's tenure on the Tennessee high court. In 1833, the state legislature, following the earlier example of Georgia's general assembly, passed laws giving itself jurisdiction over Cherokee land within its boundaries. In *State v. Foreman*, 16 Tenn. 256, it was charged that these laws were unconstitutional. Catron upheld the state laws in a long opinion that is notable for its brutal attitude toward the Indians. "It was more just," Catron wrote, "that the country should be peopled by Europeans, than continue the haunts of savage beasts, and of men yet more fierce and savage." The Indians were, in his mind, "mere wandering tribes of savages" who "deserve to be exterminated as savage and pernicious beasts." Furthermore, it was simply by right of power that whites could exert their dominance: "Our claim is based on the right to coerce obedience. The claim may be denounced by the moralist. We answer, it is the law of the land. Without its assertion and vigorous execution, this continent never could have been inhabited by our ancestors." The issue resurfaced a few years later during Martin Van Buren's presidency when the Cherokee were forced to give up their land and make a long march on what was called the Trail of Tears to land west of the Mississippi.

In 1836, Catron directed Van Buren's presidential campaign in Tennessee. Van Buren won the election, succeeding fellow Democrat Jackson. On his last day in office, March 3, 1837, Jackson appointed two new members—Catron and John McKinley—to the U.S. Supreme Court as required by the JUDICIARY ACT OF 1837, which increased the size of the Court from seven to nine members. Catron was confirmed five days later, and at age fifty-one he became a sitting justice with ROGER B. TANEY serving as chief justice.

Catron was a strong advocate of states' rights during his tenure on the Court. In the cases considered in *Thurlow v. Commonwealth of Massachusetts*, 46 U.S. (5 How.) 504, 12 L. Ed. 256 (1847), Catron wrote two opinions upholding the rights of states to regulate the importation of

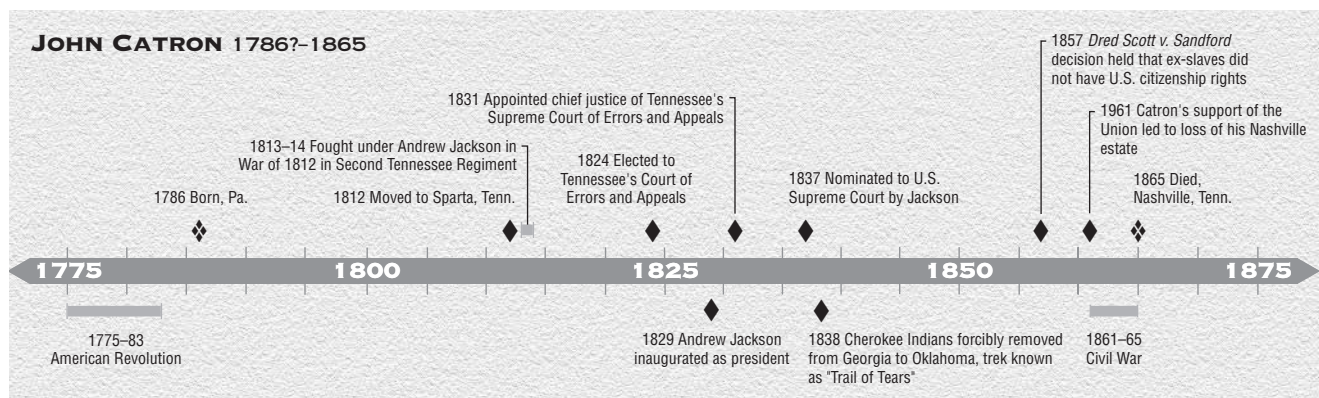
liquor from other states and countries. The cases touched on interpretation of the **COMMERCE CLAUSE**, the part of the Constitution—Article I, Section 8, Clause 3—that gives Congress power “[t]o regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.” Catron argued that the federal government does not have exclusive power to regulate interstate commerce and that where it does not act to regulate commerce, the states are free to do so. The state laws in question had encroached on no laws passed by Congress and were therefore valid. According to Catron, “the **POLICE POWER** was not touched by the Constitution, but left to the States as the Constitution found it.” Catron and the Court ruled similarly in *Cooley v. Board of Wardens*, 53 U.S. (12 How.) 299, 13 L. Ed. 996 (1851), again upholding the ability of states to regulate local aspects of interstate commerce.

Catron dissented from the Court’s opinion in several cases involving the states’ ability to regulate corporations. In one case in which the Court had ruled in favor of a large corporation, Catron expressed concern regarding “the unparalleled increase of corporations throughout the Union . . . ; the ease with which charters containing exclusive privileges and exemptions are obtained; the vast amount of property, power, and exclusive benefits, prejudicial to other classes of society that are vested in and held by these numerous bodies of associated wealth” (*Ohio Life Insurance & Trust Co. v. Debolt*, 57 U.S. [16 How.] 416, 14 L. Ed. 997 [1853]).

Catron played an important role in the famous *Dred Scott* case, which concerned the highly controversial issue of slavery in the territories. Dred Scott was a slave from Missouri whose owner took him into Illinois, where slav-

ery had been outlawed, and the Louisiana Territory, where it had been forbidden as well by the Missouri Compromise, the 1820 agreement that attempted to resolve the dispute as to whether new states would be admitted to the Union as free or slave states. When Scott returned to Missouri, he brought suit against his owner, claiming that he was free because he had resided in free territory. In its decision, the Court, with Catron writing a concurring opinion, held that a slave could not become a citizen under the U.S. Constitution. Scott, the Court wrote, was not a citizen and therefore could not sue in federal courts. Chief Justice Taney went further and declared the Missouri Compromise unconstitutional, denying the authority of Congress to exclude slavery from the territories. This was only the second time the U.S. Supreme Court had found an act of Congress unconstitutional, the first having been the 1803 decision *MARBURY v. MADISON* 5 U.S. (1 Cranch) 137, 2 L. Ed. 60 [1803]. Many viewed *Dred Scott* as a pro-slavery ruling from a Court dominated by a Southern majority. The ruling may very well have hastened the coming of the Civil War.

In his concurring opinion, Catron emphasized that Congress could not abridge the property rights of slave-owning citizens in the Louisiana Territory by outlawing slavery. He also argued that the Missouri Compromise violated the constitutional guarantee of equal **PRIVILEGES AND IMMUNITIES** to citizens of all states, a guarantee that was, Catron wrote, a “leading feature of the constitution—a feature on which the Union depends, and which secures to the respective States and their citizens an entire equality of rights” (60 U.S. at 529). Three of the seven concurring justices argued that an African-American descended from slaves had no



rights as a U.S. citizen and no standing in court. Catron was one of four justices who did not address this last question of whether a freed slave was a citizen or not.

Despite his pro-Southern leanings and the subsequent loss of his estate, Catron supported the Union during the Civil War. As hostilities began to mount and war neared in March 1861, Catron returned to Nashville to try to keep the border states of his judicial circuit—Tennessee, Kentucky, and Missouri—in the Union. Of these, only Tennessee would eventually join the Confederacy. After an angry mob confronted him when he tried to hold federal court in Nashville, Catron was forced to leave for Washington, D.C., accompanied by a military escort, leaving behind an estate worth more than \$100,000. During the war, Catron continued to support the Union by broadly interpreting the federal government's war powers. In one case, he wrote an opinion refusing to release a prisoner if evidence showed that he was a Confederate sympathizer. After 1862, Catron also worked hard to keep order in the states forming his new circuit: Tennessee, Arkansas, Louisiana, Texas, and Kentucky. He stayed in close touch with President ABRAHAM LINCOLN and worked hard to keep the federal judiciary effective during the war.

On May 30, 1865, Catron, one of the last embodiments of Jacksonian democracy to leave the national scene, died in his adopted city of Nashville.

FURTHER READINGS

Anderson, Burnet. 1993. "John Catron." In *The Supreme Court Justices: Illustrated Biographies, 1789–1993*, ed. Claire Cushman. Washington, D.C.: Congressional Quarterly.

Gatell, Frank O. 1969. *The Justices of the United States Supreme Court, 1789–1969: Their Lives and Major Opinions*, Vol. 1. ed. Leon Friedman and Fred L. Israel. New York: Chelsea House.

CROSS-REFERENCES

Judicial Review; Native American Rights.

CAUSA MORTIS

[Latin, In contemplation of approaching death.] *A phrase sometimes used in reference to a deathbed gift, or a gift causa mortis, since the giving of the gift is made in expectation of approaching death. A gift causa mortis is distinguishable from a gift inter vivos, which is a gift made during the donor's (the giver's) lifetime.*

The donor of the gift of **PERSONAL PROPERTY** must expect to die imminently from a particular ailment or event. This has important consequences in terms of the donor's ability to revoke the gift.

For example, an elderly man is suffering from pneumonia and believes he is going to die as a result of the sickness. He tells his grandson that if he dies, he will give the grandson his pocket watch. If the man recovers and wants to retain his watch, he will be able to do so, because a gift *causa mortis* is effective only if made in contemplation of death due to a known condition and the donor actually dies as a result of that condition.

A gift *causa mortis* is taxed under federal estate tax law in the same way as a gift bequeathed by a will.

CAUSE

Each separate antecedent of an event. Something that precedes and brings about an effect or a result. A reason for an action or condition. A ground of a legal action. An agent that brings something about. That which in some manner is accountable for a condition that brings about an effect or that produces a cause for the resultant action or state.

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

Cause and Causality in American Law

If an individual is fired from a job at the bank for **EMBEZZLEMENT**, he or she is fired *for cause*—as distinguished from decisions or actions considered to be **ARBITRARY** or capricious.

In **CRIMINAL PROCEDURE**, **PROBABLE CAUSE** is the reasonable basis for the belief that someone has committed a particular crime. Before someone may be arrested or searched by a police officer without a warrant, probable cause must exist. This requirement is imposed to protect people from unreasonable or unrestricted invasions or intrusions by the government.

In the law of **TORTS**, the concept of causality is essential to a person's ability to successfully bring an action for injury against another person. The injured party must establish that the other person brought about the alleged harm. A defendant's liability is contingent upon the connection between his or her conduct and the

injury to the plaintiff. The plaintiff must prove that his or her injury would not have occurred but for the defendant's NEGLIGENCE or intentional conduct.

Actual, Concurrent, and Intervening Cause

The *actual cause* is the event directly responsible for an injury. If one person shoves another, thereby knocking the other person out an open window and he or she breaks a leg as a result of the fall, the shove is the actual cause of the injury. The immediate cause of the injury in this case would be the fall, since it is the cause that came right before the injury, with no intermediate causes. In some cases the actual cause and the immediate cause of an injury may be the same.

Concurrent causes are events occurring simultaneously to produce a given result. They are contemporaneous, but either event alone would bring about the effect that occurs. If one person stabs another person who is simultaneously being shot by a third person, either act alone could cause the person's injury.

An INTERVENING CAUSE is one that interrupts the normal flow of events between the wrong and the injury. It comes between an expected sequence of occurrences to produce an unanticipated result. If someone driving under the influence of alcohol grazes a telephone pole that is rotted and thus knocks it down, the condition of the pole would be the intervening cause of its collapse. This is important in determining the liability of the intoxicated driver. If the telephone company knew or should have known about the unsafe condition of the pole and negligently failed to replace it, the telephone company would be responsible for the harm caused by the falling pole. Depending upon how hard the driver hit the pole, the driver may be held contributorily negligent, or partially liable, for the accident that took place.

An *intervening efficient cause* is one that totally supersedes the original wrongful act or omission. For example, an intoxicated cabdriver transports a person in a cab with faulty brakes. An accident occurs, which is a direct result of the intoxication rather than the faulty brakes. The injury resulting to the passenger is attributable to the driver's condition. The intervening efficient cause thereby broke the causal connection between the original wrong of the faulty brakes and the injury.

Proximate, Unforeseeable, and Remote Cause

The proximate cause of an injury is the act or omission of an act without which the harm would not have occurred. This is a concept in the law of torts and involves the question of whether a defendant's conduct is so significant as to make him or her liable for a resulting injury. For example, a person throws a lighted match into a wastepaper basket that starts a fire that burns down a building. The wind carries the flames to the building next door. The act of throwing the match would be the proximate cause of the fire and the resulting damage; however, the person may not be held fully liable for all resulting consequences.

An *unforeseeable cause* is one that unexpectedly and unpredictably results from the proximate cause. The degree of injury sustained is unanticipated or far removed from the negligent or intentional conduct that took place. For example, if a customer in a supermarket irritates a clerk and the clerk pushes the customer out of the way, which results in prolonged bleeding because the person is a hemophiliac, the bleeding is an unforeseeable consequence of the clerk's action. Even if the clerk intentionally pushed the customer, the resulting injury is clearly far removed from the conduct.

A *remote cause* is one that is removed or separate from the proximate cause of an injury. If the injuries suffered by a person admitted to a hospital after being hit by a truck are aggravated by MALPRACTICE, the malpractice is a remote cause of injury to that person. The fact that the cause of an injury is remote does not relieve a defendant of liability for the act or omission, but there may be an APPORTIONMENT of liability between the defendants.

CROSS-REFERENCES

Action; Arbitrary; Arrest; "But For" Rule; Criminal Procedure; Probable Cause; Search and Seizure; Tort Law; Warrant.

CAUSE CÉLÈBRE

[French, famous case.] A trial or lawsuit in which the subject matter or a participant is particularly newsworthy, unusual, or sensational and that typically attracts a great deal of media attention. For example, the case of Scott Peterson, accused of the murder of his pregnant wife, Laci Peterson, was a cause célèbre in 2003.

CAUSE OF ACTION

The fact or combination of facts that gives a person the right to seek judicial redress or relief against another. Also, the legal theory forming the basis of a lawsuit.

The cause of action is the heart of the complaint, which is the **PLEADING** that initiates a lawsuit. Without an adequately stated cause of action the plaintiff's case can be dismissed at the outset. It is not sufficient merely to state that certain events occurred that entitle the plaintiff to relief. All the elements of each cause of action must be detailed in the complaint. The claims must be supported by the facts, the law, and a conclusion that flows from the application of the law to those facts.

The cause of action is often stated in the form of a syllogism, a form of deductive reasoning that begins with a major premise (the applicable **RULE OF LAW**), proceeds to a minor premise (the facts that gave rise to the claim), and ends with a conclusion. In a cause of action for **BATTERY**, the rule of law is that any intentional, unpermitted act that causes a harmful or offensive touching of another is a battery. This is the major premise and is stated first. Supporting facts, constituting the minor premise, appear after the rule of law. For example, a statement of facts for a case of battery might be "The plaintiff, while walking through ABC Store on the afternoon of March 11, 1998, was tackled by the defendant, a security guard for the store, who knocked the plaintiff to the floor and held her there by kneeling on her back and holding her arms behind her, while screaming in her ear to open her shopping bag. These actions caused the plaintiff to suffer injuries to her head, chest, shoulders, neck, and back." The cause of action concludes with a statement that the defendant is responsible for the plaintiff's injuries and that the plaintiff is entitled to compensation from the defendant.

The facts or circumstances that entitle a person to seek judicial relief may create more than one cause of action. For example, in the preceding example, the plaintiff might assert claims for assault, battery, intentional infliction of emotional distress, and violation of **CIVIL RIGHTS**. She might also bring claims for negligent hiring (if the guard had a history of violent behavior which the store failed to discover) or negligent supervision. (When damages are caused by an employee it is common to sue both the employee and the employer.) All these causes of

action arise from the same set of facts and circumstances but are supported by different rules of law and constitute separate claims for relief.

A cause of action can arise from an act, a failure to perform a legal obligation, a breach of duty, or a violation or invasion of a right. The importance of the act, failure, breach, or violation lies in its legal effect or characterization and in how the facts and circumstances, considered as a whole, relate to applicable law. A set of facts may have no legal effect in one situation, whereas the same or similar facts may have significant legal implications in another situation. For example, tackling a shoplifting suspect who is brandishing a gun is a legitimate action by a security guard and probably would not support a claim for relief if the suspect were injured in the fracas. On the other hand, tackling a shopper who merely acts in a suspicious manner while carrying a shopping bag is a questionable exercise of a guard's duty and may well give rise to **JUSTICIABLE** causes of action.

FURTHER READINGS

McCord, James W.H. "Drafting the Complaint: Defending and Testing the Lawsuit." *Practicing Law Institute* 447.

CAVEAT

[Latin, Let him beware.] A warning; admonition. A formal notice or warning given by an interested party to a court, judge, or ministerial officer in opposition to certain acts within his or her power and jurisdiction.

Originally, a *caveat* was a document that could be served on either a judge or a public official to give him or her notice that he or she should discontinue a certain proceeding until an opposing party was given an opportunity to be heard.

Used in the past by someone objecting to the appointment of an executor or administrator of an estate or to the granting of a patent for an invention, the term *caveat* is rarely used by modern attorneys.

CAVEAT EMPTOR

[Latin, Let the buyer beware.] A warning that notifies a buyer that the goods he or she is buying are "as is," or subject to all defects.

When a sale is subject to this warning the purchaser assumes the risk that the product might be either defective or unsuitable to his or her needs.

This rule is not designed to shield sellers who engage in FRAUD or bad faith dealing by making false or misleading representations about the quality or condition of a particular product. It merely summarizes the concept that a purchaser must examine, judge, and test a product considered for purchase himself or herself.

The modern trend in laws protecting consumers, however, has minimized the importance of this rule. Although the buyer is still required to make a reasonable inspection of goods upon purchase, increased responsibilities have been placed upon the seller, and the doctrine of *caveat venditor* (Latin for “let the seller beware”) has become more prevalent. Generally, there is a legal presumption that a seller makes certain warranties unless the buyer and the seller agree otherwise. One such WARRANTY is the IMPLIED WARRANTY of merchantability. If a person buys soap, for example, there is an implied warranty that it will clean; if a person buys skis, there is an implied warranty that they will be safe to use on the slopes.

A seller who is in the business of regularly selling a particular type of goods has still greater responsibilities in dealing with an average customer. A person purchasing antiques from an antique dealer, or jewelry from a jeweler, is justified in his or her reliance on the expertise of the seller.

If both the buyer and the seller are negotiating from equal bargaining positions, however, the doctrine of *caveat emptor* would apply.

CROSS-REFERENCES

Consumer Protection; Sales Law.

CEASE AND DESIST ORDER

An order issued by an ADMINISTRATIVE AGENCY or a court proscribing a person or a business entity from continuing a particular course of conduct.

The force and effect of a cease and desist order are similar to those of an INJUNCTION issued by a court.

CEDE

To yield up; to assign; to grant; to surrender; to withdraw. Generally used to designate the transfer of territory from one government to another.

CELEBRATION OF MARRIAGE

A colloquial phrase that refers to the solemnization or formalization of a marriage.

In a number of states there must be a celebration of a marriage through some type of official government ceremony before a marriage will be legally recognized.

Some statutes provide that every JUSTICE OF THE PEACE of a particular state, every minister, and every religious society be empowered to solemnize marriage. The type of celebration required varies according to state law and religious custom.

CELIA, A SLAVE

Celia, a slave, was probably born in Missouri in 1836. No documentation of her birth date, birthplace, or parentage exists. Her recorded history begins in the summer of 1850 when she was purchased by Robert Newsom, of Fulton Township, Calloway County, Missouri; at the time of the transaction she was about fourteen years old. Celia's recorded history ends five and a half years later when she was tried and hanged for the murder of her owner; she was nineteen years old and the mother of at least two children at the time of her death. Her final resting place and the fate of her children are unknown.

The circumstances of Celia's short life—and the events that led to her hanging—illustrate the realities of slave life in the South and the personal choices the institution of SLAVERY forced upon slaves and slaveholders. The course and outcome of Celia's trial were influenced by individuals and a court system that were trying to reconcile the personal consequences of slavery with existing moral codes, politics, and economics—at a time when nationwide struggles over the same issues were increasingly heated and often violent.

By 1850, when knowledge of Celia begins, Missouri had already been at the center of the national slavery debate for more than a quarter of a century. The U.S. Congress had confronted the dilemma presented by the existence of slavery in a free society in 1819 when Missouri petitioned for statehood. Angry and emotional debates considered whether a territory should be asked to abandon slavery as a condition of statehood. Congress preempted the debate by passing the Missouri Compromise, under which it preserved the nation's balance by admitting Maine as a free state in 1820 and Missouri as a slave state in 1821. The Missouri Compromise also drew a line between North and South by limiting the expansion of slavery in the Louisiana Territory to areas south of Missouri.

During this volatile time, Newsom left Virginia and brought his wife and children to the Missouri Territory. In the fall of 1822, with statehood granted and slavery assured for his new home, Newsom settled in southern Calloway County. Hard work and slave labor made him a prosperous farmer—and Calloway County went on to become a large slave-holding county.

Because many core issues of the slave debate were unresolved by the Missouri Compromise, leaders on both sides of the issue knew that it was only a matter of time before the nation's expansion would force another confrontation. That confrontation came in 1850 when Congress found itself waging a battle over the expansion of slavery in territories gained as a result of the Mexican War. Northern politicians wanted to stop the expansion of slavery and assure the admission of California to the Union as a free state. Their Southern counterparts did not want slavery prohibited in territories for which Southern soldiers had fought and died. Missouri, with roughly equal numbers of citizens supporting each side of the issue, was as deeply divided as the nation.

The residents of agriculture-based, slave-holding Calloway County—including Newsom—probably favored the pro-slavery rhetoric and politics described in the papers of the day. The 1850 census for Calloway County, which shows that Newsom owned five male slaves, supports this assumption, as does Newsom's decision to purchase Celia even while the controversy over slavery was escalating to its ultimate conclusion—civil war.

In all likelihood, however, Newsom did not purchase Celia as a political statement. His reasons for buying Celia were much more personal. Newsom's wife had died in 1849. Following her death, his household comprised a widowed daughter named Virginia Waynescot; her children, James Coffee Waynescot, Amelia Waynescot, and Thomas Waynescot; and an unmarried daughter, Mary Newsom. Two sons, Harry Newsom and David Newsom, were married and living nearby.

When Newsom went to purchase Celia, outward appearances suggested that he was looking for a domestic servant to assist his daughters with cooking and household work. Subsequent trial testimony and transcripts indicate otherwise. At any rate, in the spring of 1850 Newsom traveled by wagon to Audrain County, a day's ride to the north of his home, to buy his new

slave. On the return trip, Newsom raped the young girl and established the true nature of her future role in the Newsom household.

Over the next four years Celia's life revolved around her role as Newsom's conjugal partner. He provided her with a brick cabin near the main house and other material possessions indicating both her status and his affection for her. He visited her often and he was most likely the father of her first two children.

The kind of relationship Newsom had with Celia was fairly widespread in the South but seldom acknowledged or publicly condoned. Given the daily rhythms and routines of rural life in 1850 Missouri, Newsom's adult daughters were most likely aware of their father's intimate relationship with Celia; because of their economic dependence on their father they also likely did not make an issue of his relationship with the slave. Though not much is known about the details of Celia's interaction with members of the Newsom household, one author concluded from court documents that she must have been a disturbing presence on the Newsom farm.

By 1854, Celia had tired of Newsom's attentions and begun a forbidden relationship with a Newsom slave named George. Sometime in early 1855 George started staying in Celia's cabin when Newsom was not there. Within months, Celia was pregnant and uncertain of the child's father. George, believing the child to be his, pressured Celia to end her physical relationship with their owner. Newsom, believing the child to be his, and unaware of Celia's intimate friendship with George, saw no reason to change the established pattern of their relationship.

Caught in the middle, Celia was forced to make a choice that would eventually cost her her life. At some point in June of 1855, Celia made an attempt to satisfy George's demands and to stop Newsom's sexual advances by appealing to Newsom's daughters. She threatened to hurt Newsom if he did not stop forcing his attentions on her while she was ill (court documents indicate that the early stages of Celia's third pregnancy were difficult, causing her to be sick much of the time). It is not known if his daughters spoke to Newsom on Celia's behalf but it is clear that Newsom's sexual demands on her did not stop. On Saturday, June 23, Celia confronted her master directly, asking him to leave her alone. He ignored her request and told her he would visit her cabin that evening.

Newsom went to Celia's cabin later that evening and was never seen again. When he did not appear for breakfast on Sunday morning his children and neighbors began to search for him and to question the slaves. A statement from Celia's lover, George, led the family to suspect her involvement in Newsom's disappearance. George told the search party that they were not likely to find anything unless they searched near Celia's cabin.

Celia initially denied any involvement in Newsom's disappearance. But worn down by questioning, she finally confessed to his murder. She admitted that Newsom had come to her cabin the night before. She described how she struck him twice with a large stick to stop his advances. Realizing she had killed him, she decided to burn his body in the fireplace to cover her crime. She buried the bones that did not burn under the hearth and she enlisted the help of Newsom's own grandson, James Coffee Waynescot, to carry the ashes out of the cabin on Sunday morning. A buckle and buttons retrieved from the ashes and bone fragments found under the hearth confirmed her story.

On Monday, June 25, *State v. Celia, a Slave*, Celia File No. 4496, began. Two local justices, D. M. Whyte and Isaac P. Howe, and a jury of six men—George Thomas, Daniel Robinson, John Wells, Simpson Hyton, George Brown, and John Carrington—considered an AFFIDAVIT filed by David Newsom accusing Celia of murder. They found PROBABLE CAUSE to charge her with murder and she was arrested and taken to the Fulton County jail. An October trial date was set and Judge William Augustus Hall was named to preside.

Newspaper accounts of the murder at the Newsom farm fueled local fears by reporting that the crime was committed without sufficient cause (no mention was made of Celia's intimate relationship with the victim or her reasons for attacking him). These fears, along with Celia's physical condition and the belief that her two children were in the cabin at the time of the murder, led the community to believe that Celia did not commit the crime on her own.

Acts of violence by slaves and the possibility of conspiracy and organized slave rebellion were very much on the minds of Calloway County residents in the spring of 1855. A free-slave conflict in neighboring Kansas Territory had moved from debate to bloodshed. Passage of the KANSAS-NEBRASKA ACT, which called for "popu-

lar sovereignty" in the territories, along with a threatened repeal of the Missouri Compromise, made Kansas Territory a national battleground. Northern activists channeled antislavery settlers into the territory hoping they would eventually vote against slavery. Slaves themselves were encouraged to commit violent acts as a means of asserting their rights and winning their freedom. Missouri residents poured across the Kansas-Missouri border to antagonize Northern settlers, support pro-slavery residents, and keep the slaves in submission.

With supporters on both sides of the slavery issue watching the proceedings, Judge Hall was under pressure to see that Celia received credible representation at her trial. On August 16 he appointed John Jameson and his associates to defend her. Jameson was a popular citizen in Fulton Township. He was a slave owner but he was not personally involved in the ongoing slavery debates. He had practiced law in the community for three decades and had represented Missouri for three terms in the U.S. Congress. With political savvy and a reputation as an excellent trial lawyer, Jameson was acceptable to those on both sides of the conflict.

On October 9 Celia entered the Calloway County Courthouse for trial. After dealing with numerous preliminary and procedural matters, including jury selection, Celia's attorneys entered a plea of not guilty to the charge of murdering Newsom. Like the inquest jury, Celia's trial jury was made up of male residents of the county: all were married and had children, all but one were farmers, about half were slave owners, and none were as prosperous as Newsom. Though certainly not Celia's peers, they were as good a jury as could be expected for the time.

The next day testimony began. The prosecution stressed the facts of the case and reminded the jury that Celia had confessed to the murder.

The defense focused on Celia's sexual exploitation and the motive for her actions. Jameson argued that Celia was entitled, by law, to use DEADLY FORCE to protect herself from rape, regardless of her previous sexual relationship with the victim. His argument was unconventional and bold because it was based on a Missouri statute that had been created to protect white women; in most of the South sexual assault on a slave was considered TRESPASS, and owners could not be accused of trespass on their own property.

After concluding their arguments, both sides were allowed to propose jury instructions for Judge Hall's consideration. Jameson requested several instructions that would have allowed Celia to be acquitted if the jury found from the evidence that she had killed Newsom in an effort to prevent his sexual advances. The prosecution objected to Jameson's instructions and Hall ultimately refused to deliver them to the jury. Denied any grounds for acquitting her, the jury found Celia guilty of murder.

On October 11 Celia's attorneys filed a motion to set aside the jury verdict and grant a new trial. Judge Hall's prejudicial rulings and his refusal to issue critical jury instructions were cited as grounds for the motion. On October 13 Hall denied the defense motion and Celia was sentenced to death by hanging on November 16. This execution date may have been set to allow for delivery of Celia's expected child; under Missouri law a pregnant woman could not be executed. Court records indicate she delivered a stillborn baby while in custody.

After the sentencing, Judge Hall was asked to issue a stay of execution while Celia's case was appealed to the Missouri Supreme Court. He refused. Though no record of the appeals document exists, Jameson probably included many of the same arguments and issues outlined in his motion for a new trial. By early November the Missouri Supreme Court had not considered the appeal. When it looked as though Celia would be executed before her appeal was heard, her supporters took drastic measures. On the night of November 11 she was helped to "escape" from jail. She was not returned to custody until after her original execution date had passed. Upon her return a new execution date of December 21 was set.

On December 6 Jameson wrote a letter to Judge Abiel Leonard asking the Missouri Supreme Court to issue a stay of execution until the case could be heard. On December 14 the court ruled that it found no probable cause for an appeal. Accordingly, the stay of execution was refused. Celia's fate was sealed by the same court that had earlier exhibited its pro-slavery leanings in the famous *Dred Scott* decision, in which a majority of the court ruled that a slave remained a slave—even if he traveled and lived in free territory (*DRED SCOTT V. SANDFORD*, 60 U.S. (19 How.) 393, 15 L. Ed. 691 [1857]).

The Missouri Supreme Court's ruling in Celia's case was filed in the circuit court of Cal-

loway County on December 18. On the afternoon of Friday, December 21, Celia was hanged for the murder of Newsom. In a final statement, she repeated her story: she had acted alone, she had struck Newsom to stop his advances, and she had not intended to kill him. Unable, or unwilling, to challenge the underlying beliefs and behaviors that allowed slavery to exist, Missouri's pre-Civil War supreme court failed to extend the protection of an existing law to a slave.

FURTHER READINGS

1850 federal census for Calloway County, Missouri, including slave and agricultural schedules. Dakota/Wescott Library and Minnesota Historical Society.

McLaurin, Melton A. 1991. *Celia, A Slave: A True Story*. Athens, Ga.: Univ. of Georgia Press; and New York: Avon Books.

CEMETERIES

Areas that are set aside by public authority or private persons for the burial of the dead.

A *public cemetery* is open for use by the community at large while a *private cemetery* is used only by a small segment of a community or by a family.

A cemetery includes not only the actual grave sites but also surrounding areas such as avenues, walks, and grounds.

Cemeteries are not governed by laws that apply to real property or corporations due to their inherently different nature. Most states have established laws that specifically apply to cemeteries.

Establishment and Regulation

The establishment of a cemetery involves the process of formally designating a tract of land for use for the burial of the dead. It must be set apart, marked, and distinguished from adjoining ground as a graveyard.

The state, in the exercise of its **POLICE POWER**, has the right to regulate the creation of cemeteries by providing for their establishment and discontinuance as well as to monitor their use. Private interests in the place of burial are subject to the control of public authorities, which have the right to require the disinterment of bodies if deemed necessary.

Burial sites may not be absolutely prohibited by legislative action inasmuch as they are considered indispensable and directly related to the public health. Provisions in corporate charters cannot prevent the exercise of **POLICE POWERS**



The establishment of cemeteries, such as the one pictured, may be prohibited by state or local legislative bodies but only under certain circumstances.

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with regard to which lands may be used for burial purposes, since burial in certain places might create a public NUISANCE.

Regulation by Municipal Corporations

Subject to express legislative authority, and by virtue of its general police powers, a municipality may reasonably regulate places of burial within its borders. The key requirement is that a municipality may not act arbitrarily with regard to the regulations it adopts.

The power of a municipality to regulate cemeteries is an ongoing one that may be exercised as required by considerations of public health and welfare. Regulations may prohibit such actions as future burials in existing cemeteries, the enlargement of existing cemeteries, or the establishment of new ones.

A municipality may own and maintain a cemetery when it is expressly authorized to do so. General control may be exercised over a cemetery that a municipality owns, but control may not be exercised arbitrarily, capriciously, or unreasonably.

Corporations and Associations A cemetery corporation, as defined expressly by statute, is any corporation formed for the burial of the

dead in a receptacle or vault. Such a corporation may or may not be organized for pecuniary profit and may or may not be organized under the general corporate law.

The members of a cemetery corporation are those people who own plots according to express statutory provisions. They cannot make a profit out of the sales of lots if the corporation is not for profit. Nor can they make a gift of their plot to another independent corporation.

If statute permits, cemetery corporations may issue stock and pay dividends to stockholders. Stockholders may enact bylaws.

Some statutes provide that a cemetery may give land shares, which are certificates entitling the holder to receive a portion of the profit from the subsequent sales of plots, in exchange for payment for the land purchased. This type of certificate is not a stock certificate but is in the nature of a nonnegotiable promise to pay money.

Location

The establishment of cemeteries may be prohibited by state or local legislative bodies, but only under certain circumstances. The interment of dead bodies is necessary and proper and

therefore the prohibition of the establishment of a cemetery must be based on the potential danger to human life or health. State and municipal organizations are not permitted to prohibit burial for such reasons as the value of adjoining land being lessened or because a cemetery might be a source of annoyance to inhabitants of the surrounding community.

Under some statutory provisions a cemetery cannot be established within a certain distance of a private residence, store, or other place of business without the owner's consent. Similarly, certain statutes provide that, prior to the establishment of a cemetery, consent must be obtained from the county or municipal authorities within whose limits the cemetery will be located.

Title and Rights of Owners of Plots, Grounds, or Graves

The purchaser of a plot in a cemetery is generally regarded as having obtained only a limited property right. He or she acquires a privilege, EASEMENT, or license to make burials in the purchased plot, exclusive of all other people, provided that the land remains a cemetery.

The plot owner's interest is a property right entitled to protection from invasion and the title is a legal estate. The owner's rights are subject to the police power of the state as well as the rules of the cemetery and any restrictions made in the contract of sale.

A cemetery corporation may cancel the contract of sale of a plot where regulations of the corporation that are part of the contract are violated by the sale due to a MISTAKE OF FACT. A purchaser may, in turn, rescind the contract where substantial misrepresentations have been made by the corporation.

Plot holders cannot be prevented by cemetery owners from erecting markers, entering the grounds, or interring family members in the plots they own. If a plot owner dies intestate, the rights to the plot pass to the heirs in the same manner that PERSONAL PROPERTY passes in the absence of a will. A gravestone or marker is the personal property of the person who places it near a grave and its ownership is passed to this person's heirs.

ABANDONMENT is the only way in which the use of land as a cemetery may cease. It takes place either by removal of all the interred bodies or by neglect to such a degree that the property is no longer identifiable as a cemetery. The

removal of bodies may be ordered by public authorities when necessitated by the public health. The owner of a cemetery may opt to discontinue the sale of plots as initially planned, but permission to do so from government officials might be a prerequisite.

Duties as to Care and Maintenance

The owner of a plot has the duty to care for and maintain the plot either personally or through an agent. A cemetery's trustees may supervise plots to prevent them from disintegrating to the point of unsightliness.

If a statute so requires, a cemetery association must care for its plots. If a charter imposes a duty upon the association to keep the grounds in repair, this obligation does not encompass plots sold to individuals.

A cemetery association has the duty to maintain the premises in a reasonably safe condition. Doing so includes the proper maintenance of portions of the cemetery used for travel or occupation by attendants of burials.

Uniform and reasonable rules and regulations may be made for the care and management of lots by the proprietors of a cemetery. Such rules must be equal in their operation. An unreasonable rule would be to prohibit the owner of a lot from hiring his own caretaker; however, a rule requiring that such work be done by competent persons would be reasonable.

Right of Burial

Everyone is entitled to a decent burial in a suitable place. The right to be interred in a particular cemetery is an easement, license, or privilege. An element of this right is the privilege to be buried according to the usual custom in the community and pursuant to the rules and regulations set forth by the proprietor of the cemetery. When an individual does not purchase a plot subject to any restrictions on burial, the proprietors have no subsequent power to limit such right unreasonably.

An individual who obtains the right to be buried in a cemetery subject to the control of a religious organization takes the plot subject to the organization's rules. This may limit the burial right to its members or to those in communion with such organizations. The church has exclusive jurisdiction over the question of whether a person is in communion with a religious organization and thereby entitled to burial in its cemetery.

Interference with Owner's Rights

A CAUSE OF ACTION may be based upon the interference with the rights of a plot owner. An unlawful and unwarranted interference with an individual's exercise of the right of burial in a cemetery lot is a TORT. An infringement of the rights of a plot owner may be prevented by an INJUNCTION if an injury is threatened.

Either criminal or civil liability, or both, exist for TRESPASS or other types of injuries to a cemetery or to individual burial plots. If a burial ground or plot is wrongfully invaded or desecrated, an action of trespass may be brought against the wrongdoer. VANDALISM and destruction of tombstones are criminal offenses. The person who erects a tombstone may maintain an action for injury to it. After that person's death, his or her heirs may prosecute such an action. Generally, the measure of damages for trespass is the cost of restoration. Since there is a strong public policy against injury to gravesites due to the indignity of the act, punitive damages—intended to deter future acts of desecration—may be awarded.

FURTHER READINGS

- Cronin, Xavier. 1996. *Grave Exodus: Tending to Our Dead in the 21st Century*. Fort Lee, NJ: Barricade.
- Echo-Hawk, Roger C., and Walter Echo-Hawk. 1996. *Battlefields and Burial Grounds: The Indian Struggle to Protect Ancestral Graves in the United States*. Minneapolis, Minn.: Lerner.
- Harnish, Jessica L. 2002. "Unlawful Concealment and Desecration of Burial Sites not Considered an Improvement to Land." *University of Baltimore Journal of Environmental Law* 9 (spring): 141–4.
- Mitford, Jessica. 1964. *The American Way of Death*. Greenwich, Conn.: Crest.
- Murray, Virginia H. 2000. "A 'Right' of the Dead and a Charge on the Quick: Criminal Laws Relating to Cemeteries, Burial Grounds and Human Remains." *Journal of the Missouri Bar* 56 (March–April): 115.
- Rezatto, Helen. 1980. *Mount Moriah: Kill a Man, Start a Cemetery: The Story of Deadwood's Boot Hill*. Aberdeen, SD: North Plains Books & Art.
- Wright, Roberta H., and Wilbur B. Hughes. 1996. *Lay Down Body: Living History in African American Cemeteries*. Detroit: Visible Ink.

CROSS-REFERENCES

Corpse; Easement; Property Law.

CENSORSHIP

The suppression or proscription of speech or writing that is deemed obscene, indecent, or unduly controversial.

The term *censorship* derives from the official duties of the Roman censor who, beginning in 443 B.C., conducted the census by counting, assessing, and evaluating the populace. Originally neutral in tone, the term has come to mean the suppression of ideas or images by the government or others with authority.

Throughout history, societies practiced various forms of censorship in the belief that the community, as represented by the government, was responsible for molding the individual. For example, the ancient Greek philosopher Plato advocated various degrees of censorship in *The Republic*; the content of important texts and the dissemination of knowledge were tightly controlled in ancient Chinese society as is much information in modern China; and for centuries the Roman Catholic Church's *Index Librorum Prohibitorum* proscribed much literature as contrary to the church's teachings.

The English-speaking world began wrestling with issues of censorship in the seventeenth century. In his *Areopagitica* (1644), John Milton argued in favor of the right to publish, free from government restraint. In the United States, the FIRST AMENDMENT to the Constitution (1787) guarantees FREEDOM OF SPEECH and FREEDOM OF THE PRESS. When a U.S. government agency attempts to prohibit speech or writing, the party being censored frequently raises these First Amendment rights. Such cases usually involve communication that the government perceives as harmful to itself or the public.

Abortion

In some cases, the government can constitutionally censor the speech of those who receive federal funding. For example, the Supreme Court ruled in *Rust v. Sullivan*, 500 U.S. 173, 111 S. Ct. 1759, 114 L. Ed. 2d 233 (1991), that, without restricting First Amendment rights, the government can ban ABORTION counseling in federally funded health clinics.

Prisoners' Mail

If the government's interest is penological it also has broader rights to censor speech. Prisoners' outgoing mail can be censored in order to thwart escape plans, shield the recipients from obscene or menacing letters, or circumvent inaccurate or adverse reports about prison conditions. Under the Supreme Court ruling in *Procunier v. Martinez*, 416 U.S. 396, 94 S. Ct. 1800, 40 L. Ed. 2d 224 (1974), prison administrators can censor prisoners' personal corre-

spondence only if it is necessary to maintain security, order, or rehabilitation efforts. Such censorship can be neither random nor excessively troublesome.

Entertainment

Perhaps the most visible form of censorship is that affecting the entertainment industry. Theater and film, as types of public entertainment, affect the common interest and can hence be subjected to certain types of governmental regulation. But attempts to regulate or censor often risk obstructing the free speech rights of playwrights, screenwriters, filmmakers, performers, and distributors.

The U.S. Supreme Court has ruled that it is lawful to censor obscene entertainment to safeguard children from **PORNOGRAPHY** and to protect adults from unknowingly or involuntarily viewing indecent materials (*Ginsberg v. New York*, 390 U.S. 629, 88 S. Ct. 1274, 20 L. Ed. 2d 195 [1968]). Although Supreme Court interpretation permits individuals to view **OBSCENITY** in the privacy of their homes (*Stanley v. Georgia*, 394 U.S. 557, 89 S. Ct. 1243, 22 L. Ed. 2d 542 [1969]), theaters and movie houses are public places and therefore subject to regulation (*Paris Adult Theatre I v. Slaton*, 413 U.S. 49, 93 S. Ct. 2628, 37 L. Ed. 2d 446 [1973]). The difficulty with such censorship is in trying to determine what is "obscene."

In *MILLER V. CALIFORNIA*, 413 U.S. 15, 93 S. Ct. 2607, 37 L. Ed. 2d 419 (1973), the Supreme Court concluded that a work is obscene and can be regulated if it appeals to a viewer's prurient interest; portrays sexual conduct in a patently offensive way; and lacks serious literary, artistic, political, or scientific value. The Court further ruled that interpretations of this definition may vary across the United States and that communities may apply their own local standards to determine obscenity.

To avoid government censorship, the Motion Picture Association of America (MPAA) regulates itself through a voluntary rating system. The system does not have statutory authority but is used to help the industry conform with statutes designed to protect children. Recognizing a 1968 Supreme Court decision that favored limited censorship for minors (*Ginsberg v. New York*, 390 U.S. 629, 88 S. Ct. 1274, 20 L. Ed. 2d 195), the MPAA devised a rating system based on the viewer's age. A G rating signals that subject matter is suitable for general audiences; PG

stands for Parental Guidance Suggested; PG-13 strongly advises guidance for children under age 13 because of possibly inappropriate material; R requires accompaniment by an adult for children under age 17, or 18 in some states; and NC-17 or X prohibit anyone under age 17, or 18 in some states, from entering the theater.

Radio and television have also met with governmental pressure to control the content of their broadcasts. Spurred by the belief that violence on television adversely affects children's behavior and attitudes, Congress has attempted several times to encourage the media to adopt voluntary guidelines in the hope that less violence on television will lead to a less violent society. Although none of Congress's acts have been deemed outright censorship, government intrusion into broadcasting to discourage certain types of speech has not been welcomed by all. The various pieces of legislation raise questions about media self-censorship and the role of the **FEDERAL COMMUNICATIONS COMMISSION** (FCC) in regulating freedom of expression.

In response to congressional pressure the **NATIONAL ASSOCIATION OF BROADCASTERS** adopted the Family Viewing Policy in 1974 to limit the first hour of prime-time programming to material suitable for families. The policy was found unconstitutional in 1976 (*Writers Guild of America, West, Inc. v. F.C.C.*, 423 F. Supp. 1064 [C.D. Cal., 1976]).

Congress addressed the content of children's television with the Children's Television Act of 1990 (47 U.S.C.A. §§ 303a-303b [Supp. III 1991]), which limits the amount of advertising on children's television and compels broadcasters to air educational programs. Failure to comply with the act could jeopardize renewal of a station's license. Critics point out that the act has not improved children's programming because of its vague standards and the FCC's disinclination to enforce it.

The Television Violence Act (47 U.S.C.A. § 303c [Supp. III 1991]), proposed in 1986 by Senator Paul Simon (D-Ill.), was signed into law by President **GEORGE H.W. BUSH** in December 1990. This act, which expired in 1993, was intended to prompt the networks, cable industry, and independent stations to decrease the amount of violence shown on television. Although it did not constitute direct government regulation, the act was criticized as a governmental attempt to impose its values on society by discouraging, if not suppressing, unpopular ideas.

The Telecommunications Act of 1996, 110 Stat. 56, required television manufacturers to create a chip, known as the V-chip, which allows users, presumably parents, to block out programs based on their sexual or violent content. The chip, which has been installed in television sets manufactured since 1999, operates in conjunction with a voluntary rating system implemented by TV broadcasters that rates programs for violence and sexual content.

Radio broadcasts have also come under scrutiny. In *FCC v. Pacifica Foundation*, 438 U.S. 726, 98 S. Ct. 3026, 57 L. Ed. 2d 1073 (1978), the Supreme Court ruled that a daytime broadcast of George Carlin's "Seven Dirty Words" monologue violated the prohibition of indecency in 18 U.S.C.A. § 1464 (1948) and was therefore subject to regulation. To many, this ruling gave the FCC further authority to censor speech and dictate values.

Music

Just as the entertainment industry has faced regulation or censorship for allegedly violent, obscene, or indecent material, so has the recording industry. Claiming that some popular music erodes morals by encouraging violence, drug abuse, and sexual promiscuity, the Parents' Music Resource Center, founded in 1985 by Tipper Gore, the wife of the future vice president, ALBERT GORE, successfully lobbied the music industry to place warning labels on records that may feature lyrics inappropriate for children.

Concerned about the rising rate of violent crime against law enforcement officers, the assistant director of public affairs for the FEDERAL BUREAU OF INVESTIGATION (FBI) sent a letter in August 1989 to Priority Records to protest a rap group's lyrics. N.W.A., a Los Angeles-based rap group, recorded on its album *Straight Outta Compton* the song "Fuck tha Police," which violently protested police brutality. Although the letter from the FBI was a protest, not an attempt at regulation, many in the music industry interpreted it as an example of indirect censorship through intimidation.

Perhaps the most famous legal proceedings to censor music involved the rap group 2 Live Crew. In early 1990, a Florida circuit judge banned all sales of the group's album *As Nasty As They Wanna Be* on the grounds that the lyrics of several of its songs, including "Me So Horny," violated community standards for obscenity. The group brought suit to have the ban lifted in

Skyywalker Records v. Navarro, 742 F. Supp. 638 (S.D. Fla. 1990), but the judge upheld the obscenity ruling. A record store owner was arrested for continuing to sell the album and two members of 2 Live Crew were arrested on obscenity charges after a performance. The band members were acquitted of all charges in October 1990, but the debate continues between those demanding free expression in music and those seeking to censor allegedly obscene material.

Art

For almost as long as artists have been creating art, governments have both supported and censored artists' work. Ancient Athens, the Roman Empire, and the medieval Catholic Church financed many projects, whereas totalitarian regimes, for example, banned many works and repressed artists. The U.S. Congress was reluctant to fund art that might subsequently be construed as national art, or as government-approved art until 1960s activism encouraged it to do so. In 1965, the National Foundation on the Arts and the Humanities was established to foster excellence in the arts. It is composed of two divisions, the National Endowment for the Arts (NEA) and the National Endowment for the Humanities (NEH). Among its many interests, the NEA provides stipends to deserving artists.

Controversy over the role of government support of the arts arose in the late 1980s with two artists who received NEA funding. In 1988, the photographer Andres Serrano received harsh condemnation for his photograph titled *Piss Christ*, which depicted a plastic crucifix floating in a jar of Serrano's urine. Numerous senators sent letters of protest to the NEA, insisting that the agency cease underwriting vulgar art. A second furor arose in 1989 over the work of another photographer, Robert Mapplethorpe, who received NEA support for his work, which depicted flowers, nude children, and homosexuality and sadomasochism.

Senator JESSE HELMS (R-N.C.) argued the most vociferously against the NEA's choices and introduced legislation to ban funding of "obscene or indecent art" (1989 H.R. 2788 [codified at 20 U.S.C.A. § 953 et seq. (1989)]). The Helms Amendment, adopted in October 1989, gave the NEA great power and latitude to define obscenity and quash alternative artistic visions. To enforce the new amendment, the NEA estab-



Demonstrators outside the Brooklyn Museum of Art protest Mayor Rudolph Giuliani's threat to withdraw the museum's city funding based on what he felt were offensive works of art in the 1999 Sensation exhibit.

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lished an "obscenity pledge," which required artists to promise they would not use government money to create works of an obscene nature. The art world strongly resisted this measure: many museum directors resigned in protest and several well-known artists returned their NEA grants.

Two important cases tested the power of the NEA to censor artistic production. In *Bella Lewitsky Dance Foundation v. Frohnmayer*, 754 F. Supp. 774 (C.D. Cal. 1991), a dance company refused to sign the obscenity pledge and sued on the ground that the pledge was unconstitutional. A California district court agreed that the pledge violated the First Amendment right to free speech and that its vagueness denied the dance company DUE PROCESS under the FIFTH AMENDMENT.

In *New School v. Frohnmayer*, No. 90-3510 (S.D.N.Y. 1990), the New School for Social Research, in New York City, turned down a grant, claiming that the obscenity pledge acted as PRIOR RESTRAINT and therefore breached the school's First Amendment rights. Before the constitutionality of the prior restraint argument was decided, the NEA released the school from its obligation to sign the pledge.

The NEA abolished the obscenity pledge in November 1990, but in its place instituted a "decency clause" (1990 Amendments, Pub. L. No. 101-512, § 103(b), 104 Stat. 1963 [codified at 20 U.S.C.A. § 954(d)(1990)]), which required award recipients to ensure that their works met certain standards of decency. Failure to comply with this demand could mean suspension of grant payments.

Again the art world protested. In *Finley v. NEA*, 795 F. Supp. 1457 (C.D. Cal. 1992), artists known as the NEA Four—Karen Finley, John Fleck, Holly Hughes, and Tim Miller—sued the NEA over the decency clause. A California district court agreed with the artists. The *Finley* court held that the decency clause, like the obscenity pledge, was unconstitutional because its vagueness denied the artists the due process guaranteed by the Fifth Amendment and because its too-general restriction suppressed speech.

Books

U.S. parents send their children to public schools to receive an education and to learn the fundamental values on which their democratic society is based. Conflict ensues when parents believe that certain schoolbooks contain material that is objectionable on political, moral, or religious grounds and should be banned in order to protect their children from exposure to allegedly harmful ideas. In some instances school boards have responded by physically removing books from school library shelves. In general, advocates of book banning maintain that censorship is warranted to redress social ills, whereas critics believe that freedom of speech is more important and useful to society than imposing values through censorship.

Book banning as a way to remedy social problems was first tested by the Supreme Court in *Board of Education v. Pico*, 457 U.S. 853, 102 S. Ct. 2799, 73 L. Ed. 2d 435 (1982). In *Pico*, parents objected to nine books in the high school library, most of which were subsequently removed by the school board. The nine books were *Slaughterhouse Five*, by Kurt Vonnegut Jr.; *Naked Ape*, by Desmond Morris; *Down These Mean Streets*, by Piri Thomas; *Best Short Stories of Negro Writers*, edited by Langston Hughes; *Laughing Boy*, by Oliver LaFarge; *Black Boy*, by Richard Wright; *A Hero Ain't Nothin' But a Sandwich*, by Alice Childress; *Soul on Ice*, by ELDRIDGE CLEAVER; and *Go Ask Alice*, by an anonymous author.

Pico debated the authority of local school boards to censor material in the interest of protecting students. The case reached the Supreme Court because lower courts were unable to devise standards for testing the constitutionality of book removal. The Supreme Court ruled that it is unconstitutional for public school boards to abridge students' First Amendment rights by

banning books. Although school boards have the power to determine which books should sit on library shelves, they do not have the authority to censor.

Books published by commercial presses for sale to the general public sometimes meet with harsh condemnation and subsequent action that could be tantamount to censorship. In November 1990, Simon and Schuster canceled its contract with author Bret E. Ellis to publish his novel *American Psycho*, citing the work's graphic violence and sexual brutality. The National Writers Union decried the cancellation as contrary to free speech and artistic expression and as censorship. The publishing house defended its editorial judgment by claiming it did not want to put its imprint on a book of questionable taste and value. Vintage Books, a division of Random House, soon acquired the novel, and published it in March 1991.

Students' Speech

Students' free speech rights sometimes clash with schools' interest in maintaining control of public education. Students' First Amendment liberties were affirmed by the landmark *TINKER V. DES MOINES INDEPENDENT COMMUNITY SCHOOL DISTRICT*, 393 U.S. 503, 89 S. Ct. 733, 21 L. Ed. 2d 731 (1969), which ruled that public school students could not be penalized for wearing symbols, such as black armbands, to protest the VIETNAM WAR.

Two subsequent cases dealing with issues of censorship in school newspapers pointed to a more restrictive judicial view of students' right to free expression. In *Hazelwood School District v. Kuhlmeier*, 484 U.S. 260, 108 S. Ct. 562, 98 L. Ed. 2d 592 (1988), the Supreme Court ruled in favor of a Hazelwood, Missouri, school principal who removed several articles from a student newspaper. The articles dealt with teen pregnancy and a student's feelings about her parents' DIVORCE. The court in *Hazelwood* held that a school newspaper is not a public forum, and thus granted school officials the right to determine what type of student speech is appropriate and to regulate such speech.

Three years later, the ruling in *Planned Parenthood v. Clark County School District*, 941 F.2d 817 (9th Cir. 1991), was based on *Hazelwood*. In *Planned Parenthood*, a public high school newspaper solicited advertisements from local businesses, including Planned Parenthood. The principal refused to allow Planned Parenthood

to place an advertisement in school publications and Planned Parenthood sued the school district. The Ninth Circuit Court of Appeals upheld a district court decision that a public high school publication is not a public forum and that the school could therefore accept or reject advertisements. Both *Hazelwood* and *Planned Parenthood* concluded that because public high schools are nonpublic forums, school districts can apply a limited degree of censorship.

Hundreds of public universities in the United States have speech codes to regulate students' choice of words. Speech can be constitutionally curtailed in some circumstances. For example, public COLLEGES AND UNIVERSITIES can forbid threats of violence, prohibit obscene language and conduct (although it is extremely difficult to define or prove obscenity), and punish students for using defamatory speech against each other, all without violating the First Amendment. Numerous cases have successfully contested free speech limitations on campus, suggesting that a majority of these codes are unconstitutional.

In *Doe v. University of Michigan*, 721 F. Supp. 852 (E.D. Mich. 1989), a biopsychology student maintained that the university's speech code prevented him from freely discussing controversial ideas about biologically based differences between the sexes and races. A district court ruled that the university's code proscribed too great a range of speech and therefore was an unconstitutional infringement on the plaintiff's First Amendment rights. The court also held that the overbroad nature of the code denied his due process rights.

A University of Wisconsin student was accused of violating the university's speech codes by yelling rude comments at a woman. In *U.W.M. Post, Inc. v. Board of Regents*, 774 F. Supp. 1163 (E.D. Wis. 1991), the university's speech code was also struck down as overbroad. Two years later school officials punished fraternity brothers at GEORGE MASON University for dressing in drag and staging an "ugly woman contest." In *Iota X Chapter v. George Mason University*, 993 F.2d 386 (1993), the Fourth Circuit found that the university had violated the First Amendment because it did not sanction the fraternity merely for its conduct, but rather for the message conveyed by the "ugly woman contest," which ran counter to the views the university sought to foster.

Internet

Computer-mediated communication grows explosively every year and in some ways outpaces and obviates current legal principles. The prevailing concept of law applies to real-world events and transactions, and, as those in the legal field are realizing, may unravel when exercised in cyberspace. As more and more people transmit widely divergent messages on the electronic highway, issues of free speech and censorship become increasingly complicated and regulations difficult to enforce.

The first case of criminal prosecution of electronic communication involved the distribution of pornography over an electronic bulletin board system (BBS). In *United States v. Thomas*, No. CR-94-20019-G (W.D. Tenn. 1994), Robert Thomas and Carleen Thomas were found guilty of disseminating obscene materials by interstate telephone lines and computer. From their home in California, the Thomases ran an adults-only private BBS from which subscribers could download computer graphics files and order sexually explicit photographs and videotapes while on-line. To gather evidence against the couple, a Memphis postal inspector, under an assumed name, downloaded to his computer many of the pornographic electronic files and ordered tapes.

The Thomases were charged with, among other things, transporting obscene materials across state lines. The couple attempted to transfer their case to the Northern District of California, so that their materials would be measured against that community's standards of obscenity, rather than the obscenity standards of the Western District of Tennessee. The district judge denied their request, noting that in obscenity prosecutions the trial can be held either in the district from which the material was sent or where it was received.

The "virtual" nature of cyberspace poses a number of problems for courts and legislatures on the issue of obscenity. Among the most difficult of these is the issue of community standards. Because the INTERNET brings together people from all over the United States and all over the world, it defies identification with any particular community. Other difficulties are the criminal element of knowledge and the issue of dissemination. Persons may post and receive information on Internet bulletin boards without the knowledge of those who maintain the BBS, making it difficult to determine whether the

BBS operators "knowingly disseminated" obscene materials.

In 1996, Congress passed the Communications Decency Act (CDA), which punished disseminating "indecent" material over the Internet. The Supreme Court struck down the law in *Reno v. ACLU*, 521 U.S. 844, 117 S.Ct. 2329, 138 L.Ed.2d 874 (1997). Although the Court recognized the "legitimacy and importance of the congressional goal of protecting children from harmful materials," it ruled that the CDA abridged freedom of speech and therefore was unconstitutional. The Court also noted that its previous decisions limiting free speech out of concern for the protection of children were inapplicable in this case, and that the CDA differed from the laws and orders upheld in previous cases in significant ways. For example, the CDA did not allow parents to consent to their children's use of restricted materials; it was not limited to commercial transactions; it failed to provide a definition of "indecent"; and its broad prohibitions were not limited to particular times of the day. Finally, the act's restrictions could not be analyzed as a form of time, place, and manner regulation because it was a content-based blanket restriction on speech.

Congress lost little time in responding to this decision. In 1998, it quickly passed the Child Online Protection Act (COPA), which would make it illegal to use the World Wide Web to communicate "for commercial purposes" any material considered to be "harmful to minors." The law also incorporated the three-part obscenity test that the Supreme Court formulated in *Miller v. California*. The AMERICAN CIVIL LIBERTIES UNION (ACLU) and a group of on-line website operators challenged the constitutionality of COPA, arguing that it was overbroad. In addition, the plaintiffs contended that the use of the community standards test would give any community in the United States the ability to file civil and criminal lawsuits under COPA. This meant that the most conservative community in the country could dictate the content of the Internet. A federal appeals court in Philadelphia agreed with these arguments and the government appealed again to the Supreme Court.

The Supreme Court, in *Ashcroft v. American Civil Liberties Union*, 535 U.S. 564, 122 S.Ct. 1700, 152 L.Ed.2d 771 (2002), produced a decision that failed to give a clear direction. The use

of community standards did not by itself make the statute overbroad and unconstitutional under the First Amendment. Apart from that conclusion, the Court could not agree, with five of the justices producing separate opinions. A majority, however, had reservations about the COPA. A number of the justices expressed concern that without a national standard it would be difficult for operators of Internet services to know when they had crossed a line and had subjected themselves to liability. The case was remanded to the lower courts for a full examination of the law on all issues. The fate of COPA is likely to be decided by the Court in a future decision.

As the popularity of the Internet continues to grow, more issues involving censorship are likely to appear. And with the advancement of high-speed Internet access, movies, videos, text, and pictures can now be downloaded with greater ease, creating even more opportunities for legal debate.

FURTHER READINGS

- Bussian, James R. 1995. "Anatomy of the Campus Speech Code: An Examination of Prevailing Regulations." *South Texas Law Review* 36 (February).
- Butler, Deborah A. 1992. "Planned Parenthood of Southern Nevada v. Clark County School District: The Evolution of the Public Forum Doctrine." *Wayne Law Review* 38 (summer).
- Byassee, William S. 1995. "Jurisdiction of Cyberspace: Applying Real World Precedent to the Virtual Community." *Wake Forest Law Review* 30 (spring).
- "The Call to Campus Conduct Policies: Censorship or Constitutionally Permissible Limitations on Speech." 1990. *Minnesota Law Review* 75 (October).
- Couvares, Francis G., and Charles Musser. 1996. *Movie Censorship and American Culture*. Washington, D.C.: Smithsonian Institution Press.
- Foerstel, Herbert N. 2002. *Banned in the U.S.A.: A Reference Guide to Book Censorship in Schools and Public Libraries*. Rev. ed. Westport, Conn.: Greenwood Press.
- Kolbert, Kathryn, and Zak Mettger. 2002. *Justice Talking: Censoring the Web: Leading Advocates Debate Today's Most Controversial Issues*. New York: New Press.
- Madved, Lory. 1992. "Protecting the Freedom of Speech Rights of Students: The Special Status of the High School Library." *Capital Univ. Law Review* 21 (fall).
- Schlegel, Julia W. 1993. "The Television Violence Act of 1990: A New Program for Government Censorship?" *Federal Communications Law Journal* 46 (December).
- Strossen, Nadine. 1996. *Defending Pornography: Free Speech, Sex, and the Fight for Women's Rights*. New York: Anchor Books.
- Walker, Michael W. 1993. "Artistic Freedom v. Censorship: The Aftermath of the NEA's New Funding Restrictions." *Washington Univ. Law Quarterly* 71 (fall).

CROSS-REFERENCES

Art Law; Entertainment Law; Movie Rating; Schools and School Districts.

CENSURE

A formal, public reprimand for an infraction or violation.

From time to time deliberative bodies are forced to take action against members whose actions or behavior runs counter to the group's acceptable standards for individual behavior. In the U.S. Congress, that action can come in the form of censure. Censure is a formal and public condemnation of an individual's transgressions. It is stronger than a simple rebuke, but not as strong as expulsion. Members of Congress who have been censured are required to give up any committee chairs they hold, but they are not removed from their elected position. Not surprisingly, however, few censured politicians are re-elected.

While *censure* is not specifically mentioned in the U.S. Constitution, Congress has the right to adopt resolutions, and a resolution to invoke censure falls into this category. The first use of censure was actually directed not at a member of Congress but at a member of George Washington's cabinet. ALEXANDER HAMILTON, Washington's treasury secretary, was accused of mishandling two congressionally authorized loans. Congress voted a censure resolution against Hamilton. The vote fell short, but it established censure as a precedent. In general, each house of Congress is responsible for invoking censure against its own members; censure against other government officials is not common, and censure against the president is rarer still.

Because censure is not specifically mentioned as the accepted form of reprimand, many censure actions against members of Congress may be listed officially as rebuke, condemnation, or denouncement. The end result, however, is the same, and to all intents and purposes these are censure measures. At the same time, each censure case is different, and those delivering censure like to have enough leeway to tailor the level of severity. Still, the prospect of an open, public rebuke by one's peers is painful even for the most thick-skinned politician.

Noteworthy Censure Cases

Among the best known censure cases in Congress were the 1811 censure of Massachu-

setts senator Timothy Pickering for reading confidential documents in Senate sessions and the 1844 censure of Ohio senator Benjamin Tappan for releasing a confidential document to a major newspaper. Perhaps one of the more colorful censure motions was the 1902 censure of South Carolina's two senators, Benjamin R. Tillman and John L. McLaurin. On February 22, 1902, they began fighting in the Senate chamber. Both men were censured and suspended for six days (retroactively).

Probably the most infamous censure case was the condemnation of Senator JOSEPH R. MCCARTHY (R-WI) in 1954. McCarthy took the national stage at the height of the anti-Communist movement following WORLD WAR II. McCarthy spent several years making claims that known Communists had infiltrated the U.S. government, and although he never offered proof of even one claim, his crusade was popular and powerful. Many Americans from all walks of life saw their lives destroyed in the early 1950s by groundless accusations of communist sympathies. His power unchecked, McCarthy became even more relentless, and in 1954 he openly attacked members of the Eisenhower administration in televised hearings. His colleagues realized they had no choice but to act. A censure committee was formed, and McCarthy as much as accused its members of being Communists. The vote to condemn McCarthy passed 65 to 22 on December 2, 1954.

Robert Torricelli (D-NJ) was found guilty in 2002 of taking illegal gifts and cash payments from a businessman and not reporting them. The businessman got help from the senator in LOBBYING the government. Although Torricelli denied the charges, his colleagues found the evidence compelling enough to "severely admonish" him. While not called a "censure," this reprimand clearly had the same effect. Torricelli, who was up for reelection, saw his popularity plunge in a matter of weeks, and on September 30, 2002, he withdrew from the race.

Presidential Censure

Congress rarely acts against the president with a formal reprimand. ANDREW JACKSON was the first president to be thus reprimanded, by the Senate in 1834, after he removed the secretary of the treasury (a responsibility that Congress believed rested with the legislature). Jackson was a Democrat, but the Senate was controlled by the rival WHIG PARTY. Three years later, when the Democrats took control of the

Senate, Jackson's censure was expunged from the records.

President JOHN TYLER was reprimanded in 1842 by the House of Representatives, which accused him of abusing his powers. Apparently Tyler had promised representatives on several occasions that he would support certain bills, only to VETO them when they arrived at his desk. In 1848, President JAMES K. POLK was reprimanded by the House for starting the Mexican War without first obtaining Congressional approval. In 1864, President ABRAHAM LINCOLN and his secretary of war, EDWIN STANTON, were condemned by the Senate for allowing an elected member of the House to hold commissions in the Army. The Senate voted for the reprimand 24 to 12, but it was referred to a special committee and no further action was taken.

In 1998, during the IMPEACHMENT trial of President BILL CLINTON, several members of Congress attempted to have him censured instead, believing that while his behavior warranted rebuke it did not merit a full impeachment. The move for censure failed, and Clinton was impeached.

FURTHER READINGS

"Congressional Ethics: Historical Facts and Controversy." 1992. *Congressional Quarterly*. Washington, D.C.: CQ.

Thompson, Dennis F. 1995. *Ethics in Congress: From Individual to Institutional Corruption*. Washington, D.C.: Brookings Institution.

CROSS-REFERENCES

Congress of the United States; Impeachment.

CENSUS

An official count of the population of a particular area, such as a district, state, or nation.

The U.S. Constitution requires that a census of the entire population, citizens and noncitizens alike, be made every ten years (Article I, Section 2, Clause 3). The FOURTEENTH AMENDMENT to the Constitution directs that the census will be used to determine the number of members of the U.S. House of Representatives from each state. The census is conducted by the U.S. CENSUS BUREAU, an agency established in 1899 within the U.S. COMMERCE DEPARTMENT. The data gathered by the U.S. Census Bureau are used by the states to draw boundaries for congressional and state legislative districts, and by local governments to establish districts for other representative bodies such as county legislatures, city councils, and boards of supervisors.

Census data are also used to allocate federal and state funding and services. By the mid-1990s, more than \$50 billion in federal aid for education, housing, and health programs to states and cities was distributed annually based on census numbers. In addition, census information is used in academic research and is sought by product manufacturers and marketers who want to know the demographics of potential consumers.

The first U.S. census took place in 1790 when some six hundred U.S. MARSHALS went door-to-door counting approximately 3.9 million people. The 1790 census consisted of fewer than ten questions, which for each household included the name of the head of the family, the number of free white males over and under 16 years of age, the number of free white females, the number of all other free persons, and the number of slaves.

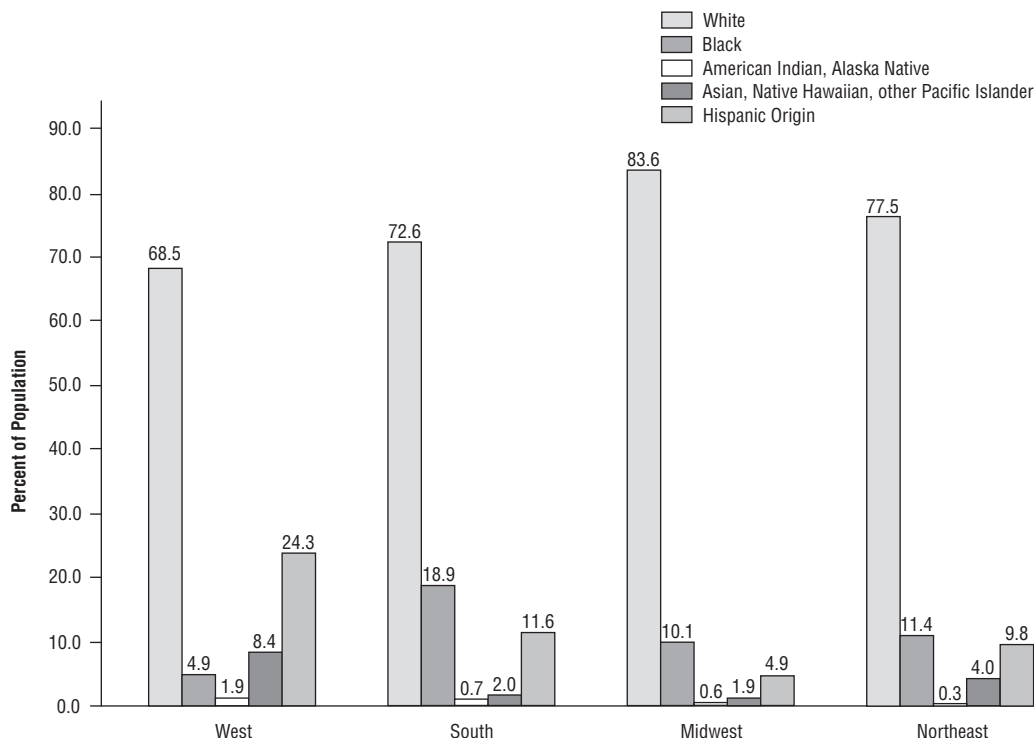
The 1890 census counted 63 million U.S. citizens and reflected a dramatic increase in immi-

gration, urbanization, and industrialization. That census showed that for the first time fewer than half of all U.S. workers were employed on farms. The 1890 census included questions regarding military service during the Civil War, number of years in the United States, naturalization status, reading and writing ability, and mental and physical disabilities.

By 1980, the Census Bureau conceded that the decennial censuses were undercounting portions of the population, usually low-income and minority groups in the inner cities. In follow-up surveys after the 1980 census the bureau determined that it had missed some 3.2 million persons, or 1.4 percent of the population. For example, a 1986 post-census survey of East Los Angeles estimated that the 1980 census missed about ten percent of the Latino community, seven percent of the Asian community, and nine percent of the black community. Census officials determined that overall, nearly six percent of the black and Hispanic populations were uncoun-

Census

RESIDENT POPULATION OF THE UNITED STATES, BY RACE AND REGION^a



^aTotals may add up to more than 100 because more than one racial identifier may be chosen.

SOURCE: U.S. Bureau of Census, *Census 2000*.

and less than one percent of the white population.

By May 1987, the Census Bureau had determined that the 1990 census could be adjusted for undercounting by using a technique called a post-enumeration survey (PES). The PES would allow the census to be checked for accuracy by sending census takers back to a given number of households that would be representative of the entire U.S. population and comparing the information gathered with the initial head count. If discrepancies arose, the bureau could make corrections and project them to neighborhoods with similar demographic characteristics.

But in October 1987, officials from the Commerce Department, which oversees the Census Bureau, decided against making any statistical adjustment to the 1990 census. As a result, in 1988, New York, Los Angeles, and several other cities, as well as a number of states and organizations, brought suit in federal district court. They claimed that the secretary's decision not to adjust the 1990 census violated their right to EQUAL PROTECTION under the FIFTH AMENDMENT to the Constitution and asked the court to enjoin the census. They also argued that the Commerce Department's actions were politically motivated by a Republican administration that realized that the undercounted population is historically Democratic. The defendants moved to dismiss the complaint, contending that the secretary's decision was not subject to JUDICIAL REVIEW. In *City of New York v. United States Department of Commerce*, 713 F. Supp. 48 (E.D.N.Y. 1989), the district court denied the motion to dismiss, holding that the plaintiffs had standing (the legal right) to challenge the census on constitutional grounds and that the court could review the secretary's decision.

Following the district court's decision the parties entered into a stipulation in July 1989 by which plaintiffs would withdraw their motion to enjoin the census and the Commerce Department would reconsider its 1987 decision not to adjust the 1990 census. The agreement required the Commerce Department to conduct a PES of not fewer than 150,000 households as part of the 1990 census in order to produce corrected counts usable for congressional and legislative reapportionment and redistricting. The agreement also required the department to develop guidelines under which the secretary would assess any proposed adjustment. In March 1990 the Commerce Department issued final guide-

lines. The plaintiffs challenged them in court on the grounds that they were impermissibly vague and were biased against any adjustment to the 1990 census. In *City of New York*, 739 F. Supp. 761 (E.D.N.Y. 1990), the district court held that the guidelines satisfied the defendants' obligations under the 1989 stipulation. The Census Bureau then began the 1990 census.

The 1990 census employed more than 425,000 workers who gathered information on an estimated 250 million people in 106 million households. For the first time, the Census Bureau combined technology with traditional door knocking, using coast-to-coast computerized maps of all 7.5 million census tracts in the United States. The bureau predicted that these maps would reduce the number of errors caused by census workers' reliance on outdated state and local maps. The census cost some \$2.6 billion—65 percent more than the 1980 census—making it the most expensive count ever conducted.

In March 1990, the bureau mailed or hand delivered more than 106 million questionnaires, one to every household in the United States. Most households received a short form consisting of 14 questions covering personal characteristics and housing. One in six U.S. households received a long form with 45 additional questions on topics such as utilities, tax, mortgage, and rent payments; place of birth; ethnic origin; and work habits. From March to June 1990 census workers continued the data collection. The bureau set aside March 20, 1990, as "homeless night." On that night, census takers, many hired from among the homeless population or those who worked with them, visited shelters and low-cost motels from 6:00 P.M. to midnight; counted homeless people on the streets from 2:00 A.M. to 4:00 A.M.; and from 4:00 A.M. to 6:30 A.M. stood outside abandoned buildings, counting those who emerged.

The homeless count caused a great deal of controversy. The 1990 census reported 228,600 HOMELESS PERSONS in the United States, compared with earlier estimates of 500,000 to 3 million. Advocates for homeless persons argued that the Census Bureau had surveyed only a third of the country's cities and counties and had visited only a limited number of locations. The bureau acknowledged that its workers had avoided actually going into hideaways such as abandoned buildings and dumpsters because of safety concerns and admitted that many winter

shelters had closed by the time the census was taken in late March. The bureau maintained that its homeless survey was not intended to produce a definitive count of the homeless population.

In October 1990, the Census Bureau issued estimated U.S. population figures of approximately 254 million, based on a tracking of birth, death, and immigration records. In December, the bureau released a final U.S. population tally of some 249 million, based on the actual mailed census questionnaires and house-to-house interviews. The discrepancy between the two sets of numbers indicated that the 1990 census missed some five million U.S. residents.

By December 31, 1990, the bureau reported to the president population figures for each state as well as the number of seats in the U.S. House of Representatives that each state would receive. Between January and March 1991, states with early deadlines for redrawing legislative districts received totals of all persons of voting age, broken down by race. By April 1, 1991, most other states received the voting age and race data. Between April 1991 and 1993, the Census Bureau released statistics compiled from the long forms, including information on income, marital status, disabilities, types of housing, and education.

In April 1991, the bureau announced the results of its PES. Estimates drawn from the PES revealed that the census had resulted in a national undercount of 2.1 percent, or approximately 5.3 million persons out of a total population of approximately 255 million, the largest undercounting in the history of the census. For example, in one south central Los Angeles neighborhood, officials determined that census takers had underreported the number of occupants in 38 percent of 5,800 households. As expected, the undercount was greater for members of racial and ethnic minorities. Hispanics were undercounted by 5.2 percent, Native Americans by 5.0 percent, African Americans by 4.8 percent, and Asian Pacific Islanders by 3.1 percent. The PES-calculated undercount for non-African Americans was 1.7 percent and for non-Hispanic whites, 1.2 percent. Among major cities with high undercounts were Los Angeles (5.1 percent), Houston (5 percent), Washington, D.C. (5 percent), Dallas (4.8 percent), Miami (4.6 percent), Detroit (3.5 percent), and New York (3 percent).

Among the reasons given for the low counts were that certain segments of the population did

not believe the Census Bureau's promise that information is confidential and will not be shared with other government agencies such as the Immigration and Naturalization Service (INS), the local housing authority, or the police; did not have addresses and thus were missed because the 1990 census was conducted primarily by mail; lived in urban high-crime areas where census takers were afraid to go door-to-door; were illegal immigrants; feared the government in general; or lacked proficiency in English.

According to the bureau, if the adjusted count were adopted, Arizona and California would each gain a seat in the House of Representatives and Wisconsin and Pennsylvania would each lose one seat. These discrepancies led state officials to renew their plea for an adjustment of the census using the PES.

In July 1991, Secretary of Commerce Robert A. Mosbacher announced his decision not to adjust the 1990 census to account for the estimated five million people undercounted by the census. Mosbacher said that although he was troubled by the undercount of minorities, his decision supported the integrity of the census and that the resulting disadvantage to minorities should not be remedied in the official census. He also expressed concern that adjustment might not improve distribution of representatives among the states and that uncertainty as to the methods of adjustment and assumptions behind them might cause even more dispute about the accuracy of the census.

The plaintiffs in *Wisconsin v. City of New York* 517 U.S. 1, 116 S.Ct. 1091, 134 L.Ed.2d 167 (1996), attacked the secretary's decision, contending that it was tainted by partisan political influence and violated the Constitution, the ADMINISTRATIVE PROCEDURE ACT OF 1946, and the 1989 stipulation agreed to by both parties in the case. After a 13-day bench (non-jury) trial, the district court concluded that it could not overturn the secretary's decision (*City of New York*, 822 F. Supp. 906 [E.D.N.Y. 1993]). On appeal, the court of appeals concluded that, given the admittedly greater accuracy of the adjusted count, the secretary's decision was not entitled to be upheld without a showing by the secretary that the refusal to adjust the census was essential to the achievement of a legitimate government objective (*City of New York*, 34 F.3d 1114 [2d Cir. 1994]). On appeal, the Supreme Court reversed the decision of the Second Cir-



Census workers in a Phoenix, Arizona, data capture center. For the 2000 Census, the bureau planned to hire 850,000 temporary employees to assist its 6,000 permanent employees.

U.S. CENSUS BUREAU

cuit, holding that the secretary's decision not to adjust the census was within the government's discretion (___ U.S. ___, 134 L. Ed. 2d 167, 116 S. Ct. 1091 [1996]).

By October 1991, at least five state legislatures had filed requests under the FREEDOM OF INFORMATION ACT (FOIA) (5 U.S.C.A. § 552 et seq.) to see the adjusted census figures in order to decide which set of numbers should be used to redraw state political boundaries. Secretary Mosbacher refused to make the adjusted numbers public, claiming they were flawed and their release could disrupt the redistricting process. In *Assembly of California v. United States Department of Commerce*, 797 F. Supp. 1554 (E.D. Cal. 1992), California state officials brought an action under the FOIA to enjoin the Commerce Department from withholding computer tapes containing statistically adjusted census data for California. The department claimed that the information was protected from disclosure under an exemption to the FOIA. But the district court said the exemption did not apply to the census data and ordered the Commerce Department to release the tapes. The court of appeals affirmed the district court's order to release the tapes (*Assembly of California*, 968 F.2d 916 [9th Cir. 1992]).

In a similar case, the U.S. Court of Appeals for the Eleventh Circuit reached the opposite result. In *Florida House of Representatives v. United States Department of Commerce*, 961 F.2d 941 (11th Cir. 1992), the Florida House of Representatives brought a FOIA action to compel the Commerce Department to release all the adjusted census data for Florida. The district

court granted SUMMARY JUDGMENT for Florida and the Commerce Department appealed (*Florida House of Representatives*, No. TCA 91-40387-WS [N.D. Fla. 1992]). The Eleventh Circuit reversed, finding that the census data were exempted from disclosure under the FOIA. The U.S. Supreme Court declined to review the case (*Florida House of Representatives*, 506 U.S. 969, 113 S. Ct. 446, 121 L. Ed. 2d 363 [1992]).

In light of the controversy over the 1990 census, government officials and demographers debated how best to conduct the census in 2000 and later. Many demographers argued that the U.S. population had become too mobile and too uncooperative to allow reliance on mail-in-surveys and door-to-door interviews. An increase in the number of non-English speakers, undocumented immigrants, and homeless persons makes census taking more difficult and residents will become more diverse and less tolerant of government intrusion in the future. The American Statistical Association urged the government to use scientific sampling surveys to estimate the population that has been the most difficult to count.

In preparation for the 2000 census the bureau conducted a test census in the spring of 1995 at three sites—Paterson, New Jersey; Oakland, California; and six parishes in northwestern Louisiana. The sites were selected because of their ethnic diversity and their large number of multidwelling housing units. In Paterson the bureau experimented with a multimedia kiosk, which allowed residents to answer census questions by touching a screen. In Oakland all identified households were sent a census form and blank forms were also made available at libraries, post offices, and the STATE DEPARTMENT of motor vehicles. The bureau also experimented with using statistical samples from random surveys to estimate total population.

From these test projects the Census Bureau announced that it would use statistical sampling to take into account historically undercounted populations. These populations included minorities, renters, children, poor persons, and illegal ALIENS. Although the American Statistical Association supported this approach as a valid methodology, the announcement set off a political firestorm. Congressional Republicans, worried that sampling would lead to congressional APPORTIONMENT that favored the DEMOCRATIC PARTY, filed a lawsuit challenging the constitutionality of the proposed practice.

The Supreme Court, in *Commerce Dept. v. U.S. House of Representatives*, 525 U.S. 316, 119 S.Ct.765, 142 L.Ed.2d 797 (1999), ruled, in a 5–4 decision, against the use of statistical sampling, holding that the 1976 amendments to the Census Act (1954) prohibit the use of statistical sampling for purposes of population head counts. Justice SANDRA DAY O’CONNOR, writing for the majority, stated that there had been over two hundred years of history “during which federal census statutes have uniformly prohibited using statistical sampling for congressional apportionment.”

The 2000 census revealed that the U.S. population had grown to approximately 281 million. There was little public controversy over the results, a sharp contrast to the 1990 census. However, one state did file suit in an attempt to throw out census figures derived from a method the state considered impermissible sampling. Utah, noting that its population grew by 30 percent in ten years, was disappointed it did not gain another seat in the U.S. House of Representatives. In reviewing the census data it noted that the Census Bureau had relied on a statistical method called imputation to estimate the number of members of a household that census takers could not contact after repeated efforts. Utah discovered that if it could have these imputed numbers removed from the population count it would gain a House seat that had been awarded to North Carolina.

A three-judge panel heard Utah’s lawsuit but dismissed it at the urging of the Commerce Department. The panel ruled that the imputation method was not impermissible under the 1999 Supreme Court decision and that it did not violate the Constitution’s Census Clause. The Supreme Court, in *Utah v. Evans*, 536 U.S. 452, 122 S.Ct. 2191, 153 L.Ed.2d 453 (2002), upheld the lower court ruling. The Court, in a 5–4 decision, dismissed Utah’s contention that *actual enumeration* under the Census Clause was intended as a description of the only methodology for counting U.S. citizens. As for the imputation method, the Court saw it as different from sampling: “sampling seeks to extrapolate the features of a large population from a small one, but the Bureau’s imputation process sought simply to fill in missing data as part of an effort to count individuals one by one.”

The Census Bureau has established at its website (<<http://www.census.gov>>) a portal for accessing all 2000 census data. The site provides researchers with tables of data while also provid-

ing the public with breakdowns of data in easily searchable formats.

FURTHER READINGS

- Anderson, Margo J. 1990. *The American Census: A Social History*. New Haven, Conn.: Yale Univ. Press.
- Katz, Bruce, Robert Lang, and Franklin Raines. 2003. *Redefining Urban and Suburban America: Evidence from Census 2000*. Washington, D.C.: Brookings Institution.
- U.S. Census Bureau. Available online at <www.census.gov> (accessed May 28, 2003).

CROSS-REFERENCES

Apportionment.

CENTER FOR CONSTITUTIONAL RIGHTS

The Center for Constitutional Rights (CCR) is a nonprofit legal and educational organization dedicated to advancing and protecting the rights guaranteed by the U.S. Constitution and the Declaration of Human Rights. Since its formation in 1966 by attorneys working for CIVIL RIGHTS demonstrators in the South, the CCR has been a forceful advocate of civil rights for all people. The New York City-based organization seeks to halt what it describes as a steady erosion of civil liberties in the United States and elsewhere. The group addresses such areas as international human rights, government misconduct, sexual politics, indigenous peoples’ rights, nuclear and environmental hazards, WOMEN’S RIGHTS, civil rights, FREEDOM OF THE PRESS, racism, ELECTRONIC SURVEILLANCE, criminal trials, AFFIRMATIVE ACTION, and abuse of the GRAND JURY process.

Cofounded by attorneys WILLIAM M. KUNSTLER, Morton Stavis, and others in the heady days of 1960s social activism, the left-leaning CCR describes itself as “committed to the creative use of law as a positive force for social change.” As such, throughout its history, the CCR has consistently generated legal and political controversy. African American civil rights leader MARTIN LUTHER KING JR. was one of the group’s first clients. And, since then, the CCR has won favorable decisions for such diverse figures as antinuclear leaders in the Micronesian republic of Belau and Native American protesters at Wounded Knee, South Dakota.

Much of the center’s work has involved international causes and foreign clients. In the early 1970s, the CCR sued the U.S. government to discover answers regarding U.S. citizens missing in Chile and U.S. involvement in the support

of Chilean leader Salvador Allende. The group has broken ground in the battle to establish the right to sue foreign governments or individuals in U.S. courts. In 1986, the CCR represented the government of President Corazon Aquino, of the Philippines, in its fight to recover millions of dollars in assets taken by former dictator Ferdinand Marcos. In another case, *Filartiga v. Pena-Irala*, 630 F.2d 876 (2d Cir. 1980), the organization won a settlement of \$10.4 million for a Paraguayan boy who brought suit against an exiled dictator of Paraguay who had ordered the boy's torture.

In 1998, the CCR joined forces with Greenpeace USA and other organizations to block the Japanese corporate giant Shintech from constructing the largest PVC plant in the world in St. James Parish, Louisiana. The local community surrounding the site of the proposed plant had a population consisting of more than 80 percent minorities, 40 percent of whom lived below the poverty level. It also was known for its high degree of chemical POLLUTION, so much so that it was dubbed "Cancer Alley." The CCR accused the company of, among other things, environmental racism. Shintech abandoned its plans in late 1998. The CCR also played an important role in the 2000 release of Palestinian immigrant Hany Kiardeeen, who was detained by the Immigration and Naturalization Service (INS) for 19 months solely on the basis of secret evidence that neither he nor his lawyers were permitted to review.

The CCR also conducts a number of programs. Its Movement Support Network, started in 1984, provides aid to social activist groups, including legal protection for groups experiencing harassment by the FEDERAL BUREAU OF INVESTIGATION (FBI) and other government law enforcement agencies. The Anti-Biased Violence Project (ABVP), established in 1991, uses litigation and education to oppose violence against individuals because of their race, ethnicity, religion, gender, or sexual orientation, and has defended ordinances that curtail hate speech. The CCR's ELLA BAKER Student Program provides internships to law students. In Greenville, Mississippi, the CCR operates the Voting Rights Project, a community-based voting rights litigation group that works in Mississippi, Arkansas, and Tennessee. The CCR also maintains a speakers' bureau and publishes books, pamphlets, and periodicals, the last including *Docket* and the *MSN News*.

The CCR maintains its own staff, but also works with many lawyers who donate their time **PRO BONO** (for free). The group has previously been called the Civil Rights Legal Defense Fund and the Law Center for Constitutional Rights.

FURTHER READINGS

Center for Constitutional Rights. Available online at <www.ccr-ny.org> (accessed June 12, 2003).

Center for Constitutional Rights (CCR). 1994. *Docket*. New York: CCR, spring.

CENTERS FOR LAW AND LEGAL STUDIES

Center for Law and Education

The Center for Law and Education (CLE) offers support services on educational issues for advocates working on behalf of low-income students and parents. It seeks to take a leadership role in both improving the quality of public education for low-income students in the United States and enabling low-income communities to address their own public education problems effectively. As part of the nationwide network of support centers funded by the **LEGAL SERVICES CORPORATION** (LSC), it provides specialized legal assistance to staff members of legal services programs and to members of approved panels representing eligible clients. The center has been at the fulcrum of reforms in education policy.

Founded in 1969, the Cambridge, Massachusetts, and Washington, D.C., branches of the center offer advice and collaboration on cases, publications, training, federal program advocacy, and litigation and assist parent and student involvement in education. The center publishes the *NEWSNOTES* periodical on a quarterly basis, as well as a host of other manuals, monographs, and reports. Its staff includes attorneys, an editor, and administrative support personnel. The center conducts training workshops, usually in conjunction with local legal services programs.

The CLE has been a part of significant lawsuits dealing with the enforcement of federal and state constitutional rights and of federal laws. It focuses on issues such as students' rights, federally funded programs, special education, sex and race discrimination, vocational education, bilingual-bicultural education, and Native-American education. Its staff has pressed significant litigation on the fairness of state programs for competency testing, the right of

pupils with limited proficiency in English to understand instruction, the rights of students with disabilities, and RACIAL DISCRIMINATION in education—among other issues. Whenever feasible, the center encourages the development of local lay advocacy resources to avoid costly and time-consuming litigation. A significant portion of the center's work is supported by grants from private funding.

Center for Law and Social Policy

As a national public interest organization, the Center for Law and Social Policy (CLASP) seeks to improve the economic conditions of low-income families with children. The Washington, D.C.-based center also attempts to secure access for poor people to the nation's civil justice system through education, policy research, and advocacy. CLASP has worked closely with the Center on Budget Policies and Priorities, the CHILDREN'S DEFENSE FUND, the American Public Welfare Association, and hundreds of other federal and state advocacy organizations. The center helps develop new strategies to fight poverty and stimulates new approaches in the delivery of legal services.

Since its founding in 1969, CLASP has been involved in important court decisions related to welfare distribution. The center headed efforts to preserve professional legal services for poor people. It also organized the first clinical program for law school externs and initiated the National Women's Law Center and the Mental Health Law Project. In the 1990s CLASP got involved in a debate over proposed changes in the welfare system: the center issued a number of publications and began a process of information dissemination that created a conduit so that commissions on welfare could obtain information about each other's activities. As part of its ongoing mission the center has committed itself to the continuing review and analysis of developments in federal and state welfare reform.

CLASP advocates streamlined enforcement of CHILD SUPPORT. In the 1990s it initiated the ChildNet campaign which was designed to increase public awareness of the need for reform of the enforcement system for child support. In addition, the center attempted to expand the access of teen parents and impoverished adults to education and training programs. As to legislative issues, the Child Care and Development Block Grant, vocally supported by the center, tempers proposed limitations on welfare recipi-

ents that would make affordable child care less feasible. Generally, the center has promoted income support policies that enhance work, reduce poverty, and promote the well-being of families.

CLASP maintains a network of state and local advocates who provide training and technical assistance to other advocates and officials. It produces the quarterly *Family Matters* periodical, newsletters, and periodic updates on new policy developments. It serves as counsel to the hundreds of legal services programs across the United States and their national organizations.

Center for Oceans Law and Policy

The Center for Oceans Law and Policy concerns itself with the future of the oceans and of the coastal and polar areas of the earth. The center has contributed to decisions made on the protection and use of these areas. It supports research, education, and discussion on legal and public issues surrounding oceans policy. It promotes interdisciplinary interaction at all levels—international, national, regional, and state—by conducting conferences and lectures. The center has dedicated itself to education in areas of oceans law and serves as a primary source for ongoing efforts in international research.

In 1976 the center was founded as a part of the University of Virginia, in Charlottesville. Since its founding the center has established a number of programs to promote discussion of oceans issues. In one such measure it established a teaching program in oceans law at the University of Virginia School of Law, along with the first master of law degree program with specialization in oceans law and policy. In addition, a basic course on oceans law and policy is taught by center personnel at American University, Georgetown University Law Center, and George Washington University Law School. Also working with the University of Virginia's law library, the center established the Newlin Collection on Oceans Law and Policy, believed to be the largest collection of formal and informal materials in oceans law anywhere in the world.

The center's activities include advocacy in five different areas: publications and research (the biennial *Director's Report* and the Oceans Policy Study Series); international associateships and fellowships; curriculum and teaching programs in oceans law and policy; conferences and seminars; and the Newlin Collection. Through

teaching, research, and the dissemination of information, the center seeks to help promote rational choices for maintaining a vital part of the earth's well-being. The center is supported by the Henry L. and Grace Doherty Charitable Foundation.

Center on Social Welfare Policy and Law

The Center on Social Welfare Policy and Law (CSWPL) seeks an income support system that provides an adequate standard of living for people in the United States. In attempting to achieve this goal it respects individual rights of privacy, independence, self-determination, and fair treatment. It works as a nonprofit legal and policy organization providing assistance to advocates and poor people's organizations on welfare policy issues in Washington, D.C., and in the rest of the United States.

Since 1965 the CSWPL has pursued an aggressive policy of advocacy for poor people. Its work concentrates on public assistance programs that provide cash subsistence benefits to millions of economically disadvantaged people. The center works to facilitate programs such as Aid to Families with Dependent Children and general assistance programs at the state and local levels, which together provide services to over 15 million adults and children.

A professional staff of seven attorneys and policy analysts contributes to the center's understanding of welfare policy and law. First, welfare recipients and poor people receive direct representation in federal litigation before appropriate administrative and legislative bodies; this includes litigation before the U.S. Supreme Court, which has established basic DUE PROCESS rights for welfare recipients and ended discriminatory practices of welfare agencies. Second, the center seeks nonpartisan policy analysis designed to identify objective welfare policy issues. Third, by means of public education, the center attempts to increase popular understanding—and dispel myths—about public assistance programs. Fourth, the center disseminates legal analyses of developments in welfare law and policy to more than fourteen hundred welfare specialists in every state and to the poverty law journal *Clearinghouse Review*. Finally, it provides specialized case assistance with training and training materials for local lawyers, paralegals, and other advocates throughout the United States who are engaged in work that coincides

with the center's mission. In the 1990s the center focused on welfare reform proposals.

The center receives financial support from foundations, corporations, the Legal Services Corporation, the Interest on Lawyer Account Fund of the State of New York, law firms, church groups, community organizations, and individuals. Under section 501(c)(3) of the INTERNAL REVENUE CODE, the center is a nonprofit corporation with tax exempt status.

Center for the Study of the Presidency

The New York City-based Center for the Study of the Presidency (CSP) promotes citizenship education, especially for youth. It seeks an understanding of U.S. political and economic systems and relies on a network of college and university faculty and students for its intellectual support. The center conducts high-profile roundtable discussions with political leaders as well as special studies of U.S. political policies. It also maintains a research clearinghouse on the presidency.

The founding of the CSP in 1968 received support from former President DWIGHT D. EISENHOWER who said, "The result [of the center] cannot fail to be good . . . for the Nation." The New York State Board of Regents chartered the center. Since the center's founding, Dr. R. Gordon Hoxie, a former chancellor of Long Island University, has served as its president and chief executive. Its board of trustees, pursuant to the EDUCATION LAW of the state of New York, is limited to twenty-five members. In 1995, membership in the center as a whole reached five thousand business, professional, and government leaders as well as contributors in academia. Corporations and foundations assist in the center's \$1 million budget. The center has remained a nonpartisan, nonprofit educational corporation.

The CSP has several objectives. Primarily, it focuses on securing an understanding of the U.S. constitutional system of government. The center also seeks to make itself an objective, nonpartisan body for public policy research. It provides educational programs for college and university students. It seeks to strengthen democratic institutions both at home and abroad: as part of its comprehensive mission and international scope, the center attempts to build a sense of interdependence and understanding between peoples and nations, while recognizing and respecting cultural differences.

The initiation of most of the center's basic programs occurred before the end of 1970. The Annual Leadership Conference, the Annual Student Symposium, the Fellowship Program, the Annual Lecture Series, and the center's publications (ANNUAL REPORTS and the *Center House Bulletin*) date to its early days. In 1974, the Annual Awards Program was added to its activities. In the 1990s, the Annual Business Leaders Symposium and a program for White House interns joined its offerings.

The center is exempt from federal INCOME TAX. The INTERNAL REVENUE SERVICE has also determined that the center is not a private foundation, making it eligible for "distributions" from foundations.

Jerry Lee Center of Criminology (formerly the Sellin Center)

Founded in 1960 and located in Philadelphia, the Jerry Lee Center of Criminology (formerly the Sellin Center for Studies in Criminology and Criminal Law, which closed in 1998 and was rededicated and renamed in 2001) researches crime, delinquency, the police, judicial systems, prisons, social control, and social deviance. Housed in the Wharton School, at the University of Pennsylvania, the center also trains graduate students toward master's and doctor's degrees. Studies at the center have produced numerous professional presentations and government reports, books, articles, and monographs.

The Jerry Lee Center views criminology as the scientific study of crime and criminals and society's reaction to both. The center emphasizes the contributions of different disciplines—the behavioral sciences, psychology, anthropology, legal studies, psychiatry, neurology, biology, and the criminal justice system—to criminology.

The center has worked on one of its primary projects since the early 1970s. *Delinquency in a Birth Cohort* analyzes the largest population of delinquents ever studied in the United States. The project has had a major effect on criminal justice thought throughout the world and has become a frequently cited publication in the field of criminology. Another project focuses on delinquency in the People's Republic of China. Students in both the center and China have participated in this extensive project. Many of the center's studies—of both national and international scope—have been cited in testimony before the U.S. Senate and House Judiciary Committees.

The Jerry Lee Center has worked with officials in Pennsylvania and throughout the nation. It has provided technical assistance to the mayor's and district attorney's offices and to judges and other officials in Philadelphia. The center has also worked with the New Jersey Public Defender's Office in using an extensive database to assess possible discriminatory practices in the imposition of CAPITAL PUNISHMENT.

FURTHER READINGS

Center for Law and Education (CLE). Available online at <www.cleweb.org> (accessed November 20, 2003).

Center for Law and Social Policy. Available online at <www.clasp.org> (accessed November 20, 2003).

Center for Oceans Law and Policy. 1990. Report of the director. Available online at <www.virginia.edu/colp> (accessed November 20, 2003).

Center for the Study of the Presidency (CSP). 1995. *A Time of Transition: 1994–95 Annual Report*. New York: CSP.

A Description of the Center on Social Welfare Policy and Law. 1994. New York, December.

Jerry Lee Center for Criminology. Available online at <www.sas.upenn.edu/jerrylee> (accessed November 20, 2003).

Litman, Alyssa. 2001. "Penn Celebrates Opening of New Center for Criminology." *Daily Pennsylvanian* online (October 16).

CROSS-REFERENCES

Schools and School Districts; Environmental Law.

CENTERS FOR MEDICARE & MEDICAID SERVICES

On July 1, 2001, the Health Care Financing Administration was reorganized and changed its name to the Centers for Medicare & Medicaid Services (CMS). CMS is an operating division of the HEALTH AND HUMAN SERVICES DEPARTMENT. It was established in 1977 to combine under one administration the oversight of the MEDICARE Program and the federal portion of the MEDICAID Program (Reorg. Order of Mar. 9, 1977, 42 Fed. Reg. 13262).

As part of the 2001 reorganization, three new business centers were developed: the Center for Beneficiary Choices, the Center for Medicare Management, and the Center for Medicaid and State Operations. The Center for Beneficiary Choices provides beneficiaries with information about Medicare, Medicare Select, Medicare+Choice, and Medigap options. It also manages the Medicare+Choice plans, consumer research and demonstrations, and grievances and appeals. The Center for Medicare Management oversees the traditional fee-for-service Medicare program. This entails developing payment policies

and managing Medicare fee-for-service contractors. The Center for Medicaid and State Operations oversees programs administered by the states, including Medicaid, the State Children's Health Insurance Program (SCHIP), insurance regulation functions, survey and certification, and the Clinical Laboratory Improvements Act (CLIA).

Medicare provides health insurance coverage for U.S. citizens age 65 or older, for younger people receiving SOCIAL SECURITY benefits, and for persons needing dialysis or kidney transplants for the treatment of end-stage renal disease (42 U.S.C.A. § 1395 et seq.). Medicare beneficiaries may receive medical care through physicians of their own choosing or through health maintenance organizations and other medical plans that have contracts with Medicare.

Medicaid is a medical assistance program jointly financed by state and federal governments for low-income individuals (42 U.S.C.A. § 1396 et seq.). Medicaid covers HEALTH CARE expenses for recipients of Temporary Assistance for Needy Families (formerly Aid to Families with Dependent Children), as well as for low-income pregnant women and other individuals whose medical bills qualify them as medically needy. Most states also cover medical expenses for older U.S. citizens who are needy, as well as for individuals who are blind and disabled who receive assistance under the Supplemental Security Income Program. Coverage is further extended to some INFANTS and low-income pregnant women and, depending on the state, to other low-income individuals with medical bills that qualify them as medically needy.

The mission of the CMS is to promote the timely delivery of quality health care to Medicare and Medicaid beneficiaries and to ensure that the Medicare and Medicaid Programs are administered in an efficient manner. The agency must also ensure that program beneficiaries are aware of the services for which they are eligible, that those services are accessible and of high quality, and that agency policies and actions promote efficiency and quality within the total health care delivery system. A quality assurance program administered by the CMS is responsible for developing health and safety standards for providers of health care services authorized by Medicare and Medicaid legislation. This program helps to ensure that Medicare and Medicaid benefici-

aries receive quality health care services at a reasonable cost.

FURTHER READINGS

Centers for Medicare & Medicaid Services. Available online at <www.cms.hhs.gov> (accessed July 23, 2003).

Medicare Resource Center. Available online at <www.medicare.gov> (accessed July 23, 2003).

U.S. Government Manual Website. Available online at <www.gpoaccess.gov/gmanual> (accessed November 10, 2003).

CENTRAL INTELLIGENCE AGENCY

The Central Intelligence Agency (CIA) was established following WORLD WAR II, from which the United States and the Soviet Union emerged as superpowers with vast military might and sharply conflicting world views. To protect the nation's security in all international matters and to ensure continued democracy and freedom for the United States, Congress created the CIA with the National Security Act of 1947 (ch. 343, 61 Stat. 495 [1947]). Gathering information from other countries relevant to national security is a sensitive task requiring considerable secrecy and covert activity. Unlike most other organizations, the CIA receives comparatively little media coverage when it is doing its job well. For this reason, most of the information that reaches the media concerning the CIA is negative.

All intelligence information collected by the CIA is reported to the NATIONAL SECURITY COUNCIL, under whose direction the CIA acts. The CIA is headed by the director of central intelligence, who is a member of the president's cabinet and the presidential spokesperson for the agency and the intelligence community. The director and deputy director of the CIA are appointed by the president with the advice and consent of the Senate.

The CIA is headquartered at a 258-acre compound in Langley, Virginia, and maintains twenty-two other offices in the Washington, D.C., area. The main compound includes a printing plant that produces phony documents, such as birth certificates, passports, and driver's licenses, for use by its agents. The plant also produces the *President's Daily Brief*, an eight-page CIA document that is presented to the president every morning. Another facility is used exclusively for recruiting spies to work for the CIA; another houses the Foreign Broadcast Information Service, which monitors and translates broadcasts from forty-seven countries. Several

other facilities recruit officers of the former Komitet Gosudarstvennoi Bezopasnosti (KGB)—the State Security Committee for countries in the former Soviet Union, now known as the Russian Federal Security Service—to spy on their own countries. The agency also maintains facilities in 130 countries throughout the world. Of the \$28 billion that is budgeted annually to the U.S. Intelligence Committee, \$3 billion goes to the CIA. The official number of individuals employed by the CIA is sixteen thousand, but many believe the actual number to be closer to twenty-two thousand.

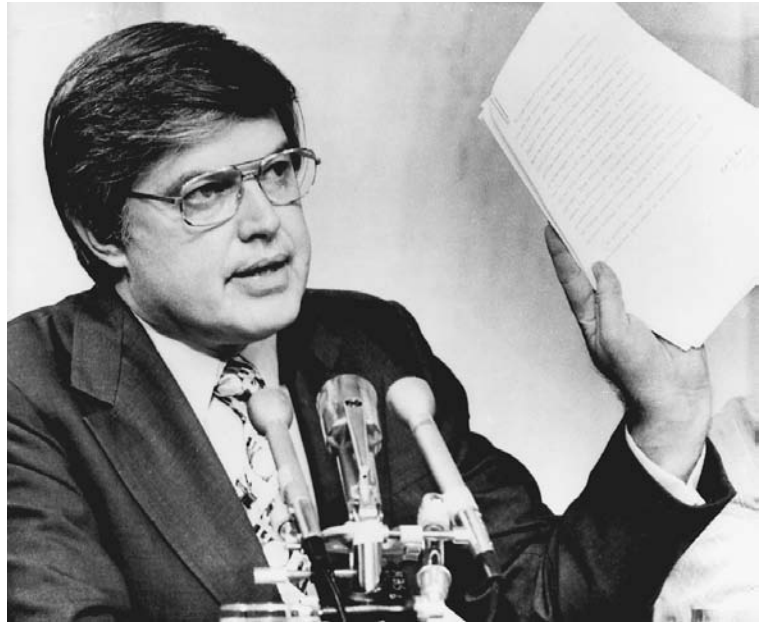
Although all aspects of the CIA revolve around gathering intelligence and maintaining the security of the nation, the actual responsibilities of the agency are many and varied; they include

- Advising the National Security Council in matters concerning national security
- Gathering and disseminating foreign intelligence (The CIA coordinates with the FEDERAL BUREAU OF INVESTIGATION (FBI) to gather intelligence within the United States.)
- Conducting counterintelligence activities outside of the United States (The CIA coordinates with the FBI to conduct intelligence and counterintelligence activities within the United States.)
- Gathering and disseminating intelligence on the foreign aspects of narcotics production and trafficking
- Conducting other special activities approved by the president.

In its earliest days the CIA operated in a shroud of secrecy. In recent years, however, increased media attention has made the country more aware of CIA activities. Since the mid 1970s, the CIA has received more attention for breaking the law than it has for upholding national security. Four events focused unwanted attention to the CIA: the Church committee hearings, the IRAN-CONTRA AFFAIR, the Aldrich Ames scandal, and the end of the COLD WAR.

The Church Committee Hearings

In 1974, the *New York Times* broke a story that the CIA had violated its charter by spying on U.S. citizens who openly opposed the VIETNAM WAR. An investigation followed, headed by Senator Frank Church (D-ID). Church and his committee uncovered a wealth of damaging information about the agency that went far



beyond the issue of the Vietnam War. The Church committee hearings changed the way the public looked at the agency that is responsible for the security of its country.

The Church committee found that the CIA had been intercepting and reading mail exchanged between the United States and the Soviet bloc. The CIA had records on more than three hundred thousand U.S. citizens who had no ties with ESPIONAGE or intelligence. The CIA had also conducted LSD tests on unknowing participants, one of whom was driven to suicide. Through the CIA, the United States had tried to assassinate at least five foreign leaders, including Cuban premier Fidel Castro. The CIA had first decided to embarrass the Cuban leader and thereby damage his popularity. To accomplish this, the agency plotted to make Castro's beard fall off by placing thallium salts in his shoes. The agency had a second plot: to give Castro a personality disorder by contaminating his cigars. The agency had even enlisted the help of the mafia in its attempt to assassinate Castro. These shocking disclosures brought demands for closer scrutiny of CIA activities.

Following the Church committee hearings, Congress amended the National Security Act of 1947 in 1980 to require the CIA to inform the House and Senate Intelligence Committees of "significant anticipated intelligence activity." Within six years, however, the CIA found itself in trouble once more for failing to inform Congress of its activities.

During the mid-1970s, Senator Frank Church headed a Senate Intelligence Committee investigation into abuses committed by the CIA, including monitoring of U.S. citizens with no intelligence ties, the testing of LSD on unsuspecting participants, and numerous assassination attempts on the lives of foreign leaders.

AP/WIDE WORLD
PHOTOS

The Iran-Contra Affair

On November 3, 1986, the Lebanese magazine *Shiraa* reported that Robert McFarland, U.S. national security adviser, had come to Iran with a shipment of arms from the United States. This revelation spurred what was ultimately termed the Iran-Contra affair and spoiled an otherwise secret operation.

The CIA had involved itself in a covert action in which arms were shipped to Iran in exchange for the release of hostages. The payments that were received from the Iranians were, in turn, diverted to the Nicaraguan Contra rebels who were fighting the Communist Sandanista regime, at a time when U.S. military aid to the Contras was prohibited by federal law. All of this was done without the knowledge of Congress; the CIA informed neither the House Intelligence Committee nor the Senate Intelligence Committee of its actions. President RONALD REAGAN had not approved the agency's covert activity.

One year after the arms had been sold, WILLIAM J. CASEY, director of central intelligence and a cabinet member, asked the president to approve the transaction retroactively. Reagan signed an agreement to that effect, which specified that Congress was not to be told of the approval. John Poindexter, the national security adviser at the time, later testified that he destroyed the only copy of the agreement in order to save President Reagan from political embarrassment.

Despite great media attention and congressional finger-pointing, actual punishments for the Iran-Contra affair were few and lenient. Casey was never indicted in the scandal. McFarland and Secretary of Defense Caspar W. Weinberger were brought up on criminal charges, but both were pardoned on Christmas Eve 1992 by president GEORGE H.W. BUSH. All other persons linked to the scandal either were also pardoned by Bush or were punished with small fines, PROBATION, or both, or had their convictions overturned on appeal.

The Ames Scandal

It did not take the CIA long to make its way back into the spotlight. This time, it was not the agency that broke the law, but an individual. On February 21, 1994, Agent Aldrich Ames became the highest-ranking CIA official ever arrested. Ames had been selling U.S. secrets to the Soviet Union.

Ames's responsibilities as a CIA agent included directing the analysis of Soviet intelligence operations and recruiting Soviet agents who would betray those operations. This position put Ames in frequent contact with Soviet officials at the Soviet Embassy in Washington, D.C. Ultimately, Ames began selling U.S. security secrets to the Soviets, a venture that earned him more than \$2.5 million before his arrest. Some of this information involved betraying double agents, disclosures that led to the death of at least twelve Soviet and Eastern European spies.

The CIA began to search for a mole (a double agent) in 1986, after two intelligence officers at the Soviet Embassy who had been recruited as double agents by the FBI were recalled to Moscow, arrested, tried, and executed. The CIA was jolted again in 1989 when three more of its most valued Soviet double agents met their deaths by firing squad in Russia.

In 1991 the CIA began to work with the FBI in investigating East Germany and other former Warsaw Pact countries for leads to possible moles in the U.S. government. Ames became one of the suspects and was quietly transferred to the CIA's counternarcotics center. Since the FBI was in charge of counterintelligence domestically, Ames fell under its jurisdiction of investigation. CIA officials played down the possibility of one of its key employees being a spy and blocked independent scrutiny by the FBI. Ames continued to betray the CIA and the country.

The CIA was sharply criticized for its unwillingness to consider one of its own a double agent and for its refusal to allow the FBI to investigate the situation. For years, the agency failed to monitor Ames's overseas travel, to question his personal finances, or to detect unauthorized contacts between Ames and Soviet officials. As early as 1989, the CIA had been warned that Ames appeared to colleagues and neighbors to have accumulated sudden wealth. Ames was questioned about the source of the money during a routine 1991 background check. He said he had inherited money from his father-in-law.

From 1985 onward, Ames and his wife Rosario bought a \$540,000 house for cash, put \$99,000 worth of improvements into the house, purchased a Jaguar, bought a farm and condominium in Colombia, and invested \$165,000 in stocks. In one year, they charged more than \$100,000 on their credit cards. According to

court documents, the Ames family spent nearly \$1.4 million from April 1985 to November 1993. All of this took place while Ames's annual CIA salary never exceeded \$70,000. According to CIA officials, indications of wrongdoing by CIA employees were often overlooked because supervisors were far too trusting of employees, whom they treated as family.

When Ames got a call to go to his CIA office in the morning of February 21, 1994, he had no inkling that after almost nine years his career of selling secrets to Moscow was about to end. With Ames planning to travel to Russia the next day on CIA business, the FBI believed that it had to act. A block and a half from Ames's house, his Jaguar was forced to the curb, and Ames was arrested by FBI agents.

On April 28, 1994, Ames pleaded guilty to the criminal charges of espionage and TAX EVASION. He received a sentence of life imprisonment without PAROLE, the maximum sentence he could have expected if convicted after trial.

The End of the Cold War

The importance of the threat imposed by Ames's dealings with the Soviet Union was seemingly diminished with that country's dissolution. But despite the apparent end of the cold war and the break-up of the former Soviet Union, the United States continues to spy on the Russian Republic. The former Soviet Union also continues its own covert activities within the United States.

Some question the continued need for the CIA in the post-cold war era. But supporters need point no further than the war with Iraq to justify continued backing for the agency. The CIA was responsible for supplying intelligence reports that allowed the United States to cripple the Iraqi efforts in the Gulf War with an initial air strike. Without the assistance of the CIA, the war might not have reached such a swift ending. Supporters also argue that it is unfair to criticize a covert organization for its failures when so little attention is given to its successes. When the CIA is functioning efficiently and effectively, its operation is invisible to the country's citizens; it is only in failure that the secrecy of the agency is betrayed to scrutinizing eyes.

Since the end of the cold war, some members of Congress have called for severe cuts in the CIA's budget or dissolution of the agency. President BILL CLINTON said that such ideas are "pro-



Aldrich Ames was arrested in February 1994, for selling U.S. secrets to the Soviet Union. His betrayal of double agents led to the death of at least 12 Soviet and Eastern European spies. Ames was sentenced to life imprisonment.

AP/WIDE WORLD
PHOTOS

foundly wrong," and that the United States still faces many threats and challenges, including TERRORISM, drug trafficking, and nuclear proliferation. "I believe making deep cuts in intelligence during peacetime is comparable to canceling your HEALTH INSURANCE when you're feeling fine," he said.

September 11th and The Aftermath

Having seemingly lost some of its purpose with the end of the Cold War, the CIA found a new purpose in the aftermath of the terrorist attacks on the World Trade Center and Pentagon on September 11, 2001. However, this new purpose came with both criticism and concern as to whether the CIA was up to the challenge of tackling terrorism. There was strong debate after September 11th as to what role the CIA should play, and how it fit in to the new security paradigm.

Like every other domestic and foreign intelligence service in the United States, the CIA was apparently caught by surprise on Sept. 11th. However, there were some who argued that it should not have been. It was shown that the CIA had tracked two of the terrorists from that day at an al Qaeda summit in January 2000. But the CIA did nothing to share the information with other agencies, and both men were allowed to enter the United States. The CIA also told President GEORGE W. BUSH at a brief-

ing in August 2001 that terrorists associated with Osama bin Laden might be planning to hijack a plane. Again, nothing was done with this information.

Although President Bush defended the agency and refused to fire its director, George Tenet, he conceded that the cooperation between the CIA and the FBI could have been better: "In terms of whether the FBI and CIA communicated properly, I think it's clear that they weren't."

FURTHER READINGS

- Benjamin, Daniel, and Steven Simon. 2002. *The Age of Sacred Terror*. New York: Random House.
- Curl, Joseph. 2002. "Bush Concedes FBI, CIA Faults, But Doubts Attacks Avoidable." *Washington Times* (June 5).
- Gellman, Barton. 2001. "CIA Weighs 'Targeted Killing' Missions." *Washington Post* (October 28).
- Kessler, Ronald. 1992. *Inside the CIA*. New York: Pocket Books.
- Ranelagh, John. 1986. *The Agency: The Rise and Decline of the CIA from Wild Bill Donovan to William Casey*. New York: Simon & Schuster.
- Rudgers, David F. 2000. *Creating the Secret State: The Origins of the Central Intelligence Agency, 1943-1947*. Lawrence: Univ. Press of Kansas.

CENTURY DIGEST®

A volume of the American Digest System that arranges by subject summaries of court opinions reported chronologically in the various units of the National Reporter System during the period from 1658 to 1896.

There are over four hundred subject classifications within the digest, each corresponding to a legal concept, such as evidence. All the cases for the period covered in the Century Digest that discuss similar points of law can be found under a specific topic designation.

CROSS-REFERENCES

Legal Publishing.

CERTIFICATE

A written document that is official verification that a condition or requirement has, or has not, been met.

A written assurance issued from a court that is notification to another officer, judge, or court of procedures practiced therein.

A document (such as a birth certificate) prepared by an official during the course of his or her

Birth Certificate

STATE OF FLORIDA	
OFFICE of VITAL STATISTICS	
CERTIFICATION OF BIRTH	
NAME:	TEST RECORD SMITH III
DATE OF BIRTH:	1/01/62
SEX:	MALE
PLACE OF BIRTH:	DUVAL COUNTY, FLORIDA
CERTIFICATE NUMBER:	109-62-200000
DATE FILED:	1/05/62
DATE ISSUED:	8/20/02
MOTHER'S MAIDEN NAME:	MARY ANN JONES
FATHER'S NAME:	TESTING RECORD SMITH JR
This is to certify that this is a true abstract of the official record filed with that office.	
By	State Registrar
C. Marsha Grigg	
WARNING: 5796940	
THIS DOCUMENT IS PRINTED OR PHOTOCOPIED ON SECURITY WATERMARKED PAPER AND CONTAINS SECURITY PAPERS. DO NOT ACCEPT WITHOUT VERIFYING THE PRESENCE OF THE WATERMARK. THE DOCUMENT FACE CONTAINS A MULTICOLORED BACKGROUND AND GOLD EMBOSSED SEAL. THE BACK CONTAINS SPECIAL LINES WITH TEXT AND SEALS IN THERMOCHROMATIC INK.	
FLORIDA DEPARTMENT OF HEALTH	

A sample birth certificate

regular duties, and which may be used as evidence for certain purposes.

A document certifying that one has fulfilled certain requirements and may practice in a field.

A stock certificate is a paper representing a share of stock in a corporation that has been purchased by its holder.

A certificate of acknowledgment is the written statement by a NOTARY PUBLIC, JUSTICE OF THE PEACE, or other authorized officer that sets forth that a person or persons appeared before him or her on a particular date and declared an instrument to be their VOLUNTARY ACT and deed.

A certificate of deposit is prepared by a bank as a receipt for money deposited by a customer that the bank promises to repay to the depositor after certain conditions have been fulfilled.

CERTIFICATE OF DEPOSIT

A written recognition by a bank of a deposit, coupled with a pledge to pay the deposited amount plus interest, if any, to the depositor or to his or her order, or to another individual or to his or her order.

A form of COMMERCIAL PAPER that serves as documentary evidence that a savings account exists.

CERTIFICATE OF OCCUPANCY

A document issued by a local building or ZONING authority to the owner of premises attesting that the premises have been built and maintained according to the provisions of building or zoning ordinances, such as those that govern the number of fire exits or the safety of electrical wiring.

Certificate of Deposit

XYZ SAVINGS BANK

1 YEAR CERTIFICATE OF DEPOSIT

Rate information

The interest rate for your account is 5.20 % with an annual percentage yield of 5.34 %. You will be paid this rate until the maturity date of the certificate. Your certificate will mature on September 30, 1993. The annual percentage yield assumes interest remains on deposit until maturity. A withdrawal will reduce earnings.

Interest for your account will be compounded daily and credited to your account on the last day of each month.

Interest begins to accrue on the business day you deposit any noncash item (for example, checks).

Minimum balance requirements

You must deposit \$1,000 to open this account.

You must maintain a minimum balance of \$1,000 in your account every day to obtain the annual percentage yield listed above.

Balance computation method

We use the daily balance method to calculate the interest on your account. This method applies a daily periodic rate to the principal in the account each day.

Transaction limitations

After the account is opened, you may not make deposits into or withdrawals from the account until the maturity date.

Early withdrawal penalty

If you withdraw any principal before the maturity date, a penalty equal to three months interest will be charged to your account.

Renewal policy

This account will be automatically renewed at maturity. You have a grace period of ten (10) calendar days after the maturity date to withdraw the funds without being charged a penalty.

A sample certificate of deposit

A certificate of occupancy is evidence that the building complies substantially with the plans and specifications that have been submitted to, and approved by, the local authority. It complements a building permit—a document that must be filed by the applicant with the local authority before construction to indicate that the proposed construction will adhere to zoning laws.

In legal practice, the requirement that a certificate of occupancy be presented on the day of closing is usually attached as a rider to a contract for the sale of a house or building. If the seller is unable to present the certificate of occupancy the buyer may refuse to complete the sale.

Some cities require that a landlord file a certificate of occupancy for apartments to be leased. This requirement is designed to prevent a building's deterioration to such an extent that it could expose its tenants to risks to their health and lives. Each time an apartment is vacated, an inspector from an appropriate government agency—such as the housing authority—inspects the apartment to make sure that it meets minimum standards of habitability. If the apartment does not, the inspector may issue a warning to the landlord to correct the violation within a certain period of time or the landlord will be prevented from leasing the apartment.

CERTIFICATION PROCEEDING

An administrative hearing before the NATIONAL LABOR RELATIONS BOARD (NLRB), pursuant to the federal WAGNER ACT (29 U.S.C.A. § 151 et seq. [1935]) to determine whether a group of employees is an appropriate bargaining unit, and if so, to decide whether a particular union should be declared its bargaining agent.

Employers and employees frequently negotiate and agree upon the terms and conditions of employment through COLLECTIVE BARGAINING, in which a representative of a particular group of employees presents the employees' demands to the employer so that a mutually advantageous accord can be reached. Before such bargaining can occur, it must be decided what group of employees will be served by the representative who will legally bind the group by his or her acceptance or rejection of the employer's terms. Once the group—the bargaining unit—is established the identity of its representative must be determined. Employers often willingly recognize a cohesive, homogeneous group of employees as a bargaining unit, thus acknowledging a

particular union that claims to be its representative or bargaining agent. Disputes occasionally arise, however, over (1) the control of the union by the employer, thereby conflicting with the union's position as a representative of the employees; (2) the failure of a majority of the unit to select the union; (3) the wrongful action of a union that has usurped the rightful status of another union as the bargaining agent of the unit; and (4) situations in which the employer refuses to recognize the unit or its union.

A certification proceeding is the statutorily prescribed method of resolving such difficulties. The NLRB investigates a petition filed by the employees concerning a union acting in behalf of the employees, which the employer refuses to recognize or a petition by an employer who has received a claim of representation by the union. The NLRB holds a nonadversarial fact-finding hearing to determine whether a valid question concerning representation exists. The hearing officer forwards the transcript containing evidence to the regional director of the NLRB. The regional director can dismiss the petition or decide to hold a secret ballot election for the bargaining agent and certify the result. Prior to the election, the director determines which employees are within the unit for purposes of voter eligibility. The NLRB will review a regional director's decision only if a statutorily determined, compelling reason exists, for instance, if his or her decision on a substantial issue of fact is clearly erroneous and adversely affects the rights of one party. An NLRB certification proceeding decision is subject to JUDICIAL REVIEW only if there is evidence of ABUSE OF DISCRETION. The court of appeals, as a rule, defers to the NLRB because of its presumed expertise in the labor area. An aggrieved employer dissatisfied with a certification proceeding can obtain review by refusing to bargain with the agent, thereby committing an UNFAIR LABOR PRACTICE. Such a practice would probably result in an unfair labor practice proceeding and the final order that is made by the NLRB in such an action is reviewable by the court of appeals.

CROSS-REFERENCES

Labor Law; Labor Union.

CERTIFIED CHECK

A written order made by a depositor to a bank to pay a certain sum to the person designated—the payee—which is marked by the bank as

Certification Note**Certified Check**

This certified check, on behalf of Developer/Owner Name, assures the approval and faithful payment of Amount Determined by County Staff to the Board of Commissioners of Lee County, Georgia in the event that Developer/Owner defaults on fulfilling their agreement to complete all site work on approved plan of Lot #, Street address, City, State. The work shall be completed by Date Agreed Upon. This certified check will be refunded upon issuance of Certificate of Occupancy.

Date: _____

Owner

A sample certified check

“accepted” or “certified,” thereby unconditionally promising that the bank will pay the order upon its presentation by the payee.

A certified check is considered the equivalent of cash since the bank, by its certification, guarantees it to be cashable. No bank is under a duty to its depositors or anyone else to certify checks since it involves the assumption of a new obligation for which it is primarily responsible. It is a commonplace practice, however, and there is usually a small fee for this service. A certified check is often required by a payee who does not want to rely only upon the credit of the drawer, the person who wrote the check.

A payee who requires a drawer's check to be certified ensures his or her right to payment. Not only can the payee seek payment from the certified bank, but if for some reason the bank refuses to pay, the payee retains the right to enforce payment from the drawer. In this situation the bank is primarily liable while the drawer is secondarily liable.

Occasionally the payee or subsequent holder of the check—a person who has been legally given possession and the right to payment—will present the check to the drawer's bank for certification. Although the bank is obligated to cash the check, it need not certify the check because only it, not the drawer or any subsequent endorsers, would be liable for its payment. Some banks will certify a check in such instances only with the approval of the drawer.

If a bank refuses to pay a check that it has certified, its drawer or holder may sue the bank for its wrongful conduct, called dishonor. A cer-

tified check, a type of **COMMERCIAL PAPER** or negotiable instrument, is governed by Article 3 of the **UNIFORM COMMERCIAL CODE**.

CERTIFIED COPY

A photocopy of a document, judgment, or record that is signed and attested to as an accurate and a complete reproduction of the original document by a public official in whose custody the original has been placed for safekeeping.

A certified copy is admissible as evidence in a lawsuit when the original document cannot be produced because it has been lost or destroyed. This rule, which considers a certified copy to be secondary evidence unless circumstances of loss or destruction warrant its treatment as primary evidence, is known as the best evidence rule. State and **FEDERAL RULES OF EVIDENCE** govern the use of a certified copy in their respective judicial proceedings.

CERTIORARI

[Latin, To be informed of.] At COMMON LAW, an original writ or order issued by the Chancery or King's Bench, commanding officers of inferior courts to submit the record of a cause pending before them to give the party more certain and speedy justice.

A writ that a superior appellate court issues in its discretion to an inferior court, ordering it to produce a certified record of a particular case it has tried, in order to determine whether any irregularities or errors occurred that justify review of the case.

*A sample writ of
certiorari*

Writ of Certiorari

No. 01-1425

In the
Supreme Court of the United States

Washington Legal Foundation; Allen D. Brown;
Dennis H. Daus; Greg Hayes; and L. Dian Maxwell,
Petitioners,

v.

Legal Foundation of Washington; Katrin E. Frank, in her
official capacity as President of the Legal Foundation of Washington;
and Gerry L. Alexander, Bobbe J. Bridge, Thomas Chambers,
Faith Ireland, Charles W. Johnson, Barbara A. Madsen,
Susan Owens, and Charles Z. Smith, in their official capacities as
Justices of the Supreme Court of Washington,
Respondents.

On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit

BRIEF IN OPPOSITION FOR LEGAL FOUNDATION OF WASHINGTON AND ITS PRESIDENT

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QUESTIONS PRESENTED

1. Does *per se* takings analysis apply to a regulation that requires legal professionals to place clients' small or short-term deposits of principal, incapable of providing a positive net return to the client, in pooled trust accounts with banks that agree to pay some interest on the accounts to a state-created foundation for access to justice?
2. Does the Just Compensation Clause of the Fifth Amendment require that compensation be paid for a taking that does not result in any financial loss to the owner?

PARTIES TO THE PROCEEDING

In addition to the current parties named in the caption, the following were previously parties in this action.

1. During the course of this case, the following successively have been presidents of the Legal Foundation of Washington, and thus technically were defendants themselves in their respective official capacities: Kevin F. Kelly (during 1997), Bradley C. Diggs (1998), Dwight S. Williams (1999), the Honorable Gregory J. Tripp (2000), and the Honorable Cynthia Imbrogno (2001).
2. When Petitioners commenced this case, they named all the then-Justices to the Supreme Court of Washington as defendants in their official capacities. Petitioners then voluntarily dismissed their claims against Justice Richard B. Sanders. The following former Justices were parties, but have been replaced by the Justices that are named in the caption: Barbara Durham, James M. Dolliver, Richard P. Guy, and Philip A. Talmadge.

Respondent Legal Foundation of Washington has no parent corporation and no publicly owned company owns any stock in it.

A device by which the SUPREME COURT OF THE UNITED STATES exercises its discretion in selecting the cases it will review.

Certiorari is an extraordinary prerogative writ granted in cases that otherwise would not be entitled to review. A petition for certiorari is made to a superior appellate court, which may exercise its discretion in accepting a case for review, while an appeal of a case from a lower court to an intermediate appellate court, or from an intermediate appellate court to a superior appellate court, is regulated by statute. Appellate review of a case that is granted by the issuance of certiorari is sometimes called an appeal, although such review is at the discretion of the appellate court.

A party, the petitioner, files a petition for certiorari with the appellate court after a judgment has been rendered against him in the inferior court. The petition must specifically state why the relief sought is unavailable in any other court or through any other appellate process, along with information clearly identifying the case and the questions to be reviewed, the relevant provisions of law to be applied, a concise statement of facts relating to the issues, and any other materials required by statute. The rules of practice of the appellate court to which the petitioner has applied for relief govern the procedure to be observed. For example, a petition for statutory certiorari made to the Supreme Court of the United States must be prefaced by a motion for leave, or permission, to file such a petition. If a common-law writ is sought, however, the petitioner need only file a petition for certiorari.

After evaluating the petition, the appellate court will decide whether to grant or deny certiorari. Certiorari is issued, designated as "cert. granted," when the case presents an issue that is appropriate for resolution by the court and it is in the public interest to do so, such as when the issue has been decided differently by a variety of lower courts, thereby creating confusion and necessitating a uniform interpretation of the law. Certiorari is denied when the appellate court decides that the case does not present an appropriate matter for its consideration. In the practice of the Supreme Court, if a petition has been granted certiorari as a result of a mistake, such as where the petitioner misrepresents the case or the case has become moot, the Court will dismiss the petition as "having been improvidently granted," which has the same effect as an

initial denial of the petition. Practically speaking, this rarely occurs.

Some states have abolished writs of certiorari under their rules of appellate practice.

FURTHER READINGS

- Brenner, Saul. 2000. "Granting Certiorari by the United States Supreme Court: An Overview of the Social Science Studies." *Law Library Journal* 92 (spring): 193–201.
- Garmisa, Steven P. 2003. "Supreme Court Reviews Common Law on Certiorari, Old Appellate Cases." *Chicago Daily Law Bulletin* 149 (April 15): 1.
- Hartnett, Edward A. 2000. "Questioning Certiorari: Some Reflections Seventy-Five Years After the Judges' Bill." *Columbia Law Review* 100 (November): 1643–1738.

CESSION

The act of relinquishing one's right.

A surrender, relinquishment, or assignment of territory by one state or government to another.

The territory of a foreign government gained by the transfer of sovereignty.

CESTUI QUE

[French, He or she who.] *The person for whom a benefit exists.*

A *cestui que trust* is a person for whose benefit a trust is created; a beneficiary. Although legal title of the trust is vested in the trustee, the *cestui que trust* is the beneficiary who is entitled to all benefits from a trust.

A *cestui que use* is an archaic term of PROPERTY LAW that describes one who has a beneficial interest in land held by someone else. Title and possession as well as the duty to defend the land is held by another, but the *cestui que use* has the right to rents, profits, and other benefits from the land.

A *cestui que vie* is the person whose life is used to measure various things, such as the duration of a trust, a gift, or an insurance contract. It can also be used to mean the person upon whose life a policy of life insurance is drawn.

CF.

An abbreviation for the Latin word confer, meaning "compare."

The use of this abbreviation indicates that another section of a particular work or another case or volume contains contrasting, comparable, or explanatory opinions and text.

C.F.&I.

An abbreviation for cost, freight, and insurance that is used in a sales contract to indicate that the purchase price quoted for the goods by the seller includes the expense incurred by the seller for shipment of such goods and for insurance of the goods against loss or destruction until their arrival at the destination named by the buyer.

The abbreviation C.F.&I. is synonymous with the abbreviation C.I.F. commonly found in contracts for foreign shipments. A seller who has entered a sales contract with a C.F.&I. provision agrees to accept the expense of placing the goods into the custody of a carrier for shipment from their port of origin to their designated location and to obtain a negotiable bill of lading, which will be endorsed by the buyer upon receipt of payment for the goods. The seller has the responsibility of loading the cargo and obtaining a receipt from the carrier, which might be incorporated into the bill of lading to show that freight has been paid by him or her. The seller must also purchase insurance against the loss, damage, or destruction of such goods and have the buyer designated as the beneficiary. The seller prepares an invoice of the goods to be shipped and sends the necessary documents to both the shipper and the buyer so that the buyer can take delivery of the goods upon arrival at their destination.

CROSS-REFERENCES

Shipping Law.

❖ **CHAFEE, ZECHARIAH, JR.**

As a leading U.S. legal scholar and educator, Zechariah Chafee Jr. did more than anyone else in the early twentieth century to shape the debate surrounding FREEDOM OF SPEECH and the Constitution's FIRST AMENDMENT. In his most influential book, *Freedom of Speech* (1920), Chafee argued for the importance of protecting free speech even in wartime. His ideas later guided the Supreme Court in liberalizing its approach to free speech.

Chafee was born on December 7, 1885, in Providence, Rhode Island, to a wealthy family. He attended Brown University, graduating with a bachelor's degree in 1907. He helped manage his family's iron foundry for three years and then left to attend Harvard Law School in 1910. He remained on the family firm's board of directors for the rest of his life. He married Bess Frank Searle in 1912 and they had four children.

While at Harvard he was influenced by the theories of sociological JURISPRUDENCE presented by ROSCOE POUND and others. At Harvard, he also met Harold J. Laski, a political scientist and later a leader of England's Labour party, who became a lifelong friend. Chafee graduated from law school with a bachelor of laws degree in 1913 and practiced law for three years in Providence. In 1916 he began teaching at Harvard Law School as an assistant professor of law. He accepted a full professorship three years later and remained at Harvard for the rest of his life.

Chafee was a professor at Harvard Law School for nearly forty years. His writings and public service influenced many different areas of civil liberties, from conditions for mine workers to international HUMAN RIGHTS to the system for apportioning U.S. House seats among the states. His other books include *America Now* (1938), *Freedom of Speech in the United States* (1941), *Government and Mass Communications* (1947), *Documents on Fundamental Human Rights* (1951), *Freedom of Speech and Press* (1955), and *Blessings of Liberty* (1956). Justice FELIX FRANKFURTER wrote of Chafee, "The extent to which . . . he influenced the thought and temper of public opinion and action in that pervasive aspect of national life known as CIVIL RIGHTS has no match in the legal professoriate."

Chafee's goal in his legal writings was to "master the law and reduce it to reason." In the area of free speech, this meant replacing intuition with reason and producing a rational interpretation of the First Amendment, which states that "Congress shall make no law . . . abridging the freedom of speech, or of the press." The notion of balance was a crucial element in his legal philosophy. According to Chafee, most legal problems could be solved by BALANCING competing interests. In the case of free speech, that meant balancing society's competing interests in the benefits of security and in the benefits of unlimited discussion.

Chafee's interest in free speech and civil liberties began while he was teaching a course on EQUITY at Harvard Law School during WORLD WAR I. He became interested in the history of LIBEL law and free speech, particularly as judges across the United States began making ARBITRARY and often conflicting decisions regarding SEDITION (the act of urging others to rebel against authority) and free speech during wartime. In many cases, people who spoke out or demonstrated against the wartime policies of

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—ZECHARIAH
CHAFEE JR.

the U.S. government were imprisoned for their views. Such cases often involved two laws passed by Congress, the *ESPIONAGE ACT OF 1917* (ch. 30, 40 Stat. 217) and the *Sedition Act of 1918* (ch. 75, 40 Stat. 553). Looking closely at the judicial decisions regarding such cases, Chafee began to see that laws regarding freedom of speech were in great need of modernization.

Between 1918 and 1920 Chafee published two articles—"Freedom of Speech" in the *New Republic* (Nov. 16, 1918) and "Freedom of Speech in Wartime" in the *Harvard Law Review* (747 [June 1919])—and the book *Freedom of Speech* (1920), which caused great controversy and also made his reputation, associating him for the rest of his career with free speech issues. In these writings Chafee took aim against contemporary interpretations of the First Amendment. "Nearly every free speech decision," Chafee wrote in his law review article, "appears to have been decided largely by intuition." Chafee sought to replace that intuition with more informed legal reasoning.

In his articles and book, Chafee set forth his views regarding the need to balance the competing interests involved in speech issues. In the following passage from *Freedom of Speech*, which he described as the key passage of the book, he defined the meaning of freedom of speech:

The true meaning of freedom of speech seems to be this. One of the most important purposes of society and government is the discovery and spread of truth on subjects of general concern. This is possible only through absolutely unlimited discussion, for . . . once force is thrown into the argument, it becomes a matter of chance whether it is thrown on the false side or the true, and truth loses all its natural advantage in the contest. Nevertheless, there are other purposes of government, such as order, the training of the young, protection against external aggression. Unlimited discussion sometimes interferes with these purposes, which must then be balanced against freedom of speech, but freedom of speech ought to weigh very heavily in the scale. The First Amendment gives binding force to this principle of political wisdom.

Chafee gave an indication of just how "heavily" freedom of speech weighed in the scale by arguing in his law review article that free speech should be tightly protected even in wartime:

Even after war has been declared there is bound to be a confused mixture of good and bad arguments in its support, and a wide dif-

ference of opinion as to its objects. Truth can be sifted out from falsehood only if the government is vigorously and constantly cross-examined. . . . Legal proceedings prove that an opponent makes the best cross-examiner. Consequently it is a disastrous mistake to limit criticism to those who favor the war.

Chafee put his case more succinctly when he wrote, "In wartime, speech should be free, unless it is clearly liable to cause direct and dangerous interference with the conduct of the war."

Chafee's views influenced the Supreme Court in significant ways. In particular, Justices *OLIVER WENDELL HOLMES JR.*, and *LOUIS D. BRANDEIS* closely studied Chafee's ideas and gradually liberalized their views on free speech. For example, Chafee found fault with Holmes's opinion in *SCHENCK V. UNITED STATES*, 249 U.S. 47, 39 S. Ct. 247, 63 L. Ed. 470 (1919), upholding the conviction of Charles T. Schenck, a secretary of the Socialist party who had distributed leaflets urging men to disobey the draft. Schenck had been convicted under the Espionage Act. In his famous opinion Holmes wrote that Congress may restrict freedom of speech when there is a "clear and present danger" that such speech will bring about "substantive evils that Congress has a right to prevent." Chafee argued that Schenck's actions had not presented a direct danger and that Holmes had not adequately defined what exactly were the "substantive evils" society had to be protected from. Chafee maintained that only sedition that came dangerously close to succeeding might be punished and that a better test of free speech was whether it could gain acceptance in the marketplace of free ideas.

Holmes later used Chafee's ideas in his dissent to *ABRAMS V. UNITED STATES*, 250 U.S. 616, 40 S. Ct. 17, 63 L. Ed. 1173 (1919), in which the Court upheld the conviction of Jacob Abrams, who had been sentenced to twenty years in prison for distributing leaflets opposing U.S. involvement in Russia. Chafee's ideas also influenced other Holmes and Brandeis dissents, including those in *GITLOW V. NEW YORK*, 268 U.S. 652, 45 S. Ct. 625, 69 L. Ed. 1138 (1925). The majority in *Gitlow* determined that the Constitution did not bar the conviction under New York's criminal *ANARCHY* statute (Laws 1909, c. 88; Consol. Laws 1909, c. 40) of a socialist who distributed a paper advocating that the government be overthrown, even though no effect whatsoever resulted from circulation of the manifesto. And in another influential case, *NEAR V. MINNESOTA*, 283 U.S. 697, 51 S. Ct. 625,

75 L. Ed. 1357 (1931), Chief Justice CHARLES E. HUGHES used Chafee's ideas in an opinion that voided a Minnesota law (Minn. St. 1927, § 10123-1) calling for the suppression of "malicious, scandalous, and defamatory" publications.

Chafee's views were not popular ones at the time and he nearly lost his job because of them. In 1921, he was brought before the Board of Overseers of Harvard University on a charge of radicalism for his questioning of the sentence handed down in *Abrams*. Chafee defended himself eloquently in a speech before a special committee in the Boston Harvard Club and he was allowed to remain at Harvard.

Chafee viewed himself as a reformer rather than an activist. Although he often embraced causes considered radical, he also was skeptical of big government and described himself as a "conservative . . . Rhode Islander steeped in the Roger Williams tradition." Speaking in the early 1920s of his interest in civil liberties, Chafee commented;

I see no reason why I should be out mountain climbing and enjoying life while some other chap who started life with less money and gets a little angrier and a little more extreme should be shut up in a prison for five or ten years. . . . When I am loafing around on my boat, or taking an inordinately large number of strokes on the golf course, I occasionally think of these poor devils who won't be out for five or ten years and want to do a bit to make the weight of society less heavy on them.

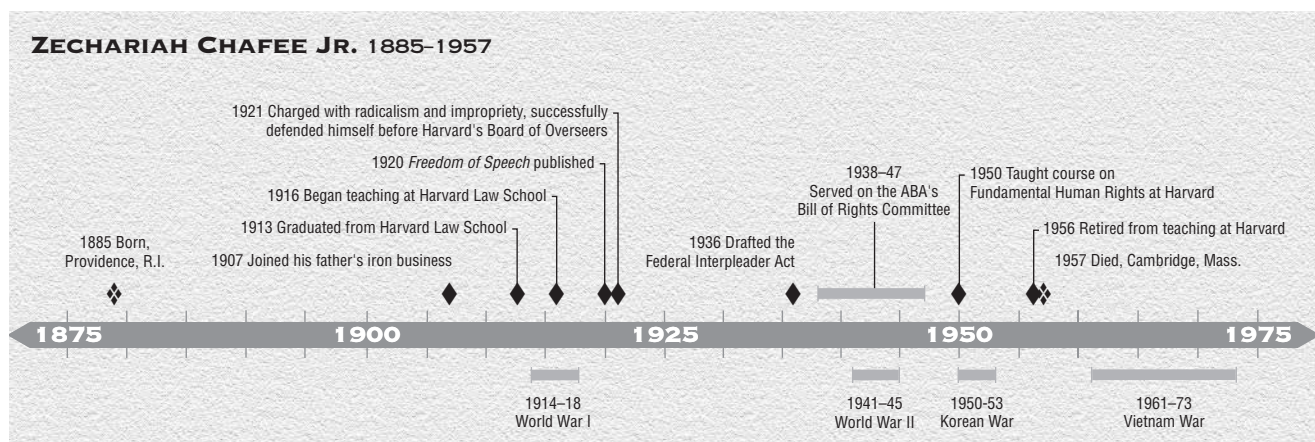
Chafee never became an active member of the AMERICAN CIVIL LIBERTIES UNION or that organization's National Advisory Committee. Nor did he appear often in court. He did harbor

ambitions to become a Supreme Court justice but was never nominated for the position.

Chafee wrote on many aspects of the law besides free speech. In 1936 he drafted what he considered to be his foremost professional accomplishment, the Federal Interpleader Act (May 8, 1926, ch. 273, 44 Stat. 416). This was a highly specialized law designed to resolve multiple claims for the same debt against insurance companies, banks, and other businesses. Chafee also became an authority on the mathematical methods for reapportioning among the states the seats in the U.S. House of Representatives. His advocacy of the equal proportions method for allotting House seats eventually led to changes in federal law regarding APPORTIONMENT after the 1940 census.

During his career Chafee served on a number of committees that made important reforms in U.S. law and society. Beginning in 1923 he was chairman of the Committee of Inquiry on Coal and Civil Liberties. This group produced a report criticizing mine operators, their private police, and their company towns, taking a position that, like Chafee's views on free speech, outraged some influential Harvard law alumni. From 1928 to 1932 Chafee was president of the Massachusetts Council for the Abolition of the Death Penalty. Between 1929 and 1931 he worked for the National Commission on Law Enforcement and Observance, also called the WICKERSHAM COMMISSION, which looked into POLICE MISCONDUCT during the era of PROHIBITION.

Some of Chafee's more important work occurred through his membership on the American Bar Association's Bill of Rights Committee from 1938 to 1947. In this capacity he submitted



advisory briefs in several Supreme Court cases. In a case involving the refusal of Jehovah's Witnesses to have their children salute the flag in school (*West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 63 S. Ct. 1178, 87 L. Ed. 1628 [1943]), Chafee wrote a brief hoping to persuade the Court to reverse an earlier decision upholding a state law requiring a flag salute. In his brief he made an eloquent case for freedom of religion and freedom of expression.

Chafee became an advocate for international human rights later in his career through his work as a representative on the UNITED NATIONS Subcommission on Freedom of Information and the Press in 1947. In 1950, when Chafee's prestige and seniority at Harvard enabled him to teach whatever course he wished, he chose to offer a course called "Fundamental Human Rights." He hoped to have students realize "how dearly these rights were bought and ... what they meant to the men who put them forever into our fundamental law."

Chafee received honorary doctor of law degrees from St. John's University, New York, in 1936, Brown University in 1937, and the University of Chicago in 1953. He also received an honorary doctor of CIVIL LAW degree from Boston University in 1941 and a doctor of letters degree from Colby College in 1944.

He died February 8, 1957, in Cambridge, Massachusetts.

FURTHER READINGS

- Re, Edward D. 1981. *Freedom's Prophet: Selected Writings of Zechariah Chafee, Jr., University Professor, Harvard Law School*. New York: Oceana.
- Smith, Donald L. 1986. *Zechariah Chafee, Jr.: Defender of Liberty and Law*. Cambridge: Harvard Univ. Press.

CROSS-REFERENCES

Interpleader.

CHAIN OF CUSTODY

The movement and location of physical evidence from the time it is obtained until the time it is presented in court.

Judges in bench trials and jurors in jury trials are obligated to decide cases on the evidence that is presented to them in court. Neither judges nor jurors may conduct their own investigations into the underlying facts of a given case. In fact, state and federal court rules prohibit judges and jurors from being swayed by, or even taking into consideration, extrajudicial evi-

dence—that is, evidence that is not properly admitted into the record pursuant to the rules of evidence—in rendering their decisions.

Similarly, parties to civil and criminal litigation depend on judges and juries to impartially weigh the evidence, and only the evidence, that is properly admitted into the record. Every day, across the United States, litigants stake their reputations, livelihoods, bank accounts, homes, PERSONAL PROPERTY, and freedom on the premise that the outcome to their judicial proceedings will be one that is reached fairly and justly, according to the evidence.

Court-rendered judgments and jury verdicts that are based on tainted, unreliable, or compromised evidence would undermine the integrity of the entire legal system if such outcomes became commonplace. One way in which the law tries to ensure the integrity of evidence is by requiring proof of the chain of custody by the party who is seeking to introduce a particular piece of evidence.

Proof of a chain of custody is required when the evidence that is sought to be introduced at trial is not unique or where the relevance of the evidence depends on its analysis after seizure. A proper chain of custody requires three types of testimony: (1) testimony that a piece of evidence is what it purports to be (for example, a litigant's blood sample); (2) testimony of continuous possession by each individual who has had possession of the evidence from the time it is seized until the time it is presented in court; and (3) testimony by each person who has had possession that the particular piece of evidence remained in substantially the same condition from the moment one person took possession until the moment that person released the evidence into the custody of another (for example, testimony that the evidence was stored in a secure location where no one but the person in custody had access to it).

Proving chain of custody is necessary to "lay a foundation" for the evidence in question, by showing the absence of alteration, substitution, or change of condition. Specifically, foundation testimony for tangible evidence requires that exhibits be identified as being in substantially the same condition as they were at the time the evidence was seized, and that the exhibit has remained in that condition through an unbroken chain of custody. For example, suppose that in a prosecution for possession of illegal narcotics, police sergeant A recovers drugs from the

defendant; A gives police officer B the drugs; B then gives the drugs to police scientist C, who conducts an analysis of the drugs; C gives the drugs to police detective D, who brings the drugs to court. The testimony of A, B, C, and D constitute a "chain of custody" for the drugs, and the prosecution would need to offer testimony by each person in the chain to establish both the condition and identification of the evidence, unless the defendant stipulated as to the chain of custody in order to save time.

Chain of custody need not be demonstrated for every piece of tangible evidence that is accepted into the trial court's record. Physical evidence that is readily identifiable by the witness might not need to be supported by chain-of-custody proof. For example, no chain-of-custody foundation is required for items that are imprinted with a serial number or inscribed with initials by an officer who collected the evidence. Similarly, items that are inherently distinctive or memorable (for example, a holdup note written in purple crayon) might be sufficiently unique and identifiable that they establish the integrity of the evidence.

Whether the requisite foundation has been laid to establish chain of custody for an exhibit is a matter of discretion on the part of the trial judge. Possibilities of misidentification and adulteration must be eliminated, not absolutely, but as a matter of reasonable probability. Where there is sufficient testimony that the evidence is what it purports to be, and that testimony is offered by each responsible person in the chain of custody, discrepancies as to accuracy or reliability of testimony regarding the chain of custody go to the weight of the evidence and not to its admissibility, meaning that the evidence would be admitted into the record for the judge or jury to evaluate in light of any conflicting testimony that the chain of custody somehow had been compromised. While the party who offers the evidence has the burden of demonstrating the chain of custody, the party against whom the evidence is offered must timely object to the evidence when it is first introduced at trial, or the party will waive any objections as to its integrity based on a compromised chain of custody.

FURTHER READINGS

Giannelli, Paul. 1996. "Chain of Custody." *Criminal Law Bulletin* 32.

———. 1983. "Chain of Custody and the Handling of Real Evidence." *American Criminal Law Review* 20.

CHAIN OF TITLE

A list of successive owners of a parcel of land, beginning from the government, or original owner, to the person who currently owns the land.

To show that a title to a piece of land is a marketable title and is free to transfer, a person must know who had ownership of the land at any point in time. In addition, the seller should be able to trace the way in which each person came into the chain of title. An **ABSTRACT OF TITLE** contains a condensed history of the title to a piece of land in addition to a summary of conveyances. This history appears on public record so that title to land can be checked.

CHAIN REFERRAL

A type of sales plan that convinces individuals to make purchases based upon the promise that their payment will be reduced for each new purchaser they recommend to the seller.

Referral sales in general are under close scrutiny by **CONSUMER PROTECTION** laws and are illegal in many states due to their fraudulent and misleading nature. A chain referral is a type of pyramid sales scheme whereby an innocent consumer is lulled into investing money based on the promise that he will eventually make money, which is usually highly unlikely, if not impossible.

CROSS-REFERENCES

Ponzi Scheme.

CHAMBERS

A judge's private room or office wherein he or she hears motions, signs papers, and performs other tasks pertaining to his or her office when a session of the court, such as a trial, is not being held.

Business transacted in a private setting is said to be done "in chambers."

CHAMIZAL TRACT

A description of the 1895 title dispute between the United States and Mexico that arose over a tract of land in El Paso, Texas, known as "El Chamizal."

The Boundary Commission was unable to agree on a boundary line and a convention was signed by the two governments on June 24, 1910, establishing another commission to decide the issue. Because the new commission departed from the terms of submission and because of disturbed conditions in Mexico, no further action was taken until the conclusion of a treaty

in 1963 that divided the disputed territory between the two countries.

CHAMPERTY AND MAINTENANCE

Champerty is the process whereby one person bargains with a party to a lawsuit to obtain a share in the proceeds of the suit. Maintenance is the support or promotion of another person's suit initiated by intermeddling for personal gain.

Both champerty and maintenance have been illegal for two basic public policy reasons since early COMMON LAW: (1) It is considered desirable to curb excess litigation for the operation of an efficient judicial system. The reasons for this are numerous and include problems of overcrowding on court calendars, economic considerations, and the desirability of promoting a society that is not excessively litigious. Champerty and maintenance work contrary to this societal goal by stirring up litigation. (2) Champerty and maintenance bring money to an individual who was not personally harmed by the defendant. An attorney found guilty of either champerty or maintenance will be subject to the payment of any damages that may have been incurred by the parties to the lawsuit and to disciplinary proceedings, which can result in his or her disbarment.

Whether or not champerty and maintenance exist in a particular instance depends upon the facts and circumstances of the case. They apply specifically to cases wherein one person profits from another person's recovery in a lawsuit. If a licensed collection agency purchases a group of bad accounts from a store, the agency is buying the right to collect on the accounts rather than on a particular lawsuit and is therefore not guilty of champerty. An attorney who buys a chose in action with the sole, SPECIFIC INTENT to initiate an action for his or her own benefit would be guilty of champerty provided the purchase was made with that intent.

To lend money to an individual who would not otherwise be able to afford to bring a lawsuit is not maintenance unless the lender intends to gain substantially from his loan by being compensated with a portion of the recovery.

Today, some states still recognize champerty and maintenance as offenses but in most states they have been replaced with the civil actions of ABUSE OF PROCESS and MALICIOUS PROSECUTION, both of which deal with the wrongful initiation of litigation and perversion of legal process.

CHANCELLOR

A secretary, secretary of state, or minister of a king or other high nobleman.

The king's chancellor in England during the Middle Ages was given a variety of duties, including drawing up writs that permitted the initiation of a lawsuit in one of the common-law courts and deciding disputes in a way that gave birth to the system of law called EQUITY. His governmental department was called the Chancery.

The Chancellor of the Exchequer in England is like the secretary of the U.S. treasury, but in former times he also presided over a court called the Court of Exchequer, which at first heard disputes over money owed to the king but eventually heard a wide variety of cases involving money. This jurisdiction was founded on the theory that a creditor who could not collect a debt would later be less able to pay whatever he owed to the king.

Chancellor has also been used as the title for a judge who sits in a court of equity, for the president of a university, or for the public official in charge of higher education in some states.

CHANCERY

The old English court in which the monarch's secretary, or Chancellor, began hearing lawsuits during the fourteenth century.

The decisions rendered there were based on conscience and fairness rather than on the strict common-law FORMS OF ACTION. In the United States, courts like the old chancery have been called courts of chancery or courts of EQUITY.

CHARACTER EVIDENCE

Proof or attestations about an individual's moral standing, general nature, traits, and reputation in the general community.

A character witness is an individual who testifies as to the habits and reputation of another person. In criminal cases, a defendant might attempt to reduce the possibility that he or she will be convicted of committing the crime as charged by exhibiting his or her good character or propensity for not committing the offense. Ordinarily, this is limited to testimony concerning the particular character trait that is in issue. For example, evidence concerning the defendant's trustworthiness with property might be relevant in an EMBEZZLEMENT case. The character witness must be a person who is familiar

with the defendant's reputation in the community fairly close to the time the crime was committed.

In federal trials the admissibility of character evidence and the use of character witnesses are governed by the **FEDERAL RULES OF EVIDENCE**.

CHARGE

*To impose a burden, duty, obligation, or lien; to create a claim against property; to assess; to demand; to accuse; to instruct a jury on matters of law. To impose a tax, duty, or trust. To entrust with responsibilities and duties (e.g., care of another). In commercial transactions, to bill or invoice; to purchase on credit. In **CRIMINAL LAW**, to indict or formally accuse.*

An encumbrance, lien, or claim; a burden or load; an obligation or duty; a liability; an accusation. A person or thing committed to the care of another. The price of, or rate for, something.

A retail store may attach a finance charge to money owed by a customer on a store account.

A *charge to the jury* is the process whereby a judge addresses the jury before the verdict. During the charge, the judge summarizes the case and gives instructions to the jury concerning such matters as the **RULES OF LAW** that are applicable to various issues in the case.

A *public charge* is a person who has been made a ward of the state who requires public support due to illness or poverty.

CHARGE-OFF

Eliminate or write off.

The term *charge-off* is used to describe the process of removing from the records of a company something that was once regarded as an asset but has subsequently become worthless.

A classic case is the bad debt, which is an uncollectible debt. A *bad debt* is a permissible business tax deduction, and a *non-business bad debt* may also be claimed as a charge-off in the year the debt becomes entirely worthless. Charge-off is generally used in reference to a charge or debt that is not paid when due.

CHARITABLE TRUST

*The arrangement by which real or **PERSONAL PROPERTY** given by one person is held by another to be used for the benefit of a class of persons or the general public.*

The law favors charitable trusts, sometimes called public trusts, by according them certain privileges, such as an advantageous tax status. Before a court will enforce a charitable trust, however, it must examine the charity and evaluate its social benefits. The court cannot rely on the view of the settlor, the one who establishes the trust, that the trust is charitable.

In order to be valid, a charitable trust must fulfill certain requirements. The settlor must intend to create this type of trust. There must be a trustee to administer the trust, which must consist of some res or trust property. The charitable purpose must be expressly designated. A definite class of persons comprised of indefinite beneficiaries within it must actually receive the benefit. The requirements of intention, the trustee, and the res are the same in a charitable trust as they are in any other trust.

Charitable Purposes

A charitable purpose is one designed to benefit, ameliorate, or uplift mankind mentally, morally, or physically. The relief of poverty, the improvement of government, and the advancement of religion, education, and health are some examples of charitable purposes. Trusts to prevent cruelty to animals, to erect a monument in honor of a famous historical figure, and to beautify a designated village are charitable purposes aimed, respectively, at fostering kindness to animals, patriotism, and community well-being.

The definition of charitable purposes is derived from an old **ENGLISH LAW**, the Statute of Charitable Uses, but has been expanded throughout the years as new public needs developed.

Beneficiaries

The class to be benefited in a charitable trust must be a definite segment of the public. It must be large enough so that the community in general is affected by, and interested in, the enforcement of the trust, yet it cannot encompass the entire human race. Within the class, however, the specific persons to benefit from the trust must be indefinite. A trust "for the benefit of the orphans of American veterans of the Vietnam conflict" is charitable. The orphans of such veterans constitute a definite class. The indefinite persons within the class are the ones who are ultimately chosen by the trustee to be paid the benefits. The class is large enough so that the community is interested in the enforcement of the trust.

A trust for named persons or a trust for profit cannot be a charitable trust. A trust “to construct and maintain a hospital” might be charitable, even though the hospital charges the patients who are treated, provided that any profits realized are used solely to continue the charitable services rendered and are not paid to private persons.

A trust that serves both charitable and non-charitable purposes will fail if the two are inseparable. For example, suppose a settlor bequeaths \$500,000 to a trustee “to hold in trust for the benefit of all the schools in a particular town.” The settlor’s daughter is the residuary legatee of the estate, who will inherit the remainder of the estate after the testamentary dispositions are satisfied. Some of the schools in the town are public and charitable institutions and some are private and operated for profit. The settlor has not apportioned the \$500,000 between the public schools and the private schools. The valid part—to be given to public schools and charitable institutions—cannot be separated from the invalid part—the disposition to private or profit making institutions; therefore, the trust fails as a charitable trust. The trustee holds the \$500,000 in a **RESULTING TRUST** for the settlor’s daughter, since the settlor’s disposition cannot be valid as a charitable trust because there is no indefinite beneficiary.

If a trust has both charitable and noncharitable purposes and if the maximum amount to be used for noncharitable purposes can be determined, the trust fails only with respect to that amount pertaining to noncharitable purposes, which will be held in a resulting trust by the trustee for the settlor’s statutory heir or residuary legatee. The remainder is a valid charitable trust.

As a general rule, a charitable trust can be eternal, unlike a private trust, which must comply with the **RULE AGAINST PERPETUITIES**, a principle limiting the duration of a trust. With respect to a private trust, the designated beneficiary is the proper person to enforce the trust, but in a charitable trust, the state attorney general is the one to enforce it. The settlor, his or her heirs or personal representatives, the members of the general public, and possible beneficiaries cannot maintain a lawsuit for the enforcement of the trust.

Charitable trusts yield substantial tax benefits to donors, whether in the form of **INCOME TAX** deductions, tax shelters, or reduced inheri-

tance taxes. Typically under *charitable remainder trusts*, immediate income tax deductions can also be matched with avoidance of capital gains taxes if the donor funds the trust using certain types of assets. The *charitable lead trust*, which is often used in estate planning, commonly benefits heirs. After its duration, the principal assets return to the donor’s heirs subject to reduced gift and estate tax.

FURTHER READINGS

- Parks, Charles T., Jr. 2003. “The Charitable Lead Trust: Why It Works Even in a Down Market.” *Faegre & Benson LLP*. Available online at <www.faegre.com/articles/article_840.asp> (accessed June 17, 2003).
- Teitell, Conrad. 2001. “Tax Primer on Charitable Giving.” *Trusts & Estates* (June 1).

CROSS-REFERENCES

Charities; Estate and Gift Taxes; Heir; Taxation.

CHARITIES

Organizations created for the purpose of philanthropic rather than pecuniary pursuits.

A charity is a group designed to benefit society or a specific group of people. Its purpose may be educational, humanitarian, or religious. A charity goes beyond giving relief to the indigent, extending to the promotion of happiness and the support of many worthy causes.

The law favors charities because they promote goodwill and lessen the government’s burdens. They are therefore ordinarily exempt from paying income or property taxes.

Charitable Gifts and Trusts

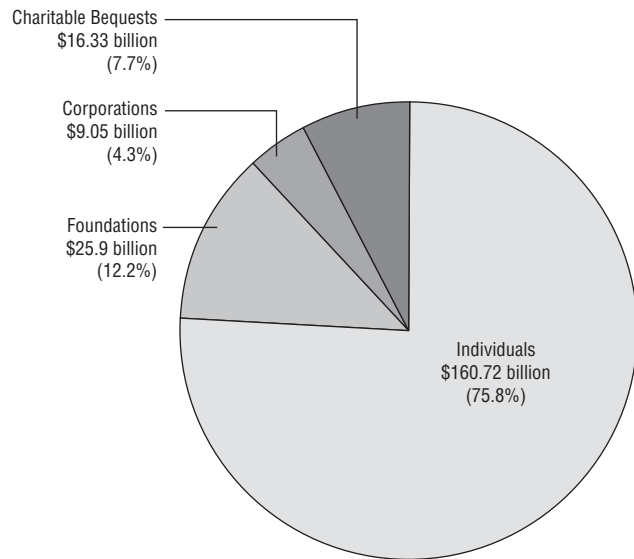
A *charitable* gift is something that is donated by an individual or organization with the intent to benefit the public or some segment of it as a whole. It is meant for use by an indefinite number of people. Similarly, charitable trusts or *public trusts* are trusts of religious, political, or general social interests, or for the relief of poverty or the advancement of education.

Charities are ordinarily supported by gifts from donors and most states have set forth statutes controlling the manner in which funds are solicited for charities. In addition, the state will generally require charities to disclose their financial structure and condition.

Charitable gifts are often testamentary, or created by will. If there is a problem in determining the actual donative intent of the testator, the court might have to pass on his or her intent. **CY PRES** is a doctrine applied by a court so that

Charities

PRIVATE PHILANTHROPY IN THE UNITED STATES IN 2001



SOURCE: AAFRC Trust for Philanthropy, Indianapolis, IN, *Giving USA*, 2002.

it can carry out a trust made by will for charitable purposes even when the testator's charitable purpose can not be accomplished in the precise manner specified by the testator. For example, if a testator wished to donate money to a certain hospital whose name had changed, for example, this would not defeat the gift. With cy-pres the court would interpret the donor's intent to be to give money to the hospital in spite of the change of name.

Charitable Societies and Institutions

To determine whether an institution is charitable, the test is whether its major purpose is to aid others or to make a profit.

Charitable corporations are nonprofit corporations that have been created to minister to the physical needs of the indigent or to advance a particular goal, such as the aid of a particular religious group or country. In order to receive a tax-exempt status, such organizations must meet certain criteria.

Ordinarily, charitable corporations have no capital stock and they obtain their funds primarily from private and public charity. These funds are held in trust to serve the charitable objects of the institutions.

Beneficial associations also exist mainly for a charitable purpose and not for financial gain.

Religious organizations, such as the Young Men's and Women's Christian Associations and the Salvation Army, are also considered to be charitable societies.

The test for determining whether or not an educational institution is a charitable organization is the question of whether it exists for a public purpose or for a private gain.

While charities may charge a nominal fee for some of their services and still be considered charitable societies, they are organized primarily for the public good and not for profit.

CHARLES RIVER BRIDGE V. WARREN BRIDGE

The 1837 landmark U.S. Supreme Court decision *Charles River Bridge v. Warren Bridge*, 36 U.S. (11 Pet.) 420, 9 L. Ed. 773, illustrated the shift in politics brought about by the presidency of ANDREW JACKSON. Nineteenth-century FEDERALISM, a dominant political doctrine from the time of the drafting of the U.S. Constitution, favored the protection of private investments. The *Charles River Bridge* decision espoused newly popular Jacksonian political beliefs, which favored free enterprise. Arguably, the case altered the course of economic JURISPRUDENCE in the United States.

The facts of *Charles River Bridge* began in 1650 when the state of Massachusetts granted a charter to Harvard College (now Harvard University) to operate for profit a ferry over the Charles River between Boston and Charlestown. Later, in 1785, the Massachusetts Legislature granted a charter to a group of Charlestown businessmen to build the Charles River Bridge. These entrepreneurs were to fund the bridge's construction and in return the state would allow them to collect revenue from a specified toll for the next forty years. As part of the agreement, the entrepreneurs were to pay an ANNUITY to Harvard College to replace ferry profits lost by the building of the new bridge.

The bridge was immediately successful and immensely profitable. Prompted by its popularity, the Massachusetts Legislature in 1792 chartered the building of a second bridge, known as the West Boston Bridge. To appease the proprietors of the Charles River Bridge, who faced competition from the West Boston Bridge, the state of Massachusetts extended the Charles

River Bridge charter from forty to seventy years.

In 1828 Massachusetts chartered a third bridge, the Warren Bridge, which was to be constructed within a few rods of the Charles River Bridge. The Charles River Bridge proprietors strongly objected to this third bridge because the competition would diminish their profits. But Massachusetts citizens viewed the Charles River Bridge as monopolistic and welcomed competition and reduced tolls. The Warren Bridge was completed as planned.

Within a year the Charles River Bridge suffered a 40 percent drop in revenues. The bridge's proprietors, represented by DANIEL WEBSTER and LEMUEL SHAW, went to court, seeking an INJUNCTION against the Warren Bridge. Webster and Shaw argued that the Warren Bridge's charter with the state violated the Contracts Clause of the U.S. Constitution by interfering with the state's separate obligations under its charter with the Charles River Bridge proprietors. They maintained that as successors to the original ferry service charter held by Harvard College, the Charles River Bridge proprietors had an implied exclusive right to tolls charged for crossing the Charles River. Moreover, they said that judicial policy should protect investments; without security in investments, entrepreneurs would not be willing to take risks in technological developments such as bridges and railroads. And this reluctance to take risks would only prove detrimental to the public.

Lawyers for the Warren Bridge proprietors countered that no exclusive rights existed for transportation over the Charles River and that judicial policy should favor technological progress and free enterprise over the rights of those investing in private property. After hearing oral arguments in October 1829, the Supreme Judicial Court of Massachusetts ruled in favor of the Warren Bridge proprietors. The Charles River Bridge group appealed the case to the U.S. Supreme Court.

In March 1831, the Supreme Court first heard arguments in the case. At that time JOHN MARSHALL was chief justice and the Court was dominated by Federalists. But several justices were absent during that argument, so the Court scheduled a second argument. This action had a significant consequence: several justices resigned or died prior to the second argument, and, taking advantage of his privilege of appointing new justices, President Jackson

changed the membership of the Court to primarily Democratic.

Following a second argument in 1837 the Court held that the Warren Bridge charter did not violate the Contracts Clause of the Constitution. Chief Justice ROGER B. TANEY, who authored the opinion, held that any state legislation that chartered a private entity to provide a public service, such as a bridge, turnpike, or ferry, was to be strictly construed (interpreted) in favor of the state and against the private entity. The Court found that no implied rights had passed from the Harvard College ferry charter to the Charles River Bridge charter.

Chief Justice Taney further observed the harm in ruling for the Charles River Bridge proprietors simply because they faced competition and reduced profits owing to the Warren Bridge. He suggested that such a holding would encourage turnpike proprietors to sue the railroads for destroying turnpike profits. In Taney's view, economic development was better served by public improvements than by protections for monopolies.

The *Charles River Bridge* decision received widespread attention. Hard-line Federalists disputed the Court's rationale, insisting that only by protecting vested property rights would future financing for transportation technology be ensured. And although railroads were not at issue in *Charles River Bridge*, many historians believe that the Taney Court placed great faith in the future of railroads in the United States, and in rendering its opinion was attempting to facilitate their growth. There is little doubt among legal scholars that *Charles River Bridge* signified the introduction of Jacksonian politics into U.S. jurisprudence.

FURTHER READINGS

Mensel. 1994. "Privilege against Public Right: A Reappraisal of the Charles River Bridge Case." *Duquesne Law Review* 33.

CHARTER

A grant from the government of ownership rights in land to a person, a group of people, or an organization such as a corporation.

A basic document of law of a MUNICIPAL CORPORATION granted by the state, defining its rights, liabilities, and responsibilities of self-government.

A document embodying a grant of authority from the legislature or the authority itself, such as a corporate charter.

The leasing of a mode of transportation, such as a bus, ship, or plane. A charter-party is a contract formed to lease a ship to a merchant in order to facilitate the conveyance of goods.

❖ CHASE, SALMON PORTLAND

Salmon Portland Chase served from 1864 to 1873 as the sixth chief justice of the SUPREME COURT OF THE UNITED STATES. He was also a distinguished lawyer and politician, serving as U.S. senator from Ohio (1849–55 and 1860–61), governor of Ohio (1855–59), and secretary of the treasury (1861–64). Chase also sought the presidential nomination in every election between 1856 and 1872, even while sitting as chief justice. As a result, many criticized him for neglecting his judicial responsibilities in favor of his political ambitions. Despite his extrajudicial activities, Chase helped to navigate the Supreme Court through the dangerous political waters of Reconstruction, the period following the Civil War when the country attempted to rebuild itself and readmit the Southern states to the Union, preserving the Court's powers when a Republican-dominated Congress sought to control both the presidency and the Supreme Court. As chief justice, Chase presided over the 1868 IMPEACHMENT trial of President ANDREW JOHNSON. Chase was an ardent opponent of SLAVERY his entire life, and in his last years on the Court he fought against a narrow interpretation of the FOURTEENTH AMENDMENT, an interpretation that he surmised would allow future state legislatures to rescind the newly won rights of African Americans.

Chase was born January 13, 1808, in Cornish, New Hampshire, the eighth of 11 children in a family that had lived in New England since the 1600s. His father operated a tavern as well as a glass factory and distillery near Keene, New Hampshire, and died when Chase was nine years old. Chase had two prominent uncles who aided him in his father's absence: Dudley Chase, who served two terms as U.S. senator from Vermont (1813–17 and 1825–31), and Philander Chase, who became bishop of Ohio for the Episcopal Church and president of Cincinnati College. When he was 12 years old, Chase moved to Ohio to help on Philander Chase's farm. In return for his work, his uncle taught him Greek, Latin, and mathematics in his church school. Chase attended Cincinnati College for a year then eventually returned to his family in New Hampshire and entered Dart-

mouth College, graduating Phi Beta Kappa in 1826.

After college, Chase moved to Washington, D.C., where he studied law under Attorney General WILLIAM WIRT. He passed the bar exam and returned to Cincinnati to set up a legal practice. In Cincinnati, Chase's personal life was clouded by tragedy. He lost three wives between 1835 and 1852. He had one daughter by each of his last two wives. He remained single for the last part of his life and was a devoted father to his two daughters.

Chase strongly opposed slavery from his early years, a position that owed much to his deeply religious outlook. In Ohio, he was nicknamed the Attorney General for Runaway Negroes for his LEGAL REPRESENTATION of abolitionists who had aided runaway slaves from Kentucky. He even took two of these cases to the U.S. Supreme Court—*Jones v. Van Zandt*, 46 U.S. (5 How.) 215, 12 L. Ed. 122 (1847), and *Moore v. Illinois*, 55 U.S. (14 How.) 13, 14 L. Ed. 306 (1852)—both of which he lost. About his nickname, Chase commented that he “never refused . . . help to any person black or white, and that he liked the office nonetheless because there were neither fees nor salary connected with it.”

In 1849 Chase was elected to the U.S. Senate as a member of the Free-Soil party, which sought to keep new states in the west free of slavery. In the Senate, he and CHARLES SUMNER became leading spokesmen for the antislavery movement. He gained renown through his opposition to the 1854 KANSAS-NEBRASKA ACT, which allowed each territory to conduct a popular vote deciding whether it would permit slavery. Shortly thereafter, he helped to found the antislavery REPUBLICAN PARTY, and in 1855 he was elected governor of Ohio. He was considered for the 1856 Republican presidential nomination but was passed over, and in February 1860 he was reelected to the U.S. Senate. In May of the same year, he sought the presidential nomination at the Republican convention in Chicago. Chase and William H. Seward were considered the chief contenders for the nomination, but on the third ballot Chase's supporters gave their votes to ABRAHAM LINCOLN, thus giving the man from Illinois the nomination. After his election, Lincoln offered Chase and Seward the respective posts of secretary of the treasury and SECRETARY OF STATE. Chase then gave up his seat as U.S. senator.

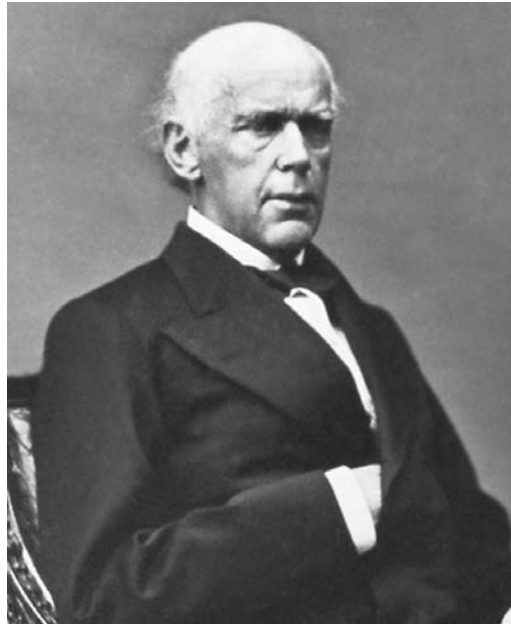
“NO MORE SLAVE
STATES, AND NO
MORE SLAVE
TERRITORY. LET
THE SOIL OF OUR
EXTENSIVE
DOMAIN BE KEPT
FREE.”
—SALMON
PORTLAND CHASE

At the Treasury, Chase faced the difficult task of financing a government that was engaged in a civil war. As part of this effort, he helped to establish a national banking system that gave the federal government its first effective national paper currency. Early in the war, Chase also advised military leaders who sought guidance from Washington, D.C. Chase was often unhappy with the decisions of Lincoln and other members of the cabinet and resolved that he could do better as president. He therefore opposed Lincoln for the Republican presidential nomination in 1864. Chase had the support of the more liberal wing of the Republican Party but he eventually withdrew his name from consideration, conceding to the more popular Lincoln. In June 1864, after several disagreements with Lincoln, Chase resigned from the cabinet.

Despite their differences, Lincoln admired Chase, and in December 1864 he nominated Chase to succeed ROGER B. TANEY as chief justice of the U.S. Supreme Court. He nominated Chase with the expectation that Chase would sustain two extraordinary measures taken by the Union during the war—the emancipation of the slaves and the issuance of paper money to repay debt. Both measures had caused great controversy, and as a result many Americans had lost confidence in the federal government.

Chase joined a Court with only three other justices who consistently supported Republican positions, Justices DAVID DAVIS, NOAH H. SWAYNE, and SAMUEL F. MILLER, all appointed by Lincoln. The Court was sharply divided over the various issues surrounding Reconstruction. The post-Civil War crisis deepened when Lincoln was assassinated on April 14, 1865, and Vice President Andrew Johnson became president.

Chase urged a moderate, conciliatory stance toward the defeated South, a stance that eventually alienated him from the Radical Republicans, a faction of the Republican party that sought to impose strict military measures and punitive new laws on the states of the former Confederacy. Like the Radical Republicans, Chase supported expanded freedoms for African Americans. Unlike them, however, he also supported such measures as ending MILITARY GOVERNMENT in the South, pardoning Confederate leaders, and quickly restoring Southern states to the Union. Chase's moderation helped to spare Jefferson Davis, president of the former Confederacy. After the war, Davis had been imprisoned in Virginia, part of Chase's circuit, where the



Salmon P. Chase.
LIBRARY OF CONGRESS

government hoped to try him for TREASON. Chase refused to hold a civil trial while the area was still under military rule. Although a GRAND JURY indicted Davis for treason, no action was taken against him, and eventually the government's case was dismissed.

Many of the U.S. Supreme Court's decisions during Chase's tenure involved the thorny issue of Reconstruction. In March 1867, Congress passed the Reconstruction Acts, which divided the South into five districts and imposed military rule. Reconstruction involved new problems of constitutional interpretation as to the federal government's powers over the states. At issue were questions not only of STATES' RIGHTS but also of the status of freed slaves. In one early decision, *EX PARTE MILLIGAN*, 71 U.S. (4 Wall.) 2, 18 L. Ed. 284 (1866), Chase voted with the Court in challenging Congress over Reconstruction. The Court held that Congress could not authorize military trials where civil courts were still operating. The majority opinion warned of the military's "gross usurpation of power"—a direct challenge to the Reconstruction Acts passed by Congress. However, in later decisions Chase voted to uphold congressional laws pertaining to Reconstruction. In the 1867 *Test Oath* cases—*Cummings v. Missouri*, 71 U.S. (4 Wall.) 277, 18 L. Ed. 356, and *Ex parte Garland*, 71 U.S. (4 Wall.) 333, 18 L. Ed. 366—Chase disagreed with the Court's decision to strike down laws requiring that priests and lawyers swear oaths of

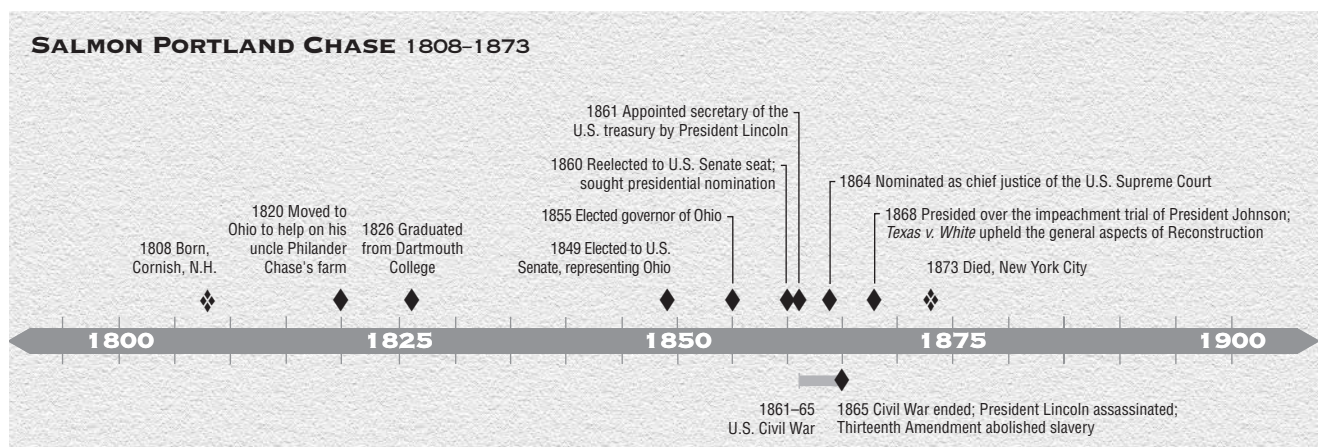
loyalty to the Union. In his dissenting opinion, joined by Chase, Justice Miller declared that no punishment was inflicted by requiring such an oath and that Congress could impose such requirements. Chase considered *TEXAS V. WHITE*, 74 U.S. (7 Wall.) 700, 19 L. Ed. 227 (1868) to be the most important case of his Supreme Court career. Chase, writing the Court's opinion, upheld the general principles of Reconstruction, asserting that Congress, and not the Supreme Court, possessed the authority to recognize state governments as legitimate.

When Southern states sought to make cases in court against executives of the federal government—including President Johnson and Secretary of War Edwin M. Stanton—Chase joined the majority in dismissing those cases, thereby aiding Congress in its Reconstruction fervor. In *Mississippi v. Johnson*, 71 U.S. (4 Wall.) 475, 18 L. Ed. 437 (1867), Mississippi, in the first court case ever to name the president of the United States as an individual party, attempted to prevent President Johnson from enforcing certain provisions of the Reconstruction Acts. Chase dismissed the case, holding that preventing the president from acting on congressional legislation would cause a “collision . . . between the executive and legislative departments of the government.” This, in turn, would give the House grounds to sue for the president's impeachment. This opinion proved prophetic, of course, when Congress did attempt to impeach President Johnson.

Chase's public standing improved when he ably handled the impeachment trial of President Johnson in March 1868. The Radical Republican-dominated Congress had voted to bring impeachment proceedings against Johnson after

he dismissed one of their favorite members of his cabinet, Secretary of War Stanton. The Senate sat as a court of impeachment with Chase presiding as judge. Chase frustrated Radical Republican aims by sticking to procedural rules and helping to bring about Johnson's acquittal, which passed the Senate by one vote. The public acclaim occasioned by his handling of the impeachment trial led Chase to make another try at the presidency in 1868. That time, however, Chase made known his desire to run as a Democratic candidate, largely because his moderate positions toward the South had endeared him to Democrats. His efforts failed.

Although the Supreme Court under Chase's leadership rarely questioned congressional Reconstruction measures after 1867, it did declare other federal legislation unconstitutional. Whereas before 1864 the Court had overturned acts of Congress only twice—in *MARBURY V. MADISON*, 5 U.S. (1 Cranch) 137, 2 L. Ed. 60 (1803), and *DRED SCOTT V. SANDFORD*, 60 U.S. (19 How.) 393, 15 L. Ed. 691 (1857)—between 1864 and 1873 it voided ten pieces of congressional legislation. These decisions included the first of the *Legal Tender Cases*, *Hepburn v. Griswold*, 75 U.S. (8 Wall.) 603, 19 L. Ed. 513 (1870)—but reversed later by *Knox v. Lee* and *Parker v. Davis*, 79 U.S. (12 Wall.) 457, 20 L. Ed. 287 (1871), heard concurrently—in which Chase questioned much of his earlier work for the Treasury when he declared the Legal Tender Acts (12 Stat. 345, 532, 709) unconstitutional. This decision created a temporary crisis of confidence in the national currency. The Court reversed this decision in 1871 after a change in membership, with Chase sticking to his views of two years earlier. Despite his participation in



such judicial activism, Chase at other times advocated judicial restraint. In his opinion for the *Licence Tax Cases*, 72 U.S. (5 Wall.) 462, 18 L. Ed. 497 (1868), in which he upheld a law that taxed the sale of lottery tickets throughout the United States, Chase wrote:

This court can know nothing of public policy except from the Constitution and the laws, and the course of administration and decision. It has no legislative powers. It cannot amend or modify any legislative acts. It cannot examine questions as expedient or inexpedient, as politic or impolitic. Considerations of that sort must, in general, be addressed to the legislature. Questions of policy determined there are concluded here.

ULYSSES S. GRANT won the presidential election of 1868, and from that time onward, the power of Radical Republicanism began to wane. Grant's appointments made the Court a more conservative body. In the *SLAUGHTER-HOUSE CASES*, 83 U.S. (16 Wall.) 36, 21 L. Ed. 394 (1873), Chase dissented from the Court's narrow interpretation of the Fourteenth Amendment, which was passed in 1868 and sought to protect the rights of African-Americans against infringements by state legislation. In its *Slaughter-House* decision, the Court held that the Fourteenth Amendment's *PRIVILEGES AND IMMUNITIES CLAUSE* protected only a few select rights of national citizenship, such as the right to travel. The Court did not interpret the amendment as guaranteeing more fundamental rights, such as the right to vote. Chase objected that the Court's opinion jeopardized newly won freedoms for African Americans. It would take another century before the Court would reverse this narrow interpretation of the Fourteenth Amendment.

Chase suffered a series of crippling strokes beginning in 1870. Despite his failing health, his daughter Catherine Chase and other admirers put forth his name for the 1872 presidential nomination. As had happened each time before, his nomination came to nothing. He died May 7, 1873, after suffering a stroke while visiting his daughter in New York City, and he was interred in Spring Grove Cemetery in Cincinnati. Although Chase did not achieve his highest goal of becoming president, he nevertheless held more high offices during his life than did any other Supreme Court justice besides James F. Byrnes and WILLIAM H. TAFT. More importantly, Chase successfully guided the Court through some of the most tumultuous years in the his-

tory of the nation. His actions as chief justice helped to preserve the powers of the Supreme Court in the face of serious congressional challenges during the extraordinary years following the Civil War.

FURTHER READINGS

- Blue, Frederick J. 1987. *Salmon P. Chase: A Life in Politics*. Kent, Ohio: Kent State Univ. Press.
- Cushman, Claire, ed. 1993. *The Supreme Court Justices: Illustrated Biographies, 1789–1993*. Washington, D.C.: Congressional Quarterly.
- Friedman, Leon, and Fred L. Israel, eds. 1969. *The Justices of the United States Supreme Court, 1789–1969: Their Lives and Major Opinions*. New York: Chelsea House.
- Hyman, Harold Melvin. 1997. *The Reconstruction Justice of Salmon P. Chase*. Lawrence: Univ. Press of Kansas.
- Niven, John. 1995. *Salmon P. Chase: A Biography*. New York: Oxford Univ. Press.

CROSS-REFERENCES

Loyalty Oath.

❖ CHASE, SAMUEL

Samuel Chase served as a justice of the U.S. Supreme Court from 1796 to 1811. In 1804 the U.S. House of Representatives voted to impeach Chase. However, the Senate did not uphold the House's action and Chase continued to serve on the Court until his death. Chase remains the only justice who has been the subject of *IMPEACHMENT* proceedings. Chase's decisions set several precedents for the Supreme Court, among them opinions establishing the supremacy of federal treaties over state laws and the establishment of *JUDICIAL REVIEW*, which is the Court's power to void legislation it deems unconstitutional, a power that makes the judiciary one of the three primary branches of the federal government (the other two branches being Congress and the president).

Known for his fiery and partisan manner, Chase was an active politician for most of his life. Before his career as a judge Chase served in the Maryland colonial and state legislatures. As a member of the *CONTINENTAL CONGRESS* in the 1770s, Chase was an outspoken advocate of American independence from Britain. He signed the Declaration of Independence in 1776. He opposed the Constitution as an Anti-Federalist (an opponent of federal government powers over the states) in the 1780s. Later, however, he became a member of the *FEDERALIST PARTY* and as a Supreme Court justice helped establish the powers of the federal judiciary. Chase generally

"I CANNOT
SUBSCRIBE TO THE
OMNIPOTENCE OF
A STATE
LEGISLATURE."
—SAMUEL CHASE

The Samuel Chase Impeachment Trial

Originally an anti-Federalist opposed to the ratification of the U.S. Constitution on grounds that it deprived the states of their independence and sovereignty, Supreme Court Justice Samuel Chase changed his tune about the propriety of a strong central government once he saw the **ANARCHY** and madness wrought by the French Revolution. By the time he was seated on the nation's high court, Chase had earned a reputation for his zealous defense of the **FEDERALIST PARTY** and his harsh criticism of the **DEMOCRATIC-REPUBLICAN PARTY**.

Generally speaking, the Federalist Party favored a strong national government, promoted legislation that advanced mercantile interests, supported the creation of a national bank, and believed that the federal government should be run by the most well-educated and affluent Americans. The Democratic-Republican Party generally favored stronger and more independent state governments, promoted legislation that advanced agricultural interests, opposed the creation of a national bank, and believed that the federal government should be run as a popular democracy, with its power being directly and closely derived from everyday, average Americans.

Chase's political beliefs endeared him to the White House while Federalist **JOHN ADAMS** was in office. But in 1800 Democratic-Republican **THOMAS JEFFERSON** defeated Adams to become the third president of the United States, and his Democratic-Republican Party took control of both houses of Congress. Chase had rankled Democratic-Republicans even before Jefferson took office. The beginning of the fall term of the Supreme Court in 1800 had to be postponed several weeks until Chase finished campaigning for John Adams in Maryland.

After Jefferson took office, Chase began openly assailing the president and his policies. Chase even took to condemning the Democratic-Republicans from the bench. In reading a charge to a Baltimore **GRAND JURY** in May 1803, Chase unleashed what one contemporary observer called "a tirade against Democratic-Republican legislation." Dismayed that Jeffersonians in Maryland had established universal male suffrage, Chase suggested to the grand jurors that "the country . . . [was] headed down the road to mobocracy, the worst of all popular governments" and that, if left in power, Jeffersonian Democratic-

Republicans would eliminate "all security for property, and personal liberty." The "modern doctrine . . . that all men in a state of society are entitled to equal liberty and equal rights," Chase warned, will bring "mighty mischief upon us." Finally, Chase said that congressional Democratic-Republicans had gravely compromised the independence of the judiciary by repealing the Judiciary Act of 1801, which lame-duck Federalist lawmakers had passed to create extra federal judgeships for President Adams to fill.

When Jefferson learned of Chase's grand jury charge on May 13, 1803, he immediately wrote Joseph Nicholson, one of his party leaders in the House of Representatives, suggesting action against Chase: "Ought this seditious and official act on the principles of our Constitution, and on the proceedings of a State, to go unpunished? And to whom so pointedly as yourself will the public look for the necessary measures? I ask these questions for your consideration, for myself it is better that I should not interfere." Nicholson quietly alerted his Democratic-Republican colleagues as to Jefferson's suggestion. Less than a year later, on March 12, 1804, the U.S. House of Representatives voted to impeach Chase by a 73 to 32 margin, naming John Randolph, a cousin of Jefferson and a mercurial politician in his own right, to head the House Managers responsible for prosecuting Chase in his trial before the Senate.

The eight **ARTICLES OF IMPEACHMENT** centered on three charges. The first charge arose from Chase's remarks before the Baltimore grand jury. The second charge stemmed from his conduct in the 1800 **TREASON** trial of John Fries. The third charge focused on Chase's conduct in the 1800 **SEDITION** trial of James Callender. Together, the House managers argued, these three charges represented judicial misconduct amounting to impeachable **HIGH CRIMES AND MISDEMEANORS**. Article II, Section 4 of the U.S. Constitution provides that the federal judges "shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors."

The least serious of the charges concerned Chase's conduct in the Fries trial. Fries was accused of treason for leading a riot over a dwelling tax in Pennsylvania in 1799. At the outset of the Fries trial, Chase had delivered a written opinion in which he



defined the meaning of treason as a **MATTER OF LAW**, without ever hearing argument from the lawyers in the case. Fries' attorneys were flabbergasted. They withdrew from the case because, they contended, Chase's conduct had irrevocably tainted the jury pool and made a fair trial impossible. Without counsel, Fries was easily convicted. In defense of his actions, Chase told the Senate that before the jury began deliberating in the Fries case, he had instructed the jurors that they had the final word on the definition of treason and the final say on how that definition would be applied to the facts of the case.

The most serious charge concerned Chase's conduct at the Callender trial. Callender had been indicted under the provisions of the Sedition Act for publishing a book accusing John Adams of being a British toady and a monarchist. Passed in 1798 by a Federalist Congress, the Sedition Act made it a crime to speak or write in such a way as to bring the president or Congress "into contempt or disrepute." Jeffersonians viewed the act as a political tool that the Adams administration used to muzzle its opponents.

During the impeachment trial, the House Managers presented evidence that Chase had prejudged the Callender case. They offered testimony that Chase, upon first reading Callender's book, had expressed the intent to present the offending passages to a grand jury himself and obtain an indictment against the defendant. Chase admitted threatening such action but denied following through on the threat and argued that the threat by itself did not constitute a high crime or misdemeanor. The House Managers also presented evidence that Chase failed to exclude a juror from sitting on the jury, even though the juror had formed an unfavorable opinion about Callender. Chase admitted that one juror indicated having formed such an opinion, but Chase said that the same juror also said he had not formed an opinion about the specific charges against the defendant.

The trial began on February 9, 1805, and the House Managers took ten full days to present the testimony of more than 50 witnesses. Chase did not testify during the proceedings but instead read a prepared statement that attempted to refute the charges. Closing arguments started on February 20 and lasted several days. Martin Luther, one of the country's most able and respected lawyers, represented Chase. Seven House Managers, led by Randolph, spoke for the prosecution. Thirty-Four senators weighed the evidence, 25 Democratic-Republicans

and 9 Federalists. **AARON BURR**, Jefferson's vice president, presided over the proceedings. Twenty-two votes, or two-thirds of the Senate, were necessary for conviction.

On March 1, 1805, the Senate announced its verdicts. Chase was acquitted on all counts. The closest vote was 19–15 in favor of convicting Chase for his anti-Democratic-Republican remarks to the Baltimore grand jury. Contemporary observers and historians have given Martin Luther a lion's share of the credit for the acquittals. His closing argument deeply impressed the Senate with ideas that Chase was a wronged man and that the integrity and independence of the federal judiciary would be imperiled by conviction. John Randolph's closing argument, by contrast, was described as so ineffective, disorganized, shrill, and blatantly partisan that even Thomas Jefferson was alienated.

The failure of the Senate to convict allowed Chase to return to the Supreme Court and serve 6 more years as an associate justice. More importantly, the acquittal deterred the House of Representatives from using impeachment as a partisan political tool. Some historians have suggested that the Chase impeachment trial was just a **TEST CASE** for House Democratic-Republicans who would have pursued other impeachments more aggressively.

The Chase impeachment is also said to have left a lasting impression on Chase's friend, Chief Justice **JOHN MARSHALL**, who spent much of his later career attempting to demonstrate that the nation's high court was separate from and even above party politics. In the final analysis, these two results represent flip sides of the same coin: one result increased the independence of the federal judiciary from interference by the legislative and executive branches, while the other result revealed the danger to that independence created by unelected federal judges who publicly attack the popular policies of democratically elected lawmakers.

FURTHER READINGS

- Presser, Stephen B. 1991. *The Original Misunderstanding: The English, the Americans, and the Dialectic of Federalist Jurisprudence*. Durham, NC: Carolina Academic.
- Rehnquist, William H. 1992. *Grand Inquests: The Historic Impeachments of Justice Samuel Chase and President Andrew Johnson*. Durham, NC: Carolina Academic.

CROSS-REFERENCES

High Crimes and Misdemeanors.



*Samuel Chase.*INDEPENDENCE
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avored a strong government ruled by an elite and he opposed the radical ideas of the French Revolution.

Chase was born April 17, 1741, in Somerset County, Maryland. His father, Thomas Chase, was a British-born clergyman of the Church of England. His mother, Matilda Walker Chase, died at Chase's birth. In 1744 the family moved to Baltimore where Chase grew up and received a classical education under his father's supervision. Chase studied law in Annapolis, Maryland, at the office of Attorney John Hall from 1759 until he was admitted to the bar in 1763. In 1762 Chase married Ann Baldwin. They had seven children, three of them dying in infancy. Ann died sometime between 1776 and 1779 and in 1784 Chase married Hannah Kitty Giles, with whom he had two daughters.

Chase established a successful law practice in Annapolis, the colonial capital and later the state capital of Maryland. He also became prominent in colonial politics. In 1764 he was elected to the lower house of Maryland's colonial legislature as a representative of Annapolis and by the early 1770s he had become well-known as a skillful legislator and outstanding leader, earning the nickname the Maryland Demosthenes after the ancient Greek orator and politician. He represented Maryland in the Continental Congresses from 1774 to 1778 and 1784 to 1785 and in 1778 served on as many as thirty committees in his tireless efforts to advance the cause of independ-

ence from Britain. He advocated a boycott of Britain and a political confederation of the colonies. He denounced those who opposed such policies as "despicable tools of power, emerged from obscurity and basking in proprietary sunshine." Together with BENJAMIN FRANKLIN and Charles Carroll, Chase traveled in 1776 to Montreal in an unsuccessful attempt to persuade Canada to join the American colonies in their revolt against England. He signed the Declaration of Independence in 1776 and worked for its acceptance in Maryland.

Chase helped draft the Maryland Constitution in 1776. He served in the Maryland House of Delegates for all but a year and a half between 1777 and 1788. When the U.S. Constitution came before the Maryland Convention for ratification Chase was in the minority of delegates who voted against it. He was an ardent Anti-Federalist at the time and argued that the Constitution concentrated power in the hands of the central government at the expense of the common individual. "I consider the Constitution," he wrote to a friend, "as radically defective in this essential: the bulk of the people can have nothing to say to it. The government is *not* a government of the people." He also argued that the Constitution failed to protect the FREEDOM OF THE PRESS and the right to trial by jury.

His opposition to the Constitution cost him his state legislative seat in 1788. The same year, Chase also went bankrupt after several of his speculative business ventures failed. These business risks had also damaged his political career, which had been plagued with charges that he used his office for personal gain. In 1778 he had been dismissed from the Continental Congress for two years for allegedly attempting to corner the flour market and profit from speculation on prices.

Dogged by BANKRUPTCY and charges of corruption, Chase sought refuge in the position of a local judge in Baltimore County in 1788. In 1791 he was concurrently appointed chief judge of the Maryland General Court. The state assembly, upset with his behavior on the bench and his holding two positions as judge, tried unsuccessfully to remove him from both positions.

Chase might seem to have been an unlikely choice for a Supreme Court justice. However, President GEORGE WASHINGTON nominated him to the Supreme Court on January 26, 1796. Over the years Washington had been impressed

by Chase's legal skills; he also admired the zeal with which Chase had worked for American independence during the Revolutionary War as well as Chase's efforts in support of Washington in the Continental Congress. James McHenry of Maryland, the secretary of war and a friend of Washington's, strongly recommended Chase to Washington. Moreover, the Supreme Court was not very powerful or prestigious at the time and it was difficult to find a lawyer who would accept a position on it. The job did not pay well and justices had to travel long distances to preside over circuit courts.

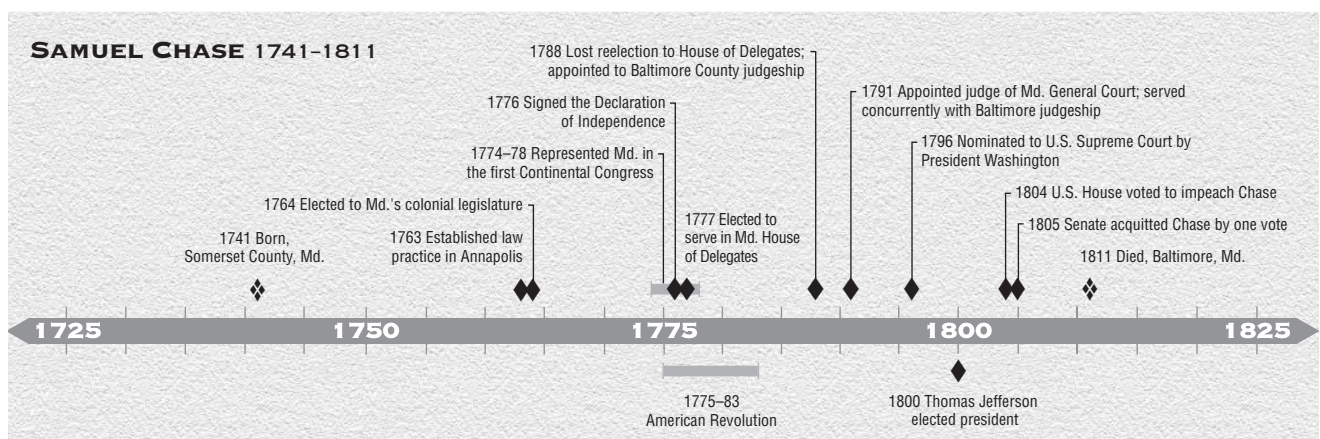
Chase took his seat on the Court on February 4, 1796. He was an Anti-Federalist at the time of the Constitution's ratification but during his tenure on the Court he became a persuasive advocate for the federal judiciary's power to review legislation. Two cases from Chase's first session on the Supreme Court—*Hylton v. United States*, 3 U.S. (Dall.) 171, 1 L. Ed. 556, and *Ware v. Hylton*, 3 U.S. (Dall.) 199, 1 L. Ed. 568, both decided in March 1796—stand out. In *Hylton v. United States*, the Court for the first time reviewed a law passed by Congress. Although the Court refrained from declaring its ability to void acts of Congress on constitutional grounds, its review nevertheless paved the way for *MARBURY V. MADISON*, 5 U.S. (1 Cranch) 137, 2 L. Ed. 60 (1803), which established the right of the Court to declare laws unconstitutional. At issue in *Ware v. Hylton* was whether a treaty decided by the federal government could take precedence over state laws. The U.S. government had made a treaty with Great Britain following the Revolutionary War that provided for the payment of debts owed to Great Britain. The states, meanwhile, had passed their own

laws on this issue, many of which enabled U.S. citizens to forgo repaying their debts to British citizens. JOHN MARSHALL, future chief justice of the Court, argued the case before the Court for the debtors. The Court ruled that the national treaty had precedent over state law. Of Chase's opinion in this case, constitutional scholar EDWARD S. CORWIN wrote in 1930 that it "remains to this day the most impressive assertion of the supremacy of national treaties over State laws."

In *Calder v. Bull*, 3 U.S. (Dall.) 386, 1 L. Ed. 648 (1798), Chase wrote a highly influential opinion for the Court. He defined a constitutional interpretation of EX POST FACTO laws—that is, retroactive laws, or laws that affect matters occurring before their enactment. Chase decided that the Constitution's prohibition of such laws extended only to criminal statutes that make prior conduct a crime, not to civil statutes. Chase also set a precedent by arguing that any law "contrary to the great first principles of the social compact" must be declared void. In his opinion, Chase emphasized that the Constitution limits the ability of legislators to disturb established property rights even when it does not expressly set forth such rights. Described by Presser as the natural-law basis of the Constitution, this argument broadened the Court's ability to test the constitutionality of legislation.

In *United States v. Callender*, Chase's Trial 65, Whart. St. Tr. 668, 25 F. Cas. 239, No. 14, 709 (C.C. Va.) (1800), Chase further defined the powers of the Court when he ruled that a jury could not decide the constitutionality of a law:

[T]he judicial power of the United States is the only proper and competent authority to decide whether any statute made by congress



(or any of the state legislatures) is contrary to, or in violation of, the federal constitution. . . . I believe that it has been the general and prevailing opinion in all the Union, that the power now wished to be exercised by a jury, belongs properly to the Federal Courts.

Chase also found himself embroiled in highly publicized political controversy for his actions both on and off the bench. For example, he made partisan speeches in 1796 for JOHN ADAMS, the Federalist party candidate for president, even after he had taken the position of Supreme Court justice. He also pushed for passage of the ALIEN AND SEDITION ACT, 1 Stat. 596 (1798), which outlawed “false, scandalous, and malicious” attacks on the government, the president, or Congress. The law was designed largely to discourage criticism of President Adams by the rival DEMOCRATIC-REPUBLICAN PARTY, whose most well-known leader was THOMAS JEFFERSON. In circuit court decisions in 1799 and 1800 Chase imposed harsh sentences on Democratic-Republicans who had published opinions critical of Adams’s Federalist administration. In several cases Chase worked to keep Anti-Federalists off juries. In the case of John Fries of Pennsylvania, a strong supporter of Jefferson who had led rebellions against federal excise taxes, Chase sentenced the accused to death. President Adams subsequently set aside the sentence.

In 1800 the political atmosphere in Washington, D.C., changed when Jefferson defeated Adams for the presidency of the United States. In 1803 Chase got into trouble with the Jeffersonian Democratic-Republicans when he severely criticized their policies in front of a Baltimore GRAND JURY. Chase explained that he objected to recent changes in Maryland law that gave more men the privilege of voting. Such changes as these advanced by Democratic-Republicans, Chase exclaimed, would

rapidly destroy all protection to property, and all security to personal liberty, and our Republican Constitution [would] sink into mobocracy, the worst of all possible governments. . . . The modern doctrines by our late reformers, that all men in a state of society are entitled to enjoy equal liberty and equal rights, have brought this mighty mischief upon us, and I fear that it will rapidly destroy progress, until peace and order, freedom and property shall be destroyed.

This angered Jefferson and other Democratic-Republicans and in 1804 the U.S. House of Representatives voted to impeach Chase on

charges of misconduct and bias in the SEDITION cases and of seditious criticism of Jefferson in the 1803 Baltimore grand jury charge. In 1805, the Democratic-Republican-controlled U.S. Senate moved to impeach Chase. Democratic-Republican senators charged that Chase had been guilty of judicial misconduct and that his partisan acts showed that he lacked political objectivity. Federalists defending Chase argued that he had committed no crime and that he could not be convicted under the constitutional definition of HIGH CRIMES AND MISDEMEANORS. The Senate failed to achieve the two-thirds majority necessary to impeach Chase and he remained on the Court until his death.

Chase’s acquittal set an important precedent for the Court—no Supreme Court justice could be removed simply because of his or her political beliefs. The failure to impeach Chase allowed Chief Justice Marshall to assert and define the powers of the Court in future decisions with more confidence. It was thus a step in the process of defining the independence of the Supreme Court as one of the three primary branches of U.S. government.

Chase avoided controversy in his subsequent work on the Court. His near impeachment served as a warning both to him and to other justices to be careful in their choice of words while in office. As Chase suffered in later years from declining health, Marshall became the most vocal justice and assumed Chase’s position as the lightning rod for the Court.

Chase died June 19, 1811, in Baltimore. He was interred in St. Paul’s Cemetery.

FURTHER READINGS

Dilliard, Irving. 1969. “Samuel Chase.” In *The Justices of the United States Supreme Court, 1789–1969: Their Lives and Major Opinions*, ed. Leon Friedman and Fred L. Israel. New York: Chelsea House.

Haw, James. 1993. “Samuel Chase.” In *The Supreme Court Justices: Illustrated Biographies, 1789–1993*, ed. Claire Cushman. Washington, D.C.: Congressional Quarterly.

CROSS-REFERENCES

Constitution of the United States “Federalists vs. Anti-Federalists” (In Focus); Fries’s Rebellion.

CHATTEL

An item of PERSONAL PROPERTY that is movable; it may be animate or inanimate.

Chattels are synonymous with goods or personalty.

Chattel Mortgage

A sample chattel mortgage

PROMISSORY NOTE

This document is to be used as a guideline only. HowStuffWorks does not guarantee that this document is suitable, or legally accurate, for all situations, and is not liable for any deficiencies in the document's content.

Borrower Information:

Name: _____ Date: _____
 Street Address: _____ Date of Birth: _____
 City: _____ Area code/Telephone Number: _____
 State: _____ Driver's License Number: _____
 Zip: _____ Social Security Number: _____

Lender Information:

Name: _____ Area code/Telephone number: _____
 Street Address: _____ If paying by check, make check payable to: _____
 City: _____ Send payments to: _____
 State: _____
 Zip: _____

Loan Information:

Loan Amount: _____ Loan Period: _____
 Interest Rate: _____ Payment Schedule: _____

1. **Promise to Pay.** For value received, _____ (Borrower) promises to pay _____ (Lender) \$ _____ and interest at the yearly rate of _____ % on the unpaid balance as specified below.
2. **Installments.**
 - ☐ Borrower will pay _____ payments of \$ _____ each at monthly/yearly/ _____ intervals on the _____ day of the month.
 - ☐ Borrower will pay one lump payment on _____ date.
 - ☐ Borrower will pay _____ payments of \$ _____ each at monthly/yearly/ _____ intervals with a final
 - ☐ balloon payment of _____ at the end of the loan term on _____ date.
3. **Application of Payments.** Payments will be applied first to interest and then to principal.
4. **Prepayment.** Borrower may prepay all or any part of the principal without penalty.
5. **Loan Acceleration.** If Borrower is more than _____ days late in making any payment, Lender may declare that the entire balance of unpaid principal is due immediately, together with the interest that has accrued.
6. **Security.**
 - ☐ This is an unsecured note.
 - ☐ Borrower agrees that until the principal and interest owed under this promissory note are paid in full, this note will be secured by a security agreement and Uniform Commercial Code Financing statement giving Lender a security interest in the equipment, fixtures, inventory and accounts receivable of the business known as _____.
 - ☐ Borrower agrees that until the principal and interest owed under this promissory note are paid in full, this note will be secured by the
 - ☐ mortgage
 - ☐ deed of trust covering the real estate commonly known as _____ and more fully described as follows: _____
7. **Collection Costs.** If Lender prevails in a lawsuit to collect on this note, Borrower will pay Lender's costs and lawyer's fees in an amount the court finds to be reasonable.

[continued]

A sample chattel mortgage (continued)

Chattel Mortgage

The undersigned and all other parties to this note, whether as endorsers, guarantors or sureties, agree to remain fully bound until this note shall be fully paid and waive demand, presentment and protest and all notices hereto and further agree to remain bound notwithstanding any extension, modification, waiver, or other indulgence or discharge or release of any obligor hereunder or exchange, substitution, or release of any collateral granted as security for this note. No modification or indulgence by any holder hereof shall be binding unless in writing; and any indulgence on any one occasion shall not be an indulgence for any other or future occasion. Any modification or change in terms, hereunder granted by any holder hereof, shall be valid and binding upon each of the undersigned, notwithstanding the acknowledgement of any of the undersigned, and each of the undersigned does hereby irrevocably grant to each of the others a power of attorney to enter into any such modification on their behalf. The rights of any holder hereof shall be cumulative and not necessarily successive. This note shall take effect as a sealed instrument and shall be construed, governed and enforced in accordance with the laws of the State of _____.

Witnessed: _____ Date: _____

Witnessed: _____ Date: _____

Witnessed: _____ Date: _____

Witnessed: _____ Date: _____

CHATTEL MORTGAGE

A transfer of some legal or equitable right in PERSONAL PROPERTY as security for the payment of money or performance of some other act. Chattel mortgages have generally been superseded by other types of SECURED TRANSACTIONS under the UNIFORM COMMERCIAL CODE (UCC), a body of law adopted by the states that governs commercial transactions.

The rights of the lender who gives a chattel mortgage are valid only against others who know or should know of the lender's security interest in the property. Since the borrower possesses the property, others cannot realize that a chattel mortgage exists without notice. Each state, therefore, has developed a system for recording instruments showing the existence of chattel mortgages for particular items of property; these records are usually located in the county clerk's office.

If a recording system is in existence a buyer is presumed to know about a mortgage. Once, therefore, the mortgage is properly recorded, the buyer obtains the debt in addition to the property.

CROSS-REFERENCES

Recording of Land Titles.

CHATTEL PAPER

A writing or writings that evidence both a monetary obligation and a security interest in or a lease of specific goods. In many instances chattel paper

will consist of a negotiable instrument coupled with a security agreement. When a transaction is evidenced both by such a security agreement or a lease and by an instrument or a series of instruments, the group of writings taken together constitutes chattel paper.

CROSS-REFERENCES

Secured Transactions.

❖ CHÁVEZ, CÉSAR ESTRADA

César Estrada Chávez, the son of Mexican American farm workers, became a well-known labor leader, founding the UNITED FARM WORKERS (UFW) union, which led a massive grape boycott across the United States during the 1960s. Chávez won wage increases, benefits, and legal protections for migrant farm workers in the western United States and fought to have dangerous pesticides outlawed.

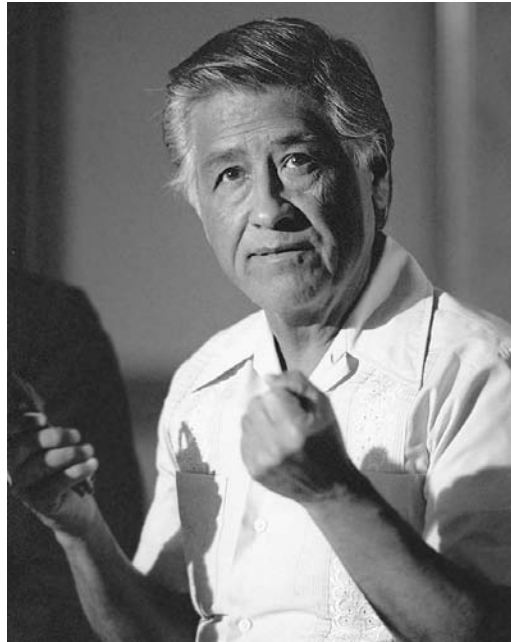
Chávez was born March 31, 1927, in Yuma, Arizona, one of five children in a family that lived on a small farm for a time. When he was a child, the family was pushed onto the road as migrant laborers when Chávez's parents lost the family farm during the Great Depression. Later, he often spoke of what he felt was the unjust way in which his family had lost their property through foreclosure. Chávez never went beyond the eighth grade, and he once said that he had attended over 60 elementary schools because of his family's constant search for work in the fields.

Chávez was exposed to labor organizing as a young boy, when his father and uncle joined a dried-fruit industry union during the late 1930s. The young Chávez was deeply impressed when the workers later went on strike. At age 19, Chávez himself picketed cotton fields but watched the union fail in its efforts to organize the workers.

After serving in the U.S. Navy during **WORLD WAR II**, he returned to California, where he married a woman named Helen Fabela. In 1952, the Los Angeles headquarters of organizer Saul Alinsky's Community Service Organization (CSO) decided to set up a chapter in San Jose, California, to work for **CIVIL RIGHTS** for the area's Mexican-Americans and Mexican immigrants. A parish priest supplied several names to CSO organizer Fred Ross, including that of Chávez, who was then living in one of San Jose's poorest and toughest neighborhoods—*Sal Si Puedes* (leave, if you can). Ross believed that Chávez could be the best grassroots leader he had ever encountered, so he sought Chávez out and eventually convinced him to join the group's efforts. Chávez began as a volunteer in a CSO voter registration drive and a few months later was hired as a staff member. He spent the next ten years leading voter registration drives throughout the San Joaquin Valley and advocating for Mexican immigrants who complained of mistreatment by police officers, immigration authorities, and **WELFARE** officials.

Chávez believed that unionizing was the only chance for farm workers to improve their working conditions. He resigned in 1962, increasingly frustrated because the CSO would not become involved in forming a farm workers' union. He immediately established the National Farm Workers Association, which later became the UFW, an affiliate of the **AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS (AFL-CIO)**. At the UFW's first meeting in September 1962, in Fresno, California, Chávez's cousin, Manuel Chávez, unveiled the flag that he and Chávez had designed for the new union—a black Aztec eagle in a white circle on a bold red background. The banner soon became the symbol of the farm workers' struggle.

When Chávez founded the UFW, field workers in California averaged \$1.50 per hour, received no benefits, and had no methods by which to challenge their employers. Under Chávez's leadership, the UFW won tremendous



César Chávez.
AP/WIDE WORLD
PHOTOS

wage increases and extensive benefits for farm workers, including medical and unemployment insurance and **WORKERS' COMPENSATION**. A strict believer in nonviolence, Chávez used marches, boycotts, strikes, fasts, and civil disobedience to force growers in California's agricultural valleys to the bargaining table. In 1968, Filipino grape pickers in Delano, California, struck for higher wages; several days later, the UFW joined the strike and initiated a boycott of California grapes. More than 200 union supporters traveled across the United States and into Canada, urging consumers not to buy California grapes. The mayors of New York, Boston, Detroit, and St. Louis announced that their cities would not buy nonunion grapes. By August 1968, California grape growers estimated that the boycott had cost them about 20 percent of their expected revenue. The boycott brought Chávez to the attention of national political leaders, including U.S. Senator **ROBERT F. KENNEDY**, who sought the **DEMOCRATIC PARTY** nomination for president before his assassination in 1968. Kennedy described Chávez as a heroic figure. In 1970, after its successful boycott, the UFW signed contracts with the grape growers.

In 1975, Chávez had a great success when the strongest law ever enacted to protect farm workers, the Agricultural Labor Relations Act (Cal. Lab. Code § 1140 et seq. [West]), was passed by the California Legislature. This law gave workers the right to bargain collectively and the right to

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WEAPONS."
—CÉSAR CHÁVEZ

seek redress for UNFAIR LABOR PRACTICES. Other regulations banned the use of tools that caused crippling back injuries, such as the short-handled hoe, and required growers to give workers breaks and to provide toilets and fresh water in the fields. Chávez was among the first to link workers' health problems to pesticides. He negotiated union contracts that prohibited growers from using DDT, and he targeted five leading pesticides that cause birth defects or kill upon contact.

At its peak during the 1970s the UFW had over 70,000 members. During the early 1980s, the UFW's influence began to wane and union membership dipped below ten thousand. Chávez blamed the decline in part on the election of Republican governors, who sided with the growers. In addition, Chávez decided to turn his efforts toward conducting boycotts rather than organizing workers, a move that was widely criticized and caused a split among the union's members. Chávez was also forced to defend himself against lawsuits stemming from UFW actions taken years before. In 1991, the union lost a \$2.4 million case when the U.S. Supreme Court declined to hear its appeal. The case stemmed from a 1979 Imperial Valley strike in which a farm worker was shot and killed (*Maggio, Inc. v. United Farm Workers of America*, 227 Cal. App. 3d 847, 278 Cal. Rptr. 250 [Cal. App. 1991], cert. denied, 502 U.S. 863, 112 S. Ct. 187, 116 L. Ed. 2d 148 [1991]).

In April 1993, Chávez returned to San Luis, a small town near his native Yuma, Arizona, to testify in the retrial of a lawsuit brought by Bruce Church, Inc., a large Salinas, California-based producer of iceberg lettuce. At the time Chávez testified, Bruce Church had extensive landholdings in Arizona and California, including the

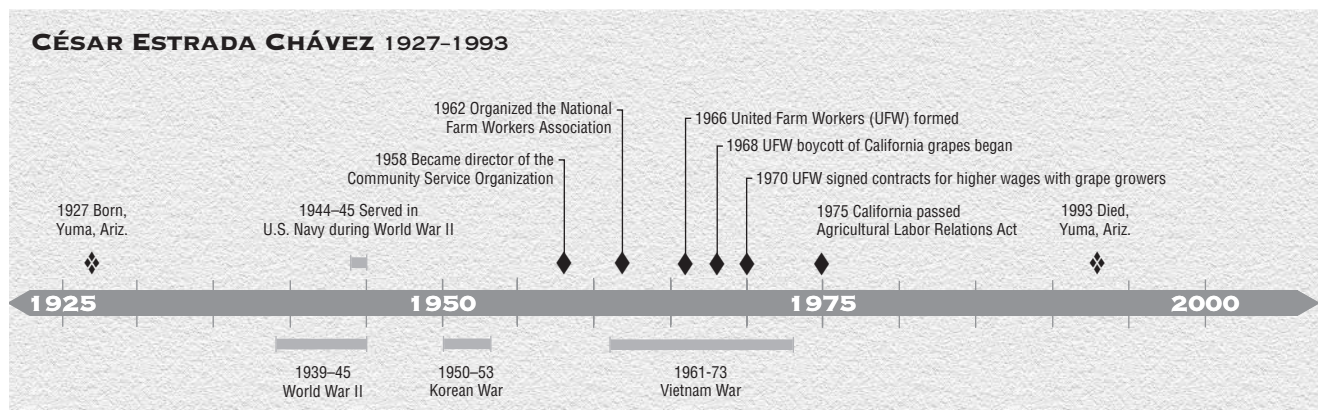
acreage east of Yuma that Chávez's parents had once owned. The company had won a \$5.4 million judgment for alleged damage caused by union boycotts, but an appellate court overturned the judgment and sent the case back to the trial court (*Bruce Church, Inc. v. United Farm Workers of America*, 816 P. 2d 919 [Ariz. App. 1991]). On April 22, Chávez finished his second day of testimony in Yuma County Superior Court. He returned to spend the night at the home of a family friend and died in his sleep.

Following Chávez's death, Lane Kirkland, president of the AFL-CIO, described the leader as instrumental in organized labor's efforts to improve the lot of the worker. "Always, César had conveyed hope and determination, especially to minority workers, in the daily struggle against injustice and hardship," Kirkland said. "The improved lives of millions of farm workers and their families will endure as a testimonial to César and his life's work."

In a 1984 speech to the Commonwealth Club in San Francisco, Chávez said, "Regardless of what the future holds for our union, regardless of what the future holds for farm workers, our accomplishment cannot be undone. The consciousness and pride that were raised by our union are alive and thriving inside millions of young Hispanics who will never work on a farm."

FURTHER READINGS

- Etulain, Richard W., ed. 2002. *Cesar Chavez: A Brief Biography with Documents* New York: Palgrav.
- Houle, Michelle, ed. 2003. *Cesar Chavez*. San Diego, Calif: Greenhaven Press.
- Matthiessen, Peter. 1969. *Sal Si Pudes: Cesar Chavez and the New American Revolution*. New York: Random House.
- Tracy, Kathleen. 2003. *Cesar Chavez*. Bear, Del.: Mitchell Lane.



CROSS-REFERENCES

Agricultural Law; Labor Union.

CHECK

A written order instructing a bank to pay upon its presentation to the person designated in it, or to the person possessing it, a certain sum of money from the account of the person who draws it.

A check must contain the phrase "pay to the order of." A check differs from a draft in that a check is always drawn on a bank, while a draft is an order for payment drawn on anyone, including a bank, a person, or a trading account with a company.

A *blank check* is one that the drawer signs but omits filling in the space for the name of the payee, the person in whose favor a check is drawn, or neglects to fill in the space for the amount to be paid.

A *cashier's check* is one that the bank draws on itself and is signed by an authorized bank official. The bank lends its credit to the purchaser of the check in order to facilitate its immediate use in commercial transactions. It is a direct obligation of the bank.

A *personal check* is one that the individual draws on his or her own account.

A *postdated check* is one that bears a date after its date of issuance, and is payable on the stated date.

A *traveler's check* is one purchased from a bank, express company, or other financial institution in various denominations, and is signed immediately by the purchaser in order to establish the form of his or her signature. The check cannot be treated as cash because of this first signature, but it is treated as cash upon the purchaser's second signature when he or she uses it. The genuineness of the second signature is established by comparing it to the initial signature. A traveler's check is similar to a cashier's check of the issuer.

CHECKOFF

A system whereby an employer regularly deducts a portion of an employee's wages to pay union dues or initiation fees.

The checkoff system is very attractive to a union since the collection of dues can be costly and time-consuming. It prescribes the manner in which dues are paid by deductions in earnings rather than through individual checks sent

directly to the union. Unions are thereby assured of the regular receipt of their dues.

A dues checkoff system is only lawful when voluntarily authorized by an employee. Unions have attempted to make alternatives to checkoff more onerous by requiring such practices as in-person delivery of dues checks to out-of-state locations. The NATIONAL LABOR RELATIONS BOARD has held that this type of inducement to checkoff is unlawful, however, as is the attempt by a union to collect assessments extending beyond periodic dues.

CROSS-REFERENCES

Labor Law; Labor Union.

CHEROKEE CASES

With the creation of the U.S. Constitution and a national government, political and legal policymakers had to determine how to deal with Native American tribes that resided on lands granted to them by treaties. By the 1820s, U.S. policy toward what was regarded as the "Indian problem" was one of forced removal and resettlement to lands to the west. In 1830, Congress passed the Indian Removal Act (4 Stat. 411) and appropriated \$500,000 for that purpose, signaling a determination to affect great changes.

The Cherokee, faced with growing hostility to their presence in the state of Georgia, were the first group of Native Americans to press their legal rights all the way to the U.S. Supreme Court. The Court issued decisions in two cases that are commonly known as the *Cherokee Cases*: *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1, 8 L. Ed. 25 (1831), and *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515, 8 L. Ed. 483 (1832). These are landmark cases that have continued to shape judicial analysis of disputes between tribal governments and state and federal governments. A key issue in both cases was the legal and political status of Native American tribes. The Cherokee claimed they were an independent, sovereign state, akin to a nation such as France or Great Britain. The Supreme Court rejected this claim in the first case but developed a different theory of sovereignty in the second decision.

In *Cherokee Nation*, the Cherokee asked the Court for an INJUNCTION that would prevent Georgia from executing laws that the tribe contended were being used to drive them off their land and to "annihilate" their existence as a political society. Chief Justice JOHN MARSHALL,

writing for the Court, acknowledged that the plight of the Cherokee and other Native American tribes was real: they were “gradually sinking beneath our superior policy.” The Court, however, could not base its analysis on sympathy.

Marshall concluded that before the merits of the Cherokee case could be considered, the Court had to determine whether it had jurisdiction to hear the case at all. The Cherokee argued they were a foreign state, pointing out that the tribe was a distinct political society that managed its own affairs, and that both the colonial and U.S. governments had regarded them as a state. The fact that the federal government negotiated treaties with the Cherokee seemed to be good evidence that the tribe was regarded as a foreign state.

The Court rejected these claims. Marshall stated that the Cherokee tribe was not a foreign state “in the sense of the Constitution” since the Indian Territory was located inside the geographical and jurisdictional boundaries of the United States. Moreover, the Cherokee had acknowledged, in the very treaties in question, that they were under the protection of the United States. Therefore, a better classification for the Cherokee and other Native American tribes was that of “domestic dependent nations.”

The Court noted that the Constitution was silent on the issue of permitting the federal courts to hear disputes between states and Indian nations. Chief Justice Marshall found that the COMMERCE CLAUSE empowers Congress to “regulate commerce with foreign nations, and among the several states, and with the Indian tribes.” This clause clearly distinguished between foreign nations and Native American tribes, making them distinct entities. The relation between the tribes and the United States resembled that of a ward and his guardian rather than of coequal states. Based on this analysis the Supreme Court dismissed the case for lack of jurisdiction.

The Cherokee returned to the Supreme Court the following year in *Worcester*, and this time had the opportunity of arguing the merits of the case. The issue in question involved Georgia legislation, which made it a crime for white persons to live in Cherokee country without first obtaining a license from the state. The state of Georgia indicted Samuel A. Worcester, a missionary of the American Board of Commissioners for Foreign Missions, and six other white persons for the offense of “residing within the

limits of the Cherokee nation without a license.” All seven defendants were convicted and sentenced to four years in prison.

Worcester and the other defendants appealed to the Supreme Court, arguing that Georgia had no jurisdiction over Cherokee sovereign territory. Under the Constitution, Congress has the power to regulate commerce with Native American tribes. The Indian Commerce Clause (Article I, Section 8, Clause 3) is the main source of federal power over Native American tribes. Worcester contended that this clause demonstrated that the federal government had exclusive jurisdiction over the establishment and regulation of intercourse with Native Americans. In addition, Worcester pointed to treaties between the United States and the Cherokee nation. No state could interfere with these agreements, which were the supreme law of the land.

Chief Justice Marshall, writing for the majority, agreed with Worcester’s legal position and found that the relationship between the existing treaties and the constitutionality of the state law were the paramount issues. Marshall reviewed the colonizing of the continent and noted that the colonists’ legal basis for claiming the land as their own was questionable:

It is difficult to comprehend the proposition, that the inhabitants of either quarter of the globe could have rightful original claims of dominion over the inhabitants of the other, or over the lands they occupied; or that the discovery of either by the other should give the discoverer rights in the country discovered, which annulled the pre-existing rights of its ancient possessors.

Marshall analyzed two treaties negotiated between the United States and the Cherokee. He found that these agreements recognized the national character of the Cherokee and their right of self-government. In addition, the treaties guaranteed their lands, and the federal government assumed the duty of protecting the integrity of the agreement.

Marshall then pointed out that from the beginning of the Republic, Congress had enacted a series of laws to regulate trade and intercourse with Native American tribes. These laws treated the tribes as nations, respected their rights, and sought to give the tribes the protection that the treaties stipulated. He concluded that “Indian nations are distinct political communities, having territorial boundaries, within which their authority is exclusive, and having a

right to all the lands within those boundaries, which is not only acknowledged, but guaranteed by the United States.”

In light of *Cherokee Nation*, a key question was whether a treaty negotiated with Native Americans should be treated differently than one negotiated with a foreign nation. Marshall concluded that it should not:

The words “treaty” and “nation” are words of our own language, selected in our diplomatic and legislative proceedings, by ourselves, having each a definite and well understood meaning. We have applied them to Indians, as we have applied them to the other nations of the earth. They are applied to all in the same sense.

Therefore, Marshall ruled that the Cherokee nation was a “distinct community occupying its own territory,” where the laws of Georgia had no force. The Cherokee were vested with the power to determine whether the citizens of Georgia could enter their territory, subject to treaty provisions and acts of Congress. He concluded that “the whole intercourse between the United States and this nation, is, by our constitution and laws, vested in the government of the United States.”

The decisions involving the Cherokee nation established the basic principles of Native American sovereignty. Native American tribes, by occupying North America, possessed some elements of preexisting sovereignty. This sovereignty could be diminished or eliminated by the United States, but not by the individual states. Finally, because the tribes had limited sovereignty and were dependent on the United States for protection, the United States had a trust responsibility. This meant that the U.S. government was a trustee with the duty of looking after the best interests of Native Americans, who were wards of the government.

The legal victory proved of little benefit to the Cherokee nation, however. The demand for land in Georgia grew more intense after gold was discovered on Cherokee land. More ominously, President ANDREW JACKSON, who favored the removal of the Cherokee nation and other Native American tribes, refused to enforce the Court’s decision. His refusal illustrated the problem that occurs when one branch of government refuses to honor the decision of another branch. During Jackson’s term of office (1829–37), 94 removal treaties were negotiated, demonstrating his resolve to move Native American tribes westward.

In December 1835, the Treaty of New Echota, signed by a small minority of the Cherokee, ceded to the United States all their land east of the Mississippi River for \$5 million. Though the tribe sought to repudiate the treaty, they were unsuccessful. Under the Indian Removal Act, the Cherokee were forced to leave Georgia beginning in 1838. Nearly a quarter of the 15,000 Cherokee died during the relocation. The Cherokee called the western trek to Oklahoma and Indian Territory the Trail of Tears.

FURTHER READINGS

- Berutti, Ronald A. 1992. “The Cherokee Cases: the Fight to Save the Supreme Court and the Cherokee Indians.” *American Indian Law Review* 17 (spring).
- Norgren, Jill. 1994. “The Cherokee Nation Cases of the 1830s.” *Journal of Supreme Court History* Annal 1994.

CROSS-REFERENCES

Native American Rights; “Worcester v. Georgia” (Appendix, Primary Document).

♦ CHESSMAN, CARYL

The execution of Caryl Chessman in the gas chamber of San Quentin Prison on May 3, 1960, ended a twelve-year struggle between Chessman and the justice system that culminated in international rage at the treatment of the prisoner.

Caryl Whittier Chessman was born May 27, 1921, in St. Joseph, Michigan. In 1948, Chessman was a 27-year-old parolee from Folsom Prison in California when he was arrested in Los Angeles as the prime suspect in the “red light bandit” incidents. The *MODUS OPERANDI* of the bandit was distinctive: he stalked desolate areas known to be popular with couples seeking a place to park and be alone. The bandit would walk toward a parked car carrying a red light similar to that used by police, and then assault the unsuspecting occupants of the car.

Chessman initially confessed to the crimes but later claimed that he was tortured into confessing. He professed his innocence but was indicted on eighteen separate counts, including KIDNAPPING, ROBBERY, sexual mistreatment, and attempted rape. Two of the charges carried a mandatory death sentence in California, based on the passage of the “Little Lindbergh” law in 1933 in response to the heinous kidnapping and murder of the infant son of aviator Charles Lindbergh and poet Anne Morrow Lindbergh. The law required CAPITAL PUNISHMENT for a kidnapping in which the victim was inflicted with physical harm.



Caryl Chessman appealed his conviction 42 times, but it was never overturned. He was executed in 1960 after 12 years on death row.

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PHOTOS

The trial lasted two weeks, and Chessman served as his own counsel, aided by an attorney provided by the court. The jury returned a verdict of guilty on seventeen of the charges, including those imparting the death sentence.

Chessman was transferred to San Quentin Prison in California pending an appeal to the state supreme court. The court affirmed the decision, and Chessman was sent to cell 2455 on death row to await his execution scheduled for March 28, 1952.

Chessman appealed his case on the grounds that he was not granted **DUE PROCESS OF LAW**. He based his appeal on the fact that the transcript of his trial was inaccurate. The original court reporter had died suddenly, leaving two-thirds of the testimony to be transcribed. Chessman argued that the new reporter did not accurately decipher the old-style shorthand used by his predecessor. Chessman had also requested daily transcripts of the testimony, but this request was denied.

Chessman's plea was rejected, and during the next twelve years he submitted his appeal forty-two times before various federal and state appellate courts, including the **SUPREME COURT OF THE UNITED STATES**. He remained on death row for twelve years, during which he wrote several books describing his life there. He was scheduled to face the gas chamber on nine separate occasions, but he always received a reprieve before the execution.

Chessman argued that his predicament was an example of **CRUEL AND UNUSUAL PUNISHMENT**, which violated his constitutional rights. The case began to attract international and

political attention and at one point, Governor Edmund Brown of California called for a stay of execution by order of the **STATE DEPARTMENT** to ensure a peaceful tour of South America by President **DWIGHT D. EISENHOWER**.

Time was running out for Chessman by 1960. Although his lawyers claimed to have found new evidence in favor of their client, the courts denied a plea for a writ of **HABEAS CORPUS**. He was again scheduled for execution in May 1960. Protests were heard from several countries and famous people, including Aldous Huxley and Albert Schweitzer. Despite these efforts, Chessman was executed on May 3, 1960.

The death of Caryl Chessman incited a wave of anti-American sentiment with protests in several countries.

FURTHER READINGS

Hamm, Theodore. 2001. *Rebel and a Cause: Caryl Chessman and the Politics of the Death Penalty in Postwar California, 1948-1974*. Berkeley: Univ. of California Press.

CROSS-REFERENCES

Lindbergh Kidnapping; Capital Punishment.

CHICAGO EIGHT

The trial of the Chicago Eight exemplified the state of turmoil that existed in the United States in 1968. Because the Chicago conspiracy trial opened with eight defendants, this group of radical leaders is sometimes referred to as the Chicago Eight. The trial of one defendant, **BOBBY SEALE**, was severed from that of the other seven; hence the name Chicago Seven is a name also used to refer to this trial.

The assassinations of Senator **ROBERT F. KENNEDY** and Dr. **MARTIN LUTHER KING JR.**, occurred within months of each other. The escalation of the **VIETNAM WAR** was unpopular with many U.S. citizens and a number of young men of draft age burned their draft registration cards or fled to Canada rather than risk their lives for a cause in which they did not believe. Protest demonstrations were prevalent. The turbulence in the United States culminated in events at the Democratic Presidential Convention in Chicago, Illinois, which led to a sensational courtroom trial.

Chicago was controlled politically by Mayor Richard J. Daley and his Democratic followers. When Chicago was chosen as the site for the Democratic Convention, groups of protestors decided to seize the opportunity to converge on

that city to stage demonstrations and publicly espouse their views against U.S. participation in the Vietnam War. The protestors arrived from all over the nation, establishing a camp at Lincoln Park.

Mayor Daley was opposed to any incident that might cause a disturbance of the convention proceedings and taint the reputation of the city of Chicago. The demonstrators were denied a permit to assemble in Lincoln Park and were told to disband. When they refused the Chicago police tried to forcibly eject them from the park. When these efforts failed the police used tear gas and billy clubs. A riot resulted, and as news of the Chicago violence reached the nation, other groups went to Chicago to join the protestors. When the number of demonstrators reached 20,000, the NATIONAL GUARD was enlisted to quell the violence. Eight radical leaders emerged as the organizers of the demonstration movement: Tom Hayden and Rennie Davis, who had established the group known as Students for a Democratic Society, or SDS; Abbie Hoffman and Jerry Rubin, founders of the Youth International Party, or "Yippies"; Bobby Seale, leader of the BLACK PANTHER PARTY; David Dellinger, staunch opponent of the Vietnam War and renowned pacifist; and John Froines and Lee Weiner, two teachers.

In 1968 Congress enacted legislation prohibiting conspiracies to cross state boundaries with the intent of inciting a riot. The eight men were brought to trial at the Federal Court Building in Chicago in 1969 and were accused of breaking this new law.

The trial evoked a number of controversial issues. The purpose of the protest was to air the views of the participants against the Vietnam War. The blame for the ensuing riots, however, could not be clearly placed on the demonstrators or on the actions of the police to disband them. While the Constitution provides for the basic freedoms of speech, protest, and assemblage, the terms of the new law—particularly concerning the actual act of conspiring to riot—were not clearly defined in relation to these rights.

Federal district court judge Julius J. Hoffman was selected to try the case. The U.S. attorney for the prosecution for Illinois was Thomas Foran. A number of defense lawyers were retained, but the two most prominent were WILLIAM KUNTSLER and Leonard Weinglass. Armed protection was provided at the court building to discourage disturbances.

Judge Hoffman proved to be a difficult man. Four defense lawyers notified the judge by telegram that they had decided to withdraw from the case; Hoffman charged them with CONTEMPT of court for not informing him personally of their intentions. The charges were eventually dropped but not before protests from lawyers all over the nation were filed. Bobby Seale's lawyer became ill, and Seale asked for either a delay of his trial until his lawyer could participate or permission to defend himself. Hoffman denied both requests.

The prosecution began by stating three charges against the Chicago Eight: (1) they had persuaded people to travel to Chicago for the purpose of joining protest demonstrations;



Six members of the Chicago Eight at a 1970 press conference: (seated, l-r) Rennie Davis, Jerry Rubin, and Abbie Hoffman; (standing, l-r) Lee Weiner, Bob Lamb, and Thomas Hayden.

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PHOTOS

(2) they had influenced their followers to defy law enforcement officials; and (3) they had encouraged a riot. The defense attorneys countered that the actions of the demonstrators were in accordance with the basic freedoms granted by the Constitution.

Police informants were called as witnesses for the prosecution. Bobby Seale asked to be allowed to cross-examine the witnesses, and again the argument flared between Seale and Hoffman as to Seale's rights to representation by counsel. The other defendants voiced agitation during the early days of the trial, but exchanges between Bobby Seale and Judge Hoffman were particularly vehement, and Hoffman had Seale handcuffed to a chair and gagged. Hoffman claimed that the court had the right to employ this tactic, but it was the first time it had been utilized during a trial of any consequence in the United States. Seale still found ways to interrupt the proceedings, and Hoffman declared a mistrial in Seale's case and imposed on Seale sentence of four years for contempt of court.

The seven remaining defendants and their lawyers became enraged; the trial became a shouting match between all involved, with insults being flung at the judge by the defendants. Hoffman began ruling in favor of motions presented by the prosecution and against those for the defense.

The trial came to a close on February 14, 1970. As the jury deliberated, Hoffman charged all the defendants and attorneys Kunstler and Weinglass with contempt of court and passed sentences ranging from 2 months 8 days, to 29 months 13 days. Kunstler, however, received the longest sentence of 4 years 13 days. Judge Hoffman also refused to permit bail.

The jury finally reached a verdict. The seven defendants were cleared of conspiracy charges, but five of them were found guilty of crossing state boundaries to incite a riot and were given prison sentences of five years and fined \$5,000. Defendants Froines and Weiner were acquitted of all charges.

The Chicago Eight appealed to higher courts, which resulted in granting of bail, a reversal of all contempt charges—including those of the two lawyers—and a new trial for the convicted five. The proceedings of the new trial were private and lacked the sensationalism of the earlier hearings, and although the defendants were again found guilty, their sentences were suspended.

FURTHER READINGS

- Babcox, Peter, and Deborah Babcox, eds. 1969. *The Conspiracy: The Chicago Eight Speak Out!* New York: Dell.
- Dellinger, David. 1993. *From Yale to Jail*. New York: Pantheon Books.
- Epstein, Jason. 1970. *The Great Conspiracy Trial: An Essay on Law, Liberty, and the Constitution*. New York: Random House.
- Hayden, Tom. 1988. *Reunion: A Memoir*. New York: Random House.
- . 1970. *Trial*. New York: Holt, Rinehart & Winston.
- Schultz, John. 2000. "The Substance of the Crime Was a State of Mind"—How a Mainstream, Middle Class Jury Came to War with Itself (Chicago Conspiracy Trial of 1969–1970, Also Known as the Trial of the Chicago 8 or Chicago 7)." *UMKC Law Review* 68 (summer).

CROSS-REFERENCES

Freedom of Association and Assembly; Freedom of Speech; Right to Counsel.

CHICAGO JURY PROJECT

The Chicago Jury Project was an investigation of the role and functions of the jury in the U.S. legal system. The inquiry was conducted by the University of Chicago Law School with funding from the Ford Foundation. Its primary goal was to join the social scientist and the lawyer in a working relationship in which they could share their unique skills and experiences with each other, along with amassing pertinent data to answer some interdisciplinary questions, in order to create new ideas and theories in their respective fields.

The topics to be studied included the differences between the roles of the judge and the jury; the jury's determination of the issue of insanity when it is asserted as a defense; the influence of the existence of insurance upon the minds of the jurors when deciding a case; and the jury's comprehension of, and attitude toward, the concept of contributory NEGLIGENCE in jurisdictions where it was law. The methodology by which such information was gleaned included personal conversations with jurors after the conclusion of trials as well as questionnaires. The rationales underlying the processes by which jurors were selected and examined on VOIR DIRE were additional subjects of study. The views of the general public and members of the legal profession regarding juries were solicited. There was also an examination of the costs inherent in the operation of the jury system.

The Chicago Jury Project encountered one problem as a result of the techniques used in collecting data. With the permission of the pre-

siding judge and counsel, the staff made recordings of the deliberation of jurors in five civil cases brought to trial before the federal district court sitting in Wichita, Kansas. Such recordings were to be used in determining whether interviews conducted with jurors after a trial accurately described the events occurring in the jury room. The jurors were not, however, informed of the recordings. When it was revealed that such recordings were made, the attorney general of the United States publicly censured the project and the SENATE JUDICIARY COMMITTEE convened a special hearing to investigate such unorthodox and questionable research methods. State legislatures responded to such disclosures by enacting statutes proscribing the recording of jury deliberations.

The findings of the Chicago Jury Project are discussed in the books *Delay in the Court* and *The American Jury*, published in 1959 and 1966, respectively.

CHICAGO SCHOOL

Among contemporary movements in U.S. law, few have had as much influence as the Chicago school. This school of thought helped revolutionize legal thinking on economics from the 1970s to the 1980s. At the heart of its philosophy is the idea that economic efficiency should be the goal of national policy and law. This argument left its mark, in particular, in the area of antitrust, where the Chicago school swayed the U.S. Supreme Court for more than a decade. Although they received less attention in the 1990s than they had earlier, the school's leaders continued to rank among the preeminent—and more controversial—figures on the legal landscape.

The Chicago school takes its name from the University of Chicago, with which most of its core proponents were all affiliated at one time. These include Professor Ronald H. Coase, Judge Frank H. Easterbrook, Professor Richard A. Epstein, Professor Daniel R. Fischel, Judge RICHARD A. POSNER, and Judge Ralph K. Winter Jr. ROBERT H. BORK, another prominent member, was a professor at Yale. The early work of the Chicago school, produced in the 1960s, built on scholarship by Professor Aaron Director. Director's specialty had been antitrust, the area of law that addresses UNFAIR COMPETITION in business. Antitrust has a long history, in which ideas have come and gone. Through the late 1960s, the U.S. Supreme Court took a harsh view of

restraints on trade. The Court ruled that certain anticompetitive practices were per se illegal—so harmful to competition that they need not even be evaluated on a case-by-case basis.

The Chicago school urged the Court to take another look. Scholars of the school praised economic efficiency. If they could show, for instance, that certain restraints on trade were actually a result of efficient competition, then why should these practices be considered illegal by courts? Underlying this view was the contention that markets could take care of themselves without the need for heavy regulation. It was not long before the Chicago school's ideas began to influence the Supreme Court. In 1977, the Court abandoned its reliance on per se rules in *Continental T.V. v. GTE Sylvania*, 433 U.S. 36, 97 S. Ct. 2549, 53 L. Ed 2d 568, and turned instead to a rule of “reason,” opening a new era in ANTITRUST LAW.

Throughout the 1970s, the Chicago school continued to refine its economic theory in numerous essays and treatises such as Posner's *Antitrust Law* (1976) and Robert H. Bork's *The Antitrust Paradox* (1978), both of which attacked the idea that big business is necessarily bad. The school argued that an unrestricted market, in which producers and consumers acted freely, will operate rationally and efficiently all by itself. The hands-off implications of this picture had broad significance for corporate law and national policy. Chicago school theory influenced the Reagan administration's attack on government regulation.

President RONALD REAGAN appointed several Chicago school members to the federal bench: Posner in 1981 to the Seventh Circuit, Winter in 1982 to the Second Circuit, and Easterbrook in 1985 to the Seventh Circuit. Bork, a judge on the U.S. Court of Appeals for the District of Columbia Circuit, was nominated to the U.S. Supreme Court in 1987. However, widespread protest over his views led the U.S. Senate to block his confirmation.

In the 1990s the Chicago school continued to provoke lively debate. Bork, despite resigning from the judiciary in 1988 following his failed nomination to the Supreme Court, attracted attention with publications such as his 1990 book *The Tempting of America: The Political Seduction of the Law*. But in the area of antitrust, at least, the heyday of the school's influence was over. For years, the Chicago school's theory had been undergoing a reevaluation, with critics

questioning its faith in government nonintervention.

FURTHER READINGS

- Katz, Ronald S., and Janet S. Arnold. 1993. "Kodak v. Image Technical Services: Downfall of the Chicago School of Antitrust Economics." *American Law Institute* (January 21).
- Posner, Richard A. 1975. "The Economic Approach to Law." *Texas Law Review* 53.
- Protos, Jill Dickey. 1993. "Kodak v. Image Technical Services: A Setback for the Chicago School of Antitrust Analysis." *Case Western Reserve Law Review* (spring).
- Rosenthal, Douglas E. 1993. "Reevaluating the Chicago School Paradigm for Promoting Innovation and Competitiveness." *Canada-United States Law Journal*.
- Simpson, Alexander G. 1993. "Shareholder Voting and the Chicago School: Now Is the Winter of Our Discontent." *Duke Law Journal* (October).

CHIEF JUSTICE

The presiding, most senior, or principal judge of a court.

Although the office of the chief justice of the SUPREME COURT OF THE UNITED STATES is a prestigious position, the functions and powers of the chief justice are not well-defined. The U.S. Constitution contains only one mention of the chief justice, in Article I, Section 3, and it concerns the IMPEACHMENT of the president: "When the President of the United States is tried, the Chief Justice shall preside." The JUDICIARY ACT OF 1789, which created the Supreme Court, specified only "[t]hat the supreme court of the United States shall consist of a chief justice and five associate justices" (1 Stat. 73). As a result, each individual who has occupied the post has had the freedom to shape and define the role.

Like the associate justices of the Supreme Court, the chief justice is appointed for life by the president but must first be confirmed by the Senate. Prior service on the Court is not required, though several chief justices, including HARLAN F. STONE and WILLIAM H. REHNQUIST, served as associate justices before becoming chief justice. Many chief justices served in other branches of government before joining the Court: JOHN MARSHALL and ROGER B. TANEY were cabinet members, EDWARD D. WHITE was a U.S. senator, and EARL WARREN was governor of California. Other chief justices came to the Court as judges from lower federal and state courts or practiced law prior to their appointments.

The chief justice's primary duty is to preside over all Supreme Court proceedings, both those open to the public and those held in private. The chief justice traditionally opens and closes the public sessions in which the Court hears oral arguments. He or she wields the most influence in closed-door proceedings. The chief justice determines which decisions the Court will discuss in conferences where the justices choose the cases they will accept for review. The chief justice also leads the private discussions on cases recently argued. After presenting the facts and issues in such a case and the relevant law, the chief justice states her or his conclusions and casts a vote. The discussion continues in order of seniority, with each associate justice presenting her or his views and vote.

If the chief justice is in the majority after voting has concluded, he or she assigns the writing of the opinion in the case. This critical responsibility provides the chief justice with an important opportunity to influence the outcome of the case, since he or she can assign the case to a justice who he or she believes has similar views. The chief justice may also assign the authorship of the opinion to himself or herself, as many chief justices have done in cases involving far-reaching constitutional issues. If the chief justice is not in the majority, the senior justice in the majority has the power of assignment.

The chief justice is also responsible for the overall management of the Supreme Court, including the oversight and supervision of the Court's clerks, marshal, reporter of decisions, librarian, and other officers, and the handling of various personnel management issues. The chief justice estimates the Court's budget and designates the officials to present it to the appropriate congressional committees. Although the chief justice is expected to avoid overt participation in political activities, many have acted as public advocates for the Court before Congress. WILLIAM H. TAFT, the only chief justice to have also served as president, actively promoted the Judiciary Act of 1925. That landmark legislation, designed to help the Court manage its large backlog of cases, gave the Court almost unlimited discretion to decide the cases it would accept for review. WARREN E. BURGER, chief justice from 1969 to 1986, lobbied for the establishment of a national court of appeals to help alleviate the backlog of federal cases and actively promoted other judicial reform proposals. In 1988, Rehnquist, appointed to succeed Burger,

Succession of Supreme Court Justices

This table is designed to aid the user in identifying the succession of justices on the Supreme Court. Read vertically, the table lists the succession of justices in each position of the Court and the years served by each.

The number of justices constituting the Supreme Court has varied. Initially, the Court comprised six justices, but Congress increased the number to seven in 1807, to nine in 1837, and then to ten in 1863. In 1866, Congress reduced the number of justices to eight in an effort to prevent President Andrew Johnson from making any appointments to the Court. As a result, the positions of John Catron, who died in 1865, and James M. Wayne, who died in 1867, were abolished. In 1869, Congress raised the number of justices to nine, where it has remained. William Strong, the first justice appointed under the new statute, has generally been considered to have succeeded Wayne. Thus, Catron is the only person who has held the tenth seat on the Court.

Chief Justices	Associate Justices								
Jay 1789–1795	J. Rutledge 1789–1791	Cushing 1789–1810	Wilson 1789–1798	Harrison ^f 1789	Iredell 1790–1798	Todd 1807–1826	Field 1863–1897	McKinley 1837–1852	Catron 1837–1865
J. Rutledge ^a 1795	T. Johnson 1791–1793	Story 1811–1845	Washington 1798–1829	Blair 1789–1796	Moore 1799–1804	Trimble 1826–1828	McKenna 1898–1925	Campbell 1853–1861	
Ellsworth 1796–1799	Paterson 1793–1806	Woodbury 1845–1851	Baldwin 1830–1844	S. Chase 1796–1811	W. Johnson 1804–1834	McLean 1829–1861	Stone ^h 1925–1941	Davis 1862–1877	
J. Marshall 1801–1835	Livingston 1806–1823	Curtis 1851–1857	Grier 1846–1870	Duvall 1812–1835	Wayne 1835–1867	Swayne 1862–1881	R. Jackson 1941–1954	Harlan 1877–1911	
Taney 1836–1864	Thomson 1823–1843	Clifford 1858–1881	Bradley 1870–1892	Barbour 1836–1841	Strong 1870–1880	Matthews 1881–1889	Harlan 1955–1971	Pitney 1912–1922	
S. P. Chase 1864–1873	Nelson 1845–1872	Gray 1882–1902	Woods 1881–1887	Daniel 1841–1860	Shiras 1892–1903	Brewer 1889–1910	Rehnquist ⁱ 1971–1986	Sanford 1923–1930	
Waite 1874–1888	Hunt 1873–1882	Holmes 1902–1932	L. Lamar 1888–1893	Miller 1862–1890	Day 1903–1922	Hughes 1910–1916	Scalia 1986–	Roberts 1930–1945	
Fuller 1888–1910	Blatchford 1882–1893	Cardozo 1932–1938	H. Jackson 1893–1895	Brown 1891–1906	Butler 1922–1939	Clarke 1916–1922		Burton 1945–1958	
E. White ^b 1910–1921	E. White ^d 1894–1910	Frankfurter 1939–1962	Peckham 1895–1909	Moody 1906–1910	Murphy 1940–1949	Sutherland 1922–1938		Stewart 1958–1981	
Taft 1921–1930	Van Devanter 1911–1937	Goldberg 1962–1965	Lurton 1910–1914	J. Lamar 1911–1916	Clark 1949–1967	Reed 1938–1957		O'Connor 1981–	
Hughes 1930–1941	Black 1937–1971	Fortas ^e 1965–1969	McReynolds 1914–1941	Brandeis 1916–1939	T. Marshall 1967–1991	Whittaker 1957–1962			
Stone ^c 1941–1946	Powell 1971–1988	Blackmun 1970–1994	Byrnes 1941–1942	Douglas 1939–1975	Thomas 1991–	B. White 1962–1993			
Vinson 1946–1953	Kennedy 1988–	Breyer 1994–	W. Rutledge 1943–1949	Stevens 1976–		Ginsburg 1993–			
Warren 1953–1969			Minton 1949–1956						
Burger 1969–1986			Brennan 1956–1990						
Rehnquist ^g 1986–			Souter 1990–						

^aAppointment not confirmed.

^bAssociate justice, 1894–1910.

^cAssociate justice, 1925–1941.

^dLater chief justice, 1910–1921.

^eAppointment as chief justice but not confirmed; resigned.

^fDeclined appointment.

^gAssociate justice, 1971–1986.

^hLater chief justice, 1941–1946.

ⁱLater chief justice, 1986–.

was instrumental in the passage of the Judicial Improvements and Access to Justice Act (Pub. L. 100–702, Nov. 19, 1988, 102 Stat. 4642), which was intended to make the appeal process more efficient by reducing the Supreme Court's mandatory appeal jurisdiction.

Another responsibility of the chief justice is to oversee the administration of the entire federal judiciary. In 1922, Congress established the JUDICIAL CONFERENCE OF THE UNITED STATES, the governing body for the administration of the federal judicial system. As chair of the confer-

ence, the chief justice presides over the conference's biannual meeting, manages the agenda, and appoints committees. The chief justice also chairs the ADMINISTRATIVE OFFICE OF THE U.S. COURTS, created in 1939 during Taft's term as chief justice, and the FEDERAL JUDICIAL CENTER, established in 1967 under Warren. Like the Judicial Conference, these organizations are also involved in the administration and management of the federal judiciary with the chief justice playing a major role in the selection of directors and other personnel to run them.

Congress has also provided chief justices with a number of duties not specially related to the judiciary. The chief justice traditionally serves as a member of the Board of Regents of the Smithsonian Institution and sits on the Board of Trustees of the National Gallery of Art, both located in Washington, D.C.

FURTHER READINGS

Congressional Quarterly. 1989. *Guide to the U.S. Supreme Court*. 2d ed. Washington, D.C.: Congressional Quarterly.

Witt, Elder. 1993. *The Supreme Court A to Z: A Ready Reference Encyclopedia*. Vol. 3 of the Encyclopedia of American Government series. Washington, D.C.: Congressional Quarterly.

CHILD ABUSE

Physical, sexual, or emotional mistreatment or neglect of a child.

CHILD ABUSE has been defined as an act, or failure to act, on the part of a parent or caretaker that results in the death, serious physical or emotional harm, SEXUAL ABUSE, or exploitation of a child, or which places the child in an imminent risk of serious harm (42 U.S.C.A. § 5106g). Child-abuse laws raise difficult legal and political issues, pitting the right of children to be free from harm, on the one hand, against the right of families to privacy and the rights of parents to raise and discipline their children without government interference, on the other.

The mistreatment of children at the hands of parents or caretakers has a long history. For centuries, this behavior was shielded by a system of laws that gave children few, if any, rights. Under English COMMON LAW, children were treated as property owned by the parents. Parents, particularly fathers, had great latitude over the treatment and discipline of children. This outlook was carried to the American colonies and incorporated into early laws in the United States.

One of the first cases to bring national attention to child abuse arose in the early 1870s. An eight-year-old New York orphan named Mary Ellen Wilson complained of being whipped and beaten nearly every day by her foster family. Her case captured the attention of the American Society for the Prevention of Cruelty to Animals (ASPCA). An attorney for the ASPCA took Wilson's case, arguing that as members of the animal kingdom, children are entitled to the same legal protections from cruelty as are animals. A judge heard evidence that Wilson's foster family, the Connollys, routinely beat her, locked her in a bedroom, and made her sleep on the floor. Charged with ASSAULT AND BATTERY, Wilson's foster mother was convicted and sentenced to one year of hard labor. Even more significantly, publicity surrounding Wilson's case led to the establishment, in 1874, of the New York Society for the Prevention of Cruelty to Children. The following year, the New York Legislature passed a statute that authorized such societies to file complaints of child abuse with law enforcement agencies.

In 1962, an article in a major medical journal again brought national attention to the issue by identifying the symptoms that can indicate child abuse. The article, by Dr. Henry Kempe, appeared in the *Journal of the American Medical Association* (JAMA) and discussed a diagnosis for child abuse. The article resulted in widespread awareness of child abuse and prompted further public discussion on ways to address the problem. By 1970, every state had enacted laws requiring certain professionals, such as teachers and doctors, to report incidents of suspected child abuse to law enforcement agencies. In 1974, the Federal Child Abuse Prevention and Treatment Act (42 U.S.C.A. §§ 5105–5106) became law, authorizing federal funding for states to identify child abuse and to offer protective services for abused children.

Statutes make up one component of a state's child-protective services; another component, the child-protective services agency, implements the statutes. Reporting statutes, which vary from state to state, require that certain professionals report suspected child abuse, whereas others, such as neighbors, are entitled but not required to do so. Other statutes define child abuse. For example, in some states, officially recognized physical abuse occurs only when a child suffers a specified type of injury, whereas in other states,

any serious injury that is not accidental in nature is considered abuse. Sexual abuse of children generally need not cause injury; any sexual act performed on a child can be considered abuse. Similarly, state statutes categorize as child abuse any neglect of a child that places the child at risk, regardless of whether the child is actually injured. Before substantiating a report of emotional abuse of a child, state statutes generally require a finding of actual harm. Still other statutes specify procedures for investigating child abuse, determining whether a report of abuse is substantiated, intervening to protect an abused child from further harm, and maintaining records of child abuse reports.

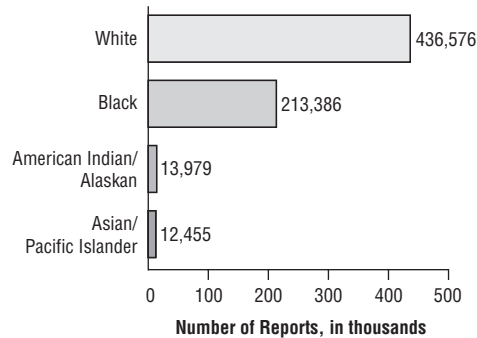
When allegations of abuse meet the statutory definitions, the state's child-protective services agency or a law enforcement agency steps in to investigate. Child-protective services agencies generally investigate allegations only when the child's parent or guardian is suspected of causing the abuse or of allowing it to occur. FAMILY LAW presumes that the parent or guardian will protect the child from abuse by other parties and that he or she will contact law enforcement agencies to investigate incidents of abuse by other parties when the parent is not causing or allowing the abuse.

Caseworkers for child-protective services investigate abuse allegations most commonly by interviewing or visiting with the child, the child's parents or guardians, and other sources such as physicians and teachers. If an agent finds evidence that supports a conclusion that the child has been abused, the agency deems the allegations substantiated. The next step is intervention.

Intervention can mean many different things. Frequently, when the risk of further abuse is immediate and significant, child-protective services agents will place the child temporarily in a foster home. Alternatively, agents may monitor the family or may provide counseling in order to curb the threat of abuse. If a family does not cooperate with the intervention efforts of child-protective services, the agency may take the case before a judge, who may determine that abuse or neglect has occurred. He or she may issue a court order mandating the agency's intervention. In extreme cases, agents may remove the child from the home permanently; following a judicial termination of parental rights, the child is then placed for ADOPTION.

Number of Child Abuse and Neglect Victims Reported in 2000, by Race/Ethnicity

The total number of reports was 676,396.



SOURCE: U.S. Department of Health and Human Services, *Child Maltreatment 2000: Reports from the States to the National Child Abuse and Neglect Data System*.

Another function of state child-protective services is record keeping, which is accomplished through a system known as the central registry. The central registry contains information about child abuse reports—both substantiated and unsubstantiated—such as the names of the child and of the suspected abuser and the final determination made by the child-protective services worker. This system helps agents in investigating current reports of abuse because it allows them to compare any previous accusations, particularly within the same family. The registry also supplies statistics about child abuse, which help the agency and the state legislature to enact appropriate laws and policies and to provide adequate funding for child-protective services. In some states, other parties may have access to the registry. For example, a day-care center may check the registry before hiring employees, or an adoption agency may check the registry before placing an infant with a family.

Few doubt that state child-protective services agencies provide a valuable service by responding to allegations of child abuse. But such agencies also have their critics. Many people who have been accused of child abuse, particularly parents, object to the way in which these agencies routinely remove children from their homes when child abuse is suspected. Children are traumatized by being taken from their parents, and allegations of abuse are frequently

Cardinal Bernard F. Law came under bitter public rebuke for allegedly shielding abusive priests from scrutiny, footing their legal bills, and either allowing them to remain on the job or reassigning them to new, unsuspecting churches. Law resigned in December 2002.

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unfounded, these critics claim. Contentious CHILD CUSTODY battles sometimes prompt false accusations of physical or sexual abuse, costing the accused time and money in the fight to reclaim their children and their reputations. Others object to the names of the accused being included on the central registry even when the accusations are unsubstantiated. The backlash against child-protective services spurred the establishment, in 1984, of an information and support group known as Victims of Child Abuse Laws (VOCAL). VOCAL claims to have thousands of members nationwide, and its members lobby for new laws that protect not only children but also parents who are falsely accused of being abusive or negligent.

Despite increased legislation and penalties for child abuse, extreme cases continue to appear and to sustain the debates over child abuse laws. Such cases include the Schoo case in suburban Chicago, which received widespread media coverage. In December 1992, David Schoo, a 45-year-old electrical engineer, and his 35-year-old wife, Sharon Schoo, a homemaker, flew to Acapulco, Mexico, for a Christmas vacation, leaving their daughters, nine-year-old Nicole Schoo and four-year-old Diana Schoo, home alone. The Schoos provided their daughters only with cereal and frozen dinners to eat

and a note telling them when to go to bed. One day during their parents' absence, the girls left the house when a smoke alarm sounded. As they stood barefoot in the snow, a neighbor found them, learned of their situation, and called the police.

The Schoos were arrested while still on the plane that returned them from Mexico nine days after they had left their children. Following their indictment on various state charges of child endangerment and cruelty, a GRAND JURY also found evidence that the Schoos had beaten, kicked, and choked their children in order to discipline them. In April 1993, the Schoos plea-bargained, agreeing to serve two years of PROBATION and 30 days of house arrest while the girls remained in foster care. In August 1993, the Schoos agreed to give up their parental rights and placed their daughters up for permanent adoption.

Another nationally publicized case raised questions regarding the effectiveness of child-protective services and implicated social workers charged with protecting the victim. Two-year-old Bradley McGee, of Lakeland, Florida, died in July 1989 from massive head injuries after his stepfather, 23-year-old Thomas E. Coe, repeatedly plunged him head-first into a toilet. Coe later testified that he had become angry when the child had soiled his pants. McGee's 21-year-old mother, Sheryl McGee Coe, pleaded no contest to second-degree murder and aggravated child abuse for allowing her husband to abuse McGee, and received a 30-year prison sentence. Thomas Coe, convicted of first-degree murder and aggravated child abuse, received a sentence of life in prison.

The McGee case alarmed the public not only because of the harsh physical abuse that caused the toddler's death but also because of what many perceived to be a failure in the system that is designed to protect children like Bradley McGee. Two months before his death, Bradley had been living with foster parents owing to allegations of abuse at the hands of the Coes. Despite strong objections by the foster parents, caseworkers for Florida's Health and Rehabilitative Services returned McGee to his mother and stepfather, determining them to be fit parents.

Public reaction was strong following the news of Bradley's death. Four social workers were prosecuted for negligently handling the case, but only the main caseworker, Margaret

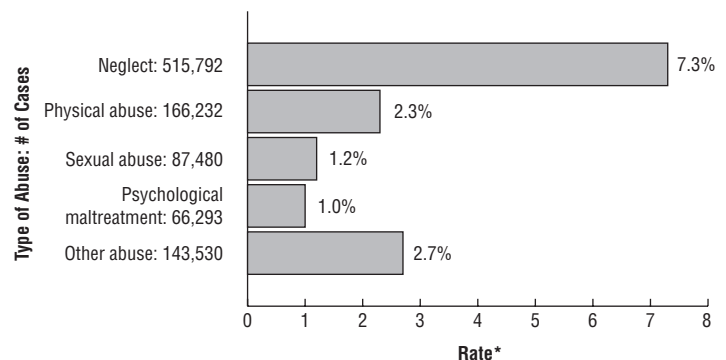
Barber, was convicted, for disregarding a report from a psychologist who had warned that the Coes were unfit parents. The publicity shed light on problems within Florida's child-protective services agency, including severe understaffing, and led to new laws that emphasize keeping children safe over keeping families together and that also increase funding for more social workers. A Florida appellate court later overturned Barber's felony conviction but left standing a misdemeanor conviction for failing to report child abuse.

In 1997, a controversial court decision led to a new legal concept: abuse of an unborn child. Traditionally, courts have refused to hold a woman who causes injuries to her own fetus criminally liable for the injuries. But in August 1977, the Supreme Court of South Carolina affirmed the criminal conviction of a woman whose crack cocaine usage while pregnant caused the fetus to be born with cocaine in its system, (*Whitner v. State*, 328 S.C. 1, 492 S.E. 2d 777 [1997]). By regarding the fetus as a person, the 3–2 majority concluded that the mother was guilty of criminal child neglect. In January 2003, the state court revisited its holding in *Whitner* when it voted 3–2 to uphold the 12-year sentence of a woman who had been convicted under the state's homicide-by-child-abuse law after her cocaine use had resulted in a stillbirth. (*State v. McKnight*, 353 S.C. 238, 577 S.E. 2d 456 [2003]).

In early 2002, a major child-abuse scandal involving priests shook the Catholic Church. Although child-abuse litigation against priests is hardly new, the public was shocked by the revelation that senior church officials had covered up the facts about widespread abuse. Beginning with allegations against church officials in Massachusetts, the scandal swiftly became national in scope. By year's end, 432 U.S. priests had resigned; at least 1,205 more had been accused of child sex abuse; church officials paid hundreds of millions of dollars to settle victims' lawsuits; and seven grand jury probes continued nationwide.

At the epicenter of the scandal was Boston-based Cardinal Bernard F. Law. Following the molestation conviction of former priest John Geoghan in January 2002, it emerged that Law had known of Geoghan's abuse during the 1980s yet had merely reassigned him to a new parish. More abuse ensued and ultimately led to over \$10 million in settlements with victims.

Child abuse and neglect cases, in 2000



*Rates were based on the number of victims divided by the child population in the reporting States and multiplied by 1,000. The numbers for victims are based on data from reporting States for that year. Data for 1996–1999 are based on SDC submissions only.

SOURCE: U.S. Dept of Health and Human Services, *Child Maltreatment 2000: Reports from the States to the National Child Abuse and Neglect Data System*

As fresh allegations emerged throughout the year, Law came under bitter public rebuke for allegedly shielding abusive priests from scrutiny, footing their legal bills, and either allowing them to remain on the job or reassigning them to new, unsuspecting parishes. Critics charged that such policies failed to protect children. With church attendance and donations reportedly in decline, the U.S. Conference of Bishops responded by instituting a policy requiring bishops to report abuse allegations to civil authorities. The church also began cleaning house: Following a meeting with the Pope, Law resigned in December 2002.

With most investigations continuing in 2003, grand juries probed possible criminal actions by church officials in Massachusetts, New York, Philadelphia, Phoenix, St. Louis, Los Angeles, and Cincinnati. Even with Law and seven bishops under subpoena, and with evidence of what was called an elaborate cover-up, Massachusetts attorney general Thomas Reilly dampened expectations for a criminal prosecution, due to barriers under state law to holding a superior liable for the actions of a subordinate. In New York, which concluded its probe in February 2003, no charges were brought because the five-year STATUTE OF LIMITATIONS had expired. But grand jurors there issued a blistering 181-page report alleging that church officials had protected 58 sexually abusive priests and that they had intimidated victims in order to prevent

legal action. The New York archdiocese denied the allegations.

Legislation at the state and federal levels continues to change to meet the goal of protecting children from abuse and neglect while protecting families from the damage of false accusations.

FURTHER READINGS

- Ahearn, James. 2003. "Quantifying Priestly Abuse." *The Record* (January 15).
- Bayles, Fred. 2002. "Seven Grand Juries Examine Bishops." *USA Today* (June 20).
- Cooperman, Alan. 2003. "N.Y. Grand Jury Faults Diocese on Handling of Sexual Abuse." *Washington Post* (February 11).
- Ferdinand, Pamela. 2002. "Archdiocese Agrees to Report Past Sex Abuse Allegations." *Washington Post* (January 25).
- Lavoie, Denise. 2002. "Boston Cardinal Bernard Law, Other Bishops Subpoenaed to Testify by Grand Jury." *AP Worldstream* (December 13).
- Moore, Jill D. 1995. "Charting a Course between Scylla and Charybdis: Child Abuse Registries and Procedural Due Process." *North Carolina Law Review* 73.
- Simpson, Victor L. 2002. "Boston's Cardinal Law Resigns After Months of Public Outrage That He Failed to Protect Children." *AP Worldstream* (December 13).
- Zoll, Rachel. 2002. "Boston Scandal Leads Other U.S. Catholic Dioceses to Open up About Sex Abuse." *AP Worldstream* (March 6).

CROSS-REFERENCES

Parent and Child.

CHILD CARE

The supervision and nurturing of a child, including casual and informal services provided by a parent and more formal services provided by an organized child care center.

Because there are many different views about how a child should be reared or nurtured, the topic of child care often involves controversial social and political issues. For instance, it may raise complex questions about a child's religious upbringing or whether a child should be disciplined with **CORPORAL PUNISHMENT**. Some people believe that providing child care outside the home undermines so-called traditional family structures in which the mother is considered the primary caretaker. Others are concerned primarily with broadening community responsibility for children and removing barriers for women who wish to enter and participate fully in the labor force. In addition, the term *child care* encompasses a wide range of services. It can include home-based care by a child's mother or

father, care by a grandparent or other relative, care by a nanny, or care by an organized licensed facility or family center. It can also involve early childhood education such as that offered by nursery schools, Montessori schools, and kindergarten programs.

According to a 1997 study by the Urban Institute, an estimated 76 percent of preschool children with mothers who are employed are cared for by someone other than their parents. According to these statistics, center-based day-care centers cared for 32 percent of children throughout the United States. By comparison, 23 percent of the children were cared for by relatives, while 16 percent were cared for by a childcare provider in the provider's home. Six percent of the children were cared for by a nanny or a babysitter in the child's home.

Child care has always existed in the United States. Organized childcare centers in the early 1800s took the form of infant day schools in parts of Boston and New York. During the industrial revolution, and as a result of increased immigration to the United States, day nurseries were created in the late nineteenth century to care primarily for poor urban children. In New York City, in approximately 1910, 85 such nurseries cared for more than 5000 children each day. Day nurseries were privately run and charitable in nature and were intended to provide custodial supervision, hygiene instruction, and nutrition services. Later, many middle-class parents opted to enroll their children in kindergartens, educational programs adopted in parts of the United States in the mid-nineteenth century.

During **WORLD WAR II**, millions of women entered the workforce in war production areas. The need for an organized childcare program became acute. Congress responded by including provisions in the Community Facilities Act of 1941, then more commonly known as the **LANHAM ACT**, which created Lanham Act centers for child care. (As of the early 2000s, the term Lanham Act is generally used to refer to the Trademark Act of 1946, 15 U.S.C.A. § 1051 et. seq.) The establishment of the Lanham Act centers marked the first time the federal government became directly involved in providing childcare services to children who were not poor: the centers were open to all children whose parents worked in war production areas. The federal government provided 50 percent of the funds needed to operate the Lanham Act centers;

states, localities, and parents provided the remaining 50 percent in matching funds. In 1943, the cost to parents for child care in a Lanham Act center was uniformly set at 50 cents a day.

The federally sponsored Lanham Act centers closed in 1946, soon after World War II ended, although California continued them at a state level. After that, direct federal involvement in a national childcare program virtually ceased. Although the U.S. Congress passed the Comprehensive Child Development Act of 1972, which would have in part established a national childcare program, President RICHARD M. NIXON vetoed the bill. Nixon stated that the act would “commit the vast moral authority of the national government to the side of communal approaches to child-rearing over and against the family-centered approach.” Nixon’s statement reflected the continuing debate about the appropriateness of providing child care outside a traditional family structure.

Although in the early 2000s the federal government does not have a national child care program, it does provide numerous social programs that include funding for childcare services. In 2000, the U.S. states spent an estimated \$8 billion on child care. Of this number, approximately \$6 billion came from the federal government in the form of subsidies provided by a number of programs.

The Head Start program provides developmental education programs primarily to poor children under the age of four. WELFARE programs such as Aid to Families with Dependent Children (AFDC) provide funds for states to implement childcare services for parents—usually mothers—who receive welfare grants. The Family Support Act of 1988 (FSA), Pub.L. 100–485, 102 Stat. 2343, created the federal Jobs Opportunity and Basic Skills (JOBS) program, in which qualifying parents who receive AFDC are required to enter education or training programs to enhance their chances of finding employment. The federal government funds the JOBS program by providing money to the states. The states in turn are allowed to choose the method of providing childcare services to welfare recipients. They may provide child care directly, reimburse parents for childcare expenses, or make direct payments to childcare providers. In 1993, the federal government spent approximately \$480 million on FSA childcare subsidies.



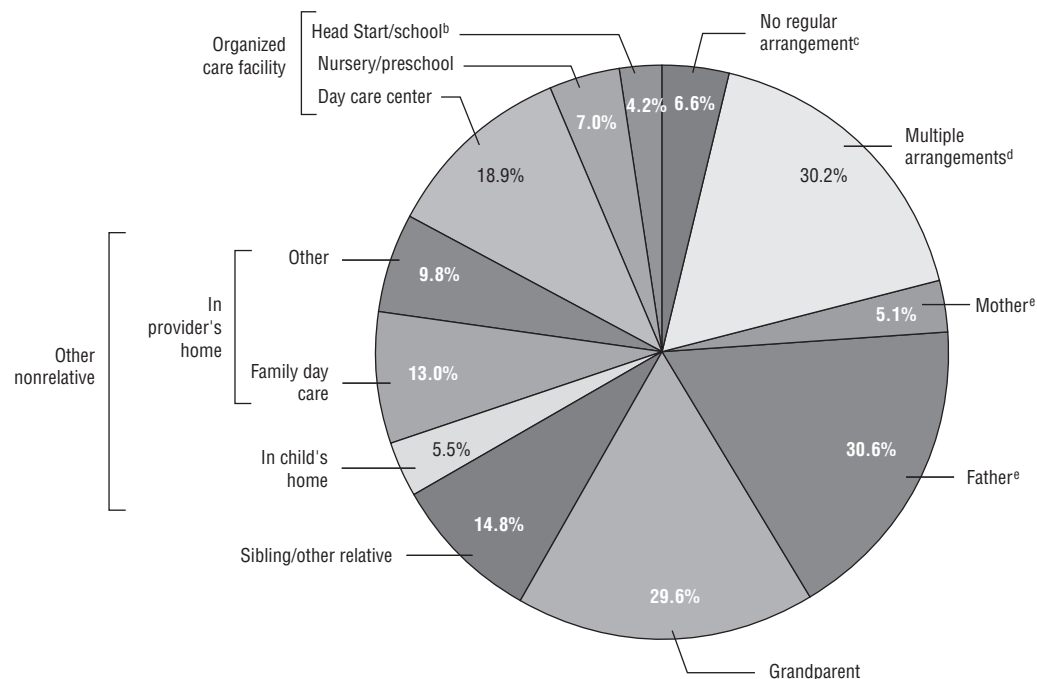
The federal government also provides funds to states through the Social Services Block Grant, under title XX of the SOCIAL SECURITY ACT, 42 U.S.C.A. §§ 1397a et seq., as well as funds for the operation of the At-Risk Child Care Program. The At-Risk Program divides more than \$350 million among state governments for childcare subsidies to families who are at risk of welfare dependency; the states must match the grants before they can use the money. Finally, the federal government allows families to deduct childcare expenses from their taxes in the form of the federal dependent care tax credit.

In response to increasing demands, Congress passed the Family and Medical Leave Act of 1993 (FMLA), Pub. L. 103–3, 107 Stat. 6. Although the FMLA does not directly provide for childcare services, it does mandate in part that employers with more than 50 employees must allow those employees to take up to 12 weeks of unpaid leave for the birth or ADOPTION of a child or in order to take care of a child with a serious health condition. Many states also have parental leave legislation, which allows a parent to take unpaid time off for the birth or adoption of a child. The length of time allowed for unpaid leave varies from state to state and may be from six weeks to six months.

The regulation of childcare services occurs primarily on the state level, with the federal government requiring states to implement minimal regulations for private childcare centers. When Peggy McMartin Buckey and Raymond Buckey were accused of sexually abusing children in a day care center in California in the early 1980s, their case (*McMartin v. Children’s Institute Intern.*, 212 Cal. App. 3d 1393, 261 Cal. Rptr. 437 [Cal. App. 1989]) and others like it received

Kindergartens grew in popularity during the late nineteenth century, especially in New York City and Boston.

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Primary Child Care Arrangements Used by Employed Mothers for Children Under 5 Years Old in 1997^a

^a Numbers of children in specified arrangements may exceed the total because of multiple arrangements.

^b Includes children in federal Head Start program and in kindergarten or grade school.

^c May indicate instability in child care arrangements or difficulty in identifying what is regularly used. It does not necessarily indicate that no one looked after the child.

^d Being cared for by two or more child care arrangements, excluding school and self care.

^e Only asked for the time the designated parent was working or in school.

SOURCE: U.S. Bureau of Census, *Who's Minding the Kids: Childcare Arrangements: Spring 1997*.

national media attention. Out of a stated concern for the notice given to such allegations, the federal government passed legislation in 1985 that appropriated funds to the states to provide training for childcare workers and to support licensing and enforcement officials. The federal government also required states to implement procedures that would require childcare centers to screen workers for any criminal history. In addition, the Child Care and Development Block Grant of 1990 (CCDBG), which provided funds to state government agencies to subsidize childcare services for low-income working parents, required states to develop minimum health and safety requirements for state-licensed childcare centers. Amendments to the CCDBG in 1995 removed such requirements but did obligate states to ensure that parents or guardians may visit or have access to a child while the child is in a child care center.

The regulation of child care facilities and caregivers on the state level varies considerably. A state may require a child care center to obtain a license in order to operate, or it may mandate certain minimum standards for all child care facilities. As of the early 2000s, every state requires that space for a child care facility be "adequate" or of a certain specified size. Most states also regulate how many child care workers must be on duty for a specified number of children, depending on the age of the children: for instance, New York requires one caregiver on duty for every two children under the age of two. Most states also regulate the qualifications and training requirements for child care workers and require child care centers to determine whether a job applicant or worker has a criminal record or has been listed in the state's CHILD ABUSE registry. Some states, such as Arkansas and South Carolina, in some circumstances

allow corporal punishment of children in their licensed day care centers.

Most states exempt certain child care centers from regulations or licensing requirements. Religious or church-based day care centers, as well as small home-based day care programs, are often exempt from regulations or licensing requirements other than basic health and safety regulations. In addition, private day care groups or associations may set goals for quality child care and may provide certification or accreditation programs for member centers.

FURTHER READINGS

- Berry, Mary Frances. 1993. *The Politics of Parenthood: Child Care, Women's Rights, and the Myth of the Good Mother*. New York: Viking.
- Capone, Angela, et al. 2003. *Childdmate: A Guide to Appraising Quality in Child Care*. Clifton Park, N.Y.: Delmar Learning.
- Hayes, Cheryl D., John L. Palmer, and Martha J. Zaslow, eds. 1990. *Who Cares for America's Children: Child Care Policy for the 1990's*. Washington, D.C.: National Academy Press.
- Jackson, Sonia, et al. 2004. *People under Three: Young Children in Day Care*. New York: Routledge.
- Lombardi, Joan. 2003. *Time to Care: Redesigning Child Care to Promote Education, Support Families, and Build Communities*. Philadelphia, Pa.: Temple Univ. Press.
- Ring, B., ed. 2001. *The Child Care Disaster in America: Disdain or Disgrace?* Huntington, N.Y.: Nova Science.
- Steinfels, Margaret O'Brien. 1973. *Who's Minding the Children: The History and Politics of Day Care in America*. New York: Simon & Schuster.
- Youcha, Geraldine. 1995. *Minding the Children: Child Care in America from Colonial Times to the Present*. New York: Scribner.

CROSS-REFERENCES

Family Law; Parent and Child; Welfare.

CHILD CUSTODY

The care, control, and maintenance of a child, which a court may award to one of the parents following a DIVORCE or separation proceeding.

Under most circumstances, state laws provide that biological parents make all decisions that are involved in rearing their child—such as residence, education, HEALTH CARE, and religious upbringing. Parents are not required to secure the legal right to make these decisions if they are married and are listed on the child's birth certificate. However, if there is disagreement about which parent has the right to make these decisions, or if government officials believe that a parent is unfit to make the deci-

sions well, then family courts or juvenile courts will determine custody.

District and state courts base their decisions on state laws, which vary greatly among states. If a case challenges the constitutionality of a state law or—in rare instances—a state's jurisdiction (i.e., its right to decide the case), then the U.S. Supreme Court may issue an opinion.

Divorced Parents

When custody must be spelled out because of a couple's divorce, the custody arrangement usually becomes part of the divorce decree. The decree names the parent with whom the child will live, how visitation will be handled, and who will provide financial support. Courts consider a custody award to be subject to change until the child comes of age, and in most states proof of a "change in circumstances" may overturn an earlier award. This flexibility is intended to allow for the correction of poor or outdated decisions, but it consequentially enables some parents to wage bitter custody battles that can last for years.

In a typical divorce involving at least one child, permanent physical custody is awarded to the parent with whom the child will live most of the time. Usually, the custodial parent shares joint legal custody with the noncustodial parent, meaning that the custodial parent must inform and consult with the noncustodial parent about the child's education, health care, and other concerns. In such situations, courts may order visitation, sometimes called temporary custody, between the child and the noncustodial parent. A clear schedule with dates and times may be written into the order, or a court may simply state that visitation should be reasonable. CHILD SUPPORT is a common requirement and is paid by the noncustodial parent to the custodial parent as assistance in raising the child.

The typical arrangement is subject to some exceptions. Some courts allow parents to retain joint physical custody, in which the child spends equal time with both parents. In California, the Family Code, for example, establishes a presumption that joint custody is in the child's best interest, thus placing joint custody as a preferred option when courts make custody determinations in that state. Cal. Fam. Code. Ann. § 3040 (West 1995). Advocates of joint custody argue that it lessens the feelings of losing a parent that children may experience after a divorce, and that it is fair to both parents. Many courts, on the other hand, resist ordering joint custody if either

parent does not want it, due to the high degree of cooperation it requires, especially when the children involved are young or if the parents live a great distance apart, such as in separate states.

Split custody is an arrangement in which the parents divide custody of their children, with each parent being awarded physical custody of one or more children. In general, courts try not to separate siblings when awarding custody.

Unmarried Parents

Where a child's parents were never married, most states provide that the child's biological mother has sole physical custody unless the biological father takes steps to have himself considered for custody. Those steps include obtaining a court's finding of **PATERNITY** and filing a petition for custody. In some states, this is a bifurcated (i.e., two-step) process; in others, the two steps are combined. An unwed father usually cannot win custody from a mother who is a good parent, but he may have priority over other relatives, foster parents, or strangers who want to adopt his child.

The government must provide a child's unwed parents with the opportunity to step forward if it is seeking custody. In *Stanley v. Illinois*, 405 U.S. 645, 92 S. Ct. 1208, 31 L. Ed. 2d 551 (1972), the U.S. Supreme Court held that under the **EQUAL PROTECTION CLAUSE** of the **FOURTEENTH AMENDMENT**, an unwed father was entitled to a hearing to determine his fitness as a parent before the state could obtain custody of his children following their mother's death.

Criteria for Custody Awards

Much debate about **CHILD CUSTODY** has focused upon the criteria that the courts use in awarding permanent physical custody in cases where two biological parents disagree. Noncustodial parents of both genders have long charged that judges' decision making is **ARBITRARY** and that it does not focus on the child. In response to this criticism, many states have adopted a standard that places primary emphasis on the best interests of the child. The challenge for courts since the 1990s has been to interpret the standard objectively in the absence of meaningful guidelines.

Policies of the past offer little guidance. Before the late 1800s, fathers had sole rights to custody, because it was closely tied to inheritance and **PROPERTY LAW**. Mothers had no such rights. Beginning in the nineteenth century, courts began to award custody of young boys

and of girls of all ages solely to mothers on the presumption that mothers are inherently better caretakers of young children.

Until 1970, most states encouraged or allowed this maternal preference, also called the **TENDER YEARS DOCTRINE**, and mothers almost always received custody. Eventually, many state courts found this preference to be unconstitutional, and gender-neutral custody statutes had replaced maternal-preference standards in 45 states by 1990. A catalyst for this change was *Reed v. Reed*, 404 U.S. 71, 92 S. Ct. 251, 30 L. Ed. 2d 225 (1971), a noncustody case in which the U.S. Supreme Court ruled that the Equal Protection Clause of the Fourteenth Amendment prevents courts from basing opinions on generalizations about either gender.

A 1994 **AMERICAN BAR ASSOCIATION** study of divorces in Utah showed that after maternal preference in divorce cases was declared unconstitutional in that state in 1986, the number of mothers who received sole custody decreased, the number of joint legal custody awards increased, and the number of specific-visitation schedules increased. The researchers concluded that although the proportion of fathers who received sole custody did not necessarily go up, the net result was more involvement by fathers after divorce.

No straightforward criterion has replaced the simple—although unconstitutional—presumption that children belong with one gender or the other. The decisions that result are often inconsistent, and many participants view them as arbitrary. Ultimately, the judge decides the child's future, and few guidelines are provided to ensure that the decision is objective.

Nevertheless, courts have instituted some mechanisms to determine a child's best interests. **GUARDIANS AD LITEM** (caretakers "for the lawsuit") or friends are sometimes appointed to represent the child's interests and to advocate in court on the child's behalf. Custody evaluations may be ordered, in which court-services personnel visit each parent's home and evaluate each parent's plan for caring for the child. The fact that one parent has been the child's primary caretaker is often considered but is not enough to guarantee a custody award.

Changing Custody Awards

Standards for changing custody awards are similarly vague, although most states' criteria allow courts to modify custody only when the

circumstances of the custodial parent or of the children—not of the noncustodial parent—have changed. A 1993 Stanford University study of petitions to modify custody found that these awards were highly inconsistent, and it attributed them in many cases to personal gender biases held by judges.

Social Issues: Sexual Orientation and Race

Social issues are sometimes slow to affect custody decisions. Homosexual parents still pose dilemmas for judges. Although in many cases homosexual parents have won or retained custody, the Virginia Supreme Court in 1995 reinstated a trial court order awarding custody of a boy to his grandmother because the lesbian mother's sexual orientation was deemed potentially harmful to the boy (*Bottoms v. Bottoms*, 249 Va. 410, 457 S.E. 2d 102). Similarly, the Alabama Supreme Court in *Ex parte H.H.*, 830 So. 2d 21 (Ala. 2002) refused to return custody of a mother's children to her, despite the mother's assertions that the father, the custodial parent, had abused the children. Although the majority in the decision did not address the fact that the mother was a lesbian, a concurrence written by the chief judge of the court suggested that the court should consider homosexuals as presumptively unfit to have custody of minor children. In contrast to these types of decisions, many courts have been more willing to grant custody to gay and lesbian parents when the parents are a same-sex couple. See also GAY AND LESBIAN RIGHTS.

Although the U.S. Supreme Court ruled in 1984 that removing custody from a white child's mother because of her marriage to a black man would be discriminatory (*Palmore v. Sidoti*, 466 U.S. 429, 104 S. Ct. 1879, 80 L. Ed. 2d 421), a Tennessee court in 1986 removed custody from a white mother who was living with a black man. In that case, when one of the children's guardians died two years later, the mother, who had by then married the man, was awarded custody of one of her children (*Smith v. Smith*, 1989 WL 73229 (Tenn. App)).

Adoption

ADOPTION can provide courts with another source of custody disputes. Most state laws require that both birth parents give consent before their child can be adopted. Such a law was at issue in a custody battle over Jessica DeBoer, who was born in Iowa in 1991 and adopted by a

Michigan couple. DeBoer's birth mother later married DeBoer's birth father, and they sought and won custody of DeBoer in Iowa, based on the father's never having consented to the adoption. The adoptive parents then won in the Michigan courts, based on an analysis of the child's best interests. On appeal, the Michigan Supreme Court reversed, declaring that under federal law, Iowa had jurisdiction in this case, and that unless a child's birth parents are unfit, an unrelated person may not retain custody. The U.S. Supreme Court agreed, in *DeBoer by Darrow v. DeBoer*, 509 U.S. 1301, 114 S. Ct. 1, 125 L. Ed. 2d 755 (1993), and Jessica was returned to her birth parents.

Family ties are often a compelling factor for judges even when birth relatives other than parents are involved. For example, the Minnesota Supreme Court ruled in 1992 in *Matter of Welfare of D. L.*, 486 N.W.2d 375 (Minn.), that the biological grandparents of Baby D., a three-year-old African-American, should be granted custody, rather than the white foster parents who had raised her from birth. The case convinced the Minnesota Legislature to change a law (M. S. A. § 259.28, subd. 2) providing for same-race preference in adoptions, but race was not the deciding factor in the case: The court based its decision on reuniting Baby D. with her birth relatives and her siblings, of whom the grandparents also had custody.

Critics of removing children from parents and from parental figures to whom they have become attached argue that the rupture is too difficult to overcome and that children suffer from imperfect child-custody laws. The National Conference of Commissioners on Uniform State Laws approved in 1994 a model adoption statute, which was designed to reduce the chances that custody will be changed after children have become attached to parent figures. The model statute provides guidelines for birth parents and adoptive parents to follow before an adoption in order to prevent custody battles afterward.

In the 1990s, courts appeared to place more importance on child-caretaker attachment and in some cases even denied custody to birth parents in order to uphold this attachment. A Florida judge ruled in 1993 that 14-year-old Kimberly Mays could choose not to see her birth parents, from whom she had been separated at birth by a hospital error (*Twigg v. Mays*, 1993 WL 330624 [Fla. Cir. Ct.]). The decision was based on the length of time she had spent with

her nonbiological family and her attachment to it.

In 1978, the U.S. Supreme Court ruled that the adoption of a child by the child's stepfather did not violate the DUE PROCESS rights of the child's unwed biological father. In *Quilloin v. Walcott*, 434 U.S. 246, 98 S. Ct. 549, 54 L. Ed. 2d 511 (1978), the Court decided that the adoption was in the best interests of the child, and wrote that because that particular biological father had participated very little in rearing the child, he did not have the same rights under the Equal Protection Clause that a more involved father would have.

Terminating Parental Rights

Owing in part to a national surge in reports of CHILD ABUSE and neglect in the 1980s and 1990s, courts and society faced questions of whether abusive or dangerously neglectful parents should retain custody of their own children. It is the government's role to step in when a child is not being safely cared for, and if parents are judged unfit, the local social-services department may seek to terminate their parental rights and to free the child for adoption or alternative care. A child may be placed in foster care while a custody case is pending.

Before removing a child from her or his parents, the state must produce "clear and convincing" evidence that terminating parental rights is the best option for the child. This was clarified in *Santosky v. Kramer*, 455 U.S. 745, 102 S. Ct. 1388, 71 L. Ed. 2d 599 (1982). The case arose after a New York County social-services department successfully brought neglect proceedings in state court against the Santoskys, a couple with three children. The U.S. Supreme Court found that the state's standard—"a fair preponderance of evidence"—was too low for deciding something as important as a family's future.

Courts and Jurisdiction

Most custody decisions are made by family courts. However, where a juvenile court has found that a minor poses a threat to society if current custody arrangements continue, the juvenile court may turn over physical custody to the state. The court may simultaneously issue a so-called CHIPS petition, declaring the "child in need of protective services," if the current custodian is abusive or negligent.

Jurisdiction is an issue that has received much attention. A court has the power to settle

a custody dispute if a child lives for at least six months in the location where the court has jurisdiction or if it is demonstrated that the court has the closest connection with the child. All states have adopted the Uniform Child Custody Jurisdiction Act, originally adopted in 1967, which provides that a state's court will not accept a custody case unless that state has original jurisdiction or the state with original jurisdiction relinquishes it. All states have adopted the original uniform law. This law was updated in 1997 with the passage of the Uniform Child Custody Jurisdiction and Enforcement Act, which added a number of provisions for the enforcement of child-custody orders from other states. As of 2003, more than 30 states, including the District of Columbia, had adopted the new law, and several others were considering its adoption. The Hague Convention Treaty provides similar reciprocity between nations that are parties to it (implemented at 42 U.S.C.A. §§ 11601–11610 [Supp. 1993]).

A parent's interstate move sometimes blurs jurisdictional lines. For this reason, courts may restrict the geographic area in which a parent may live as part of the custody order, or they may deny a subsequent request for permission to move if the move is viewed as an attempt to hinder the other parent's visitation.

Parental Kidnapping

Parental KIDNAPPING occurs when one parent deprives the other of his or her legal right to custody or visitation by illegally taking the child out of the jurisdiction. It is outlawed by the federal Parental Kidnapping Prevention Act (28 U.S.C.A. § 1738A [Supp. 1993]), which applies the FULL FAITH AND CREDIT CLAUSE of the U.S. Constitution to child-custody cases, meaning that each state must abide by custody decisions made by another state's courts if the other state would be bound by those decisions. The law was enacted to respond to cases in which one parent leaves the state that has jurisdiction; however, in 1998 the U.S. Supreme Court ruled in *Thompson v. Thompson*, 484 U.S. 174, 108 S. Ct. 513, 98 L. Ed. 2d 512, that the existence of two different state-custody decrees is not, itself, a reason for federal involvement under this law.

The Parental Kidnapping Prevention Act often works in concert with state laws, such as state adoptions of the Uniform Child Custody Jurisdiction and Enforcement Act, in order to facilitate the return of a child to the state that has proper jurisdiction. Many of the custody

provisions in the federal law are similar to those in the corresponding state laws.

Termination of Custody

Most types of custody end when the child is emancipated (i.e., considered a legal adult) by becoming self-supporting, by marrying, or by reaching the age of majority as specified by state law. Not until then does family court lose its power to determine custody.

FURTHER READINGS

- Bahr, Stephen J., et al. 1994. "Trends in Child Custody Awards: Has the Removal of Maternal Preference Made a Difference?" *Family Law Quarterly* (summer).
- Horne, Jennifer. 1993. "The Brady Bunch and Other Fictions: How Courts Decide Child Custody Disputes Involving Remarried Parents." *Stanford Law Review* (July).

CROSS-REFERENCES

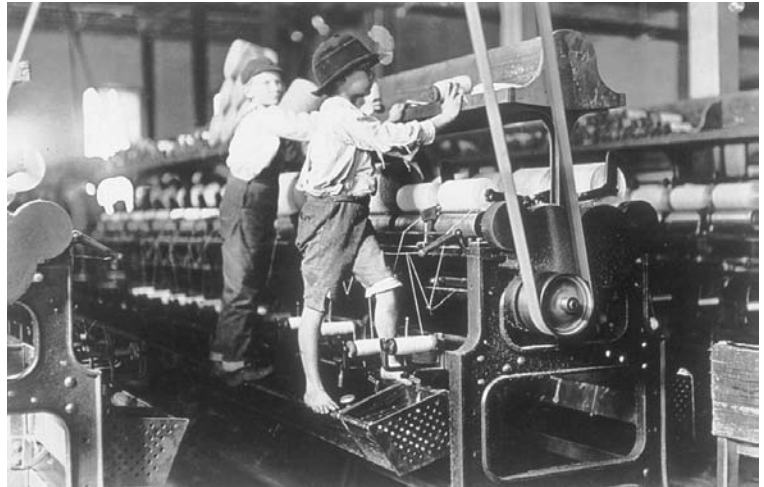
Illegitimacy; Gay and Lesbian Rights; Family Law; Parent and Child.

CHILD LABOR LAWS

Federal and state legislation that protects children by restricting the type and hours of work they perform.

The specific purpose of child labor laws is to safeguard children against harm generally associated with child labor, such as exposure to hazardous, unsanitary, or immoral conditions, and overwork. Child labor legislation primarily applies to business enterprises, but in some states nonprofit activities are within the purview of the law.

The federal law controlling child labor is the FAIR LABOR STANDARDS ACT of 1938 (FLSA) 29 U.S.C. §§ 201 et. seq., administratively regulated through 29 C.F.R. Part 570 et seq. The law is enforced by the U.S. Labor Department's Wage & Hour Division. Federal law provides the basic structural framework for certain prohibitions or restrictions placed on the employment of children. Regulations further delineate minimum requirements to include age restrictions, MINIMUM WAGE provisions, occupational restrictions, hours of work restrictions, and certain prohibited fields or occupations (e.g., hazardous occupations, liquor and lottery sales, or occupations involving moving vehicles or power-driven machinery). Moreover, all states and the federal government require that children have work permits on file with their employers that certify their ages. (29 C.F.R. § 570.9)



Each state also has its own set of child labor laws that may further prohibit or restrict employment of children. The laws vary in detail from state to state, particularly for those states where seasonal or agricultural employment is high. However, federal law preempts state law, and so all state laws must comply with all federal minimum requirements.

Specific provisions of the particular child labor law govern the age of majority. Some laws permit minors to be employed in certain activities if their parents satisfy stated conditions concerning supervision, control, and approval. The state has the right to prohibit parents from binding a minor to an employment contract based upon the theory that parents cannot diminish benefits that the law confers to children.

Cursory directions to subordinates are not sufficient to fulfill the employer's duty to enforce child labor regulations. Where such directives are followed by further violations, sterner measures controlling the actions of subordinates are required.

In some states, it is unlawful to employ children under a specified age in certain activities without an employment certificate issued and filed in accordance with the law. An employer's failure to comply with this requirement makes the employment illegal. Technical errors, such as the lack of a detailed account of the child's duties in the employer's pledge of employment, will not have this effect nor invalidate the certificate.

Regulations also relate to occupations that are or may be potentially dangerous, extremely hazardous, or harmful to a child's health or

Two young boys at work in a textile mill. Before child labor laws went into effect, many companies employed young people at low wages, often exposing them to overwork, as well as hazardous and unsanitary conditions.

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morals, as defined by statute or judicial decision. In one state a log-loading machine was held to be within the meaning of a law that barred the employment of minors in businesses using dangerous machinery.

The violation of child labor regulations can subject the perpetrator to criminal prosecution or render the employment contract illegal. In appropriate circumstances an **INJUNCTION**, a court order that commands or prohibits a certain act, may be issued against a violator to stop the illegal conduct.

In 1919, Congress passed the so-called **CHILD LABOR TAX LAW**, (40 Stat. 1057) which imposed a ten percent excise tax on persons or establishments that employed children under the age of 14 or children between the ages of 14 and 16 working more than eight hours daily or more than six days a week. However, in *Bailey v. Drexel Furniture Co.*, 259 U.S. 20, 42 S. Ct. 449, 66 L. Ed. 2d 817 (1922), the U.S. Supreme Court invalidated the law as unconstitutional, agreeing with a lower court that "the provisions of the so-called taxing act must be naturally and reasonably adapted to the collection of the tax and not solely to the achievement of some other purpose plainly within state power."

Liability for child labor law violations depends upon the provisions of the law. As a general rule, the owner of the business is liable, whether it is a natural person, a corporation, or a joint association. An employer is usually not liable if a minor is assigned to work on the premises in violation of law by an **INDEPENDENT CONTRACTOR**, a person whose work methods are not controlled by the employer. Some states, however, will impose liability on the owner under such circumstances.

The employer's knowledge that the child is within the prohibited age is not an element of the offense. The offense is committed if the employer does not know but should have known by the exercise of reasonable diligence that the child was underage. The employer's good faith—his honest belief—is no defense even though the child misrepresented his age.

A person who hires a child in violation of law will be liable if the child is injured. The duration of the employment and the status of the child as an employee are irrelevant.

The parents will not be held liable merely because they assented to the hiring of their child by another. Only the injured child will recover damages, reparations for injury caused by

another, for third persons are not within the class of persons that the laws were enacted to protect.

During the 1990s, a new issue of child labor moved into the forefront: imported foreign goods that were produced by foreign "sweatshops" employing child labor—legally repugnant in the United States. As more domestic or multinational corporations opened facilities in foreign countries—where labor costs were cheaper—the problem worsened. The FLSA prohibits sweatshops. The U.S. **DEPARTMENT OF LABOR** considers a work place to be a sweatshop if it violates two or more of the most basic labor laws, for example, child labor, fire safety, minimum wage, or overtime hours. Senator Tom Harkin (D-IA) has been at the forefront of legislative initiatives, including the Child Labor Deterrence Act, still pending as of mid-2003. The act would prohibit the importation of manufactured or mined goods that are produced by foreign children under the age of 15. Meanwhile, President **BILL CLINTON** signed **EXECUTIVE ORDER 13,126**, "Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor," on June 12, 1999.

FURTHER READINGS

- Executive Order No. 13,126. 1999. *Federal Register* 64:115:32383 (June 16).
- Given, Olivia. 1999. "An Indictment of Sweatshops." *Child Labor and Sweatshops*. San Diego: Greenhaven.
- Harkin, Tom. 1999. "The United States Should Ban Imports of Products Made by Children." *Child Labor and Sweatshops*. San Diego: Greenhaven.
- Labor Department. *Report on the Youth Labor Force*. Bureau of Labor Statistics (BLS) Publication, 2000.

CROSS-REFERENCES

Labor Law; Parent and Child.

CHILD MOLESTATION

*Child molestation is a crime involving a range of indecent or sexual activities between an adult and a child, usually under the age of 14. In psychiatric terms, these acts are sometimes known as pedophilia. It is important, however, to keep in mind that child molestation and child **SEXUAL ABUSE** refer to specific, legally defined actions. They do not necessarily imply that the perpetrator bears a particular psychological makeup or motive. For example, not all incidents of child molestation are perpetrated by pedophiles; sometimes the perpetrator has other motives for his or her actions and does not manifest an ongoing pat-*

tern of sexual attraction to children. Thus, not all child molestation is perpetrated by pedophiles, and not all pedophiles actually commit child molestation.

Regardless of the terminology, it is illegal for an adult to touch any portion of a child's body with a "lewd and lascivious" intent. Usually, consent is not a matter of consideration, and is not available as a defense to a charge of child molestation. Even in cases where it can be proven that the minor victim was a willing participant, a sex act or improper touching is still a crime because children cannot legally consent to anything. Criminal penalties are severe for those convicted of child molestation.

According to the JUSTICE DEPARTMENT, there are approximately four million pedophiles in the United States. It is difficult, however, to accurately assess the number of child molesters because many child molesters are not caught. The Justice Department reports the alarming statistic that one in four girls and one in seven boys will experience sexual abuse before the age of 18.

There is no single profile that accurately describes or accounts for all child molesters. There are many variables among individuals in terms of their personal characteristics, life experiences, criminal histories, and reasons for committing such offenses. One common misconception is that molested children grow up to become child molesters themselves. But, in fact, most childhood sexual abuse victims do not go on to become perpetrators. In some instances, if a child is sexually victimized, and is abused in other ways as well, he or she may later molest a child. Likewise, a sexually abused child who also exhibits antisocial behavior may go on to commit acts of child molestation, although an individual's inadequate social and interpersonal skills do not make it inevitable that he will sexually abuse children.

Few criminal offenses are more despised than the sexual abuse of children, and few are so little understood in terms of the number of offenses committed, the proportion of the population who commit offenses, and the risks of re-offense. One reason is that sex crimes committed against children and teenagers are believed to be widely underreported. This assumption is supported by the reports of both SEX OFFENDERS and sexually abused children. Offenders commonly report fewer incidents of child molestation than those for which they are



ultimately convicted. And children are often loathe to report an incident because they are ashamed or they fear REPRISAL.

Most convicted sex offenders are eventually released, giving rise to concerns over RECIDIVISM. Recidivism rates are affected by a number of factors, including differences in legal guidelines and statutes in the states; opportunities to re-offend; characteristics of the offender; treatment availabilities; and post-treatment supervision. Child molesters have been known to re-offend as late as 20 years following release into the community. Problems caused by recidivist offenders have given rise to several legislative initiatives to help manage societal risk. For example, there are various sex offender registration schemes known as MEGAN'S LAWS, which list names, addresses, and other specifics about convicted sex offenders. Such registries are available for public access. The laws take their name from a child named Megan Kanka who was abducted, molested, and murdered by a convicted child molester who lived near her home in New Jersey.

A more active scheme that gained increased attention in the wake of several national news stories of abducted and molested children is known as Amber Alert Laws. These laws were prompted by citizen concerns following the tragic 1996 KIDNAPPING and murder of nine-year-old Amber Hagerman in Arlington, Texas. The "Amber Alert" involves law enforcement and broadcast media response when there is a

An Amber Alert, a law enforcement and broadcast media response to a report of a missing child, is displayed over Interstate 80 near Omaha, Nebraska, in December 2002.

AP/WIDE WORLD
PHOTOS

report of a missing child, and it appears that the child has been abducted by a sexual predator. Although the scope of the Amber Alert varies from jurisdiction to jurisdiction, the criteria to trigger it are generally consistent: the missing child falls within a certain age range; the law enforcement agency believes the child has been abducted; the agency believes the missing child is under threat of serious bodily harm or death. In all cases, law enforcement activates an Amber Alert by notifying broadcast media with relevant information about the child's identity, the description of the suspected perpetrator, and the circumstances of the abduction.

Once an Amber Alert has been issued by law enforcement, radio and television stations interrupt regularly scheduled programming to notify the public that a child has been kidnapped and to provide relevant information about the case. Because approximately 95 percent of all people driving in their cars are tuned in to a radio station, the Amber Alert is an extremely effective way of disseminating descriptions of the child, the kidnapper, accomplices, and vehicles. The goal of the Amber Alert is to notify an entire community. It adds extra eyes and ears to watch, listen, and help in the safe return of the child and apprehension of the suspect. The federal government is also working on legislation that would establish a national Amber Alert system. Legislation has been introduced in the House and the Senate, and President **GEORGE W. BUSH** signed a national Amber Alert bill at the end of April of 2003. [PL 108-21, April 30, 2003, 117 Stat 650. Prosecutorial Remedies and Tools Against the Exploitation of Children Today Act of 2003 (Protect Act).]

For several years numerous charges of child molestation and other allegations of sexual abuse or improprieties were levied against members of the Roman Catholic clergy. These cases had been in various stages for some time, but since the late 1990s the scope of the problem became more widely known. By 2003, it was common to regularly hear a report of a priest resigning or being defrocked or censured by his bishop. These scandals originated in the United States, but spread to many other countries around the world.

In March 2002, a Polish archbishop, a friend and former personal assistant to the Pope, resigned in the wake of sexual abuse charges. In Australia, 51 priests were convicted of child molestation between 1992 and 2003. In Eng-

land, 21 priests were convicted of sexual molestation between 1995 and 2002. In Ireland, taxpayers have contributed about one-fifth of \$500 million to pay claims against the church relating to cases of abuse of over three thousand victims spanning 30 years. There have been hundreds of resignations, firings, or monetary settlements in many countries, particularly Australia, Canada, England, France, Germany, Ireland, Mexico, Poland, and the United States.

One of the most notorious cases that made national and international news involved a priest named John Geoghan. Over 130 men reported that they had been abused by Geoghan when they were children; the abuse cases spanned 30 years. The priest was ultimately sentenced to nine years for child molestation. What turned this story into a national and a Catholic institutional scandal was the revelation that Geoghan's bishop, Cardinal Bernard Law of Boston, had been privy to the allegations against Geoghan, but had quietly reassigned him to a succession of parishes. Several times, Cardinal Law even presided over secret financial settlements of claims that were substantiated or confirmed. The cardinal resigned his post in the wake of these revelations.

The Boston case opened the floodgates to hundreds of similar cases in a dozen states. Upon inquiry, similar stories of child molestation or other sexual abuse and financial cover-ups have drained the financial resources of many parishes. Already, the church has set aside \$30 million just for victims of John Geoghan. In Texas, the Dallas diocese paid out \$31 million to 11 plaintiffs after a Dallas priest, Rudolph Kos, was convicted on seven counts. In New Mexico, the Santa Fe diocese paid \$50 million to victims of 20 priests. In Bridgeport, Connecticut, the diocese settled a multimillion dollar civil case against six priests. And in Santa Rosa, California, four plaintiffs alleging sexual abuse by clergy were awarded \$1.6 million. In most of the cases that have resulted in large awards, the Catholic Church itself has been implicated, accused of shielding priests it knew were molesting children.

While these revelations of priests molesting children have focused attention on the issue, the breadth of child sexual abuse reaches beyond the Catholic Church. Society is just beginning to understand its many dimensions and the legal line is being more firmly drawn to protect the rights of children.

FURTHER READINGS

"Amber Plan." National Center for Missing and Exploited Children. Available online at <www.missingkids.com> (accessed May 7, 2003).

Szasz, Thomas. 2002. "Sins of the Fathers: Is Child Molestation a Sickness or a Crime?" Available online at <www.reason.com> (accessed May 7, 2003).

CHILD PORNOGRAPHY

Child pornography is the visual representation of minors under the age of 18 engaged in sexual activity or the visual representation of minors engaging in lewd or erotic behavior designed to arouse the viewer's sexual interest.

Child pornography may include actual or simulated sexual intercourse involving minors, deviant sexual acts, bestiality, masturbation, sado-masochistic abuse, or the exhibition of genitals in a sexually arousing fashion. In most instances, however, the mere visual depiction of a nude or partially nude minor does not rise to the level of child pornography. Thus, home movies, family pictures, and educational books depicting nude children in a realistic, non-erotic setting are protected by the Free Speech Clause of the FIRST AMENDMENT to the U.S. Constitution and do not constitute child pornography.

Child pornography differs from pornography depicting adults in that adult pornography may only be regulated if it is obscene. In *MILLER v. CALIFORNIA*, 413 U.S. 15, 93 S.Ct. 2607, 37 L.Ed.2d 419 (1973) the U.S. Supreme Court ruled that pornography depicting adults is obscene if (1) the work, taken as a whole by an average person applying contemporary community standards, appeals to the prurient interest; (2) the work depicts sexual conduct in a patently offensive way; and (3) the work, when taken as a whole, lacks serious literary, artistic, political, or scientific value. In contrast, child pornography can be banned without regard to whether the pornographic depictions of minors violate contemporary community standards or otherwise satisfy the *Miller* standard for OBSCENITY.

In *New York v. Ferber*, 458 U.S. 747, 102 S.Ct. 3348, 73 L.Ed.2d 1113 (U.S. 1982), the Supreme Court explained the rationale underlying the distinction between child pornography and adult pornography. The Court said that the government has a compelling interest in protecting minor children from SEXUAL ABUSE and exploitation. Using the same rationale, the Supreme Court later said that even the mere possession of child pornography may be pro-

hibited without violating the First Amendment. *Osborne v. Ohio*, 495 U.S. 103, 110 S.Ct. 1691, 109 L.Ed.2d 98 (U.S. 1990).

However, the Supreme Court drew the line with so-called "virtual" depictions of child pornography. In 1996 Congress passed the Child Pornography Prevention Act (CPPA), which expanded the federal prohibition on child pornography to include not only pornographic images made using actual children, but also "any photograph, film, video, picture, or computer or computer-generated image or picture" that "is, or appears to be, of a minor engaging in sexually explicit conduct." 18 U.S.C. § 2256. Civil libertarians worried that the CPPA would be applied to ban a range of sexually explicit images that appeared to depict minors but were produced by means other than using real children, such as through the use of computer-imaging technology.

The Supreme Court agreed. In *Ashcroft v. Free Speech Coalition*, 535 U.S. 234, 122 S.Ct. 1389, 152 L.Ed.2d 403 (2002), the Court ruled that the CPPA's provisions went too far by trying to ban speech that created no real minor victims of sexual abuse. Nor could the CPPA be sustained on grounds that pedophiles might use virtual child pornography to seduce actual children into participating in real child pornography. The prospect of crime, by itself, does not justify laws suppressing protected speech, the Court said.

In response to the Court's decision, the Senate and U.S. House of Representatives introduced almost identical bills that attempt to implement the substantive provisions of the CPPA in a way that would survive constitutional scrutiny. The Child Obscenity and Pornography Prevention Act of 2002 was approved by the House (H.R. 4623 § 3(a)) and as of early 2003 was pending before the SENATE JUDICIARY COMMITTEE. S. 2511, § 2(a).

In the new bill, Congress changed the prohibition against images that "appear" to be of a minor engaging in sexually explicit conduct to a prohibition against "computer image or computer-generated image that is, or is indistinguishable" from a conventional image of child pornography. Similarly, the proposed legislation replaced language prohibiting electronic images that "convey the impression" that the pornographic material contains a visual depiction of a minor engaging in sexually explicit conduct with an SCIENTER requirement, which makes it

an offense to advertise or promote material “with the intent to cause any person to believe that the material is, or contains, a visual depiction of a minor engaging in sexually explicit conduct.”

Finally, the House and Senate included a number of “findings” that attempt to bolster the constitutionality of the proposed law. Section 2 of the bill details at length how the limitations placed on prosecuting child pornographers who pander both “real” and “virtual” child pornography have frustrated law enforcement efforts and meritorious prosecutions in the Ninth Circuit. These findings are plainly meant to provide any courts that might scrutinize the proposed legislation with a compelling interest necessary to uphold it over First Amendment objections. However, as of early 2003, Congress had not yet passed the bill.

FURTHER READINGS

- Clark, Matthew C., ed. 2002. *Obscenity, Child Pornography and Indecency*. New York: Novinka Books.
- Tate, Tim. 1990. *Child Pornography: An Investigation*. London: Methuen.
- U.S. Senate, Committee on the Judiciary. 2003 *Stopping Child Pornography: Protecting Our Children and the Constitution: Hearing Before . . . 107th Congress, 2nd Session, October 2, 2002*. Washington, DC: U.S. G.P.O.

CROSS-REFERENCES

Child Abuse; Computer Crime; First Amendment; Freedom of Speech; Obscenity; Pedophilia.

CHILD SUPPORT

A payment that a noncustodial parent makes as a contribution to the costs of raising her or his child.

In the mid-1990s, as never before, child support became a topic of urgent U.S. national discussion. The system that awards and enforces child support was declared inadequate by state and federal policy makers. Failures in the system were blamed for child poverty rates, long-term dependence on government assistance, and the “feminization of poverty.” Courts drew criticism for awarding child support inconsistently and inequitably. These social and economic issues attracted both federal attention and reform efforts.

The need for child support payments usually arises when one parent does not have physical custody of his or her child, so that parent’s income does not benefit the child on a daily basis. At times, neither parent has custody, and both may pay a third person who is caring for

the child. When both of a child’s parents have full custody (as when they are married to each other), and usually when they are divorced and share joint physical custody, the needs of the child are presumed met and child support is not an issue. As long as parents provide a safe level of care, the government does not control their contributions to their children.

In the United States in the early 2000s, nearly half of all marriages ended in **DIVORCE**, and almost one-quarter of all children were born to unmarried parents. Most of the children who lived in single-parent families had a legal right to a child support order. Child support can be voluntary or court ordered and can be secured through a divorce decree or a separate action. Increasingly, support orders are issued by state agencies.

The legal duty to support a minor child belongs to both parents, even if the custodial parent is capable of caring for the child single-handedly. Support is awarded to provide for the child’s basic needs and to allow the child to share in the standard of living of both parents. Although both mothers and fathers can be ordered to pay support, a 1994 study in Utah found that over a 20-year period, mothers were required to pay child support in fewer than one in five cases in which fathers received sole custody. A greater proportion of noncustodial fathers were ordered to pay support.

A petition for support is usually begun in a state court where the plaintiff (the parent seeking the order) resides. The Uniform Interstate Family Support Act of 1992, which was updated in 1996 and 2001 and which has been adopted in some form in the majority of states, provides that jurisdiction exists where the child or one of the parents resides. Before support can be awarded, parentage (called **PATERNITY** in the case of fathers, **MATERNITY** in the case of mothers) must be demonstrated. The would-be payer is entitled to blood tests, but in some states must pay for them. The 1993 **FEDERAL BUDGET** bill (Omnibus Budget Reconciliation Act of 1993, 42 U.S.C.A. § 666[a][2]) required states to offer speedy means of establishing parentage, since parentage disputes can delay a valid child support award.

Determining Awards

Child support awards are made by each state’s family court system. Most states require that they be based on the best interests of the

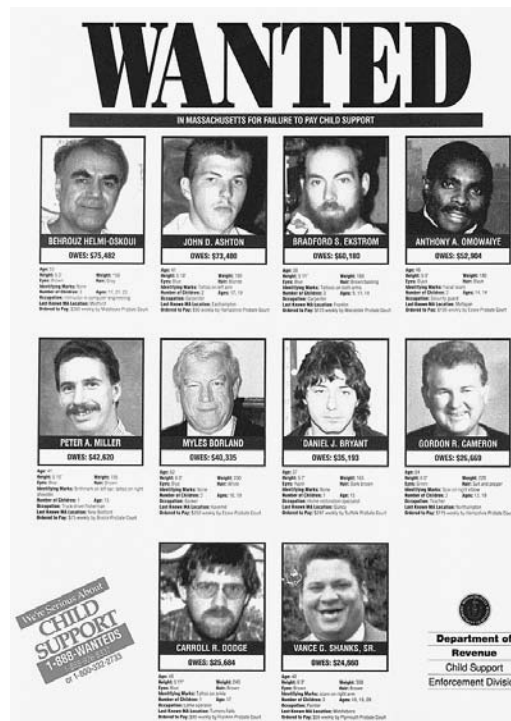
child. In addition to determining support in contentious divorce cases, courts review stipulations (agreements) between parents and can overrule an agreement that does not adequately provide for children.

Often, courts feel pressure to balance children's needs with their parents' needs. Awards are based on the noncustodial parent's ability to pay and must allow the parent to remain self-supporting. Many associations of noncustodial parents emerged after the 1980s to express their belief that awards were burdensome to the payers, benefited only the custodial parent, or did not provide payers with enough in return. At the same time, more single parents with children slipped into poverty than had at any other point in the nation's history.

In the mid-1990s, no federal child support guideline existed, mainly because child support was historically a state-controlled issue. Most states had established their own guidelines in the quest for fair standards. About 15 states used the "percentage-of-income" guideline, which is based on the income of the noncustodial parent. Thirty states used the "income-shares" method, which is based on the income of both parents. It prorates the total support between the parents and calculates each contribution proportionally according to income. Several states used the elaborate Melson formula, which provides a basic subsistence level for each parent before determining the primary support needs of the children. This formula then awards a percentage of the remaining income so that the children share in the standard of living of each parent.

Even when guidelines are used, judges consider the facts of a case and other statutes. They can depart from the guidelines for considerations such as how property is divided, whether an arrearage (unpaid child support) exists, and what disparities in parents' incomes exist. In many states, judges must prove in writing that an exception to the guidelines serves the child's best interest.

In practice, courts are allowed to use many criteria in setting an award amount. Some judges consider the needs of subsequent children when obligors (payers) remarry and start new families. Some may adhere to the Uniform Parentage Act, which states that courts must take into consideration, among other things, the age of the child, the financial resources and earning ability of the child, and the value of services contributed by the custodial parent.



The Massachusetts Department of Revenue, Child Support Enforcement Division, issued this "Ten Most Wanted" poster in March 2001.

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PHOTOS

Investment income, unearned income, overtime, bonuses, income from a second job, gifts, and retirement pay may all be eligible income when calculating child support due, regardless of its tax status. Putative income (earning capacity) is used to calculate support in many states if it is suspected that the noncustodial parent is deliberately underemployed or unemployed. The court is allowed to credit SOCIAL SECURITY benefits toward support, but this action is not automatic. Child support is not deductible from either parent's taxes, any more than are the provisions that married parents supply to their children. The children themselves qualify as household deductions, but only one parent may claim them.

Unless a state mandates that child support be awarded, the court can deny it. Courts have denied support in situations of split custody, in which each parent has custody of one or more children. With exceptions, the court usually does not award child support to a noncustodial parent during visitation. Support can be ordered for legally adopted children. It cannot be ordered for grandchildren who have not been legally adopted.

Consequences for Nonpayment

The consequences of not paying child support are inconsistently applied—a situation

State Child Support Enforcement Offices

Alabama Department of Human Resources Division of Child Support (334) 242-9300	Iowa Bureau of Collections Department of Human Services (515)281-5580
Alaska Child Support Enforcement Division (907) 269-6900	Kansas Child Support Enforcement Program Department of Social & Rehabilitation Services (913) 296-3237
Arizona Division of Child Support Enforcement (602) 252-4045	Kentucky Division of Child Support Enforcement Cabinet for Families and Children (502) 564-2285
Arkansas Office of Child Support Enforcement (501) 682-8398	Louisiana Support Enforcement Services Office of Family Support (504) 342-4780
California Office of Child Support Department of Social Services (916) 654-1532	Maine Division of Support Enforcement and Recovery Bureau of Family Independence Department of Human Services (207) 287-2886
Colorado Division of Child Support Enforcement (303) 866-5994	Maryland Child Support Enforcement Administration Department of Human Resources (410) 767-7619
Connecticut Department of Social Services Bureau of Child Support Enforcement (860) 424-5251	Massachusetts Child Support Enforcement Division Department of Revenue 1-800-332-2733
Delaware Division of Child Support Enforcement Delaware Health and Social Services (302) 577-4863	Michigan Office of Child support Department of Social Services (517) 373-7570
District of Columbia Child Support Enforcement Department of Human Services (202) 724-1444	Minnesota Office of Child Support Enforcement Department of Human Services (651) 215-1714
Florida Child Support Enforcement Program Department of Revenue (850) 922-9590	Mississippi Division of Child Support Enforcement Department of Human Services (601) 359-4861
Georgia Child Support Administration (404) 657-8651	Missouri Department of Social Services Division of Child Support Enforcement (573) 751-4301
Hawaii Child Support Enforcement Agency Department of Attorney General (808) 692-7000	Montana Child Support Enforcement Division Department of Public Health and Human Services (406) 442-7278
Idaho Bureau of Child Support Services Department of Health and Welfare (208) 334-5710	Nebraska Child Support Enforcement Office Department of Social Services (402) 471-9160
Illinois Child Support Enforcement Division Illinois Department of Public Aid (217) 524-4602	
Indiana Child Support Office (317) 233-5437	

[continued]

many states want to remedy. A delinquent obligor may face contempt-of-court charges and civil penalties. Criminal sanctions can include a jail sentence or a fine, but these punishments are used sparingly and for repeat violations. Prosecution may proceed on a misdemeanor or felony level, depending on the circumstances. In addition, federal prosecution may occur for a parent who crosses a state line to avoid paying support.

Enforcement

In 1992 \$27 billion in child support went uncollected. The U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES has estimated that a substantial increase in child support collections could reduce the payments of Aid to Families with Dependent Children (AFDC) by 25 percent. The federal government created the AFDC program in 1935 to enable states to provide money and services to help poor children remain in their own, single-parent homes.

These observations were not lost on the 1994 Senate, which directed the JUSTICE DEPARTMENT to "immediately address shortcomings in enforcement of the law [regarding child support]." Enforcement efforts are administered federally through the department's Office of Child Support Enforcement, but child support recovery units at the state level perform the daily task of securing payment.

The problems surrounding the collection of child support have provoked frustration and ingenuity in states throughout the nation. A major barrier to timely and regular collection is the large volume of child support orders that states are required to enforce monthly. One response has been to divert cases from the court system by empowering state agencies to enforce child support orders.

A primary means of collecting is wage withholding. This action requires that the employer of the obligor send a percentage of the obligor's paychecks to the state or county, which forwards it to the custodial parent. Where the custodial parent receives federal public assistance, income withholding is mandatory. GARNISHMENT is similar to withholding, but it is used when the obligor is about to receive a lump-sum payment.

Interception of the obligor's federal tax return is another enforcement tool. In the first seven years after implementing a pilot of this requirement, \$1.8 billion was collected. As of the early 2000s federal law requires every state to have legislation for intercepting the tax returns

of delinquent obligors and applying them to child support after a review.

Self-employed obligors, or those whose employment is unknown, pose a challenge to collection agencies. In their case, states may rely on the custodial parent's knowledge of the obligor's income and on tax returns to pursue enforcement.

If a parent who owes child support dies, the child support payments may be made from the deceased parent's estate, at least according to one court. In *L. W. K. v. E. R. C.*, 735 N.E.2d 359 (Mass. 2000), in the Supreme Judicial Court of Massachusetts a father was required by a court to pay \$100 per month in child support for his minor daughter until the daughter turned 18. The father subsequently disinherited the daughter in his will. He died five months after he executed the will. The court ruled that the child was entitled to receive child support payments from the father's estate until she turned 18.

Other enforcement methods include placing a lien on the obligor's property so that it cannot be sold without clearing the arrearage. At times, interest is added to unpaid child support in order to motivate the obligor to pay off this debt; in 1995, the default rate was nearly 50 percent on child support, compared with only 3 percent on car loans. Some states have taken the high-profile approach of publicly issuing controversial "Wanted" posters depicting delinquent obligors. Others have revoked state-issued fishing, hunting, and even driver's licenses as punishment for nonpayment.

Less common methods for securing child support owed are the seizure of government security bonds, collection of the full amount by the INTERNAL REVENUE SERVICE (this method was still under consideration in 1995), and seizure and sale of property or other forced payment. The effects of reporting delinquent obligors to credit bureaus are being studied.

Interstate orders (orders for support to be paid by a parent in a different state) pose additional problems for enforcement. Although three in ten child support cases are interstate, only 10 percent of the delinquent collections nationwide result from these cases. This circumstance has caused child support collection, usually considered a state function, to become an issue of national importance. Although most states have LONG-ARM STATUTES enabling them to retain jurisdiction over obligors in other states, delays result when the laws are not uni-

State Child Support Enforcement Offices

Nevada
Child Support Enforcement Program
Nevada State Welfare Division
(702) 687-4744

New Hampshire
Office of Child Support
Division of Human Services
Health and Human Services Building
(603) 271-4427

New Jersey
Division of Family Development
Department of Human Services
Bureau of Child Support and
Paternity Programs
(609) 588-2915

New Mexico
Child Support Enforcement Bureau
Department of Human Services
(505) 827-7200

New York
Office of Child Support Enforcement
Department of Social Services
(518) 474-9081

North Carolina
Child Support Enforcement Office
Division of Social Services
Department of Human Services
(919) 571-4114

North Dakota
Department of Human Services
Child Support Enforcement Agency
(701) 328-3582

Ohio
Office of Family Assistance and Child
Support Enforcement
Department of Human Services
(614) 752-6561

Oklahoma
Child Support Enforcement Division
Department of Human Services
(405) 522-5871

Oregon
Recovery Services Section
Adult and Family Services Division
Department of Human Resources
(503) 378-5567

Pennsylvania
Bureau of Child Support Enforcement
Department of Public Welfare
(717) 787-3672

Rhode Island
Child Support Services
Division of Administration and
Taxation
(401) 222-2847

South Carolina
Department of Social Services
Child Support Enforcement Division
(803) 737-5875

South Dakota
Office of Child Support Enforcement
Department of Social Services
(605) 773-3641

Tennessee
Child Support Services
Department of Human Services
(615) 313-4880

Texas
Office of the Attorney General
State Office
Child Support Division
(512) 460-6000

Utah
Office of Recovery Services
(801) 536-8500

Vermont
Office of Child Support
1-800-786-3214

Virginia
Division of Support Enforcement
Department of Social Services
(804) 692-1428

Washington
Division of Child Support
Department of Social Health Services
(360) 664-5000

West Virginia
Child Support Enforcement Division
Department of Health & Human Resources
(304) 558-3780

Wisconsin
Bureau of Child Support
Division of Economic Support
(608) 266-9909

Wyoming
Child Support Enforcement
Department of Family Services
(307) 777-6948

SOURCE: U.S. Department of Health & Human Services, Administration of Children & Families, *Office of Child Support Enforcement Handbook*.

form. Failures to collect across state lines are due to heavy case backlogs, multiple and conflicting orders, lack of priority given to interstate cases

*A sample child
support guidelines
worksheet
(state of NE)*

Child Support Guidelines Worksheet (State of NE)

CHILD SUPPORT GUIDELINES WORKSHEETS 1 (Basic), 4 (Number of Children), & 5 (Deviations) (2000)

= No. of Children		MOTHER	COMBINED	FATHER	
INCOME:					
1a/b	Last Two Years Schedule C/F income				
2a/b	Last Two Years Depreciation claimed				
3	MONTHLY S. E. INCOME ((1a+1b+2a+2b)/24)				
4	MONTHLY SALARY INCOME				
5	MONTHLY VALUE of Fringe Benefits				
6	MONTHLY INCOME ALL SOURCES (sum L3..L5)				
DEDUCTIONS:					
7	Filing Status (1=Single; 2=HH)				
8	No. of Exemptions				
9	Annual Gr. Inc (((1a+1b)/2)+(L4x12))	-----		-----	
10	Standard Ded. (S:\$4400; HH:\$6450)				
11	Exemptions (\$2800 each)				
12	Fed Taxable Inc. (L9-L10-L11)				
13	Annual Fed Income Tax (from table)				
14	Child Credit (\$500/ch in custody)	-----			
15	Federal Income Taxes ((L13-L14)/12)				
16	St Taxable Inc (L9-L10)				
17	State Tax Before Credits (from table)				
18	State Exemption Credit (L8 x \$91)				
19	Annual State Income Tax (L17-L18)				
20	State Income Taxes (L19/12)				
21	FICA/Medicare: 7.65% Sal; 15.3% SE				
22	Child(ren)'s Health Insurance Premiums				
23	Mandatory Retirement				
24	Child Support Previously Ordered for Other Children				
25	TOTAL DEDUCTIONS (sum L15+L20 to L24)				
26	MONTHLY NET INC Bef Othr Chldrn Dedtn (L6-L25)				
27	Deduction for Children Not Subject of Order				
28	MONTHLY NET INCOME (L26-L27)				
29	Percentage of Combined Income	----- %		----- %	
MONTHLY SUPPORT, from table		(rounded)	(unrounded)	(rounded)	
30	One Child				
31	Two Children				
32	Three Children				
33	Four Children				
34	Five Children				
35	Six Children				
36	GUIDELINE R LIMITATION (rounded down):	-----			
DEVIATION (Specify):					
37		+/-		+/-	
MONTHLY SUPPORT NET OF DEVIATIONS:					
38	One Child				
39	Two Children				
40	Three Children				
41	Four Children				
42	Five Children				
43	Six Children				
FED:	Single	Head H:	STATE:	Single:	Head H:
15.0%	26,250	3,515	2.51%	2,400	3,800
28.0%	63,550	90,800	3.49%	17,000	24,000
31.0%	132,600	147,050	5.01%	26,500	35,000
36.0%	288,350	288,350	6.68%	excess	excess
39.6%	excess	excess			

APPENDIX "B" Support Worksheet; _____ v. _____ : _____ County, Case No. _____

F-4 & G-1

by the responding state, and an inability to locate the noncustodial parent.

The Uniform Interstate Family Support Act (UIFSA), which was developed in 1992, contains what is called the one order, one time rule, in which the initial state retains jurisdiction in order to prevent multiple orders. The act limits modifications and provides that they must occur in the child's home state. The model legislation also features direct income withholding, so that the state of origin can communicate directly with the obligor's employer in another state. It also requires that states that adopt the uniform law provide enforcement services to one another.

In October 1994, the U.S. Congress's Full Faith and Credit for Child Support Orders Act became effective (28 U.S.C.A. §§ 1 note, 1738B, 1738B note), enabling states to enforce and modify orders under certain circumstances.

Public Assistance

In 1991 the CENSUS BUREAU found that nearly half of all single-parent families headed by a woman live at the poverty level. A report on child support enforcement presented to the Senate in 1994 found that more than one-fifth of all U.S. children lived in poverty. As a result, in the 1990s, reliance on AFDC increased dramatically nationwide.

In recognition that many families require public WELFARE because a noncustodial parent does not contribute, Congress adopted Title IV-D of the Social Security Act in 1975 (Social Services Amendments of 1974, Pub. L. No. 93-647, 88 Stat. 2337 [1975] [pertinent sections codified at 42 U.S.C.A. §§ 661-665 (1988)]). The legislation created the federal Office of Child Support Enforcement and required states to establish state child support offices. Under Title IV-D, services such as locating noncustodial parents, determining parentage, and establishing and enforcing support orders must be provided free to families that receive AFDC. In addition, these services must be provided at very low cost to custodial parents who do not receive AFDC. The federal government requires states to provide these services as a condition for receiving AFDC services.

In the 1990s, child support was sought as part of the regular intake procedure for unmarried parents who were requesting public assistance. To comply with federal funding requirements, most states require that an unmarried parent

seeking AFDC identify the absent parent and cooperate in efforts to establish parentage and secure child support.

Modifying Awards

A family's postdivorce economic situation will likely be different from its predivorce economic situation. In most cases, divorced parents set up separate households whereas they lived together in one home while married. Because the same resources cannot support two households at the same level as a single household, awards are often considered inadequate by the custodial parent and burdensome by the obligor.

An existing support order may be modified if the child's needs or the paying parent's resources change. Back child support can be ordered if a modification or other order delays payment.

Remarriage or COHABITATION does not necessarily affect child support, although if demonstrated to be a permanent change in circumstances, it could become a basis for modification. A child's ADOPTION releases the obligor from future payments but does not cancel an arrearage.

Some orders are automatically modified when certain conditions are met. For example, an escalation clause allows the child support amount to increase as the obligor's income increases. A cost-of-living-adjustment (commonly referred to as COLA) clause permits modification without a hearing when there is an increase in income coupled with inflation. The purpose of these clauses is to keep cases out of court. Courts usually do not approve automatic increases that are not based on an increase in income.

To ensure that orders remain adequate and equitable, Congress began in 1993 to require that states review and, if necessary, adjust child support orders at least once every three years if the custodial parent receives federal public assistance. This arrangement differs from state modification standards that are based on changes in circumstances.

BANKRUPTCY does not end a child support obligation. A child's move, if authorized, does not end support. And an obligor's estate may be required to continue support payments after the obligor's death. In most cases, the obligation ends only when the child reaches the age of majority, marries, or can support herself or himself.

In some states, the court may terminate or suspend child support as a way to enforce a visitation order. The difficulty with this modification is that the child may suffer as a result.

Other Awards

Financial awards for higher education are sometimes included in an order to pay support but are not meant to substitute for primary support. Education awards are common in families in which children are expected and able to complete postsecondary coursework. Courts have denied awards for tuition, for lessons, and for other education-related expenses when those expenses are deemed unnecessary.

A responsibility to provide **HEALTH CARE** is occasionally clarified in orders for support, especially when one or both parents have access to an employer-provided health plan. In the early 1990s, a total of 25 million children had no employer-provided insurance, and 8.4 million had no coverage at all. Nevertheless, also in the early 1990s, a majority of support orders lacked provisions regarding **HEALTH INSURANCE**.

An obligor may be required to maintain a life insurance policy naming the child or guardian as beneficiary.

FURTHER READINGS

- Bahr, Stephen J., et al. "Trends in Child Custody Awards: Has the Removal of Maternal Preference Made a Difference?" *Family Law Quarterly* (summer).
- Calhoun, Janelle T. 1995. "Interstate Child Support Enforcement System: Juggernaut of Bureaucracy." *Mercer Law Review* (winter).
- Haynes, Margaret Campbell. 1994. "Child Support and the Courts in the Year 2000." *American Journal of Trial Advocacy* (spring).
- Mason, Mary Ann. 2000. *The Custody Wars: Why Children Are Losing the Legal Battle and What We Can Do About It*. New York: Basic Books.
- Ramsey, Sarah H., and Douglas E. Abrams. 2003. *Children and the Law in a Nutshell*. St. Paul, Minn.: West.
- Sampson, John J., and Barry J. Brooks. 2002. "Uniform Interstate Family Support Act (2001) With Prefatory Note and Comments." *Family Law Quarterly* 36 (fall): 329–447.
- Solomon-Fears, Carmen. 2003. *Paternity Establishment: Child Support and Beyond*. New York: Novinka Books.
- U.S. Census Bureau. *Custodial Mothers and Fathers and Their Child Support*. Washington, D.C.: U.S. Government Printing Office.
- U.S. Dept. of Health and Human Services. 2000. *Income Withholding for Child Support*. Washington, D.C.: U.S. Dept. of Health and Human Services, Office of Child Support Enforcement.
- Zmijewski, Daniel Robert. 2003. "The Child Support Recovery Act and Its Constitutionality After *U.S. v. Morrison*."

The Kansas Journal of Law & Public Policy 12 (winter): 289–309.

CROSS-REFERENCES

Child Custody; Divorce; Family Law; Parent and Child; Welfare.

CHILDREN'S DEFENSE FUND

The Children's Defense Fund (CDF) is a national organization that is committed to the social **WELFARE** of children. Founded in 1973, the nonprofit group uses its annual \$9 million budget to lobby legislators and to speak out publicly on a broad array of issues on the law, the family, and society. It is involved in the welfare debate: The CDF has consistently fought for federal welfare programs that directly help poor children, a cause that has enjoyed significant success in Washington, D.C. In the 1980s, its intensive **LOBBYING** efforts saved billions of dollars in proposed funding cuts, and in the early 1990s, close ties with the administration of President **BILL CLINTON** increased its influence, leading to new federal legislation. Besides its work on Capitol Hill, the organization issues reports on the health and the economic and social well-being of U.S. children. The organization owes much of its effectiveness to the work of its founder and director, **CIVIL RIGHTS** attorney **MARIAN WRIGHT EDELMAN**.

The first black woman to pass the bar exam in Mississippi, Edelman fought **RACIAL DISCRIMINATION** in the 1960s. She initially came to national attention by stopping efforts in Mississippi to deny African Americans money from the federal Head Start program. By the end of the 1960s, she ran an advocacy group called the Washington Research Project, whose chief focus was antidiscrimination law. The group acquired powerful allies—one staff attorney was Hillary Rodham, who would become First Lady. Edelman lobbied extensively for federal **HEALTH CARE** and **CHILD CARE**, but to little avail. By 1973, she realized that "the country was tired of the concerns of the sixties. When you talked about poor people or black people, you faced a shrinking audience. I got the idea that children might be a very effective way to broaden the base for change." She renamed her organization, made children's issues its primary focus, and began building the corporate sponsorship that has grown to include such major donors as American Express and Coca-Cola.

The CDF has taken a stand against cutting federal programs that benefit poor children.

Leading its list are the Head Start and Women, Infants, and Children (WIC) nutrition programs. Although viewed as a liberal organization, it has blasted presidential administrations from Jimmy Carter's to George H.W. Bush's whenever budgets have been threatened. It has attacked social spending cuts as "callous" and motivated by "greed," arguing that welfare is properly seen as a children's issue. In a display of its influence during the Reagan era, the CDF convinced Congress to spare approximately \$2.5 billion in cuts. In addition to supporting existing programs, the CDF has argued in favor of greater federal support for underprivileged families in the areas of housing, day care, child immunization, so-called family preservation programs, and employment training.

The organization's research and recommendations are often the catalyst for debate. For example, its 1991 study *Bright Futures or Broken Dreams: The Status of the Children of the District of Columbia and an Investment Agenda for the 1990s*—noting items such as infant mortality, teenage pregnancy and murder, and child abuse—concluded that "across almost every indicator of health, income, and social well-being, the status of children in the District is abysmal." Edelman opened the CDF's first local office in the District of Columbia. She called society's failure to save children's lives unforgivable and blamed it on local and federal governments. Such conclusions sit well with traditional liberals but not with conservatives. Nationally syndicated columnist Mona Charen, for example, attacked the CDF for wanting "a bigger and bigger welfare state, with less and less emphasis on personal responsibility and self control." Even neoliberals such as author Mickey Kaus found the CDF's social analysis to be outdated and its answers impractical. "Are American taxpayers more likely to open their wallets for someone with an unvarnished analysis of the underclass problem," Kaus wrote in the *New Republic*, "or someone who tries to overwhelm analysis with emotionalism about children?"

Despite such criticism, the organization's agenda flourished during the Clinton administration, in part due to long-established personal and political ties between the Clintons and Edelman: HILLARY RODHAM CLINTON was CDF chair from 1986 to 1992. The president promoted several of the CDF's positions in his legislative goals: He signed family-leave legislation and stepped up enforcement of CHILD SUPPORT

Children Living in Poverty: Best and Worst States

Best States		Worst States	
Rank	Rate	Rank	Rate
1 New Hampshire	7.1%	51 District of Columbia	30.9%
2 Minnesota	9.3%	50 West Virginia	27.7%
3 Colorado	9.8%	49 Louisiana	27.6%
4 Utah	10.7%	48 Mississippi	25.8%
5 New Jersey	10.8%	46 Arkansas	25.5%
		46 New Mexico	25.5%

SOURCE: Children's Defense Fund, *The State of Children in America's Union*, 2002.

payments with the help of the INTERNAL REVENUE SERVICE. He also proposed budgets that would fully fund or expand Head Start and WIC; advocated a comprehensive federal immunization program for children; and supported health care reform that would ensure care for children and pregnant women.

The CDF has been critical of the administration of GEORGE W. BUSH with respect to federal support for poor children. Edelman and the organization have embarked upon a mission called Leave No Child Behind, calling for comprehensive legislation to provide federal support for the health, safety, and education of all children. The mission is named similarly to an initiative by Bush that resulted in the No Child Left Behind Act of 2001, Pub. L. No. 107-110, 115 Stat. 1425 (20 U.S.C.A. §§ 6301 et seq.), which was primarily an educational bill. Edelman and other CDF supporters have disapproved of several of Bush's initiatives relating to children's programs.

FURTHER READINGS

Children's Defense Fund. Available online at <www.childrensdefense.org/> (accessed November 12, 2003).

CROSS-REFERENCES

Family Law.

CHILDREN'S RIGHTS

The opportunity for children to participate in political and legal decisions that affect them; in a broad sense, the rights of children to live free from hunger, abuse, neglect, and other inhumane conditions.

The issue of children's rights is poorly defined in legislation and by the courts, partly because U.S. society as a whole has not decided how much autonomy to grant children. Although the United States is built on protecting

the interests of individuals and the twentieth century saw the rights of people with special needs recognized, the nation has yet to extend to children legal standing (the right to bring a court case) and legal protection similar to that of adults.

When most children's advocates talk about children's rights, they are not referring to the same rights held by adults, such as the rights to vote, drink, smoke, and run for office. Instead, they mean that more emphasis should be placed on children's status as "natural persons" deserving of benefits under the law as provided in the U.S. Constitution and its BILL OF RIGHTS.

The U.S. legal system grants rights to people who are deemed competent to exercise those rights. This qualification poses a dilemma for advocates of children's rights because most children lack the skills to advocate for themselves in the political, judicial, or economic arena. Yet, children's rights supporters believe that because of this powerlessness, children must be granted more protections and power than has been provided in their legal status.

PARENS PATRIAE ("the state as parent") is the philosophy that guided many court decisions in the 1990s. This approach basically assumes that the government has a duty to make decisions on behalf of children to ensure that their best interests are met. But the doctrine can be interpreted as allowing government interests to replace interests children may wish to express on their own behalf. It also assumes that what the government wants matches what the child needs, which may or may not be true.

How U.S. society defines and provides children's rights has implications for many areas: how children are represented by attorneys; how resources are distributed, for example, in a family experiencing DIVORCE; how long some children will live in abusive situations or foster care; how the role of families is viewed; and more.

Court Standing

Twelve-year-old Gregory Kingsley made the news headlines in 1992 when he went to court to sever his legal ties to his parents—and won (*In re Kingsley*, No. JU90-5245, 1992 WL 551484 [Fla. Cir. Ct. Oct. 21, 1992; *Kingsley v. Kingsley*, 623 So. 2d 780 (Fla. Ct. App. 1993)]). A year later, Kimberly Mays, age 17, won her legal battle to end any parental rights her biological parents might attempt to exercise (*Twigg v. Mays*, No. 88-4489-CA-01, 1993 WL 330624 [Fla. Cir. Ct.

Aug. 18, 1993]). What was unusual in both cases was that children were allowed to advocate for their interests on their own behalf. Some children's rights advocates believe that competent children like Mays and Kingsley must be allowed to use the courts to pursue their interests. But these particular cases may have done more to promote the discussion of children's rights than to promote actual rights.

For example, when Kingsley's mother subsequently appealed the termination of her rights, the appellate court ruled that as a minor, Kingsley alone did not have standing (*Kingsley v. Kingsley*). It was ultimately the support of adults who later joined Kingsley in bringing the case (including his adoptive parents), along with his parents' inability to care for him, that influenced the appeals court to affirm the lower court's decision.

The situation surrounding Mays's parentage is so unusual that few similar cases are anticipated to arise. Mays was raised by Robert Mays and Barbara Mays after being mistakenly identified as their daughter in the hospital where she was born. When Mays's biological parents discovered the switch more than a decade later, they sought visitation with Mays, starting a battle between them and the man who had believed that Mays was his daughter and had raised her alone after his wife's death.

Except when there is evidence of neglect or abuse, parents usually retain their status as preferred caretakers of their children. The case of *Meyer v. Nebraska*, 262 U.S. 390, 43 S. Ct. 625, 67 L. Ed. 1042 (1923) established that the Liberty Clause of the FOURTEENTH AMENDMENT gives parents the right to raise their children. The government's assumption is that parents' priorities match their children's.

The situation is less clear when the conflict is between children and their parents, as in the cases of Mays and Kingsley. When a family court is considering a CHILD CUSTODY or support petition, it may become aware that the parents are not acting in their children's best interests. In these cases, the court may appoint a GUARDIAN AD LITEM to identify the children's needs and to advocate that those needs be met. This caretaker "for the lawsuit" may be an attorney chosen to act on behalf of the child in court. But heavy increases in child protection and family court caseloads nationwide have led to long delays in making determinations on behalf of children—and have led many advocates to suggest that a

solution may lie in allowing children to initiate actions for themselves.

Many situations in which children and parents do not share common interests have not been resolved in favor of the minors. These include cases that challenge laws requiring minors to get their parents' consent before an ABORTION or that challenge parents' efforts to commit their children to psychiatric institutions. For example, in *Parham v. J. R.*, 442 U.S. 584, 99 S. Ct. 2493, 61 L. Ed. 2d 101 (1979), the Supreme Court decided that when parents seek to institutionalize their children in mental hospitals, the DUE PROCESS provided to the children need be no more than an evaluation by an independent medical decision maker. Again, the Court upheld the government's assumption that what is best for the children is what the parents and the state decide, despite criticisms that this is not always true.

Juvenile Justice

Some advocates of children's rights believe that children should be afforded the same constitutional and procedural safeguards that adults are given in court. The juvenile justice system is cited by some experts as an area in which the protections granted to children lag behind those provided to adults. For example, children may be detained in situations where adults would not be. Bail is not set for children, and children do not receive the benefit of a jury of their peers. In some states, as recently as the late 1980s, minors could receive longer incarceration sentences than could adults.

Some constitutional protections were won in the late 1960s on behalf of juveniles who could be tried as adults. These protections included the right to an attorney's advice at the time when the court was deciding whether to try the juvenile as an adult, the right to a hearing on that issue, and the right to the same information the court would use in making a decision (*IN RE GAULT*, 387 U.S. 1, 87 S. Ct. 1428, 18 L. Ed. 2d 527 [1967]; *Kent v. United States*, 383 U.S. 541, 86 S. Ct. 1045, 16 L. Ed. 2d [1966]). However, advances in this area have not kept pace with federal and state legislation expanding the punishment of juveniles as adults.

Constitutional Issues

Legal commentators have noted that the courts were seemingly willing to recognize the constitutional rights of children during the 1960s and 1970s. A series of U.S. Supreme Court deci-

sions recognized minors' RIGHTS TO COUNSEL in criminal proceedings, to protection from SELF-INCRIMINATION, as well as other procedural rights and general privacy rights. However, according to some commentators, the 1988 case of *Hazelwood School District v. Kuhlmeier*, 484 U.S. 260, 108 S. Ct. 562, 98 L. Ed. 2d 592 (1988) marked a turning point in the Court's recognition of children's constitutional rights. In that case, the Court limited the right of children to exercise free speech and free expression. According to the decision, children's rights "are not coextensive with the rights of adults in other settings."

One 1993 study of constitutional decisions concluded that from the 1960s to the early 1990s, the U.S. Supreme Court was increasingly less supportive of expanding children's claims to constitutional rights. The study showed that under the liberal WARREN COURT, 100 percent of decisions about constitutional cases upheld children's claims. The Burger Court, which followed, upheld children's claims in 59 percent of such decisions, and the Rehnquist Court in 22 percent of such cases to 1993. The cases in the survey concerned issues of EQUAL PROTECTION, due process, privacy, free expression, and free exercise of religion.

Statistics such as these prompted concern among experts as to the denial of basic legal rights given to children. During the mid- to late-1990s, a number of scholarly articles were published advocating expanded rights for children. However, the trend toward restricting children's rights continued into the early 2000s. Courts, with some frequency, find that children are not capable of managing full legal rights and of making decisions on their own behalf. The question of how far society should go in allowing children to participate in determining their destiny remains a difficult challenge.

FURTHER READINGS

- Archard, David William. 2003. *Children, Family, and the State*. Aldershot, Hants, England, Burlington, Vt.: Ashgate.
- Cannon, Scott A. 1994. "Finding Their Own 'Place to Be': What Gregory Kingsley's and Kimberly Mays' 'Divorces' from Their Parents Have Done for Children's Rights." *Loyola Law Review* (winter).
- Coons, John E., Robert H. Mnookin, and Stephen D. Sugarman. 1991. "Puzzling over Children's Rights." *Brigham Young University Law Review*.
- Dale, Michael J. 1992. "The Supreme Court and the Minimization of Children's Constitutional Rights: Implications for the Juvenile Justice System." *Hamline Journal of Public Law and Policy* (summer).

- Federle, Katherine Hunt. 1993. "Constructing Rights for Children." *Family Law Quarterly* (fall).
- Jackson, Rochelle D. 1999. "The War Over Children's Rights: And Justice for All? Equalizing the Rights of Children." *Buffalo Human Rights Law Review*. 223.
- John, Mary. 2003. *Children's Rights and Power: Charging Up for a New Century*. London, New York: Jessica Kingsley.
- Mezey, Susan Gluck. 1993. "Constitutional Adjudication of Children's Rights Claims in the United States Supreme Court, 1953-92." *Family Law Quarterly* (fall).
- Ramsey, Sarah H., and Douglas E. Abrams. 2003. *Children and the Law in a Nutshell*. 2d ed. St. Paul, Minn.: West Group.
- Sommer, Cristina Dugger. 1994. "Empowering Children: Granting Foster Children the Right to Initiate Parental Rights Termination Proceedings." *Cornell Law Review* (July).

CROSS-REFERENCES

Child Abuse; Child Custody; Child Support; Divorce; Family Law; Guardian ad Litem; Parent and Child.

CHILLING EFFECT DOCTRINE

In CONSTITUTIONAL LAW, any practice or law that has the effect of seriously dissuading the exercise of a constitutional right, such as FREEDOM OF SPEECH.

CHINESE EXCLUSION ACT OF 1882

Passed by U.S. Congress in 1882 and signed into law by President CHESTER A. ARTHUR, the Chinese Exclusion Act (22 Stat. 58) created a ten-year MORATORIUM on the immigration of Chinese laborers into the United States. The Act represents the first law ever passed by Congress that denied entry to the United States on the basis of race or ethnicity. Congress indefinitely extended the act in 1902 and made it permanent in 1904. However, it was repealed in its entirety in 1943, when China became an important ally to the United States against Japan. However, its residual effect on Chinese-American relations continued far beyond.

Anti-Chinese sentiment in the United States began during the 1850s' Gold Rush, which eclipsed a period of great poverty in China. Chinese laborers flocked to California, where they soon became an exploited workforce because even the meager wages they earned in California represented far more than they could have earned in their homeland. By the 1870s, clear resentment existed among American miners, who felt their own wages were being held down by the industrious Chinese. U.S. miners also felt that the laborers were sending too much gold back to China, believing the natural resource

should stay within the United States. Moreover, the Chinese were beginning to prosper in the laundry business, particularly in overcrowded San Francisco, where Victorian tastes and cultures approved of such domestic indulgences. Mounting political pressure resulted in heated debate, and final passage of the act occurred on May 6, 1882.

Under the provisions of the act, immigration of Chinese laborers to the United States was suspended for ten years. Chinese laborers already in the country were permitted to remain, even following temporary absences, but were barred from naturalization. Illegal immigrants were to be deported. Non-labor Chinese students, teachers, merchants, or those "proceeding to the United States from curiosity" were permitted entry. The act expressly defined "Chinese laborers" as "both skilled and unskilled laborers and Chinese employed in mining." Additional provisions of the act levied heavy fines on those who would bring in or "aid and abet" any Chinese person unlawfully within the United States.

Under the Geary Act (making the act permanent), other provisions were added to require Chinese residents in the United States to register and obtain a certificate of residence. This act required that they be photographed and submit photograph copies with local police. Moreover, they had to carry identification with them at all times. The federal government paid for all related costs associated with compliance.

Following an influx of general post-war immigrants during the 1920s, Congress began to implement quotas and requirements pertaining to national origin. By 1943, Congress repealed all exclusion acts, instead leaving in place a yearly limit of 105 Chinese. Further, Congress gave foreign-born Chinese naturalization rights of citizenship. The so-called origin system (with several subsequent modifications) continued to control immigration until the passage of the Immigration and Nationality Amendment Acts of 1965, Pub. L. No. 89-836, 79 Stat. 911.

FURTHER READINGS

American Federation of Labor. 1902. *Some Reasons for Chinese Exclusion. Meat v. Rice. American Manhood against Asiatic Coolieism, Which Shall Survive?* Senate Document No. 137, 57th Congress, 1st Session. Washington, DC: Government Printing Office.

"Chinese Exclusion Act of 1882." Excerpted from *Teaching with Documents: Using Primary Sources from the National Archives*. Available online at <www.ourdocuments.gov> (accessed June 2, 2003.)

Chinese Exclusion Act of 1882, 22 Stat. 58. Available online at <www-marine.Stanford.edu/HMSweb/cea.htm> (accessed June 2, 2003).

❖ CHIPMAN, DANIEL

Daniel Chipman was born October 22, 1765, in Salisbury, Connecticut. He graduated from Dartmouth College in 1788, pursued legal studies, and was admitted to the Vermont bar in 1790.

In 1794 Chipman relocated to Middlebury, Vermont, where he established a successful legal practice and acted as counselor until 1819. In 1797 he became state attorney for Addison County, performing these duties until 1817.

Chipman entered state politics in 1798 as a delegate from Middlebury to the General Assembly. From 1808 to 1815 he served as a member of the governor's council, acting as speaker in 1813 and 1814.

In 1814 Chipman began service in the federal government as a congressman; he left his post after one session, due to illness. In 1818 he returned to the General Assembly and represented Middlebury during that year and again in 1821.

Chipman's career interests also extended to the field of education. He accepted a professorship of law at Middlebury College in 1806 and taught for the next ten years.

The last years of Chipman's life were devoted to his writing; however, he also served as a Vermont supreme court reporter in 1823, and as a representative to two state constitutional conventions, in 1843 and in 1850.

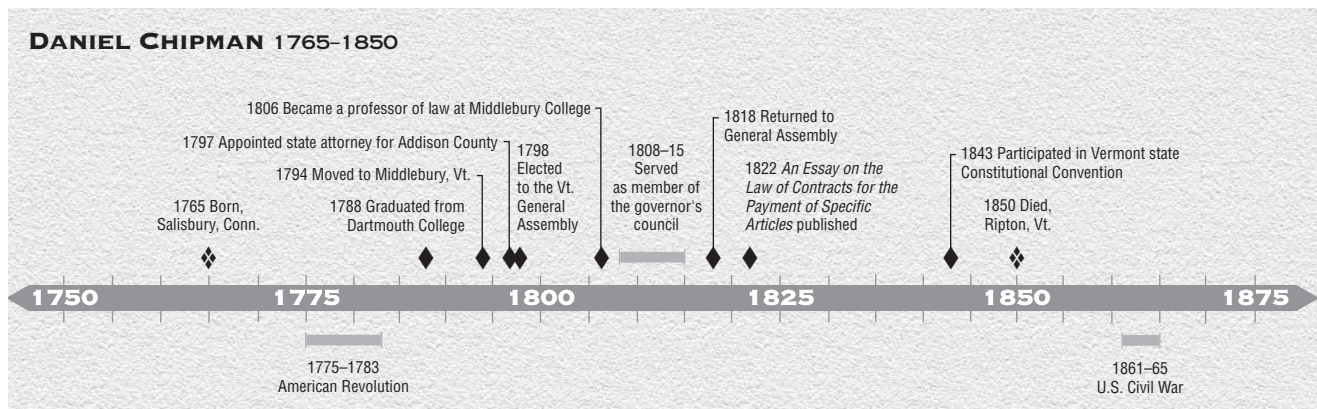
As an author, Chipman wrote numerous publications, including several biographies. His most famous work is *An Essay on the Law of Contracts for the Payment of Specific Articles*, published in 1822.

Chipman died April 23, 1850, in Ripton, Vermont.

❖ CHISHOLM, SHIRLEY ANITA ST. HILL

A distinguished congresswoman, scholar, and African American spokeswoman, Shirley Chisholm was the first black woman elected to the U.S. House of Representatives. A dynamic public speaker who boldly challenged traditional politics, "Fighting Shirley Chisholm," as she called herself during her first congressional campaign, championed liberal legislation from her seat in the House beginning with her inauguration in 1968 and continuing until her retirement in 1982. Admirers and foes alike dubbed her the "Pepperpot" because of her fondness for saying, "I breathe fire." Known for her wit, dedication, and compassion, she remains a fierce and eloquent voice on national matters.

Chisholm was born Shirley Anita St. Hill on November 30, 1924, in the impoverished Bedford-Stuyvesant section of Brooklyn. Her father, an emigrant from Guyana, worked as an unskilled laborer, and her mother, a native of Barbados, was a seamstress and a domestic worker. Extraordinary circumstances separated Chisholm from her parents for much of her early childhood. Struggling to save money for a house and for their children's education, the St. Hills sent their four daughters to live on the farm of a grandmother in Barbados. From the age of three to the age of 11, Chisholm received a British elementary school education and acquired a West Indian rhythm of speech. An important influence on her early life, her grandmother instilled in her the values of pride, courage, and faith. Her parents took her back to Brooklyn at the age of 11.



*Shirley Chisholm.*AP/WIDE WORLD
PHOTOS

"THE WORD
'RADICAL,'
PROPERLY USED,
MEANS GOING TO
THE BASIS OF A
PROBLEM—THE
WORD COMES
FROM THE LATIN
FOR 'ROOT'—
RATHER THAN
DEALING WITH ITS
MANIFESTATIONS."

—SHIRLEY
CHISHOLM

Graduating with an excellent academic record from a Brooklyn girls' high school, Chisholm earned a scholarship to study sociology at Brooklyn College. She quickly became active in political circles, joining the Harriet Tubman Society, serving as an Urban League volunteer, and winning prizes in debate. Her interest in her community led her to attend city meetings, where, as a student, she astonished older adults by confronting civic leaders with questions about the quality of government services to her predominantly black neighborhood. While beginning to establish her profile in her community, she also impressed her professors with a powerful speaking style and was encouraged to enter politics. She received her sociology degree with honors in 1946. While working in a nursery school she studied for a master's degree in elementary education at Columbia University where she met Conrad Chisholm, whom she married in 1949. Two years later she received her master's degree in early childhood education.

Over the next decade Chisholm built a reputation as an authority on early education and child welfare. She served as the director of the Friends Day Nursery, in Brownsville, New York, and, from 1953 to 1959, of the Hamilton-Madison Child Care Center, in Lower Manhattan. Taking her expertise into the public sector, she became an educational consultant in New York City's Bureau of Child Welfare from 1959 to

1964. In addition to her professional work, she participated in a variety of community and civic activities. She served on the board of directors of the Brooklyn Home for Aged Colored People and became a prominent member of the Brooklyn branch of the National Association for the Advancement of Colored People (NAACP). She frequently volunteered her time for such groups as the Democratic Women's Workshop; the League of Women Voters; and the Bedford-Stuyvesant Political League, an organization formed to support black candidates. Her intense participation in local politics—marked by her forthrightness and her willingness to confront politicians with difficult questions about racial equality—made her unpopular with the predominantly white Democratic establishment in New York. But it won her the recognition and respect of her community which was about 70 percent African American and Hispanic residents.

So well known was Chisholm in Brooklyn by 1964 that she could mount a successful campaign for a seat in the New York State Assembly despite having no support from the Democratic establishment. She stressed that "the people" had asked her to run. As an assemblywoman from 1964 to 1968, she spearheaded legislation providing for state-funded day care centers and for unemployment insurance for domestic workers. Of particular importance to her were bills that she shepherded through the Education Committee. One major accomplishment was a financial aid program known as Search for Elevation, Education and Knowledge (SEEK). Passed into law in 1965, SEEK reached out to students of color who lacked the necessary academic requirements to enter state universities by providing them with scholarships and remedial training. Other legislative successes boosted school spending limits and wiped out the practice of stripping tenure from women teachers who took maternity leave.

In 1968, Chisholm became the first African American woman to run for the U.S. Congress. In her pursuit of the Democratic nomination for the Twelfth District she bested two other African American candidates and was appointed New York's National Committee representative at the party's national convention. She later said that to win the nomination she had to beat the political machine, an entrenched bureaucracy that had never been fond of her brash style. With the nomination in hand, she faced her Republi-

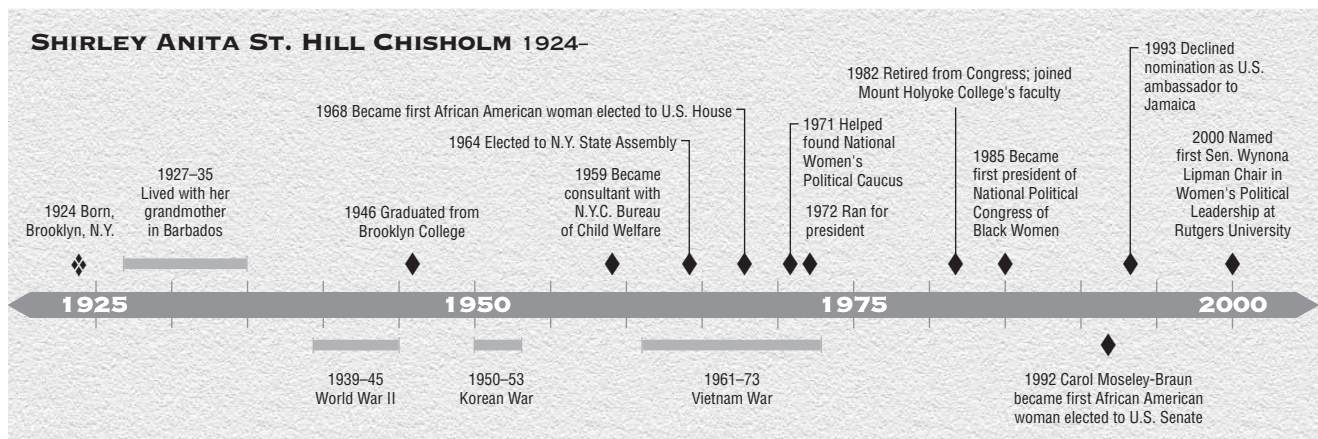
can opponent, James Farber, a liberal white male who enjoyed national prominence as a **CIVIL RIGHTS** leader. Farber was expected to win, but on November 5, 1968, by a margin of more than 2–1, Chisholm staged an upset victory. The success of her antiestablishment campaign, which ran under the slogan “Unbought and Unbossed,” was attributed both to widespread support from women and to her ability to address Puerto Rican voters in Spanish.

From the moment she took her seat in the House of Representatives, Chisholm demonstrated the bold iconoclasm that would mark her career in Washington, D.C. With her, it would not be politics as usual. Her initial appointment to a minor subcommittee of the Agriculture Committee struck her as a waste of her talents and experience, and, despite warnings that she was endangering her career, she protested. The House Ways and Means Committee relented and she was appointed to Veterans’ Affairs. In her first speech on the floor of the House she vowed to vote against all defense spending. She told lawmakers, “Our children, our jobless men, our deprived, rejected and starving fellows, our dejected citizens must come first.” In May of 1969 she gave a speech to the House of Representatives in which she introduced the **EQUAL RIGHTS AMENDMENT** and pointed out that the bill had been introduced before every Congress for the previous 40 years. To those who argued that women were already protected under the law, she pointed out that existing laws were inadequate and that the majority of women were concentrated in lower-paying menial jobs. “If women are already equal,” she asked. “Why is it such an event whenever one gets elected to Congress?”

Chisholm’s goals as a congresswoman were twofold. First, when she took office, only nine of the 435 House members were black, so she made herself an advocate for African Americans both in and out of her district. Second, she tried to advance the goal of racial equality. She supported programs that provided housing and education aid to cities, voted to uphold laws that would end discrimination in federally funded jobs, and promoted new antidiscrimination legislation. **ABORTION** rights also became a focal point in her politics. As a state assemblywoman she had supported bills that would make it easier for women whose lives were endangered to have abortions, although she had opposed outright legalization of abortion. But in 1968, with a change of heart, she agreed to be honorary president of the newly formed National Association for the Repeal of Abortion Laws. This would have been a dangerous position for an established politician, let alone a newly elected House member.

Independence of thought was Chisholm’s hallmark, however, and the following year she crossed party lines to support Republican mayor John V. Lindsay in the New York mayoral election. Her decision so outraged her own party that some members called, unsuccessfully, for her ouster from the Democratic National Committee. But Chisholm saw the need for revamping traditional politics, supporting foes if necessary, and creating new bases of power. In 1971, along with such feminist leaders as author **GLORIA STEINEM**, she helped found the National Women’s Political Caucus.

Chisholm’s dramatic decision to run for president in 1972 came in part through her widely publicized opposition to the **VIETNAM**



WAR and the policies of President RICHARD M. NIXON. While speaking at college campuses she was frequently asked if she would consider running. At first doubtful that an African American woman would stand a chance, she became encouraged by the growing numbers of blacks serving in elected office. Initially she received little support, even within black political circles, but following an enthusiastic tour of Florida, she announced her candidacy on January 25, 1972. During campaign stops she asked voters to replace entrenched white male leadership with a new voice: "I am your instrument of change. . . . give your votes to me instead of one of those warmed-over gentlemen who come to you once every four years." Criticized for running a hopeless campaign, she remained steadfast. "Some people call me a freak for running for the presidency," she said, "but I am very glad to be a freak in order to break down this domain."

Despite her popularity with women and young people, Chisholm's campaign suffered from limited finances, internal disarray, and lukewarm support from black political leaders. By July 1972, she had 28 delegates, almost half of what she had hoped to bring to the Democratic National Convention. Nevertheless, she won the support of the convention's black caucus, and, in a symbolic move, HUBERT H. HUMPHREY released his black delegates to vote for her. As a result, on the first ballot, she received 152 delegates and addressed the convention. But the number was far too small to stop candidate George S. McGovern from winning the party's nomination.

After the election the trouble that had beset her campaign continued. A 1973 report by the government's GENERAL ACCOUNTING OFFICE recommended that the U.S. JUSTICE DEPARTMENT investigate possible misconduct in handling campaign funds but a 1974 investigation found no evidence of any wrongdoing.

Following her reelection to the House in the fall of 1972, Chisholm served every two-year term until 1982. The seniority she earned over seven terms—she was the only woman on the House Rules Committee—made her effective in building coalitions among liberal politicians. In addition to supporting women's equality, she was instrumental in advancing welfare legislation designed to help poor and needy citizens. However, the onset of the Reagan era drastically changed the political landscape in Washington, D.C., as liberals were swept aside by conservative

challengers. Announcing her retirement on February 10, 1982, Chisholm cited as her chief reason the defeat of liberal senators and representatives, which made it impossible for the old alliances to work.

Chisholm accepted an invitation to join the faculty at Mount Holyoke, the United States' oldest women's college, where she taught courses in political science and women's studies until 1987. She was also a visiting professor at Spelman College in Atlanta, Georgia. At one commencement address she urged new graduates to be active citizens: "Ask questions and demand answers. Do not just tend your garden, collect your paycheck, bolt the door, and deplore what you see on television. Too many people are doing that already. Instead, you must live in the mainstream of your time and of your generation." Although she had left Washington, D.C., she remained immersed in politics. In 1985, she became the first president of the newly formed National Political Congress of Black Women, which in three years grew from five hundred to 8,500 members. In 1988, she campaigned for the Reverend JESSE JACKSON, who was seeking the Democratic Party's presidential nomination.

Using her retirement to give speeches and commencement addresses on vital issues, Chisholm has continued to inspire the public imagination. She has advocated sex education for students beginning at the age of seven in order to combat the "national plague" of teenage pregnancy. In 1991, calling the small numbers of African American college professors a crisis in black education, she warned, "Blacks run the risk of becoming an intellectual boat people, just drifting." Opposing the Persian Gulf War in 1991, she argued that the expense of U.S. militarism blocked the goals of peace and equality. "The foundation is being laid for yet another generation of minority Americans to be denied the American dream," she cautioned.

In 1993, Chisholm was nominated to the position of ambassador to Jamaica but was prevented from assuming the role because of poor health. In 1999, she was a commencement speaker at San Diego State University College of Health and Human Services, where she received her 38th honorary degree. Chisholm received the AMERICAN ASSOCIATION OF RETIRED PERSONS (AARP) Andrus Award in May 2000. The award is given biennially to nationally recognized older Americans who have made significant contributions to society. In an interview with AARP's

news magazine *Modern Maturity*, the former congresswoman listed her grandmother, ELEANOR ROOSEVELT, and Harriet Tubman as her three greatest influences and stated that race and poverty were the two major issues that still need to be addressed in modern America.

FURTHER READINGS

- Brownmiller, Susan. 1970. *Shirley Chisholm*. New York: Doubleday.
- Chisholm, Shirley. 2000. "The Straight-Talking Optimist." Interview by Mary Willis. *Modern Maturity* (May/June). Available online at <www.aarp.org/mmaturity/may_jun00/perspectives.html> (accessed June 19, 2003).
- Scheader, Catherine. 1990. *Shirley Chisholm: Teacher and Congresswoman*. Springfield, N.J.: Enslow.

CHISHOLM V. GEORGIA

An early U.S. Supreme Court case holding that Article III of the federal Constitution gives the Court original jurisdiction over lawsuits between a state government and the citizens of another state, even if the state being sued does not consent. The decision generated immediate opposition from 12 states and led to the ratification of the ELEVENTH AMENDMENT, which gives states SOVEREIGN IMMUNITY from being sued in federal court by citizens of other states without the consent of the state being sued.

In 1777, Robert Farquhar, a Charleston, South Carolina, merchant, sold goods to the Georgia army for use in the Revolutionary War. The next year Farquhar died, and in 1791, his executor, Alexander Chisholm, brought suit to collect the debt in the U.S. Circuit Court for the District of Georgia. Plaintiffs sought 100,000 pounds in sterling silver for payment of the debt plus interest. Notably, Associate Justice JAMES IREDELL, who later filed the famous dissenting opinion in the U.S. Supreme Court's decision in *Chisholm v. Georgia*, heard the arguments at the district court level while discharging his duties as a traveling circuit judge (in the early days of the U.S. Supreme Court, justices performed the double duty of deciding cases for the nation's highest court and *riding circuit* to hear cases in the particular jurisdictions they were assigned).

In his opinion for the circuit court, Iredell dismissed the suit for want of jurisdiction. If any court had jurisdiction over the dispute, Iredell said, it was the U.S. Supreme Court because Article III of the federal Constitution gave only the Supreme Court original jurisdiction over all cases in which a state is named as a party. "It may fairly be presumed," Iredell wrote for the circuit

court, "that the several States thought it important to stipulate that so awful and important a Trial [to which a State is party] should not be cognizable by any Court but the Supreme." Iredell's conclusion was not challenged when the Supreme Court heard *Chisholm* under its original jurisdiction.

One reason Iredell's lower court decision was not challenged in the Supreme Court is that Georgia would likely have been the only party objecting to it, and Georgia refused to appear before the nation's high court after *Chisholm* refiled his lawsuit there. Georgia feared that by making an appearance at trial, the Supreme Court would deem that appearance consent to the Court's jurisdiction over the dispute, something Georgia denied the Court had power to exercise. Nonetheless, in public pronouncements the Georgia governor made clear that he believed the Court had no jurisdiction because the state had not consented to the suit in its capacity as an independent and sovereign government. Without such consent, the Georgia legislature contended, the states are immune from being sued in federal court, and Article III did nothing to abrogate this immunity.

At oral argument, the Supreme Court thus heard only from *Chisholm's* attorney, EDMUND RANDOLPH. According to Caleb Nelson in his article on sovereign immunity, a courtroom observer later reported that Georgia "was right in not appearing to this action," since Chief Justice JOHN JAY "said from the Bench that had the State pleaded it would have been an acknowledgement of the jurisdiction of the Court." Having heard from only one party to the dispute, the Supreme Court had no choice but to enter a default judgment in *Chisholm's* favor. *Chisholm v. Georgia*, 2 U.S. 419, 2 Dall. 419, 1 L.Ed. 440 (U.S. 1793).

In a 4–1 decision, the Court issued five separate opinions. Justices Jay, JAMES WILSON, WILLIAM CUSHING, and JOHN BLAIR JR. wrote opinions concurring in judgment, while Justice Iredell wrote the only dissent. The four concurring justices agreed that final sovereignty resided in the people of the United States, and at least for the purposes of this lawsuit Georgia was not a sovereign state. Wilson's opinion drew most attention among the concurring justices because Wilson had been the delegate who had introduced the Original Jurisdiction Clause at the Constitutional Convention in Philadelphia. Not surprisingly, Wilson said it was difficult for him to imagine words that would "describe, with

more precise accuracy, the cause now [pending] before the tribunal.”

In his dissenting opinion Iredell observed that through the JUDICIARY ACT OF 1789 Congress had authorized federal courts to issue all writs “necessary for the exercise of their respective jurisdictions, and agreeable to the principles and usages of law.” Judiciary Act of 1789, ch. 20, §14, 1 Stat. 73, 81-82. Iredell interpreted “principles and usages of law” to mean the COMMON LAW of the several states, which Iredell said embodied the common law as it existed in England when America was first settled. Under the English common law, the British Crown was sovereign and could not be sued without its consent. Iredell then concluded that the states enjoyed the same sovereign immunity as the English King at the time of the American settlement. Article III did not alter the states’ immunity from being sued without their consent, Iredell continued, and “even if the Constitution would admit of the exercise of such a power, a new law is necessary for the purpose, since no part of the existing law applies, this alone is sufficient to justify my determination in the present case.”

The states’ reaction to the majority’s decision in *Chisholm* was fast and furious. Each state understood the implications of being forced to pay Revolutionary War debt at a time when the state treasuries were struggling to avoid insolvency. The Massachusetts legislature led the way. In a resolution that was circulated to the other states, it condemned “a power . . . of compelling a State to be made defendant in any Court of the United States, at the suit of an individual.” The resolution instructed the state’s lawmakers “to obtain such amendments in the CONSTITUTION OF THE UNITED STATES as will remove any clause or article of the said Constitution which can be construed to imply or justify a decision that a State is compellable to answer in any suit by an individual or individuals in any Court of the United States.” Other states quickly followed suit.

Congress responded to this groundswell of state activity by drafting the Eleventh Amendment. It provides that “[t]he Judicial power of the United States shall not be construed to extend to any suit in law or EQUITY, commenced or prosecuted against one of the United States by Citizens of another State . . .” In short, the Eleventh Amendment sought to guarantee states sovereign immunity from being sued in federal court without their consent, the very right denied to them in *Chisholm*. By 1798 the requi-

site 12 states had ratified the amendment. New Jersey and Pennsylvania refused to ratify, while Tennessee and South Carolina took no action.

Chisholm v. Georgia is considered the first great case decided by the U.S. Supreme Court. The case forced the Court to grapple with contentious debates over FEDERALISM or the proper balance of power between the state and federal governments. It was heard by justices who not only participated in the Constitutional Convention, but by the one justice who had actually drafted the very constitutional provision being scrutinized. Finally, *Chisholm v. Georgia* is the first Supreme Court case that was superseded by a constitutional amendment.

FURTHER READINGS

- Lee, Thomas H. 2002. “Making Sense of the Eleventh Amendment: International Law and State Sovereignty.” *Northwestern University Law Review* (spring).
- Meyler, Joan. 2001. “A Matter of Misinterpretation, State Sovereign Immunity, and Eleventh Amendment Jurisprudence.” *Howard Law Journal* 45 (fall): 77–154.
- Nelson, Caleb. 2002. “Sovereign Immunity as a Doctrine of Personal Jurisdiction.” *Harvard Law Review* 115 (April): 1561–1654.
- Pfander, James E. 1998. “History and State Suability: An ‘Explanatory’ Account of the Eleventh Amendment.” *Cornell Law Review* 83 (July): 1269–1382.
- Strasser, Mark. 2001. “Chisholm, the Eleventh Amendment, and Sovereign Immunity: On Alden’s Return to Confederation Principles.” *Florida State University Law Review* 28 (spring): 605–48.

CROSS-REFERENCES

Eleventh Amendment; Federalism; Sovereign Immunity.

CHOATE

Perfected, complete, or certain.

A *choate right* is an undefeatable right that is totally valid and cannot be subsequently lessened or altered by later claims. If someone purchases a plot of land totally free from encumbrances, that person has a choate property interest in the land.

A *choate lien* is one to which nothing further must be done to make it enforceable. Elements such as the identity of the lienor and the property that is subject to the lien are established; thus, the lien is certain and definite.

Inchoate, the opposite of choate, is the more commonly used phrase. It means unfinished or incomplete and is used to describe a number of things such as liens, rights, crimes, or interests. For example the term inchoate BATTERY can be used to describe an assault.

❖ CHOATE, JOSEPH HODGES

Joseph Hodges Choate was a popular lawyer in New York in the late 1800s. Choate distinguished himself by his exceptional career before the bar, his accomplishments as ambassador to the Court of St. James's (an ambassador to England), his dedication to public service, and his sharp wit and clever after-dinner speeches.

Choate was born January 24, 1832, in Salem, Massachusetts, the fifth of six children and the youngest of four boys in a family with an established heritage. His father, Dr. George Choate, was a graduate of Harvard University and Harvard Medical School and was one of Salem's most distinguished physicians. Choate was also the cousin of Congressman RUFUS CHOATE, who was just beginning his second term when Choate was born.

Continuing the family tradition, Choate attended Harvard with his three brothers. He went on to Harvard Law School, graduating in 1855. Choate then left New England to pursue a career in New York. With the help of a letter from Rufus Choate to WILLIAM M. EVARTS (who would become SECRETARY OF STATE for President RUTHERFORD B. HAYES from 1877 to 1881), Choate joined the law office of Butler, Evarts, and Southmayd.

Choate's skills as an orator made him a formidable litigator. He appeared in hundreds of cases covering a wide range of controversies. One of the most notorious of these cases was the prosecution of William Marcy ("Boss") Tweed. Tweed, elected to the New York State Senate in 1868, headed TAMMANY HALL, a corrupt political organization in New York City that was controlled by the DEMOCRATIC PARTY. In 1871 Choate was appointed to the committee that



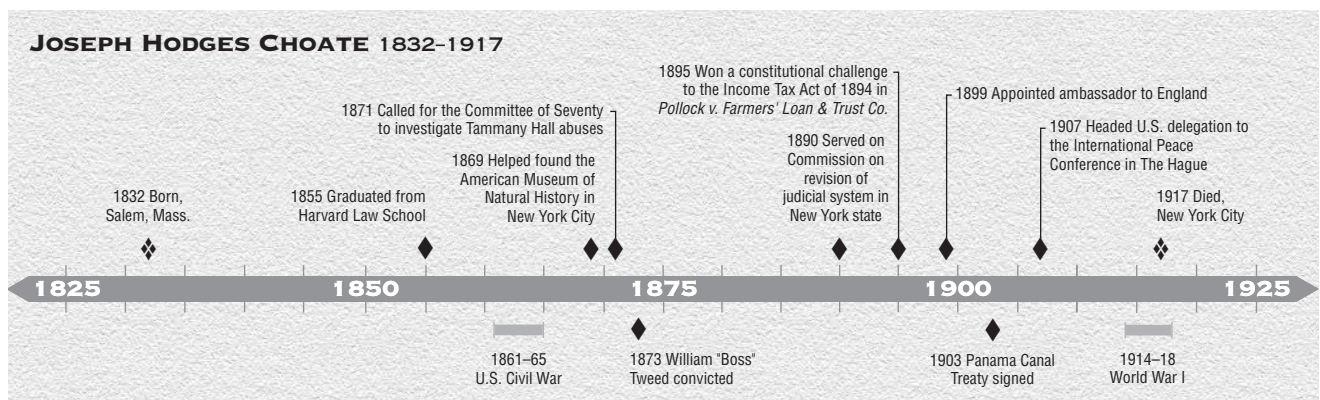
Joseph H. Choate.
LIBRARY OF CONGRESS

eventually charged Tweed with embezzling funds from the city treasury.

Many of Choate's cases involved matters of national importance and were appealed to the U.S. Supreme Court. Choate unsuccessfully fought Kansas's liquor prohibition in *Mugler v. Kansas*, 123 U.S. 623, 8 S. Ct. 273, 31 L. Ed. 205 (1887), and anti-Chinese legislation in *Fong v. United States*, 149 U.S. 698, 13 S. Ct. 1016, 37 L. Ed. 905 (1893). He successfully appealed claims of certain Native Americans that the government had reneged on a treaty and deprived them of their land in *New York Indians v. United States*, 170 U.S. 1, 18 S. Ct. 531, 42 L. Ed. 927 (1898). In the landmark case *POLLOCK V. FARMERS' LOAN &*

"LAW IS THE
EXPRESSION AND
THE PERFECTION
OF COMMON
SENSE."

—JOSEPH CHOATE



TRUST CO., 157 U.S. 429, 15 S. Ct. 673, 39 L. Ed. 759 (1895), *reh'g granted*, 158 U.S. 601, 15 S. Ct. 912, 39 L. Ed. 1108 (1895), *overruled by South Carolina v. Baker*, 485 U.S. 505, 108 S. Ct. 1355, 99 L. Ed. 2d 592 (1988), Choate won a constitutional challenge to an INCOME TAX act of 1894. In his winning argument, Choate said, "The act . . . is communistic in its purposes and tendencies, and is defended here upon principles as communistic, socialistic—what should I call them—populistic as ever have been addressed to any political assembly in the world."

Choate's prominence as an attorney attracted the attention of the White House and in January 1899, President WILLIAM MCKINLEY appointed Choate ambassador to the Court of St. James's, in England. As ambassador Choate negotiated the Hay-Pauncefote Treaty, which allowed the U.S. government to build and operate the Panama Canal. Choate was also instrumental in gaining an "open door" to China, and he resolved a controversy over Samoa with Germany and the United Kingdom. In 1907 Choate headed the delegation from the United States at the International Peace Conference at The Hague.

Choate supported many charitable causes. He was president of the New York State Charities Aid Association and of the Association of the Blind. Choate was a member of the Provisional Committee of 1869 which was appointed to establish the Metropolitan Museum of Art. He continued his relationship with the museum as one of its incorporators and as a member of the executive committee of the board of trustees. He was also an incorporator and officer of the Museum of Natural History.

Choate's successes were due in part to his talents as a public speaker. His keen intellect and

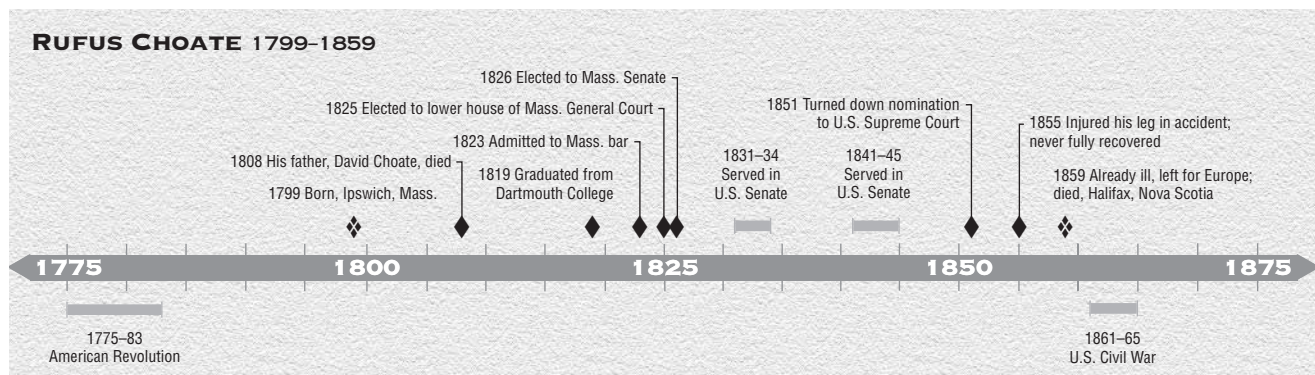
engaging speaking style combined with his sense of humor to captivate audiences. No lawyer of the New York bar was in as much demand at public functions. He had speaking engagements before the New England Society, the Union League Club, and the Century Association before and during his presidency of these societies, at dinners and receptions of the bar association, and at innumerable philanthropic events. Shortly after Choate had passed his eighty-fifth birthday he was appointed chairman of a committee of citizens to receive French and British commissioners on a visit to the United States. He was in poor health but he survived long enough to fulfill his duties. Choate died May 14, 1917, in New York City.

Choate once described the path of his career as follows:

To be a priest . . . in the temple of justice, to serve at her altar and aid in her administration, to maintain and defend those inalienable rights of life, liberty, and property upon which the safety of society depends, to succor the oppressed and to defend the innocent, to maintain constitutional rights against all violations, . . . to rescue the scapegoat and restore him to his proper place in the world—all this seemed to me to furnish a field worthy of any man's ambition.

FURTHER READINGS

- Hicks, Frederick C., ed. 1926. *Arguments and Addresses of Joseph Hodges Choate*.
- Lasson, Kenneth. "Lawyering Askew: Excesses in the Pursuit of Fees and Justice." *Boston University Law Review* 74.
- Martin, Edward S. 1921. *The Life of Joseph Hodges Choate*. Vols. 1 and 2. New York: Scribner.
- Simmons, Daniel L. 1987. "The Tax Reform Act of 1986: An Overview." *Brigham Young University Law Review*.
- Strong, Theron G. 1917. *Joseph Choate: New Englander, New Yorker, Lawyer, Ambassador*. New York: Dodd, Mead.



❖ CHOATE, RUFUS

Rufus Choate was born October 1, 1799, in Ipswich, Massachusetts. He graduated from Dartmouth College in 1819 and was admitted to the bar in 1823.

In 1827 Choate served as a member of the Massachusetts Senate and from 1831 to 1834 he acted as a representative from Massachusetts to the U.S. House of Representatives. He was involved in the organization of the WHIG PARTY in Massachusetts. He served as U.S. senator from Massachusetts from 1841 to 1845.

Choate continued his participation in politics by nominating DANIEL WEBSTER for the presidency in 1852 and by attending the Massachusetts Constitutional Convention in 1853. He is the author of the *Discourse Commemorative of Daniel Webster*.

Choate died July 13, 1859, in Halifax, Nova Scotia.

CHOSE

[French, Thing.] *Chattel*; item of PERSONAL PROPERTY.

CHOSE IN ACTION

The right to bring a lawsuit to recover chattels, money, or a debt.

A *chose in action* is a comprehensive term used to describe a property right or the right to possession of something that can only be obtained or enforced through legal action. It is used in contradistinction to *chose in possession*, which refers to cases where title to money or property is in one person but possession is held by another.

Examples of a chose in action are the right of an heir to interest in the estate of his or her decedent; the right to sue for damages for an injury; and the right of an employee to unpaid wages.

CHRISTIAN COALITION

The Christian Coalition is a nonprofit organization that serves as a powerful lobby for politically conservative causes. Under federal tax law, the organization is permitted to lobby for political issues but cannot endorse political candidates. The Christian Coalition has primarily sought the support of born-again evangelical Christians, but since 1996 it has attempted to build alliances with Roman Catholics, members of the Greek Orthodox Church, and Jews.

The Christian Coalition was founded in 1989 by religious broadcaster Pat Robertson. Robertson, who unsuccessfully sought the 1988 REPUBLICAN PARTY presidential nomination, decided to create an organization of evangelical Christians that would exert influence over the party. The coalition's central goals have been to gain working control of the Republican Party through grassroots organizing and to elect Christian candidates to office. The coalition soon became a potent political force. By 1997, it claimed control of several Republican state central committees and had elected to public office numerous Christian Coalition members and other candidates it endorsed. Prior to the congressional elections of 2002, the Christian Coalition distributed 70 million voter guides throughout the 50 states, an effort that has been credited with helping the Republican Party gain control of Congress.

The Christian Coalition has focused on family and moral issues. It strongly opposes legalized ABORTION, and in 1998 it began an effort to require all endorsed Republican candidates to oppose partial-birth abortions. The coalition has also campaigned against gay rights, and through its legal arm, the American Center for Law and Justice, it has filed many church-state lawsuits.

Robertson, who served as president until 1997, appears on the *700 Club*, a television program that, as of July of 2003, is watched by 1 million viewers each week. Robertson has characterized politics as a struggle pitting militant leftists, secular humanists, and atheists against conservative, evangelical Christians. The success of the coalition's grassroots organizing, however, can be attributed to Ralph Reed, who served as executive director until 1997. Reed encouraged coalition members to run for school boards, city councils, and legislatures without revealing their affiliation. This strategy also proved effective within the Republican Party.

The Christian Coalition has over 1,500 chapters in the United States with over one million members. The coalition's staff is headquartered in Chesapeake, Virginia; it also maintains a legislative office in Washington, D.C. With a budget of more than \$27 million, the coalition has the resources to mount nationwide campaigns on public policy issues. The organization also actively lobbies Congress on numerous issues, sponsors grassroots training schools across the United States, and organizes activists



Christian Coalition founder Pat Robertson (right) and the group's former executive director Ralph Reed built the organization into a powerful political force whose grassroots organizing is credited with helping the Republicans gain control of Congress in 1994.

AP/WIDE WORLD
PHOTOS

around the country who are involved in federal and local politics.

The election of GEORGE W. BUSH as president in 2000 and the gain of Republican seats in both the House and Senate in 2002 gave increased clout to the Christian Coalition's already vigorous advocacy. In early 2003, the Christian Coalition lobbied for the confirmation of Miguel Estrada, an Hispanic lawyer, to be a judge on the District of Columbia Circuit Court of Appeals. According to the coalition, his confirmation was "being blocked by those who would subject judicial nominees to a liberal litmus test." The organization also supported a ban on partial-birth abortions and the cloning of humans. In addition, the Christian Coalition voiced strong support for President Bush as the United States was poised on the brink of war with Iraq.

FURTHER READINGS

American Center for Law and Justice. Available online at <www.aclj.org> (accessed June 17, 2003).

Christian Coalition. Available online at <www.cc.org> (accessed June 17, 2003).

CHRISTIAN LEGAL SOCIETY

The Christian Legal Society (CLS), founded in 1961, is a nonprofit organization of lawyers, judges, law professors, and law students. The group's missions are to promote high ethical

standards within the legal profession, to support its members' commitment to Christian professional lives, and to advance religious freedom for all U.S. citizens regardless of affiliation. CLS provides resources for research into law and theology; maintains a data bank of commentaries on legal issues; and provides a speakers' bureau, a lawyer-referral service, and mediation and ARBITRATION services. It also publishes *Christian Legal Society—Briefly*, a quarterly newsletter for its members, and *Christian Legal Society—Quarterly*, a magazine that covers issues that are in line with the society's goals. CLS's legal-advocacy arm, the Center for Law and Religious Freedom, promotes freedom of religion and challenges government interference with the free exercise of religion.

In 1993, CLS backed passage of the Religious Freedom Restoration Act (RFRA), 42 U.S.C.A. §§ 2000bb, et seq., a response to the 1990 U.S. Supreme Court decision in *Employment Division, Department of Human Resources v. Smith*, 494 U.S. 872, 110 S. Ct. 1595, 108 L. Ed. 2d 876. *Smith* upheld a denial of unemployment benefits to Native Americans who had been fired from their jobs for using peyote, a hallucinogenic drug, as part of a religious ceremony. CLS and numerous other groups representing a wide range of religious and political persuasions lobbied for RFRA, which requires the government to show a "compelling state interest," such as public health or safety, before interfering with religious practices.

CLS members successfully argued two important religious-freedom cases before the U.S. Supreme Court in 1993. In *Zobrest v. Catalina Foothills School District*, 509 U.S. 1, 113 S. Ct. 2462, 125 L. Ed. 2d 1, the Court held that the Establishment Clause did not prohibit a public school district from paying for a sign language interpreter for a deaf student who attended a Catholic high school. In *Lamb's Chapel v. Center Moriches Union Free School District*, 508 U.S. 384, 113 S. Ct. 2141, 124 L. Ed. 2d 352, the Court held that a school district's denial of a religious organization's application to use school facilities to show a film on Christian values in family relationships violated the church's FIRST AMENDMENT right to FREEDOM OF SPEECH.

In *Rosenberger v. Rector and Visitors of the University of Virginia*, 515 U.S. 819, 115 S. Ct. 2510, 132 L. Ed. 2d 700 (1995), CLS supported the plaintiff, who sued the University of Virginia

for denying his request for financial support for publication of a Christian magazine. Although the university subsidized a wide range of publications from its Student Activities Fund (SAF), it denied Ronald W. Rosenberger's request on the grounds that his magazine violated SAF guidelines. Rosenberger argued that the guidelines, which prohibited the university from subsidizing a publication that "primarily promotes or manifests a particular belie[f] in or about a deity or an ultimate reality," violated his free speech rights. A brief filed by CLS maintained that the guidelines discriminated on the basis of religious belief and that a decision against the plaintiff would be a step toward "a relentlessly secular society" that is intolerant of religious persons and their views. The U.S. Supreme Court decided in favor of the plaintiff but rested its holding on free speech grounds, stating that the SAF guidelines discriminated on the basis of viewpoint and violated the plaintiff's First Amendment rights.

The position taken by CLS in its *amicus* brief filed in the U.S. Supreme Court case of **BOY SCOUTS OF AMERICA V. DALE**, 530 U.S. 640, 120 S. Ct. 2446, 147 L. Ed. 2d 554 (2000) also raised arguments considered by the high court in its final ruling. The Court held that New Jersey's public-accommodations law violated the Boy Scouts' First Amendment right of association when the law required the Boy Scouts of America to admit James Dale, an avowed homosexual and gay-rights activist, as a member of its organization. The Boy Scouts, a private, not-for-profit organization, had asserted that homosexual conduct was inconsistent with the values it sought to instill in its members.

In the early part of the decade, CLS filed *amicus* briefs in numerous cases involving religious, ethical, or moral issues, including *Newdow v. U.S. Congress*, 292 F.2d 597 (9th Cir. 2002), *judgement stayed* (opposing a challenge to the "under God" phrase in the Pledge of Allegiance) and *Oregon v. Aschcroft*, 192 F. Supp. 2d 1077 (D. Or. 2002) (supporting Attorney General Ashcroft's directive to revoke federal controlled-substances licenses from physicians who prescribed narcotics for suicides). In 2002, CLS also published a scholarly position paper opposing human cloning for any purpose. It argued that the scientific distinction between human reproductive cloning and therapeutic (stem cell) cloning was specious and not supported by scientific data, in that both forms of

cloning required the killing of a living human embryo.

CLS members are committed to the biblical injunction to "not leave justice and the love of God undone" (Luke 11:42, Matt. 23:23). They are dedicated to ending injustice, limiting or eliminating legal **ABORTION**, outlawing **PORNOGRAPHY**, and bringing religious thought and precepts into public education. They also are committed to the evangelization of the legal profession, and plan to increase the society's membership by ten to 12 percent each year.

FURTHER READINGS

Christian Legal Society Website. Available online at <www.clsnet.org> (cited March 17, 2003).

Christian Legal Society Quarterly. Published beginning in 1981.

CHURNING

*The practice whereby a **BROKER** dealing in **SECURITIES** abuses the confidence of a client for personal gain by unnecessarily trading stocks to earn more commissions.*

CIPOLLONE V. LIGGETT GROUP, INC.

See **TOBACCO** "Cipollone v. Liggett Group, Inc." (Sidebar).

CIRCUIT

A territorial or geographical division of a country or state.

A circuit is the judicial territory over which a court has the jurisdiction to hear cases.

CIRCUIT COURT

A specific tribunal that possesses the legal authority to hear cases within its own geographical territory.

A circuit court is ordinarily an inferior trial-level court; appeals are heard by superior courts possessing the requisite jurisdiction. The jurisdiction of a circuit court generally extends over a number of counties or districts wherein the court sits.

The name *circuit court* can be traced historically to the period when a single judge rode the circuit to hold trials in each county within the designated territory. In geographical locations with small populations, this method of dispensing justice eliminates the expense of providing every small village with its own judiciary.

CIRCUMSTANTIAL EVIDENCE

Information and testimony presented by a party in a civil or criminal action that permit conclusions that indirectly establish the existence or nonexistence of a fact or event that the party seeks to prove.

CIRCUMSTANTIAL EVIDENCE is also known as indirect evidence. It is distinguished from direct evidence, which, if believed, proves the existence of a particular fact without any inference or presumption required. Circumstantial evidence relates to a series of facts other than the particular fact sought to be proved. The party offering circumstantial evidence argues that this series of facts, by reason and experience, is so closely associated with the fact to be proved that the fact to be proved may be inferred simply from the existence of the circumstantial evidence.

The following examples illustrate the difference between direct and circumstantial evidence: If John testifies that he saw Tom raise a gun and fire it at Ann and that Ann then fell to the ground, John's testimony is direct evidence that Tom shot Ann. If the jury believes John's testimony, then it must conclude that Tom did in fact shoot Ann. If, however, John testifies that he saw Tom and Ann go into another room and that he heard Tom say to Ann that he was going to shoot her, heard a shot, and saw Tom leave the room with a smoking gun, then John's testimony is circumstantial evidence from which it can be inferred that Tom shot Ann. The jury must determine whether John's testimony is credible.

Circumstantial evidence is most often employed in criminal trials. Many circumstances can create inferences about an accused's guilt in a criminal matter, including the accused's resistance to arrest; the presence of a motive or opportunity to commit the crime; the accused's presence at the time and place of the crime; any denials, evasions, or contradictions on the part of the accused; and the general conduct of the accused. In addition, much SCIENTIFIC EVIDENCE is circumstantial, because it requires a jury to make a connection between the circumstance and the fact in issue. For example, with fingerprint evidence, a jury must make a connection between this evidence that the accused handled some object tied to the crime and the commission of the crime itself.

Books, movies, and television often perpetuate the belief that circumstantial evidence may not be used to convict a criminal of a crime. But this view is incorrect. In many cases, circum-

stantial evidence is the only evidence linking an accused to a crime; direct evidence may simply not exist. As a result, the jury may have only circumstantial evidence to consider in determining whether to convict or acquit a person charged with a crime. In fact, the U.S. Supreme Court has stated that "circumstantial evidence is intrinsically no different from testimonial [direct] evidence" (*Holland v. United States*, 348 U.S. 121, 75 S. Ct. 127, 99 L. Ed. 150 [1954]). Thus, the distinction between direct and circumstantial evidence has little practical effect in the presentation or admissibility of evidence in trials.

FURTHER READINGS

- Romano, John F. 1999. "Prohibitions in the Use of Circumstantial Evidence: Key Tips on Gaining Strategic Advantage." *Trial Lawyer* 22 (January-February): 2-4.
- Romano, John F., and Rodney G. Romano. 1998. "The Circumstantial Evidence Generation: 25 Guidelines for Winning the Circumstantial Evidence Case." *Trial Diplomacy Journal* 21 (May-June).

CITATION

A paper commonly used in various courts—such as a probate, matrimonial, or traffic court—that is served upon an individual to notify him or her that he or she is required to appear at a specific time and place.

Reference to a legal authority—such as a case, constitution, or treatise—where particular information may be found.

Cases are published in a series of books called reporters, which are compilations of judicial decisions made in a certain court, state, or jurisdiction. Reporters are published in consecutively numbered volumes, each of which contains the most recently decided cases. When the volume numbers on a set of reporters get too high, the publisher will begin a new set with a new series of numbers.

To refer to a particular case in a reporter, a designation including the volume number, the name of the reporter, and the page number is given. If, for example, a case decided in the U.S. Supreme Court were cited as 60 S. Ct. 710, the case would be in volume 60 of the Supreme Court Reporter on page 710. To promote uniformity of citations, many lawyers and law students use *The Blue Book: A Uniform System of Citation*, commonly referred to simply as *The Blue Book*. This manual is published jointly by law schools at Harvard, Yale, Columbia, and the University of Pennsylvania. Other citation manuals have also been published.

When a court issues a citation, it orders a person to appear at a certain time and place. Failure by the person to adhere to the requirements in a citation results in punishment by the court. On appeal, a court may issue a citation of appeal, giving parties notice of the appeal and ordering them to appear in court. Issuance of a citation is required in order to give an appellate court jurisdiction over the appeal. The clerk of a court is generally required to issue a citation.

Police officers also issue citations for minor offenses, especially for traffic violations. The citation that an officer gives to a violator states the charge and requires an appearance before a judge on a specified date, subject to punishment for failure to appear. Citations issued by police officers for minor violations are typically only admissible for a criminal action that is based upon the violation. In most jurisdictions, evidence of an arrest from a citation is not admissible in a civil action based upon the same facts.

CROSS-REFERENCES

Legal Publishing.

CITATOR

A volume or set of volumes that is a record of the status of cases or statutes.

A citator is a guide published primarily for use by judges and lawyers when they are in the process of preparing such papers as judicial decisions, briefs, or memoranda of law. Its purpose is to provide a judicial history of cases and statutes as well as to make a note of new cases. A citator indicates whether or not the law in a particular case has been followed, modified, or overruled in subsequent cases.

A citator is usually organized into columns of citations. Various abbreviations designate such things as whether a case has been overruled, superseded, or cited in the dissenting opinion of a later case.

The most well-known and commonly used citator is SHEPARD'S CITATIONS. The process of consulting this book or any other citator is known as shepardizing a case.

CITE

To notify a person of a proceeding against him or her or to call a person forth to appear in court.

To make reference to a legal authority, such as a case, in a citation.

Cases, statutes, constitutions, treatises, and other similar authorities are cited to support a certain view of law on an issue. When writing a legal brief, an attorney may wish to strengthen his or her position by referring to cases that support what he or she is saying in order to persuade the court to make a ruling favorable for the client.

CROSS-REFERENCES

Precedent; Stare Decisis.

CITIZENS

Those who, under the Constitution and laws of the United States, or of a particular community or of a foreign country, owe allegiance and are entitled to the enjoyment of all CIVIL RIGHTS that ACCRUE to those who qualify for that status.

Neither the United States nor a state is a citizen for purposes of DIVERSITY OF CITIZENSHIP, a phrase that is used in regard to the jurisdiction of the federal courts, which—under Article III, Section 2, of the Constitution—empowers those courts to hear and decide cases between citizens of different states. Municipalities and other local governments, however, are deemed to be citizens.

The term *citizen* in Article III of the Constitution, which established the federal judiciary, includes corporations; therefore, suits concerning corporations involve citizens for federal jurisdictional purposes. The term *citizen*, however, as defined by the Fourteenth and Fifteenth Amendments, does not encompass either corporations or ALIENS. Neither corporations nor aliens receive the protection of the PRIVILEGES AND IMMUNITIES Clauses of the FOURTEENTH AMENDMENT and Article IV, as those clauses protect only citizens.

Aliens, however, are considered to be “persons” for the purposes of the DUE PROCESS Clauses of the Fifth and Fourteenth Amendments and the EQUAL PROTECTION CLAUSE of the Fourteenth Amendment. In the 1982 case of *Plyler v. Doe*, 457 U.S. 202, 102 S. Ct. 2382, 72 L. Ed. 2d 786, the U.S. Supreme Court recognized that even illegal aliens are “persons” within the Equal Protection Clause of the Fourteenth Amendment for purposes of public education. A corporation is also deemed to be a citizen for certain purposes. It is a citizen of the United States and of the state under whose laws it was organized. A particular state, commonly Delaware, is selected for incorporation because

that state charges lower taxes and its laws favor businesses. Once the company incorporates in the designated state, it is a citizen of that state, but it can apply in any other state for authority to do business there.

The Fourteenth Amendment to the Constitution provides: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. . . ." The important right of citizenship, whether for native-born or naturalized citizens, cannot be divested, whether as punishment for a crime or for any other reason, by the states or the federal government, including their agencies and officials (see also *Afroyim v. Rusk*, 387 U.S. 253, 87 S. Ct. 1660, 18 L. Ed. 2d 757 [1967]). American citizenship can be relinquished, but it cannot be taken away unless it was procured through FRAUD or any other unlawful action.

The Fourteenth Amendment, through the inclusion of the phrase "all persons," was specifically enacted in 1868 specifically to grant citizenship to former slaves. Since 1924, it has been judicially interpreted to include American Indians. U.S. citizenship does not divest an Indian of tribal citizenship but, rather, coexists with it.

The Fourteenth Amendment does not, however, make children who are born within the territory of the United States of foreign ambassadors, consuls, and military officers American citizens. Such children derive their citizenship from their parents.

Ordinarily, a person who is in a country other than the one of which he or she is a citizen owes to that country a type of "temporary allegiance," which essentially is a respect for the laws of the host country, although it is not as substantial as the loyalty demanded of citizens. It requires that an alien observe the laws of the country and, in some countries, even serve in the military; it ensures the protection of the alien by the laws of the country.

Ambassadors, consuls, and military officers, however, owe no allegiance to the foreign country where they are assigned, and their children are not "born within the allegiance" of a foreign country in which they serve.

Citizen of a State

The Fourteenth Amendment provides that American citizens are also citizens "of the state wherein they reside," but U.S. citizenship does not necessitate residence in a particular state.

Persons living abroad, for example, are citizens of the United States but not of any state.

One significant legal disadvantage exists for a person who is not a citizen of a state. The Constitution provides that federal courts can hear "Controversies . . . between Citizens of different States." The phrase "Citizens of different States" includes citizens of Puerto Rico, the Virgin Islands of the United States, and Guam. Puerto Rico is in the First Circuit, the Virgin Islands are in the Third Circuit, and Guam, Alaska, and Hawaii are in the Ninth Circuit. A person who is not a resident of a state or designated area, even if he or she is a U.S. citizen, cannot satisfy the diversity of citizenship requirement and therefore cannot bring an action under the Diversity Clause in a federal court.

American Citizenship

U.S. citizenship is attained either by birth or by naturalization, the legal procedure that a qualified person must satisfy in order to be accepted as a citizen.

Federal law provides that those who are born in any of the 50 states, Puerto Rico, the former Panama Canal Zone, the Virgin Islands of the United States, and Guam are all native-born citizens, including the children of an American Indian, Eskimo, Aleutian, or any other tribal member.

Persons born in outlying possessions of the United States, such as Wake Island or Midway Island, and their children are called *nationals*. They owe allegiance to the United States and enjoy some rights. The term *national* denotes everyone who owes allegiance to the country, including citizens, but not every national possesses all of the rights of a citizen.

A person born beyond the geographical boundaries of the United States and its outlying possessions, of parents who are both U.S. citizens, is a national and a citizen of the United States at birth if one parent had a residence in the United States or one of its outlying possessions prior to the birth of such person. If only one parent is a citizen and the other is a national—but not a citizen—the parent who is a citizen must have been physically present in the United States or one of its outlying possessions for a continuous period of one year prior to the birth of the child in order for the child to be a national and a citizen of the United States at birth.

A person born out of wedlock in a foreign country acquires at birth American citizenship if the mother was a citizen at the time of such person's birth and had formerly been physically present in the United States or one of its outlying possessions for a continuous period of one year preceding the birth.

Derivative Citizenship

A child born in a foreign country can become a U.S. citizen if his or her parents become naturalized U.S. citizens. If the child is brought to the United States before becoming an adult, and the child's parents become citizens, then the child is entitled to claim U.S. citizenship when he or she becomes an adult. Although his or her birth certificate will still reflect a foreign-born status, a person in this situation can obtain a certificate of nationality by filing an application with the SECRETARY OF STATE.

Rights of U.S. Citizens

Everyone within the jurisdiction of the United States is protected by most of the guarantees and safeguards of the Constitution. A U.S. citizen traveling abroad retains the protection of the United States. If property of an individual is stolen while he or she is in a foreign country, the United States consul can lend him or her money to return to the United States. U.S. citizens, of course, must observe and obey the laws of other countries while they are visiting, but if a U.S. citizen is arrested, a representative from the U.S. ambassador's office can visit him or her and inform the foreign government that the treatment of the U.S. citizen will be scrutinized.

Unlike citizens of other countries, U.S. citizens are entitled to enter into, and to depart from, the United States, and to obtain a passport from the government. The passport certifies to foreign nations that its holder is entitled to all of the protection afforded by the U.S. government. The right to enter and leave the United States is so fundamental, however, that a citizen cannot be prevented from coming into the United States merely because he or she has no passport. Even if someone departs from the country without obtaining a passport, knowing that he or she should have done so, he or she must be permitted to enter upon returning if a birth certificate or expired passport is presented, or if the person takes an oath as to his or her citizenship.

However, the U.S. government can prohibit its citizens from traveling in designated coun-



tries that are hostile to the U.S. and perilous to U.S. citizens. The passport of a person who ignores these restrictions can be revoked, and such a traveler can be denied protection by the government.

A naturalized citizen has all of the rights of a native-born U.S. citizen but one: He or she can never be president of the United States. Article II of the Constitution provides: "No person except a natural-born Citizen, or a Citizen of the United States, at the time of Adoption of this Constitution, shall be eligible to the Office of President."

Obligations of Citizenship

The most fundamental duty of a citizen is to be loyal to the United States. Allegiance is not an unquestioning acceptance, but a general faith in the U.S. system. In times of national emergency, citizens can be required to defend the country, through military service or alternative service such as employment in a hospital.

Issues surrounding the duties of citizens often arise in the same context as the freedoms enjoyed by citizens of the United States. In one of his more famous speeches, *The Duties of American Citizenship*, President THEODORE ROOSEVELT said, "It ought to be axiomatic in this country that every man must devote a reasonable share of his time to doing his duty in the Political life of the community. No man has the right to shirk his political duties under whatever plea of pleasure or business. . . ."

In the wake of the SEPTEMBER 11TH ATTACKS in 2001, the case against one American citizen, John Philip Walker Lindh, demonstrated the

Immigrants take an oath of citizenship in a 1990 ceremony held on Ellis Island in New York City. Naturalized citizens have all the rights of a native-born U.S. citizen with one exception: they cannot serve as president of the United States.

AP/WIDE WORLD
PHOTOS

attitude that the U.S. government takes against nationals who breach their duty of citizenship. Lindh, also known by the Islamic names Suleyman al-Faris and Abdul Hamid, as well as the nickname “the American Taliban,” converted to Islam in 1997. After visiting such countries as Yemen and Pakistan to study Islam at various times from 1997 to 2000, Lindh began training with the terrorist organization al-Qaeda in 2001. Both before and after the terrorist attacks in September 2001, Lindh served the Taliban regime of Afghanistan in an ongoing conflict with the Northern Alliance in northeastern Afghanistan. Lindh was captured by Northern Alliance groups in November 2001. He was eventually turned over to the U.S. military, who returned him to the United States on January 23, 2002.

In the case of *United States v. Lindh*, 198 F. Supp. 2d 739 (E.D. Va. 2002), Lindh was indicted on ten criminal charges, including conspiracy to murder U.S. nationals, contributing to and conspiring to contribute to al-Qaeda, and using and carrying firearms and other destructive devices during crimes of violence. Lindh pled guilty in July 2002 to a count of supplying services to the Taliban government and received a 20-year sentence.

Surrender of Citizenship

Unlike some nations, the United States permits expatriation, the voluntary relinquishment of one's citizenship. A U.S. citizen can lose his or her citizenship by declaring that he or she no longer wishes to be a citizen or to owe allegiance to the United States, or by performing a **VOLUNTARY ACT** that constitutes the surrender of citizenship, as prescribed by law.

The test of whether an **ABANDONMENT** of citizenship is voluntary depends on whether the person's acts were of his or her own choice and pertained to allegiance to the United States. If they were, federal law provides that one has intentionally and voluntarily surrendered his or her right to American citizenship.

A loss of citizenship can occur by serving in the military of another nation; serving as a public official in a foreign country that requires an oath of allegiance to that country; and attempting to overthrow the U.S. government, which is established by a conviction for the crime.

Conduct that might be construed as a renunciation of citizenship sometimes is insufficient to prove voluntary expatriation. If a person

merely enjoys the benefits that are available in another country, the surrender of his or her U.S. citizenship is not necessarily established.

The U.S. Supreme Court has recognized the power of Congress to specify conduct that constitutes expatriation, but the right to citizenship is so substantial that such actions must be closely related to a conspicuous movement of allegiance away from the United States. Although some courts have ruled that Congress *never* is empowered to deprive the native born of citizenship, this view is not in accordance with current law.

Conviction of a crime can result in a partial deprivation of rights of citizenship. Prior to the twentieth century under English and American **COMMON LAW**, convicts actually lost their citizenship, which was known in some jurisdictions as civil death. Today, however, only some rights are divested, even if the applicable law is called “loss of citizenship.”

A state is empowered to deny someone the right to vote after his or her conviction of a felony or an “infamous crime,” such as **BRIBERY** or perjury. This denial of a right of citizenship can remain in effect until the completion of the sentence, including periods of **PAROLE**, or it might be permanent. A pardon from the president or a governor can restore such rights, however. Some statutes even authorize the courts to restore rights of citizenship upon proof of the rehabilitation of the former prisoner.

International Law

Questions concerning whether someone is a citizen of one country or another are generally resolved by treaty, a compact formed between two or more nations with respect to matters pertaining to the public welfare pursuant to principles of **INTERNATIONAL LAW**. One person might qualify for dual nationality, that is, citizenship in more than one nation, if he or she can satisfy the citizenship requirements of different countries.

International law also recognizes a rule labeled the “law of the flag,” which determines the citizenship of persons born on ships. The rule is responsive to the citizenship laws of different nations and to treaties that are rewritten to fulfill new political conditions.

A child born of U.S. parents on a vessel anywhere in the world is a U.S. citizen. A child born in U.S. waters on a foreign ship is a citizen of that foreign nation when his or her parents are citizens of that country. If his or her parents

are from a different country, provisions of treaty or international law apply. A child born on the high seas on a foreign vessel of parents from that same country assumes that country's citizenship and not the citizenship of his or her destination.

FURTHER READINGS

- Aleinkoff, T. Alexander, and Douglas Klusmeyer, eds. 2001. *Citizenship Today: Global Perspectives and Practices*. Washington, D.C.: Carnegie Endowment for International Peace.
- Doak, Robin. 2002. *Citizenship*. New York: Raintree Steck-Vaughn Publishers.
- Lister, Ruth. 2003. *Citizenship: Feminist Perspective*. New York: New York Univ. Press.
- Noorani, A.G. 2002. *Citizens' Rights, Judges and State Accountability*. New York: Oxford Univ. Press.

CITIZENS FOR DECENCY THROUGH LAW

Citizens for Decency through Law (CDL), one of the first major anti-pornography organizations in the United States, was founded in 1956 by lawyer and future financier Charles H. Keating Jr., after his daughter was sexually attacked in the 1950s. Believing that **PORNOGRAPHY** causes violence and **CHILD ABUSE**, CDL members have endeavored to stop the sale of pornographic material and close movie theaters that show sexually explicit movies by pressuring politicians and judges into enforcing **OBSCENITY** laws.

CDL has provided legal advice to cities investigating dealers in sexually explicit motion pictures, magazines, and mail-order publications. CDL attorneys have concentrated on helping the police and prosecutors to prepare trials and appeals in obscenity cases, prepare testimony before local, state, and federal legislative committees, and draft model legislation. Between 1963 and 1981, CDL sponsored or wrote **AMICUS CURIAE** (**FRIEND-OF-THE-COURT**) briefs for 27 obscenity cases reviewed by the U.S. Supreme Court. Of those cases, 37 percent had rulings favorable to CDL's views. In addition to providing direct, personal assistance in certain important cases, CDL's legal staff have prepared and mailed comprehensive analyses of developments in obscenity law to prosecutors around the United States. The group has also sought to educate the public on the extent of the traffic in obscene materials.

Keating, a staunch Roman Catholic who originally called his group Citizens for Decent Literature, is perhaps best known as a central

figure in a scandal involving the Lincoln Savings and Loan Association. Between 1989 and 1993, he was charged with and convicted on numerous civil **RACKETEERING** and **FRAUD** charges and sentenced to prison. CDL as a national organization splintered after the scandal, but local chapters remain active in some cities and states.

Keating began his career as a prosecutor in Cincinnati—a conservative city that now prides itself on being a national center for anti-pornography efforts—and first sought to rid newsstands of sexually explicit materials in the 1950s when he prosecuted a local candy store accused of selling obscene publications. By 1969, his zealous battles against pornography had earned him an appointment by **RICHARD M. NIXON** to the Presidential Commission on Obscenity and Pornography. In 1970, Keating filed a lawsuit that delayed release of a report by the commission that recommended repeal of all adult **CENSORSHIP** laws.

Over the years, CDL battled foes ranging from Larry Flynt, publisher of *Hustler* magazine, to Pacific Bell, which allowed indiscriminate access to dial-a-porn messages. A long-running skirmish in the 1980s involved an adult movie theater in an Orange County, California, shopping center that Lincoln Savings and Loan sued after the city of Santa Ana failed to close the theater. Lincoln's lawsuit charged that the theater, operated by Mitchell Brothers, attracted "criminal elements, **ORGANIZED CRIME** and persons who practice sexual deviations, such as homosexuals, lesbians, voyeurs, prostitutes, pedophiles, sadists, masochists, rapists, etc., into the area." (After the Lincoln bank failed, the federal government took over the institution, and the lawsuit was dropped.)

During the administrations of Presidents **RONALD REAGAN** and **GEORGE HERBERT WALKER BUSH** lawyers recruited from CDL took part in a controversial and lengthy prosecution of businesses involved with obscene materials. In November 1993, the U.S. **JUSTICE DEPARTMENT** dropped this prosecution tactic, which involved threatening businesses with indictments in numerous jurisdictions in order to extract agreements to stop distribution of the materials. The theory behind the strategy was that the mere expense of defending themselves in so many places would encourage plea bargains by the businesses. Among the targets of these prosecutions was Adam and Eve, a large distributor of sexually explicit films, magazines, and books.

A number of federal judges and civil liberties organizations denounced the multidistrict tactic as a form of harassment, sweeping in nonobscene materials protected by the **FIRST AMENDMENT** in addition to unprotected obscenity.

CDL often worked with other organizations, including the National Religious Alliance against Pornography; Morality in Media; the Moral Majority; Citizens against Pornography; the American Family Association; and the National Federation for Decency. It has also been aligned with smaller compatriot groups such as Citizens for Legislation against Decadence in Portland, Oregon; Women against Pornography in New York; Feminists against Pornography in Chicago and in Washington, D.C.; and the feminist-sponsored Pornography Resource Center in Minneapolis. CDL opponents include the **AMERICAN CIVIL LIBERTIES UNION** and other civil liberties organizations as well as publishers of pornography, such as *Oui* magazine, which in 1975 dubbed Keating the number one enemy of pornography.

FURTHER READINGS

"Interest Group Litigation During the Rehnquist Era." 1993. *Journal of Law and Politics* (summer).

"The Public Interest and the Constitutionality of Private Prosecutors." 1994. *Arkansas Law Review* 47.

CIVIL ACTION

A lawsuit brought to enforce, redress, or protect rights of private litigants—the plaintiffs and the defendants—not a criminal proceeding.

Today, courts in the United States generally are not divided into common-law courts and **EQUITY** courts because most states and the federal government have merged the procedures for law and equity into one system. Now all kinds of lawsuits are simply called civil actions without the former distinctions of procedure in law or in equity.

A criminal proceeding is called a penal action to distinguish it from civil actions.

CIVIL DEATH

The FORFEITURE of rights and privileges of an individual who has been convicted of a serious crime.

Civil death is provided for by statute in some states. Most civil death statutes apply only to offenders who have been sentenced to a life term.

Civil death involves the imposition of numerous disabilities, including the denial of the privilege to vote, to hold public office, and to obtain many job and occupational licenses. In addition, an offender cannot enter into judicially enforceable agreements, such as contracts, and may not obtain insurance and **PENSION** benefits. The offender may also be deprived of any right to commence certain lawsuits in court.

Successive marriages can also be affected by civil death laws. The issue is whether or not the spouse of a person declared civilly dead may enter into a subsequent marriage. The state courts are in disagreement on the matter, although, in most instances, where a felony is a ground for **DIVORCE**, the spouse of the convicted person may end the marriage.

CIVIL DISOBEDIENCE

A symbolic, non-violent violation of the law, done deliberately in protest against some form of perceived injustice. Mere dissent, protest, or disobedience of the law does not qualify. The act must be nonviolent, open and visible, illegal, performed for the moral purpose of protesting an injustice, and done with the expectation of being punished.

By peacefully and openly violating the law and submitting to punishment, those engaging in civil disobedience hope to draw attention to the law they hope to reform, the injustice they hope to stop, or the policy or practice they hope to end. By calling into question the justness, fairness, **EQUITY**, or propriety of the status quo, persons engaging in civil disobedience usually appeal to some form of higher law, whether it be the divine law of god, **NATURAL LAW**, or some form of moral reasoning.

The philosophical underpinnings for civil disobedience can be found in New Testament writings which report on the teachings of Jesus. They also appear in works by Cicero, Thomas Aquinas, **JOHN LOCKE**, and **THOMAS JEFFERSON**. In a famous essay entitled "Civil Disobedience," **HENRY DAVID THOREAU** claimed that the individual is "a higher and independent power" from which the state obtains its authority. As individuals, people must not wait for the government to recognize injustice and instigate reform, Thoreau said, because the machinery of government moves too slowly. If individuals have right on their side, then they must do right by trying to peacefully and openly change society.

Civil disobedience has been extensively employed around the world by nationalist movements (e.g., MOHANDAS GANDHI used civil disobedience to protest against British colonial rule in India), CIVIL RIGHTS leaders (e.g., MARTIN LUTHER KING JR. used civil disobedience to protest against racial SEGREGATION laws in the United States), and anti-war protestors (e.g., Muhammad Ali used civil disobedience to protest U.S. involvement in the VIETNAM WAR), among others.

CROSS-REFERENCES

Civil Rights Movement; Protest.

CIVIL LAW

A body of rules that delineate private rights and remedies, and govern disputes between individuals in such areas as contracts, property, and FAMILY LAW; distinct from criminal or public law. Civil law systems, which trace their roots to ancient Rome, are governed by doctrines developed and compiled by legal scholars. Legislators and administrators in civil law countries use these doctrines to fashion a code by which all legal controversies are decided.

The civil law system is derived from the Roman *Corpus Juris Civilis* of Emperor JUSTINIAN I; it differs from a common-law system, which relies on prior decisions to determine the outcome of a lawsuit. Most European and South American countries have a civil law system. England and most of the countries it dominated or colonized, including Canada and the United States, have a common-law system. However, within these countries, Louisiana, Quebec, and Puerto Rico exhibit the influence of French and Spanish settlers in their use of civil law systems.

In the United States, the term *civil law* has two meanings. One meaning of civil law refers to a legal system prevalent in Europe that is based on written codes. Civil law in this sense is contrasted with the common-law system used in England and most of the United States, which relies on prior case law to resolve disputes rather than written codes. The second meaning of civil law refers to the body of laws governing disputes between individuals, as opposed to those governing offenses that are public and relate to the government—that is, civil law as opposed to CRIMINAL LAW.

In France, the civil law is set forth in the comprehensive French Civil Code of 1804, also known as the Code Napoléon. France exported

this legal system to the New World when it settled Louisiana in 1712. When the French ceded Louisiana to Spain in 1762, the new Spanish governor replaced French civil law with Spanish civil law. France regained control of the territory in 1803 and the United States purchased it a mere 20 days later. During that brief period of French rule, the French prefect abolished all Spanish courts but did not reintroduce French law. Hence, the new U.S. governor of Louisiana, William Claiborne, took control of a territory that lacked a legal system.

Determined to Americanize Louisiana, Claiborne attempted to impose COMMON LAW but met fierce resistance from Louisianans who had grown accustomed to their mixture of French and Spanish laws and culture. Realizing that he would not be able to mandate a common law system, he directed the state's legislature to draft a civil code based on existing law. Louisiana's first civil code, enacted in 1808, drew heavily from the Code Napoléon and was even written in French. It was replaced in 1825 by a more comprehensive and detailed code. Finally, the Louisiana Civil Code, enacted in 1870 and still largely in force, clarifies and simplifies the earlier laws. The 1870 code is written in English, signaling a shift toward a partial Americanization of Louisiana's legal culture. To this day, Louisiana enjoys the distinction of being the only state in the United States to have a civil law system rather than a common-law system.

The first article of the Louisiana Civil Code reads: "The sources of law are legislation and custom" (LA C.C. Art. 1). This means that judges in Louisiana are obligated to look first to written laws for guidance in reaching their decisions. If no statute directly governs the dispute, judges may base their decisions on established custom. Article 3 defines custom as a "practice repeated for a long time and generally accepted as having acquired the force of law." However, Article 3 makes it clear that custom may not abrogate or conflict with legislation. Hence, Louisiana judges do not make law with their decisions; rather, the code charges them with interpreting, as closely as possible, what has been written and passed by the legislature or long established by custom.

Louisiana judges, unlike their common-law counterparts, are not bound by judicial precedent. Common-law judges adhere to the doctrine of STARE DECISIS, which mandates that the outcome of a lawsuit be governed by previous

decisions in similar cases. Louisiana's civil code does not recognize the binding force of precedent. However, under the civil law doctrine of *jurisprudence constante*, or settled JURISPRUDENCE, judges are expected to follow a series of decisions that agree on the interpretation of a code provision.

Although Louisiana is generally called a civil law state, its code is imbued with some common-law features, making it a hybrid of the two traditions. The state's constitution, administrative and criminal law, civil and CRIMINAL PROCEDURE, and RULES OF EVIDENCE all contain elements derived from common-law principles. As a result, Louisiana judges operate under administrative rules that differ from those found in other civil law jurisdictions. For example, whereas European judges actively elicit the facts in a controversy and seldom use a jury, Louisiana judges operate more like their common-law colleagues, assuming the role of neutral and passive fact finder or arbiter, and leaving the final decision to a jury. Oral argument is generally absent in a pure civil law proceeding, whereas Louisiana's procedural and evidentiary rules allow oral presentations, resulting in trials that are closer to those found in a common-law court. Finally, European courts allow almost unlimited discovery by the accused in a lawsuit, whereas Louisiana's procedural and evidentiary rules place certain restrictions on such discovery.

Civil law systems differ from common-law systems in another important way: in a common-law jurisdiction, appellate courts, in most instances, may review only findings of law. However, civil law appellate courts may review findings of fact as well as findings of law. This allows a Louisiana appellate court to declare a jury's decision erroneous, impose its own findings of fact, and possibly even reduce a damage award. This is a significant consideration for a plaintiff who has a choice of whether to file suit in Louisiana or in another state (to bring suit in a particular state, a plaintiff must demonstrate some relationship between that state and the lawsuit). Since a jury award could be overturned on appeal, the plaintiff with a strong case may wish to file in a common-law state. On the other hand, if the plaintiff is uncertain of success at the trial level, the possibility of broader review on appeal may make Louisiana the better choice. As a practical matter, such dilemmas arise infrequently, and most often involve complex multi-state litigation concerning corporations.

FURTHER READINGS

Rogowski, Ralf. 1996. *Civil Law*. New York: New York Univ. Press.

CROSS-REFERENCES

Napoleonic Code; Roman Law.

CIVIL PROCEDURE

The methods, procedures, and practices used in civil cases.

The judicial system is essentially divided into two types of cases: civil and criminal. Thus, a study of CIVIL PROCEDURE is basically a study of the procedures that apply in cases that are not criminal.

Generally, criminal trials are used by the government to protect and provide relief to the general public by attempting to punish an individual. Civil trials can be used by anyone to enforce, redress, or protect their legal rights through court orders and monetary awards. The two types of trials are very different in character and thus have separate procedural rules and practices.

Procedural law is distinguished from SUBSTANTIVE LAW, which creates, defines, and regulates the rights and duties of individuals. Federal and state constitutions, statutes, and judicial decisions form the basis for substantive CIVIL LAW on matters such as contracts, TORTS, and probate. Procedural law prescribes the methods by which individuals may enforce substantive laws. The basic concern of procedural law is the fair, orderly, efficient, and predictable application of substantive laws. Procedural guidance can be found in court rules, in statutes, and in judicial decisions.

Federal Rules of Civil Procedure

State and federal courts maintain separate procedural rules. On the federal level, the Federal Rules of Civil Procedure govern the process of civil litigation at the level of the U.S. district court, which is a trial court. At least one U.S. district court operates in each state. Each district court also exists within one of thirteen federal circuits. Any appeal of a decision by a U.S. district court is heard by the court of appeals for the federal circuit in which the district court sits. Appeals of decisions by a U.S. court of appeals may be heard by the SUPREME COURT OF THE UNITED STATES.

The Supreme Court and the courts of appeals use procedures contained in the Federal Rules of Appellate Procedure and in the U.S.

Supreme Court Rules. As reviewing courts, they are concerned with the district courts' application of the Federal Rules of Civil Procedure.

The Federal Rules of Civil Procedure are now contained in title 28 of the U.S. Code. Before 1938, the procedural rules in U.S. district courts varied from circuit to circuit. The rules in the western United States, for example, were generally less complex than those in the East. To add to the confusion, federal civil cases were designated either at law, which essentially meant that the relief sought was monetary or equitable, which meant that the court was asked to act on principles of fairness and, generally, to award nonmonetary relief. The distinction was important because the procedural rules for a case at law differed from those for an EQUITY suit.

In response to widespread criticism of procedural complexity, the U.S. Congress in 1934 passed the Federal Rules Enabling Act (28 U.S.C.A. §§ 2071, 2072). This act conferred on the Supreme Court the power to make new rules for federal courts. In 1938, new rules were recommended by an advisory committee appointed by the Supreme Court and approved by Congress. The new rules featured simplified PLEADING requirements, comprehensive discovery procedures, a PRETRIAL CONFERENCE to narrow the scope of a trial and define issues, and broad provisions for joining parties and claims to a lawsuit. In addition, legal and equitable claims were merged to proceed with the same set of rules.

After the first set of uniform federal rules were promulgated, it became clear that continuous oversight of the rules was necessary to ensure their improvement. In 1958, Congress created the JUDICIAL CONFERENCE OF THE UNITED STATES, a freestanding body to study federal civil procedure and propose amendments to the Supreme Court. The Judicial Conference, in turn, created the ongoing Committee on Rules of Practice and Procedure to help fashion the best procedural rules for federal courts. Subsequently amendments to the Federal Rules of Civil Procedure occurred on a regular basis.

State courts generally follow the same judicial hierarchy as federal courts. In all states, a party to a civil suit is entitled to at least one review of a trial court decision. In some states, a party may be entitled to two appeals: one in a court of appeals, and one in the state supreme court.

Procedural rules in state courts are similar to the federal rules. Indeed, many states base their procedural rules on the federal rules. Thus, there is a large measure of uniformity among the states and among state and federal courts.

Litigation Process: Pleadings, Jurisdiction, and Venue

A civil action is commenced with the filing of a complaint. The plaintiff must file the complaint with the court and must give a summons to the court and a copy of the complaint to the defendant. The complaint must set forth the claims and the legal bases for them.

Before filing the complaint, the plaintiff must decide where to file it. As a general rule, cases are filed in state, not federal, courts. The question of whether a particular court has authority over a certain matter and certain parties is one of jurisdiction. Federal courts generally have jurisdiction over civil actions in three situations. The most common is when the parties to the suit live in different states and the amount of money in controversy exceeds \$50,000. The second instance is when a claim is specifically authorized by federal statute. The third is when a claim is made by or against the federal government or its agents.

The jurisdiction of state courts depends on a number of variables. Plaintiffs filing in state court generally prefer to file in their home state. However, this may be difficult in a case where the defendant lives in another state and the injury occurred outside the plaintiff's home state. A court in the plaintiff's home state can gain jurisdiction over an out-of-state defendant in several ways. For example, if the defendant enters the plaintiff's home state, the plaintiff may serve the defendant there and force the defendant to appear there for trial. Or the plaintiff can show the court that the defendant has some minimal amount of contact with the plaintiff's home state. Or the plaintiff can show that the defendant has property in the plaintiff's home state and the property is the subject matter of the dispute.

In addition to jurisdiction, the plaintiff must also consider venue. Venue is the term describing the particular county or geographical area in which a court with jurisdiction may hear and determine a case. The plaintiff makes a decision on venue after deciding whether to file suit in state or federal court. For example, if a plaintiff decides to file suit in state court, and

has settled on a particular state, the plaintiff must decide in which county to file suit. The overriding consideration in determining the best venue in a case is the convenience to the parties.

Once the plaintiff determines where to file the complaint, the plaintiff must prepare pleadings and motions. Pleadings are the plaintiff's initial allegations and the defendant's responses to those allegations. Motions are requests made by the parties for a specific order by the court. Courts usually schedule pretrial conferences to review and rule on pleadings and motions, sort out preliminary issues, and prepare a case for trial.

Before a case can proceed, the court must determine whether the plaintiff has standing to bring the suit. In order to hear the suit the court must find that the plaintiff has some legally protectible, tangible interest in the outcome of the litigation. Other plaintiffs may join the original plaintiff if they seek the same relief concerning the same transaction or event and the complaints involve a common **QUESTION OF LAW** or fact. This is called **JOINDER**.

In some cases, joinder may be compulsory. Under Rule 19, a person must be joined if (1) complete relief cannot be accorded to the parties without joining the missing person or (2) the missing person claims an interest in the action, and absence from the suit will impair that person's ability to protect the interest, or absence would subject the parties to multiple or inconsistent obligations regarding the matter of the suit. Both plaintiffs and defendants may be ordered by the court to join a suit.

The court must also determine before trial that the issues in the case are **JUSTICIABLE**, that is, the case is ready and proper for a judicial determination. Courts do not hear hypothetical, abstract, or political cases. For example, a person may not file a suit against a legislator over the legislator's vote on a matter before the legislature. Nor may a person file a suit against another unless the filing person can demonstrate having been harmed by the other.

If the complaint does not state a claim upon which judicial relief can be granted, the defendant may move for **SUMMARY JUDGMENT**, which is a request that the court issue a final judgment on the case in favor of the defendant. The plaintiff also may submit a motion for summary judgment, either soon after filing the complaint or after the defendant submits a summary judg-

ment motion. When deciding a motion for summary judgment, the court must consider the pleadings in the light most favorable to the party opposing the motion.

The parties to a lawsuit prepare their case based on information gained through the process of discovery. Discovery consists of a variety of methods including depositions and interrogatories. A deposition is an interview of a party or witness conducted by a lawyer. Usually, this interview is conducted orally with a lawyer for the other side present and able to participate; sometimes, it is conducted using written questions. Information about a party may be secured through written interrogatories or requests to produce documents or other things. These requests may be served only upon a party. A request for production may seek any item within a party's control.

Procedural rules for depositions and other forms of discovery address a number of concerns, including how a deposition is conducted, the permissible scope of a deposition, who may conduct a deposition, when a party may object to a question at a deposition, when a party may object to an interrogatory, when a party may enter upon land for inspection, when a party may make physical or mental inspections of another party, and what happens when a party does not cooperate with a court order directing compliance with discovery.

If the parties cannot reach a settlement, the case goes to trial. Just before trial, the plaintiff must decide whether to ask for a jury trial. Not all civil cases may be tried before a jury. The right to a jury trial is usually tied to the amount of money at issue: if the case concerns less than a certain amount, such as \$10,000, the case may be limited to trial before a judge. In federal court, however, all parties have the constitutional right to a jury trial. If a plaintiff or defendant is granted a jury trial, both sides will have the opportunity to screen potential jurors for bias.

At trial, each side is given the opportunity to make an **OPENING STATEMENT** to the fact finder, be it judge or jury. The plaintiff then presents evidence. Evidence can include testimony from witnesses and tangible items presented through witnesses. When the plaintiff has presented her or his case, the defendant has the option of presenting evidence. After the defendant presents evidence, the parties make closing arguments to the fact finder.

After final arguments, the judge must determine what laws apply to the case. Both parties submit proposed instructions to the judge. If the case is tried before a jury, the judge must read instructions to the jury. If the case is tried before a judge, the judge will give the parties an opportunity to argue that certain favorable law controls the case.

At this point, either party may move the court for a directed verdict. This is a request that the court decide in the party's favor before deliberating on the case or sending it to the jury. A directed verdict may be granted only if no substantial evidence supports a finding in the opposing party's favor, and the opposing party bears the burden of producing evidence on the issue. If the judge does not issue a directed verdict, the fact finder retires to deliberate the case in secret.

The final phase of the trial is the judgment. The court has the option of requesting different types of verdicts. If it requests a general verdict, it is looking for a flat finding of liability or no liability. If it requests a special verdict, it expects the fact finder to answer specific factual questions, and then the judge determines the legal consequences of the answers.

In a complex jury trial, the court may request that the jury deliver a general verdict along with answers to special interrogatories. This form of verdict allows the judge to ensure that the jury delivers the correct verdict based on its factual findings.

The number of jurors on a civil jury can be as few as five or as many as twelve, depending on the jurisdiction. In most jurisdictions, including federal courts, the jury's decision must be unanimous, but some jurisdictions allow a verdict with something less than unanimity, such as an agreement among nine of twelve jurors.

If the defendant has failed to appear for the proceedings, default judgment will be entered for the plaintiff. However, in this situation, the defendant may contest the judgment when the plaintiff attempts to collect on it, by filing a separate suit and challenging the jurisdiction of the court.

When the verdict is delivered, the losing party may seek a reversal of the judgment. Sometimes a verdict is unsatisfactory to both parties, and both parties seek a reversal; this might happen, for example, when one party wins the lawsuit but receives a small damages award. Reversal of a verdict may be pursued

through a motion for **JUDGMENT NOTWITHSTANDING THE VERDICT**, or **J.N.O.V.** (for judgment *non obstante veredicto*, which is Latin for "notwithstanding the verdict"). The standard for this order is the same as that for a directed verdict. A reversal of judgment usually occurs only in jury trials; judges generally are not inclined to reverse their own decisions.

A court may grant a new trial if procedural problems at trial prejudiced a party or worked against the interests of a party, and affected the verdict. Such problems include juror misconduct and unfair withholding of evidence by an opposing party. A new trial may also be granted if the damages authorized by the jury were excessive or inadequate. In extreme cases, a new trial may be granted if newly discovered evidence comes to light after the case is given to the jury.

All jurisdictions give parties to a civil suit the right to at least one appeal. A decision may be reversed if an error at trial prejudiced the appellant (the party bringing the appeal). Appeals courts generally do not reverse verdicts based on the **WEIGHT OF EVIDENCE**. Instead, they limit their review of cases to mistakes of law. This nebulous concept generally refers to mistakes relating to procedural and constitutional violations.

Sometimes a party may appeal a court order or decision to a higher court during trial. Known as an **INTERLOCUTORY** appeal, this option is limited. A party may appeal during trial if the party stands to suffer irreparable harm if the order or decision is not immediately reviewed. A party may also appeal an order or decision during trial if it affects a matter that is collateral to, or separate from, the litigation.

After a judgment is reached, the winning party must enforce it. If the losing party does not voluntarily relinquish the disputed property or pay the monetary judgment, the winning party may seize and sell the property of the losing party. This is accomplished by filing the judgment in the county where the property is located and proceeding to obtain ownership of the property through another civil suit. If the losing party has no money, the winning party may seek to garnish a portion of the losing party's wages. If the losing party does not work and has no property, the winning party may be unable to collect on the judgment.

Some parties come to court seeking provisional remedies, which are forms of temporary relief available in urgent situations. Temporary

restraining orders and injunctions are court orders that direct a party to perform a certain act or refrain from performing a certain act. For example, if a party wants to bring suit to prevent the imminent demolition of what he believes is a historic building, he may petition the court for a **TEMPORARY RESTRAINING ORDER** to prevent demolition while the suit is filed. A temporary restraining order will last up to ten days. When the ten days have expired, the litigant may seek either renewal of the temporary restraining order or a preliminary injunction.

A preliminary **INJUNCTION**, if granted, requires a party to perform an act or refrain from performing an act until the end of trial. A permanent injunction is a court order that requires a defendant to perform an act or refrain from performing an act permanently.

Civil Justice Reform Act of 1990

Civil cases often are expensive and time-consuming. In August 1990, the U.S. Congress passed the Civil Justice Reform Act to help remedy these problems (28 U.S.C.A. §§ 471–482). The U.S. Senate explained that the Civil Justice Reform Act was “to promote for all citizens, rich or poor, individual or corporation, plaintiff or defendant, the just, speedy and inexpensive resolution of civil disputes in our Nation’s federal courts” (S. Rep. No. 101-416, 101 Cong., 2d Sess., at 1 [Aug. 3, 1990]). The act ordered each U.S. district court to implement a Civil Justice Expense and Delay Reduction Plan under the direction of an advisory group comprising “those who must live with the civil justice system on a regular basis” (S. Rep. No. 101-416, at 414 [quoting statement of SENATE JUDICIARY COMMITTEE chairman Biden, *Cong. Rec.* S416 (Jan. 25, 1990)]).

The advisory groups in each federal district were appointed by the chief judge of the federal circuit, and they generally consisted of judges, clerks, and law professors. These experts prepared a report on methods for reducing expense and delay in civil litigation. The report was then considered by the federal circuit court judges in forming the Civil Justice Expense and Delay Reduction Plan.

One major challenge that faced the advisory groups was how to get courts to best use modern technology. Since passage of the act, many federal circuits have authorized the filing of court documents by facsimile and other electronic means, which may include the use of computers.

Federal courts have also acted to improve scheduling. The U.S. District Court for the District of New Hampshire, for example, created four separate categories for scheduling civil cases: administrative, expedited (“rocket docket”), standard, and complex. The determination of a case’s category is made at the preliminary pretrial conference. Most cases fall into the standard category, which means a trial will be held within one year of the preliminary pretrial conference. A rocket docket case can be tried within six months of the preliminary pretrial conference, if the parties agree and the trial will last no more than five days. Administrative and complex cases are scheduled with special attention. By identifying the length and complexity of a case at the preliminary pretrial conference, federal circuit courts are able to minimize unnecessary delays.

In all jurisdictions, preliminary pretrial conferences have become important in civil litigation. The court, after consulting the parties, schedules and holds this conference within a certain amount of time after the filing of the complaint. At this conference, the court attempts to resolve all the issues that can be resolved outside of trial. These issues include the control and scheduling of discovery, the admissibility of evidence, the possibility of separate trials, and orders limiting the length of the trial presentation. To reach, or decide, substantive issues more quickly, many federal courts ask litigants to file any motions for summary judgment or motions to dismiss before the preliminary pretrial conference. Pre-trial conferences also offer the opportunity to discuss settling the case, allowing both parties to save the costs of going to trial and litigating the issue. Saving costs by settling disputes without resorting to formal litigation is the primary objective of **ALTERNATIVE DISPUTE RESOLUTION**.

Alternative Dispute Resolution

Alternative dispute resolution (ADR) is a generic term that refers to a wide array of practices the purpose of which are to manage and quickly resolve disagreements at a lower cost than formal civil litigation and with as little adverse impact as possible on business and personal relationships. Every jurisdiction provides residents with some form of ADR technique by which they can resolve legal disputes, but **ARBITRATION**, mediation, minitrials, and early neutral evaluations are generally the most popular.

Arbitration is the process of referring a dispute to an impartial intermediary chosen by the parties who agree in advance to abide by the arbitrator's award that is issued after a hearing at which all parties have the opportunity to be heard. There are two different forms of arbitration: private and judicial arbitration. Private arbitration is the product of an agreement to arbitrate drafted by the parties who enter a relationship anticipating that disputes will arise but who mutually desire to keep any such disputes out of court. Judicial arbitration, sometimes called court-annexed arbitration, is a non-binding form of arbitration, which means that any party dissatisfied with the arbitrator's decision may choose to go to trial rather than accept the decision. However, most jurisdictions prescribe a specific time period within which the parties to a judicial arbitration may elect to reject the arbitrator's decision and go to trial. If this time period expires before either party has rejected the arbitrator's decision, the decision becomes final, binding, and just as enforceable as a private arbitrator's decision.

Mediation is a rapidly growing ADR technique. Sometimes referred to as conciliation, mediation consists of assisted negotiations in which the disputants agree to enlist the help of a neutral intermediary, whose job it is to facilitate a voluntary, mutually acceptable settlement. A mediator's primary function is to identify issues, explore possible bases for agreement, discuss the consequences of reaching impasse, and encourage each party to accommodate the interests of other parties through negotiation. However, unlike arbitrators, mediators lack the power to impose a decision on the parties if they fail to reach an agreement on their own.

A **MINITRIAL** is a process by which the attorneys for the parties present a brief version of the case to a panel, often comprised of the clients themselves and a neutral intermediary who chairs the process. Expert witnesses (and less frequently, lay witnesses) may be used in presenting the case. After the presentation, the clients, normally top management representatives who by now are more aware of the strengths and weaknesses of their positions, attempt to negotiate a settlement of the dispute. If a negotiated settlement is not reached, the parties may allow the intermediary to mediate the dispute or render a non-binding **ADVISORY OPINION** regarding the likely outcome of the case were it to be tried in civil court.

Early neutral evaluation is an informal process by which a neutral intermediary is appointed to hear the facts and arguments of counsel and the parties. After the hearing, the intermediary provides an evaluation of the strengths and weaknesses of the parties' positions and the parties' potential exposure to liability for money damages. The parties, counsel, and intermediary then engage in discussions designed to assist the parties in identifying the agreed upon facts, isolating the issues in dispute, locating areas in which further investigation would be useful, and devising a plan to streamline the investigative process. Settlement negotiations and mediation may follow, but only if the parties desire. In some jurisdictions, early neutral evaluation is a court-ordered ADR technique. However, even in these jurisdictions the parties are given the option of hiring their own neutral intermediary or having the court appoint one.

FURTHER READINGS

- Anderson, Peter D. 1994. *Federal Discovery Procedure under New Rules*. Concord, N.H.: New Hampshire Continuing Legal Education.
- Clermont, Kevin M. 1992. *Federal Rules of Civil Procedure 1992 and Selected Other Procedural Provisions*. Westbury, N.Y.: Foundation Press.
- Leubsdorf, John. 1984. "Constitutional Civil Procedure." *Texas Law Review* 63.
- Louisell, David W., Geoffrey C. Hazard, Jr., and Colin C. Tait. *Pleading and Procedure: State and Federal*. 6th ed. Westbury, N.Y.: Foundation Press.
- Meslar, Roger W., ed. *Legalines Civil Procedure*. Chicago: Harcourt Brace Jovanovich.
- Rice, Emily Gray. 1994. *Summary of the Civil Justice Expense and Delay Reduction Plan for the United States District Court for the District of New Hampshire*. Concord, N.H.: New Hampshire Continuing Legal Education.
- U.S. Senate. 1990. 101st Cong., 2d Sess. S. Rept. 416.
- Zuckerman, Adrian A.S., ed. 1999. *Civil Justice in Crisis: Comparative Perspectives of Civil Procedure*. New York: Oxford University Press.

CROSS-REFERENCES

Alternative Dispute Resolution; Judicial Conference of the United States; Substantive Law; Tort Law.

CIVIL RIGHTS

Personal liberties that belong to an individual, owing to his or her status as a citizen or resident of a particular country or community.

The most common legal application of the term *civil rights* involves the rights guaranteed to U.S. citizens and residents by legislation and by the Constitution. Civil rights protected by the

Constitution include **FREEDOM OF SPEECH** and freedom from certain types of discrimination.

Not all types of discrimination are unlawful, and most of an individual's personal choices are protected by the freedoms to choose personal associates; to express himself or herself; and to preserve personal privacy. Civil rights legislation comes into play when the practice of personal preferences and prejudices of an individual, a business entity, or a government interferes with the protected rights of others. The various civil rights laws have made it illegal to discriminate on the basis of race, color, religion, sex, age, handicap, or national origin. Discrimination that interferes with **VOTING RIGHTS** and equality of opportunity in education, employment, and housing is unlawful.

The term **PRIVILEGES AND IMMUNITIES** is related to civil rights. Privileges and immunities encompass all rights of individuals that relate to people, places, and real and **PERSONAL PROPERTY**. *Privileges* include all of the legal benefits of living in the United States, such as the freedom to sell land, draft a will, or obtain a **DIVORCE**. *Immunities* are the protections afforded by law that prevent the government or other people from hindering another's enjoyment of his or her life, such as the right to be free from illegal **SEARCHES AND SEIZURES** and the freedom to practice religion without government persecution. The Privileges and Immunities Clause in Article IV of the U.S. Constitution states, "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States." The clause is designed to prevent each state from discriminating against

the people in other states in favor of its own citizens.

The **BILL OF RIGHTS**, the first ten amendments to the U.S. Constitution, delineates specific rights that are reserved for U.S. citizens and residents. No state can remove or abridge rights that are guaranteed by the Constitution.

In 1857, the U.S. Supreme Court held, in **DRED SCOTT V. SANDFORD**, 60 U.S. (19 How.) 393, 15 L. Ed. 691, that the Constitution did not apply to African Americans because they were not citizens when the Constitution was written. After the Civil War, therefore, new laws were necessary for the purpose of extending civil liberties to the former slaves.

In 1865, the **THIRTEENTH AMENDMENT** to the Constitution was enacted to make **SLAVERY** and other forms of **INVOLUNTARY SERVITUDE** unlawful. In addition, Congress was given the power to enact laws that were necessary to enforce this new amendment.

The **FOURTEENTH AMENDMENT**, ratified in 1868, provides that every individual who is born or naturalized in the United States is a citizen and ensures that a state may not deprive a citizen or resident of his or her civil rights, including **DUE PROCESS OF LAW** and **EQUAL PROTECTION** of the laws. Congress is also empowered to enact laws for the enforcement of these rights.

The Origin of Federal Civil Rights Laws

During the period immediately following the Civil War, civil rights legislation was originally enacted by Congress, based upon its power under the Thirteenth and Fourteenth Amendments to pass laws to enforce these rights. The first two of these laws were based upon the **CIVIL RIGHTS ACT** of 1866 (42 U.S.C.A. § 1982), which had preceded the Fourteenth Amendment.

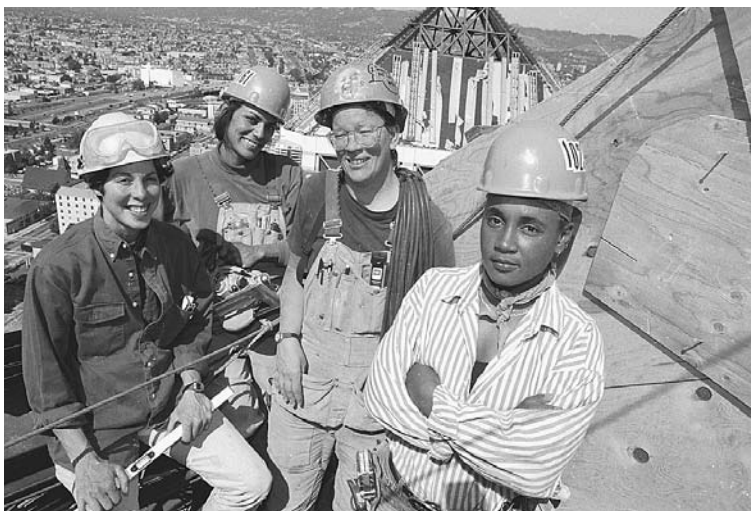
The first civil rights law guaranteed *equal rights* under the law for all people who lived within the jurisdiction of the United States. The second guaranteed each citizen an equal right to own, inherit, rent, purchase, and sell real property as well as personal property. The third original civil rights law, the **KU KLUX KLAN ACT** of 1871 (17 Stat. 13), provided citizens with the right to bring a civil action for a violation of protected rights. The fourth law made violation of such rights a criminal offense.

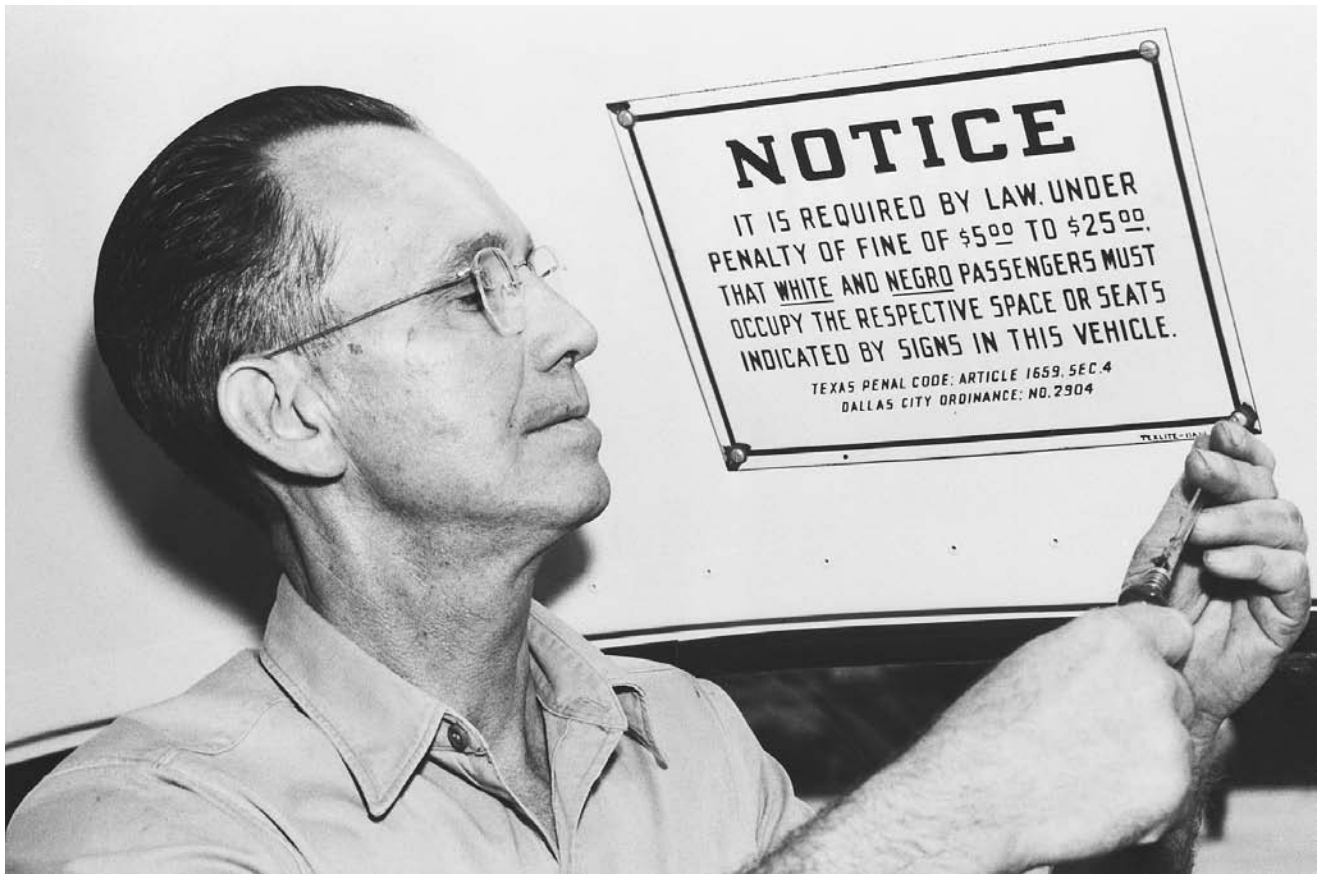
Subsequent Legislation

Although these initial laws purported to guarantee the civil rights of all citizens, including African Americans and other minorities,

One effect of legislation and judicial decisions concerning civil rights has been an increase in the number of women in what were traditionally male jobs.

AP/WIDE WORLD
PHOTOS





they were effectively negated for most African-Americans in the late nineteenth century by the passage of JIM CROW LAWS, or BLACK CODES, in the South. These laws made it illegal for African-Americans to use the same public facilities as whites, restricted their travel, impeded their ability to vote, forbade interracial marriage, and generally relegated them to a legally inferior position.

In the 1896 landmark case *PLESSY V. FERGUSON*, 163 U.S. 537, 16 S. Ct. 1138, 41 L. Ed. 256, the U.S. Supreme Court upheld the constitutionality of a Jim Crow law that required the SEGREGATION, or separation, of the races on railroad cars. The Court held that the Louisiana law in question was not a violation of the Equal Protection Clause of the Fourteenth Amendment as long as the facilities that were provided for each race were “separate but equal.” This SEPARATE-BUT-EQUAL doctrine was used to support other segregation laws applying to public schools and public facilities.

No significant civil rights legislation was enacted until many decades later, when the COMMISSION ON CIVIL RIGHTS was established by

Congress in the Civil Rights Act of 1957 (42 U.S.C.A. § 1975) to monitor and collect facts regarding race relations for consideration by Congress and the president. Congress subsequently passed the Civil Rights Act of 1960 (42 U.S.C.A. § 1971). The statute guarantees that qualified voters have the right to register to vote in any state and that they have the right to sue any person who prevents them from doing so. Voters possess this right to sue regardless of whether the individual who so prevents them is a state official or merely an individual who acting as one.

The CIVIL RIGHTS ACT OF 1964 (42 U.S.C.A. §§ 2000a et seq.) is the most comprehensive civil rights legislation in the history of the United States. It contains provisions for parity in the use and enjoyment of public accommodations, facilities, and education, as well as federally assisted programs and employment. Title VII of that act, which prohibits employment discrimination based on an employee’s race, color, religion, sex, or national origin, is regarded as the most inclusive source of employment rights. All employers who have at least 15 employees,

In 1956 the Dallas Transit Company removed all segregated seating signs from its buses to comply with the Supreme Court ruling banning racial segregation on public transportation.

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including state and local governments and **LABOR UNIONS**, are subject to its provisions, but it does not apply to the federal government, American Indian tribes, clubs, or religious organizations.

The Civil Rights Act of 1968 (25 U.S.C.A. § 1301 et seq.) proscribes discrimination in the sale and rental of most U.S. housing. It also prohibits discrimination in financing arrangements and extends to agents, brokers, and owners. Both the 1964 and 1968 Civil Rights Acts establish the right of an injured party to sue and to obtain damages from any individual who illegally infringes with a person's civil rights, conspires to deprive others of their civil rights, or abuses either government authority or public office to accomplish such unlawful acts.

In the area of education, a significant civil rights milestone was achieved in 1954 with the U.S. Supreme Court's decision in **BROWN V. BOARD OF EDUCATION**, 347 U.S. 483, 74 S. Ct. 686, 98 L. Ed. 873. In *Brown*, the justices unanimously rejected the separate-but-equal doctrine that it had upheld in *Plessy*. They found that segregating black and white children in different public schools violates the Equal Protection Clause of the Fourteenth Amendment. Segregation, the Court held, effectively discriminates against African-American children by promoting in them a sense of inferiority that limits their opportunities in life. The Court also required that school districts desegregate "with all deliberate speed." **INTEGRATION**, or desegregation, of public schools has been a divisive issue ever since. In particular, arguments arise over the practice of busing students a distance to school, a method that has been used, often by court order, to create a better racial balance.

The issue of segregation continues to cause strife. In 2002, Senate Majority Leader **TRENT LOTT** (R.-Miss.) suggested during comments at the 100th birthday party of retired Senator **STROM THURMOND** that he was proud that the state of Mississippi had supported Thurmond in a presidential bid in 1948. Thurmond had run on the so-called "Dixiecrat" platform that advocated segregation. The comments caused a storm of criticism directed at Lott, and he resigned as senate majority leader in December 2002.

In employment, **COMMON LAW** permits an employer or **LABOR UNION** to discriminate for a valid reason in its relations with employees, unless otherwise provided by federal or state

statute. The National Labor Relations Act of 1935 (29 U.S.C.A. § 151 et seq.) initially restrained discrimination against employees or job applicants who engage in union activities. Subsequently, the act has been extended through various amendments to prohibit other forms of discrimination, including race and **SEX DISCRIMINATION**. In 1963, Congress enacted the Equal Pay Act (29 U.S.C.A. § 206), which requires that men and women be paid the same wages when they do substantially similar work. The federal **EQUAL EMPLOYMENT OPPORTUNITY COMMISSION** (EEOC) is the initial forum for claims of illegal employment discrimination. It also publishes advisory guidelines that explain or define the law. Many states have agencies or **HUMAN RIGHTS** commissions that are similar to the EEOC.

The 1980s and Beyond

One result of civil rights legislation is **AFFIRMATIVE ACTION**, which is the effort to enforce race and sex classifications when necessary to correct past discriminatory patterns. The ordering of affirmative action requires employers or labor unions to make concerted efforts to hire minorities who traditionally have been discouraged from seeking employment with them. The basis for affirmative action is that if such efforts are not made, unlawful discrimination will be perpetuated.

Affirmative action and other attempts to end discrimination raise new questions. For example, have efforts to help minorities and women begun to infringe on the rights of individuals outside of those groups, such as white men? Some argue that affirmative action results in *reverse discrimination*, which is prejudice or bias practiced against a particular person or class of people in order to remedy a pattern of past discrimination against another individual or group of individuals.

Much of the attention on the constitutionality of affirmative action programs has focused upon the federal courts of appeals. The most heated controversy has centered on affirmative action programs in higher education. The Fifth Circuit Court of Appeals in *Hopwood v. Texas*, 78 F.3d 932 (5th Cir. 1996) held that a program at the University of Texas School of Law granting preferences to minorities in admissions decisions was unconstitutional. This case stirred a national debate, and several commentators noted that the percentage of minorities who were admitted to the school dropped markedly

after the decision. The U.S. Supreme Court allowed the decision to stand when it denied certioari.

In 2003, the U.S. Supreme Court clarified some of the confusion experienced by the lower federal courts with respect to affirmative action programs in higher education. In *Grutter v. Bollinger*, 539 U.S. ___, 123 S. Ct. 2325, ___ L. Ed. 2d ___ (2003), the Court upheld a practice by the law school at the University of Michigan that considered race one of the factors the school considered when admitting students. The ruling upheld the decision in *BOARD OF REGENTS OF THE UNIVERSITY OF CALIFORNIA V. BAKKE*, 438 U.S. 265, 98 S. Ct. 2733, 57 L. Ed. 2d 750 (1978), a controversial decision that had likewise allowed schools to consider race as a factor in admissions. In a companion case to *Grutter*, however the Court limited the scope of affirmative action programs of universities when it struck down Michigan's undergraduate admissions policies. *Gratz v. Bollinger*, 539 U.S. ___, 123 S. Ct. 2411, ___ L. Ed. 2d ___ (2003). Unlike the law school's admissions policies at Michigan, the undergraduate admissions department added a certain number of "points" to the application of a racial minority. Because the university added these points automatically without consideration of the individual applicant, the Court held that this policy could not pass constitutional muster.

After President RONALD REAGAN appointed three justices to the U.S. Supreme Court during his two presidential terms between 1981 and 1989, the Court proceeded to render more conservative opinions regarding civil rights. For example, in *Patterson v. McLean Credit Union*, 491 U.S. 164, 109 S. Ct. 2363, 105 L. Ed. 2d 132 (1989), it addressed the issue of discrimination in the private sector and held that section 1981 of the Civil Rights Act of 1866 barred only RACIAL DISCRIMINATION in hiring, and thus not racial harassment while on the job. Minority-rights groups were disappointed by the ruling and saw it as part of a general trend toward making civil rights violations more difficult to prove. However, Justice ANTHONY M. KENNEDY, who wrote the Court's opinion, stated, "Neither our words nor our decisions should be interpreted as signaling one inch of retreat from Congress's policy to forbid discrimination in the private, as well as the public, sphere."

Less controversial have been developments in the area of civil rights for handicapped peo-

ple. In 1990, President GEORGE H. W. BUSH signed into law the Americans with Disabilities Act (ADA) (Pub. L. No. 101-336, 104 Stat. 327 [codified in scattered sections of 42, 29, 47 U.S.C.A.] [effective 1992]), which was quickly hailed as the most significant civil rights legislation since the Civil Rights Act of 1964. The ADA prohibits discrimination against DISABLED PERSONS in employment, public accommodations, transportation, and TELECOMMUNICATIONS. Referred to as the bill of rights for physically and mentally disabled citizens—who were estimated to number 43 million at the time of the act's passage—the act supersedes previous state and local laws and extends protection to any person with a physical or mental impairment that "substantially limits one or more of the major life activities of such individual."

The act includes many features that are intended to improve living conditions for those with disabilities. For example, employers, providers of public transportation, and private businesses with public accommodation (such as theaters, restaurants, hotels, and banks) must make "reasonable accommodations" for disabled persons. Often such accommodations must include wheelchair access. Similarly, all commuter and intercity trains are required to have at least one car that is handicapped-accessible, and telephone companies must provide relay operators for hearing-impaired individuals who use special telecommunications devices.

The Civil Rights Act of 1991 (Pub. L. No. 102-166, 105 Stat. 1071 [codified in scattered sections of 42, 29, 2 U.S.C.A.]) marked another important step in civil rights legislation. The act repudiated several U.S. Supreme Court decisions on civil rights; granted women and disabled persons the right to recover money damages under Title VII of the Civil Rights Act of 1964; and granted congressional employees the protection of Title VII. Among the high court's decisions that were overturned by the 1991 act was *Patterson*. Section 101 of the act states that employees may sue for damages experienced through racial discrimination in hiring, promotion, dismissal, and all other terms of employment. The changes in Title VII employee-discrimination cases entitle plaintiffs to jury trials and allow them to recover damages in addition to back pay.

Although many minority groups have made rapid advances toward recognition of their civil rights, one group that continues to struggle is

the homosexual community. Similar to ethnic and racial minorities, individuals who identify themselves as homosexual, bisexual, or transsexual have long been subject to disparate treatment from the majority. Although GAY AND LESBIAN RIGHTS groups have made advances toward changing perceptions in society, challenges in the courts have been only marginally successful.

Gay and lesbian rights group claimed a victory in 1996 with the Supreme Court's decision in *ROMER V. EVANS*, 517 U.S. 620, 116 S. Ct. 1620, 134 L. Ed. 2d 855 (1996). In that case, a constitutional amendment in the state of Colorado prohibited governmental units from passing any statute, regulation, or ordinance purporting to protect the rights of homosexuals or bisexuals. The U.S. Supreme Court held that the amendment violated the Equal Protection Clause because it explicitly denies a single group protection under the law.

Although *Romer* represented one of the first major victories for gay and lesbian groups, other decisions have been less favorable. In *BOY SCOUTS OF AMERICA V. DALE*, 530 U.S. 640, 120 S. Ct. 2446, 147 L. Ed. 2d 554 (2000), the Court held that the Boy Scouts could properly exclude gay boys from their organization based upon the principle of FREEDOM OF ASSOCIATION. Due in large part to their limited success in the courts and legislatures, gay and lesbian advocates have focused much of their attention on changing societal perceptions of homosexual, bisexuals, and other similar minority groups.

Another issue that has arisen in the courts with respect to civil rights is the limitations placed upon SECTION 1983 actions against governmental officials for violations of constitutional rights. For instance, in *Board of County Commissioners of Bryan County, Okla. v. Brown*, 520 U.S. 397, 117 S. Ct. 12382, 137 L. Ed. 2d 626 (1997), the U.S. Supreme Court clarified that a plaintiff cannot recover in an action under section 1983 under a theory of *repondeat superior*. The plaintiff in the case was injured when a police officer forced her to the ground after a chase. The officer had been hired by his great-uncle, a county sheriff, despite the fact that he had had a number of criminal convictions. The plaintiff claimed that the sheriff and the county had shown a reckless indifference toward her constitutional rights through their hiring practices. The U.S. Supreme Court disagreed, holding that a plaintiff in a Section 1983 action must prove that a governmental unit, through delib-

erate conduct, was a moving force behind the alleged injury.

Prisoners' Rights

Lawsuits brought by prisoners to recover damages for alleged violations of their civil rights have caused problems in American legal systems. Many of these cases have involved alleged violations by prisons or prison officials against inmates. Although many of these claims have no valid legal basis, some do, so courts must determine, among the thousands of cases that are filed each year, which ones have merit. In response to these claims, Congress enacted the Prison Litigation Reform Act of 1995, 28 U.S.C.A. § 1932 (2003), which requires prisoners to pay filing fees and restricts the amount of money damages that prisoners can recover.

Prisoners have prevailed on a variety of claims, notwithstanding limitations placed upon their court actions. For example, in *Crawford-El v. Britton*, 523 U.S. 574, 118 S. Ct. 1584, 140 L. Ed. 2d 759 (1998), the U.S. Supreme Court reversed an appellate court decision that had imposed a higher BURDEN OF PERSUASION on inmate claims. Similarly, prisoners are periodically successful in claims that prison officials have deprived them of constitutional rights, including due process of law.

However, the majority of claims by inmates fail. For instance, in *Correctional Services Corp. v. Malesko*, 534 U.S. 61, 122 S. Ct. 515, 151 L. Ed. 2d 456 (2001), the U.S. Supreme Court held that a plaintiff held in a halfway house that was operated by a private corporation under a contract with the federal government could not sue the corporation. The plaintiff had sought to bring the case under the rule in *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388, 91 S. Ct. 1999, 29 L. Ed. 2d 619 (1971) (called a *Bivens* action), which allows for suits against federal officials who have violated the civil rights of plaintiffs. The Court in *Malesko* held that *Bivens* actions do not apply to the acts of government agencies or business entities and ruled against the plaintiff.

FURTHER READINGS

- Abraham, Henry J., and Barbara A. Perry. 2003. *Freedom and the Court: Civil Rights and Liberties in the United States*. Lawrence: Univ. Press of Kansas.
- Hepple, Bob, and Erika M. Szyszczak, eds. 1992. *Discrimination: the Limits of Law*. New York: Mansell.
- Lewis, Harold S. Jr., and Elizabeth J. Norman. 2001. *Civil Rights Law and Practice*. St. Paul, Minn.: West.

Rutland, George H., ed. 2001. *Civil Rights in America*. Huntington, N.Y.: Nova Science Publishers.

Shull, Steven H. 1999. *American Civil Rights Policy from Truman to Clinton: the Role of Presidential Leadership*. Armonk, N.Y.: M.E. Sharpe.

CROSS-REFERENCES

Civil Rights Acts; Ku Klux Klan Act; Section 1983; Voting Rights Act of 1965. See also primary documents in "Civil Rights" section of Appendix.

CIVIL RIGHTS ACTS

Federal legislation enacted by Congress over the course of a century beginning with the post-Civil War era that implemented and extended the fundamental guarantees of the Constitution to all citizens of the United States, regardless of their race, color, age, or religion.

The Civil Rights Acts of 1866 (14 Stat. 27) and 1870 (16 Stat. 140) were enacted to give newly freed slaves the same rights under federal law as those afforded to non-slaves. Such rights were the rights to sue and be sued, the rights to own real and **PERSONAL PROPERTY**, and the rights to testify and present evidence in legal proceedings. Serious questions existed, however, as to the constitutionality of the 1866 act and to whether Congress actually had authority to enact such a measure. Subsequent to the passage of the **FOURTEENTH AMENDMENT** in 1868, Congress reenacted the act pursuant to its power under the amendment to enforce the amendment through appropriate legislation. The Civil Rights Act of 1866 was, therefore, superseded by the **CIVIL RIGHTS ACT** of 1870.

In 1875 Congress passed a third Civil Rights Act (18 Stat. 336) in response to the refusal of many whites who owned public establishments, inns, railroads, and other facilities to make them equally available to blacks. The Civil Rights Act of 1875 prohibited **RACIAL DISCRIMINATION** in such places and guaranteed "full and equal enjoyment" of such places.

Violations of this act abounded and criminal prosecutions ensued. A number of convictions were appealed to the **SUPREME COURT OF THE UNITED STATES** which in 1883 declared the act unconstitutional in the **CIVIL RIGHTS CASES**, 109 U.S. 3, 3 S. Ct. 18, 27 L. Ed. 835. The Court reasoned that the social rights that the act safeguarded were not civil rights and, therefore, Congress was powerless to legislate on the social conduct of private individuals. Following this decision, states began enacting **SEGREGATION** into various laws, the most notorious of which

were the **JIM CROW LAWS**. It took more than eighty years before Congress would again attempt to legislate in this area.

The Civil Rights Acts of 1957 represented congressional recognition that the federal government had to bring about an end to racial discrimination. The **CIVIL RIGHTS COMMISSION** was established and the laws guaranteed qualified voters the right to vote, regardless of their color. In the years 1964 to 1968 Congress enacted extensive and far-reaching legislation affording blacks equal status under the law, ranging from full and free enjoyment of public accommodations and facilities to the prohibition of racial discrimination in employment as well as transactions affecting housing in the United States.

The Civil Rights Act of 1991 granted to victims of unlawful discrimination the right to seek money damages, jury trials, and back pay.

CROSS-REFERENCES

Civil Rights; "Civil Rights Act of 1964" (Appendix, Primary Document); Ku Klux Klan Act; "Voting Rights Act of 1965" (Appendix, Primary Document).

CIVIL RIGHTS CASES

A landmark decision, which was a consolidation of several cases brought before the SUPREME COURT OF THE UNITED STATES in 1883 that declared the CIVIL RIGHTS ACT of 1875 (18 Stat. 336) unconstitutional and ultimately led to the enactment of state laws, such as JIM CROW LAWS, which codified what had previously been individual adherence to the practice of racial SEGREGATION. The cases were United States v. Stanley, United States v. Ryan, United States v. Nichols, and United States v. Singleton, 109 U.S. 3, 3 S. Ct. 18, 27 L. Ed. 835.

The Civil Rights Act of 1875 was passed by Congress in the post-Civil War era in response to the refusal of many whites to afford newly freed slaves equal treatment with whites under federal law. The act mandated that owners of public facilities, such as inns, restaurants, railroads, and other carriers, not discriminate against blacks who sought access to, or service from, them on the basis of their race. Anyone who violated the law was subject to criminal prosecution.

Scores of prosecutions ensued and six cases reached the Supreme Court. The fact patterns of the cases were comparable in that they all were predicated upon the failure of blacks to be

treated the same as whites in various establishments such as restaurants, theaters, railroads, and even the New York City Grand Opera House.

The Court consolidated these cases by deciding that the crucial issue in each was whether the Civil Rights Act of 1875 was constitutional, to which it answered “no.” In an 8–1 decision, Justice JOSEPH BRADLEY reasoned that neither the Thirteenth nor Fourteenth Amendments empowered Congress to safeguard blacks against the actions of private individuals. To decide otherwise would afford blacks a special status under the law that whites did not enjoy. The Thirteenth Amendment’s prohibition of SLAVERY had no application to discrimination in the area of public accommodations. Neither did the EQUAL PROTECTION CLAUSE of the FOURTEENTH AMENDMENT apply to prohibit racial segregation, since it was as the result of conduct by private individuals, not state law or action, that blacks were suffering.

The only dissenting justice was JOHN MARSHALL HARLAN, who criticized the majority opinion on a number of grounds, including that the exclusion of blacks from state licensed facilities for no other reason than their race did bring into application both the Thirteenth and Fourteenth Amendments and that Congress had the authority pursuant to the COMMERCE CLAUSE to legislate in those cases involving railroads.

The decision in the *Civil Rights Cases* severely restricted the power of the federal government to guarantee equal status under the law to blacks. State officials in the South took advantage of the eclipsed role of Congress in the prohibition of RACIAL DISCRIMINATION and proceeded to embody individual practices of racial segregation into laws that legalized the treatment of blacks as second-class citizens for another seventy years.

CROSS-REFERENCES

Civil Rights; Civil Rights Acts; “Civil Rights Cases” (Appendix, Primary Document).

CIVIL RIGHTS MOVEMENT

The civil rights movement was a struggle by African Americans in the mid-1950s to late 1960s to achieve CIVIL RIGHTS equal to those of whites, including equal opportunity in employment, housing, and education, as well as the right to vote, the right of equal access to public

facilities, and the right to be free of RACIAL DISCRIMINATION. No social or political movement of the twentieth century has had as profound an effect on the legal and political institutions of the United States. This movement sought to restore to African Americans the rights of citizenship guaranteed by the Fourteenth and Fifteenth Amendments, which had been eroded by segregationist JIM CROW LAWS in the South. It fundamentally altered relations between the federal government and the states, as the federal government was forced many times to enforce its laws and protect the rights of African American citizens. The civil rights movement also spurred the reemergence of the judiciary, including the Supreme Court, in its role as protector of individual liberties against majority power. In addition, as the Reverend Martin Luther King Jr. and other leaders of the movement predicted, the movement prompted gains not only for African Americans but also for women, persons with disabilities, and many others.

The civil rights movement has been called the Second Reconstruction, in reference to the Reconstruction imposed upon the South following the Civil War. During this period, the FOURTEENTH AMENDMENT (1868)—granting EQUAL PROTECTION of the laws—and FIFTEENTH AMENDMENT (1870)—giving the right to vote to all males regardless of race—were ratified, and troops from the North occupied the South from 1865 to 1877 to enforce the ABOLITION of SLAVERY. However, with the end of Reconstruction in 1877, southern whites again took control of the South, passing a variety of laws that discriminated on the basis of race. These were called Jim Crow laws, or the BLACK CODES. They segregated whites and blacks in education, housing, and the use of public and private facilities such as restaurants, trains, and rest rooms; they also denied blacks the right to vote, to move freely, and to marry whites. Myriad other prejudicial and discriminatory practices were committed as well, from routine denial of the right to a fair trial to outright murder by LYNCHING. These laws and practices were a reality of U.S. life well into the twentieth century.

Organized efforts by African Americans to gain their civil rights began well before the official civil rights movement got under way. By 1909, blacks and whites together had formed the National Association for the Advancement of Colored People (NAACP), which became a lead-

The Birth of the Civil Rights Movement

On December 1, 1955, **ROSA PARKS** was arrested in Montgomery, Alabama, for refusing to give up her seat on a city bus to a white man. News of Parks's arrest quickly spread through the African American community. Parks had worked as a secretary for the local branch of the **NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE**. Because she was a well-respected and dignified figure in the community, her arrest was finally enough to persuade African Americans that they could no longer tolerate racially discriminatory laws.

After exchanging phone calls, a group of African American women, the Women's Political Council, decided to call for a boycott of the city buses as a response to this outrage. This suggestion was greeted with enthusiasm by local African American leaders, including the influential black clergy.

On December 5, members of the African American community rallied at the Holt Street Baptist Church in Montgomery and decided to carry out the boycott. Their resolve was inspired by the words of the Reverend **MARTIN LUTHER KING JR.**

"We are here this evening," King declared to the packed church, "to say to those who have mistreated us so long that we are tired—tired of being segregated and humiliated; tired of being kicked about by the brutal feet of oppression." He went on to make a case for peace and nonviolence. Contrasting the methods of nonviolence that he envisioned for a civil rights movement, to the methods of violence used by the racist and terrorist **KU KLUX KLAN**, King declared,

in our protest there will be no cross burnings. . . . We will be guided by the highest principles of law and order. Our method will be that of persuasion, not coercion. We will only say to the people, "Let conscience be your guide" . . . [O]ur actions must be guided by the deepest principles of our Christian faith. Love must be our regulating ideal. Once again we must hear the words of Jesus echoing across the centuries: "Love your enemies, bless them that curse you, and pray for them that despitefully use you."

With these words and these events, the long, difficult struggle of the **CIVIL RIGHTS** movement began.



ing organization in the cause of civil rights for African Americans. From its beginning, the NAACP and its attorneys challenged many discriminatory laws in court, but it was not until after **WORLD WAR II** that a widespread movement for civil rights gathered force.

The war itself contributed to the origins of the movement. When African Americans who had fought for their country returned home, they more openly resisted being treated as second-class citizens. The movement's first major legal victory came in 1954, when the NAACP won **BROWN V. BOARD OF EDUCATION OF TOPEKA, KANSAS**, 347 U.S. 483, 74 S. Ct. 686, 98 L. Ed. 873, in which the Supreme Court struck down laws segregating white and black children into different public elementary schools. With *Brown*, it became apparent that African Americans had important allies in the highest federal court and its chief justice, **EARL WARREN**.

Another catalyzing event occurred on December 1, 1955, when **ROSA PARKS**, an African American woman, was arrested after she refused to give up her seat to a white man on a Montgomery, Alabama, bus. The law required African Americans to sit in the back of city buses and to give up their seats to whites should the white section of the bus become full. The city's black residents, long tired of the indignities of **SEGREGATION**, began a boycott of city buses. They recruited King, a 27-year-old preacher, to head the Montgomery Improvement Association, the group which organized the boycott. The African Americans of Montgomery held out for nearly a year despite violence—including the bombing of King's home—directed at them by angry whites. This violence was repugnant to many whites and actually increased support for the civil rights movement among them. The boycott finally achieved its goal on November 13, 1956, when the Supreme Court, in *Gayle v.*

Million Man March

On Monday, October 16, 1995, hundreds of thousands of African American men gathered on the Mall in Washington, D.C., for the Million Man March, a daylong rally promoting personal responsibility and racial solidarity. Organized by Louis Farrakhan, leader of the **NATION OF ISLAM**, the march was one of the most well attended and significant rallies in the history of the nation's capital. With its mass of men stretching from the Capitol steps to the Washington Monument, the gathering marked a renewed commitment to self-empowerment and betterment on the part of African Americans.

The Million Man March deliberately recalled the 1963 March on Washington, which many consider the high point of the civil rights movement. During that earlier gathering, the Reverend **MARTIN LUTHER KING JR.**, gave his famous "I Have a Dream" speech. Many speakers at the Million Man March invoked King's speech, noting with a combination of sorrow, anger, and penitence that King's dreams for a racially united America had not yet been realized.

Farrakhan gave the keynote address of the day. Flanked by members of his paramilitary group, the Fruit of Islam, and speaking from behind a bullet-proof shield, he announced at the beginning of his speech, "We are gathered here to collect ourselves for a responsibility that God is placing on our shoulders to move this nation toward a more perfect union." He continued to orate for over two hours, frequently bringing home the point that African Americans still suffer disadvantages that European Americans did not have. "There's still two Americas," he declared, "one black, one white, separate and unequal."

In another significant speech, the Reverend **JESSE JACKSON** expanded on the religiously inspired tone of repentance that was so much a part of the Million Man March. Speaking for those in attendance, the **CIVIL RIGHTS** leader prayed for "God to forgive us for our sins and the foolishness of our ways." Like many of the other speakers, he called on African American men to take responsibility for their families, to end violence and drug use in the home

and in their communities, and to make sure their children are learning in school. He had this to say about the current problems facing African Americans:

We come here today because there is a structural malfunction in America. It was structured in the Constitution, and they referred to us as three-fifths of a human being, legally. . . .

Why do we march? Because our babies die earlier. . . . Why do we march? Because we're less able to get a primary or secondary education. Why do we march? Because the media stereotypes us. We are projected as less intelligent than we are; less hard-working than we work; less universal than we are; less patriotic than we are; and more violent than we are. Why do we march? We're less able to borrow money. . . . Why do we march? Because we're trapped with second-class schools and first-class jails.

Other speakers at the march included the Reverend Joseph Lowery; Damu Smith, of Greenpeace; poet Maya Angelou; and **ROSA PARKS**, whose arrest inspired the 1955 **MONTGOMERY BUS BOYCOTT**.

Away from the speakers' podium, the men collected on the Mall made their own history on that day. Coming from different classes, regions, and religions, they were a diverse group not beholden to any one leader. Many men remarked on the deep meaning the experience had for them, on the fellowship and friendships they gained, and on their own commitment to renewal and repair of both themselves and their communities.

One of the most contentious issues of all regarding the march was the attendance figure. The National Park Service officially estimated attendance at 400,000, whereas event organizers pegged it at over 1.5 million. In comparison, the 1963 March on Washington attracted 250,000 participants.

The Million Man March drew an extremely large share of the nation's television audience, as well as laudatory comments from many national leaders, including President **BILL CLINTON** and former general Colin L. Powell.



Browder, 352 U.S. 903, 77 S. Ct. 145, declared Montgomery's bus segregation law unconstitutional. By December 1956, the city was forced to desegregate its buses.

Although African Americans had sporadically demonstrated against segregation laws in previous decades, the MONTGOMERY BUS BOYCOTT became a turning point for their protests. It gained significant media attention for the civil rights cause, and it brought King to the fore as a leader. King would go on to head the SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE (SCLC), which was formed in 1957, and to guide the civil rights movement itself. The boycott also marked the end of reliance on litigation as the major tactic for gaining civil rights for African Americans. From this point on the movement also engaged in nonviolent direct action, a technique of civil disobedience that had been used before by pacifists, by labor movements, and by Mohandas K. Gandhi in the struggle to secure India's freedom from Great Britain.

Nonviolent methods had been used by African Americans since the 1940s, when the CONGRESS OF RACIAL EQUALITY (CORE)—a group of blacks and whites that formed in 1942 to lobby for equal civil rights for all—organized nonviolent direct action to protest racial discrimination. King described his own view of nonviolent protest in his 1958 book *Stride toward Freedom*. This type of protest worked in part by seeking to create a sense of shame in the opponent.

The nonviolence of the civil rights movement and the power of the federal government over the states were tested as African Americans sought to make use of the rights that had been confirmed by the Supreme Court. For example, segregationist whites, including the Alabama legislature, refused to recognize the rulings of the federal judiciary regarding SCHOOL DESEGREGATION. Some whites formed citizens' councils to combat desegregation, and the KU KLUX KLAN and other reactionary whites began a campaign of TERRORISM, including bombings and murders, intended to intimidate African Americans into giving up their cause.

A significant state-federal confrontation occurred in 1957 at Little Rock, Arkansas's Central High School, when angry mobs of whites attacked nine black students attempting to enroll for classes. President DWIGHT D. EISENHOWER had to send in troops to enforce the Supreme Court's decision in *Brown*, confirming



Dr. Martin Luther King Jr. and other Civil Rights movement leaders participate in the March on Washington on August 28, 1963.

AP/WIDE WORLD
PHOTOS

the right of the students to attend the school. In 1962, when JAMES MEREDITH attempted to enroll at the University of Mississippi, President JOHN F. KENNEDY also sent in federal military troops to uphold desegregation.

The SCLC, which under King's leadership had become one of the most important civil rights organizations in the country, in turn spawned another influential group, the STUDENT NON-VIOLENT COORDINATING COMMITTEE (SNCC, popularly called Snick). In 1960 this group, which was made up of both blacks and whites, became a major player in the civil rights struggle. SNCC attracted youths who were often dissatisfied by what they saw as the unnecessarily moderate goals and methods of the NAACP and the SCLC. SNCC members later led voting registration and education efforts throughout the South, often at great personal risk. Eventually, the group planted the seed of factionalism in the civil rights movement, as it became increasingly radical and alienated from the mainstream of the movement as represented by King.

SNCC played an influential role in another form of nonviolent direct action employed in the civil rights movement: sit-ins. These demonstrations often focused upon the whites-only lunch counters across the South. Armed only with a strict code of conduct that forbade them to strike back or curse their opponents, demon-

strators endured jeers, spitting, and blows by angry whites. One tactic associated with this strategy was the jail-in—also called jail, no bail—in which hundreds of people, many of them underage youths, arrived in waves at segregated lunch counters, were arrested for trespassing, and proceeded to overcrowd local jails. Jail-ins bogged down local governments and drew national attention to the cause. In the North, activists responded by picketing businesses, including the Woolworth chain of stores that operated segregated lunch counters in the South. The right to participate in sit-ins was upheld by the Supreme Court decisions *Garner v. Louisiana*, 368 U.S. 157, 82 S. Ct. 248, 7 L. Ed. 2d 207 (1961), and *Peterson v. City of Greenville*, 373 U.S. 244, 83 S. Ct. 1119, 10 L. Ed. 2d 323 (1963).

The Freedom Rides were a type of nonviolent direct action designed to oppose segregation in interstate buses and bus stations. They were inspired in part by the 1960 Supreme Court decision *Boynton v. Virginia*, 364 U.S. 459, 81 S. Ct. 182, 5 L. Ed. 2d 206, which outlawed racial segregation in bus terminals and other places of public accommodation related to interstate transportation. Organized by CORE in 1961, the Freedom Rides were undertaken by six whites and seven blacks who rode two interstate buses from Washington, D.C., to New Orleans. Along the way, the riders deliberately violated segregation policies on the buses and in bus terminal rest rooms, waiting areas, and restaurants. White mobs savagely beat Freedom Riders of both races at different stops in the Deep South and in Alabama, one of the buses was firebombed.

In order to protect them from possible violence on the part of desegregation opponents, African American students at Central High School in Little Rock, Arkansas, are escorted from school by members of the Army's 101st Airborne division in September 1957.

AP/WIDE WORLD
PHOTOS



Although the 1961 Freedom Rides proceeded no farther than Jackson, Mississippi, they achieved their larger goal of inducing the federal government to enforce its laws. The administration of President Kennedy sent in U.S. MARSHALS to protect the riders during the last part of their journey. An even clearer victory was achieved in September 1961 when the INTERSTATE COMMERCE COMMISSION abolished all segregated facilities in interstate transportation.

On August 28, 1963, the civil rights movement reached a high point of public visibility when it held the March on Washington. Hundreds of thousands of people—an estimated 20 to 30 percent of them white—gathered in front of the Lincoln Memorial in Washington, D.C., to urge Congress and the federal government to support desegregation and VOTING RIGHTS. During this occasion, King gave his famous “I Have a Dream” speech.

The following summer, civil rights activists in Mississippi organized another highly publicized event, Freedom Summer, a campaign to bring one thousand students, both white and black, into the South to teach and organize voter registration. Many civil rights groups provided backing for this movement, including SNCC, CORE, and the NAACP.

Throughout this period of nonviolent protest, the civil rights movement continued to suffer the effects of white violence. MEDGAR EVERS, an NAACP leader who was organizing a black boycott in Jackson, was shot and killed outside his home in 1963. Three participants in Freedom Summer—James Chaney, an African American, and Andrew Goodman and Michael Schwerner, both whites—were killed in Mississippi in June 1964. Events such as these murders outraged many in the nation and solidified popular support for the civil rights cause.

Then Congress passed one of the most significant pieces of civil rights legislation ever proposed, the CIVIL RIGHTS ACT OF 1964 (42 U.S.C.A. § 2000a et seq.). This act made Congress an equal partner with the Supreme Court in establishing civil rights. Title II of the act outlawed discrimination in all places of public accommodation, including restaurants and lunch counters, motels and hotels, gas stations, theaters, and sports arenas. It also allowed the DEPARTMENT OF JUSTICE to bring suit in order to achieve desegregation in public schools, relieving the NAACP of some of its civil rights litigation caseload. The following year, Congress



After the Supreme Court outlawed segregation in interstate bus terminals, the 1961 Freedom Rides were undertaken to challenge continuing segregation policies in the South. The riders were attacked at many of the stops, and are shown here being protected by police and National Guard troops in Montgomery, Alabama.

AP/WIDE WORLD
PHOTOS

passed another important piece of legislation, the VOTING RIGHTS ACT OF 1965 (42 U.S.C.A. § 1973 et seq.). This act outlawed the voting qualifications, including literacy tests, that whites had used to keep African Americans from voting. It also gave the federal government oversight powers regarding changes in state voting laws. These laws together with federal actions showed that the civil rights movement had the backing of the powers of the federal government and that no amount of resistance, however violent, by white southerners would impede the cause.

By the mid-1960s, the nature of the civil rights movement began to change. African Americans, who had been united in their support of activities such as the Montgomery bus boycott, began to diverge in their views over what political action should be taken to improve their situation. Members of different groups within the movement increasingly expressed their dissatisfaction with other groups. More radical groups, including the Black Muslims and black power proponents, voiced discontent with the limited goals of the civil rights movement and its advocacy of nonviolence.

Many of the new African American radicals called for black separatism or nationalism—that is, separation from white society rather than INTEGRATION with it. Not content merely to

seek civil equality, they began to press for social and economic equality. They also questioned the usefulness of nonviolence and no longer sought to include whites in the movement. SNCC, for example, became an all-black organization in 1966. The arguments of the African American radicals were punctuated by urban riots such as those in the Watts section of Los Angeles in 1965.

By the late 1960s, African Americans still suffered from many disadvantages, including poverty rates that were much higher than those among whites and physical health that was much worse. Racially motivated violence persisted as well, as seen in the assassination of King by a white man in 1968.

Despite these problems, the civil rights movement had forever changed the face of U.S. law and politics. It had led to legislation that gave greater protection to the rights of minorities. It had also greatly changed the role of the judiciary in U.S. government, as the Supreme Court had become more active in its defense of individual rights, often in response to litigation and demonstrations initiated by those in the movement. In this respect, the Court and the civil rights movement had great influence on each other, with each reacting to and encouraging the efforts of the other. Likewise, the federal government had, even if hesitatingly, enforced

the rights of a persecuted minority in the face of vigorous opposition from the southern states.

FURTHER READINGS

- Blumberg, Rhoda L. 1984. *Civil Rights: The 1960s Freedom Struggle*. Boston: Twayne.
- Chalmers, David. 2003. *Backfire, Backfire: How the Ku Klux Klan Helped the Civil Rights Movement*. Lanham, Md.: Rowman & Littlefield.
- Friedman, Leon, ed. 1967. *The Civil Rights Reader*. New York: Walker.
- Gray, Fred D. 2003. "Civil Rights—Past, Present and Future." *The Alabama Lawyer* 64 (January): 8.
- Johnson, Frank Minis. 2001. *Defending Constitutional Rights*. Athens, Ga.: Univ. of Georgia Press.
- Levine, Ellen, ed. 1994. *Freedom's Children: Young Civil Rights Activists Tell Their Own Stories*. New York: Morrow/Avon.
- Liebman, James S., and Charles F. Sabel. 2003. "The Federal No Child Left Behind Act and the Post-Desegregation Civil Rights Agenda." *North Carolina Law Review* 81 (May): 1703–49.
- McKissack, Fredrick L., Jr. 2000. *This Generation of Americans: A Story of the Civil Rights Movement*. Columbus, Ohio: Jamestown.
- Rostron, Alan. 1999. "Inside the ACLU: Activism and Anti-Communism in the Late 1960s." *New England Law Review* 33 (winter): 425–74.
- Wilkinson, J. Harvie III. 1979. *From Brown to Bakke: The Supreme Court and School Integration, 1954–1978*. New York: Oxford Univ. Press.

CROSS-REFERENCES

Baker, Ella Josephine; Bates, Daisy Lee Gatson; Black Panther Party; Carmichael, Stokely; Cleaver, LeRoy Eldridge; Davis, Angela Yvonne; Douglass, Frederick; Du Bois, William Edward Burghardt; Jackson, Jesse; Ku Klux Klan; Liuzzo, Viola Fauver Gregg; Marshall, Thurgood; School Desegregation; Wallace, George Corley. See also primary documents in "From Segregation to Civil Rights" section of Appendix.

CIVIL SERVICE

The designation given to government employment for which a person qualifies on the basis of merit rather than political patronage or personal favor.

Civil service employees, often called civil servants or public employees, work in a variety of fields such as teaching, sanitation, HEALTH CARE, management, and administration for the federal, state, or local government. Legislatures establish basic prerequisites for employment such as compliance with minimal age and educational requirements and residency laws. Employees enjoy job security, promotion and educational opportunities, comprehensive medical insurance coverage, and PENSION and other benefits often not provided in comparable positions in private employment.

Most civil service positions are filled from lists of applicants who are rated in descending order of their passing scores on competitive civil service examinations. Such examinations are written tests designed to measure objectively a person's aptitude to perform a job. They are open to the general public upon the completion and filing of the necessary forms. Promotional competitive examinations screen eligible employees for job advancement. Veterans of the ARMED SERVICES may be given hiring preference, usually in the form of extra points added to their examination scores, depending upon the nature and duration of their service. Applicants may also be required to pass a medical examination and more specialized tests that relate directly to the performance of a designated job. Once hired, an employee may have to take an oath to execute his job in GOOD FAITH and in accordance with the law.

Unlike workers in private employment, civil service employees may be prohibited from certain acts that would compromise their position as servants of the government and the general public. For example, the federal HATCH ACT (5 U.S.C.A. § 7324 et seq. [1887]) makes participation by federal, state, and local civil service employees in designated public electoral and political activities unlawful.

The U.S. Civil Service Commission, created by Congress in 1883 and reorganized under the Civil Service Reform Act of 1978 (5 U.S.C.A. § 1101 et seq.) as the MERIT SYSTEMS PROTECTION BOARD, established a merit system for federal employment and governs various aspects of such employment, such as job classification, tenure, pay, training, employee relations, equal opportunity, pensions, and health and life insurance. Most states have comparable bodies for the regulation of state and local civil service employment.

CIVIL WAR

Civil war exists when two or more opposing parties within a country resort to arms to settle a conflict or when a substantial portion of the population takes up arms against the legitimate government of a country. Within INTERNATIONAL LAW distinctions are drawn between minor conflicts like riots, where order is restored promptly, and full-scale insurrections finding opposing parties in political as well as military control over different areas. When an internal



Combatants loyal to President Charles Taylor gather in Monrovia, Liberia, during a July 2003 ceasefire in that nation's civil war. AP/WIDE WORLD PHOTOS

conflict reaches sufficient proportions that the interests of other countries are affected, outside states may recognize a state of insurgency. A recognition of insurgency, whether formal or de facto, indicates that the recognizing state regards the insurgents as proper contestants for legitimate power. Although the precise status of insurgents under international law is not well-defined, recognized insurgents traditionally gain the protection afforded soldiers under international RULES OF LAW pertaining to war. A state may also decide to recognize the contending group as a belligerent, a status that invokes more well-defined rights and responsibilities. Once recognized as a belligerent party, that party obtains the rights of a belligerent party in a public war, or war between opposing states. The belligerents stand on a par with the parent state in the conduct and settlement of the conflict. In addition, states recognizing the insurgents as belligerents must assume the duties of neutrality toward the conflict.

CROSS-REFERENCES

U.S. Civil War; War.

CIVIL WAR AMENDMENTS

See FIFTEENTH AMENDMENT; FOURTEENTH AMENDMENT; THIRTEENTH AMENDMENT.

❖ CIVILETTI, BENJAMIN RICHARD

Benjamin Richard Civiletti served as U.S. attorney general from 1979 to 1981 under President JIMMY CARTER. His leadership helped the JUSTICE DEPARTMENT regain public credibility in the years following the WATERGATE scandal.

Civiletti was born July 17, 1935, in Peekskill, New York. He received a bachelor of arts degree from Johns Hopkins University in 1957 and a law degree from the University of Maryland in 1961. He served from 1961 to 1962 as clerk to William Calvin Chesnut, a U.S. district judge for Maryland. From 1962 to 1964, he worked as assistant U.S. attorney in Baltimore.

Civiletti then turned to private practice with the prestigious Baltimore law firm of Venable, Baetjer, and Howard. His skill as a trial attorney enabled him to rise quickly in the firm. He became a partner in 1969 and headed the litigation department two years later. He also became highly active on various professional committees in Baltimore and Maryland, including the Character Committee of the Court of Appeals of Maryland (1970–76), the Mayor's Commission to Investigate Baltimore City Jails (1972–73), the Judiciary Committee of the Bar Association of Baltimore (1972–75), and the Maryland state legislature's Task Force on Crime (1975–76).

Civiletti's reputation as an outstanding lawyer and civic leader attracted the notice of officials in President Carter's administration. In 1977, the Carter administration appointed Civiletti assistant attorney general in charge of the Criminal Division of the Justice Department. He oversaw a number of sensitive cases in the Criminal Division, including the investigation of Bert Lance, a friend of Carter's who resigned as director of the OFFICE OF MANAGEMENT AND BUDGET in September 1977 after being questioned by the Senate about alleged violations of banking laws. Civiletti also dealt with a scandal involving alleged attempts by South Korean government officials to buy influence from members of Congress and from other U.S. government officials.

In late 1977, the Carter administration nominated Civiletti as deputy attorney general. He was finally appointed to the post in January 1978. As deputy attorney general, Civiletti received widespread praise for his coordination

"LAW REQUIRES
BOTH A HEART
AND A HEAD."
—BENJAMIN
CIVILETTI

Benjamin Civiletti.
AP/WIDE WORLD
PHOTOS



of an interagency campaign against **WHITE-COLLAR CRIME**.

Civiletti's rapid rise through the ranks of the Justice Department culminated in his appointment, in 1979, as U.S. attorney general. His appointment came after President Carter requested the resignation of top cabinet officials in an attempt to improve the functioning of his administration. The previous attorney general, **GRIFFIN B. BELL**, had strongly recommended Civiletti to be his replacement. The Senate approved Civiletti's appointment on August 1, 1979, by a vote of 94–1.

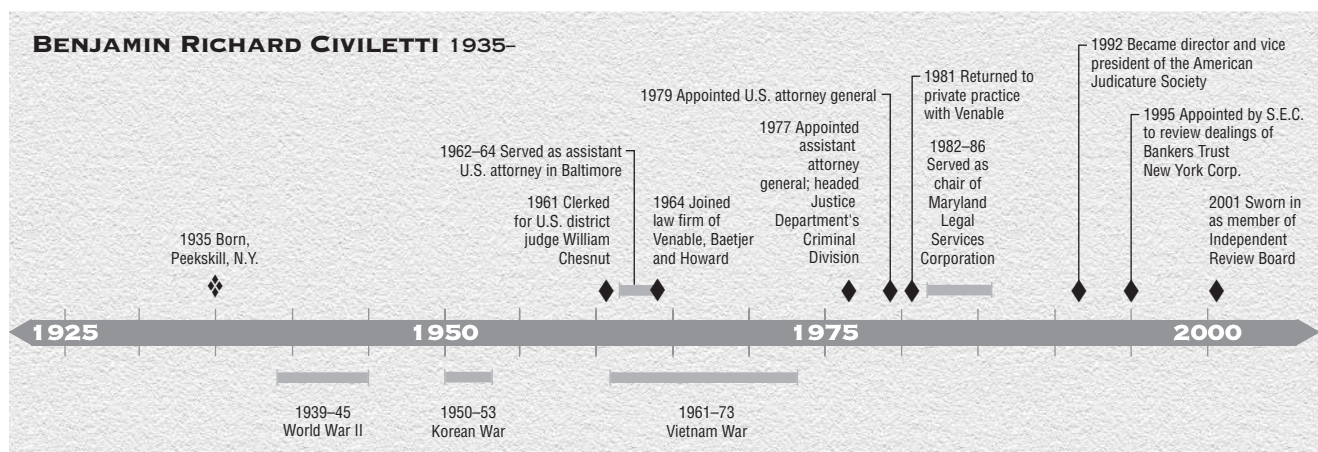
As attorney general, Civiletti continued policies initiated by Bell: a restructuring of the

FEDERAL BUREAU OF INVESTIGATION so that it might better investigate white-collar crime; recodification of **CRIMINAL LAW** statutes; increased pursuit of antitrust cases; and improvement of the Immigration and Naturalization Service. In addition, Civiletti continued his earlier work to improve cooperation between different law enforcement divisions of the federal government.

Civiletti was also forced to respond to international events during his tenure as attorney general. After U.S. citizens were seized at the U.S. Embassy in Tehran in 1979, Civiletti directed the Justice Department's efforts to deport Iranians who had entered the United States illegally. Civiletti also traveled to the **INTERNATIONAL COURT OF JUSTICE** at The Hague, and persuaded its judges to rule in favor of the United States and denounce the Iranian capture of the U.S. embassy.

After **RONALD REAGAN** took office as president in 1981, Civiletti returned to private practice at the Venable law firm. He founded the Maryland **LEGAL SERVICES CORPORATION** and was the original director of the National Institute against Prejudice and Violence. In 1992, Civiletti became the director and vice president of the American Judicature Society, and in 1993, he was named chairman of the Maryland Governor's Commission on Welfare Policy. Civiletti has served as a trustee of Johns Hopkins University and has received honorary doctorates of law from the University of Baltimore, Tulane University, Saint John's University, the University of Notre Dame, and the University of Maryland.

In 1999, Civiletti testified before a House Judiciary Subcommittee in opposition to the



reauthorization of the Independent Counsel Act. The act authorized a three-judge panel to appoint a special prosecutor to investigate alleged illegal actions by government officials. It drew criticism for granting these prosecutors too much power without any effective oversight from the executive or judicial branches of government. In August 2001, Civiletti was sworn in as the second member of the Independent Review Board, a quasi-governmental agency that was created by court order to monitor the activities of the Teamsters Union.

In the early 2000s, Civiletti continued his work in private practice where he focused on litigation and antitrust issues as well as white collar-crime, corporate governance, government regulation, and health law. He also built a practice in **ALTERNATIVE DISPUTE RESOLUTION**. Civiletti continued to sit on numerous boards, committees, councils and task forces. He also published extensively and maintained a steady schedule of speaking engagements.

FURTHER READINGS

Baker, Nancy V. 1992. *Conflicting Loyalties: Law and Politics in the Attorney General's Office, 1789–1990*. Lawrence: Univ. Press of Kansas.

"Independent Review Board." Teamsters Union. Available online at <www.teamster.org/keegel/irb.htm> (accessed June 17, 2003).

"Profiles in Power: The 1994 Power List: An Overview of the Outstanding Members of the Legal Profession." 1994. *National Law Journal* (April 4).

Venable, Baetjer, and Howard Venable. "Civiletti, Benjamin R." Baltimore. West's Legal Directory, WestLaw.

CIVILIAN REVIEW BOARDS

A municipal body composed of citizen representatives charged with the investigation of complaints by members of the public concerning misconduct by police officers. Such bodies may be independent agencies or part of a law enforcement agency.

Generally, the power of a civilian review board is restricted to reviewing an already completed internal police investigation, and commenting on it to the Chief of Police. Citizen review boards have not been very effective at causing reform, as they are often co-opted by the police department whose investigations they are supposed to review, and thus wind up agreeing with the police department in almost all instances.

Some of the newer civilian review board models, however, provide board members with investigatory as well as review authority. Some

of these models contemplate that the board will conduct parallel investigations to supplement the internal affairs investigations. In a few localities, the review board has subpoena power and can force a police officer to testify. A few jurisdictions even grant sole investigatory power to their civilian review boards. But it is very rare for a civilian review board to have the final say as to the disposition of an investigation or discipline to be imposed on an officer. These ultimate decisions generally continue to be the province of the chief of police. Nonetheless, all civilian review boards with independent investigatory authority seem to have the power to make recommendations to the chief on disposition and discipline.

FURTHER READINGS

Goldsmith, Andrew J., and Colleen Lewis. 2000. *Civilian Oversight of Policing: Governance, Democracy, and Human Rights*. Portland, Ore.: Hart Pub.

C.J.

An abbreviation for chief justice, the principal presiding judge or the judge with most seniority on a particular court, as well as an abbreviation for circuit judge, the judge of a particular judicial circuit.

CJS®

The abbreviation for Corpus Juris Secundum, which is a comprehensive encyclopedia of the principles of American law.

Corpus Juris Secundum (CJS) serves as an important research tool that enables a user to locate statements and reported decisions on points of law in which he or she is interested. It is a multivolume set that alphabetically arranges broad topics of law, such as contracts, **PRODUCT LIABILITY** and **SECURED TRANSACTIONS**. Preceding the text of each topic or title is a detailed sectional analysis that demonstrates a logical development of the principles of the title. The analysis permits a researcher to obtain a skeletal overview of the title and provides easy access to the desired area. Within each section, a more detailed analysis of subsections is provided when necessary to elucidate the finer points of a particular principle. A concise summary of the law discussed within the section is set out in heavy black print and is referred to as black letter law. This feature, which introduces the text of a section, allows a researcher to determine quickly whether the text explains the **RULE OF LAW** that is desired. Immediately following the

statements of black letter law are the library references, which refer the researcher to the relevant key number of the West Digest System, thereby providing access to all of the related cases.

The main body of text discusses the general principles of the title. It is supported by footnotes that contain citations to relevant decisions that are reported in the various digests and reporters. A brief statement of the case is sometimes included in the footnote.

Each volume of *CJS* contains an index to the titles found within it. The entire set has a general index that facilitates location of the desired point of law. Each of the volumes is kept current through the use of annual pocket parts that include all relevant new cases and changes in statutes that affect the title. Volumes undergo complete revision periodically when substantial changes and developments in the law warrant the reorganization of the title.

CJS is one of two major legal encyclopedias with a national focus. The other is *American Jurisprudence*, which began publication in 1936 and is now in its second series. Although the two were competitors of sorts for a number of years, both are now published by the same company, the West Group. *CJS* and *American Jurisprudence 2d* are both available in electronic format on WESTLAW, the online legal-research database.

CLAIM

To demand or assert as a right. Facts that combine to give rise to a legally enforceable right or judicial action. Demand for relief.

A claim is something that one party owes another. Someone may make a legal claim for money, or property, or for SOCIAL SECURITY benefits.

A claim also means an interest in, as in a possessory claim, or right to possession, or a claim of title to land.

CLAIM FOR RELIEF

The section of a modern complaint that states the redress sought from a court by a person who initiates a lawsuit.

A civil action is commenced with the filing of a complaint with the court. The person who is seeking money damages or a court order, called the plaintiff, files a complaint, which notifies or warns the defendant that legal action has begun. Within a complaint, the claim for relief

portion sets forth a short, concise statement justifying the relief requested by the plaintiff.

CLARENDON, CONSTITUTIONS OF

Statutes—enacted by a parliament convened at Clarendon, England, in 1164 during the reign of King Henry II—that restricted the authority of the pope and his clergy by subjecting them to the secular jurisdiction of the king's court.

The Constitutions of Clarendon limited the jurisdiction that ecclesiastical courts exercised over members of the clergy while expanding the jurisdiction of the civil court of the king. Clerics accused of common-law crimes, as opposed to violations of CANON LAW, were tried in the king's court. The procedure for making appeals in ecclesiastical law was revised so that the final decision was to be rendered by the king, rather than the pope. Archbishop of Canterbury THOMAS À BECKET reluctantly agreed to these enactments at first but subsequently rejected them with the approval of Pope Alexander III. His efforts had, however, no effect on the development of ENGLISH LAW resulting from the Constitutions of Clarendon.

♦ CLARK, MARCIA RACHEL

Marcia Rachel Clark gained national prominence as the prosecutor of legendary football player O.J. SIMPSON. Yet, long before the Simpson trial made her famous, Clark had built an enviable legal reputation. The one-time professional dancer left private practice to become a Los Angeles assistant district attorney in 1981, a fortuitous career choice that allowed the 28-year-old lawyer to combine her interest in victim advocacy with powerful preparatory skills and a strong courtroom style. Clark prevailed in 19 successful HOMICIDE prosecutions in just over a decade against such high-profile defendants as the murderer of TV actress Rebecca Schaeffer and Los Angeles vigilante James Hawkins. Colleagues and adversaries alike praise her abilities. She is noted for her ability to critically examine complex SCIENTIFIC EVIDENCE.

Clark was born in Oakland, California, on August 31, 1953, to Abraham Kleks and Rozlyn Mazur Kleks. In their strict orthodox Jewish household academic achievement took priority. Clark and her brother studied heavily and took classes in Hebrew twice a week. Clark's passion was drama; she studied ballet; took lead roles in high school plays; and later, as a student at the

University of California, Los Angeles, briefly toured with a professional dance company. But Clark had nonartistic interests as well, as reflected in her undergraduate degree in political science, awarded in 1976. Upon graduation, she married and enrolled in Southwestern University School of Law. The marriage, to Gabriel Horowitz, a flamboyant backgammon gambler known for his high-stakes hustling of celebrities, did not last. It did, however, once bring Clark across the path of Simpson, one of her husband's—and later her own—famous opponents.

Following her graduation from law school in 1979 Clark decided to specialize in **CRIMINAL LAW**. Her life changed rapidly. In 1980, she married Gordon Clark, a computer engineer and an executive in the Church of Scientology, and took his name. She had recently joined the Los Angeles firm of Brodey and Price as a junior attorney but the job did not suit her: she strongly disliked defending violent suspects and soon came to a personal crossroads. The turning point was her involvement in the defense of James Holiday, a man accused of fatally stabbing a woman he had lured into his car. So disturbing was the case to Clark that she believed herself incapable of completing a legal brief for him. But she did the work and won; the case was thrown out of court for lack of evidence and Holiday walked. Afterward, confronting her boss with her deep misgivings, Clark was advised to consider a career change. She took this recommendation, and in 1981 the Los Angeles district attorney's office hired her.

The new assistant district attorney assumed her duties in the Culver City, California, courthouse with enthusiasm. She knew that her sympathies lay with **VICTIMS OF CRIME** and it only remained for her to prove herself as a prosecutor. Working with another assistant district attorney, Clark successfully tried several murder suspects over the next four years. These cases established her reputation for thorough preparation and toughness in court. In 1985, she won convictions in a lurid case involving the double murders of a college couple, Michelle Ann Boyd and Brian Harris, by four inner-city youths, convincing one of the murderers to testify against his friends. If tough guys did not intimidate her, neither did high-powered defense attorneys. In a case that anticipated their matchup in the Simpson trial, she faced off successfully against noted California defense attorney **ROBERT L. SHAPIRO** who ultimately entered a plea bargain for his



Marcia Clark.
AP/WIDE WORLD
PHOTOS

client, Theodore Pacheco, an estranged husband accused of storming into his wife's home with a shotgun and killing her friend.

Clark's success quickly came to the attention of the district attorney's office. In 1985, she got a considerable career boost when she was assigned to work with veteran Los Angeles prosecutor Harvey Giss on the James Hawkins murder case. Hawkins, an African American who worked at his father's grocery store in Watts, had shot a street gang member. Hawkins said he intervened to stop the gangster from harassing a woman and her five children; the shooting, he claimed, was accidental. Turning him into an overnight folk hero, the media and community leaders praised him for fighting back against criminals. But investigators believed that he had simply shot a rival gang member. In 1987, in part because of Clark's skillful presentation of gun ballistics evidence, she and Giss won a conviction on not one but two charges of murder. Her success against Hawkins's top-notch defense team, headed by Los Angeles attorney Barry Levin, did not go unnoticed. "She was born to be a trial prosecutor," Levin later told the *San Jose Mercury News*. "She's tenacious, she's ethical, she's highly competent, she's prepared."

Clark's reputation continued to grow, not simply because she won cases but because of how she won them. She was innovative and daring, as the Rebecca Schaeffer murder case revealed. After slaying the young TV actress in

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REBECCA IS ALIVE
AND HER
MURDERER DEAD."
—MARCIA CLARK

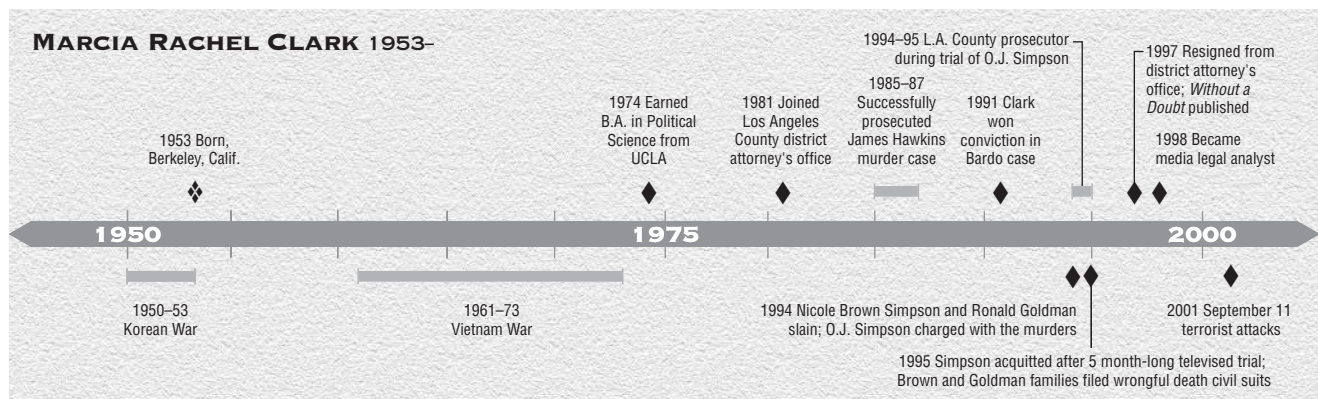
California in 1989, John Bardo, an emotionally disturbed Arizona man who stalked celebrities, fled back to Arizona where he was arrested. His public defender fought Clark's request for Bardo's extradition—but filed pleadings in the wrong Arizona court. Clark capitalized on his legal error by dispatching detectives at the eleventh hour to return Bardo to Los Angeles to stand trial. The action provoked controversy, but Clark withstood it, supported by Los Angeles district attorney Ira Reiner who praised her tactics and understanding of the law. The successful prosecution of Bardo in 1991 involved keen preparation that undermined the testimony of the defense's star witness, a psychiatrist who argued that Bardo had shot the actress in a fit of anger. Chipping away at the expert's testimony, Clark proved that the murder had been premeditated. Later, superior court judge Dino Fulgoni publicly complimented her on her trial preparation skills. Bardo's public defender was ambivalent; having refused to enter any plea for his client in protest of the surprise EXTRADITION, he later told the *Los Angeles Daily News* that Clark was "very aggressive, but she's always very well-prepared, very professional in her presentation."

By the time of O. J. Simpson's arrest on suspicion of murder in mid-1994, Clark was highly qualified to bring the state's case against him. She had a record of 19 successful homicide prosecutions. She had matched abilities with star defense attorneys. Moreover, her ability to win a case in court using highly detailed, complex scientific evidence was proved; she had, after all, won the conviction of murderer Christopher Johnson in 1991 on the strength of a single drop of blood found in his car, establishing a link to Johnson through DNA comparisons with blood

of the victim and of the victim's living relatives. In addition, Clark was already recognized as a victim advocate who went out of her way to forge close ties to victims' families. Early in the case against Simpson, she endeavored to build public sympathy for the slain Nicole Brown Simpson and Ronald Lyle Goldman. "We have two young people whose lives stretched out before them, with all the possibilities," she said at a press conference in June 1994. "These two young victims have been murdered in a brutal and horrible way."

The Simpson trial earned Clark mixed reviews. At first, legal analysts generally approved of the prosecution's strategy although sometimes not of Clark's tactics. In the long, frustrating case, Clark readily held her own against Simpson's celebrated defense team in their many biting exchanges. Even from the beginning, Clark sparred with Shapiro as each warned the other not to try to direct her or his case. Yet, as the weeks wore on, she did not always come out favorably in the eyes of Judge Lance Ito, who sometimes admonished her for inappropriate remarks in court. Clark and lead defense attorney JOHNNIE L. COCHRAN JR., battled passionately over the admissibility of certain evidence, but it was with attorneys F. LEE BAILEY and Barry Scheck that she fought most bitterly. In court, she likened Bailey to a bizarre character out of the novel *Alice in Wonderland*, and after a query from Scheck, she exploded, "There is no lawyer with half a brain, with an IQ above five, who would not have known that such a question was improper."

Given the extraordinary attention paid to the trial, it was inevitable that Clark herself came under exacting scrutiny. Her new status as the best-known woman attorney in the nation car-



ried certain liabilities. Her gender opened her to peculiar criticism: initially, critics jumped on her decision to wear what the media called short skirts. When she changed clothes and hairstyle, the criticism sharpened. Clark took the advice of jury specialists (consultants who advise attorneys on the subtleties of body language, clothing, and speech) who had recommended that she soften her image to be more appealing to jurors. Feminist critics generally sympathized with her but called the need to change her appearance offensive. Susan Estrich, a University of Southern California law professor, told the *Boston Globe*, "This woman is in the business of prosecuting murderers, and the notion that she has to do it wearing pink is a stunning indictment of how far we've come in terms of equal rights." "She's not going to a tea party, after all," observed GLORIA ALLRED, president of the Women's Equal Rights Legal Defense and Education Fund. Clark also became the focus of discussion about working mothers, after Gordon Clark, from whom she was divorced in 1994, sued for custody of their two children, alleging that she had no time left over from the Simpson trial to care for them.

On July 6, 1995, after five and a half months, the prosecution rested its case. The numbers were staggering: Clark and fellow prosecutors had presented 58 witnesses over 92 days of testimony with 488 exhibits—at a minimum expense to Los Angeles County of \$5.69 million. As expected, defense attorney Cochran immediately filed a motion to have the case dismissed, arguing that the prosecution had failed to prove its case; the motion failed. If any consensus emerged among legal analysts, it was that the prosecution had presented too much CIRCUMSTANTIAL EVIDENCE, much of which defense attorneys had apparently been able to discredit. Standing by his prosecutors, Los Angeles district attorney Gil Garcetti told reporters, "The mountain, truly the giant mountain of evidence that we have produced in court over these many weeks, points to only one person, and we know who that person is." *Esquire* magazine named Clark its Woman of the Year for 1995, and speculation immediately began about whether she would continue her career as a prosecutor or pursue movie offers.

In October 1995, O.J. Simpson was acquitted. The jury verdict stunned the prosecution and strained race relations throughout the country. Immediately afterwards, Clark took a

leave of absence and ultimately resigned from the district attorney's office in 1997. She began a series of speaking engagements that continues to this day.

In 1997, Clark published her book about the trial. Cowritten with Teresa Carpenter, *Without a Doubt* describes the Simpson trial as well as the experiences that brought Clark to her role as prosecuting attorney. The book immediately hit the best-seller lists where it remained for a number of weeks. Since then Clark has appeared as legal commentator on a number of TV and radio shows.

FURTHER READINGS

Clark, Marcia, and Teresa Carpenter. 1997. *Without a Doubt*. New York: Viking.

Linedecker, Clifford L. 1995. *Marcia Clark: Her Private Trials and Public Triumphs*. New York: Pinnacle Books.

CROSS-REFERENCES

Simpson, O. J.

❖ CLARK, TOM CAMPBELL

Distinguished jurist and federal law enforcement official Tom Campbell Clark played a pivotal role in U.S. law following WORLD WAR II. During his three decades in the federal government, Clark served in various capacities in the DEPARTMENT OF JUSTICE (1937–45), as U.S. attorney general (1945–49), and as an associate justice of the U.S. Supreme Court (1949–67). A conservative whose political philosophy moderated in his later years, Clark took part in the Supreme Court's expansion of CIVIL RIGHTS and civil liberties in the 1960s.

Clark was born in Dallas on September 23, 1899, to a life of comfort and privilege. Following high school, he attended the Virginia Military Institute and then served as a sergeant in 1917, narrowly missing overseas action in WORLD WAR I. After his discharge, Clark followed his grandfather, father, and brother into the PRACTICE OF LAW. He entered the University of Texas, and completed bachelor of arts and bachelor of law degrees in 1922 before joining his father and brother in their law practice. He soon married Mary Jane Ramsey, a former fellow student, with whom he later had two children.

Family political connections served Clark throughout his career. Help in launching his career came from two influential Texas politicians, Senator Tom Connally and Representative

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OWN EXISTENCE."
—TOM CLARK

Tom Clark.

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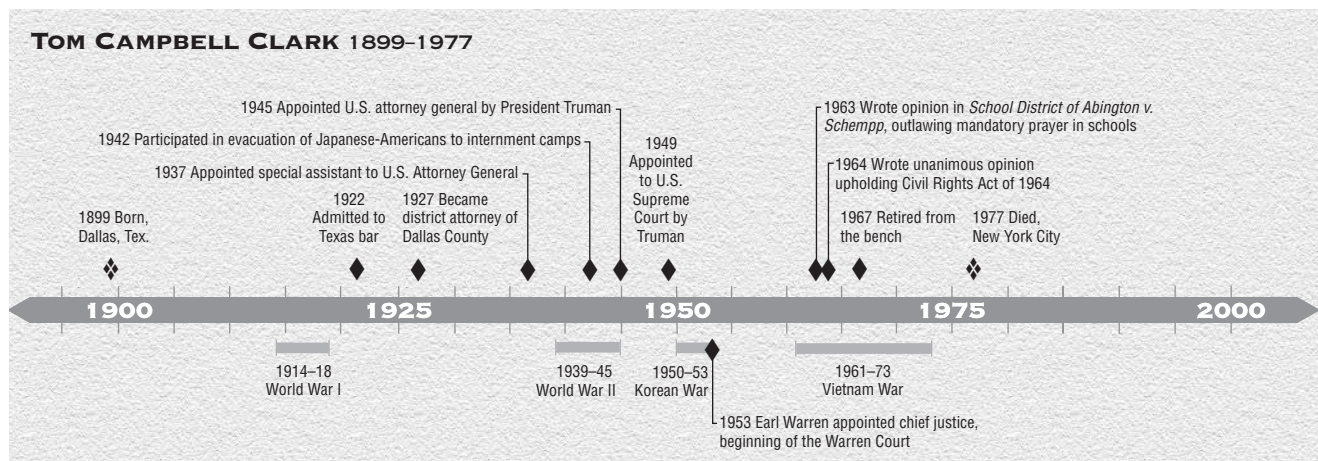
Sam Rayburn. With Connally's help, Clark left private practice in 1927 to become the civil district attorney of Dallas County. He had a perfect prosecution record in his five years in the office. In the early 1930s, he was active in Texas politics as well as in corporate law, and he briefly represented the Texas Petroleum Council as a lobbyist fighting tax increases.

In 1937, Clark began his long career in Washington, D.C. He joined the U.S. Department of Justice as a special assistant to the attorney general, an appointment secured through the strong political support of Senator Connally.

The job required overseeing several department bureaus and prosecuting antitrust cases, in which he distinguished himself. By 1939, he was chief of the Antitrust Division's West Coast offices, fighting and ending price-fixing in the lumber industry.

During World War II, Clark held two leading positions in the Justice Department: chief of the Antitrust Division in 1942 and chief of the Criminal Division in 1945. Wartime had transformed the federal government, multiplying responsibilities for its officers, and thus, Clark found himself assisting the U.S. Army in a controversial domestic action: he coordinated the federal effort to round up and intern in camps American citizens of Japanese ancestry residing on the West Coast. Clark also worked closely with Senator Harry S. Truman's Special Senate Committee Investigating the War Program, which unearthed cases of war FRAUD for the Justice Department to prosecute.

Throughout the late 1940s, Clark and Truman's association benefited both men. Clark supported Truman at the 1944 DEMOCRATIC PARTY convention, and was awarded an appointment to Truman's cabinet as U.S. attorney general. Holding the position from 1945 to 1949, he took the unusual step of personally arguing the federal government's position in antitrust cases—his specialty—before the U.S. Supreme Court. He also helped fuel the postwar era's RED SCARE by investigating so-called subversive groups and helping to prosecute the leaders of the American Communist party. Clark's anti-Communism and loyalty to the president converged when Truman sought election in 1948. Republicans attacked Truman for not being suf-



ficiently anti-Communist, a common tactic in the era's fervent politics, and Clark came to his defense. After Truman won a second term, he appointed Clark to the U.S. Supreme Court in 1949.

In his early years on the bench, the new associate justice remained conservative. Under the leadership of Chief Justice FRED M. VINSON, the Court was reluctant to return decisions in favor of civil liberties, and Clark tended to vote with Vinson. But the character of the Court—and subsequently that of U.S. law—changed with the appointment of EARL WARREN as chief justice in 1953. In its exercise of JUDICIAL REVIEW, the WARREN COURT placed a high value on the BILL OF RIGHTS, handing down decisions that profoundly altered the course of life in the United States.

Clark supported several of these decisions. Like the Court, he had changed, shifting toward a more moderate position on First and FOURTH AMENDMENT issues. He still resisted liberalism: for instance, he dissented in *Aptheker v. Secretary of State*, 378 U.S. 500, 84 S. Ct. 1659, 12 L. Ed. 2d 992 (1964), which struck down a provision of the Subversive Activities Control Act of 1950 (50 U.S.C.A. §785) that prevented members of the Communist party from securing passports. But on balance, he voted in favor of VOTING RIGHTS, privacy, and the separation of church and state.

In 1961, Clark wrote the majority opinion in *MAPP V. OHIO*, 367 U.S. 643, 81 S. Ct. 1684, 6 L. Ed. 2d 1081 (1961), a seminal and controversial decision. *Mapp* concerned the Fourth Amendment right to be secure from unreasonable searches. By a narrow 5–4 majority, the Court extended to defendants in state criminal cases a protection that had previously been available only in federal cases: it barred state prosecutors from using illegally obtained evidence under the so-called EXCLUSIONARY RULE. In theory, the Fourth Amendment had always protected citizens from government intrusion. But the amendment contains no specific means for redressing violations. Since the vast majority of criminal cases have always been brought at the state level, it took the decision in *Mapp* to give this liberty real teeth. Now, cases in which police officers abused their power—for example, by failing to properly obtain a search warrant—could be thrown out of court. “To hold otherwise,” Clark wrote, “is to grant the right but in reality to withhold its privilege and enjoyment.”

In 1963, Clark wrote the majority opinion in another pivotal civil liberties case. *ABINGTON SCHOOL DISTRICT V. SCHEMPP*, 374 U.S. 203, 83 S. Ct. 1560, 10 L. Ed. 2d 844, banned the Lord's Prayer and Bible reading from public schools. It followed by one year the Court's landmark ruling in *ENGEL V. VITALE*, 370 U.S. 421, 82 S. Ct. 1261, 8 L. Ed. 2d 601 (1962), which held unconstitutional a state-authored school prayer. *Engel* was the first major decision on the unconstitutionality of religious practice in public schools. *Schempp* went further. It issued the Court's first concrete test for determining violations of the First Amendment's Establishment Clause. Thus, it laid the groundwork for anti-prayer rulings that continued into the 1990s.

Earning a reputation for integrity and judicial independence, Clark remained on the Court until 1967. He stepped down to clear the way for his son, RAMSEY CLARK, to become U.S. attorney general, thus removing the possibility of a conflict of interest in government cases before the Supreme Court. But he did not leave the federal judiciary: he went on to become the only justice in U.S. history to sit on all eleven circuits of the U.S. Court of Appeals.

After Clark's death on June 13, 1977, in New York City, among the tributes paid to his life and work was this statement by U.S. Supreme Court Justice WILLIAM J. BRENNAN JR.: “His great distinction as a judge is the reflection of his conviction that it is wrong to live life without some deep and abiding social commitment.”

FURTHER READINGS

Young, Evan A. 1998. *Lone Star Justice: A Biography of Justice Tom C. Clark*. Dallas, Tex.: Hendrick-Long.

CROSS-REFERENCES

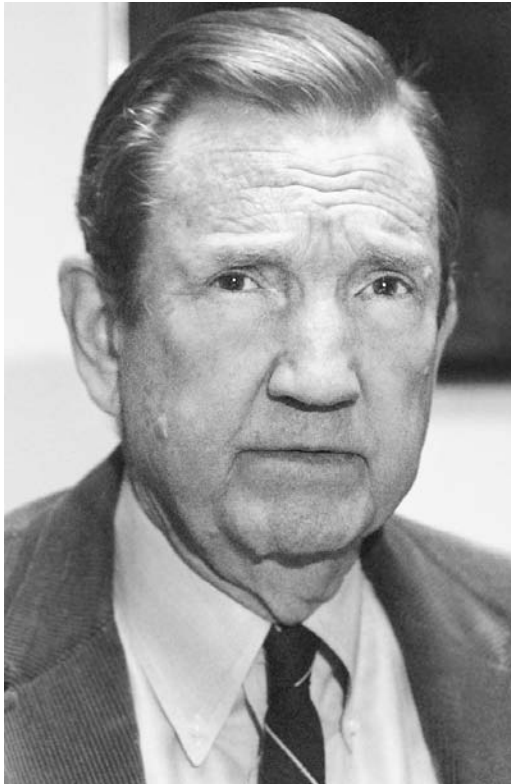
Communism; Japanese American Evacuation Cases; Religion; School Prayer; Search and Seizure; Warren Court.

❖ CLARK, WILLIAM RAMSEY

Ramsey Clark is a unique attorney whose list of clients reads like a who's who of political underdogs. After serving as assistant attorney general, deputy attorney general, and finally attorney general of the United States in the 1950s and 1960s, he returned to private practice with a strong interest in INTERNATIONAL LAW and HUMAN RIGHTS. His liberal views on crime, particularly crime against the U.S. government, have led him to represent a number of individuals and groups that are notably disliked or feared by the U.S. public.

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EVERY INDIVIDUAL
ON THIS PLANET
TO SEE THAT HIS
OR HER
GOVERNMENTAL
OFFICIALS ARE
ACCOUNTABLE FOR
THEIR ACTS.”
—WILLIAM CLARK

Ramsey Clark.
AP/WIDE WORLD
PHOTOS



William Ramsey Clark was born December 18, 1927, in Dallas, Texas, to TOM C. CLARK and Mary Ramsey Clark. He received his bachelor of arts degree from the University of Texas in 1949 and his master of arts and doctor of JURISPRUDENCE degrees from the University of Chicago in 1950. After being admitted to the Texas bar in 1951, he practiced law in Dallas for ten years. In 1961 he was appointed assistant attorney general in the U.S. DEPARTMENT OF JUSTICE. He served in that capacity until 1965 when he was made deputy attorney general. In 1967, President LYNDON B. JOHNSON appointed him attorney general, a position he held until 1969.

Clark was politically well connected. His father had served as U.S. attorney general from 1945 to 1949 under President HARRY S. TRUMAN and as an associate justice of the U.S. Supreme Court from 1949 to 1967. President Johnson was not happy with Clark's performance as attorney general. Clark was criticized for being too soft on crime in the United States as well as too soft on defense. Clark was one of many 1960s-era proponents of a new approach to solving the crime problem—focusing on education and rehabilitation rather than punishment—and his influence extended into the 1990s.

In 1968, after Congress passed the Omnibus Crime Control and Safe Streets Act (Pub. L. No. 90-351, 82 Stat. 197 [June 19, 1968]) to overturn *MIRANDA V. ARIZONA*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966), Clark disagreed with the act and refused to apply it, a precedent that all U.S. attorneys general have followed since. The Omnibus Crime Control and Safe Streets Act, which replaced *Miranda's* flat prohibition on the use of confessions obtained illegally, employed a five-part test for judges to decide whether a confession was voluntary (18 U.S.C.A. § 3501[b]). However, in *Dickerson v. U.S.*, 530 U.S. 428, 120 S.Ct. 2326, 147 L.Ed.2d 405 (U.S. 2000), the U.S. Supreme Court ruled that *Miranda* is a constitutional decision, and thus it may not be in effect overruled by an Act of Congress, specifically including 18 USCA 3501. Congress may not legislatively supercede Supreme Court decisions interpreting and applying the Constitution, the Court concluded, and any attempt to do so would thus be invalid.

Under Clark the JUSTICE DEPARTMENT was considerably more liberal than it was under later leaders. The department opposed CAPITAL PUNISHMENT, even in an incident where two Immigration and Naturalization Service agents were killed. While with the Justice Department, Clark brought future SECRETARY OF STATE Warren M. Christopher in to serve as deputy attorney general. Under Clark's authority, Christopher shepherded the 1968 CIVIL RIGHTS ACT (Pub. L. No. 90-284, 82 Stat. 73-92 [Apr. 11, 1968]) through Congress. The passage of the Civil Rights Act was a notable accomplishment because the United States was experiencing considerable civil strife and social turmoil and Congress did not want to appear soft on crime.

After exiting the attorney general post in 1969, Clark moved to New York City to practice law, taking on clients in matters of international law and human rights, particularly those with claims against the U.S. government—a unique position for a former attorney general. In particular, Clark has specialized in representing Middle Eastern groups and individuals, including the Palestine Liberation Organization (PLO). Clark successfully represented the PLO in an action brought by the U.S. government to close the PLO's Permanent Observer Mission at the UNITED NATIONS (*United States v. PLO*, 695 F. Supp. 1456 [S.D.N.Y. 1988]). Clark also represented the PLO in a suit brought by the survivors of Leon Klinghoffer, who was killed in

1985 while aboard the hijacked *Achille Lauro* (*Klinghoffer v. SNC Achille Lauro*, 816 F. Supp. 930 [S.D.N.Y. 1993]).

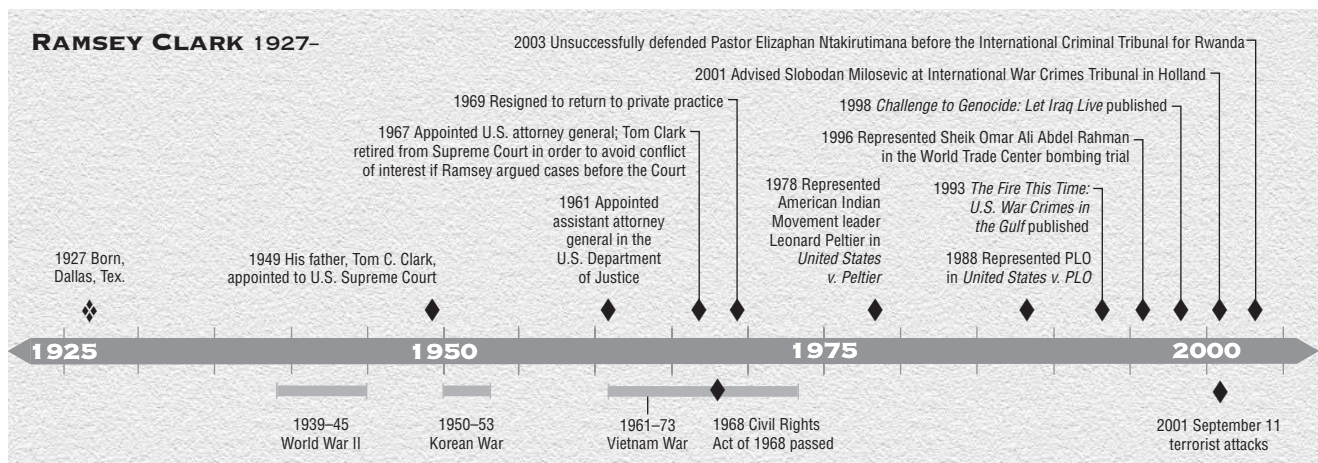
Clark has been unafraid to represent clients whose alleged crimes have angered and outraged U.S. citizens and foreigners alike, including two men who fought EXTRADITION to Israel: Abu Eain, accused by the Israeli government of a 1979 bombing that killed two in Tiberias, Israel (*Eain v. Wilkes*, 641 F.2d 504 [7th Cir. 1981]), and Mahmoud El-Abed Ahmad, accused of a 1986 terrorist attack on an Israeli bus in the West Bank (*Ahmad v. Wigen*, 910 F.2d 1063 [2d Cir. 1990]). To protest the United States' 1986 air strike against Libya, Clark brought suit against the United States and the United Kingdom on behalf of 55 Libyans seeking damages for injuries, death, and property loss sustained in the air strike. The U.S. Court of Appeals for the District of Columbia fined Clark for filing a frivolous lawsuit, one for which there was no hope whatsoever of success (*Saltany v. Regan*, 886 F.2d 438 [D.C. Cir. 1989]). Sheik Omar Ahmad Ali Abdel Rahman, a fundamentalist Muslim cleric who was accused of conspiracy to wage a war of TERRORISM in the United States, also had Clark at his side in proceedings related to his involvement in the 1993 bombing of the World Trade Center.

Clark's practice has also included cases that arose out of wartime acts. He represented Radovan Karadzic, leader of the Bosnian Serbs, who was accused of permitting his soldiers to rape thousands of Muslim women in Bosnian detention camps (*Doe v. Karadzic*, 866 F. Supp. 734 [S.D.N.Y. 1994]); Jack (Jakob) Reimer, an instructor at a WORLD WAR II German SS camp

in Poland who was accused of WAR CRIMES for participation in the murder of more than 50 Jewish civilians in the winter of 1941–42; and Bernard Coard and Phyllis Coard, former officials of the Grenadian government who were sentenced to death for murdering Prime Minister Maurice Bishop and his followers in the coup that preceded the U.S. invasion in 1983 (Petition for Provisional and Permanent Relief against Death Penalties and Sentences of Imprisonment, 137 Cong. Rec. H6305, 102d Cong., 1st Sess. [Aug. 1, 1991]). Clark also counted as one of his clients Captain Lawrence P. Rockwood who was court-martialed for dereliction of duty for leaving his army post in September 1994 to investigate human rights abuses in a Haitian prison.

Clark has represented clients who were arrested while engaging in acts of civil disobedience including a group of people who protested at a General Electric plant in Pennsylvania where parts of Minuteman nuclear missiles were manufactured (*Commonwealth v. Berrigan*, 369 Pa. Super. 145, 535 A.2d 91 [1987]).

Clark's clients have included U.S. citizens who fought the U.S. government in court for reasons other than civil disobedience: Vander Beatty, a former New York state senator convicted of conspiracy and forgery in an election scandal (*Beatty v. Snow*, 588 F. Supp. 809 [S.D.N.Y. 1984]); followers of the Branch Davidians who sued federal authorities over the 1993 BRANCH DAVIDIAN RAID in Waco, Texas; and Lyndon LaRouche, who was convicted of MAIL FRAUD and conspiracy to defraud the INTERNAL REVENUE SERVICE in connection with fund-raising efforts (*United States v. LaRouche*, 896 F.2d



815 [4th Cir. 1990], *aff'd*, 4 F.3d 987, No. 92-6701, 1993 WL 358525 [4th Cir. Sept. 13, 1993]).

One notable group of Clark's clients consisted of some attorneys and a judge who were sanctioned for their conduct in court. This group included New York attorney Arthur V. Graseck Jr., who was ordered by a federal court to pay his opponent's attorney's fees for pursuing frivolous claims, under 28 U.S.C.A. § 1927 and rule 11 of the Federal Rules of Civil Procedure (*Oliveri v. Thompson*, 803 F.2d 1265 [2d Cir. 1986]); California-based civil rights attorney Stephen Yagman, who was suspended from the PRACTICE OF LAW for criticizing a federal district judge (*Yagman v. Republic Insurance*, 987 F.2d 622 [9th Cir. 1993]; *Standing Committee on Discipline v. Yagman*, 856 F. Supp. 1395 [C.D. Cal. 1994]); and U.S. district judge Miles Lord, who presided over the Dalkon Shield CLASS ACTION litigation and was accused of prejudicial administration of justice (*In re Miles Lord*, NOS. JCP 84-001 and JCP 84-002 [8th Cir. Judicial Council 1984] (unreported order); *Gardinier v. Robins*, 747 F.2d 1180 [8th Cir. 1984]).

Throughout the 1990s and beyond, Clark has been unwavering in his support of Leonard Peltier, an AMERICAN INDIAN MOVEMENT leader who was convicted of killing two FEDERAL BUREAU OF INVESTIGATION agents in a siege on the Rosebud Indian Reservation in 1975, in his quest for a new trial (*United States v. Peltier*, 585 F.2d 314 [8th Cir. 1978], *aff'd*, *Peltier v. Henman*, 997 F.2d 461 [8th Cir. 1993]).

In 1990, Clark organized the Coalition to Stop U.S. Intervention in the Middle East. He has served as spokesman for a U.S. group of supporters of Fidel Castro and has accused the media of presenting a one-sided view of Cuba because it has focused on the dictatorship rather than on U.S. efforts to undermine the Cuban Revolution. In 1993, he brought U.S. doctors, and with them eight tons of medicines and vitamins, to Cuba to help the population overcome shortages of medicines and medical care that have occurred since the fall of the Soviet Union.

In the early 1990s, as a reaction to what he characterized as war crimes committed by the U.S. government against Iraqi civilians during the first Persian Gulf war, Clark conducted a war-crimes tribunal in which former president George H. W. Bush and Generals Colin Powell and Norman Schwarzkopf were among those found guilty of committing war crimes. He also

helped to found the International Action Center, which views its mission as providing information and resources to help people fight racism, U.S. corporate greed, and militarism.

Throughout the 1990s and into the 2000s, Clark continued an ambitious agenda of speaking and writing about international and constitutional rights, civil rights, crime control, VOTING RIGHTS, and international affairs. He authored or coauthored numerous books, including *Acts of Aggression: Policing Rogue States*, coauthored with Noam Chomsky and Edward Said.

In early 2003, Clark drafted ARTICLES OF IMPEACHMENT against President GEORGE W. BUSH, Attorney General JOHN ASHCROFT, and other administration officials for planning a preemptive strike against Iraq.

FURTHER READINGS

Clark, Ramsey. 1993. *The Fire This Time: U.S. War Crimes in the Gulf*. New York: Thunder's Mouth Press.

International Action Center. Available online at <www.iacenter.org> (accessed June 19, 2003).

Vote to Impeach. Available online at <www.votetoimpeach.org> (accessed June 19, 2003).

◆ CLARKE, JOHN HESSIN

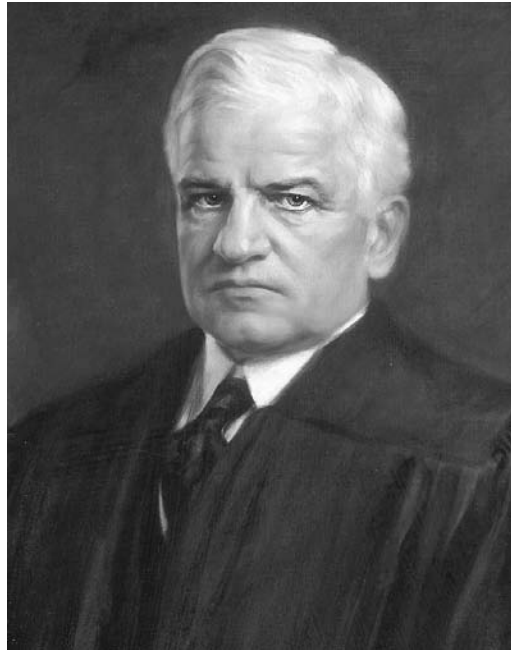
After a career as a successful corporate lawyer, civic reformer, and federal judge in Ohio, John Hessin Clarke was appointed by WOODROW WILSON to the Supreme Court in 1916. He served only a short time on the Court, however, stepping down in 1922 to work for U.S. entry into the League of Nations—becoming one of the few justices to leave office while in reasonably good health. During his brief tenure Clarke earned the respect of his fellow justices and became known for his liberal positions on many issues. A Progressive Era Democrat, he joined with Justice LOUIS D. BRANDEIS on many votes. He also wrote the Court's opinion in *ABRAMS V. UNITED STATES*, 250 U.S. 616, 40 S. Ct. 17, 63 L. Ed. 1173 (1919), in which the Court upheld the conviction of several radicals accused of fomenting unrest and in the process helped define the Court's position on free speech issues for decades to come.

Clarke was born in Lisbon, Ohio, on September 18, 1857. His father, John Clarke, Sr., was an Irish Protestant who immigrated to Lisbon in 1830 and became a successful lawyer and judge. Clarke attended Western Reserve College in Hudson, Ohio, graduating Phi Beta Kappa in

1877 and receiving a master of arts degree in 1880. After college Clarke returned to Lisbon to study law under his father's tutelage. He passed the bar with honors in 1878 and practiced briefly in his father's firm. At age twenty-three he moved to the nearby city of Youngstown and opened his own corporate law firm. He soon gained a reputation as an excellent lawyer and developed an impressive list of clients. Clarke also became an active citizen of Youngstown. He bought an interest in the local Democratic newspaper, the *Vindicator*, and used it to promote progressive political reform including national civil service reform and free public libraries. He was an active participant and speaker in a local literary society. Clarke did not marry.

In 1897, after spending seventeen years in Youngstown, Clarke moved to Cleveland, where he joined the firm of Williamson and Cushing. His clients there included the Erie Railroad, the Nickel Plate Railroad, and the Pullman Company, maker of railcars. In Cleveland, Clarke continued to advocate progressive political reform, sometimes conflicting with the interests of his clients. He became part of the circle of Tom L. Johnson, Cleveland's Democratic mayor (from 1901 to 1909) and a leader in political reform. Among other things, Clarke pushed for limits on railroad fares and profits. He also sought to impose ANTITRUST LAWS on the rail industry. In 1896 Clarke opposed the populist policies of fellow Democrat WILLIAM JENNINGS BRYAN, who ran for president that year. Unlike Bryan, Clarke supported the gold standard, a policy that fixed the value of the dollar in terms of a specific amount of gold.

Clarke's name came up at times for political office, including that of governor and of congressional representative but he declined such invitations. In 1903, however, he finally ran for the U.S. Senate as a Democratic candidate. His platform advocated radical reform, including municipal ownership of street railways, equalization of taxes, direct election of senators, institution of WORKERS' COMPENSATION, and disclosure of campaign finances. Clarke lost to the more conservative incumbent, Mark Hanna, a fellow native of Lisbon. He sought the Democratic nomination for the U.S. Senate again in 1914 but withdrew when a popular politician, Thomas Hogan, entered the race. Clarke later supported progressive reforms including women's VOTING RIGHTS.



John Hessin Clarke.
U.S. SUPREME COURT

At age fifty-six the silver-haired Clarke began a judicial career when President Wilson appointed him to become a federal judge in the Northern District of Ohio. Only two years later, on July 14, 1916, Wilson summoned him again, this time to be a nominee for the U.S. Supreme Court. Wilson hoped that Clarke would join with Justice Brandeis—who had been confirmed shortly before Clarke's nomination—in moderating the conservative slant of the Court. Taking the place of CHARLES E. HUGHES who had stepped down to run for president, Clarke met Wilson's expectations. He took a liberal stance on most issues, becoming, for example, a strong advocate of enforcing antitrust laws against business monopolies. He also made many decisions that were pro-labor.

Clarke had become wary of the potential of large corporations to eliminate competition and infringe on the rights of workers. One of his most important contributions to the history of the Court was in the area of antitrust law. He dissented in several decisions early in his term—including *United States v. United States Steel Corp.*, 251 U.S. 417, 40 S. Ct. 293, 64 L. Ed. 343 (1920)—in which the Court found the defendants not guilty of violating antitrust laws. However, in *United States v. Reading R.R.*, 253 U.S. 26, 40 S. Ct. 425, 64 L. Ed. 760 (1920), the Court majority joined him in his earlier dissenting position, dissolving a railroad holding com-

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—JOHN CLARKE

pany because it was, according to Clarke's opinion, "a menace to . . . interstate commerce within the meaning of the Anti-Trust Act." Then, in *United States v. Lehigh Valley R.R.*, 254 U.S. 255, 41 S. Ct. 104, 65 L. Ed. 253 (1920), Clarke garnered unanimous support for his opinion, in which the Court opined that a railroad had bought up its competition in order to gain a **MONOPOLY** on rail service. *Lehigh Valley R.R.* served as a model for antitrust decisions during the 1930s.

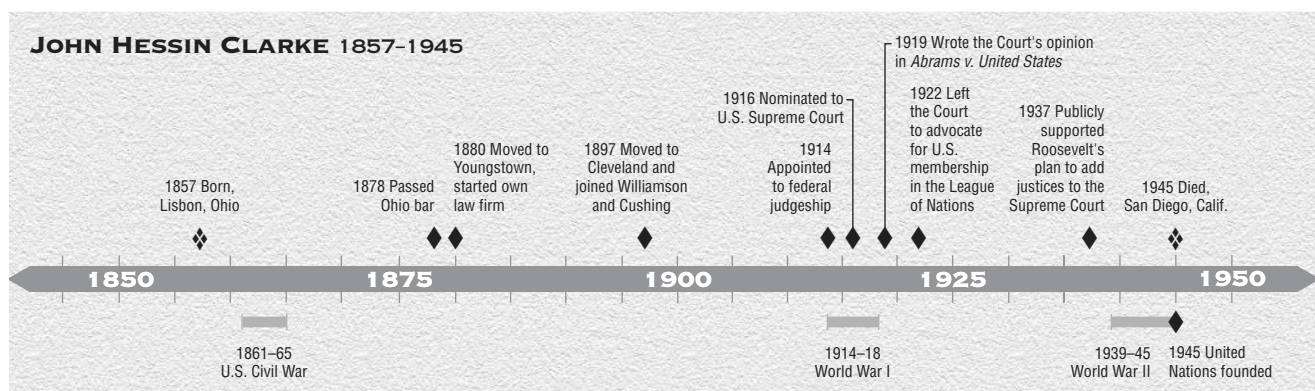
Clarke often sided with labor and he opposed efforts to use antitrust laws against unions. He upheld labor's right to strike in several cases and in *Bunting v. Oregon*, 243 U.S. 426, 37 S. Ct. 435, 61 L. Ed. 830 (1917), he voted to sustain Oregon's **MINIMUM WAGE** law and its ten-hour workday limit.

Clarke's record on civil liberties was less uniformly liberal. Although he often voted with fellow justices Brandeis and **OLIVER WENDELL HOLMES JR.**, he differed with them in *Abrams*. At issue was the First Amendment's Free Speech Clause, which states, "Congress shall make no law . . . abridging the freedom of speech." The case involved Russian-born anarchists and socialists who had been accused of distributing leaflets calling for weapons workers to go on strike during **WORLD WAR I**. In the Court's opinion, Clarke wrote, "the defendants plainly urged and advocated a resort to a general strike of workers in ammunition factories for the purpose of curtailing the production of ordnance and munitions necessary and essential to the prosecution of the war." Clarke said that the Sedition Act of 1918, 40 Stat. 553, allowed for the restriction of speech that intended to disrupt the conduct of the war, even if that intention had not led to such disruption. This interpreta-

tion of the **FIRST AMENDMENT** remained dominant for several decades. In his dissent, Holmes argued that Clarke and the majority had overblown the effect of "the surreptitious publishing of a silly leaflet by an unknown man." Clarke again opted for a conservative interpretation of the First Amendment in *U.S. ex rel. Milwaukee Social Democratic Publishing Co. v. Burleson*, 255 U.S. 407, 41 S. Ct. 352, 65 L. Ed. 704 (1921). In that decision, Clarke upheld a Milwaukee postmaster's denial of mailing privileges to a socialist newspaper, claiming that a mailing permit was a privilege and not a right.

Clarke resigned from the Court in 1922 on his sixty-fifth birthday. He left in order to become an advocate for U.S. membership in the **LEAGUE OF NATIONS**. Among the reasons for his resignation, he told Brandeis, was his perception that many of the cases accepted by the Court were trivial in nature. Clarke was suffering from health problems, including loss of hearing and a heart condition, and he had been greatly affected by the death of two sisters. He also resented the hostility of the conservative justice **JAMES C. MCREYNOLDS**. President Wilson wrote to Clarke of the resignation, "I am only sorry, deeply sorry. Like thousands of other liberals throughout the country, I have been counting on the influence of you and Justice Brandeis to restrain the Court in some measure from the extreme reactionary course which it seems inclined to follow." During his time on the Court, Clarke wrote 129 opinions and 23 dissents.

In the same year that he resigned Clarke became president of the League of Nations Non-Partisan Association of the United States, a position he held until 1928. After the carnage of World War I Clarke put great stock in the League



of Nations' efforts "to devise some rational substitute for irrational war as a means of settling international disputes." Clarke worked hard as an advocate for the League of Nations, traveling around the country, making speeches and campaigning for the cause—and spending a good deal of his own personal fortune in the process. He also became an active trustee of the World Peace Foundation in 1923.

Plagued with respiratory problems in addition to his heart condition, Clarke retired to San Diego in 1930. He remained disappointed by the United States' persistent isolationism and its refusal to join the League of Nations.

In the 1930s Clarke made known his support for FRANKLIN D. ROOSEVELT'S NEW DEAL legislation. In 1937 he made a radio address speaking in favor of Roosevelt's plan to add more justices to the Supreme Court. He was greatly saddened by the events of WORLD WAR II and told a friend that he "began to gravely doubt the existence of a moral government on this seemingly abandoned planet." He died in 1945, shortly before the explosion of the atomic bomb on Hiroshima and the formal creation of the UNITED NATIONS.

FURTHER READINGS

Cushman, Claire, ed. 1993. *The Supreme Court Justices: Illustrated Biographies, 1789–1993*. Washington, D.C.: Congressional Quarterly.

Friedman, Leon, and Fred L. Israel, eds. 1969. *The Justices of the United States Supreme Court, 1789–1969: Their Lives and Major Opinions*. New York: Chelsea House.

CLASS ACTION

A lawsuit that allows a large number of people with a common interest in a matter to sue or be sued as a group.

The class action suit began in the EQUITY courts of seventeenth-century England as a *bill of peace*. English courts would allow a bill of peace to be heard if the number of litigants was so large that joining their claims in a lawsuit was not possible or practical; the members of the group possessed a joint interest in the question to be adjudicated; and the parties named in the suit could adequately represent the interests of persons who were absent from the action but whose rights would be affected by the outcome. If a court allowed a bill of peace to proceed, the judgment that resulted would bind all members of the group.

Justice JOSEPH STORY, who served on the U.S. Supreme Court from 1811 to 1845, advocated the development of the bill of peace in the

United States. He wrote that in equity courts, "all persons materially interested, either as plaintiffs or defendants in the subject matter of a bill ought to be made parties to the suit, however numerous they may be," so that the court could "make a complete decree between the parties [and] prevent future litigation by taking away the necessity of a multiplicity of suits" (*West v. Randall*, 29 F. Cas. 718, 2 [C.C.R.I. Mason] 181 [1820] [No. 17, 424]). The bill of peace, and later the class action, provided a convenient and efficient vehicle for resolving legal disputes affecting a number of parties with similar claims. Common issues that could have similar outcomes did not have to be tried piecemeal in separate actions, thus saving the courts and the litigants time and money.

Initially, a class action could be brought only in equity cases, disputes in which the parties did not necessarily seek monetary damages but instead might desire some other type of relief. The adoption of Rule 23 of the Federal Rules of Civil Procedure in 1938 broadened the scope of the class action suit, providing that cases in law seeking money damages as well as cases in equity could be brought as class actions. In 1966, the scope of the class action was again clarified and expanded when Rule 23 was amended to provide that unnamed parties to a class action were bound by the final judgment in the action so long as their interests were adequately represented.

Rule 23 of the Federal Rules of Civil Procedure defines three kinds of class actions. The first type may be brought where separate lawsuits might adversely affect other members of the class or the defendant in either of two ways—if the piecemeal litigation resulting from separate suits might impose inconsistent standards of conduct on the defendant, or if multiple suits might "impair or impede" the class members from protecting their various interests. In the second type of class action, a class seeks an INJUNCTION or some type of relief compelling the defendant either to cease a certain activity or to perform some other type of action. In the third category of class action lawsuit, there are QUESTIONS OF LAW or fact common to the entire class that predominate over questions peculiar to each individual plaintiff, and a class action suit is a more efficient means to resolve the controversy. Under the third type of class action, individual members of the class may "opt out" of the litigation if they do not

SHOULD CLASS ACTIONS BE RESTRICTED?

Class action lawsuits have become a controversial topic in the 1990s. Once seen as a way of empowering individuals with small claims to have their day in court, class actions are viewed by many lawyers, legislators, and government officials as a vehicle for plaintiffs' lawyers to make millions of dollars on issues of dubious merit. Other critics charge that class actions have been used by defendants in mass **TORT** cases, such as asbestos litigation, to frustrate the large and legitimate claims of individual victims.

Defenders of class actions argue that this type of lawsuit has a legitimate social purpose. A lawyer who prosecutes a class action can be viewed as a "private attorney general" who aggressively enforces various regulatory laws or who alerts the public to **FRAUD**, health, and safety problems. In a time when government is seeking to reduce government regulation, class action lawsuits provide an opportunity for the private sector to take up the oversight function.

Defenders note that the class action format has most often been used to

aggregate small claims that were not worth litigating separately. A class action is an effective means for holding defendants accountable for widespread harm that would otherwise go unchecked. There is public value in allowing this type of class action to go forward, even if the amount payable to each member of the class is small. The deterrent effect of a class action can be substantial, forcing the defendant to change its product or procedures.



Supporters of class actions contend that trivial cases are rare and that neither high settlement rates nor small individual recoveries demonstrate frivolous litigation. Moreover, criticism of multimillion-dollar attorney fees ignores the risk that class action attorneys take in starting such lawsuits. Not every class action will be successful and the costs of litigation can be substantial. Without a financial incentive, attorneys will not take on and plaintiffs will not find redress for certain types of injury. Defenders also point out that personal injury attorneys receive large portions of the awarded damages through

CONTINGENT FEE agreements. Class action attorneys should not be treated differently.

Defenders of large claim class actions believe that mass tort cases benefit from using a class action structure. When victims of mass torts seek substantial compensation for injuries caused by a defective product, such as asbestos, breast implants, and **BIRTH CONTROL** devices, it makes sense to aggregate the claims. It is more economical for attorneys and the courts to manage hundreds or even thousands of similar claims as a group rather than on a case-by-case basis. The courts would be tied up for years if each case had to be handled individually, and the duplication of evidence and expert witnesses would generate needless expense. A class action, on the other hand, can resolve the central issues and develop rational compensation schedules for the victims. Settlement also becomes a more attractive option for defendants when the victims are members of a class.

Critics of class actions remain unconvinced about the social and legal value of group lawsuits. In small claims class actions, critics question the value of

want to be bound by the results of the suit. Courts have held that **DUE PROCESS** requires that absent class members be given adequate notice, adequate representation, and adequate opportunity to opt out, before they can be bound by a final judgment in the suit (*Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 105 S. Ct. 2965, 86 L. Ed. 2d 628 [1985]).

Class action suits have led to social reform in the United States. They have helped to remedy discrimination based on race and gender; been used to address inequities in education, housing, and **VOTING RIGHTS** laws; and helped to ensure due process. For example, **BROWN V. BOARD OF EDUCATION**, 347 U.S. 483, 74 S. Ct. 686, 98 L. Ed. 873 (1954), the Supreme Court decision striking down segregated schools, was brought as a class action lawsuit. The landmark decision *Goldberg v. Kelly*, 397 U.S. 254, 90 S. Ct. 1011, 25 L. Ed. 2d

287 (1970), in which the **SUPREME COURT OF THE UNITED STATES** held that recipients of public assistance must be given notice and the opportunity for a hearing prior to termination of benefits, was also litigated as a class action suit.

In addition, the class action suit has been used in several widely publicized mass **TORT** cases. In these actions, many plaintiffs, often hundreds or even thousands, have alleged injuries suffered as the result of the actions of a single defendant, usually the manufacturer of some product believed to have caused damage. In the mid-1970s, thousands of women brought suit against the manufacturer of the Dalkon Shield, an intrauterine contraceptive device linked to numerous health problems, including sterility. A class action suit was also employed in lawsuits against the manufacturer of the

supporting litigation in which individual class members have very small stakes. For example, does it make sense to permit a lawyer to initiate a class action where a utility company overcharged two million customers two cents per month? Such filings demonstrate to the critics the lawyer-driven nature of most small claims class actions. The individual claimants, because they have so little at stake, do not exercise any control over the litigation or elect to opt out of the class and pursue individual claims. With the plaintiffs' lawyer in total control, the dynamics of the lawsuit change. The lawyer has the largest economic stake in the outcome, leading to settlements that guarantee high attorney fees and minimal payouts to the class members.

Critics also dispute the value of the private attorney general role. Most class action attorneys, they contend, are seeking lucrative financial awards rather than social justice. Moreover, class actions may interfere with the regulatory and oversight functions of the appropriate government agency. The agency may conclude that the injuries attributed to the defendant are insignificant and do not warrant prosecution. A class action substitutes the judgment of the private attorney for that of the public's elected officials.

As to the deterrence value of class actions, the critics maintain that state and federal law enforcement organizations have the ability to investigate and punish cases involving widespread small-scale fraud and offer an alternative means of addressing wrongful conduct. Private enforcement through a class action reduces the accountability of the law enforcement effort and delegates to the plaintiffs' attorney control over enforcement priorities.

As to large claim class actions, critics believe that the victims may not be fairly served. They contend that large claim cases raise concerns about the capacity of the class action format to provide individualized justice, the ability of class attorneys to effectively represent the various needs of class members, and the impact on future class members who do not, at the time of litigation, have a ripe claim (their injury is not yet apparent).

Critics argue that in these large claim cases, defendants have sought class action status as a way of limiting liability. In some cases, the parties propose a settlement before a complaint has ever been filed, suggesting the possibility of collusion between the attorneys for the two sides. Finally, defendants in mass tort class actions have an incentive to search

for and negotiate with the plaintiffs' attorney for the lowest settlement amount.

Critics of class actions propose that legislation and court rules be changed to give more power to the courts to examine class action applications. Courts should carefully review the applications and deny class status to small claims cases with little social value in the adjudicating the claims. Another alternative is to sharply reduce attorney fees, which would reduce the incentive for frivolous actions.

FURTHER READINGS

- Conte, Alba, and Herbert B. Newberg. 2002. *Newberg on Class Actions*. 4th ed. St. Paul, Minn.: Thomson/West.
- Coyle, Marcia. 2003. "Bill Targets Class Action Lawyer Fees: Sparked by Ire Over Tobacco Money." *The National Law Journal* 25 (May 19): 1.
- Feldman, Joel S., and Keith M. Fleischman. 2002. *Non-Federal Question Class Actions 2002: Prosecution & Defense Strategies*. New York: Practising Law Institute.
- Schwartz, Robert Alexander. 2003. "Can Arbitration Do More for Consumers? The TILA Class Action Reconsidered." *New York University Law Review* 78 (May): 809-44.

herbicide Agent Orange, a highly toxic defoliant that was used during the VIETNAM WAR and has been linked to cancer and birth defects in Vietnam era veterans and their families. In mid-1995, two major class action suits on behalf of millions of smokers were instituted against several tobacco companies. The plaintiffs hoped to prove that they had become addicted to nicotine and suffered illnesses as a result, and that the defendant tobacco companies concealed their knowledge of the addictive nature of nicotine and the harmful effects of smoking.

Some large companies, anticipating liability for potentially huge damages as a result of class action suits, file for BANKRUPTCY in order to protect their assets. The pharmaceutical company A. H. Robins, the manufacturer of the Dalkon Shield, filed for bankruptcy in 1985 when it was faced with the prospect of paying

millions of dollars as a result of class action suits filed against it. In 1995, Dow Corning Corporation, the subject of hundreds of claims resulting from allegedly defective silicone gel breast implants, filed for Chapter 11 bankruptcy protection. Other companies, fearing the financial consequences of possible class action suits arising from certain types of products, have ceased research and development in certain areas altogether. The Upjohn Company, for instance, ceased contraceptive research in 1986.

The Supreme Court addressed concerns about the use of Rule 23 in mass tort actions in *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 117 S.Ct. 2231, 138 L.Ed.2d 689 (1997). This case involved persons who had been exposed to asbestos and who either had diseases attributed to this exposure or who had the potential of developing these diseases. The federal courts

became worried that they would be inundated by thousands of individual cases. Therefore, in 1991 all asbestos cases that had been filed but not tried were consolidated and transferred to a single judge in Pennsylvania.

During settlement discussions the defendants refused to negotiate unless the final agreement bound victims who would file claims in the future. The plaintiffs eventually agreed and the parties came to a settlement. They then went into court and obtained a certification of class action. However, objections were raised by many class members and the Supreme Court was required to make a final determination.

The Supreme Court ruled the class action was improper. The Court was troubled by attorneys of current victims, who stood to receive payment from the defendants, binding future victims to a settlement that greatly restricted their ability to receive compensation. Rule 23 requires class representatives to protect the interests of all class members, yet it seemed unlikely that future victims were fully protected. Another concern was that the proposed class did not have sufficient unity so that the future claimants could “fairly be bound by class representatives’ decisions.” The current plaintiffs, who had asbestos injuries and wanted immediate compensation, had agreed to terms that future claimants might find unacceptable. These included the lack of inflation adjustment, the limitation on the number of payable claims each year, and the prohibitions against asking for damages based on emotional distress and loss of consortium.

The Court found that the proposed class was not “sufficiently cohesive.” Although all members of the class shared experience of asbestos exposure, this did not meet the predominance requirement under Rule 23 (b)(3). In fact, there were many individual issues and many categories of persons who were exposed and injured or exposed but not yet injured. The supposed class was too “sprawling” to meet the Rule 23 requirement.

In 2002, the Supreme Court reviewed the rights of persons who seek to intervene in a class action settlement for the purpose of objecting to the settlement. In *Devlin v. Scardelletti*, 536 U.S. 1, 122 S.Ct. 2005, 153 L.Ed.2d 27 (2002), the Court held that persons affected by a settlement may appeal even if they are not a class representative or a court-approved intervener. The decision is likely to increase such appeals.

FURTHER READINGS

- Hensler, Deborah, Nicholas M. Pace, Bonita Dombey-Moore, Beth Giddens, et al. 2000. *Class Action Dilemmas: Pursuing Public Goals for Private Gain*. Santa Monica, Calif.: Rand.
- Olson, Walter K. 2003. *The Rule of Lawyers: How the New Litigation Elite Threatens America's Rule of Law*. New York: St. Martin's Press.
- Viscusi, Kip W., ed. 2002. *Regulation Through Litigation*. Washington, D.C.: Brookings Institution.

CROSS-REFERENCES

Civil Procedure; Product Liability.

CLAUSE

A section, phrase, paragraph, or segment of a legal document, such as a contract, deed, will, or constitution, that relates to a particular point.

A document is usually broken into several numbered components so that specific sections can be easily located. The SUPREMACY CLAUSE, for example, is part of Article IV of the U.S. Constitution.

CLAUSE PARAMOUNT

In ADMIRALTY LAW, a statement required by federal law to be included in any bill of lading, which evinces a contract for the transportation of goods by sea from U.S. ports in foreign trade.

The statement provides that such bill is subject to the provisions of the Carriage of Goods by Sea Act (46 U.S.C.A. § 1300 et seq. [1936]), the federal legislation that governs the rights, obligations, and liabilities arising out of the relation of issuer to holder of the ocean bill of lading, in regard to the loss or damage of goods.

CROSS-REFERENCES

Shipping Law.

❖ CLAY, HENRY

Fiery southern lawmaker, Speaker of the House, and SECRETARY OF STATE Henry Clay played a pivotal role in preserving the Union during the early and middle years of the nineteenth century. Clay rose from modest origins to become a well-known politician. During his lifetime, the self-educated leader was known as the Great Compromiser and the Great Pacifier, epithets earned for his ability to find the necessary middle ground between the federal government and the states over issues such as SLAVERY, tariffs, and the admittance of new states to the Union. Argumentative, eloquent, and quick to propose

a duel if insulted, he helped forge the **MISSOURI COMPROMISE OF 1820** during a career that included five bids for the presidency. His contributions to federal policy ranged from trade and finance to foreign affairs in the administration of President **JOHN QUINCY ADAMS**.

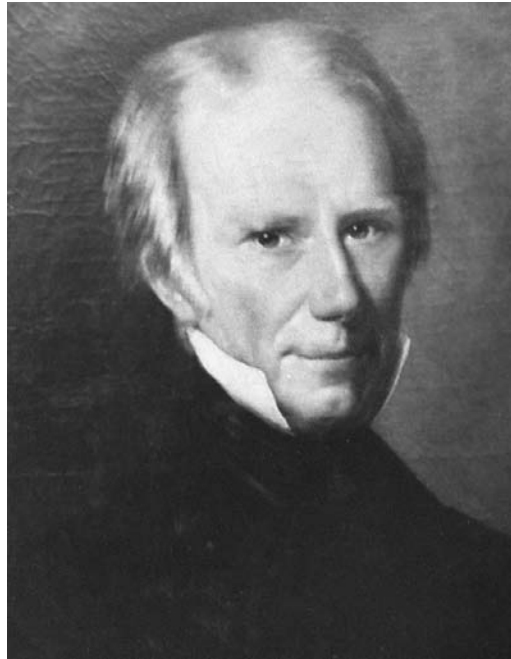
Born in Hanover County, Virginia, on April 12, 1777, Clay became a lawyer by the age of 20. He moved to Lexington, Kentucky, where he entered private practice while keeping an eye open for an entry to politics. Frontier life suited him. He especially liked gambling and drinking, pursuits that only exacerbated his hot temper. But he flourished as an attorney. His sharp oratory brought him prominence and while not yet thirty he represented former vice president **AARON BURR** in **GRAND JURY** proceedings involving Burr's real estate dealings.

In 1799, Clay married the socially prominent Lucretia Hart. Clay and his wife eventually had eleven children, and great tragedy. All six daughters and one son died at a young age.

Clay rose quickly through Kentucky politics. He used his opposition to the repressive **ALIEN AND SEDITION ACTS** of 1798 as a springboard into the state legislature in 1803, where he ultimately served seven terms. Immensely popular with his fellow lawmakers, Clay was their choice to fill an expired term in the U.S. Senate in 1806—despite his not having reached the constitutionally mandated minimum age of thirty. In 1810, he assumed a vacant seat in the Senate for a one-year period.

Two ironies emerged from Clay's early political career. Both would bear on his future course as a national leader. First, he opposed slavery and favored emancipation, an unusual and unpopular position in nineteenth-century southern politics. Clay saw slavery as evil. He was not, however, ultimately interested in African Americans sharing in U.S. society: he would later become an originator of the American Colonization Society, which sought to return former slaves to Africa, and at his death, his will would free the fifty slaves he had owned and provide for their transportation to Liberia. Second, Clay's sensitivity to insult and his hair-trigger temper landed him in personal crises that would continue throughout his career. He fought his first duel with a fellow Kentucky lawmaker in 1809, and by the time he became secretary of state, he would be **DUELING** with a U.S. senator.

Brief service in Washington, D.C., whetted Clay's appetite for a national political career.



Henry Clay.

LIBRARY OF CONGRESS

From 1811 to 1821, and 1823 to 1825, he was elected to the House of Representatives as a Democratic-Republican. He served as Speaker of the House for all but two of those years. Clay advocated a national economic policy that he called the American System, an ambitious attempt to link the East and West through transportation reforms, protectionism in the form of tariffs to boost U.S. industries, a plan for national defense, and a reorganization of the National Bank. Calling for war with Britain in 1812, he became nationally prominent as a leading member of the so-called War Hawks. In 1814, he acted as a representative to the Ghent Peace Commission, which ended the **WAR OF 1812**. Strong stands were his trademark: in 1819, opposing General Andrew Jackson's invasion of Florida, he resigned as Speaker of the House.

In 1820 Clay helped bring about the Missouri Compromise. This was a federal response to a bitter controversy over new slave states' joining the Union, which came to a head when the slave-owning Missouri Territory applied for admission in 1818. Northerners objected to the entry of more slave states. Southerners protested when the House considered a measure that would block further slavery in Missouri. Thomas Jefferson declared the Missouri issue—and in particular questions of constitutional authority—to be part of a Federalist conspiracy to destroy the Union. Clay drafted a compromise,

"I WOULD RATHER
BE RIGHT THAN
PRESIDENT."
—HENRY CLAY

persuading northern lawmakers to drop the slavery restriction, while southern lawmakers agreed to limit the geographic boundaries of slavery. In 1821 he secured a second compromise in the form of a resolution that prohibited Missouri from discriminating against citizens from other states. Clay won wide praise for his work, although the compromise would be undone in time by the Supreme Court and the question of slavery would be ultimately decided by the Civil War.

As a candidate of the **WHIG PARTY**, Clay made his first of five bids for the White House in 1824. He never succeeded, but the first failure bore fruit. In a runoff between Jackson and Adams that was decided in the House, Clay gave his support to Adams, who won. Clay's reward was the job of secretary of state, one he had long coveted.

For years, Democrats bitterly scorned the obvious deal, and the criticism wounded Clay. By 1826, he became the target of a particularly venomous attack by Senator John Randolph, an old opponent, who compared Clay to one of the scoundrels from Henry Fielding's novel *Tom Jones* in a series of blasts at Clay's competence and ethics as secretary. Clay promptly challenged Randolph to a little-celebrated pistol duel—a series of bad aims and misfires in which neither man could hit anything and the two ended up shaking hands.

In 1831 Clay was elected to the Senate. He represented Kentucky for an eleven-year stretch, to which he added another term from 1849 to 1852. Two of his achievements were significant. One was the Compromise Tariff of 1833, which eased the situation caused by South Carolina's nullification policy—a political doctrine under

which a state held that it could reject any federal law that it deemed unconstitutional. Upset over federal tariffs that it found discriminatory, South Carolina had refused to allow tariffs to be collected in its state and had threatened to secede from the Union. This refusal brought the first test of a state's decision to invoke nullification, and the reaction was swift: President Jackson, declaring that the state had no right to nullify a federal law, threatened to send troops. Clay's compromise called for a gradually declining tariff, which pleased South Carolina, averting further trouble. But, like the Missouri Compromise, it was a temporary balm to the aggravations between the North and the South.

Clay's greatest achievement occurred at the end of his long career. In 1850, as the question of slavery threatened to split the nation, he formulated a plan that fairly decided the admission of California and the New Mexico and Utah territories as free or slave states. Again, a compromise of his averted civil war.

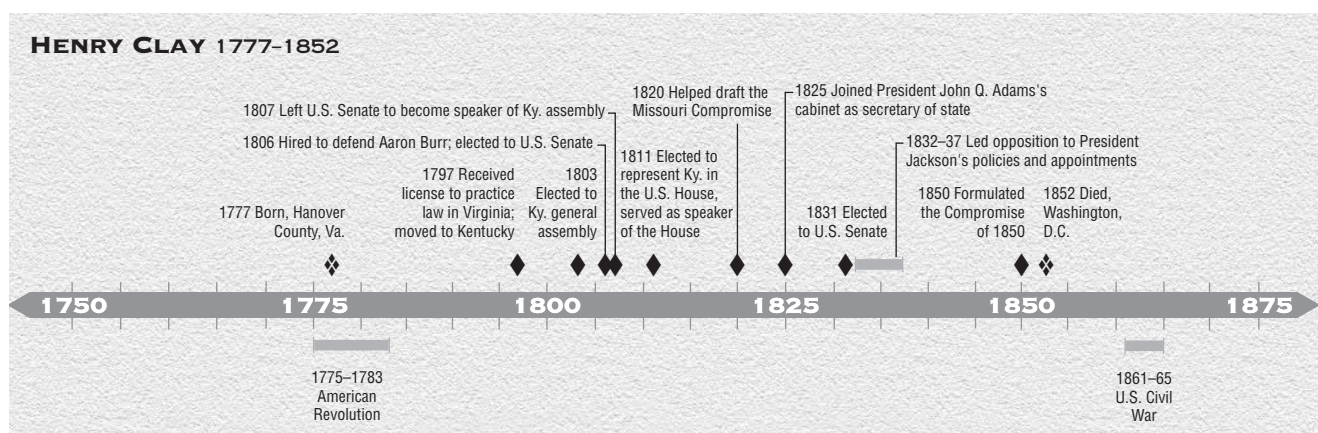
Clay died two years later, on June 29, 1852, in Washington, D.C. The war he had helped forestall came less than a decade after his death.

FURTHER READINGS

- Baxter, Maurice G. 2000. *Henry Clay the Lawyer*. Lexington: Univ. Press of Kentucky.
- Clement, Eaton. 1957. *Henry Clay and the Art of American Politics*. Boston: Little, Brown.
- Remini, Robert V. 1991. *Henry Clay: Statesman for the Union*. New York: Norton.

CLAYTON ACT

A federal law enacted in 1914 as an amendment to the SHERMAN ANTI-TRUST ACT (15 U.S.C.A. § 1 et seq. [1890]), prohibiting undue restriction of trade and commerce by designated methods.



The Clayton Act (15 U.S.C.A. § 12 et seq. [1914]) was originally enacted to exempt unions from the scope of ANTITRUST LAWS by refusing to treat human labor as a commodity or an article of commerce. Today, it is used primarily to prohibit the suppression of free competition by making illegal four business practices: price discrimination, which is the sale of the same product to comparably situated buyers at different prices; tying and exclusive dealing contracts, which are the sale of products on condition that the buyer stop dealing with the seller's competitors; corporate mergers, the acquisition of competing companies by one company; and interlocking directorates, the members of which are common members on the boards of directors of competing companies.

These practices are illegal when they might substantially lessen competition or tend to create a MONOPOLY in any line of commerce. By making the suppression of free competition unlawful the Clayton Act supplements the provisions of the Sherman Act, which outlaws monopolies.

❖ CLAYTON, HENRY DELAMAR

Henry DeLamar Clayton achieved prominence as a jurist and as the originator of the CLAYTON ANTITRUST ACT (15 U.S.C.A. § 12 et seq. [1914]).

Clayton was born February 10, 1857, in Barbour County, Alabama. He was a graduate of the University of Alabama, where he received a bachelor of arts degree in 1877 and a bachelor of laws degree in 1878.

After establishing a law firm in Clayton, Alabama, in 1878, Clayton relocated his practice

to Eufaula, Alabama, in 1880, and practiced there until 1914.

From 1890 to 1891, Clayton participated in the Alabama General Assembly. He performed the duties of U.S. district attorney for Alabama from 1893 to 1896 before entering the federal government system.

Clayton became a representative in the U.S. House of Representatives in 1897 and served until 1914. From 1911 to 1914 he was the presiding officer of the Judiciary Committee. During his last year in the House, Clayton drafted the Clayton Antitrust Act, which simplified and added provisions to the SHERMAN ANTI-TRUST ACT OF 1890 (15 U.S.C.A. § 1 et seq.), a law that was enacted to prevent the combination of businesses for the purpose of unreasonably restricting free competition.

In 1914 Clayton began the judicial phase of his career and presided as U.S. district judge in Alabama for the next fifteen years.

Clayton died December 21, 1929, in Montgomery, Alabama.

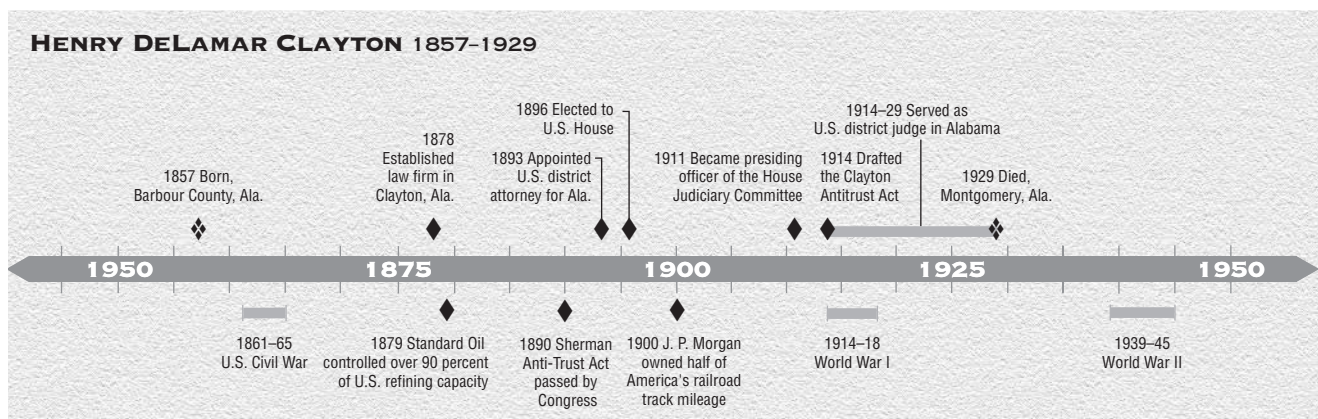
CROSS-REFERENCES

Clayton Act.

❖ CLAYTON, JOHN MIDDLETON

John Middleton Clayton achieved prominence as a U.S. senator and as a drafter of the Clayton-Bulwer Treaty.

Clayton was born July 24, 1796, in Dagsborough, Delaware. A graduate of Yale University in 1815, Clayton was admitted to the Delaware bar in 1819. He began his political career in 1824 as a member of the Delaware legislature, and, in 1826, he served as Delaware SECRETARY OF STATE for a two-year period.



John Middleton
Clayton.

LIBRARY OF CONGRESS



In 1829 Clayton entered the federal political system and represented Delaware in the U.S. Senate until 1836. During his tenure, he served on the Judiciary Committee and directed an inquiry concerning scandalous activities in the U.S. Post Office. Clayton was a member of the Senate twice more, from 1845 to 1849 and from 1853 to 1856.

Between his senatorial duties, Clayton acted as U.S. secretary of state during 1849 and 1850. He formulated the Clayton-Bulwer Treaty in 1850 with British emissary Sir Henry Bulwer, which settled a dispute concerning an isthmian canal in Central America by provid-

ing for neutrality by both countries in the use of the canal.

Clayton died November 9, 1856, in Dover, Delaware.

CLEAN STATE DOCTRINE

See SUCCESSION OF STATES.

CLEAR

Free from doubt, burden, or obstacle; without limitation; plain or unencumbered.

The term is used to mean unambiguous or definitive and has various applications. For example, a clear intent to make a gift means that there is no doubt that the donor had the intent to relinquish all dominion and control over the property.

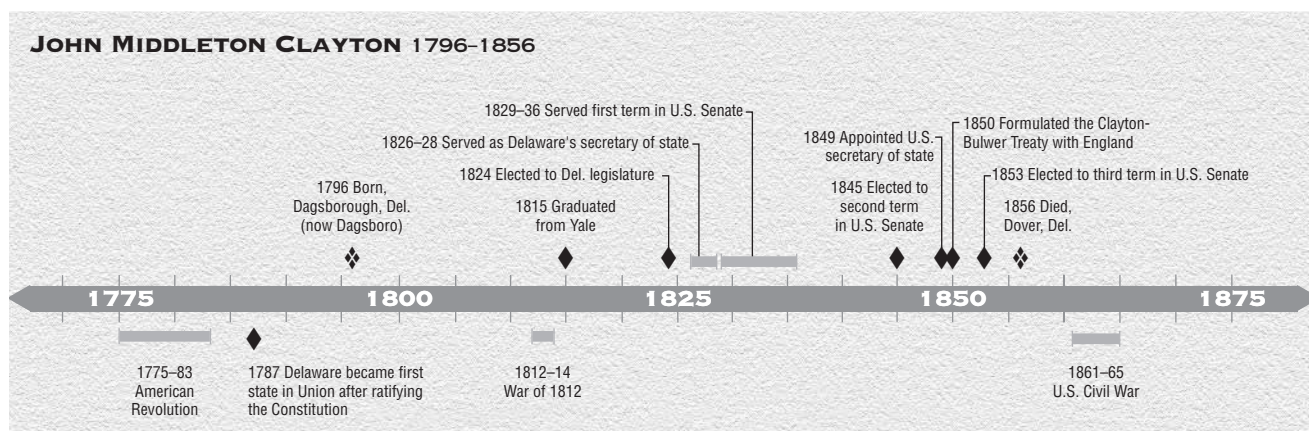
Clear and convincing proof is evidence that establishes a firm belief in a person's mind that a fact much more likely than not exists.

CLEAR AND CONVINCING PROOF

A standard applied by a jury or by a judge in a nonjury trial to measure the probability of the truthfulness of particular facts alleged during a civil lawsuit.

Clear and convincing proof means that the evidence presented by a party during the trial is more highly probable to be true than not and the jury or judge has a firm belief or conviction in it. A greater degree of believability must be met than the common standard of proof in civil actions, **PREPONDERANCE OF THE EVIDENCE**, which requires that the facts more likely than not prove the issue for which they are asserted.

The standard of clear and convincing proof—also known as “clear and convincing



evidence”; “clear, convincing, and satisfactory”; “clear, cognizant, and convincing”; and “clear, unequivocal, satisfactory, and convincing”—is applied only in particular cases, primarily those involving an equitable remedy, such as reformation of a deed or contract for mistake.

CLEAR AND PRESENT DANGER

An early standard by which the constitutionality of laws regulating subversive expression were evaluated in light of the First Amendment's guarantee of FREEDOM OF SPEECH.

Justice OLIVER WENDELL HOLMES JR., writing for the U.S. Supreme Court in *SCHENCK V. UNITED STATES*, 249 U.S. 47, 39 S. Ct. 247, 63 L. Ed. 470 (1919), stated: “The question in every case is whether the words used 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.”

The famous free speech standard proved easier to formulate than to apply, when less than a year after first articulating it in *Schenck*, Holmes dissented from a majority opinion that invoked the clear-and-present-danger test to justify upholding the convictions of five anti-war protestors who had distributed allegedly seditious pamphlets. *ABRAMS V. UNITED STATES*, 250 U.S. 616, 1180, 40 S. Ct. 17, 63 L. Ed 1173 (1919).

The clear-and-present-danger doctrine is a freedom of speech doctrine first announced by the U.S. Supreme Court in *Schenck v. United States*, 249 U.S. 47, 39 S. Ct. 247, 63 L. Ed. 470 (1919), during a controversial period in U.S. history when the FIRST AMENDMENT often clashed with the government's interest in maintaining order and morale during wartime. Various formulations of the doctrine have appeared in other significant Supreme Court decisions throughout the years.

In *Schenck*, the defendants had been convicted of violating the ESPIONAGE ACT OF 1917, 18 U.S.C.A. §§ 11, 791–794, 2388, 3241; 22 U.S.C.A. §§ 213 et seq.; 50 U.S.C.A. §§ 191 et seq., which prohibited the making of false statements with the intent to interfere with the operation of the armed forces or to cause insubordination, disloyalty, or mutiny in the armed forces. The act also made it a crime to obstruct military recruitment and enlistment. Charles T. Schenck, who was the general secre-

tary of the Socialist party, and the other defendants had printed and distributed 15,000 leaflets opposing the then recently enacted SELECTIVE SERVICE Act and mailed many to WORLD WAR I draftees (May 18, 1917, c. 15, 40 Stat. 76). At trial, Schenck had not denied that the leaflets were intended to obstruct recruitment and enlistment by attempting to persuade people to resist the draft, in violation of the Espionage Act. Instead, he had argued that the leaflets were protected by the First Amendment. The U.S. Supreme Court upheld the convictions.

Justice Oliver Wendell Holmes Jr., writing for a unanimous Court, stated that speech could be punished if “the words are used in such circumstances and 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.” According to Holmes, the leaflets in *Schenck* were printed during wartime with the intent to obstruct induction efforts, an intent that was prohibited by federal law, and thus constituted such a clear and present danger. “When a nation is at war,” he wrote, “. . . things that might be said in time of peace that are such a hindrance to its effort . . . will not be endured so long as men fight and . . . no Court could regard them as protected by any constitutional right.”

In later decisions, the Supreme Court revisited and, in some instances, reformulated the clear-and-present-danger standard as first enunciated by Holmes. In another World War I decision issued just eight months after *Schenck*, *Abrams v. United States*, 250 U.S. 616, 40 S. Ct. 17, 63 L. Ed. 1173 (1919), five Russian-born immigrants had been convicted of distributing allegedly seditious pamphlets that were critical of the U.S. government for sending troops into Russia. A seven-justice majority of the Court upheld the convictions. In his majority opinion, Justice JOHN H. CLARKE followed Holmes's reasoning in *Schenck*, noting that the pamphlets had been distributed “at the supreme crisis of the war” and that they were “an attempt to defeat the war plans of the Government.” Thus, Clarke concluded, the leaflets presented a clear and present danger. Holmes dissented from the majority decision and modified his earlier statement of the clear-and-present-danger test. Concerned about a rising tide of hysteria that could potentially impinge on free expression, Holmes argued for a broader interpretation of the clear-and-present-danger standard, writing that

speech could be punished only if it “produces or is intended to produce a clear and imminent danger that will bring about . . . certain substantive evils that the United States . . . may seek to prevent.” All opinions, he argued, must be protected “unless they imminently threaten immediate interference with the lawful and pressing purposes of the law.” Holmes believed that in *Abrams*, the “surreptitious publishing of a silly leaflet” did not create such a danger.

Six years after *Abrams*, the Court decided *GITLOW V. NEW YORK*, 268 U.S. 652, 45 S. Ct. 625, 69 L. Ed. 1138 (1925), in which Benjamin Gitlow, a member of the Socialist party, had been convicted of distributing leaflets advocating the overthrow of the government in violation of New York state CRIMINAL LAW. The Supreme Court upheld Gitlow’s conviction with Justice EDWARD T. SANFORD writing, “A state may punish utterances endangering the foundations of organized government and threatening its overthrow by violent means.” Sanford, while conceding that Gitlow’s pamphlet did not immediately incite criminal action, nevertheless maintained that it could constitute a “revolutionary spark” that could later result in a “sweeping and destructive conflagration.” Holmes strongly disagreed with the majority’s contention that words not associated with action could be punished. Joined by LOUIS D. BRANDEIS in dissent, Holmes once more argued for application of a standard requiring that danger be imminent before speech could be punished. According to Holmes, Gitlow’s pamphlets presented no such danger: “[E]loquence may set fire to reason. But whatever may be thought of the . . . discourse before us, it has no chance of starting a present conflagration.”

Holmes and Brandeis joined forces again two years later in *Whitney v. California*, 274 U.S. 357, 47 S. Ct. 641, 71 L. Ed. 1095 (1927), in which they once more argued that before speech could be prohibited, a clear and present danger must be imminent. Charlotte Whitney, a prominent member of the Socialist party, had participated in a convention establishing the California branch of the new Communist Labor party. Whitney argued for the adoption of a resolution dedicating the party to seek political change through ballot measures. Her efforts were defeated by a competing resolution arguing for revolution as a means to overthrow capitalism. Whitney remained a participant in the convention and attended one or two meetings of the

party. She was later convicted under a California law prohibiting participation in groups advocating criminal activity (Criminal Syndicalism Act of California, Statutes 1919, c. 188, p. 281). A unanimous Supreme Court sustained Whitney’s conviction, holding that by assembling with others to form a group that advocated the forceful overthrow of the government, she had acted in a manner that posed a danger to the “public peace,” in violation of the state law. Holmes and Brandeis, though concurring in the judgment, believed that the law had improperly infringed on Whitney’s free speech rights and maintained that speech could be restricted only if the assembly created an imminent danger. Brandeis wrote that “to support a finding of clear and present danger it must be shown either that immediate serious violence was to be expected or was advocated. . . . The fact that speech is likely to result in . . . violence or in destruction is not enough to justify its suppression.”

Subsequently, the Supreme Court applied the clear-and-present-danger test in a variety of other contexts. In *Thornhill v. Alabama*, 310 U.S. 88, 60 S. Ct. 736, 84 L. Ed. 1093 (1940), for example, the doctrine was used to protect LABOR UNION picketing, and in *Bridges v. California*, 314 U.S. 252, 62 S. Ct. 190, 86 L. Ed. 192 (1941), the Court relied on it to overturn the conviction of a union leader who had criticized a judge in a pending case.

Some 30 years after Holmes first enunciated the clear-and-present-danger test in *Schenck*, the Court returned to the doctrine in another case involving individuals advocating the overthrow of the government. In *Dennis v. United States*, 341 U.S. 494, 71 S. Ct. 857, 95 L. Ed. 1137 (1951), 11 Communist party leaders had been convicted of violating the SMITH ACT, 18 U.S.C.A. § 2385, which made it a crime to advocate the overthrow of the government by force and violence. In upholding the convictions, the Court applied the clear-and-present-danger standard. Chief Justice FRED M. VINSON, writing for the majority, stated that in considering whether speech could be prohibited, the Court must determine “whether the gravity of ‘evil,’ discounted by its improbability, justifies such invasion of free speech as is necessary to avoid the danger.” The Court’s approach was thus seen as a “balancing test” that weighed free speech against the government’s interest (e.g., in national security) offered to justify restraints on free speech. The Court’s new formulation of the clear-and-

present-danger test was widely criticized by civil libertarians for omitting the requirement of proving imminent danger, as originally envisioned by Holmes.

Eighteen years later, the Supreme Court appeared to return to Holmes's views in *Brandenburg v. Ohio*, 395 U.S. 444, 89 S. Ct. 1827, 23 L. Ed. 2d 430 (1969). In *Brandenburg*, the Court reversed the conviction of a KU KLUX KLAN leader under a state statute, Ohio Rev. Code Ann. § 2923.13, prohibiting advocacy of crime and violence as a necessary means to accomplish political reform. The Court held that a state could not "forbid or proscribe advocacy of the use of force . . . except where such advocacy is directed to producing imminent lawless action and is likely to incite or produce such action." Though the Court's opinion fails to mention specifically the phrase *clear and present danger*, many CONSTITUTIONAL LAW scholars have seen *Brandenburg* as a return to the Holmes-Brandeis immediacy test first set forth in *Abrams*. However, the Court has not specifically addressed the clear-and-present-danger doctrine since *Brandenburg*, and thus it is not clear whether the Court would embrace it anew or would fashion an entirely new standard for determining whether, in certain circumstances, free expression can be punished.

FURTHER READINGS

- Dow, David R., and R. Scott Shildes. 1998. "Rethinking the Clear and Present Danger Test." *Indiana Law Journal* 73 (fall): 1217-46.
- Elliott, Stephen P., ed. 1986. *A Reference Guide to the United States Supreme Court*. New York: Facts on File.
- Hopkins, W. Wat. 1995. "Reconsidering the 'Clear and Present Danger' Test: Whence the 'Marketplace of Ideas'?" *Free Speech Yearbook* 33.
- Levy, Leonard W. 1986. *Encyclopedia of the American Constitution*. New York: Macmillan.
- Schwartz, Bernard. 1994. "Holmes Versus Hand: Clear and Present Danger or Advocacy of Unlawful Action?" *Supreme Court Review*.
- Witt, Elder. 1990. *Guide to the U.S. Supreme Court*. 2d ed. Washington, D.C.: Congressional Quarterly.

CROSS-REFERENCES

Balancing.

CLEAR TITLE

Unencumbered or unrestricted legal ownership that is free from doubt as to its validity.

The phrase implies that ownership is not subject to claims by anyone but the person hold-

ing title. It is also called marketable title, or title that can be easily transferred or sold because of its lack of encumbrances.

❖ CLEAVER, LEROY ELDRIDGE

Eldridge Cleaver rose to prominence in the late 1960s as a leading African American intellectual and political revolutionary. As minister of information for the BLACK PANTHER PARTY during tumultuous years of social upheaval, Cleaver became a symbol of rebellion, freedom, and eloquence for those seeking political and social change. His 1968 best-selling book of essays *Soul on Ice* served as a kind of guidebook for radicals in the New Left, student, and CIVIL RIGHTS movements of the day. Cleaver was involved with the U.S. legal system as a convict, social critic, political activist, political candidate, fugitive, and business owner.

Leroy Eldridge Cleaver was born August 3, 1935, in Wabbaseka, Arkansas. When he was still young, the family moved to Phoenix, and then to the Watts section of Los Angeles. While in Los Angeles during his teenage years, Cleaver was arrested for bicycle theft and for selling marijuana, and was sent to two different reformatories. In 1954, he was again arrested for dealing marijuana and was sentenced to two-and-a-half years at the California State Prison at Soledad.

Unreformed by his first prison stay, Cleaver resumed dealing drugs and embarked on a series of rapes, directed first at black women, then at white women. He later came to see the recklessness and inhumanity of these crimes as both a product of his own misguided choices and a reaction to the racism of U.S. society. In *Soul on Ice*, he described the delight he felt at "defying and trampling upon the white man's law" through these actions. He also claimed that his motivation in the rapes was to get "revenge" for "the historical fact of how the white man has used the black woman."

In 1958, roughly a year after his release from the Soledad prison, Cleaver was arrested again, this time for armed assault when he attempted to rape a nurse in a parking lot. During his subsequent eight-year stay in the San Quentin and Folsom prisons, Cleaver read widely and became a member and minister of the NATION OF ISLAM, often called the Black Muslims. He also became an admirer of MALCOLM X, a Nation of Islam leader. When Malcolm X broke from the group in 1963, Cleaver followed his example.

"WHAT WE'RE SAYING TODAY IS THAT YOU'RE EITHER PART OF THE SOLUTION OR YOU'RE PART OF THE PROBLEM."
—LEROY CLEAVER

Eldridge Cleaver.
AP/WIDE WORLD
PHOTOS



Cleaver was released from prison for the second time in 1965—the same year that Malcolm X was assassinated, allegedly by Nation of Islam members—with the help of Beverly Axelrod, a white San Francisco lawyer. Correspondence and a brief love affair between Axelrod and Cleaver had led to Axelrod's help in getting several essays by Cleaver published in *Ramparts*, an influential left-wing magazine. These essays, in turn, had built support for Cleaver's cause among members of the U.S. intellectual community, including writer Norman Mailer. The support of such intellectuals helped persuade the PAROLE board to release Cleaver from prison.

After his parole Cleaver began writing for *Ramparts*. In 1967, while living in the San Francisco Bay area, Cleaver married Kathleen Neal, who had been an activist with the STUDENT NONVIOLENT COORDINATING COMMITTEE (SNCC). In that same year, he befriended HUEY P. NEWTON and BOBBY SEALE, cofounders of the Black Panthers, and he soon became that group's minister of information. The Black Panthers was an African American political organization that sought to defend the African American community from police intimidation and violence. As part of their SELF-DEFENSE actions, Black Panthers carried guns and law books, followed police cars, and observed police encounters with African Americans.

As a spokesperson for the Panthers, Cleaver explained the group's goals and ideas to the rest of the world. In media interviews, for example, he described how "Pig Power" or "the Gestapo power of the police" contributed to many of the problems in the African American community.

In February 1968, Cleaver published *Soul on Ice*, the book that made him a celebrity. It quickly became a best-seller and was named Book of the Year by the *New York Times*. The book begins with the observation that Cleaver's first year in prison, 1954, coincided with that of the landmark Supreme Court case *BROWN V. BOARD OF EDUCATION OF TOPEKA, KANSAS*, 347 U.S. 483, 74 S. Ct. 686, 98 L. Ed. 873, the first significant legal victory African Americans achieved in the CIVIL RIGHTS MOVEMENT. The book explores, among its many topics, Cleaver's relationship to Malcolm X, Cleaver's rejection of U.S. capitalism, the solidarity between African Americans and citizens of third-world countries, the relationship between sexuality and race in the United States, and Cleaver's admiration of the student movement of the 1960s. The book also deals with themes that came to dominate African American political activism of the time: racial pride, rejection of white standards of beauty, and acceptance of violence as a necessary part of political struggle.

In his essay "Domestic Law and International Order," Cleaver reflected on the situation of African Americans in light of the VIETNAM WAR and of the suppression of the Watts riots of 1965 by the NATIONAL GUARD. For Cleaver, both these events were examples of U.S. imperialism, with the U.S. army in Vietnam and the police in Watts acting as essentially identical agents of state coercion over colonized peoples:

The police do on the domestic level what the armed forces do on the international level: protect the way of life of those in power. The police patrol the city, cordon off communities, blockade neighborhoods, invade homes, search for that which is hidden. The armed forces patrol the world, invade countries and continents, cordon off nations, blockade islands and whole peoples. ... The policeman and the soldier will have the last word.

Accordingly, Cleaver called for African Americans, "who in this land of private property have all private and no property," to oppose this system and fight for power and property.

The success of *Soul on Ice*, combined with a vacuum in African American leadership caused by the assassinations of MARTIN LUTHER KING

JR. and Malcolm X, and the imprisonment of other leaders such as Newton, made Cleaver seem for a brief time to be an important African American leader. In the spring of 1968, he was nominated for the presidency of the United States by the white radical Peace and Freedom party. During his candidacy he spoke out for a revolutionary movement that involved both blacks and whites. He received 30,000 votes nationally.

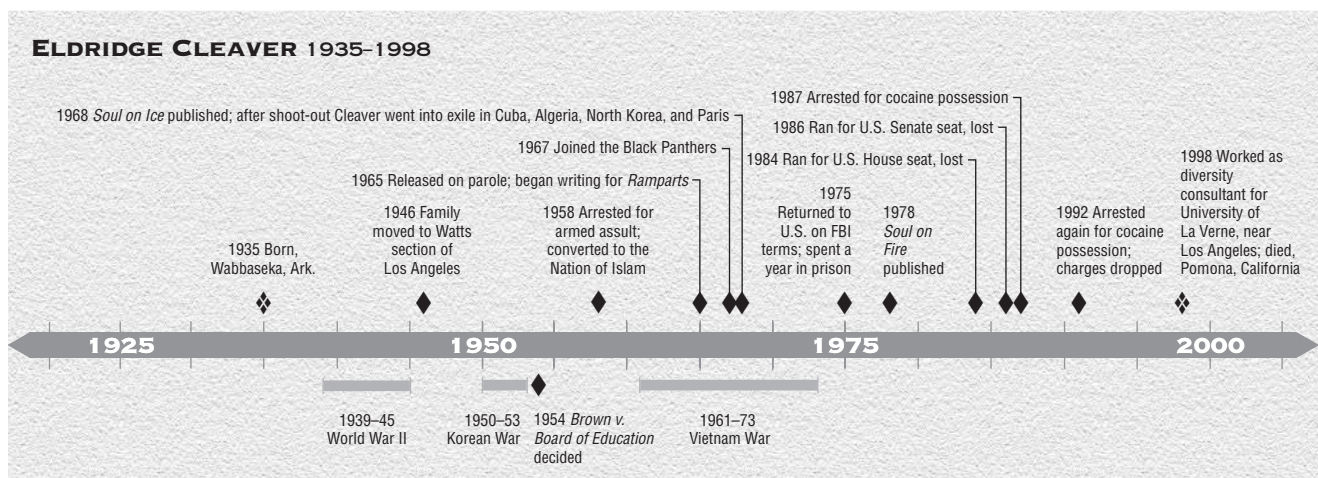
Cleaver's time in the spotlight was cut short as a result of violence that erupted between the police and the Panthers. On April 6, 1968,—two days after the assassination of King—Cleaver was involved in a shoot-out with the police in which one Black Panther was killed. Cleaver was arrested, but two months later was released on a writ of *HABEAS CORPUS* (release from unlawful imprisonment). A higher court later reversed his release and scheduled him for reincarceration in November 1968. Cleaver chose to become a fugitive from the law and fled to Cuba.

Cleaver's exile overseas was accompanied by a rapid decline in his influence as both a political and intellectual leader. His short stay in Cuba was followed by stints in Algeria, North Korea, and Paris. He continued to speak out as a revolutionary during his time overseas. Sometimes his revolutionary efforts were in the sartorial rather than political sphere, as in 1975 when he attempted to publicize his design for Cleavers, a new type of pants that featured a codpiece intended to display the male sexual organ. The new pants would, he theorized, revolutionize sexual attitudes in a way that would ultimately eliminate such crimes as rape. They would also, Cleaver said, "abolish . . . the crime of indecent exposure" and replace it with "decent exposure."

After he had lived for several years in communist countries, Cleaver's political radicalism began to wane and he became more conservative in his beliefs. Eventually, he could no longer abide life away from the United States, and by the mid-1970s Cleaver began to voice a different view of his native country. In 1975 he returned to the States where he was immediately put in prison. "I'd rather be in jail in America than free anywhere else," Cleaver commented after his return.

Cleaver's subsequent career in the United States was marked by a series of unsuccessful ventures as he has tried to regain the spotlight. While in jail in 1976 he announced that he was a born-again Christian and renounced the Marxism-Leninism and atheism of his Black Panther days. After his release on bail he began a short career as leader of a religious revivalist movement, the Eldridge Cleaver Crusades. In 1980, he attempted to create a new church called "Christ-lam," a synthesis of Christianity and Islam. He also dabbled with Reverend Sun Myung Moon's Unification Church and the MORMON CHURCH becoming, for a short period, a Black Mormon. Cleaver was a perennially unsuccessful candidate for political office, running for a seat in the U.S. House of Representatives in 1984 and for the U.S. Senate in 1986. In the second race he campaigned as a conservative Republican, the ultimate rebuke to his earlier radicalism.

Cleaver continued to have run-ins with the law. In 1987, he was arrested for cocaine possession and the following year he was arrested for theft from a residence. He was ordered to make restitution and was placed on parole for three years. Also in 1987, the Cleavers divorced.



Cleaver was again arrested for cocaine possession in 1992, but the charges were dropped, and in 1994 he was seriously injured by a blow to the head from a fellow drug addict. In the mid-1990s, Cleaver was owner of a recycling company in Oakland and a lecturer.

Cleaver started work in February 1998 as a consultant to the Coalition for Diversity at the University of LaVerne located in southern California. A few months later, however, on May 1, 1998, he died in Pomona, California.

Although his public career was a mixed success, Cleaver's writings and activities have affected U.S. politics and culture. Besides *Soul on Ice*, his books include *Eldridge Cleaver: Post-Prison Writings and Speeches* (1969) and *Soul on Fire* (1978). And despite his later rejection of many of the Black Panther beliefs, Cleaver viewed that group's legacy as beneficial. "The Black Panther Party," he said, "played a very positive role at a decisive moment toward the liberation of Black people in America."

FURTHER READINGS

Cleaver, Eldridge. 1968. *Soul on Ice*. New York: McGraw-Hill.

Rout, Kathleen. 1991. *Eldridge Cleaver*. Boston: Twayne.

"The Two Nations of Black America." 1998. Interview with Eldridge Cleaver. PBS Frontline. Available online at <www.pbs.org/wgbh/pages/frontline/shows/race/interviews/ecleaver.html> (accessed June 13, 2003).

CLEMENCY

Leniency or mercy. A power given to a public official, such as a governor or the president, to in some way lower or moderate the harshness of punishment imposed upon a prisoner.

Clemency is considered to be an act of grace. It is based on the policy of fairness, justice, and forgiveness. It is not a right but rather a privilege, and one who is granted clemency does not have the crime forgotten, as in AMNESTY, but is forgiven and treated more leniently for the criminal acts. Clemency is similar to pardon inasmuch as it is an act of grace exempting someone from punishment. Commutation of an offender's sentence, however, is the lessening of the punishment based on the offender's own good conduct subsequent to his conviction.

Although clemency is a privilege and not a right, questions have arisen as to whether a prisoner sentenced to death is entitled to certain constitutional rights during a clemency proceeding. States that impose the death penalty require a clemency review before a prisoner is

executed. For example, Ohio requires the state PAROLE authority to conduct a clemency review 45 days before the date of execution and file its report with the governor. As part of the review the prisoner may request an interview with a parole board member but the prisoner does not have the right to have an attorney present.

An Ohio death row inmate objected to the interview on two grounds, contending it violated his FIFTH AMENDMENT right against SELF-INCRIMINATION and his FOURTEENTH AMENDMENT right to DUE PROCESS. He insisted that he should not have to make a choice between seeking clemency and remaining silent about the crime he had been convicted of, and of other crimes he may have committed. A federal appeals court agreed with the inmate that the process violated his Fifth Amendment right, but the Supreme Court reversed the decision in *Ohio Adult Parole Authority v. Woodard*, 523 U.S. 272, 118 S.Ct. 1244, 140 L.Ed.2d 387 (1998).

The Supreme Court found that the inmate did not have any due process rights because clemency could only be given at the discretion of the governor. Moreover, the EXECUTIVE BRANCH, not the judicial branch, conducted the process. In addition, the Court cited prior rulings where it had stated that pardon and commutation proceedings have not traditionally been the business of courts and are rarely, if ever, appropriate subjects for JUDICIAL REVIEW. As to the Fifth Amendment argument, the Court ruled that the inmate had to exercise the same choice he had made at trial: to testify or to remain silent. In the Ohio clemency process, the inmate has a choice of providing information—at the risk of damaging his case for clemency or for post-conviction relief—or of remaining silent.

Acts of clemency are usually issued in isolated cases. In 2002, however, outgoing governor George Ryan announced that he had concerns about the fairness of Illinois judicial proceedings against 160 death row inmates, which compelled him to begin clemency review proceedings into their crimes. During the fall of 2002 a special review board conducted public hearings and private reviews concerning each inmate's case. Relatives of victims gave emotional testimony, while attorneys for the inmates pointed out troublesome charges, including the use of torture on suspects to make them confess. In January 2003, Governor Ryan took the unprecedented step of granting clemency to all the death row inmates.

He pardoned four inmates who he believed were not guilty; the remainder of the inmates were given life sentences. Ryan concluded that the legal process surrounding CAPITAL PUNISHMENT had become so corrupted that he had no choice but to grant clemency.

FURTHER READINGS

- Burnett, Cathleen. 2002. *Justice Denied: Clemency Appeals in Death Penalty Cases*. Boston: Northeastern Univ. Press.
- Davey, Monica, and Steve Mills. 2003. "Ryan Issues Blanket Clemency." *Chicago Tribune* (January 11).
- Gagne, Patricia. 1998. *Battered Women's Justice: The Movement for Clemency and the Politics of Self-Defense*. New York: Twayne.

CROSS-REFERENCES

Due Process of Law; Prisoners' Rights.

CLERGY MALPRACTICE

A breach of the duty owed by a member of the clergy (e.g., trust, loyalty, confidentiality, guidance) that results in harm or loss to his or her parishioner. A claim for clergy malpractice asserts that a member of the clergy should be held liable for professional misconduct or an unreasonable lack of competence in his or her capacity as a religious leader and counselor.

Generally speaking, most clergy malpractice cases are couched in terms of TORT LAW as matters of alleged NEGLIGENCE, abuse of authority or power, inappropriate conduct, breach of confidentiality and trust, or incompetence. The claims assert that members of the clergy owe the same kind of duty to persons they serve as doctors owe to patients or lawyers owe to clients. Most licensed professionals in the secular world, including physicians, lawyers, and psychologists, may be held liable for negligence. Clergy members, however, are not licensed as professional counselors, making them accountable only to religious standards in many jurisdictions. Moreover, because the practice (or "free exercise") of religion is protected by the Constitution, which, under the FIRST AMENDMENT, requires separation of church and state, courts remain reluctant to apply secular laws to what they perceive as religious matters. For these and other social reasons, claims of clergy malpractice historically were relatively fruitless, with courts consistently ruling in favor of defendants. In the late 1990s, however, a rising number of sexual misconduct allegations surfaced in the Roman Catholic Church, which resulted in courts taking a closer look at the viability of such a legal premise.

One of the earlier claims for clergy malpractice was brought in *Nally v. Grace Community Church of the Valley*, 47 Cal. 3d 278, 763 P.2d 948, 253 Cal. Rptr. 97 (1988). In *Nally*, the parents of 24-year-old Kenneth Nally argued that pastors at Grace Community Church, in Sun Valley, California, were liable for his suicide in 1979. Nally's parents maintained that church pastors should have directed him to seek psychiatric care. Instead, they claimed, the pastors may have actually encouraged Nally's suicide by teaching him that taking his own life would not prevent his entrance into heaven.

The ensuing litigation extended over eight years. The final appeal to the California Supreme Court attracted about 1,500 churches and religious organizations that spoke out in support of Grace Community Church in seeking protection against TORT claims under the Free Exercise Clause of the First Amendment. But when the California Supreme Court finally dismissed the lawsuit on November 24, 1988, it did not directly address the First Amendment issue. In a 5–2 opinion the majority held that the clergy in this case were not licensed counselors and could not, therefore, be held legally liable for failing to provide proper care for the people they had advised. The case established the principle that religious counseling need not abide by the same legal standards that apply in other professional areas.

Another case in the 1980s elaborated on constitutional issues more explicitly than did *Nally*. In 1986, in *Baumgartner v. First Church of Christ, Scientist*, 141 Ill. App. 3d 898, 96 Ill. Dec. 114, 490 N.E.2d 1319 (1986), Mary Baumgartner brought suit against the church for the WRONGFUL DEATH of her husband, John Baumgartner, a Christian Scientist. The plaintiff Baumgartner, the executor of the decedent's estate, claimed that the First Church of Christ Scientist had prevented her husband from finding treatment for his acute prostatitis condition. The church allegedly informed him that he would die if he sought medical care and that he should instead practice the steps of Christian Science to cure his illness. Church representatives also convinced him to alter his will, leaving half of his multimillion-dollar estate to the Christian Science church.

In addition to claims for wrongful death and MEDICAL MALPRACTICE, Baumgartner brought a claim for Christian Science malpractice. The substance of this complaint was that a member

of the church and a church nurse had deviated from the standard of care of an ordinary Christian Science practitioner and nurse when they treated the decedent. The Illinois Court of Appeals refused to rule on this claim, holding that the First Amendment to the Constitution allows only the church itself to determine whether there has been a deviation from the church's religious standards. The question of whether a practitioner of Christian Science deviated from the church's standard of care was not, held the court, a JUSTICIABLE controversy.

A 1991 Ohio case took a slightly different look at clergy malpractice claims. In *Byrd v. Faber*, 57 Ohio St. 3d 56, 565 N.E.2d 584 (1991), Leroy Byrd and his wife, Garnet Byrd, brought suit against the church and its reverend for non-consensual sex between the reverend and Garnet arising during marital counseling. The Byrds claimed clergy malpractice in addition to FRAUD, intentional infliction of emotional distress, and nonconsensual sexual conduct. The Ohio Supreme Court denied the clergy malpractice action, calling it a redundant claim. The court held that since the Byrds had not addressed any aspect of the clergy-communicant relationship that could not be redressed through general tort law, allowing them to recover under clergy malpractice would give them two recoveries for the same injury.

Likewise, in the 1994 case of *Hertel v. Sullivan*, 261 Ill. App.3d 156, an Illinois appellate court refused to hold a priest liable for professional negligence based on an alleged violation of the standards of care applicable to a psychologist. In 2000, a New York appellate court upheld a lower court's dismissal of a woman's claim that her priest breached his fiduciary duty by allowing counseling sessions to develop into a sexual relationship. The court ruled that any attempt to define the duty owed by a member of the clergy would foster excessive entanglement with religion. For similar reasons, the Utah Supreme Court unanimously upheld the dismissal of a rape case in which a woman accused the MORMON CHURCH of negligence for advising her to "forgive and forget" the childhood incident (*Franco v. The Church of Jesus Christ of Latter Day Saints*, 2001 UT 25 '2001').

Allegations of sexual misconduct appear among various faiths, but the Roman Catholic Church was rocked by scandal involving CHILD MOLESTATION and the supposed cover-up of such acts at the diocesan level. When the news

broke in Boston in early 2002, the Massachusetts attorney general began investigating for evidence of a criminal cover-up by the church, and nine priests were criminally charged with rape or molestation. Under mounting pressure, Boston's cardinal Bernard Law resigned. In the ensuing months, more than five hundred alleged victims brought civil lawsuits against the Archdiocese of Boston, coincident with a rash of similar civil suits across the country. In June 2002, the United States Conference of Catholic Bishops, pressed by its constituency, came forward with a formal policy statement, the *Charter for the Protection of Children and Young People*, declaring that abusive priests would be removed from direct contact with parishioners. In February 2003, Massachusetts Superior Court judge Constance M. Sweeney denied the church's request for dismissal of the hundreds of pending civil suits. She ruled that the cases dealt with the handling of sexually abusive priests by their superiors, and not more prohibitive issues that would require delving into religious principles.

FURTHER READINGS

- Burge, Kathleen. 2003. "Judge Rules Church Suits Can Proceed." *Boston Globe* (February 20).
- "'Clergy Malpractice' Cases." October 3, 2002. ABCnews.com. Available online at <more.abcnews.go.com/sections/primetime/dailynews/clergy_malpractice_sidebar_021003.html> (accessed June 17, 2003).
- Fain, Constance F. 1991. "Clergy Malpractice: Liability for Negligent Counseling and Sexual Misconduct." *Mississippi College Law Review* (fall).
- Graziano, Sue G. 1991. "Clergy Malpractice." *Whittier Law Review*.
- Malony, H. Newton. 1986. *Clergy Malpractice*. Philadelphia: Westminster Press.
- McMenamin, Robert W. 1986. *Clergy Malpractice*. Buffalo: Hein.
- United States Conference of Catholic Bishops. 2002. "Charter for the Protection of Children and Young People." Available online at <www.usccb.org/bishops/charter.htm> (accessed June 17, 2003).

CROSS-REFERENCES

Religion.

CLERICAL ERROR

A mistake made in a letter, paper, or document that changes its meaning, such as a typographical error or the unintentional addition or omission of a word, phrase, or figure.

A mistake of this kind is a result of an oversight. Such an error was mistakenly, not purposely, written and should be readily remedied

without objection. If the amount of money owed a plaintiff by the defendant is mistakenly recorded by a court reporter as being \$50 rather than \$500, then the plaintiff is not bound by this since it is only a clerical error. An error of this nature can be rectified by the court acting *sua sponte*, on its own, or on the motion of either party once the court learns of the error.

A *clerical misprision* is FRAUD that is perpetrated by the clerk of the court and may be readily discerned by examining the record. Such an error can only be corrected from information that appears elsewhere in the record and not from memory by the judge or clerk or by outside testimony.

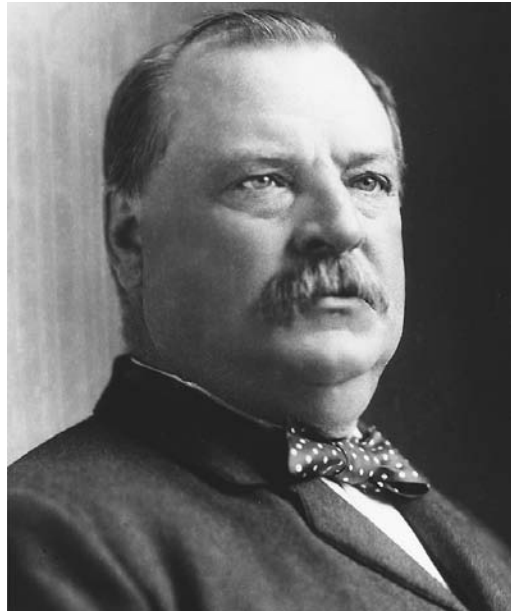
CLERK

A person employed in an office or government agency who performs various tasks such as keeping records or accounts, filing, letter writing, or transcribing. One who works in a store and whose job might include working as a cashier, selling merchandise, or waiting on customers.

A law clerk is either a law student employed by a licensed attorney to do mundane legal tasks and learn the law in the process, or a licensed lawyer working for a judge to aid in the writing and research of the cases before the judge.

❖ CLEVELAND, STEPHEN GROVER

Grover Cleveland was born STEPHEN GROVER CLEVELAND on March 18, 1837, in Caldwell, New Jersey. He pursued legal studies in Buffalo, was admitted to the bar in 1859, and established his law practice in Buffalo. He was subsequently granted a doctor of laws degree from Princeton University in 1897.



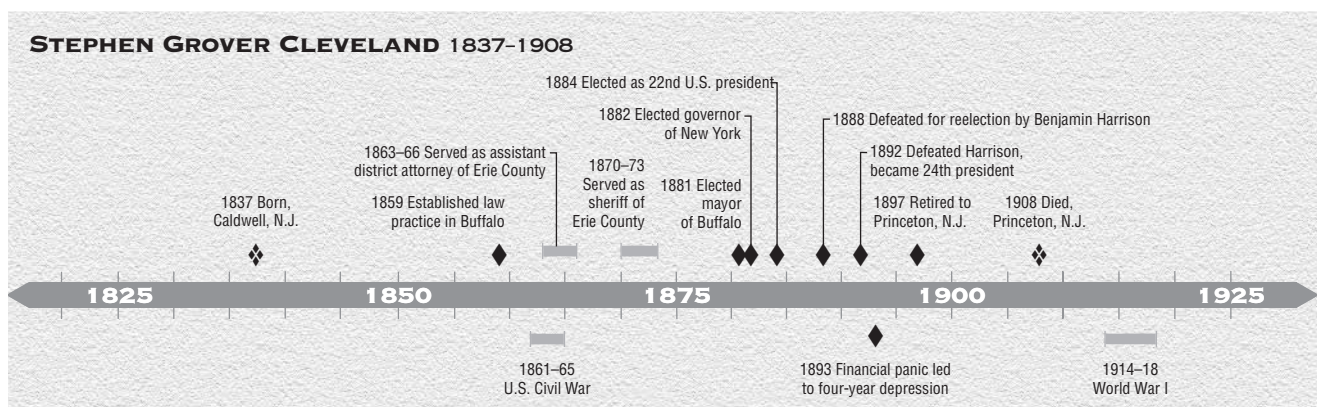
Grover Cleveland.

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From 1863 to 1866 Cleveland performed the duties of assistant district attorney of Erie County, New York, and, four years later, served as sheriff for three years. He entered politics in 1881 with his election as mayor of Buffalo and gained public attention with his forceful policy against corruption in the Buffalo government. In 1882 he became governor of New York and, for the next two years, achieved prominence for his reform policies.

Cleveland was elected to the presidency of the United States in 1884. He advocated civil service reforms and less stringent tariffs on foreign commerce and opposed excessive pensions awarded to Civil War veterans. He ran for reelection in 1888 against BENJAMIN HARRISON but lost. Four years later he successfully waged

"THOUGH THE
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—GROVER
CLEVELAND



another campaign for the presidency, defeating the incumbent President Harrison.

The second presidential administration of Cleveland was fraught with difficulties. The financial panic of 1893 caused a controversy between factions favoring the free coinage of silver and those advocating the gold standard; Cleveland belonged to the latter group and pushed to repeal the Sherman Silver Purchase Act of 1890, which had provided for an increase in the purchase of silver. The following year workers of the Pullman Parlor Car Company staged a strike, causing a stoppage of the delivery of the U.S. mail. Cleveland viewed this as sufficient reason to dispatch federal troops to intercede.

Cleveland's decisions in the silver crisis and the PULLMAN STRIKE earned him great disfavor. He was strong in foreign policy, however, and staunchly opposed force by Britain in that country's boundary dispute with Venezuela.

At the end of his second term in 1896 Cleveland settled in Princeton, New Jersey, where he spent the remainder of his years in retirement. In 1904 he wrote *Presidential Problems*, which attempted to explain his views on many of the controversial issues of his administration.

Cleveland died June 24, 1908, in Princeton.

FURTHER READINGS

- Bordsky, Alyn. 2000. *Grover Cleveland: A Study in Character*. New York: St. Martin's Press.
- Graff, Henry F. 2002. *Grover Cleveland*. New York: Times Books.
- Jeffers, Paul S. 2000. *An Honest President: the Life and Presidencies of Grover Cleveland*. New York: W. Morrow.

CLIENT

A person who employs or retains an attorney to represent him or her in any legal business; to assist, to counsel, and to defend the individual in legal proceedings; and to appear on his or her behalf in court.

This term includes a person who divulges confidential matters to an attorney while pursuing professional assistance, regardless of subsequent employment of the attorney. This attorney-client relationship is quite complex and extensive in its scope. One of the key aspects of this relationship is confidentiality of communications. A client has the right to require that his or her attorney keep secret any discussion between them during the course of their relationship that pertains to the matters for which the attorney is hired. This protection extends to

a person who might have disclosed any confidential matters while seeking aid from an attorney, whether the attorney was employed or not. If, for example, someone is "shopping" for an attorney to handle a DIVORCE, the person might reveal certain private information to several attorneys, all of whom are expected to keep such communications confidential.

CROSS-REFERENCES

Attorney-Client Privilege.

CLIENT SECURITY FUNDS

State funds that compensate clients of attorneys who have stolen their money. Monies for these funds come from attorney registration and bar association fees.

The PRACTICE OF LAW requires lawyers to hold money in trust that is legally owned by their clients. Lawyers often receive checks on behalf of their clients, whether as part of a jury award, an insurance settlement, a WORKERS' COMPENSATION award, or any number of legal and financial transactions. For attorneys who are in financial difficulties there is a temptation to dip into client funds. Such behavior is both unlawful and a violation of the canons of professional conduct. Victims of such FRAUD usually cannot recover their money from the attorney, as the attorney is typically bankrupt. In response, states have established client security funds to pay claims based on the misappropriation of client funds.

In 1959, the AMERICAN BAR ASSOCIATION (ABA) called on state bar associations to establish client security funds. During the 1960s many states established such funds and, by 2000, 49 states and the District of Columbia had established client security funds. In 1981, the ABA developed model rules for such funds. These rules were amended in 1989 as the Model Rules for Lawyers' Funds for Client Protection. States generally follow the model rules but are free to make their own modifications. The use of trust account overdraft notification, record keeping, and random audit rules have helped discourage attorneys from believing that they can use client funds, even temporarily, for their own purposes.

A key feature of client security funds is the funding mechanism: a portion of an attorney's annual registration or bar association fee is allocated to the fund. A victim of misappropriation files a claim with a client security board, which

is made up of lawyers and nonlawyers. The board reviews each claim and determines under its rules how much of the claim it can pay. Client security fund rules specify a maximum amount a victim may be compensated, which, in serious cases, means that victims will not be fully compensated. Client security boards have discovered that lawyers who steal money often steal it from a number of clients, leading to multiple claims.

Client security funds cannot be used to pay clients who have alleged lawyer MALPRACTICE. In those situations a client must file a civil lawsuit to seek compensation. Likewise, client security boards do not consider fee disputes.

CROSS-REFERENCES

Legal Malpractice.

❖ CLIFFORD, CLARK MCADAMS

Clark McAdams Clifford was a prominent Washington, D.C., attorney who served as an adviser to every Democratic president from HARRY S. TRUMAN to JIMMY CARTER. He was White House counsel to President Truman, personal lawyer to JOHN F. KENNEDY, and secretary of defense under LYNDON B. JOHNSON. Later his reputation suffered seriously with his involvement in a scandal over the Bank of Credit and Commerce International (BCCI).

Clifford was born on December 25, 1906, in Fort Scott, Kansas, and spent his childhood in St. Louis. He entered Washington University, in St. Louis, in September 1923. In the fall of 1925, after two years as an undergraduate, he entered the university's law school. He received his law degree in 1928 and practiced law in St. Louis until entering the navy in 1944.

Lieutenant Clifford began his career of public service in 1945 as a naval aide to President Truman. In 1946, he became special counsel to the president. Clifford played an important role in the birth of the national security system. He helped draft legislation creating the DEFENSE DEPARTMENT and worked with others in the Truman administration to establish the CENTRAL INTELLIGENCE AGENCY (CIA), the U.S. Air Force, and the NATIONAL SECURITY COUNCIL.

Clifford had been associated with Kennedy since Kennedy's days as a congressman and senator. After Kennedy's election to the presidency in 1960, Clifford assisted in the transition, helping pick members of the cabinet and other important high government officials. He also



Clark McAdams Clifford.

AP/WIDE WORLD
PHOTOS

served as a personal legal adviser to President Kennedy and his family.

During the Johnson administration Clifford advised the president on matters of foreign policy. Clifford served as secretary of defense from March 1968 to January 1969. During his short tenure at the Pentagon he was the leader of an influential group of officials who persuaded Johnson to de-escalate the VIETNAM WAR. He argued that the burden of fighting should be transferred from the U.S. troops to South Vietnamese forces as quickly as possible.

As the years went by Clifford rose in status as an influential elder statesman. Several years after most would have begun enjoying their retirement, the 70-year-old Clifford was advising President Carter on foreign policy issues, as he continued his work with the DEMOCRATIC PARTY and high government officials.

Despite his long-standing prominence at the top levels of government, Clifford's later years were consumed with a scandal surrounding BCCI. BCCI was founded in 1972 by Aga Hassan Abedi, a Pakistani financier who retired in 1990 owing to health problems. From the start, BCCI officials had grandiose dreams of the organization becoming a worldwide financial power, the equal of large Western banks but with special ties to developing countries. Unfortunately, the bank never had a great deal of capital and was

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always desperate for deposits. One of BCCI's largest customers was the Gulf Group, a consortium of shipping companies. The Gulf Group made substantial deposits to BCCI in 1972, but began borrowing from BCCI heavily after that. By 1977, BCCI's loans to the consortium had become so large that Gulf Group accounts were transferred from BCCI's London office to its Cayman Islands subsidiary to avoid British limits on the amount the bank could lend to individual customers. This deception eventually grew to involve approximately 750 accounts and a special department within the bank dedicated to carrying out the subterfuge. To cover its losses, the bank apparently resorted to a variety of schemes such as using deposits from other customers to make interest payments on delinquent loans. To add needed capital, BCCI lent money to its existing shareholders to buy more stock. The purchases artificially inflated the stock price, thereby giving the appearance of increased capitalization, but BCCI was only investing its depositors' money in the bank.

On July 5, 1991, banking regulators in seven countries—the Cayman Islands, France, Great Britain, Luxembourg, Spain, Switzerland, and the United States—seized the assets of BCCI, charging that the bank had engaged in widespread FRAUD over a number of years. The seizure set off a worldwide investigation that touched several U.S. government agencies, some leading figures in Washington, D.C.—most notably, Clifford—and individuals in several other agencies. The collapse of BCCI had tremendous repercussions throughout the world.

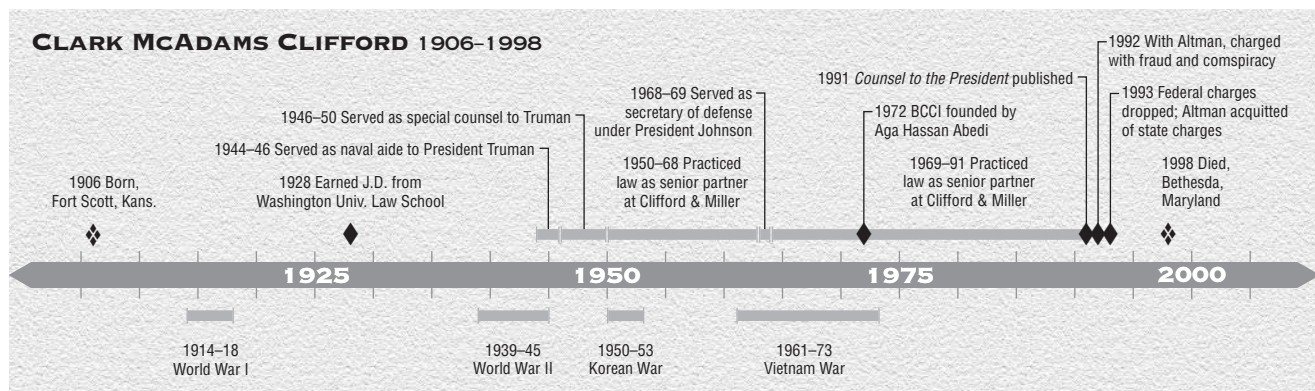
In the United States, the main issue was whether the federal government had made sufficient efforts to investigate BCCI prior to its

seizure in 1991. Various federal agencies had been interested in BCCI since the late 1980s. The CIA had prepared a report in 1986 alleging that BCCI was the owner of First American Bankshares, a major Washington bank. In 1989, the CIA prepared a report that alleged possible criminal activities conducted by BCCI, including MONEY LAUNDERING. Questions remained about what the federal government knew of BCCI's illegal activities and when it became aware of them.

Clifford was chairman of First American and his law partner Robert Altman was president. First American was allegedly acquired in 1982 by a group of Middle Eastern investors who were using BCCI money, but Clifford and Altman said they believed that the investors were acting on their own. From 1982 to 1991, Clifford had assured federal regulators on several occasions that BCCI had no connection with First American.

On August 13, 1991, both men resigned their posts at First American. In September, Clifford testified before the House Banking Committee that he had been duped by BCCI and had not known that it had owned the controlling interest in First American during the nine years that he ran the bank.

On July 29, 1992, Clifford and Altman were indicted simultaneously by federal and New York state grand juries on charges of conspiring to defraud the FEDERAL RESERVE BOARD by concealing the role of BCCI in acquiring U.S. banks. At the heart of the case were allegations of an elaborate scheme by BCCI to expand illegally into the United States by purchasing First American and acquiring National Bank of Georgia. Again, Clifford and Altman assured federal, as well as state, regulators that the group of Middle



Eastern investors who purchased First American in 1982 had no ties to BCCI, and insisted that they believed the group had acted on its own. Nevertheless, Clifford and Altman were aware of BCCI's attempts to purchase other banks. In fact, both men represented BCCI when it first attempted to acquire U.S. banks in the late 1970s, and in a series of transactions in the 1980s, the two allegedly made a profit of nearly \$10 million on First American stock that they purchased with loans from BCCI and later sold at a much higher price to a buyer who reportedly was subsidized by BCCI.

Following the two indictments, federal and state prosecutors tangled in a complex legal procedural drama about where or when the two would be tried. In September 1992, the federal trial was postponed, thereby allowing the New York state prosecution to proceed. But then the state trial was delayed as Clifford's lawyers tried to have the charges dropped because Clifford was in poor health. Clifford, age 86, eventually underwent quadruple bypass heart surgery, on March 22, 1993.

On March 30, 1993, the state trial of Altman began in a Manhattan courtroom. The prosecution alleged that Altman had participated in an elaborate scheme of deceit to help BCCI gain a foothold in the U.S. banking system. Altman countered that federal regulators were making him a scapegoat to deflect criticism of their own failings in the BCCI affair.

On April 7, federal prosecutors asked the judge to dismiss the charges against Clifford and Altman. Clifford's physical condition made it questionable that he would be able to stand trial and it was impossible for him to assist his attorneys in preparation for trial. The judge agreed and formally dismissed the federal charges against Clifford and Altman.

On August 14, a state court jury found Altman not guilty on four counts. Of the original eight felony charges, the judge had dismissed four during the trial, leaving the jury to deliberate on one count of scheming to defraud and three counts of filing false documents. During the trial the prosecution offered only CIRCUMSTANTIAL EVIDENCE, failing to prove that Altman was aware of BCCI's illegal activities.

After the state court acquittal, and with Clifford's health still precarious, efforts to prosecute the BCCI case in the United States ended, although it continued in other countries. No one can say for certain what happened to the

\$12 billion in missing depositors' funds. About one million people who lost money live in third-world countries and England. In England, depositors are expected to receive a return of 30 to 40 cents on the dollar; third-world depositors can expect even less.

In 1996, in an interview conducted by CNN as part of its 24-part documentary on the COLD WAR, Clifford discussed a number of topics including President Truman's reaction to Winston Churchill's Iron Curtain speech, the Truman Doctrine, the MARSHALL PLAN, the blockade of West Berlin, and U.S. strategy during the Cold War. Clifford died at age 91 on October 10, 1998, in Bethesda, Maryland. In 2001, he was portrayed by actor Donald Sutherland in HBO's *Path to War*, a retelling of Lyndon Johnson's involvement in Vietnam.

FURTHER READINGS

Berger, Marilyn. 1998. "Clark Clifford, Key Adviser to Four Presidents, Dies." *New York Times*. Available online at <www.mtholyoke.edu/acad/intrel/clifford.htm> (accessed June 13, 2003).

Clifford, Clark M., with Richard Holbrooke. 1991. *Counsel to the President*. New York: Random House.

♦ CLIFFORD, NATHAN

Nathan Clifford was an associate justice of the Supreme Court from 1858 to 1881. A traditional Jacksonian Democrat strongly disposed to favor STATES' RIGHTS, Clifford served on a Court that in his later career was largely dominated by Republicans. As a result, one-fifth of all his writing for the Court was made up of dissents: Clifford opposed centralization of power in the federal government at a time when the Court was moving toward expansion of federal authority; he was a Northerner who often sided with Southern democrats on issues related to SLAVERY; and he advocated a conservative interpretation of the Constitution. Clifford also served as attorney general of the United States from 1846 to 1848 and as a negotiator in the Mexican War. As the negotiator, he successfully procured a treaty with Mexico that added a huge amount of land to the southwestern part of the United States.

Clifford was born August 18, 1803, in Rumney, New Hampshire, the oldest child and only son in a family with seven children. His English ancestors had moved to the United States in 1644. As a child he worked on his family's small farm in New Hampshire. Although his parents did not encourage him to attend school he was

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—NATHAN CLIFFORD

Nathan Clifford.

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able to receive some education at Haverhill Academy, where he earned his tuition tutoring and giving singing lessons to younger children. He hoped to attend Dartmouth College but that proved impossible when his father died.

Ever ambitious, Clifford persuaded a local lawyer, Josiah Quincy, to take him on as an apprentice. He learned enough of the law to pass the bar in 1827 and moved to Newfield, Maine, where he opened a law office. Most of his legal work involved land claim disputes related to the lumber business.

In 1830, at age 27, Clifford was elected to Maine's House of Representatives on the Democratic ticket, quickly rising to Speaker of the House in 1833. Beginning in 1834 he served four years as state attorney general. During that time he made an unsuccessful bid for the U.S. Senate. He won a seat in the U.S. House of Representatives in 1838.

As a Jacksonian Democrat—that is, a Democrat in the mold of ANDREW JACKSON, who served as president of the United States from 1829–1837—Clifford was suspicious of power concentrated in urban centers of finance and politics. He was also a strong supporter of MARTIN VAN BUREN, a fellow Democrat who succeeded Jackson as president. In Congress Clifford opposed high tariffs, the creation of a federal banking system, and attempts to abolish slavery. The latter position earned him the label of “doughface”—a northern Democrat with southern sympathies. Clifford lost his seat in the House in 1843 after serving two terms.

In October 1846, President JAMES POLK appointed Clifford to become his attorney general. Clifford accepted the post but when the Supreme Court session was to begin he panicked about his qualifications for the job and suggested to Polk that he resign. Polk persuaded him to stay on. While he served as attorney general Clifford's most notable case before the Supreme Court was *Luther v. Borden*, 48 U.S. (7 How.) 1, 12 L. Ed. 581 (1849), which involved Dorr's Rebellion, the attempt by a group of Rhode Island citizens to form a new, more democratic state government to replace the established one. The rebellion had been put down through MARTIAL LAW imposed by the existing state government. Representing the rebels in court, Clifford had as his opposition DANIEL WEBSTER, a leading politician and constitutional lawyer. Clifford argued that a state could not impose martial law and that the people of Rhode Island had a right to change their constitution. The Court ruled that the case was outside of its jurisdiction.

Clifford also became involved in the Polk administration's policies regarding the Mexican War, which occurred between 1846 and 1848. He helped mediate differences between Polk and Secretary of State JAMES BUCHANAN, who would later, as president, nominate Clifford to the Supreme Court. As the war came to a close, Polk asked Clifford to resign as attorney general and become emergency peace negotiator. Clifford negotiated a treaty in 1848 that fulfilled the administration's expansionist goals in the Southwest. He eventually worked for progressive reform in Mexico, staying on there until September 1849.

When Whig candidate ZACHARY TAYLOR was elected president in 1848, Clifford was recalled from Mexico. He moved to Portland, Maine, and resumed his legal career. Not content to simply practice law, he attempted to gain the U.S. Senate in 1850 and 1853. His hopes of achieving a higher position and being rewarded for his work in Mexico materialized on December 9, 1857, when President Buchanan nominated him to the Supreme Court, filling the vacancy of BENJAMIN R. CURTIS who stepped down after the controversial case *DRED SCOTT V. SANDFORD*, 60 U.S. (19 How.) 393, 15 L. Ed. 691 (1857). In appointing the New Englander Clifford, Buchanan hoped to maintain the geographic balance of the Court at a time when such balance was crucial. The nation was increasingly divided over the

issue of slavery when Clifford joined the Court. In particular, different factions hotly debated the admission of Kansas to the Union and the status of fugitive slaves. As a Northern Democrat who nevertheless had demonstrated his sympathy for Southern causes, Clifford was a logical choice for the Court. His nomination caused great debate in the Senate, particularly over his strong Democratic loyalties and his perceived lack of legal training and qualifications. However, Clifford was finally approved by the Senate on January 12, 1858, on a 26–23 vote.

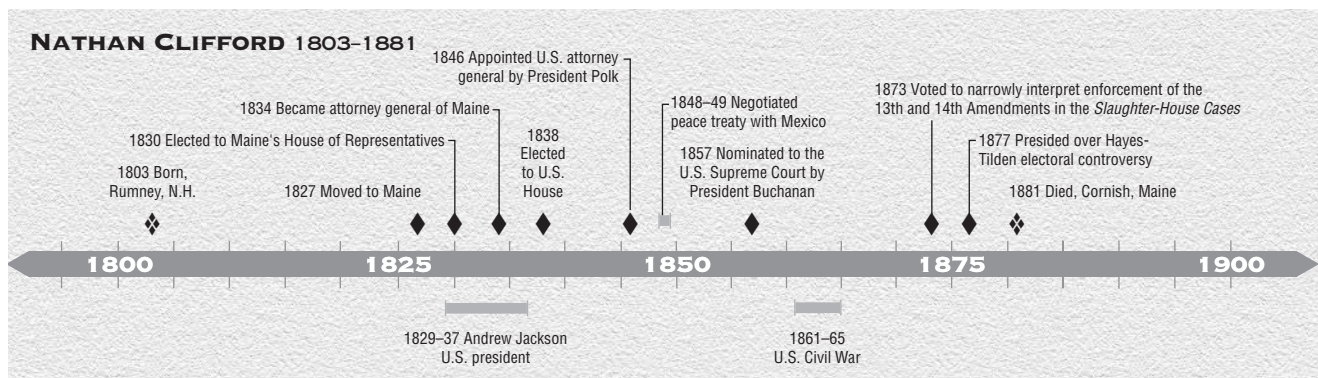
Clifford showed his anti-abolitionist stripes early when he joined a unanimous Court in upholding the fugitive slave law in *Ableman v. Booth*, 62 U.S. (21 How.) 506, 16 L. Ed. 169 (1859). When the Civil War came, however, he strongly supported the Union, deeming secession to be “wicked heresy.” Unlike his later years on the Court, those during the Civil War saw Clifford supporting Republican attempts to expand federal authority in order to better conduct the war. He stood behind the federal government in its first attempts to issue paper currency to finance the war effort. In *TEXAS V. WHITE*, 74 U.S. (7 Wall.) 700, 19 L. Ed. 227 (1868), he concurred with the majority in upholding the legality of congressional Reconstruction laws. However, in the *Prize Cases*—67 U.S. 635, 17 L. Ed. 459 (1862); 70 U.S. 451, 18 L. Ed. 197 (1865); 70 U.S. 514, 18 L. Ed. 200 (1865); and 70 U.S. 559, 18 L. Ed. 220—he dissented when the Court upheld the seizure of shipping through the Union’s blockade of Confederate ports.

After the war Clifford consistently found fault with Republican attempts to increase federal powers over the states. In the 1867 *Test Oath Cases*—*Cummings v. Missouri*, 71 U.S. (4 Wall.) 277, 18 L. Ed. 356, and *Ex parte Garland*, 71 U.S.

(4 Wall.) 333, 18 L. Ed. 366—for example, Clifford voted with the majority in striking down laws requiring oaths of loyalty to the Union. In two decisions—*Hepburn v. Griswold*, 75 U.S. (8 Wall.) 603, 19 L. Ed. 513 (1870) (the first of what became known as the *Legal Tender Cases*) and *Knox v. Lee* (heard concurrently with *Parker v. Davis*), 79 U.S. (12 Wall.) 457, 20 L. Ed. 287 (1871)—regarding the constitutionality of the Legal Tender Acts (12 Stat. 345, 532, 709), which had allowed the government to print paper money to repay war debt, Clifford reversed his earlier stances on paper currency and considered the act to be unconstitutional. In *Hepburn*, he was in the majority, whereas in *Knox*, he dissented, writing, “[T]he members of the Convention who framed the Constitution . . . not only knew that the money of the commercial world was gold and silver, but they also knew, from bitter experience, that paper promises, whether issued by the States or the United States, were utterly worthless as a standard of value for any practical purpose.”

In a later decision, *Ford v. Surget*, 97 U.S. 594, 24 L. Ed. 1018 (1878), he argued for granting clemency to the former Confederacy and honoring agreements made after the war. Only through these means could another civil war be avoided. If the sovereign, he wrote, “does not observe the terms of the capitulations and all other conventions with his enemies, they will no longer rely on his word. Should he burn and ravage, they will follow his example, and the war will become cruel, horrible, and every day more destructive to the nation.”

Clifford consistently voted against federal enforcement of the Fourteenth and Fifteenth Amendments, both of which sought to protect the rights of African Americans against infringements by state legislation. In the *SLAUGHTER-*



HOUSE CASES, 83 U.S. (16 Wall.) 36, 21 L. Ed. 394 (1873), Clifford voted with the majority in its decision to interpret the amendments narrowly. He joined the majority in two 1876 decisions—*United States v. Reese*, 92 U.S. 214, 23 L. Ed. 563, and *United States v. Cruikshank*, 92 U.S. 542, 23 L. Ed. 588—that prevented federal enforcement of VOTING RIGHTS for African Americans as guaranteed by the FIFTEENTH AMENDMENT. He also dissented in several decisions that struck down racially discriminatory jury selection.

Clifford expressed his judicial conservatism in his dissent to *Citizens' Savings and Loan Ass'n v. Topeka*, 87 U.S. (20 Wall.) 655, 22 L. Ed. 455 (1875), in which he argued that courts can declare laws unconstitutional only when state and federal constitutions expressly prohibit such legislation:

Courts cannot nullify an act of the State legislature on the vague ground that they think it opposed to a general latent spirit supposed to pervade or underlie the constitution, where neither the terms nor the implications of the instrument disclose any such restriction. Such a power is denied to the courts, because to concede it would be to make the courts sovereign over both the constitution and the people, and convert the government into a judicial despotism.

In 1877 Clifford presided over the electoral commission established to resolve the contested results of the presidential election between RUTHERFORD B. HAYES and SAMUEL J. TILDEN. Tilden, a Democrat, had won the popular vote, but a controversy arose over the accuracy of election returns in three states. Voting along strict party lines, the Republican majority on the commission accepted all electoral votes as originally reported. Hayes, the Republican, therefore won the election by the narrow margin of 185–184. Clifford officially signed the order certifying Hayes's victory but he never fully accepted the legitimacy of his presidency. He did not attend Hayes's inauguration nor did he visit the White House during the justices' customary visits to the White House.

Clifford's last act of party loyalty consisted of staying on the Court until a Democratic president was elected and could nominate his successor. Despite failing health and increasing absentmindedness, Clifford stubbornly refused to step down, hampering the Court's effectiveness. Even after suffering a severe stroke in 1880, he remained on the bench. He died on July 25,

1881, in Cornish, Maine, unsuccessful in his last attempt to stymie his Republican opponents. The following year Republican president CHESTER A. ARTHUR appointed HORACE GRAY to take Clifford's place on the bench.

Chief Justice MORRISON R. WAITE, who served on the Court from 1874 to 1888, once calculated that of the 66 significant constitutional cases that he assigned between 1874 and 1881, only one went to Clifford. This fact owed something to Clifford's minority status as a Democrat on a Court dominated by Republicans. He remained a stalwart embodiment of pre-Civil War Jacksonian Democracy even when that era had passed away.

FURTHER READINGS

- Cushman, Claire, ed. 1993. *The Supreme Court Justices: Illustrated Biographies, 1789–1993*. Washington, D.C.: Congressional Quarterly.
- Friedman, Leon, and Fred L. Israel, eds. 1969. *The Justices of the United States Supreme Court, 1789–1969: Their Lives and Major Opinions*. New York: Chelsea House.

CROSS-REFERENCES

- Dorr, Thomas Wilson; Fugitive Slave Act of 1850; Loyalty Oath; *Texas v. White*.

◆ CLINTON, HILLARY RODHAM

Attorney, professor, First Lady, and now senator Hillary Rodham Clinton created a new and dramatic role in national politics. With a distinguished career that ranged from working for the House Judiciary Committee to teaching CRIMINAL LAW and working as a lawyer, she assumed a key policy role in the administration of her husband, President BILL CLINTON. From 1993 to 1994 she ran that administration's top legislative priority, the failed effort at HEALTH CARE reform. Not surprisingly, her role in the administration was quite controversial. She was also exposed to criticism in the WHITEWATER scandal. However, supporters praised her for her skills as a manager and negotiator.

Clinton was born on October 26, 1947, in Chicago, the eldest of three children, to Hugh E. Rodham, a drapery businessman, and Dorothy Howell Rodham, a homemaker. She became head of the local Young Republicans chapter as a first-year student at Wellesley College, in Massachusetts, but she eventually changed her party affiliation. Clinton's shift in political opinion is visible from her ongoing volunteer work for presidential candidates: In 1964, the high-school senior backed the conservative BARRY GOLDWA-

TER; in 1968, the political science major supported the liberal EUGENE MCCARTHY.

At Yale Law School, Clinton did research work for the Yale Child Study Center and for Senator Walter F. Mondale and also volunteered for the child advocacy group that later became the CHILDREN'S DEFENSE FUND.

While working as an editor on the *Yale Review of Law and Social Action*, she wrote the first of several articles on CHILDREN'S RIGHTS. She was troubled by the law's refusal to consider children competent to make their own decisions until the age of 18. She concluded that the law should presume competence in children from the age of 12. Her 1979 article "Children's Rights: A Legal Perspective" argued in favor of children having the right to make a broad range of decisions, from tailoring their education to leaving an abusive home.

Yale also introduced Clinton to Bill Clinton, a fellow law student. They briefly went separate ways after graduating in 1973—he to teach law in Arkansas, she to work at the Children's Defense Fund in Massachusetts. Then, in January 1974, the 26-year-old Clinton was asked to Washington, D.C., to help impeach President RICHARD M. NIXON, whose presidency was undercut by the WATERGATE scandal. The special counsel to the House Judiciary Committee hired her to be in charge of legal procedures for its inquiry. When Nixon resigned in August rather than face almost certain IMPEACHMENT, Clinton's career was on the rise.

The Clintons were married in October 1975. They taught law at the University of Arkansas School of Law, in Fayetteville. In addition to conducting her criminal law courses, Clinton ran the school's legal aid clinic, founded the nonprofit Arkansas Advocates for Children and Families, and worked on Jimmy Carter's 1976 presidential campaign. Afterward, President Carter named her to the board of directors of the LEGAL SERVICES CORPORATION, which distributes federal funds to legal aid clinics nationwide. Over the next decade, she served on the boards of directors for national corporations and for the Children's Defense Fund. In 1980, she became a partner at the Rose Law Firm in Arkansas. Her husband, meanwhile, won election to five terms as governor of Arkansas and appointed her to head several committees, thus beginning the working partnership that would carry them to Washington, D.C. She chaired the Rural Health Advisory Committee and headed



Hillary Rodham Clinton.

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the Arkansas Education Standards Committee as well as holding other official posts.

In 1992, Clinton campaigned for her husband for president. Her speeches on domestic issues made clear to voters nationwide what voters in Arkansas already knew: She was her husband's political and intellectual equal and not merely the a spouse along for the ride.

After he took office in 1993, Clinton's husband named her to head his task force on health care reform. The reform was a key campaign promise, and the stakes were high. Most critics thought it inappropriate to appoint her. A common complaint was nepotism: the president could not be expected to fire his own wife if problems arose. This resistance largely subsided once Clinton began managing the 500-employee task force, and it was silenced after the U.S. Court of Appeals for the District of Columbia held in June 1993 that she was a de facto government official. Voters responded with mixed reactions in opinion polls, although a slim majority approved of her role. But lawmakers, despite bipartisan praise for her work with them, proved less receptive. Even a Democratic majority in Congress lacked sufficient votes to enact the plan developed by her task force.

The Whitewater scandal created more controversy around Clinton. The issue began with a failed land deal that she and her husband had made in the 1980s while he was governor and

"THERE IS NO FORMULA FOR HOW WOMEN SHOULD LEAD THEIR LIVES. THAT IS WHY WE MUST RESPECT THE CHOICES THAT EACH WOMAN MAKES FOR HERSELF AND HER FAMILY. EVERY WOMAN DESERVES THE CHANCE TO REALIZE HER GOD-GIVEN POTENTIAL."

—HILLARY CLINTON

she an attorney at the Rose Law Firm. It surfaced during the 1992 presidential campaign. By 1994, it became a flood of legal, political, and personal concerns: shady deals, improper influence, **TAX EVASION**, **BRIBERY**, cover-ups, congressional hearings, **INDEPENDENT COUNSEL**, and even the suicide of deputy White House counsel Vincent Foster. Clinton's work at the Rose Law Firm placed her squarely in the middle of the controversy. In the spring of 1994, she admitted to having made some mistakes but claimed that neither she nor her husband had done anything criminal. She asserted that political enemies were trying to smear the administration.

Despite spending millions of dollars and obtaining convictions of several Clinton associates, special prosecutor Ken Starr was unable to prove that the Clintons had broken the law. As the case began to wind down, new controversy reignited the investigation. In the course of being deposed by Starr on **SEXUAL HARASSMENT** charges by a woman named Paula Jones, President Clinton denied having had a sexual relationship with White House intern Monica Lewinsky. Starr issued a report, called a "referral" in which he accused the president of having perjured himself. As a result of the report, the Republican-led House passed **ARTICLES OF IMPEACHMENT** in December 1998. Hillary Clinton voiced her strong support of her husband, and in 1999 President Clinton was acquitted of the charges.

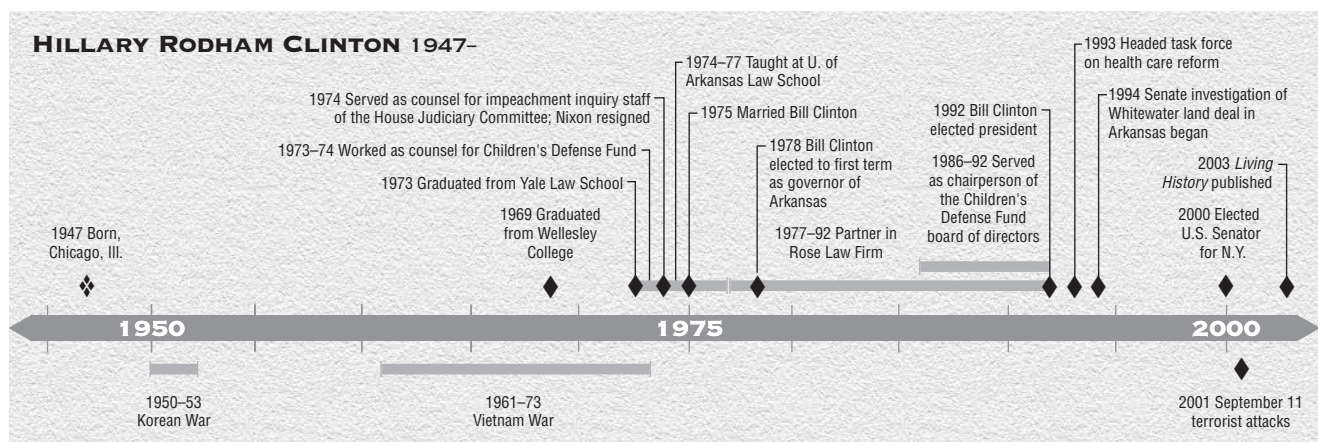
In 1999, Clinton announced that she would run for the Senate seat that had been held by Democrat Daniel Patrick Moynihan, who had announced his retirement. When New York City mayor Rudy Giuliani decided not to run, the Republican nomination went to U.S. Represent-

tative Rick Lazio. After a long and costly campaign, Clinton was elected senator from New York on November 7, 2000, becoming the first former First Lady to be elected to the United States Senate as well as the first woman elected statewide in New York. Clinton serves on the Senate Committees for Environmental and Public Works; Health, Education, Labor and Pensions. In 2003, she was appointed to the Senate Armed Services Committee becoming the first New Yorker to serve on that committee.

As a freshman senator, Clinton's greatest challenges arose in the aftermath of the **SEPTEMBER 11TH ATTACKS** in 2001. She worked with members of the New York delegation and Congress to secure funds for clean-up and recovery of Ground Zero (as the former World Trade Center site is now known) as well as health tracking for persons who worked in the area and grants to small enterprises who lost business as a result of the terrorist attacks.

In October, 2002, Clinton spoke in support of the resolution authorizing the United States to use force against Iraq, while voicing opposition to a unilateral attack. In early 2003 she proposed a funding formula for homeland security and also proposed a \$7 billion Domestic Defense Fund that included \$1 billion in funding for "high-threat" areas such as New York City and Washington, D.C.

Clinton has been the recipient of numerous honorary degrees and awards, including the National Association for Home Health Care's Claude Pepper Award, the Public Spirit Award of the **AMERICAN LEGION** Auxiliary, and the New York City Legal Aid Society's Servant of Justice Award. Clinton has written numerous op-ed pieces as well as articles for magazines and jour-



nals. She has published several books, including 1997's *It Takes a Village, and Other Lessons Children Teach Us* and the *An Invitation to the White House* (2000), both of which were best-sellers.

Over the last two decades, Clinton has been the subject of more than a dozen books and hundreds of articles. Many have recognized her for her advocacy of democracy and HUMAN RIGHTS, including WOMEN'S RIGHTS and children's rights, as well as religious tolerance and health care. Many have vilified her for her promotion of the same. As long as she remains on the political stage, Hillary Rodham Clinton will be the focus of heated debates and discussions.

FURTHER READINGS

"About Hillary Rodham Clinton." 2003. Senator Hillary Rodham Clinton webpage. Available online at <clinton.senate.gov/about_hrc.html>; website homepage: <clinton.senate.gov> (accessed November 11, 2003).

Clinton, Hillary Rodham. 2003. *Living History*. New York: Simon & Schuster.

———. 1996. *It Takes a Village: And Other Lessons Children Teach Us*. New York: Simon & Schuster.

Halley, Patrick S. 2002. *On the Road with Hillary: A Behind the Scenes Look at the Journey from Arkansas to the U.S. Senate*. New York: Viking.

❖ CLINTON, WILLIAM JEFFERSON

With his election as the forty-second president of the United States on November 3, 1992, William Jefferson Clinton became the first Democrat in the White House since JIMMY CARTER left office in 1981. Clinton began his presidency pledging to reduce the federal government's budget deficit; streamline bureaucracy; increase public investment in education, job training, and the environment; and initiate widespread domestic reforms in HEALTH CARE, WELFARE, and taxation. Although the United States achieved significant economic growth under Clinton, his presidency was eventually marred by personal and legal problems, including the second IMPEACHMENT of a president in the history of the country.

Although Clinton made progress toward reducing the budget deficit during his presidency, some of his other reforms, such as his proposal for universal health care coverage, met with opposition in the 103d Congress of 1993–94. Nevertheless, Clinton made an impact on U.S. law. On many issues, from ABORTION to environmental protection, he steered the nation in a different direction from that of his Republi-



Bill Clinton.

THE WHITE HOUSE

can predecessors, Presidents RONALD REAGAN and GEORGE H. W. BUSH.

Clinton was born William Jefferson Blythe IV on August 19, 1946, in Hope, Arkansas. His father, William Jefferson Blythe III, died in a car accident before the future president was born, and his mother, Virginia Cassidy Blythe, married Roger Clinton four years after Blythe's death. When Clinton was seven years old, the family moved to Hot Springs, Arkansas, where he spent the rest of his childhood.

Clinton graduated fourth in his class at Hot Springs High School in 1964. Already intent on entering politics, he enrolled at Georgetown University, in Washington, D.C. He completed a bachelor's degree in international studies in 1968 and won a Rhodes Scholarship to study at Oxford University, in England. After two years at Oxford, he entered Yale University Law School on a scholarship in 1970. He married Hillary Rodham on October 11, 1975.

After a brief stint as a staff attorney for the House Judiciary Committee, Clinton was hired in 1973 as a member of the faculty of the University of Arkansas School of Law, in Fayetteville. The following year, he ran for a seat in the U.S. House of Representatives from Arkansas's Third Congressional District. He lost by only four percentage points in a Republican stronghold. After successfully running Carter's Arkansas presidential campaign in 1976, Clin-

"IF YOU LIVE LONG
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YOU."

—BILL CLINTON

ton won the office of state attorney general that same year.

In 1978, at the age of 32, Clinton was elected governor of Arkansas. He was the youngest governor ever to enter office in Arkansas, and the youngest governor in the nation since 1938, when Harold C. Stassen was elected governor of Minnesota at the same age. Shortly after entering office, Clinton raised the gasoline tax and automobile-licensing fees in order to finance highway improvements. These tax increases proved unpopular, and he lost the governorship in the 1980 election.

Clinton spent the next two years working in private legal practice, then won re-election as governor in 1982 and held the post until his election as president. He implemented educational reforms in Arkansas during the 1980s, increasing educational funding through a higher sales tax and introducing such measures as competency tests for teachers and compulsory school attendance through age 17 for students.

In 1992, Clinton entered a crowded field of candidates jostling for the Democratic nomination for president. His competitors included Jerry Brown, a former governor of California; Paul E. Tsongas, a former U.S. senator from Massachusetts; and Thomas R. Harkin, a U.S. senator from Iowa. Despite rumors of an affair with a singer named Gennifer Flowers, Clinton won his party's nomination. He chose ALBERT GORE Jr., a U.S. senator from Tennessee, as his running mate. In the general election, he defeated President George H. W. Bush and an independent candidate, H. Ross Perot. Clinton tallied 43 percent of the popular vote, against 38 percent for Bush and 19 percent for Perot.

Clinton was sworn in as president on January 20, 1993. At 46 years of age, he was the youngest president since JOHN F. KENNEDY. Entering office at a time of economic recession, he immediately set to work on domestic agenda calling for economic stimulus, long-term public investments, and a deficit-reduction plan. Key aspects of this plan involved health care reform, reduction of tariffs, tax increases for the wealthy, tax cuts for the poor, spending increases for job training, and programs to increase the efficiency of the federal government.

Clinton experienced only partial success in implementing his proposals in Congress, even though his party enjoyed majority status in both the House and the Senate during the 103d Congress. He won passage of and earned INCOME

TAX credit for working poor people; cut federal spending and bureaucracy; and passed the National and Community Service Trust Act (107 Stat. 785 [1993]), which provides students with tuition assistance in exchange for work on special service projects.

The NORTH AMERICAN FREE TRADE AGREEMENT (NAFTA) (32 I.L.M. 605), signed by Clinton on December 8, 1993, was hailed as landmark legislation. Although NAFTA negotiations had begun under President George H. W. Bush, Clinton made the controversial trade agreement a test of his presidency and used his influence to secure its passage through Congress in the North American Free Trade Implementation Act (107 Stat. 2057 [1993]). The agreement removes tariffs on products traded between the United States, Mexico, and Canada over a 15-year period. The Clinton administration also secured major changes in the GENERAL AGREEMENT ON TARIFFS AND TRADE (GATT).

Clinton did not win passage of his entire economic stimulus package, nor was he able to generate significant welfare reform. But the most noted failure of the early Clinton administration proposals was its sweeping plan to reform health care. Organized by HILLARY RODHAM CLINTON and presented to Congress in the fall of 1993, the 240,000-word document was one of the most detailed legislative proposals ever presented to Congress. The Health Care Security Act, as it was later called, would have provided HEALTH INSURANCE to all citizens. Although the act was defeated in Congress, it spurred modest reforms that helped to bring down the health care inflation rate in future years.

During the 1992 presidential campaign, Clinton had pledged to lift a ban on homosexuals in the military. His efforts to fulfill this promise during his first year in office quickly met with disapproval from military leaders, members of Congress, and the general public. After lengthy debate of the issue in Congress, Clinton moderated his initial position with a new policy that was dubbed "don't ask, don't tell." Under this policy, homosexuals are free to serve in the military as long as they do not display their homosexuality or engage in homosexual conduct. Many homosexual rights advocates voiced their disappointment with Clinton's compromise on the issue.

Other significant legislation signed by Clinton included the Family and Medical Leave Act

(29 U.S.C.A. §§ 2601 et seq. [1993]), which allows employees to take up to 12 weeks of unpaid leave each year for family illness, childbirth, or **ADOPTION**. The National Voter Registration Act (42 U.S.C.A. §§ 1973gg et seq. [1993]), also called the motor-voter law, permits citizens to register to vote by mail or while obtaining a driver's license. Similar bills had been vetoed by President Bush.

Another bill signed by Clinton, the Freedom of Access to Clinic Entrances Act (18 U.S.C.A. § 248 [1994]), strengthens protection of family-planning clinics that perform abortions by making it a federal crime to obstruct clinic entrances and harass clinic patients and personnel.

Clinton signed into law a major piece of anticrime legislation on September 13, 1994 (108 Stat. 1796). The \$30.2 billion measure was a complex mixture of government spending and changes in **CRIMINAL LAW**. It provided for social programs, prisons, and the hiring of 100,000 police officers nationwide; the extension of the death penalty to more crimes; and the banning of 19 different assault-style firearms.

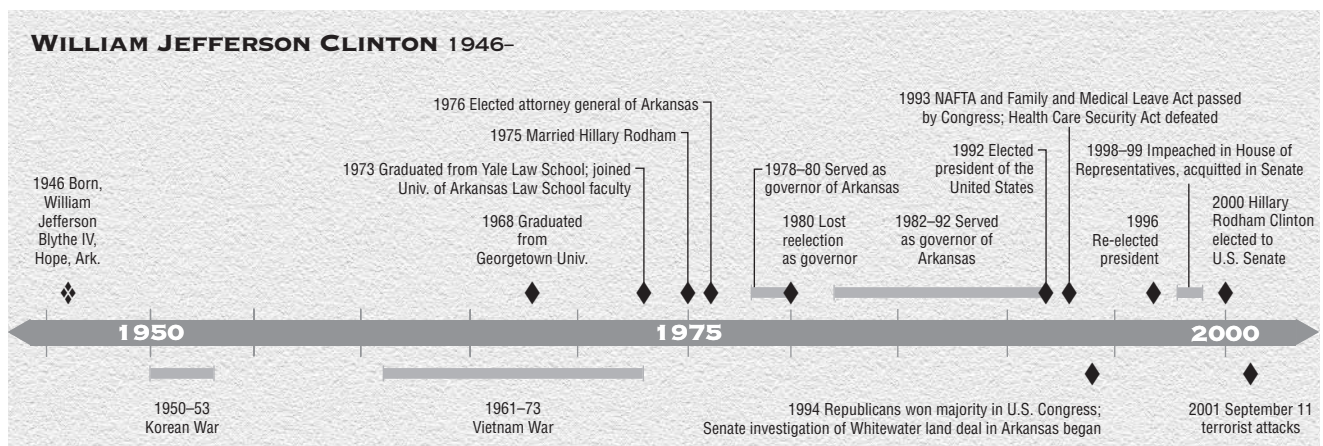
Clinton was the first Democratic president since **LYNDON B. JOHNSON** to make an appointment to the U.S. Supreme Court. Clinton appointed **RUTH BADER GINSBURG** in 1993 and **STEPHEN BREYER** in 1994. Both justices were approved by the U.S. Senate with little controversy. With their moderate positions, these justices were likely to help prevent threatened reversals of previous Court decisions on abortion and **CIVIL RIGHTS**.

Clinton appeared less confident in the area of foreign policy. Early in his term, critics characterized his handling of U.S. policy toward conflicts in Bosnia, Somalia, and Rwanda as

indecisive. Clinton appeared to gain confidence with time, however, and claimed a number of foreign policy victories later in his administration. He successfully sent U.S. troops to Haiti in 1994 to restore democratically elected President Jean-Bertrand Aristide to power. The Clinton administration also secured significant disarmament agreements with Ukraine, Belarus, and Kazakhstan, former states of the Soviet Union that possessed **NUCLEAR WEAPONS**; restored normal diplomatic relations with Vietnam; helped to broker peace negotiations in the Middle East and Northern Ireland; and slowed North Korea's development of nuclear weapons.

In March 1992, questions arose concerning a failed Arkansas business deal that the Clintons had been involved in during the 1980s. The deal centered on the Whitewater Development Corporation, a proposed real estate development near Little Rock. Among the charges later directed at Clinton was that he had benefited from criminal actions of James McDougal, an Arkansas savings-and-loan owner. In particular, it was alleged that McDougal had illegally diverted money to Clinton's gubernatorial campaign fund—money that McDougal had been able to raise partly through the help of then-Governor Clinton. James and Susan McDougal, along with former Arkansas governor Jim Guy Tucker, were convicted of **FRAUD** in 1996 for their roles in several transactions, including the Whitewater affair.

The Whitewater scandal was the most damaging to Clinton in the first term of his presidency, drawing comparisons to the **WATERGATE** scandal under President **RICHARD M. NIXON** and the **IRAN-CONTRA** scandal under President Reagan. The continuing investigation into White-



water by independent counsel KENNETH W. STARR also led to first impeachment trial in the U.S. House of Representatives since President ANDREW JOHNSON in 1868.

The roots of Clinton's impeachment began in 1994, when Starr began his investigation and Clinton faced a series of accusations regarding sexual misconduct. In 1994, Paula C. Jones filed a SEXUAL HARASSMENT lawsuit against Clinton, alleging that Clinton had made unwanted sexual advances in a hotel room in 1991, when he was governor of Arkansas and she was a state employee. Clinton was the first sitting president since 1962 to face a civil lawsuit. Meanwhile, as early as 1995, Clinton began having an adulterous relationship with White House intern Monica S. Lewinsky that lasted into 1997. In December 1997, Jones's lawyers named Lewinsky as a potential witness in the sexual harassment lawsuit. Lewinsky filed an AFFIDAVIT in the Jones case, denying that she had had sexual relations with the president, although in a series of events that were disclosed later, Lewinsky had returned several gifts that Clinton had reportedly given her during the affair. On January 12, 1997, Linda Tripp, a co-worker of Lewinsky's who had recorded telephone conversations in which Lewinsky had described the affair, turned tapes over to Starr. About a year later, on January 17, 1998, Clinton denied in a testimony before the GRAND JURY in the Jones case that he had had an "extramarital sexual affair," "sexual relations," or a "sexual relationship" with Lewinsky. Starr then investigated whether Clinton had lied under oath and/or whether he had encouraged others to lie. After Starr granted her IMMUNITY for her testimony, Lewinsky appeared before a grand jury in August 1998, describing at least 11 sexual encounters, although none involved sexual intercourse. Clinton admitted to some encounters with Lewinsky that had involved oral sex, but he claimed that because he had not engaged in intercourse, his denials about sexual relations did not constitute perjury.

Starr submitted a report to the House of Representatives on September 8, 1998, outlining 11 grounds for impeaching Clinton, including charges of perjury and obstructing justice. On October 5, 1998, the House Judiciary Committee voted 21-16, along party lines, to recommend that the House begin formal impeachment proceedings. The House concurred with the committee's recommendation, and in December 1998, Clinton faced four ARTICLES OF IMPEACH-

MENT. On December 19, the House approved two of the articles charging Clinton with perjury in his grand jury testimony and with OBSTRUCTION OF JUSTICE. The trial then moved to the Senate, where Chief Justice WILLIAM H. REHNQUIST presided as the senators listened in silence to presentations by Clinton's defense team and representatives from the House. After about a month of deliberations, the Senate voted on whether to remove Clinton from office. On both counts, the vote failed to garner the necessary two-thirds majority.

Although the impeachment undoubtedly scarred Clinton's legacy, his economic success was virtually unparalleled in recent U.S. history. Although Republicans gained control of both houses of Congress in 1994 for the first time in 40 years (Clinton admitted that he was partly responsible for his party's losses) the national deficit was reduced by several billion dollars during the last few years of the Clinton presidency. The country also experienced sustained levels of economic growth that were unmatched since the early 1960s.

Notwithstanding his successes, controversies surrounding Clinton continued even as he left office in 2001. On January 20, 2001, on his final morning in office, Clinton granted more than 170 presidential pardons and commutations, including those for two fugitive financiers who allegedly had traded illegally with Iran in the 1980s and defrauded the U.S. government of about \$48 million in taxes. In March 2001, Attorney General JOHN ASHCROFT announced that he had launched an investigation into the pardons, dubbed "Pardongate" by the media. Clinton's actions in office also affected his status as a lawyer, as both the Arkansas Supreme Court and the U.S. Supreme Court suspended his law license for the perjury and obstruction-of-justice charges stemming from the Lewinsky and Paula Jones affairs.

Clinton has remained in the public consciousness, although his legacy in U.S. history is difficult to assess thus far. In 2001, he received a \$12 million advance to publish his memoirs. In March 2003, the CBS television network announced that Clinton had agreed to appear with former senator ROBERT DOLE, whom Clinton had defeated in the 1996 presidential election, in a regular piece on the news program *60 Minutes*, where the former politicians debate current political issues. Clinton maintains an office in New York City, and construction of the

William J. Clinton Presidential Center in Little Rock, Arkansas, will be completed in the fall of 2004. Conservatives typically dismiss Clinton's economic and domestic achievements, pointing out his indiscretions throughout his two terms in office. Liberal supporters do not dismiss his imprudence, but they point out that he both presided over the country's emergence from economic recession and provided millions of Americans with opportunities that they would not have had without his programs.

FURTHER READINGS

Clinton, Bill. 1996. State of the Union address, January 23. Transcript available at 1996 WL 23253 (White House) and at the Democratic National Committee Web site <www.democrats.org/contact/president/union.html>.

———. 1995. *Clinton Administration Accomplishments*. Washington, D.C.: U.S. Government Printing Office.

Executive Office of the President. Office of Management and Budget. 1993. *A Vision of Change for America*. February 17.

Johnson, Haynes Bonner. 2001. *The Best of Times: America in the Clinton Years*. New York: Harcourt.

CROSS-REFERENCES

Armed Services; Gay and Lesbian Rights; Voting; Presidential Powers; Veto.

CLOSE

A parcel of land that is surrounded by a boundary of some kind, such as a hedge or a fence. To culminate, complete, finish, or bring to an end. To seal up. To restrict to a certain class. A narrow margin, as in a close election.

A person can close a bank account; a trial may be closed after each lawyer has concluded his or her presentation in the case at bar.

CLOSE WRIT

In ENGLISH LAW, a certain kind of letter issued by the sovereign that is sealed with the great seal indicating his or her office and directed to a particular person and for a special purpose.

A close writ—unlike a patent writ—is closed up, sealed on the outside, and not open to inspection by the public. In former times, such a writ could have been directed to the sheriff rather than the lord of a particular manor.

CLOSED ACCOUNT

A detailed statement of the mutual debit and credit demands between parties to which no further changes can be made on either side.

A closed account is distinguishable from an account stated, which remains open for the purposes of adjustment and set-off.

CLOSED CORPORATION

A type of business corporation that is owned and operated by a small group of people.

A closed corporation is also known as a *close corporation*, a *family corporation*, an *incorporated partnership*, and a *chartered partnership*. In this type of corporation all of the functions are usually performed by the same parties. These individuals serve as shareholders, officers, and directors and are involved in the management and operation of the business. A closed corporation differs from a publicly held corporation since its stock is neither issued nor traded to the public at large.

CLOSED SHOP

A shop in which persons are required to join a particular union as a precondition to employment and to remain union members for the duration of their employment.

The federal National Labor Relations Act (NLRA) (29 U.S.C.A. §§ 151 et seq.) protects the rights of workers to organize and bargain collectively and prohibits management from engaging in UNFAIR LABOR PRACTICES that would interfere with these rights. Popularly known as the WAGNER ACT, the NLRA was signed into law by President FRANKLIN D. ROOSEVELT on July 5, 1935.

Among the workers' rights legalized by the NLRA was the right to enter into a "closed shop" agreement. It differs from a union shop, in which all workers, once employed, must become union members within a specified period of time as a condition of their continued employment. Closed shop agreements ensured that only union members who were bound by internal union rules, including those enforcing worker solidarity during strikes, were hired.

As WORLD WAR II ended a decade after the NLRA was enacted, unions sought to make up the pay cuts caused by wage freezes during the war, resulting in a rash of strikes. Many people viewed these strikes as economically destructive, and union practices, such as closed shop agreements, became increasingly unpopular. Critics of the closed shop contended that it allowed unions to monopolize employment by limiting membership or closing it altogether. They also

argued that the closed shop allowed unions to force unwilling individuals to give them financial support.

In response to these criticisms, Congress amended the NLRA in 1947, with the adoption of the **LABOR-MANAGEMENT-RELATIONS ACT** (29 U.S.C.A. §§ 151 et seq.). Known as the **TAFT-HARTLEY ACT**, this law placed many restrictions on union activities. It limited picketing rights, banned supervisory employees from participating in unions, and restricted the right to strike in situations where the president of the United States and Congress determined that a strike would endanger national health and safety. The Taft-Hartley Act prohibited secondary boycotts, wherein a union incites a strike by employees of a neutral or "secondary" party, such as a retailer, in order to force the secondary party to cease doing business with the party with whom the union has its primary dispute, such as a manufacturer. The Taft-Hartley Act also allowed individual states to ban the union shop by passing **RIGHT-TO-WORK LAWS** that prohibited employees from being required to join a union as a condition of receiving or retaining a job.

Section 8(a)(3) of the Taft-Hartley Act specifically outlawed the closed shop but did allow a collectively bargained agreement for a union shop, provided certain safeguards were met. Under the union shop proviso, a union and an employer could agree that employees must join the union within thirty days of employment in order to retain their jobs. Section 8(a)(3) stated, in relevant part,

It shall be an unfair labor practice for an employer— . . . (3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: Provided, that nothing in this subchapter, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization . . . to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement . . . if such labor organization is the representative of the employees. . . . Provided further, that no employer shall justify any discrimination against an employee for nonmembership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for

believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership.

Some observers believe that the **ABOLITION** of the closed shop helped to minimize **RACIAL DISCRIMINATION** by unions. The Wagner Act allowed unions to effectively shut out black employees from employment opportunities and benefits by simply refusing them membership. The Taft-Hartley Act curtailed this practice by prohibiting the negotiation of security agreements that limited employment opportunities to union members.

FURTHER READINGS

- Baker, Joan E. 1989. "NLRA Section 8(a)(3) and the Search for a National Labor Policy." *Hofstra Labor Law Journal* 7 (fall).
- Ballam, Deborah A. 1995. "The Law As a Constitutive Force for Change, Part II: The Impact of the National Labor Relations Movement on the U.S. Labor Movement." *American Business Law Journal* 32.
- Devaney, Dennis M., and Susan E. Kehoe. 1993. "The NLRB Takes Notice to the Max in Paramax." *Hofstra Labor Law Journal* 11 (fall).
- Glick, Carol A. 1989. "Labor-Management Cooperative Programs: Do They Foster or Frustrate National Labor Policy?" *Hofstra Labor Law Journal* 7 (fall).
- Larson, Reed. 1999. *Stranglehold: How Union Bosses Have Hijacked our Government*. Special abridged ed. Ottawa, Ill.: Jameson Books.
- Mihlar, Fazil, ed. 1997. *Unions and Right-to-Work Laws: The Global Evidence of their Impact on Employment*. Vancouver: Fraser Institute.
- Plass, Stephen A. 1992. "Arbitrating, Waiving, and Deferring Title VII Claims." *Brooklyn Law Review* 58 (fall).
- Turner, William D. 1994. "Restoring Balance to Collective Bargaining: Prohibiting Discrimination against Economic Strikers." *West Virginia Law Review* 96 (spring).

CROSS-REFERENCES

Collective Bargaining; Labor Law; Labor Union.

CLOSELY HELD

A phrase used to describe the ownership, management, and operation of a corporation by a small group of people.

In a closely held corporation, the same people often act as shareholders, directors, and officers, and no outside investors exist.

CLOSING

The final transaction between a buyer and seller of real property.

At the closing, all agreements between buyer and seller are finalized, documents are signed and exchanged, money passes to the seller, and title to the property passes to the buyer.

Closings generally take place at the office of the title company, which issues title insurance to both buyer and lender. This insurance is issued after the title company has researched the chain of title to the property and cleared any matter that might interfere with a successful transfer of title.

Both the buyer and the seller may be represented by attorneys who review the closing package, which may include more than twenty-five documents and affidavits required by a raft of regulations. The buyer's attorney, if any, also

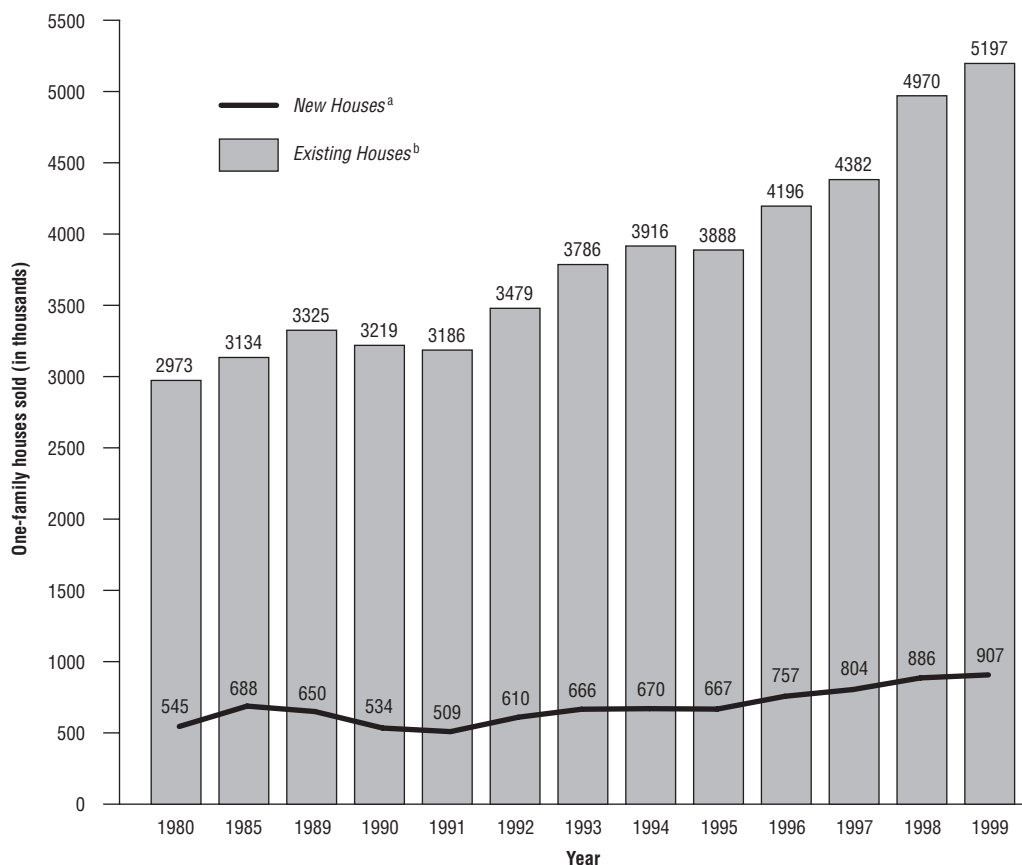
reviews the title company's research to ensure that the buyer receives clear title.

An agent of the title company conducts and facilitates the closing. At the closing, the buyer reviews and endorses all loan documents, which may include the following:

- the mortgage,
- the promissory note by which the buyer promises to pay the loan and interest in full,
- a truth-in-lending statement, in which the lender informs the buyer of the approximate annual percentage rate over the term of the loan,
- various affidavits and inspection forms,
- a survey form indicating that the buyer has seen and understands the survey, and

Closing

ONE-FAMILY HOUSES SOLD, 1980 TO 1999



^aNumbers are based on a national probability sample of monthly interviews with builders or owners of one-family houses for which building permits have been issued or, for nonpermit areas, on which construction has started.

^bNumbers are based on data reported by participating real estate multiple listing services.

SOURCE: U.S. Census Bureau, *Statistical Abstract of the United States*, 2000.

- a private mortgage insurance application, if required.

The seller also endorses a number of documents at the closing. These may include the following:

- the deed transferring title to the buyer,
- a bill of sale transferring ownership of any **PERSONAL PROPERTY** included in the sale,
- any required affidavits, such as affidavits concerning mechanic's liens or inspections, and,
- in the case of new construction, a certificate of occupancy.

Among the documents that both the buyer and the seller sign are an **AFFIDAVIT** indicating the source of the funds the buyer is using to purchase the property, and a **SETTLEMENT STATEMENT** showing all the costs associated with the transaction. This statement, required by the Real Estate Settlement Procedure Act of 1974 (RESPA) (12 U.S.C.A. § 2601 et seq.), is required in all transactions involving a mortgage from any lender whose funds are federally insured or regulated. RESPA mandates full disclosure by the lender of all the terms and conditions of the loan, as well as a good-faith estimate of the buyer's closing costs. These may include fees for the loan origination process, credit report, appraisal, title search, survey, and administrative procedures.

At closing, the buyer also pays the contract sale price, minus any earnest money deposited, usually in certified funds; loan discount fees, or points, charged by the lender to obtain the mortgage; and attorneys' fees. The buyer is often required to purchase separate buyer's and lender's title insurance policies, although in some areas this expense is split between buyer and seller.

Once all the necessary signatures have been obtained and the monies have been disbursed, the buyer takes possession of the property. In some areas, it is customary to allow the seller a short period of time to vacate the premises; in other areas, the seller may be expected to move out before the closing. If any disputes arise at closing, the title company may escrow a portion of the funds to settle the dispute later so that the closing can be concluded.

FURTHER READINGS

Eigen, Ann vom. 1999. "Proposed RESPA/TILA Changes—The Lawyer's Role in Residential Real Estate Closings." *Probate & Property* 13 (January-February): 32–6.

Gadow, Sandy. 2003. *The Complete Guide to Your Real Estate Closing: Answers To All Your Questions—From Opening Escrow, To Negotiating Fees, To Signing the Closing Papers*. New York: McGraw-Hill.

Glink, Ilyce R. 1994. *One Hundred Questions Every First-Time Home Buyer Should Ask*. New York: Random House, Times Books.

Irwin, Robert. 2004. *Home Closing Checklist*. New York: McGraw-Hill.

CLOSING ARGUMENT

The final factual and legal argument made by each attorney on all sides of a case in a trial prior to a verdict or judgment.

Just as trials begin with attorneys making statements about the case, they end with a direct address to the judge or jury. The **OPENING STATEMENT** lays out what each side intends to prove; the closing argument, which is generally more forceful, has broader ambitions. By recapitulating the facts, evidence, and testimony presented during the trial, the closing argument tries to deal a fatal blow to the opposing case while definitively proving the attorney's own. Trial lawyers put great emphasis on their closing argument, or summation, because it is their last chance to be persuasive before the judge or jury begins deliberations. An art form in itself, the closing argument often brings forth a trial's most dramatic speech, marked by criticism, appeals to emotion and reason, and florid rhetoric.

Tradition dictates only a few rules for closing arguments. Generally, in civil actions, the plaintiff's attorney speaks first and the defendant's counsel immediately follows. In criminal trials, the prosecution gives its summation, followed by that of the defense. In addition, the plaintiff's counsel or the prosecutor is allowed time for a rebuttal argument. The reason for this additional time is that the **BURDEN OF PROOF** is on the plaintiff or prosecution; thus, the plaintiff's attorney or the prosecutor is allowed to reply to the defense's closing argument. Attorneys see the rebuttal as a useful weapon, as it is the last word to be heard from counsel in a case.

Closing arguments and rebuttals vary in duration. Hollywood court dramas often make the closing argument a brief, terse statement; in real life, it can go on much longer. Summations lasting an hour or more are typical. Depending on the complexity of a case, the entire summation period may last several days, particularly in jury trials where numerous witnesses and difficult **SCIENTIFIC EVIDENCE** have been presented.

However, most attorneys avoid droning on, for fear of losing the jury's attention or possibly incurring its antagonism. Ultimately, the length of a closing argument is left to the discretion of the judge, who may impose a time limit. Judges can also sustain objections by the opposing side if the scope of the rebuttal is deemed too far-reaching.

Throughout history, rhetoric has assumed a high place in summations. Orators, including attorneys, have always known that style in a speech can be as persuasive as substance. The colonial prosecutor Josiah Quincy peppered his closing arguments with rich flourishes of indignation. "Does the law allow one member of the community to behave in this manner towards his fellow citizens," Quincy thundered during the trial of British soldiers accused of murdering protesters in the BOSTON MASSACRE of 1770, "and then bid the injured party be calm and moderate?" He went on to quote Shakespeare. But he met his match in attorney JOHN ADAMS, whose summation helped win the soldiers' acquittal. Adams argued that any soldier "would be warranted in depriving those of life who were endeavoring to deprive him of his. That is a point I would not give up for my right hand, nay, for my life."

In an age when jury consultants warn about short attention spans, contemporary attorneys shy away from arch rhetoric. Most lawyers want to reach the jury's emotions through plain, but pointed, speech. Rhetorical questions are still used powerfully; quotations from literature are featured to a somewhat lesser extent. Charts, graphs, and even photographs play a large role in keeping juries focused. Both the prosecution and the defense calculatedly used props to underscore their arguments about brothers Erik Menendez and Lyle Menendez, who were tried in California in late 1993 for the murder of their parents. Arguing that the murders were intentional, Prosecutor Pamela Bozanich displayed a photograph of the bloodied corpses. Defense Attorney Jill Lansing countered by tacking up a nude photograph of Lyle, reminding the jury that her clients claimed to have been sexually abused and saying, "You need to decide what was going on in Erik and Lyle Menendez's mind that night before you decide what kind of crime was committed." The first trial ended in a mistrial. The brothers were retried and found guilty of first degree murder on March 21, 1996.



FURTHER READINGS

- Alexander, Donald G. 2002. "Preparing for More Effective Closing Argument." *Maine Bar Journal* 17 (summer): 194–7.
- Baldwin, Scott, and Francis H. Hare Jr. 1997. *Scott Baldwin on Jury Arguments*. New York: Wiley Law.
- Gonzalez, Ervin A. 2002. "Ten Tips for Closing Argument." *The Practical Litigator* 13 (March): 15–29.
- Kunstler, William M. 1962. *The Case for Courage*. New York: Morrow.
- Lief, Michael S., H. Mitchell Caldwell, and Benjamin Bycel. 1998. *Ladies and Gentlemen of the Jury: Greatest Closing Arguments in Modern Law*. New York: Scribner.
- Mauet, Thomas A. 1980. *Fundamentals of Trial Techniques*. Boston: Little, Brown.
- McElhaney, James W. 2002. "Close with a Big Finish." *ABA Journal* 88 (November): 56.

Trials end with attorneys for each side directly addressing the judge or jury. Ron Kuby, the attorney for plaintiff Darrel Cabey, is shown making his closing argument to the jury in the 1996 civil trial of New York City subway "vigilante" Bernhard Goetz.

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PHOTOS

CLOTURE

The procedure by which debate is formally ended in a meeting or legislature so that a vote may be taken.

Cloture is a means of terminating a filibuster, which is a prolonged speech on the floor of the Senate designed to forestall legislative action.

CLOUD ON TITLE

An apparent claim or encumbrance, such as a lien, that, if true, impairs the right of the owner to transfer his or her property free and clear of the interests of any other party.

The existence of a cloud on title casts doubt upon the ability of an owner of real property to convey marketable title to his or her land, thereby lessening its value. The owner must present evidence to dispel the cloud on title if he or she wants to transfer ownership free of legal uncertainty. One method to remove a cloud on title is the commencement of an action to quiet title.

CLUB

An organization composed of people who voluntarily meet on a regular basis for a mutual purpose other than educational, religious, charitable, or financial pursuits. A club is any kind of group that has members who meet for a social, literary, or political purpose, such as health clubs, country clubs, book clubs, and women's associations. The term club is not a legal term per se, but a group that organizes itself as a club must comply with any laws governing its organization and otherwise be cognizant of the legal ramifications in undertaking to organize itself in this manner.

Various types of clubs exist. An *incorporated members' club* is composed of a group of individuals who each contribute to the club's funds, which are used to pay the expenses of conducting the society. An *unincorporated proprietary club* is one whose proprietor owns the property and funds and conducts the club to attempt to make a profit. The members are entitled to use the premises and property in exchange for the payment of entrance fees and subscriptions to the proprietor as well as any additional rights and privileges provided in their contractual agreement.

An incorporated club is generally governed by state statute. Many statutes provide for the incorporation of clubs, and the statutory requirements must be strictly observed. A statute may require that an application for incorporation state the purposes of the club in a definitive manner to help the court determine whether the objective of the club is legal. In addition, the application should state the manner in which club revenues are to be provided and the basis upon which an individual may become a member of the club.

A club's certificate of incorporation should indicate pecuniary means (i.e., funds, money, property), describe the objective of the club, and specify a place of business or office. If a club is unincorporated, the rules that govern associations apply.

Voluntary clubs are not partnerships, since the members do not join them for profit-making purposes and, unlike partners, are not responsible for the acts of each other. If a club's members do unite for a commercial venture, however, this association would constitute a partnership. In such cases, a club might be required to comply with state law governing partnerships.

Purpose and Objective

The purpose and objective of a club must be in compliance with the law and in the best interests of the community, whether a club is incorporated or not. An application for a club charter will be denied if the proposed bylaws provide for illegal methods of management.

The **POLICE POWER** of the state encompasses the supervision of amusements and thereby regulates clubs to make sure that the objectives of these organizations are lawful and that the organizations do not become harmful to society. Statutes may authorize the revocation of a club's charter if the club conducts unlawful activities.

Constitution and Bylaws

The constitution and bylaws adopted by a club constitute a binding contract between the club and its members. There is a presumption that every member of the club is acquainted with its rules. The rules and bylaws of a club must provide for the selection of officers, handling of money or property, selection of members, and dissolution or disbanding of the club itself.

A club's rights and powers are usually governed by applicable statutes and the club's own charter, constitution, and bylaws. Clubs ordinarily have the power to acquire and convey real property, to hold real estate, and to obtain suitable buildings for their accommodation, as well as to borrow money for such purposes.

Private clubs have the right to **IMMUNITY** from public interference, since public authorities have no power to interfere with a private club's festivities when they are organized for a legitimate purpose and do not constitute a breach of the peace.

Liabilities

If a contract is made by a club's duly authorized agent on its behalf, then the club will be liable under the contract. A membership corporation is subject to strictly limited powers and well-defined methods of procedure, and anyone

dealing with such a club is deemed to know this information. Unincorporated clubs are not liable for members' debts.

Concerning liability to its members for TORTS, an incorporated club that has a clubhouse and is financed by membership dues is financially responsible for injuries due to its NEGLIGENCE. Similarly, a club, whether incorporated or not, that maintains a clubhouse has a duty to keep the premises reasonably safe for its members. It also has a duty to inform and warn guests of all dangers related to the enjoyment of club privileges, that are not immediately observable.

A club may have various responsibilities to nonmembers. For example, a hunting club may be required to carry insurance in case of an accidental injury within its boundaries. Similarly, a club owes invitees on club property the duty to

exercise ordinary care to prevent them from being injured.

Protecting Civil Rights

Almost every organization that provides food, drink, lodging, or entertainment must obey the federal CIVIL RIGHTS laws and any applicable state statutes. The federal laws are designed to protect all people from interference with their right to get a job or education, participate in government, and enjoy public accommodations.

Private membership clubs are exempted from these civil rights laws in order to preserve their rights to privacy and FREEDOM OF ASSOCIATION. In attempting to determine whether an organization genuinely deserves private club status, courts have considered a number of factors, including the club's criteria for admission, membership fees, membership control over the



During 2002 and 2003, William W. "Hootie" Johnson, chairman of the private, all-male Augusta National Golf Club, engaged in a publicized dispute over the club's membership policies.

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PHOTOS

organization's operations, and use of facilities by nonmembers. Because the courts have applied these factors on a case-by-case basis, the results have been inconsistent. For example, recreational sports clubs such as golf, tennis, fishing and hunting, private dining, and swimming clubs have generally been found to provide public accommodations. Fraternal orders and lodges have proven to be more difficult to categorize. In four decisions dealing with these types of organizations, the Supreme Court narrowed the definition of freedom of association and upheld the constitutionality of state statutes designed to keep private clubs from discriminating.

The Jaycees In the first case, *ROBERTS V. UNITED STATES JAYCEES*, 468 U.S. 609, 104 S. Ct. 3244, 82 L. Ed. 2d 462 (1984), the Supreme Court addressed the constitutionality of a state public accommodations law that had been applied to a private club. The club, the U.S. Jaycees, a major national and international civic organization, had been ordered by the Minnesota Department of Human Rights to accept women as full members. The Court rejected the Jaycees' argument that this order violated its constitutional rights. In its decision, the Court identified two distinct types of protected associations: intimate associations and expressive associations.

According to the Court, intimate associations, such as families, are distinguished by "relative smallness, a high degree of selectivity in decisions to begin and maintain the affiliation, and seclusion from others in critical aspects of the relationship." Such associations are always subject to protection, the Court said, whereas large business enterprises are not. Private clubs such as the Jaycees fall somewhere in between the two. According to the Court, factors that may be relevant in determining whether a particular organization is an intimate association include "size, purpose, policies, selectivity, [and] congeniality."

The Court concluded that the Jaycees is not subject to protection as an intimate association because its chapters are large and unselective. With regard to the Jaycees' rights as an expressive association, the Court acknowledged that the organization has the right to associate with others for political, social, economic, educational, religious, and cultural purposes. However, the Court held that this right may be infringed by compelling state interests such as

the desire to eliminate SEX DISCRIMINATION. The Court concluded that Minnesota had such a compelling interest in ensuring women equal access to the leadership skills, business contacts, and employment promotions offered by the Jaycees.

Rotary Clubs Three years after *Roberts*, the U.S. Supreme Court decided *Board of Directors v. Rotary Club*, 481 U.S. 537, 107 S. Ct. 1940, 95 L. Ed. 2d 474 (1987). This case involved the application of the Unruh CIVIL RIGHTS ACT (Cal. Civ. Code § 51 [West 1996]), a California statute that prohibits gender discrimination by all "business establishments," to Rotary clubs. The Rotary is a major national and international service club. The Supreme Court held that application of the act to require the Rotary to admit women as members did not violate the club's FIRST AMENDMENT right to intimate or expressive association. The Court pointed out that Rotary chapters range in size from 20 to more than nine hundred members, the organization has a high dropout rate, and many club activities are carried out in the presence of visitors. In finding that application of the Unruh Act would not interfere significantly with the Rotary's right to expressive association, the Court stated, "Indeed, by opening membership to leading business and professional women in the community, Rotary Clubs are likely to obtain a more representative cross section of community leaders with a broadened capacity for service."

New York Clubs In 1988, in *New York State Club Ass'n v. City of New York*, 487 U.S. 1, 108 S. Ct. 2225, 101 L. Ed. 2d 1 (1988), an association of 125 private clubs challenged the constitutionality of a New York City public accommodations ordinance that prevents discrimination. The ordinance, Local Law No. 63 of 1984, exempts clubs that are "distinctly private" in nature, specifically excluding from that status any club that has more than four hundred members, serves meals on a regular basis, and receives payments directly or indirectly from nonmembers in the pursuit of business. The Court rejected the clubs' challenge to the ordinance, finding that the law could be validly applied.

In this case, the Court went beyond its decisions in *Roberts* and *Rotary* by approving a statutory presumption that large clubs that serve food and receive payments from nonmembers are not entitled to First Amendment protection. The Court emphasized the fact that significant commerce occurs at most of the clubs and that

“business deals are often made and personal contacts valuable for business purposes, employment and professional advancement are formed.” Such characteristics, according to the Court, are significant in determining the non-private nature of clubs. The law upheld by the Court in this case narrowed the definition of a private club in order to remedy a situation deemed inappropriate by a legislative body.

Boy Scouts of America The Supreme Court clarified its position on the reach of civil rights laws in *Boys Scouts of America v. Dale*, 530 U.S. 640, 120 S.Ct. 2446, 147 L.Ed.2d 554 (2000). The Court, in a 5–4 decision, held that forcing the Boy Scouts of America (BSA) to accept gay troop leaders would violate its rights of free expression and free association under the First Amendment. The BSA is a private association and therefore was not subject to state and federal public accommodation laws.

The Supreme Court tied this ruling to its previous decision in *Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston*, 515 U.S. 557, 115 S.Ct. 2338, 132 L.Ed.2d 487 (1995). In *Hurley*, the Court ruled that the sponsor of Boston’s St. Patrick’s Day parade could not be forced to let a group of gays and lesbians participate. The Court held that parades are a form of expression and that the sponsors could not be forced to include “a group imparting a message the organizers do not wish to convey.”

Public Opinion

Despite the fact that private clubs may be exempt from civil rights laws, they are still subject to the power of public opinion. In 2002, the National Council of Women’s Organizations (NCWO), which has approximately six million members from over one hundred groups, announced that it would seek the admittance of women members to the Augusta National Golf Club in Augusta, Georgia. The club, with a membership of three hundred, is the home of the prestigious Masters Golf Tournament. When NCWO stated that it would contact television sponsors of the Masters to seek their help in applying pressure, the club announced it would forgo advertising revenue for the 2003 tournament. The controversy generated friction within the membership, with some members urging the admittance of women and some resigning in protest at the club’s actions in dealing with the demands of NCWO. The NCWO pressed the CBS network not to televise the 2003 tourna-

ment but was rebuffed by the network. However, many corporations declined to sponsor the tournament, a sure indication that the NCWO campaign had some success.

FURTHER READINGS

- Cokorinos, Lee. 2003. *The Assault on Diversity: An Organized Challenge to Racial and Gender Justice*. New York: Rowman & Littlefield.
- Koppen, Margaret E. 1993. “The Private Club Exemption from Civil Rights Legislation—Sanctioned Discrimination or Justified Protection of Right to Associate?” *Pep- perdine Law Review* 20.
- Lauren, Paul Gordon. 1996. *Power and Prejudice: The Politics and Diplomacy of Racial Discrimination*. 2d ed. New York: Westview.
- Sawyer, Thomas. 1993. “Private Golf Clubs: Freedom of Expression and the Right to Privacy.” *Marquette Sports Law Journal* 3 (spring).
- Worth, Diane S., and Nancy M. Landis. 1991. “Does Membership Have Its Privileges? The Limits on Permissible Discrimination in Private Clubs.” *Journal of the Kansas Bar Association* 60 (June–July).

CROSS-REFERENCES

Gay and Lesbian Rights; Women’s Rights.

CO

A prefix that denotes jointness or the state of being conjunct or united. To be together, with, or not separate from; conjoint or combined.

A correspondent in a lawsuit is one who is joined as a defendant in the suit. A *co-owner* is a person who owns something in conjunction with another person. A *co-administrator* is one who jointly handles the management of property with one or more persons.

❖ COBB, THOMAS READE ROOTES

Thomas Reade Rootes Cobb achieved prominence as a legislator and was known for his staunch secessionist views.

He was born April 10, 1823, in Jefferson County, Georgia. An 1841 graduate of the University of Georgia, Cobb was admitted to the Georgia bar the following year. As a jurist he achieved prominence for his authorship of legal publications, including *A Digest of the Statute Laws of the State of Georgia*, which was published in 1851, and for his editorial efforts on twenty volumes of books containing the reports of the Georgia Supreme Court. From 1858 to 1861 he participated in the organization of the Georgia criminal code.

Cobb advocated the secession of Georgia from the Union. He was instrumental in the

“NEGRO SLAVERY,
AS IT EXISTS IN
THE U.S., IS NOT
CONTRARY TO THE
LAW OF NATURE.”
—THOMAS COBB

drafting of the new state constitution of Georgia in 1861 at the Georgia secession convention and participated in the creation of the Constitution of the Confederacy. He was serving as a brigadier general in the Civil War when he was fatally wounded at the Battle of Fredericksburg. He died on December 13, 1862.

❖ COCHRAN, JOHNNIE L., JR.

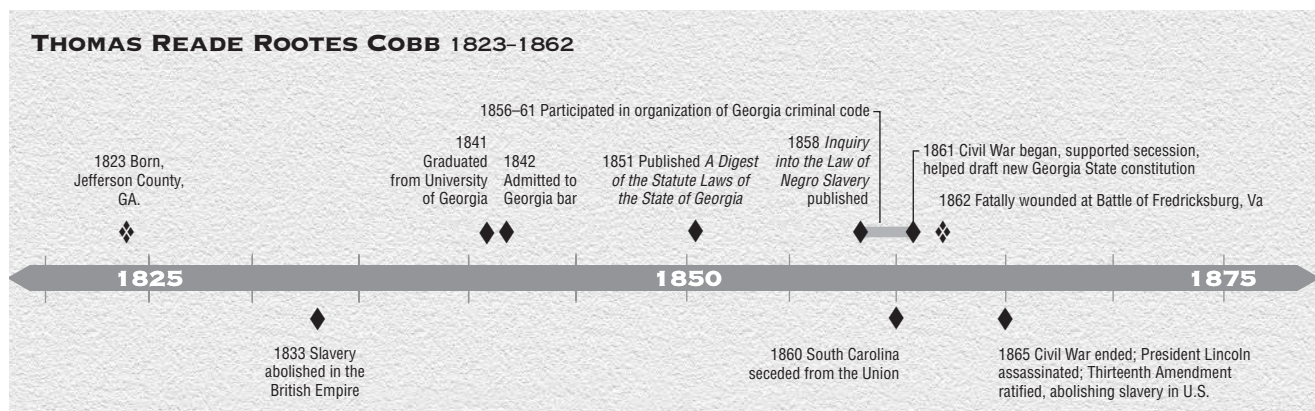
Johnnie L. Cochran Jr. built a reputation as a tough, uncompromising litigator by working on both sides of the courtroom. He has been the third-highest-ranking official of the Los Angeles County district attorney's office, and he has fought numerous cases in private practice. The recurrent theme of his career is social justice: Cochran specializes in representing African-American clients he believes have been treated unfairly by the law. His work on behalf of ordinary citizens in police-brutality cases achieved spectacular success in the 1980s and 1990s, ultimately leading to significant changes in Los Angeles Police Department (LAPD) policy. High-profile cases for celebrity clients—including Michael Jackson and O. J. (Orenthal James) Simpson—have tended to overshadow his less glamorous accomplishments, for which he has won numerous citations, awards, and courtroom victories. His controversial stewardship of Simpson's defense team in 1995 made him a household name.

Growing up in Shreveport, Louisiana, where he was born on October 2, 1937, Cochran had strong role models in his parents. His mother, a homemaker, ran an Avon business. His father and namesake, Johnnie L. Cochran, Sr., sold policies for Golden State Mutual Life Insurance, a large, black-owned company. Cochran's father moved the family to Los Angeles in 1942, where

he was promoted to chief of Golden State's training program. Cochran went on to attend the University of California, Los Angeles, and then Loyola University School of Law. His father remained a great influence and, even in the 1990s, lived in the mansion home of the younger Cochran and his wife. "I think Johnnie got a lot of his ideas about justice from seeing me as he grew up," his father said. "... I tried to make my children sensitive to racism. But we also didn't want them to get consumed by anger." The anger—outrage that became the cornerstone of the young lawyer's career—came later.

Upon graduation from law school in 1962, Cochran wanted to further social justice. Joining the Los Angeles city attorney's office allowed him to do so. As a deputy prosecutor, he represented African-Americans who had been brutalized by Los Angeles police officers. Cases of mistreatment were rife and were getting worse; in 1965, long-simmering racial tensions erupted in widespread rioting in the Watts section of the city. Cochran left for private practice that year and soon had the pivotal case of his young career. He represented the family of Leonard Deadwyler, a young African-American who was shot dead by police officers while rushing his pregnant wife to the hospital. Although Cochran's client lost, the case had lasting personal and professional importance for him. The televised trial made him immediately recognizable in Los Angeles. Moreover, his courtroom performance helped to establish him as a figure whom African-Americans trusted; he later said that the case taught him the importance of police-abuse issues to minority communities.

Cochran had found his cause. He spent much of the next decade in private practice



fighting cases involving excessive force or **SEXUAL ABUSE** by police officers. Most of his clients had little or no money, but, winning time and again, Cochran could afford to take their cases. One loss in court, however, proved to be another turning point in his life. The case of Elmer ("Geronimo") Pratt tested Cochran's faith in the justice system, changed him politically, and troubled him for decades. Pratt was a member of the **BLACK PANTHER PARTY FOR SELF-DEFENSE**, a radical, African-American political organization of the late 1960s. In 1968, the Santa Monica, California, police accused Pratt of shooting to death a white, female teacher in a tennis court **ROBBERY**. Pratt had an apparently strong alibi: He claimed to have been in Oakland at the time of the killing, attending a high-level Black Panther party meeting. The alibi was strengthened by the previous identification of a different suspect by the victim's husband. Nevertheless, Pratt was convicted of murder in 1972.

Pratt's conviction shocked Cochran, who attributed it to institutional racism. "It taught me that you can work within the system and believe in it, but if the government wants to get you, they can go out and get you," he told *Time Magazine* in 1995. "It also taught me that you never stop fighting." Cochran continued to fight for Pratt's release for nearly 25 years, although at least a dozen efforts failed to win **PAROLE** for his client. Then, in 1994, he uncovered new evidence that suggested that Pratt might have been framed by the **FEDERAL BUREAU OF INVESTIGATION (FBI)** in its notorious Counterintelligence Program (**COINTELPRO**), which once was aimed at disrupting the Panthers and other radical groups. Cochran alleged that the FBI had wiretapped his telephone and used informants to weaken Pratt's defense, and that it even had lied in court—all illegal efforts. The evidence convinced the Los Angeles district attorney's office to review the case.

Cochran's ultimate success in winning review of Pratt's case was partly due to the influence that he had accumulated over 30 years in Los Angeles. "He deals effectively with everyone, from presidents to common people," John Mack, president of the Los Angeles Urban League, told *Time Magazine*, "and he knows everyone in between." If Cochran is well-connected, it is owing not only to his affability but also to the unique course that his career has taken. Following a decade of successful private practice, he briefly returned to public service as

chief administrator of the Los Angeles County district attorney's office in the late 1970s. He was third in command. Working beneath Cochran was Gil Garcetti, who later became district attorney.

Returning to private practice in 1980, Cochran soon took a case that epitomized his professional and moral concerns: It involved a dead African American and disavowals of responsibility by police officers. Ron Settles, a black football player from California State University, had been arrested and jailed for speeding; soon afterward, he was found hanged in his cell. The LAPD called his death a suicide, but Cochran convinced the family to have Settles's body exhumed for a new autopsy—which revealed that Settles had died from being choked. At the time, choke holds were commonly used by Los Angeles police officers when making arrests. In a **WRONGFUL DEATH** suit, Cochran persuaded a jury that Settles had been choked to death by officers, winning an award for the family of \$760,000. He later noted ironically that when he had begun practicing law, "you would be almost held in **CONTEMPT** of court if you said a police officer was lying." The suit helped to bring about an important reform of LAPD policy: Shortly thereafter, the department banned the use of the choke hold.

"I THINK RACE
PLAYS A PART
OF EVERYTHING
IN AMERICA,
LET ALONE
THIS TRIAL."
—JOHNNIE
COCHRAN JR.

Prominent clients flocked to Cochran. He won a dismissal of rape charges brought against football great Jim Brown in 1985. He also secured an acquittal for actor Todd Bridges, star of the television comedy show *Diff'rent Strokes*. Bridges had been accused of attempted murder, attempted MANSLAUGHTER, and assault with a deadly weapon, but even the testimony of four eyewitnesses did not stop Cochran from winning the case in 1989. Cochran's work for pop singer Michael Jackson achieved only mixed success. After Jackson was accused of sexual molestation of a 13-year-old boy in 1993, Cochran managed to keep the case from going to court. He arranged a controversial private settlement with the boy's family, which reportedly totaled \$10 million.

Even when he represents white citizens, race is often an issue. After the epochal Los Angeles riots in 1992, Cochran represented Reginald Denny, a white truck driver whose near-fatal beating by black assailants was broadcast live on television. During the 1993 criminal trial of two suspects, Denny suddenly embraced the defendants' mothers. The spontaneous display of compassion—and apparent lack of any resentment—stunned onlookers. Praising his client, Cochran observed, "I guess he's a lot kinder than you and I." Both defendants were acquitted in a controversial verdict, but Cochran subsequently pursued a separate civil suit against the city of Los Angeles based on a novel legal claim: The suit alleged that police officers violated Denny's CIVIL RIGHTS by failing to come to his aid during the beating because they had chosen not to enter a predominantly black neighborhood.

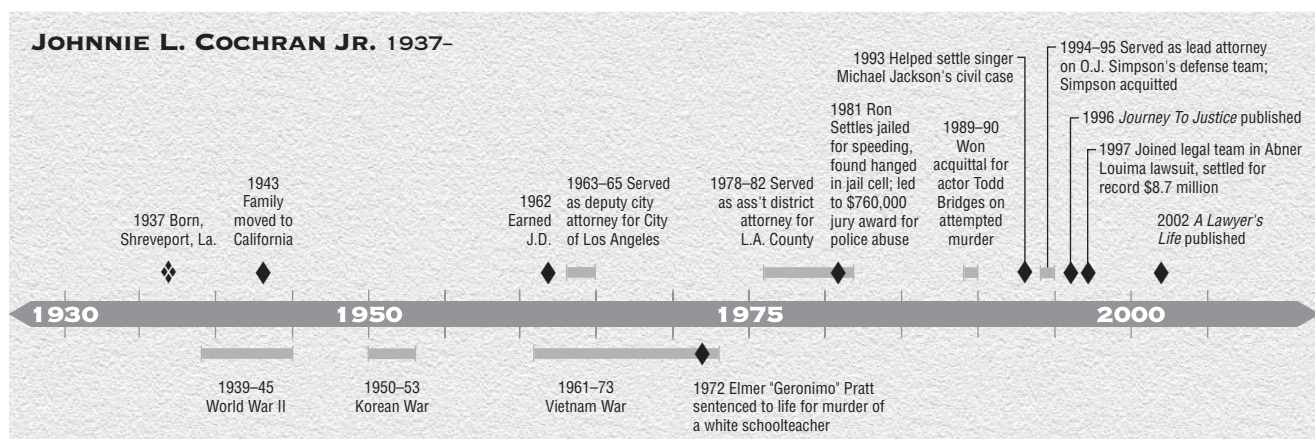
The preparation of O. J. Simpson's defense initially began without Cochran's participation.

Charged in the double murder of Nicole Brown Simpson and Ronald Lyle Goldman, Simpson brought in Cochran only after hiring Los Angeles defense attorney ROBERT SHAPIRO. As the new leader among several prominent attorneys, Cochran attacked the prosecution for "a classic rush-to-judgment case."

Cochran's work for Simpson divided critics. Legal analysts praised his eloquent OPENING STATEMENT and occasionally brilliant tactics that undermined the prosecutors' lengthy and repetitive case. But Cochran was criticized when the defense began presenting its own case, particularly for calling witnesses whose testimony backfired. Despite the opinions of critics, Cochran's role in the Simpson trial was pivotal. Simpson's acquittal was a resounding victory for Cochran. Shortly after the bombing of a federal office building in Oklahoma City in 1995, several families of victims retained his services in anticipation of bringing their own lawsuits.

Like MARCIA CLARK, his adversary in the Simpson trial, Cochran has found fame and fortune on the lecture circuit. He has given speeches, has moderated panel discussions, and has been a host on COURT TV. In 1998, Cochran published his autobiography, *Journey to Justice* which recounted his life story and a number of the significant legal cases in which he was involved, including the O.J. SIMPSON TRIAL.

Cochran now focuses his law practice on civil rights and personal injury cases. He has represented clients as diverse as ROSA PARKS and Sean "P. Diddy" Combs. In 2002, representatives of Rev. Al Sharpton's National Action Network announced that it had retained Cochran to represent workers who had been laid off from the Enron Corporation.



FURTHER READINGS

"Johnnie Cochran to Represent Rosa Parks In Outkast Appeal." MTV. Available online at www.mtv.com/news/articles/1432968/20000809/outkast.jhtml; website homepage: www.mtv.com (accessed March 22, 2003).

Robertson, Dale. "Talent's Untapped in Coaching Circles." *Houston Chronicle*. Available online at www.chron.com/cs/CDA/story.htm/sports/robertson/1780178; website homepage: www.chron.com (accessed March 22, 2003).

Sales, Robert J. "Johnnie Cochran to be MLK Speaker." MIT. Available online at web.mit.edu/newsoffice/tt/2001/jan10/cochran.html; website homepage: www.web.mit.edu (accessed March 22, 2003).

Court TV Internet site. Biographical data on Johnnie L. Cochran, Jr. Available online at www.courtTV.com (accessed November 20, 2003).

CROSS-REFERENCES

Bailey, Francis Lee; Clark, Marcia Rachel.

❖ COCKBURN, SIR ALEXANDER JAMES EDMUND

Sir Alexander James Edmund Cockburn was an eminent British jurist. He was born December 24, 1802. He graduated in 1829 from Trinity Hall, Cambridge, England. In 1847, Cockburn began his career in Parliament as a liberal. He served in the British government as attorney general from 1851 to February 1852; he resumed these duties in December of 1852 and continued until 1856. In that same year, he presided as chief justice of the Court of Common Pleas. In 1859 he was appointed Lord Chief Justice of England.

The 19th century British jurist is known for successfully defending Daniel M'Naghten, who killed British Prime Minister Sir Robert Peel's secretary (thought by M'Naghten to be the prime minister himself). In the M'Naghten case of 1843, Cockburn established the customary test of insanity in Anglo-American criminal

proceedings, which states the defendant is so mentally disturbed that he is unable to fully realize that what he did was actually wrong.

Cockburn died November 21, 1880, in London.

CODE

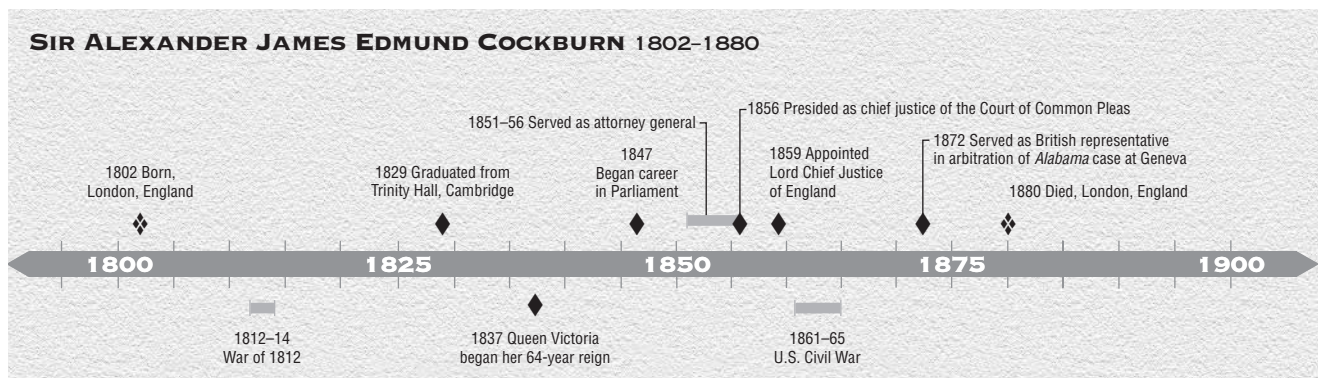
A systematic and comprehensive compilation of laws, rules, or regulations that are consolidated and classified according to subject matter.

Many states have published official codes of all laws in force, including the COMMON LAW and statutes as judicially interpreted, that have been compiled by code commissions and enacted by legislatures. The U.S. Code (U.S.C.) is the compilation of federal laws.

CODE OF FEDERAL REGULATIONS

The NEW DEAL program of legislation enacted during the administration of President FRANKLIN ROOSEVELT established a large number of new federal agencies, which generated a shapeless and confusing mass of new regulations. There was no one place for a person affected by the regulations to examine them until 1935 when Congress created the FEDERAL REGISTER, a daily publication of the rules and federal documents produced by the EXECUTIVE BRANCH of the federal government and by the agencies. By 1937 this chronological compilation of regulations was effective in informing the public of new regulations, but it did not help a researcher who wanted to locate a regulation promulgated earlier. A publication that organized the regulations by subject was needed.

To meet this need, Congress created the Code of Federal Regulations (C.F.R.) as a more permanent and better organized source of federal regulations.



The original methods employed in compiling the code are still used. Documents are selected from the *Federal Register* and arranged in a scheme of fifty titles, some of which are the same as the titles used to organize federal statutes in the U.S. Code. Each title is divided into chapters, parts, and sections. A particular provision can be cited by reference, first to the title and then to the section where it is found. For example, standards promulgated by the Occupational Safety and Health Administration to promote safe workplaces are cited as 29 C.F.R. 1910. This means that they are found in Part 1910 of Title 29 in the Code of Federal Regulations. Title 29 contains regulations relating to labor.

The Code of Federal Regulations is kept up-to-date by a complete revision each year. New pamphlets are issued containing all the regulations in force at the time of publication. One-fourth of the pamphlets are revised at the end of each quarter of the year. For example, revisions of Titles 1 to 16 are issued as of January 1. Each volume contains a list of sections that have been affected by changes since January 1, 1964. There is a separate list covering changes made between 1949 and 1964. Revised pamphlets, however, do not cover changes that were made and then discarded or modified again during the year.

To facilitate research, one volume of the C.F.R. contains both a general index and a finding aid. A general index helps researchers find regulations by looking up the name of the agency issuing them or the subject covered by them. The finding aid helps a researcher convert information from one source of law to a parallel reference in the Code of Federal Regulations. It shows how to locate a regulation in the C.F.R. after discovering a reference to it in the U.S. Code.

It is necessary to have the Code of Federal Regulations to use along with the daily issues of the *Federal Register* because the *Federal Register* announces changes in federal regulations by listing them according to the parts in the C.F.R. that are affected.

CODE OF HAMMURABI

The Code of Hammurabi was a comprehensive set of laws, considered by many scholars to be the oldest laws established; they were handed down four thousand years ago by King Hammurabi of Babylon.



This stele shows King Hammurabi (c. 1780 B.C.) standing before Shamash, a Sumerian sun god associated with justice. The law code is set out in cuneiform writing below the figures. GIANNI DAGLI ORTI/CORBIS

Although the Code of Hammurabi was essentially humanitarian in its intent and orientation, it contained the “eye for an eye” theory of punishment, which is a barbarian application of the concept of making the punishment fit the crime. The Code of Hammurabi recognized such modern concepts as that of corporate personality.

CODE OF JUDICIAL CONDUCT

A collection of rules governing the conduct of judges while they serve in their professional capacity.

The Code of Judicial Conduct was formulated by the AMERICAN BAR ASSOCIATION (ABA) in 1972. The code itself does not have the force of law, but federal and state governments have adopted it and use violations of its rules as the basis for punitive action against judges.

History of the Code

The first rules governing the conduct of judges in the United States were the Canons of

Judicial Ethics, which were written in 1924 by an ABA committee chaired by WILLIAM HOWARD TAFT, then chief justice of the U.S. Supreme Court. Prior to the promulgation of these canons, no cohesive framework existed to inform judges of the ethical obligations of their position. Judges were subject to removal, but only through the cumbersome, politicized procedures of congressional IMPEACHMENT, address, or recall.

A judge's leadership as the commissioner of professional BASEBALL helped provide the inspiration for the Canons of Judicial Ethics. In 1919, eight members of the Chicago White Sox conspired to purposely lose the 1919 World Series in exchange for payments from bookmakers. To restore public faith in the professional baseball league, the owners of the teams, on November 12, 1920, asked prominent federal judge KENESAW MOUNTAIN LANDIS to be the game's new commissioner. Landis accepted the position, which he subsequently filled while simultaneously serving as a U.S. district court judge in the Northern District of Illinois. Landis helped restore professional baseball's integrity, but his highly publicized role as the sport's commissioner damaged the integrity of the judiciary. The ABA considered his simultaneous service as a federal court judge a conflict of interest, and it voted to censure Landis in 1921. Landis resigned from the bench on March 1, 1922. In 1924, in part as a response to the Landis affair, the ABA promulgated the Canons of Judicial Ethics to regulate the activity of judges.

The Canons of Judicial Ethics were criticized as being too vague to provide guidance in resolving important questions. Even the preamble revealed the canons to be nothing more than an ABA wish list:

The American Bar Association, mindful that the character and conduct of a Judge should never be objects of indifference, and that declared ethical standards tend to become habits of life, deems it desirable to set forth its views respecting those principles which should govern the personal practice of members of the Judiciary in the administration of their office. The Association accordingly adopts the following Canons, the spirit of which it suggests as a proper guide and reminder for judges, and as indicating what the people have a right to expect from them.

A majority of states adopted the canons or wrote their own based on the ABA version. Other states had their supreme courts write ADVISORY OPINIONS informed by the canons.

Nevertheless, the canons were roundly criticized as ineffective and were replaced by the ABA in 1972 with the Code of Judicial Conduct.

The Current Code

The preface to the code stands in sharp contrast to the weak preamble of the canons. According to the preface, the Code of Judicial Conduct "states the standards that judges should observe. The canons and text establish mandatory standards unless otherwise indicated. It is hoped that all jurisdictions will adopt this Code and establish effective disciplinary procedures for its enforcement."

The code borrows much from the original canons. However, it is more specific and thus more enforceable. There had been 36 separate original canons, "a curious mixture of generalized, hortatory admonitions and specific rules" (Sutton, 1972 *Utah L. Rev.* 355, 355-56). The code trimmed the number of canons to seven and supplied each canon with subsections and comments.

In 1990, the code was amended by the ABA. Two canons were deleted, resulting in a total of five canons, and the wording of the remaining canons was changed to achieve gender neutrality. Changes and additions were also made to the subtext and comments accompanying each remaining canon.

Canon 1

A judge shall uphold the integrity and independence of the judiciary.

Canon 1 addresses the need for impartiality in judicial proceedings and the importance of judicial independence. This canon is a catchall; it holds, in part, that judges should "participate in establishing, maintaining and enforcing high standards of conduct" and "personally observe those standards."

Canon 2

A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.

Canon 2 broadly prohibits conduct that would impair, or appear to impair, judicial impartiality. A judge must comply with the law and avoid favoritism and the appearance of favoritism. For example, a judge may not be a member in an organization that invidiously discriminates on the basis of race, sex, religion, or national origin.

Canon 3

A judge shall perform the duties of judicial office impartially and diligently.

Canon 3 contains rules regarding conduct in the judge's official capacity. This canon is the most comprehensive. It addresses the judge's duties in general, public comments, administrative responsibilities, disciplinary responsibilities, and disqualification. Canon 3 also contains a variety of rules designed to eliminate bias and prejudice.

Canon 4

A judge shall so conduct the judge's extrajudicial activities as to minimize the risk of conflict with judicial obligations.

Canon 4 reaches far into the judge's private life. Although the first comment acknowledges that a judge is not expected to live in isolation, comment 2 directs that a judge should refrain from, for example, jokes or remarks that may demean individuals "on the basis of their race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status." The canon prohibits a judge from appearing at a public hearing before, or consulting with, an executive or legislative body or official. An exception is made if the appearance concerns the law, the legal system, the administration of justice, or the judge or the judge's interests.

A judge is prohibited, through this canon, from accepting appointment to a government committee, commission, or position if the committee, commission, or position is concerned with issues other than the improvement of the law, the legal system, or the administration of justice. Exceptions to this prohibition are made for historical, educational, and cultural activities.

This canon also prohibits judges from practicing law (except on the judge's own behalf or to give uncompensated advice), accepting employment or service in organizations that would ordinarily come before the judge, and engaging in business dealings that would be perceived as an exploitation of the judge's position. Financial interests, gifts, and the reporting of financial assets are also covered in Canon 4.

Canon 5

A judge or judicial candidate shall refrain from inappropriate political activity.

Canon 5 prohibits public political activity by a judge. A judge may not, for example, act as a leader or hold an office in a political organization, publicly endorse a political candidate, or make speeches on behalf of a political organization.

Under this canon, a judicial candidate may not promise any judicial conduct except the

faithful and impartial performance of official duties. A judicial candidate may not authorize or knowingly permit another person to act in violation of Canon 5, but a judicial candidate may establish a campaign committee to carry out advertising and fund-raising. Canon 5 also identifies which provisions of the code do not apply to retired, part-time, and temporary judges.

Each state has crafted its own interpretation of Canon 5 and the boundaries of political campaigns for judgeships. Some states are looser than others in terms of what a candidate may say or whether a political party may endorse a candidate. In many states judicial elections have been nonpartisan and lackluster, as candidates cannot disclose their political or legal view without risk of being disciplined under the professional conduct rules for attorneys.

Minnesota's restrictions on political speech for judicial candidates triggered a lawsuit that led to a landmark Supreme Court decision in *Republican Party of Minnesota v. White*, 536 U.S. 765, 122 S.Ct. 2528, 153 L.Ed.2d 694 (2002). A lawyer sought to run for the Minnesota Supreme Court but objected to Canon 5 restrictions. The Minnesota Republican Party sued in federal court to remove Minnesota's restrictions on speech and party endorsements in judicial elections. The district court and the circuit court of appeals rejected the claims, finding that the state had good reasons for regulating judicial elections.

The U.S. Supreme Court, however, overturned the restrictions on what a candidate can say in a campaign. The Court found that Canon 5 *announce clauses*, which prohibit candidates from discussing their views on legal and political views, were unconstitutional under the **FIRST AMENDMENT**. Such restrictions are illegal because they regulate speech based on content and burden an important category of speech.

The Court applied the **STRICT SCRUTINY** test to review the Minnesota rules. Under this test the state needed to show that its rules were narrowly tailored to serve a compelling state interest. Minnesota argued that promoting impartial judicial elections was a compelling **STATE INTEREST** but the Court rejected the argument, finding the interest to be vague and hard to define. The Court recognized that unrestricted speech might change the tenor of judicial elections, but it found that this was the price the state must pay if it was to select judges by election rather than by some other method, such as judicial

selection. In the wake of this decision a number of states began the process of revising their judicial codes to change election rules.

Enforcement of the Code

Forty-seven states and the District of Columbia have adopted the code in whole or in part. Montana, Rhode Island, and Wisconsin have not adopted it, but each has fashioned its own set of regulations based largely on the code. The JUDICIAL CONFERENCE OF THE UNITED STATES adopted the Code of Judicial Conduct in 1973, thus subjecting federal judges to its rules.

In 1980, Congress enacted the Judicial Councils Reform and Judicial Conduct and Disability Act (28 U.S.C.A. §§ 331, 332, 372, 604 [1982]). This act authorized each of the 13 federal circuits to establish a judicial council to review complaints against federal judges. The judicial council, comprising judges, was also authorized to order sanctions for violations of the Code of Judicial Conduct.

When the judicial council of a federal circuit receives a complaint of judicial misconduct, the chief judge of the circuit court of appeals conducts an initial review of the complaint. The chief judge may dismiss the complaint as baseless. If the chief judge finds that the complaint has merit, she or he assembles a special committee, which makes findings and refers the complaint to the entire judicial council. If the council finds that the judge in question has violated the Code of Judicial Conduct, it may suspend the judge from office, or it may publicly or privately reprimand the judge.

The aggrieved judge may appeal the judicial council's order to a review committee known as the U.S. Judicial Conference Committee to Review Circuit Council Conduct and Disability Orders. The decision of this committee is final and may not be appealed. Every state maintains a similar process to govern its state court judges.

A federal circuit judicial council may not remove a judge on its own. If removal is considered by the judicial council, the matter is referred to the Judicial Conference of the U.S. Courts. If the Judicial Conference finds cause for removal, it refers the matter to the U.S. House of Representatives, which holds hearings on the proposed removal.

Enforcement of the Code of Judicial Conduct is considered a matter of public concern. In *In re Complaints of Judicial Misconduct*, 9 F.3d 1562 (U.S. Jud. Conf. 1993), the U.S. Judicial

Conference Committee to Review Circuit Council Conduct and Disability Orders held that a proceeding on a complaint of judicial misconduct or disability need not satisfy the standing requirements necessary in most judicial proceedings. (Standing is the doctrine that the person seeking relief of the court must be the person aggrieved by the alleged conduct.) Essentially, the committee's holding meant that any person may lodge a complaint of judicial misconduct against a judge, with the appropriate JUDICIAL REVIEW council.

FURTHER READINGS

- Baker, Thomas E. 1989. *The Good Judge: Report of the Twentieth Century Fund Task Force on Federal Judicial Responsibility*. New York: Twentieth Century Fund Press, Priority Press.
- Baran, Jan Witold. 2002. "Judicial Candidate Speech After *Republican Party of Minnesota v. White*." *Court Review* (spring).
- Martineau, Robert J. 1972. "Enforcement of the Code of Judicial Conduct." *Utah Law Review* 1972.
- Morgan, Thomas D., and Ronald D. Rotunda. 1993. *1993 Selected Standards on Professional Responsibility*. Westbury, N.Y.: Foundation Press.
- Shaman, Jeffrey M., Steven Lubet, and James J. Alfini. 1994. *Judicial Conduct and Ethics*. 1994 cum. supp. Charlottesville, Va.: Michie.
- . 1990. *Judicial Conduct and Ethics*. Charlottesville, Va.: Michie.

CROSS-REFERENCES

Ethics, Legal.

CODE OF MILITARY JUSTICE

See MILITARY LAW.

CODE OF PROFESSIONAL RESPONSIBILITY

See PROFESSIONAL RESPONSIBILITY.

CODE PLEADING

A statutory scheme that abolished the ancient common-law FORMS OF ACTION and replaced the overly technical system of COMMON-LAW PLEADING with simplified provisions for a plaintiff to bring a lawsuit and a defendant to answer the claims alleged against him or her.

As the COMMON LAW developed in England after the Norman Conquest in 1066, a plaintiff could start a lawsuit only by obtaining a writ from the king or the king's chancellor. In time these writs took on fixed forms and a plaintiff could obtain one only if the words of the claim

fit one of the established forms of action. There was no room for variation in the words of the plaintiff's complaint or the defendant's response. By the fourteenth century the forms of action had become quite rigid and they took on the same overly technical characteristics under the common law in the United States. Frequently a worthy claim was tossed out of court because of some miscalculation or misstatement in the pleadings and justice was ill-served.

In 1848 New York enacted a new code to govern PLEADING in the courts of that state. It was called the Field Code after DAVID DUDLEY FIELD, the man who devised it. A number of other states followed the lead of New York. This pattern of pleading a CAUSE OF ACTION or a response came to be called code pleading.

Common-law pleading had required reducing every case to one claim and one response. Since grievances did not always fit into common-law forms, code pleading abandoned it. All the old forms of action were abolished and the extreme formality of common-law pleading was abandoned. Under code pleading the plaintiff has only to make a statement of facts that, if true, justify legal relief. The only requirement is that those facts fit the general pattern of some established legal right and that they state a claim on which relief can be granted. Furthermore, the plaintiff can present alternative or even inconsistent sets of facts and leave it to the trier of fact to establish which are correct. This is allowed when the plaintiff does not know all the facts affecting the claim, so long as the pleading is made honestly and in GOOD FAITH. More than one cause of action can be alleged but they must be stated as separate counts. For example, some states allow a simplified form of pleading of a breach of contract. The plaintiff may simply state that money is owed but has not been paid or services have been rendered but payment has not been made.

Code pleading solved many of the problems associated with common-law pleading but it also spawned a new controversy. The requirement that a plaintiff set out a claim by reciting facts justifying relief left open the question of what facts might be included. It has often been said that a plaintiff need plead ULTIMATE FACTS, not legal conclusions. Case after case has been fought on this point. The distinction primarily concerns how much detail must be given. A plaintiff must be able to show that he or she has a legal right, the defendant breached or violated

that right, and the plaintiff thereby suffered some harm.

CODICIL

A document that is executed by a person who had previously made his or her will, to modify, delete, qualify, or revoke provisions contained in it.

A codicil effectuates a change in an existing will without requiring that the will be reexecuted. The maker of the codicil identifies the will that is to be changed by the date of its execution. The codicil should state that the will is affirmed except for the changes contained therein. The same formalities that are necessary for the valid execution of a will must be observed when a codicil is executed. Failure to do so renders the codicil void.

CODIFICATION

The collection and systematic arrangement, usually by subject, of the laws of a state or country, or the statutory provisions, rules, and regulations that govern a specific area or subject of law or practice.

The term *codification* denotes the creation of codes, which are compilations of written statutes, rules, and regulations that inform the public of acceptable and unacceptable behavior.

U.S. law is often described as a COMMON LAW system of JURISPRUDENCE. This means that it relies on previous cases, or precedents, to determine procedures and to decide the outcome of cases. U.S. jurisprudence also involves the interpretation of written laws, including constitutions, regulations, ordinances.

Codification rearranges and displaces prior statutes and case decisions. Codification of an area of law generally constitutes the whole source that is relied upon for a legal question in that area. Thus, when a state codifies its criminal laws, the statutes contained within the new code supersede the laws that had been in place prior to the codification. There are exceptions to this general rule, however. For example, the Michigan Supreme Court ruled in 1994 that Dr. JACK KEVORKIAN could be prosecuted under Michigan common law for assisting patient with suicide, despite the absence in Michigan's criminal code of a statute that prohibits such action law (*People v. Kevorkian*, 447 Mich. 436, 527 N.W.2d 714).

Public demand for written laws can be traced to the dawn of recorded history. The first known codification of laws is attributed to Ur-

Nammu, king of Ur, in the twenty-fifth century B.C. Lipit-Ishtar, king of Isin, in ancient Sumer, promulgated a written code around 2210 B.C. Hammurabi, a monarch in Babylonia, codified laws in the eighteenth century B.C. Both Lipit-Ishtar and Hammurabi announced in the prologues of their respective codes that these compilations established justice.

Ancient Greek and Roman civilizations continued the practice of codification. However, their written codes were not always helpful. The Roman emperor Caligula wrote his laws in small characters and hung them high on pillars in order to ensnare the public. Julius Caesar attempted codification, but he was unable to reduce the enormous body of **ROMAN LAW** to its essentials.

Not until the sixth century A.D. did Rome, under emperor **JUSTINIAN I**, accomplish a complete codification of its laws. The Code of Justinian, known as the *Corpus Juris Civilis* (Body of Civil Laws), became the legal authority of Rome in 533–34 A.D. Justinian's code completely revised imperial laws; omitted obsolete, contradictory, and repetitive laws; and contained a digest of legal essays for guidance. The *Corpus Juris Civilis* was a landmark in **LEGAL HISTORY**, and it served as the basis for modern **CIVIL LAW** systems.

Civil law systems—based on comprehensive codes—were installed in such countries as Germany, France, Austria, Switzerland, Italy, Japan, and Spain. Common law systems—based on case precedents—developed in England, South Africa, and Australia. Jurisprudence in colonial America was based on the English common law system.

At first, all American colonies enacted laws, but none of these statutes purported to be a comprehensive codification of court procedures or of substantive areas of law (such as **CRIMINAL LAW**, real and personal **PROPERTY LAW**, or **ADMIRALTY LAW**). Early codification efforts were limited in scope to basic concepts and general criminal prohibitions. In 1611, Virginia became the first colony to adopt and print a body of laws. Massachusetts wrote the *Liberties of the Massachusetts Colony of New England* in 1641, and then the *Laws and Liberties of Massachusetts* in 1648. The Massachusetts codes identified simple rules of conduct based on biblical principles. Connecticut published its first code in 1650. Idolatry, blasphemy, and witchcraft were identified as capital offenses in its *Book of General Laws*. In 1665, Long Island and Westchester,

New York, adopted a set of laws relating to the rights of persons and property, and to civil and criminal procedures. Aside from these and similar laws, jurisprudence in colonial America was guided by precedent.

The civil law system and the common law system were driven by diverging philosophies. Proponents of comprehensive codification and the civil law system saw the benefits of public notice. By using simple language to inform the citizenry, the state could allow people more freedom to conduct their affairs without fear of the unexpected. Codifiers contended that it was more democratic to live by rules that had been enacted by elected legislators, rather than judges, and that the common law system was too vast and obtuse for the lay public.

Supporters of the common law system resisted codification. They noted that rules that were culled from reported case decisions and written in digests notified the public of behavior standards, and argued that it was impossible to distill legal nuances into authoritative rules. Common law advocates maintained that a simple rule could not be written to apply to all of the situations that it might cover. They further argued that precedents, carefully developed over the centuries, were fairer than rules reflecting moods of the moment.

The debate over codification raged in the 1800s. The democratic revolutions in France and the United States inspired codifiers, who emphasized that codification by legislators would reflect the will of the people more than would law as determined by judges. In 1804, France enacted the *Code Civil*, a set of rules that were designed to regulate the organization of courts, civil court procedures, remedies, and the execution of judgments. The *Code Civil*, renamed the *Code Napoléon* during Napoléon's reign as emperor, was supplemented shortly after 1804 to contain five codes relating to **CIVIL PROCEDURE**, commerce, **CRIMINAL PROCEDURE**, criminal laws, and the regulation of **SLAVERY** in French colonies.

In the United States, the *Code Napoléon* inspired French-influenced Louisiana to enact a similar comprehensive code in 1824. A codification movement was also sparked in the northern states. In 1848, **DAVID DUDLEY FIELD** (1805–94) convinced the New York Legislature to enact the *Code of Civil Procedure*, which replaced a complicated common law system of **PLEADING** and installed a simpler, more rational system.

The U.S. Congress passed the U.S. Code in 1926. Before the enactment of this code, federal laws were contained in the Revised Statutes and the subsequent Statutes at Large. The new U.S. Code synthesized and rearranged those statutes, divided them into 50 titles, and compiled them all in four volumes. In 1932, a new edition of the U.S. Code was published. Now, a new edition of the U.S. Code is promulgated every six years, with a cumulative supplement printed for each title in every intervening year.

Procedural rules have been codified as well. The resulting codes include the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure, and the **FEDERAL RULES OF EVIDENCE**. Most states have codified their procedural rules based on these federal codes.

The American Law Institute (ALI), a group of legal scholars, has been responsible for the most recent codification movement in the United States. The ALI has written **RESTATEMENTS OF LAW** for such areas as contracts, **TORTS**, and conflict of laws. The restatements do not have the force of law, but they are used by states as models for codification, and courts refer to them in judicial decisions. The ALI also drafts codes such as the **MODEL PENAL CODE** in an effort to help standardize and make consistent the application of law throughout the United States. The ALI also works with the National Conference of Commissioners to promote uniform laws. The most notable of these efforts is the **UNIFORM COMMERCIAL CODE**, a collection of laws relating to commercial transactions such as sales and leasing of goods, transfer of funds, **COMMERCIAL PAPER**, bank deposits and collections, letters of credit, investment **SECURITIES**, and **SECURED TRANSACTIONS**. The Uniform Commercial Code has been adopted in whole or in part by all of the states.

Administrative agencies follow their own procedural and substantive codes. The **CODE OF FEDERAL REGULATIONS** contains the general body of regulatory laws governing practice and procedure in federal administrative agencies. This code is divided into 50 titles and is revised annually. All states have codified regulations for their own administrative agencies.

Yet another compilation of statutes, rules, and regulations is the **UNIFORM CODE OF MILITARY JUSTICE**, which covers the substantive and procedural law governing the armed forces of the United States.

FURTHER READINGS

- Clarke, R. Floyd. 1982. *The Science of Law and Lawmaking: Being an Introduction to Law, a General View of Its Forms and Substance, and a Discussion of the Question of Codification*. New York: Macmillan, 1898. Reprint, Littleton, Colo.: Rothman.
- Palmer, Vernon V. 1988. "The Death of a Code—The Birth of a Digest." *Tulane Law Review* 60, no.2 (December).
- Rosen, Mark D. 1994. "What Has Happened to the Common Law? Recent American Codifications, and Their Impact on Judicial Practice and the Law's Subsequent Development." *Wisconsin Law Review*.

CROSS-REFERENCES

Code Pleading; Napoleonic Code; U.S. Code.

COERCION

The intimidation of a victim to compel the individual to do some act against his or her will by the use of psychological pressure, physical force, or threats. The crime of intentionally and unlawfully restraining another's freedom by threatening to commit a crime, accusing the victim of a crime, disclosing any secret that would seriously impair the victim's reputation in the community, or by performing or refusing to perform an official action lawfully requested by the victim, or by causing an official to do so.

A defense asserted in a criminal prosecution that a person who committed a crime did not do so of his or her own free will, but only because the individual was compelled by another through the use of physical force or threat of immediate serious bodily injury or death.

In the laws governing wills, coercion is present when a testator is forced by another to make provisions in his or her will that he or she otherwise would not make if permitted to act according to free choice. It is an element of both duress and **UNDUE INFLUENCE**, two ways in which a testator is deprived of his or her free choice in making the will. If coercion is established in a proceeding to admit a will to probate, the document will be denied probate, thereby becoming void; and the property of the decedent will be distributed pursuant to the laws of **DESCENT AND DISTRIBUTION**.

Coercion, as an element of duress, is grounds for seeking the **RESCISSION** or cancellation of a contract or deed. When one party to an instrument is forced against his or her will to agree to its terms the document can be declared void by a court. A marriage may be annulled or a separation or **DIVORCE** granted on the grounds of coercion.



Patty Hearst, shown here in a poster issued by the Symbionese Liberation Army, later claimed she was coerced into committing crimes on behalf of the organization. AP/WIDE WORLD PHOTOS

The coercion of small businesses by a cartel to fix prices of particular items supplied to them is a violation of **ANTITRUST LAWS**, which are intended to prevent the restraint of competition in commerce. Laws regulating labor-management relations are violated by coercion when the employer coerces employees not to join a **LABOR UNION** or when a union representative pressures, uses physical force, or threatens an employee into joining the union.

Coercion is recognized as a defense in prosecutions for crimes other than murder. If an accused can establish that he or she committed a crime as a result of the coercion imposed by another the defendant will be acquitted on the charge as a **MATTER OF LAW**. He or she will not be excused for the crime if there was only fear of minor physical injury, damage to reputation, or property loss. The person who coerces another to commit a crime is guilty of the crime committed. The coercer can also be prosecuted for the separate crime of coercion.

Coercion by law is the rendition of a judgment or a decree by a court, tax assessment board, or other **QUASI-JUDICIAL** body for an amount of money presently due that mandates

the sale of property owned by the defendant to pay the judgment.

COGNIZABLE

The adjective “cognizable” has two distinct (and unrelated) applications within the field of law. A cognizable claim or controversy is one that meets the basic criteria of viability for being tried or adjudicated before a particular tribunal. The term means that the claim or controversy is within the power or jurisdiction of a particular court to adjudicate.

Conversely, a “cognizable group” of jurors or potential jurors refers to that common trait or characteristic among them that is recognized as distinguishing them from others, such as race, ethnicity, and gender. Trial counsel are generally prohibited from eliminating jurors who are in the same cognizable group as that of a party or litigant through discriminatory **PEREMPTORY CHALLENGES** when that distinction is the basis for the challenge. In *Batson v. Kentucky*, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69, 54 USLW 4425 (U.S.Ky., Apr 30, 1986) (No. 84-6263), the U.S. Supreme Court ruled that prosecutors may not use peremptory challenges to exclude African Americans from a jury solely on the basis of race. Over the years, other cases have expanded the scope of protected or “cognizable groups” of jurors to include gender, religion, and socioeconomic status.

CROSS-REFERENCES

Failure to State a Claim; Peremptory Challenge.

COGNIZANCE

The power, authority, and ability of a judge to determine a particular legal matter. A judge's decision to take note of or deal with a cause.

That which is cognizable to a judge is within the scope of his or her jurisdiction. A **JUSTICE OF THE PEACE** would not have cognizance of a major criminal matter, for example.

COGNOVIT ACTIONEM

[Latin, He has confessed the action.] The written confession made by a defendant admitting the merits of the action brought against him or her by a plaintiff. The confession is usually based upon designated conditions, given in court, and impliedly empowers the plaintiff's attorney to sign judgment and issue execution for its enforcement.

CROSS-REFERENCES

Cognovit Note.

COGNOVIT NOTE

An extraordinary document by which a debtor authorizes his or her creditor's attorney to enter a confession in court that allows judgment against the debtor.

A creditor may ask the borrower to sign a cognovit note when credit is extended. If the debtor falls into arrears the creditor can obtain a judgment against the person without notification to the debtor. There is usually little the debtor can do to attack the judgment when it is discovered. The Supreme Court has held that cognovit notes are not necessarily illegal but most states have outlawed their use in consumer transactions.

COHABITATION

A living arrangement in which an unmarried couple lives together in a long-term relationship that resembles a marriage.

Couples cohabit, rather than marry, for a variety of reasons. They may want to test their compatibility before they commit to a legal union. They may want to maintain their single status for financial reasons. In some cases, such as those involving gay or lesbian couples, or individuals already married to another person, the law does not allow them to marry. In other cases, the partners may feel that marriage is unnecessary. Whatever the reasons, between 1970 and 1990, the number of couples living together outside of marriage quadrupled, from 523,000 to nearly 3 million. These couples face some of the same legal issues as married couples, as well as some issues that their married friends need never consider.

In most places, it is legal for unmarried people to live together, although some ZONING laws prohibit more than three unrelated people from inhabiting a house or apartment. A few states still prohibit fornication, or sexual relations between an unmarried man and woman, but such laws are no longer enforced. Even in the early twenty-first century, some states continue to prohibit SODOMY, which includes sexual relations between people of the same sex. Although these laws are rarely enforced, the U. S. Supreme Court upheld the constitutionality of these sodomy statutes as applied to same-sex couples in *Bowers v. Hardwick*, 478 U.S. 186, 106 S. Ct. 2841, 92 L. Ed. 2d 140 (1986). The Court reconsidered the same issue 17 years later, however, and decided that a Texas sodomy law that applied specifically to homosexual conduct vio-

lated the DUE PROCESS CLAUSE of the FOURTEENTH AMENDMENT (*LAWRENCE V. TEXAS*, 539 U.S. ___, 123 S. Ct. 2472, 156 L. Ed. 2d 508 [2003]). Advocates of GAY AND LESBIAN RIGHTS viewed the case as a victory for their cause.

The law traditionally has been biased in favor of marriage. Public policy supports marriage as necessary to the stability of the family, the basic societal unit. To preserve and encourage marriage, the law reserves many rights and privileges to married persons. Cohabitation carries none of those rights and privileges. It has been said that cohabitation has all of the headaches of marriage without any of the benefits. Cohabiting couples have little guidance as to their legal rights in such areas as property ownership, responsibility for debts, custody, access to HEALTH CARE and other benefits, and survivorship.

FAMILY LAW experts advise cohabiting couples to address these and other issues in a written cohabitation agreement, similar to a PREMARITAL AGREEMENT. The contract should outline how the couple will divide expenses and own property, whether they will maintain joint or separate bank accounts, and how their assets will be distributed if one partner dies or leaves the relationship. Property acquired during cohabitation, such as real estate, home furnishings, antiques, artwork, china, silver, tools, and sports equipment, may be contested if partners separate or if one of them dies. To avoid this, the agreement should clearly outline who is entitled to what.

When cohabiting couples separate, division of assets often becomes a contentious issue. In the past, courts refused to enforce agreements between unmarried couples to share income or assets, holding that such agreements were against public policy. In 1976, the California Supreme Court decided *Marvin v. Marvin*, 18 Cal. 3d 660, 134 Cal. Rptr. 815, 557 P.2d 106, holding that agreements between cohabiting couples to share income received during the time they live together can be legally binding and enforceable. The highly publicized suit between actor Lee Marvin and his live-in companion, Michelle Triola Marvin, was the first of a series of "palimony" suits that have become more numerous since the 1980s. The plaintiff in a palimony suit must prove that the agreement of financial support is not a meretricious agreement, that is, one made in exchange for a promise of sexual relations. Courts refuse to enforce

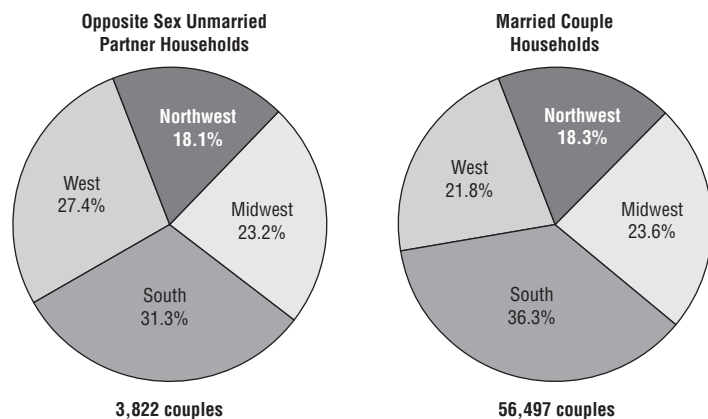
meretricious contracts because of their similarity to contracts for prostitution.

The only way to guarantee that a valid agreement of support or division of property exists is to have it in writing. In the *Marvin* case, the plaintiff, who asked for \$1.6 million, was awarded only \$104,000. An appeals court revoked that amount and found that the plaintiff had failed to show that she and the defendant had an agreement (*Marvin v. Marvin*, 122 Cal. App. 3d 871, 176 Cal. Rptr. 555 [Cal. Ct. App. 1981]). Conversely, when tennis star Martina Navratilova separated from live-in lover Judy Nelson in 1993, Nelson filed a \$16 million palimony suit, claiming that Navratilova reneged on a promise to share whatever the couple accumulated during their relationship. A signed and videotaped 1986 cohabitation agreement supported Nelson's claim, and Navratilova settled out of court for an undisclosed amount.

Cohabiting parents may face legal difficulties if they separate without a written parenting agreement. An unmarried father must acknowledge **PATERNITY** by filing an **AFFIDAVIT** with the state legitimating his child and establishing his parental relationship. Likewise, both parents must actively participate in the raising of the child in order to have a legitimate claim to custody or visitation. By legitimating their child and being involved in the child's upbringing, unmarried parents establish their right to seek custody or visitation if the family breaks up. Legitimation is also important for inheritance purposes. If an unmarried father dies without a will, his legitimated child can freely inherit his estate (see *Trimble v. Gordon*, 430 U.S. 762, 97 S. Ct. 1459, 52 L. Ed. 2d 31 [1977], which held that a signed statement establishing paternity of a child born out of wedlock is adequate protection of the child's inheritance rights). Of course, the best way to guarantee the distribution of assets to children is through a written will.

Cohabiting couples may face difficulties when one of them becomes ill and requires hospitalization or long-term care. The case of Sharon Kowalski and Karen Thompson illustrates this problem. Kowalski and Thompson lived together for four years before Kowalski sustained serious head injuries in a 1983 automobile accident. She was left paralyzed and seriously brain damaged, but able to communicate. Kowalski's parents refused to allow Thompson to see her or to participate in decisions about her treatment.

Cohabiting and Married Couple Households, by Region, in March 2000



SOURCE: U.S. Census Bureau, *Current Population Survey Report*, 2000.

In 1984, Kowalski's father was awarded guardianship of Kowalski (*In re Kowalski*, 382 N.W.2d 861 [Minn. Ct. App. 1986]) and the family continued to frustrate Thompson's efforts to see or assist Kowalski. In 1991, Kowalski's father voluntarily gave up his guardianship for medical reasons, and a Minnesota trial court awarded guardianship to Karen Tomberlin, a family friend whom the court considered a "neutral third party." The Minnesota Court of Appeals reversed the trial court, and after a seven-year battle, Thompson was finally granted guardianship of Kowalski (*In re Kowalski*, 478 N.W.2d 790 [Minn. Ct. App. 1991]). The court held that Kowalski had "sufficient capacity" to express her preference as to a guardian and that she had consistently said she wanted to be with Thompson. The court also noted the duration of the couple's relationship as well as the fact that they had exchanged rings and named each other as insurance beneficiaries before Kowalski's accident.

Cohabiting couples can avoid such conflicts by executing certain documents, including a durable **POWER OF ATTORNEY** and a medical power of attorney. A durable power of attorney grants an unmarried partner the necessary authority to make decisions in the event of physical or mental disability of the other partner. It goes further than a general power of attorney in that it specifically allows one partner to continue making decisions even if the other partner becomes incapacitated. A medical power of

attorney allows one partner to make decisions regarding medical treatment for the other. If the partners have specific instructions about funeral arrangements, these too should be put in writing. In addition, a written will or trust allows partners to specify the distribution of their property, including life insurance benefits, IRAs, and bank accounts. Partners may also name their preferred trustee or executor.

Many cohabiting heterosexual couples believe that the law will recognize their relationship as a **COMMON-LAW MARRIAGE** with the legal protections and financial benefits of marriage. However, only Alabama, Colorado, the District of Columbia, Georgia, Idaho, Iowa, Kansas, Montana, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Texas, and Utah recognize common-law marriage. In those states, a man and woman who live together and represent themselves as married may be given common-law recognition. Once a common-law marriage has been established, it must be dissolved through **DIVORCE**. Cohabiting couples who live in a state that recognizes common-law marriage and do not wish to be married should execute a statement that they are not married in order to avoid a later finding that a common-law marriage existed.

In the 1990s, a few courts began to recognize the familial ties of unmarried couples. In *Braschi v. Stahl Associates*, 74 N.Y.2d 201, 543 N.E.2d 49, 544 N.Y.S.2d 784 (1989), New York State's highest court found that a homosexual man and his deceased life partner had constituted a family for purposes of New York City's rent control ordinance. The court found that in this case, the term *family* should be construed broadly and should encompass contemporary realities, including unmarried adult partners in a long-term, committed relationship that shows mutual sharing of the mundane tasks of everyday life. Similarly, in *Dunphy v. Gregor*, 261 N.J. Super. 110, 617 A.2d 1248 (N.J. 1992), the court found that a woman who had witnessed the events leading to her fiancé's death had standing to sue for the emotional damage she suffered as a result. Previously, suits such as this (called bystander liability suits) were limited to those who were married or had blood ties to the victim. However, the court in *Dunphy* found that the plaintiff met the requirement of "intimate familial relationship," noting that the plaintiff and her fiancé had lived together for several years, that there was a high degree of mutual

dependence in their relationship, and that they contributed to and shared a common life.

Since the 1980s, a growing number of states and municipalities have passed laws allowing unmarried couples, both heterosexual and homosexual, to register as domestic partners. Some cities have established a domestic partner registry, while others extend certain benefits to domestic partners even if the city does not provide a registry. The state of California leads the nation in the number of cities and counties that provide benefits to domestic partners, offer domestic partner registries, or both. Cities providing domestic partner benefits include New York City, Los Angeles, Chicago, Boston, and Philadelphia. The ordinances and statutes in these cities allow couples to register as domestic partners, and to dissolve their partnerships if they separate.

Two 1995 court decisions declared particular domestic partner ordinances invalid. In *Lilly v. City of Minneapolis*, 527 N.W. 2d 107, the Minnesota Court of Appeals struck down a Minneapolis city council resolution authorizing reimbursement to city employees for health care insurance costs for same-sex domestic partners and for blood relatives not classified as dependents under state law. The court held that the resolution was beyond the scope of the council's authority and lacked legal force. Likewise, in *City of Atlanta v. McKinney*, 265 Ga. 161, 454 S.E.2d 517, the Supreme Court of Georgia held that the city of Atlanta had exceeded its authority when it had extended employee benefits to persons who did not qualify as dependents under state law.

Some same-sex cohabitants face other types of legal challenges. In *Garcia v. Garcia*, 60 P.3d 1174 (Utah Ct. App. 2002), the Utah Court of Appeals held that an ex-wife's involvement in a same-sex relationship constituted cohabitation for the purpose of determining whether the ex-husband's **ALIMONY** payments should be terminated. Under Utah law, a court's order requiring alimony payments from one spouse to the other terminates upon proof that the spouse receiving alimony is cohabiting with another person. The ex-wife allegedly maintained a long-term relationship with another woman, during which time she shared a common residency and had sexual contact. The trial court held that the statute's definition of cohabitation applied only to relationships between members of the opposite sex. The appeals court disagreed, holding

that the term “sexual contact” in the statute also included such contact between members of the same sex, and reversed the trial court’s decision.

FURTHER READINGS

- American Bar Association. 1994. *Family Legal Guide*. New York: Random House.
- Dailey, Patricia A. 1994. “Domestic Partnerships in the Nineties.” *Delaware Lawyer* (summer).
- Duff, Johnette, and George G. Truitt. 1992. *The Spousal Equivalent Handbook: A Legal and Financial Guide to Living Together*. New York: Penguin, NAL/Dutton.
- Ihara, Toni, Robin Leonard, and Ralph Warner. 1994. *The Living Together Kit*. 7th ed. Berkeley, Calif.: Nolo Press.
- Richardson, David G. 1993. “Family Rights for Unmarried Couples.” *Kansas Journal of Law and Public Policy* (spring).
- Samuels, M. Dee. 1995. “You Don’t Have to Be Married to Be Legal.” *Compleat Lawyer* (winter).
- Wallman, Lester. 1994. *Cupid, Couples, and Contracts: A Guide to Living Together, Prenuptial Agreements, and Divorce*. New York: MasterMedia.

CROSS-REFERENCES

Parent and Child.

❖ COHEN, FELIX SOLOMON

Felix Solomon Cohen was born July 3, 1907, in New York City. He graduated from the College of the City of New York with a bachelor of arts degree in 1926. He subsequently received a master of arts degree in 1927, a doctor of philosophy degree in 1929 from Harvard University, and a bachelor of laws degree from Columbia Law School in 1931.

In 1931 and 1932 Cohen performed the duties of secretary to the justice of the New York Supreme Court. He was also admitted to the New York bar and established his law office in New York. In 1948 Cohen was admitted to the District of Columbia bar; he practiced law in his later years in Washington, D.C.

Cohen’s career interests extended to the field of education and he presented a series of lectures on legal philosophy at the New School for Social Research during 1932 and 1933. He entered government service in 1933, serving as assistant solicitor for the U.S. Department of the Interior for ten years. From 1936 to 1948 he also acted on the board of appeals of the INTERIOR DEPARTMENT where he was presiding officer from 1940 to 1948. In 1939 he performed the duties of special assistant to the attorney general. Cohen served in the U.S. DEPARTMENT OF JUSTICE from 1939 to 1940 and returned to the Department of the Interior in 1943, acting as associate solicitor for the next five years.

In 1946 Cohen returned to teaching and served as a visiting professor at the Yale Law School; he also taught law at the City College of New York in 1948.

Cohen wrote several publications including *Ethical Systems and Legal Ideals*, which was published in 1933.

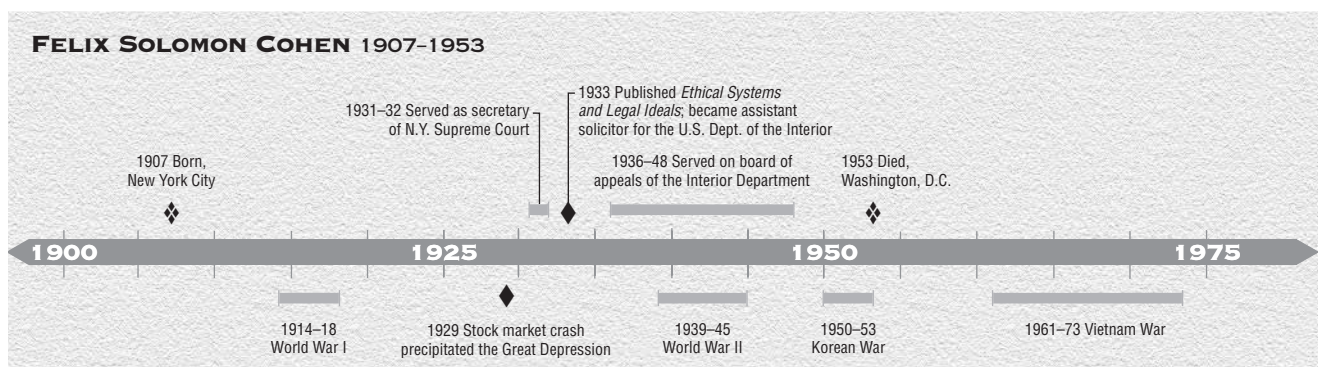
Cohen died October 19, 1953, in Washington, D.C.

❖ COHEN, MORRIS RAPHAEL

Morris Raphael Cohen achieved prominence as an educator and author.

Cohen was born July 25, 1880, in Minsk, Russia. He emigrated to the United States in 1892 and earned a bachelor of science degree from the College of the City of New York in 1900 and a doctor of philosophy degree from Harvard University in 1906. Cohen was the father of Felix Cohen, who became a somewhat noteworthy philosopher/writer in the jurisprudential school of LEGAL REALISM.

In 1899, Cohen began his teaching career as a history teacher at the Educational Alliance in New York. He also taught at Davidson Collegiate



Institute from 1900 to 1901, and in 1902 he accepted a position as mathematics teacher at his alma mater, the College of the City of New York. He held that position until 1912, when he switched his interests to philosophy and served as a professor until 1938. In that year, he accepted a professorship at the University of Chicago and continued his career as a philosophy professor.

In addition to his permanent teaching duties, Cohen also served at numerous institutions as a temporary professor—including his presentation of a series of lectures at Columbia Law School from 1906 to 1907, 1914 to 1915, the summer of 1918, and the summer of 1927; at Yale from 1929 to 1931; and at Harvard from 1938 to 1939.

Cohen is the author of several noteworthy publications, including *Reason and Nature* (1931), *Law and the Social Order* (1933), and *Faith of a Liberal* (1945).

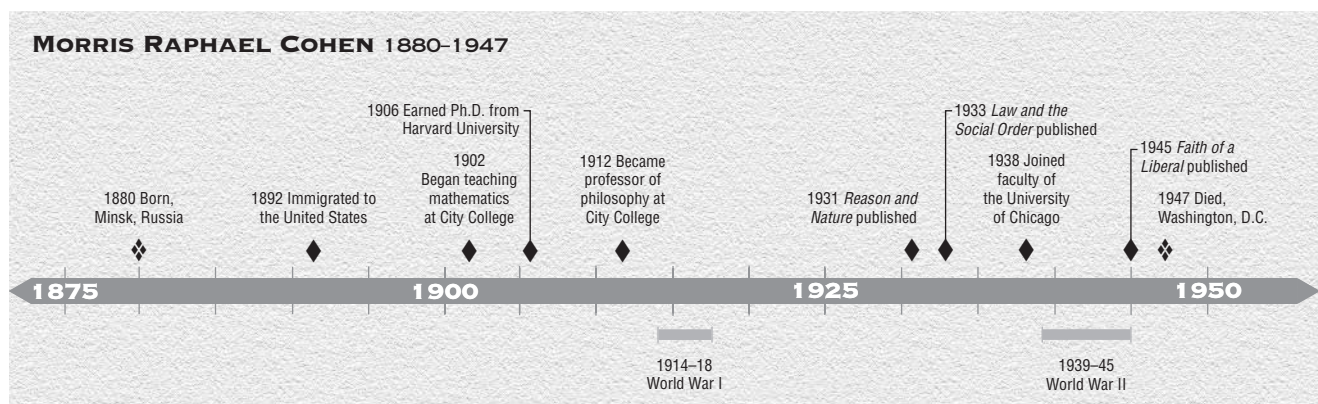
He died January 28, 1947, in Washington, D.C.

❖ COHN, ROY MARCUS

Attorney, federal prosecutor, and communist-hunter, Roy Marcus Cohn built a flamboyant, successful, and troubled career on his prominent role in COLD WAR politics. As a *wunderkind* whose legal prowess quickly brought him to national attention, Cohn took part in the controversial ESPIONAGE trial of Julius and Ethel Rosenberg in 1951. By the mid-1950s, he helped engineer Senator Joseph R. McCarthy's notorious anti-Communist witch hunts. From the 1950s to the 1980s, his private practice put him in the top rank of celebrity attorneys, but questionable ethics ultimately led to his being disbarred in 1986.

The privilege of family connections helped launch Cohn's career. He was born on February 20, 1927, in New York, New York, the son of a prominent state supreme court judge. His father was well connected in the DEMOCRATIC PARTY. By age ten, Cohn had already met FRANKLIN D. ROOSEVELT. Academic brilliance helped Cohn sail quickly through college, and he earned his law degree from Columbia University in 1947 at the age of twenty. He then had to wait one year in order to meet the state's minimum age for admission to the New York State Bar. Meanwhile, he worked for two years in the U.S. district attorney's office before moving to Washington, D.C., in 1950, to join the JUSTICE DEPARTMENT as an assistant U.S. attorney.

In Washington, Cohn established his anti-Communist credentials. For the period of the Cold War, this was an auspicious career move: Hysteria was about to afflict the nation, and he would help tighten the grip. At age twenty-three, he served as the third-ranking prosecutor on the espionage trial of Julius and Ethel Rosenberg, the American Communists who were convicted and sentenced to death in 1951 for furnishing atomic secrets to Soviet spies. During the trial, Cohn held a number of improper *ex parte*—one-sided—private conversations with Judge Irving Kaufman outside of court. According to Nicholas von Hoffman's 1988 biography *Citizen Cohn*, the attorney probably used these talks to convince Judge Kaufman to impose the death penalty. Cohn denied doing so, in his posthumously published 1988 book *The Autobiography of Roy Cohn*, but he claimed that the judge had told him the verdict of the trial even before it had begun. The AMERICAN BAR ASSOCIATION ultimately exonerated both Cohn and Kaufman for their conversations.



The ROSENBERG TRIAL put Cohn on a fast track to prominence. Adding to his reputation as an enemy of radicalism, Cohn toured U.S.-sponsored libraries in Europe in 1952 on behalf of the U.S. Senate, confiscating subversive books. In 1953, he was a special assistant to Attorney General JAMES MCGRANERY, but he left the job for greater visibility. He became chief counsel to the Senate Permanent Investigations Subcommittee, beating out ROBERT F. KENNEDY for the position. The subcommittee would make history as the bully pulpit for Senator JOSEPH R. MCCARTHY, who used it to conduct his relentless pursuit of communists in the U. S. government.

Cohn was McCarthy's right-hand man. In the Senate, he sat beside the senator and took part in the grilling of witnesses who were hauled before the committee. Officially, his role as McCarthy's special counsel made him the senator's assistant, but the relationship worked differently behind the scenes. Cohn knew more people than McCarthy did. He helped to compile lists of witnesses and suspects, a task made easier by his friendship with FBI Director J. EDGAR HOOVER. When McCarthy blundered by challenging the army in 1954, his political career ended abruptly. Cohn was criticised for having sought special favors for a friend in the army. But unlike McCarthy, who was censured by the Senate and died a broken man in 1957, Cohn escaped to a new, lucrative career.

In private practice in New York, Cohn flourished. Although many intellectuals excoriated him for his role in the McCarthy witch hunts, he gained prominent clients from across the political spectrum. He represented everyone from alleged mafia bosses to pop stars, and he was largely successful, often without having to appear in court. Cohn had developed the right

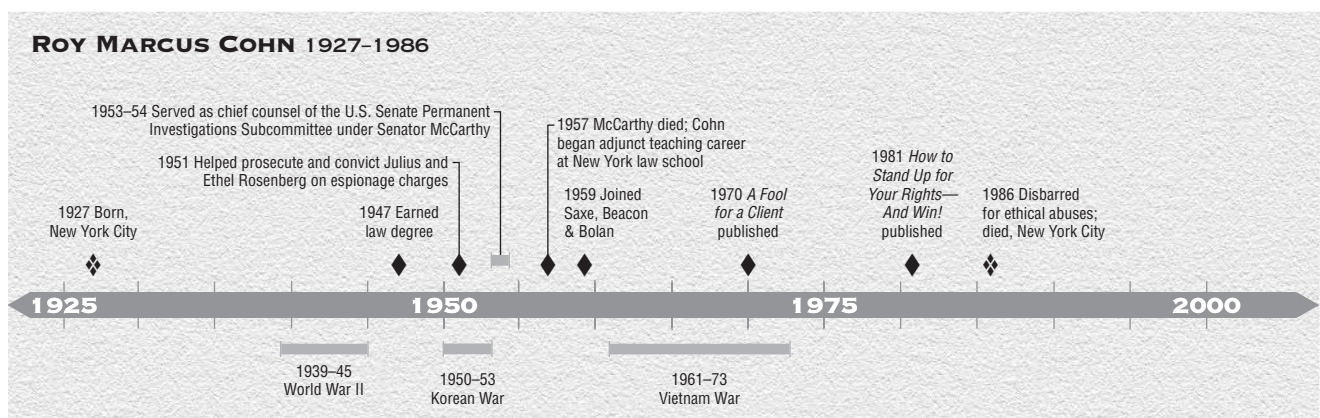


Roy Marcus Cohn.
AP/WIDE WORLD
PHOTOS

friends: newspaper columnists, publishing magnates, politicians, judges, and fellow lawyers. He was as feared for his ability to get headlines published as he was for any oral argument he might make. Outside of his law practice, he wrote widely in the popular and legal press, and authored four books, including *How to Stand Up for Your Rights—And Win!* (1981).

Though successful and popular until shortly before his death, Cohn was a complicated and enigmatic figure. Although he was Jewish, he befriended anti-Semites and used anti-Semitic jibes. Outspoken against homosexual rights, he was a gay man himself. Until the end, he concealed the fact that he was dying of AIDS. Pursued for twenty years by the INTERNAL REVENUE SERVICE (IRS), he had no bank account and owned little property; the IRS was unable to collect the reported \$7 million he owed in back taxes. Months before his death on August 2, 1986, Cohn was disbarred for ethical abuses that included lying, stealing, attempting to defraud a client, and forgery.

"I BRING OUT THE
WORST IN MY
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THAT'S HOW I GET
THEM TO DEFEAT
THEMSELVES."
—ROY COHN



CROSS-REFERENCES

Communism.

COINSURANCE

A provision of an insurance policy that provides that the insurance company and the insured will apportion between them any loss covered by the policy according to a fixed percentage of the value for which the property, or the person, is insured.

Insurance is intended to spread the risk of any loss among every insured who purchases a particular type of policy from an insurance company and the company itself. The likelihood that every policyholder will suffer the loss that has been insured against is slim, and, therefore, an insurance company should be able to compensate those who have losses, if those policyholders have complied with the terms of their policies.

Coinsurance divides the risk of loss according to the amount of insurance purchased by each person through the payment of premiums. The size of insurance premiums is based primarily upon the value of the property covered by the policy. If a person fails to insure a property for an amount close to its actual cash value or replacement cost, then the person must accept a greater share of the risk of loss than someone who pays larger premiums to insure his or her property for an amount close or equal to its actual value.

In insurance policies for fire or water damage the coinsurance clause provides that property must be insured for a specific percentage, usually 80 percent of its actual cash value. The 80 percent provision is known as the New York Standard Coinsurance Clause. The owner of the property is liable for the remaining 20 percent of its actual cash value. If the insured party's property is only partially damaged, that person's recovery under the policy will be reduced in proportion to the amount of loss suffered.

For example, a homeowner has a \$120,000 fire insurance policy on her home, which is valued at \$150,000. The woman's coverage is 80 percent of the home's actual cash value. If her house is completely destroyed by a fire that is not **ARSON**, she will recover \$120,000, which is the full face amount of the policy. She is responsible for the remaining 20 percent of its actual cash value, or \$30,000. If a fire caused only \$20,000 worth of damages, the homeowner could recover only \$16,000, or 80 percent of the

loss. The homeowner is a coinsurer for the remaining \$4,000, or 20 percent of the replacement cost of the property.

If that homeowner has purchased only \$36,000 worth of fire insurance, or 60 percent of replacement costs, thereby paying a lower premium than a policy with coverage for \$48,000, she would be responsible for a larger share of the damages incurred in the total or partial destruction of the property. The total destruction of the \$60,000 house will result in a recovery limited to the amount of insurance bought by the homeowner, or \$36,000. She is responsible for 40 percent of replacement costs. The recovery for the partial loss of \$20,000 will be \$12,000, or 60 percent of the loss, since recovery is reduced proportionately by the amount of actual loss.

Although insurance policies stipulate a specific percentage of loss that must be covered, an insured may purchase maximum insurance coverage for up to 100 percent of the replacement cost of the property covered by the policy. The premiums for such protection will be proportionately larger than the one for 80 percent of the property's actual cash value.

Coinsurance clauses in fire or water damage policies encourage property owners to purchase full or nearly full coverage. It is important for policyholders to periodically review their insurance policies to verify that their coverage adequately protects the value of their property.

In medical or **HEALTH INSURANCE** policies, coinsurance has a similar meaning. The amount of expenses that a medical insurer will reimburse a policyholder is a fixed percentage—usually 80 percent—of the approved charges—the amount of a submitted bill which the insurer considers reasonable and will reimburse after the policyholder has paid the deductible, which is usually the first \$100 of medical expenses. The insured becomes a coinsurer for the remaining 20 percent of the approved charges as well as for the amount by which the individual medical bills exceed the approved charges.

COINTELPRO

Between 1956 and 1971, the Federal Bureau of Investigation (FBI) conducted a campaign of domestic counterintelligence. The agency's Domestic Intelligence Division did more than simply spy on U.S. citizens and their organizations; its ultimate goal was to disrupt, discredit, and destroy certain political groups. The divi-

sion's operations were formally known within the bureau as COINTELPRO (the Counterintelligence Program). The brainchild of former FBI director J. EDGAR HOOVER, the first COINTELPRO campaign targeted the U.S. Communist party in the mid-1950s. More organizations came under attack in the 1960s. FBI agents worked to subvert CIVIL RIGHTS groups, radical organizations, and white supremacists. COINTELPRO existed primarily because of Director Hoover's extreme politics and ended only when he feared its exposure by his critics. A public uproar followed revelations in the news media in the early 1970s, and congressional hearings criticized COINTELPRO campaigns in 1976.

In 1956 Hoover interpreted a recent federal law—the Communist Control Act of 1954 (50 U.S.C.A. § 841)—as providing the general authority for a covert campaign against the U.S. Communist party. Officially, the law stripped the party of “the rights, privileges, and immunities attendant upon legal bodies created under the jurisdiction of the laws of the United States.” Hoover saw the party as a peril to national security and ordered a large-scale effort to infiltrate and destabilize it.

Employing classic ESPIONAGE techniques, FBI agents joined the party and recruited informants. They spread dissension at party meetings by raising embarrassing questions about the recent Soviet invasion of Hungary, for instance, or about Soviet premier Nikita Khrushchev's denunciation of the Soviet leader JOSEPH STALIN, who had been a hero to U.S. Communists. Agents also engaged in whispering campaigns identifying party members to employers and neighbors. The FBI intensified its harassment by enlisting the INTERNAL REVENUE SERVICE (IRS) to conduct selective tax audits of party members. And it spread rumors within the party itself—employing a practice known as snitch jacketing—that painted loyal members as FBI informants. In all, the government executed 1,388 separate documented efforts, and they worked: whereas party membership was an estimated twenty-two thousand in the early 1950s, it fell to some three thousand by the end of 1957.

After his initial success, Hoover did not rest. From the late 1950s through the end of the 1960s, he unleashed his agents against a wide range of political groups. Some were civil rights organizations, such as the National Association for the Advancement of Colored People (NAACP) and the SOUTHERN CHRISTIAN LEAD-

ERSHIP CONFERENCE (SCLC). Others were radical, such as the BLACK PANTHER PARTY, the AMERICAN INDIAN MOVEMENT, and the Socialist Workers party. Yet another target was the nation's oldest white hate group, the KU KLUX KLAN, although Hoover was less enthusiastic about pursuing it and did so chiefly because of political pressure resulting from the Klan's highly publicized murders of civil rights workers. In internal FBI memorandums, Hoover's motive for these operations is given as the need to stamp out COMMUNISM and subversion, but the historical record reveals a muddier picture. What turned Hoover's attention to the NAACP, for example, was the organization's criticism of FBI hiring practices for excluding minorities.

In their scope and tactics, these FBI operations occasionally went much further than the original anti-Communist COINTELPRO effort. They involved at least twenty documented burglaries of the offices of the SCLC, an organization headed by MARTIN LUTHER KING JR. Hoover detested King, whom he called “one of the most reprehensible . . . individuals on the American scene today,” and urged his agents to use “imaginative and aggressive tactics” against King and the SCLC. To this end, agents bugged King's hotel rooms; tape-recorded his infidelities; and mailed a recording, along with a note urging King to commit suicide, to the civil rights leader's wife. The COINTELPRO operation against the radical Black Panther party, which Hoover considered a black nationalist hate group, tried to pit the party's leaders against each other while also fomenting violence between the Panthers and an urban gang. In at least one instance, FBI activities did lead to violence. In 1969, an FBI informant's tip culminated in a police raid that killed Illinois Panther chairman Fred Hampton and others; more than a decade later, the federal government agreed to pay restitution to the victims' survivors, and a federal judge sanctioned the bureau for covering up the facts in the case.

Political changes in the early 1970s weakened Hoover's position. Critics in the media and Congress began to question Hoover's methods, and the newly created FREEDOM OF INFORMATION ACT (FOIA), 5 U.S.C.A. § 552, promised to pierce the veil of secrecy that had always protected him. In 1971, a break-in at an FBI field office in Pennsylvania yielded secret documents that were ultimately published. Fearing greater exposure of FBI counterintelligence programs,

Hoover formally canceled them on April 28, 1971. Some small-scale operations continued, but the days when agents had carte blanche to carry out the director's will were over.

Hoover died May 2, 1972, at the age of seventy-seven. His death was followed by the realization of his greatest fear. In 1973 and 1974, NBC reporter Carl Stern gained access to COINTELPRO documents through an FOIA claim. More revelations followed, producing a public outcry and leading to an internal investigation by Attorney General William B. Saxbe. The U.S. Congress was next: in 1975 and 1976, hearings of the House and Senate Select Committees on Intelligence further probed COINTELPRO. Even as Hoover's legacy was laid bare, supporters tried to keep the cover on: House lawmakers kept their committee's report secret. The Senate did not; its report, released on April 28, 1976, denounced a "pattern of reckless disregard of activities that threatened our constitutional system."

Along with revealing other instances of FBI illegalities under Hoover, the investigation of his activities set in motion a process of reform. Congress ultimately limited the term of the director of the FBI to ten years, to be served at the pleasure of the president, a safeguard designed to ensure that no single individual could again run the bureau indefinitely and without check. Details about COINTELPRO continue to be made public through government documents.

FURTHER READINGS

- Gentry, Curt. 1991. *J. Edgar Hoover: The Man and the Secrets*. New York: Norton.
- Hakim, Joy. 1995. *All the People: A History of Us*. New York: Oxford Univ. Press.
- Kleinfelder, Rita L. 1993. *When We Were Young: A Baby Boomer Yearbook*. New York: Prentice-Hall General Reference & Travel.
- Powers, Richard G. 1987. *Secrecy and Power: The Life of J. Edgar Hoover*. New York: Free Press.

❖ COKE, RICHARD

Richard Coke achieved prominence as a politician and jurist in the state of Texas.

Coke was born March 13, 1829, in Williamsburg, Virginia. He graduated from the College of William and Mary in 1849 and was admitted to the Texas bar in 1850. After a tour of military duty during the Civil War, Coke became a district court judge in 1865 and subsequently presided as an associate justice of the Texas Supreme Court from 1866 to 1867.

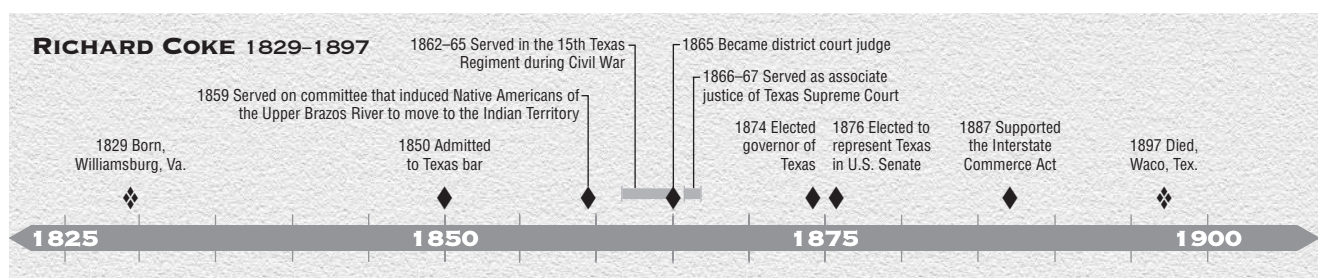
In 1874 Coke was elected governor of Texas. Two years later he became a member of the U.S. Senate, representing Texas until 1894.

He died May 14, 1897, in Waco, Texas.

❖ COKE, SIR EDWARD

An influential figure of Renaissance England and a great jurist, Sir Edward Coke bravely fought for the supremacy of the COMMON LAW over the monarchy. He served in numerous high public offices under Elizabeth I, who reigned from 1558 to 1603, James I, who reigned from 1603 to 1625, and Charles I, who reigned from 1625 to 1649—and his continual efforts to restrain the last two rulers remain a significant part of his legacy. He was frequently a member of Parliament (M.P.), and in the 1620s, he became a leading figure of that body, staunchly advocating the rights and freedoms of Parliament against challenges from James I and Charles I.

Coke was a contemporary of such great figures of Elizabethan England as William Shakespeare, Edmund Spenser, Sir Walter Raleigh, Ben Jonson, and FRANCIS BACON. He is most well-known for his influential legal writings, particularly his four-volume *Institutes of the Laws of England*. He also published, during his career, *Reports*, a compendium of leading cases of common law with his own analyses that finally constituted thirteen volumes. Coke's ideas formed part of the intellectual background for the



American Revolution and the U.S. Constitution. His writings on English common law, along with those of SIR WILLIAM BLACKSTONE, greatly influenced U.S. law and were considered required reading for U.S. lawyers until well into the nineteenth century.

Coke was born February 1, 1552, at Mileham, Norfolk, England, into a family of Norfolk gentry, the only son among eight children. His father was a barrister, or trial lawyer, and Coke took up the same profession. In 1572, after being educated at Norwich Grammar School; at Trinity College, Cambridge; and at Clifford's Inn, London, he was admitted to the Inner Temple—one of the inns of court that served as colleges in the university of law. He became a barrister in 1578, and quickly rose to great prominence in his profession and in the political sphere of his time. He was aided in his rise by his friendship with William Cecil, Baron Burghley, the chief minister to Queen Elizabeth I. Coke became recorder of Coventry in 1585 and of Norwich in 1586, M.P. for Aldeburgh in 1589, recorder of London and SOLICITOR GENERAL in 1592, and M.P. for Norfolk and Speaker of the Commons in 1593.

In 1582, Coke married Bridget Paston. The union brought him a considerable fortune in money and land, as well as seven children. With his later political power, he was able to add greatly to his wealth over the course of his life. His first wife died in 1598. His subsequent marriage a few months later to Lady Elizabeth Hatton, twenty-six years his junior and granddaughter of Burghley, was a troubled one and ended in separation. He had one daughter by Lady Hatton.

In 1594, Coke became attorney general for the Crown, or "the quenes attorney," as a contemporary put it, winning the post in competition against Bacon, a noted philosopher and politician and Coke's chief rival during his public career. As attorney general, Coke was responsible for defending the interests and royal prerogative, or power, first of Queen Elizabeth and then of King James. He supervised state prosecutions in several major TREASON trials, including those of the earls of Essex and Southampton (1600–01); Raleigh (1603); and the conspirators involved in the Gunpowder Plot (1605), an attempt by Catholic opponents to blow up the House of Lords. A gifted speaker, Coke also proved in such trials that he could be brutal in court. He said of Raleigh, a former



Sir Edward Coke.
LIBRARY OF CONGRESS

favorite of Queen Elizabeth and hero of the realm, "[T]hou hast a Spanish heart, and thyself art a spider of hell" and "there never lived a viler viper upon the face of the earth than thou." Coke was so powerful at this point in his career that in 1601 he was able to invite the queen to his estate at Stoke Poges, where he presented her with jewels and other gifts valued at over £1,000.

Coke's responsibilities as "the queen's attorney" were diametrically opposed to those in his later role as champion of the common law against the Crown. In 1606, he was made chief justice of the Court of Common Pleas, a position as judge of the common law that soon put him at odds with King James. Through this position, Coke sought to limit the jurisdiction of the royal courts—particularly the ecclesiastical, or church, courts and the Chancery, or courts of the king's lord chancellor—by maintaining that the king was bound by the tradition of common law in making decisions. Coke told King James that he could not make judicial decisions that were in conflict with common-law precedent. He argued that the common law was a system of "artificial reason and judgment," the accumulated wisdom of many decisions over hundreds of years that could only be acquired through laborious study. The common law was therefore not amenable to ARBITRARY change by one individual, even if that individual was the king. In *Fuller's* case (1607–8), for example, Coke argued that "the king in his own person cannot adjudge any case." He also delivered an opinion in 1610

"THE GREATEST
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—SIR EDWARD COKE

in which he stated that the king cannot change any part of the common law or create through royal proclamation a new offense under the law. Coke's concept of the common law's authority over the monarchy eventually became part of the English constitution.

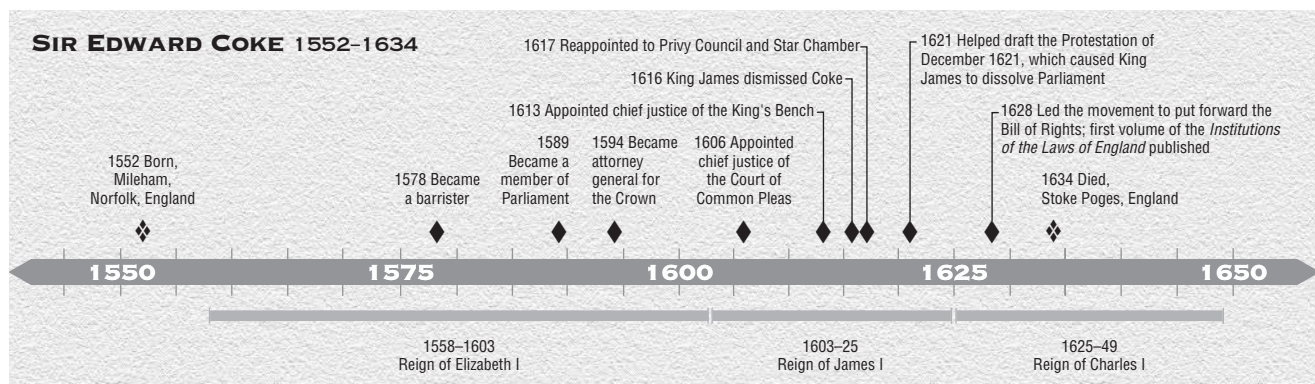
In 1613, Coke was made chief justice of the King's Bench, moving to a lower-paying position that Bacon and other enemies inflicted on him as punishment and with the hope that it would force Coke to give in to the demands of the Crown. However, shortly thereafter, Coke was appointed to the **PRIVY COUNCIL**, the king's formal body of advisers. Again, he stubbornly asserted the superiority of the common law over the powers of the king and the king's advisers. He clashed with the Court of King's Bench and with the king in several more prominent cases—including the king's attempts to hold several ecclesiastical benefices, or offices, at the same time—and in 1616, James dismissed Coke from office. Ever resilient—and ever valuable to the state because of his great legal skills and knowledge—by 1617, he was back in the Privy Council and the **STAR CHAMBER**, a court of law made up largely of members of the Privy Council.

In 1620, Coke again entered Parliament, this time as a member from a Cornwall borough. While in Parliament in this last stage of his public career, Coke became a leading advocate for that body's independent power against the king. He participated in the **IMPEACHMENT** of Bacon as lord chancellor and helped draft the Protestation of December 1621, which stated that “the liberties, franchises, privileges and jurisdictions of Parliament are the ancient and undoubted birthright and inheritance of the subjects of England” and that Parliament “hath and of right ought to have freedom of speech” in England. This document caused James to dissolve that

session of Parliament and dismiss its leaders. Coke, at age seventy, received the most severe sentence of anyone in Parliament and was put in the Tower of London for nine months.

Coke soon became an M.P. again, sitting for Coventry in the Parliament of 1624. James I died in 1625, the same year that Coke sat in Parliament for Norfolk, and the throne was taken by Charles I. In 1628, Coke spent his last term in Parliament, for Buckinghamshire. That year, he led the movement to put forward the Petition of Right, which guaranteed the subjects' rights with respect to the monarchy, including protection against arbitrary imprisonment, freedom from taxation without parliamentary representation, and **DUE PROCESS OF LAW**. In his defiant reply to the petition, King Charles was adamant about what he called his “sovereign power” to rule the country. Later, in an eloquent speech before Parliament, Coke questioned the king's phrase, reminding the members of the importance of **MAGNA CHARTA**, the medieval document that protected the nobility, Parliament, and, to a certain degree, the common people from arbitrary royal decrees. “Take we heed what we yield unto,” Coke declared. “Magna Carta is such a fellow that he will have no sovereign.”

Coke retired from public life shortly after this speech. Despite his efforts, ideas such as those contained in the Petition of Right were not embodied in formal law until much later in English history. Sadly, Coke suffered the indignities of royal prerogative once again, in July 1634, several months before his death, when his papers were ransacked and stolen by royal officials. Though Coke was very old and infirm, the king still deemed him “too great an oracle among the people” and therefore dangerous to the power of the monarchy. Coke died in his house at Stoke Poges in September 1634.



Coke's legal writings served as invaluable guides to jurists for centuries after his death. His *Reports* (1600–1611, 1650–59), covering a period of 40 years, were the preeminent legal texts of their time. These 13 volumes were based on careful notes on cases he had heard since he had been nominated to the bar. Arranged by subject, they went into greater detail than had previous law reports, including coverage of earlier precedents affecting contemporary judicial decisions. They are different from modern legal reports in that they reflect Coke's own interpretations of the law, with each report forming a brief treatise on the relevant points of law. They also contain numerous factual errors and misinterpretations of legal precedent.

Coke's four-volume *Institutes of the Laws of England* (1628–64) was the first significant legal work to be written partly in English. The first volume, called *Coke upon Littleton* (1628), contains the text of Sir Thomas Littleton's 1481 treatise on property, *On Tenures*, with an English translation and commentary by Coke. The second volume (1642) deals with statutes of Parliament, the third (1664) with CRIMINAL LAW, and the fourth (1644) with the jurisdiction and history of different English courts. Though the *Institutes* reflect many of Coke's own shortcomings—they have been criticized for their disorganization, inaccuracies, and idiosyncrasies—they nevertheless put into modern language and make accessible a body of law that would have otherwise remained obscure and difficult to gather.

Coke's ideas later influenced the American Revolution, particularly through the voice of JAMES OTIS JR., a lawyer in Massachusetts. In arguing the WRITS OF ASSISTANCE CASE in 1761, Otis used Coke's writings to support his contention that an unwritten English constitution had been developed by precedent over the years, and that any act of Parliament deemed to be in violation of that constitution could be declared void by the judiciary. The relevant passage in Coke is taken from *Dr. Bonham's case* (1610):

It appears in our books that in many cases the common law will control acts of Parliament, and sometimes adjudge them to be utterly void: for when an act of Parliament is against common right or reason, or repugnant, or impossible to be performed, the common law will control it, and adjudge such act to be void.

Leaders of the American Revolution, including JOHN ADAMS, used such ideas in the eighteenth century to lobby for power to void

PARLIAMENTARY LAWS that were considered to be harmful. Such ideas also influenced the development of the U.S. Constitution and the power of JUDICIAL REVIEW, which allows the judiciary to strike down legislation that violates the Constitution.

FURTHER READINGS

- Bowen, Catherine D. 1957. *The Lion and the Throne: The Life and Times of Sir Edward Coke (1552–1634)*. Boston: Little, Brown.
- Boyer, Allen D. 2003. *Sir Edward Coke and the Elizabethan Age*. Stanford, Calif.: Stanford Univ. Press.
- Hostettler, John. 1997. *Sir Edward Coke: A Force for Freedom*. Chichester, England: Barry Rose.
- Powell, Damian. 2000. "Coke in Context: Early Modern Legal Observation and Sir Edward Coke's Reports." *Journal of Legal History* 21 (December): 33–5.
- Woolrych, Humphry W. 2002. *The Life of the Right Honourable Sir Edward Coke, Knt.: Lord Chief Justice of the King's Bench*. Union, N.J.: Lawbook Exchange.

CROSS-REFERENCES

English Law "Dr. Bonham's Case" (In Focus).

COLD WAR

The cold war was a pivotal era in the twentieth century. The term *cold war* itself, popularized in a 1946 speech by prime minister Winston Churchill of Britain, describes the ideological struggle between democracy and COMMUNISM that began shortly after the end of WORLD WAR II and lasted until 1991. For the foreign policy of the United States, the cold war defined the last half of the twentieth century. It was a war of ideas, of threats, and of actual fighting in the countries of Korea and Vietnam, pitting western nations against the Soviet Union and China and their Communist allies. The 1940s and 1950s saw the cold war bloom into a period of unparalleled suspicion, hostility, and persecution. Anti-Communist hysteria ran through each branch of government as the pursuit of U.S. Communists and their sympathizers consumed the energies of the EXECUTIVE BRANCH, lawmakers, and the courts. Rarely in the nation's history have constitutional rights been so widely and systematically sacrificed.

The cold war began in the aftermath of World War II. Although only recently allied against Germany, the United States and the Soviet Union saw their relationship quickly disintegrate. The division of Europe, with the Soviet bloc countries sealed off behind what Churchill called the "iron curtain," had been the first blow. A fear that Communism would

A family sits in their bomb shelter, a common feature of many homes during the early years of the Cold War when fear of a nuclear war with the Soviet Union was intense.



undermine the security of the United States took hold of the nation's leaders and citizens alike. Measures had to be taken to safeguard the country from infiltration, it was popularly believed, and the government began a vigorous campaign against Communist activity. On March 21, 1947, President **HARRY S. TRUMAN** took a significant early step toward protecting the country from Communism by issuing an order establishing so-called loyalty boards within each department of the executive branch (Exec. Order No. 9835, 3 C.F.R. 627). These boards were designed to hear cases brought against employees "disloyal to the Government" and, on the evidence presented, remove disloyal employees from federal service.

The loyalty boards deviated from the traditional standard of presumed innocence. Instead, the boards made their determinations based on whether "reasonable grounds exist for belief" that an accused employee was disloyal. Thus, instead of having to prove **BEYOND A REASONABLE DOUBT** that the accused person was guilty of disloyalty, it was sufficient to bring enough evidence against the accused person to damn that person in the eyes of the board. This abridgment of **DUE PROCESS**, which ended jobs and

ruined reputations, grew harsher under the administration of President **DWIGHT D. EISENHOWER**. By amending the order in 1951, Eisenhower made it even harder for an accused employee to prove his or her innocence (Exec. Order No. 10,241, 16 Fed. Reg. 3690). Now, the **BURDEN OF PROOF** was reduced to a showing of "reasonable doubt as to the loyalty of [the] person," a standard amenable to trumped-up charges.

The intensity of domestic fears grew in 1949, following the announcement by President Truman that the Soviets had developed the atomic bomb. Only a year later, the **KOREAN WAR** broke out. These events ushered in a period of bomb shelters; air raid drills in schools; civilian anti-Communist organizations; and suspicion of anyone whose ideas, behavior, personal life, or appearance suggested belief in or sympathy for Communism. Terms like **Pinko**, **Red**, and **Communist sympathizer** found their way into the national vocabulary.

During the late 1940s, the House Un-American Activities Committee (HUAC), created to investigate subversives, provoked widespread concern that government officials had given secrets to the Soviets. Over the next

decade, in a climate of general suspicion that it helped foster, it also investigated union leaders, academics, and, most dramatically, Hollywood. The right to **FREEDOM OF ASSOCIATION** meant little to congressional investigators. HUAC subpoenaed private citizens and confronted them with a no-win choice: cooperate in naming Communists or face **CONTEMPT** charges. Crucial to the success of these hearings was the cooperation of the **FEDERAL BUREAU OF INVESTIGATION** (FBI), which provided the committee with both public support and information.

At the same time, Senator **JOSEPH R. MCCARTHY** conducted his own hearings through the Permanent Subcommittee on Investigations. From 1950 to 1954, McCarthy's charges about alleged Communist operatives in the **STATE DEPARTMENT** and the Army captivated the nation. Like HUAC activities, his witch-hunt shattered reputations and lives, but it backfired when he attacked the U.S. Army. Censured by the U.S. Senate in 1954, he ultimately gave history a word that symbolizes the zealous disregard for fairness in accusation: *McCarthyism*.

Starting in 1948, the **JUSTICE DEPARTMENT** prosecuted members of the American Communist party under the **SMITH ACT** of 1940 (18 U.S.C.A. § 2385), a broadly written law that prohibited advocating the violent overthrow of the government. The U.S. Supreme Court upheld 12 convictions in *Dennis v. United States*, 341 U.S. 494, 71 S. Ct. 857, 95 L. Ed. 1137 (1951), and this ruling cleared the way for 141 subsequent indictments. Over the next several years, 29 convicted party members were sent to jail. In time, Congress provided prosecutors with new ammunition through the **MCCARRAN INTERNAL SECURITY ACT** of 1950 (50 U.S.C.A. § 781 et seq.) and the Communist Control Act of 1954 (50 U.S.C.A. § 841).

Anti-Communist hysteria decreased somewhat following the embarrassment of McCarthy. However, the cold war continued. HUAC operated throughout the 1960s, as did the Senate Permanent Subcommittee on Investigations; both continued to locate the nation's troubles in the work of alleged subversives. And from the late 1950s to the 1960s, the FBI, under the direction of **J. EDGAR HOOVER**, secretly fought Communists and other targets through its Counterintelligence Program (**COINTELPRO**).

Although the domestic waging of the cold war had diminished by the early 1970s, the

international struggle continued. Over the next two decades the cold war drew the United States into military involvement in Asia, Africa, and Central America. After Vietnam, the United States fought communism by supporting anti-communist factions in Angola, El Salvador, Nicaragua, Guatemala, and Afghanistan. During the 1980s, the United States shifted to an economic strategy, hoping to bankrupt the Soviet Union through an arms race of unprecedented scale. The cold war effectively ended with the breakup of the Soviet Union in 1991.

FURTHER READINGS

- Craven, John Pina. 2001. *The Silent War*. New York: Simon & Schuster.
- Hakim, Joy. 1995. *All the People: A History of Us*. New York: Oxford Univ. Press.
- laFeber, Walter. 2004. *America, Russia, and the Cold War, 1945–2002*. Updated 9th ed. Boston: McGraw-Hill.
- Levering, Ralph B. 1982. *The Cold War: 1945–1972*. Wheeling, Ill.: Harlan Davidson.
- Mendelsohn, Jack. 1999. "History and Evaluation of the Role of Nuclear Weapons in the Cold War." *Case Western Reserve Journal of International Law* 31 (mid-summer).
- Neusner, Jacob and Noam M. 1995. *The Price of Excellence: Universities in Conflict during the Cold War Era*. New York: Continuum.
- Rosenn, Max. 1995. "Presumed Guilty." *University of Pittsburgh Law Review* (spring).
- Tatum, Dale C. 2002. *Who Influenced Whom?: Lessons from the Cold War*. Lanham, Md.: Univ. Press of America.
- Wenger, Andreas, and Doron Zimmermann. 2003. *International Relations: From the Cold War to the Globalized World*. Boulder, Colo.: L. Rienner.

CROSS-REFERENCES

Communism "House Un-American Activities Committee" (In Focus); Hiss, Alger; Nixon, Richard Milhous; Rosenbergs Trial.

COLLATERAL

Related; indirect; not bearing immediately upon an issue. The property pledged or given as a security interest, or a guarantee for payment of a debt, that will be taken or kept by the creditor in case of a default on the original debt.

That which is collateral is not of the essence. *Collateral facts* are facts that are not independently provable from, and that are not directly relevant to, issues in a **CAUSE OF ACTION**. *Collateral heirs* are those individuals who are not directly related to the deceased through consanguinity. Similarly, *collateral ancestors* are uncles and aunts, as contrasted with direct ancestors, such as parents and grandparents.

COLLATERAL ATTACK

An attempt to impeach or overturn a judgment rendered in a judicial proceeding, made in a proceeding other than within the original action or an appeal from it.

A defendant may make a collateral attack on a judgment entered against him or her in some instances. If a default judgment is entered against the person, he or she may collaterally attack the authority of the issuing court to render it, claiming that there was a lack of **PERSONAL JURISDICTION**.

Similarly, if a man leaves his wife and moves to another state where he obtains a **DIVORCE** that contains no support provisions for the woman, she may directly attack the judgment by appealing it in the state where it was entered or initiate a collateral attack by bringing her own divorce action in her state of residence.

A collateral attack may also be made upon a judicial proceeding in a single state.

COLLATERAL ESTOPPEL

A doctrine by which an earlier decision rendered by a court in a lawsuit between parties is conclusive as to the issues or controverted points so that they cannot be relitigated in subsequent proceedings involving the same parties.

Collateral estoppel is an **AFFIRMATIVE DEFENSE** that must be pleaded by a defendant in civil actions. The similar affirmative defense of **RES JUDICATA** differs from collateral **ESTOPPEL** in that it completely precludes the relitigation of a claim, demand, or **CAUSE OF ACTION**, as opposed to an issue or controverted point, in a subsequent proceeding between the same parties to an earlier action.

The application of the collateral estoppel doctrine promotes the speedy administration of justice by preventing the continuous, duplicative litigation of fruitless claims when relitigation of them is unlikely to change the original decision made regarding them.

Requirements

Issues or findings of fact, not conclusions of law, are subject to collateral estoppel only in certain cases. The issue against which collateral estoppel is claimed must be identical to an issue already litigated in the earlier case and must have been fully litigated at that time. In addition, the court must have actually decided the issue. The decision on the issue must have been integral in the outcome of the original lawsuit. This

last requirement assures the issue was vigorously litigated so that it is fair to prevent its relitigation in a second action because there is little likelihood that the results will be different the second time.

If an action has been settled by the agreement of the parties, most jurisdictions will not apply collateral estoppel, since the issues have not been fairly and fully litigated.

Persons Affected

Collateral estoppel is binding only upon those parties to the first action in which a decision was made and anyone who might be regarded as in privity with those parties, such as a bailor and bailee or a principal and his or her agent. In many jurisdictions a party in a lawsuit who is not subject to the estoppel effect of a prior judgment because the party was not a party to the original action in which the judgment was rendered can, in certain instances, use that judgment to bind his or her adversary who had been a party in the former action.

A defendant who, in a second action, pleads the defenses of collateral estoppel against the plaintiff uses it defensively. In many jurisdictions this use of the doctrine is considered fair because the plaintiff has the advantage of selecting the defendant and the forum in which the case is to be decided. The decision to commence the second lawsuit is based, in part, upon the findings or issues in the first action, and, therefore, it is not unreasonable to bind the plaintiff by the issues or findings made in that case.

In contrast, a plaintiff in a subsequent lawsuit who asserts collateral estoppel against a defendant uses the doctrine offensively to buttress his or her cause of action. Fewer jurisdictions, however, permit its offensive use since the defendant against whom it would be applied has neither the choice of forum nor of adversary.

Limitations

Collateral estoppel has limited applicability in cases where the issues raised in the court where the action was first heard were beyond its jurisdiction. In antitrust cases brought in federal court, which has exclusive jurisdiction over such matters, prior state court rulings concerning antitrust violations made during the course of deciding the legality of a contract will not be given collateral estoppel effect. Courts reason that the punitive and exclusive nature of the federal remedy in antitrust cases precludes collateral estoppel based upon state court decisions.

In contrast, federal courts have applied collateral estoppel in patent cases to any underlying facts decided by state courts but not to facts alleged to prove the issue of patent validity or infringement.

The availability of collateral estoppel is also limited by changes in the law that take place between the original and subsequent action. Collateral estoppel will not apply if modifications in the applicable law alter the operative facts needed to obtain a favorable ruling. To do otherwise would deny an individual EQUAL PROTECTION of law merely because of the luck of the person who obtained the previous ruling.

Criminal Matters

Jurisdictions differ on whether to give an estoppel effect to a criminal conviction of a party currently involved in a civil lawsuit. Traditionally, estoppel was not permitted, since the plaintiff in the civil action was not a party to the criminal proceeding. Today, a number of states give full collateral estoppel effect to a previous criminal conviction. Acquittal of a crime is not given collateral estoppel effect in a civil proceeding because the plaintiff in the civil suit was not a party to the criminal proceeding and could not offer evidence against the defendant. This rule prevented O. J. SIMPSON from using his acquittal of murder as a defense in the civil trials brought against him by the families of Nicole Brown Simpson and Ronald Goldman following the murder trial.

In addition, the difference between the BEYOND A REASONABLE DOUBT standard of proof necessary for a criminal conviction and the PREPONDERANCE OF EVIDENCE standard in civil actions would make it unfair to allow the acquitted defendant to use his or her acquittal to bind the opponent in the civil matter in which the standard of proof to obtain a judgment is not as stringent.

COLLATERAL HEIR

A successor to property—either by will or descent and distribution—who is not directly descended from the deceased but comes from a parallel line of the deceased's family, such as a brother, sister, uncle, aunt, niece, nephew, or cousin.

COLLATERAL WARRANTY

In real estate transactions, an assurance or guaranty of title made by the holder of the title to the person to whom the property is conveyed.

Such a WARRANTY is not the same as a COVENANT running with the land, since it runs only to a particular covenantee who accepts the land from the holder of title and not to each successive owner of the land upon taking ownership of it.

COLLECTIVE BARGAINING

The process through which a LABOR UNION and an employer negotiate the scope of the employment relationship.

A collective bargaining agreement is the ultimate goal of the collective bargaining process. Typically, the agreement establishes wages, hours, promotions, benefits, and other employment terms as well as procedures for handling disputes arising under it. Because the collective bargaining agreement cannot address every workplace issue that might arise in the future, unwritten customs and past practices, external law, and informal agreements are as important to the collective bargaining agreement as the written instrument itself.

Collective bargaining allows workers and employers to reach voluntary agreement on a wide range of topics. Even so, it is limited to some extent by federal and state laws. A collective bargaining agreement cannot accomplish by contract what the law prohibits. For example, a union and an employer cannot use collective bargaining to deprive employees of rights they would otherwise enjoy under laws such as the CIVIL RIGHTS statutes (*Alexander v. Gardner-Denver Co.*, 415 U.S. 36, 94 S. Ct. 1011, 39 L. Ed. 2d 147 [1974]). Collective bargaining also cannot be used to waive rights or obligations that laws impose on either party. For example, an employer may not use collective bargaining to reduce the level of safety standards it must follow under the OCCUPATIONAL SAFETY AND HEALTH ACT (29 U.S.C.A. §§ 651 et seq.). Furthermore, the collective bargaining agreement is not purely voluntary. One party's failure to reach agreement entitles the other to resort to certain legal tactics, such as strikes and lockouts, to apply economic pressure and force agreement. Moreover, unlike commercial contracts governed by state law, the collective bargaining agreement is governed almost exclusively by federal LABOR LAW, which determines the issues that require collective bargaining, the timing and method of bargaining, and the consequences of a failure to bargain properly or to adhere to a collective bargaining agreement.



National Basketball Association (NBA) Commissioner David Stern (right) shakes hands with NBA Players Association Executive Director Billy Hunter during a January 1999 press conference in which a collective bargaining agreement between the league and players was announced.

AP/WIDE WORLD
PHOTOS

National Labor Relations Act

Congress passed the National Labor Relations Act (NLRA) (29 U.S.C.A. §§ 151 et seq.) in 1935 to establish the right of workers to engage in collective bargaining and other group activities (§ 157). The NLRA also created the NATIONAL LABOR RELATIONS BOARD (NLRB), a federal agency authorized to enforce the right to bargain collectively (§ 153). The NLRA has been amended several times since 1935, most notably in 1947, 1959, and 1974.

The NLRA governs labor relations for businesses involved in interstate commerce only; thus, it does not protect the collective bargaining interests of all categories of workers. Several classes of employers fall outside the NLRA, including those working for the U.S. government and its wholly owned corporations, states and their political subdivisions, railroads, and airlines. The NLRA also does not protect certain types of workers, such as agricultural workers, independent contractors, and supervisory and managerial employees. But other federal and state laws often provide protection for workers not covered under the NLRA. For example, federal government workers enjoy the right to bargain collectively under the Civil Service Reform Act of 1978, which is patterned largely after the NLRA and enforced by the Federal Labor Relations Authority. Railroads and airlines are generally governed by the Railway Labor Act, the predecessor to the NLRA. Plus many states have adopted statutes similar to the NLRA that protect the rights of state and local government workers to bargain collectively.

Sections 8(a)(5) and 8(b)(3) of the NLRA define the failure to engage in collective bargain-

ing as an unfair labor practice (29 U.S.C.A. § 158[a][5], [b][3]). The aggrieved party may file an UNFAIR LABOR PRACTICE charge with the NLRB, which has the authority to prevent or halt the performance of unfair labor practices (§ 160).

Law of Collective Bargaining

The law of collective bargaining encompasses four basic points:

- The employer may not refuse to bargain over certain subjects with the employees' representative, provided that the employees' representative has majority support in the bargaining unit.
- Those certain subjects, called mandatory subjects of bargaining, include wages, hours, and other terms and conditions of employment.
- The employer and the union are not required to reach agreement but must bargain in GOOD FAITH over mandatory subjects of bargaining until they reach an impasse.
- While a valid collective bargaining agreement is in effect, and while the parties are bargaining but have not yet reached an impasse, the employer may not unilaterally change a term of employment that is a mandatory subject of bargaining. But once the parties have reached an impasse, the employer may unilaterally implement its proposed changes, provided that it had previously offered the changes to the union for consideration.

Exclusive Representation A majority of the workers in a bargaining unit must designate a representative with the sole or exclusive right to represent them in negotiations with the employer's representative (29 U.S.C.A. § 159[a]). The employer is not required to bargain with an unauthorized representative (§ 158[a][5]). Once a valid representative has been selected, even workers who do not belong to the union are bound by the collective bargaining agreement and cannot negotiate individual contracts with the employer (*J. I. Case Co. v. NLRB*, 321 U.S. 332, 64 S. Ct. 576, 88 L. Ed. 762 [1944]). As a corollary, the employer may not extend different terms to any workers in the bargaining unit, even if those terms are more favorable, unless the collective bargaining agreement contemplates flexible terms (*Emporium Capwell Co. v. Western Addition Commu-*

nity Organization, 420 U.S. 50, 95 S. Ct. 977, 43 L. Ed. 2d 12 [1975]).

Once the NLRB certifies a union as the exclusive bargaining agent, the union enjoys an irrebuttable presumption of majority support for one year (*Fall River Dyeing & Finishing Corp. v. NLRB*, 482 U.S. 27, 107 S. Ct. 2225, 96 L. Ed. 2d 22 [1987]). During that year, the employer may not refuse to bargain with the union on the ground that the union does not represent a majority of employees. After that year expires, the employer may rebut the presumption that the union represents a majority of employees by showing either that the union in fact does not enjoy majority support or that the employer has a good faith doubt founded on sufficient objective evidence that the union has lost majority support (*NLRB v. Curtin Matheson Scientific*, 494 U.S. 775, 110 S. Ct. 1542, 108 L. Ed. 2d 801 [1990]). In cases where the employer doubts that a union enjoys majority support, the employer may “anticipatorily withdraw” recognition of the union by insisting on a collective bargaining agreement that will terminate with the end of the certification year (*Rock-Tenn Co. v. NLRB*, 69 F.3d 803 [7th Cir. 1995]).

Similarly, a successor employer may not simply refuse to recognize the union for bargaining purposes. Instead, courts have required successor employers to recognize the incumbent union if “substantial continuity” exists between both employers (*NLRB v. Burns Security Service*, 406 U.S. 272, 92 S. Ct. 1571, 32 L. Ed. 2d 61 [1972]). To determine whether there is substantial continuity, courts will consider, among other factors, whether both employers are engaged in the same business, whether the employees perform substantially similar tasks under both employers, whether the customer base remains much the same, and whether the successor employer continues to use the same industrial or business processes as its predecessor (*Frye v. Specialty Envelope*, 10 F.3d 1221 [6th Cir. 1993]).

Mandatory Subjects of Bargaining

Although the parties need not bargain over every conceivable topic, they must bargain in good faith over mandatory subjects of bargaining, which include wages, hours, and other “terms and conditions of employment” (29 U.S.C.A. § 158[d]). Because these mandatory subjects are very broad, courts over the years have attempted to set standards for determining whether a specific bargaining topic is mandatory. Generally, terms and conditions of employ-

ment encompass only issues that “settle an aspect of the relationship between the employer and the employees” (*Allied Chemical & Alkali Workers of America v. Pittsburgh Plate Glass Co.*, 404 U.S. 157, 92 S. Ct. 383, 30 L. Ed. 2d 341 [1971]).

If one party wishes to bargain over a mandatory subject, it is an unfair labor practice for the other to refuse. Other topics are permissive subjects of bargaining, and it may be an unfair labor practice for a party to demand bargaining over them (*NLRB v. Wooster Division of Borg-Warner Corp.*, 356 U.S. 342, 78 S. Ct. 718, 2 L. Ed. 2d 823 [1958]). Thus, although the parties must bargain to an impasse over mandatory subjects of bargaining before implementing unilateral changes, they may change permissive subjects unilaterally without bargaining and cannot be forced to bargain over such changes.

Although most of the decisions an employer makes will affect employees, not all are mandatory subjects of bargaining. Some decisions, such as advertising and product selection, bear such an indirect relationship to and have such a minimal effect on the employment relationship that they are almost certainly only permissive subjects of bargaining. Other decisions, such as those regarding hiring, layoffs, and plant rules, are so directly relevant to the employment relationship that they are almost certainly mandatory subjects of bargaining. Still other decisions are not aimed at the employment relationship but have a sizable effect on it and are thus difficult to categorize as permissive or mandatory bargaining subjects (*First National Maintenance Corp. v. NLRB*, 452 U.S. 666, 101 S. Ct. 2573, 69 L. Ed. 2d 318 [1981] [citing *Fibreboard Paper Products v. NLRB*, 379 U.S. 203, 85 S. Ct. 398, 13 L. Ed. 2d 233 (1964) [Stewart, J., concurring]]). The Supreme Court has attempted on several occasions to define the scope of mandatory bargaining for this third category of management decisions.

In *Fibreboard*, the Supreme Court held that under its three-part analysis, an employer’s decision to subcontract out a portion of its operations was a mandatory bargaining subject. First, subcontracting falls within the literal meaning of the NLRA phrase “terms and conditions of employment.” Second, determining that subcontracting is a mandatory bargaining subject effectuates the purposes of the NLRA by “bringing a problem of vital concern to labor and management within the framework established

by Congress as most conducive to industrial peace”—namely, collective bargaining. Third, other employers in the same industry have addressed contracting out in the bargaining process, rather than leaving it to managerial discretion. Justice POTTER STEWART added in his concurrence that subjects that “lie at the core of entrepreneurial control,” such as decisions about “the commitment of investment capital and the basic scope of the enterprise,” are not mandatory subjects of bargaining.

In *First National Maintenance*, the Court addressed whether an employer’s decision to terminate certain operations entirely constituted a mandatory subject of bargaining. The Court, relying primarily on Justice Stewart’s concurrence in *Fibreboard*, held that the decision to terminate all operations at a particular site was an economically motivated management decision that was separate from the employment relationship, even though it obviously affected job security. The Court noted, however, that the effects of the employer’s decision, such as severance pay and benefits, were mandatory subjects of bargaining under section 8(a)(5) of the NLRA. Accordingly, under this *Fibreboard-First National Maintenance* framework, most significant economic decisions, such as plant shut-downs, layoffs, and relocations, are not mandatory subjects of bargaining, even though the employer must engage in “effects bargaining” as a result of them.

Duty to Bargain in Good Faith During the bargaining process, the parties are not required by law to reach agreement. They must, however, bargain in good faith (29 U.S.C.A. § 158[d]). Although good faith is a somewhat subjective concept, courts will look to the entire circumstances surrounding bargaining, including behavior away from the bargaining table such as pressure and threats (*NLRB v. Billion Motors*, 700 F.2d 454 [8th Cir. 1983]). Most authorities agree that an absolute refusal to bargain constitutes bad faith (*Wooster*).

Even so, one party’s insistence on a certain contract term is not necessarily an unfair labor practice. The NLRB and the courts that review and enforce its orders are unwilling to substitute their judgment for that of the parties and will not judge the content of collective bargaining agreements (*NLRB v. American National Insurance Co.*, 343 U.S. 395, 72 S. Ct. 824, 96 L. Ed. 1027 [1952]). In addition, the use of “economic weapons” such as pressure tactics, picketing, and

strikes to force bargaining concessions is not necessarily bad faith bargaining (*NLRB v. Insurance Agents’ International Union*, 361 U.S. 477, 80 S. Ct. 419, 4 L. Ed. 2d 454 [1960]).

The refusal to comply with an information request may constitute bad faith. For example, in *NLRB v. Truitt Manufacturing Co.*, 351 U.S. 149, 76 S. Ct. 753, 100 L. Ed. 1027 (1956), the employer committed an unfair labor practice when it refused to supply the union with information supporting its claim that it could not afford to pay a wage increase the union demanded. Over the years, courts have clarified that employers’ claims of an inability to pay requested wage increases are conceptually distinct from claims that wage increases will result in a competitive disadvantage (*United Steelworkers of America v. NLRB*, 983 F.2d 240 [D.C. Cir. 1993]). Accordingly, in *Graphic Communications International Union Local 508 v. NLRB*, 977 F.2d 1168 (7th Cir. 1992), the court held that an employer was not required to disclose financial information unless it had asserted specifically that it was unable to pay a requested wage increase; an employer’s claim that a wage increase would lead to competitive disadvantage did not require it to disclose wage information.

However, a refusal to provide requested information is not necessarily an unfair labor practice. For example, in *Detroit Edison Co. v. NLRB*, 440 U.S. 301, 99 S. Ct. 1123, 59 L. Ed. 2d 333 (1979), the Supreme Court held that an employer’s refusal to provide a union with confidential test results was not an unfair labor practice, where the company would have violated the right to privacy of the tested employees by disclosing the results.

Unilateral Changes During the time a collective bargaining agreement is in effect, the employer may not change a working condition that is a mandatory subject of bargaining, without first bargaining with the union (29 U.S.C.A. § 158[d]). Even after the collective bargaining agreement expires, the employer must maintain the status quo and may not unilaterally change mandatory subjects of bargaining, until the parties have reached an impasse (*Louisiana Dock Co. v. NLRB*, 909 F.2d 281 [7th Cir. 1990]). This proscription against unilateral changes continues even if the employer disputes that the union is the exclusive representative (*Livingston Pipe & Tube v. NLRB*, 987 F.2d 422 [7th Cir. 1993]; *NLRB v. Parents & Friends of the Specialized Living Center*, 879 F.2d 1442 [7th Cir. 1989]). Once

good faith negotiations between the parties “exhaust the prospect of concluding agreement,” the parties have reached an impasse, and implementing unilateral changes in working conditions does not constitute an unfair labor practice (*NLRB v. Plainville Ready Mix Concrete Co.*, 44 F.3d 1320 [6th Cir. 1995]; *United Paperworkers International Union v. NLRB*, 981 F.2d 861 [6th Cir. 1992]; *Southwest Forest Industry v. NLRB*, 841 F.2d 270 [9th Cir. 1988]).

A pre-impasse unilateral change to a mandatory subject of bargaining generally constitutes an unfair labor practice, even though employees may regard the change as beneficial. According to the Supreme Court, unilateral changes minimize the influence of collective bargaining by giving employees the impression that a union is unnecessary to achieve agreement with the employer. For example, in *NLRB v. Katz*, 369 U.S. 736, 82 S. Ct. 1107, 8 L. Ed. 2d 230 (1962), the employer unilaterally changed its sick leave policy and increased its wage rates without first bargaining over them with the union. The Court ruled that the employer’s unilateral change undermined the union’s ability to negotiate over sick leave, wages, and other terms of employment.

One area of ongoing conflict between unions and employers concerns when wage increases constitute mandatory subjects of bargaining. In *Acme Die Casting v. NLRB*, 26 F.3d 162 (D.C. Cir. 1994), the court of appeals analyzed the employer’s historical practice of establishing the frequency and size of wage increases and determined that whether to grant a wage increase was not an issue within the employer’s discretion and could not be decided without bargaining with the union (see also *Daily News of Los Angeles v. NLRB*, 979 F.2d 1571 [D.C. Cir. 1992] [remanding to NLRB to determine whether wage increases that are consistent in terms of timing but discretionary in terms of amount are considered mandatory subjects of bargaining]).

One area of ongoing conflict between unions and employers concerns when wage increases constitute mandatory subjects of bargaining. In *Acme Die Casting v. NLRB*, 26 F.3d 162 (D.C. Cir. 1994), the court of appeals analyzed the employer’s historical practice of establishing the frequency and size of wage increases, and determined that whether to grant a wage increase was not an issue within the employer’s discretion and could not be decided without bargaining with the union.



As of 2003, the U.S. Supreme Court had not resolved this issue of whether wage increases were mandatory subjects of collective bargaining, so the federal courts of appeals have developed rules of their own to govern this question. Where an employer does not exercise discretion in determining the timing or the amount of a wage increase, then the issue of wage increases is a mandatory subject for collective bargaining. *NLRB v. Beverly Enter.-Mass., Inc.*, 174 F.3d 13 (1st Cir. 1999). Moreover, even if an employer exercises a certain amount of discretion in determining wage increase, such as an annual increase to cover the costs of living, this fact does not prevent the wage increase from becoming a mandatory subject if the company has a long-standing practice of granting such pay increases. *NLRB v. Pepsi-Cola Bottling Co.*, No. 00-1969, 2001 WL 791645 (4th Cir. July 13, 2001).

Once the parties have reached an impasse, the employer may implement unilateral changes to mandatory bargaining subjects as long as it has previously proposed those changes to the union (*NLRB v. Plainville Ready Mix Concrete Co.*, 44 F.3d 1320 [6th Cir. 1995]; *NLRB v. Emsing's Supermarket*, 872 F.2d 1279 [7th Cir. 1989]).

FURTHER READINGS

- Aidt, Toke, and Zafiris Tzannatos. 2002. *Economic Effects in a Global Environment*. Washington, D.C.: World Bank.
- Bagchi, Aditi. 2003. “Unions and the Duty of Good Faith in Employment Contracts.” *Yale Law Journal* 112 (May).

CROSS-REFERENCES

Employment Law; Good Faith; Picketing.

In a show of support for collective bargaining rights, state employees gather in Sante Fe, New Mexico, in February 2003. One month later, Governor Bill Richardson signed a bill restoring the employees' right to collective bargaining.

AP/WIDE WORLD
PHOTOS

COLLECTIVE BARGAINING AGREEMENT

The contractual agreement between an employer and a LABOR UNION that governs wages, hours, and working conditions for employees and which can be enforced against both the employer and the union for failure to comply with its terms. Such an agreement is ordinarily reached following the process of COLLECTIVE BARGAINING. A high profile example of such bargaining happens in the world of professional BASEBALL.

COLLEGES AND UNIVERSITIES

The term *college* is a general one that encompasses a wide range of higher-education institutions, including those that offer two- to four-year programs in the arts and sciences, technical and vocational schools, and junior and community colleges. The term *university* specifically describes an institution that provides graduate and professional education in addition to four-year post-secondary education. Despite these distinctions, the terms *college* and *university* are frequently used interchangeably in the United States.

The first institution of higher education in the United States was Harvard College, founded in 1636. At the time of the Revolutionary War, nine colleges existed in the colonies—a number that had tripled by the time of the Civil War. In 1876, the first true university in the United States was established, with the founding of Johns Hopkins, in Baltimore. The university format rapidly gained popularity, and prominent private and state-run colleges soon assumed university status. According to the *Statistical Abstract of the United States*, 4,084 colleges and universities operated in the United States in 1999.

U.S. colleges and universities fall into two general categories: private and public. Private institutions are usually corporations operating under state charters. Although tuition and private gifts and endowments provide much of their financial support, most private colleges and universities also receive some degree of government support. Many of the 2,000-plus private colleges and universities in the United States claim a religious affiliation.

Public institutions are established either by state constitution or by statute, and they receive funding from state appropriations as well as tuition and endowments. Although the federal government operates several institutions of

higher learning, such as the U.S. Military Academy and the U.S. Air Force Academy, it is prohibited by statute from exercising direct control over other educational institutions.

The Legal Climate

U.S. colleges and universities are governed by many of the same laws that regulate the rest of U.S. society. In addition, they have generated a unique body of law. Educational institutions reflect the legal climate of the rest of the country, but the importance of a good education has elevated equal access, equal opportunity, and ACADEMIC FREEDOM to a higher status than they might otherwise assume.

Three general types of laws affect the operation of colleges and universities. State laws affect public and private colleges and universities in the absence of federal laws that supersede them. Federal laws may affect public and private institutions, and they usually affect entities that receive federal funding or that are subject to regulation under the COMMERCE CLAUSE of the Constitution. The most common such laws are statutes that prohibit discrimination. Finally, the Constitution governs public, but almost never private, institutions.

As state entities, public institutions must conform to constitutional provisions that prohibit the state from discriminating and from denying constitutional rights. Thus, much of the law of public institutions stems from constitutional amendments such as the following:

- the Free Speech Clause of the FIRST AMENDMENT, which guarantees that the government will not interfere with FREEDOM OF SPEECH
- the Free Exercise Clause of the First Amendment, which ensures that the government will not interfere with or outlaw religious expression
- the Establishment Clause of the First Amendment, which prohibits the government from endorsing or establishing a state religion
- the EQUAL PROTECTION CLAUSE of the FOURTEENTH AMENDMENT, which guarantees that a state will enforce its laws equally with respect to all persons, with certain exceptions
- the DUE PROCESS CLAUSE of the Fourteenth Amendment, which requires the state to provide certain procedural safeguards before depriving an individual of a liberty or prop-

Collective Bargaining Agreement

**Collective Bargaining Agreement
Between
The City of Stamford
and
Teamsters Union Local #145**

Affiliated with the International Brotherhood of Teamsters

July 1, 2001 - June 30, 2003

A sample collective bargaining agreement between the City of Stamford, Connecticut, and Teamsters Union Local #415.

AGREEMENT

This Agreement is made and entered into between THE CITY OF STAMFORD, hereinafter referred to as the "Employer" or "City", and TEAMSTERS UNION LOCAL 145, affiliated with the International Brotherhood of Teamsters, hereinafter referred to as the "Union".

**ARTICLE I
RECOGNITION**

The City of Stamford recognizes and acknowledges that the Union, its duly authorized agents and representatives is the exclusive bargaining agent with respect to wages, hours, and working conditions of the employees in the Public Works Department, the Department of Traffic and Parking, the E. Gaynor Brennan Golf Course, and Golf Course Seasonals, as set forth in Supplemental Agreement dated 5/18/93, of the City in the job classifications set forth in the Appendix hereof (hereinafter referred to as the employees).

**ARTICLE II
UNION SECURITY**

(a) All employees hired after the date of execution hereof shall become members of the Union not later than sixty (60) days after the date of their employment as a condition of continued employment. All such employees and all present employees who are members of the Union on the date of execution of this Agreement and all employees who become members of the Union hereafter, shall remain members of the Union in good standing by the payment of their regular monthly dues on or before the last day of each month as a condition of continued employment.

(b) The City agrees to deduct regular Union Dues and one (1) Initiation Fee from the pay of each employee who has signed and submitted to the City a card authorizing such deduction. All sums so deducted shall be sent monthly to the Treasurer of the Union.

(c) The City will notify the Local #145 Union office and the Chief Steward of the Union, in writing, of all new hires, transfers, suspensions and discharges concerning the employees covered by this Agreement.

(d) The Union agrees to indemnify and hold harmless the City for any loss or damage arising from the operation and execution of this Article.

**ARTICLE III
SENIORITY**

(a) Seniority, as used in this Article, is defined as the total length of continuous service with the City in a classification within a particular department, bureau, or division covered by this Agreement and subject to the provisions of this Article, except that anyone transferred from one department or location to another due to bidding on an open job shall retain Citywide seniority as long as the classification is covered under the Teamsters Local #145 contract.

(b) Seniority shall be accrued during periods of layoff.

(c) Upon completion of the probationary period provided for in Article XVIII hereof, employee's seniority shall date from the date of employment.

(d) An employee shall lose all accrued seniority status if he is discharged for just cause, is laid off for a period in excess of his recall rights or quits. Furthermore, an employee who takes or is promoted to any other job in the City that is not covered by a Teamsters Local 145 contract, shall lose all accrued seniority and may not regain any seniority if he shall return to such position for any reason.

(e) Officers and Stewards of the Union shall be placed at the head of the Seniority List in the bureau to which they are assigned by the City. This preferred seniority status shall be effective only in connection with layoffs.

(f) The City will furnish the Union, annually, with a Seniority List showing employee's seniority. These lists shall be simultaneously dated and posted on the bulletin boards and any employee who feels there is an error in his seniority date, as shown, must present his facts substantiating his position within thirty (30) calendar days of the date of posting. If no objection is raised, the date on the list will be presumed to be correct.

(g) The union will notify the City annually in writing, of the names and positions of all local Union officials and Stewards & Committeemen. The City will be promptly notified in writing, of any changes.

(h) The term "regular" employee as contained in this agreement shall mean non-probationary full-time employee.

[continued]

A sample collective bargaining agreement between the City of Stamford, Connecticut, and Teamsters Union Local #415 (continued).

Collective Bargaining Agreement

ARTICLE IV HOURS OF WORK

(a) To the extent possible, consistent with efficient operations, the regular hours of employment shall be thirty seven and one half (37-1/2) hours per week, divided equally over five (5) working days of seven and one half (7-1/2) hours each Monday through Friday. To the extent possible consistent with efficient operations the regular summer hours for the Division of Highway will be from the first Monday in May to the first Monday in October. The City may change the summer hours to meet operational requirements with two weeks notice, except as follows:

(1) The basic workday for the Refuse Collectors shall remain on an incentive basis and shall be the time required to complete the route assigned for the day. The City may schedule the work to be performed over any five (5) days out of six (6) between Monday and Saturday. The normal work hours, for the sanitation routes, is 4:00 a.m. to 12:00 p.m. However, if this change creates operational problems or difficulties, then the City reserves its right to adjust the schedule to alleviate these difficulties.

(2) (A) The WPCA employees shall work a continuous 24 hour operation, seven (7) days a week, divided into three (3) shifts per day of eight and one-half (8-1/2) hours per shift. The employees will work eight (8) hours per shift with one-half (1/2) hour off, without pay, for lunch. The lunch periods will be staggered between the third (3rd) and fifth (5th) hours of each shift so that the facility will always be covered. In the event an employee agrees to work a double shift, he must complete the full shift. These employees will have all accumulated leave time (vacation and sick) earned, before the execution of the contract and continuing thereafter, credited as eight (8) hour days.

(B) For the purposes of overtime, employees will begin to receive overtime (one and one-half [1-1/2] times their regular hourly rate) after working forty (40) hours in any given work week.

(3) The Incinerator employees shall continue to work on the present three (3) rotating shift and six (6) day operation basis.

(4) WPCA Mechanics shall continue to work on their present basis, which includes stand-by time and miscellaneous overtime, as required in their regular weekly wage.

(5) The Golf Course employees will continue to work thirty-seven and one-half (37-1/2) hours per week, divided equally over five (5) working days of seven and one half (7-1/2) hours each.

(6) Highway personnel alerted for snowstorms and plumbers shall continue to stand-by for emergencies as at present.

(b) For purposes of this Agreement, the workweek shall be deemed to start on Monday and end on Sunday. The terms "normally scheduled work day and work week" as used herein, consist of the schedule that an employee knows he is expected to work either because such schedule is posted on a bulletin board in advance or because it is the schedule he accepted upon employment or transfer, or because it is the schedule he has worked continuously so as to become routine. This includes schedules of irregular daily or weekly duration which are repetitive. New employees may be required to work different hours as a condition of employment.

(c) An assignment of work beyond the employee's regularly scheduled hours of any work day or any work week other than that necessitated by emergencies, shall be made four (4) hours in advance by authorized personnel.

(d) Overtime work shall be divided equally as far as practicable by rotation on a seniority and classification basis, subject to the employee's ability to perform the required work. Shop Stewards shall keep a list of overtime hours worked, provided to them by the time-keepers, weekly, and may post the same so that all employees may see who is receiving how much overtime. Any employee who refuses to perform overtime without just cause shall be dropped to the bottom of the overtime rotation list. If there are no employees accepting the overtime assignment, the least senior men must perform the work as scheduled. In the event of an emergency requiring callback of crews of men, a Shop Steward shall be called back one (1) hour in advance of other employees, whenever practical, to assist in telephoning men to be called in. When drivers are needed for such emergency callback, regular drivers shall be called in before temporary drivers or laborers.

(e) Employees refusing to report for a general emergency without just cause shall be subject to discipline.

(f) Any Refuse Collector desiring to work on his day off shall notify his superior of his availability.

(g) Employees may be required to take lunch on the job.

(h) The City shall maintain a minimum crew of at least four (4) sanitation employees of the bargaining unit.

(i) The provisions of Article IV, Section (a) (2) and Article V, Section (f) will be waived to permit flexibility in scheduling to meet golf course operating needs and to permit L. Mallizia and J. Gilello to work up to nine (9) hours on an assigned day at their regular rate straight time rates of pay. Overtime will be paid at the rate of time and one-half (1-1/2) per Article V, Section (f), for work in excess of thirty seven and one-half (37-1/2) hours in the workweek.

ARTICLE V WAGES

(a) The annual wages of employees covered by this Agreement shall be as set forth in "Appendix A" annexed hereto. Any retroactive payments shall apply to a base salary, overtime, premium time, callback, standby, or any other form of pay including the employee's vacation pay.

(1) Effective and retroactive to July 1, 2001, the pay rates in effect on June 30, 2001 will be increased by three percent (3%).

(2) Effective July 1, 2002, the pay rates in effect on June 30, 2002 will be increased by three percent (3%).

[continued]

Collective Bargaining Agreement

(b) Effective July 1, 2002, each employee shall receive longevity pay in accordance with the following:

After 10th Anniversary	\$350
After 15th Anniversary	\$450
After 20th Anniversary	\$550
After 25th Anniversary	\$650

Longevity payments will be made lump-sum during the month of December each year. An employee, who will be eligible for longevity during the fiscal year, will receive his/her longevity in December (ex. Employee with ten years as of February 20th during the fiscal year, will receive longevity pay in December, two months earlier. Conversely, an employee who reaches ten years as of August 20th will receive longevity in December, four months later). Pro rata payments shall be made upon termination, using July 1st as the date which the pro-rating begins (ex. employee who leaves in August will receive two-twelfths [2/12] of their annual longevity).

(c) Any employee required to work temporarily in a higher classification shall receive for such work, the rate in the higher classification for an employee with seniority equal to that of the acting employee.

(d) Employees working a second (2nd) shift (one commencing after 2:00 p.m.) shall receive a shift differential of seven percent (7%) over their regular rates, and employees working on a third (3rd) shift (one commencing after 10:00 p.m.) shall receive a shift differential of twelve percent (12%) over their regular rates. No shift premium shall be payable for emergency call-outs, standby time, or overtime, unless specifically provided herein.

(e) Except as otherwise provided, employees working in excess of a normally scheduled seven and one half (7-1/2) hour day or thirty seven and one half (37-1/2) hour week, shall be compensated for all such excess hours (except time of brief duration to complete tasks in process, e.g. returning to garage) at one and one half (1-1/2) times regular straight time rates.

(f) Each employee shall be given a minimum of four (4) hours work if called back to work for an emergency after completion of a regular day's work and shall be paid for such work at one and one half (1-1/2) times his regular straight time rate. On all such emergency calls, the employee called may be required to remain on duty for the full four (4) hours and thereafter until the emergency is over. If such employee so elects, he may, with the consent of his supervisor, remain at work less than the four (4) hours and be paid only for the hours worked. Any employee working on snow or ice (in connection with a storm) duty on Monday through Friday shall be paid straight time for hours worked between 8:00 a.m. and 4:00 p.m., time and one half (1-1/2) for hours worked between 4:00 p.m. and 12:00 midnight, and double (2) time between 12:00 midnight and 8:00 a.m. For hours worked on Saturday between 8:00 a.m. and 12:00 p.m., he will be paid time and one half (1-1/2) and for hours worked on Sunday, he will be paid double time. Pay for work on a holiday will continue as it now is in Article V, Section (k) of this Agreement.

(g) All employees shall be compensated for hours worked on the sixth (6th) day in any week at one and one half (1-1/2) times the regular straight time rates and for hours worked on the seventh (7th) day in any week at two (2) times the regular straight time rates.

(h) Except for pumping station mechanics, where Saturday or Sunday work is part of an employee's regular scheduled work week but is not performed on a sixth (6th) or seventh (7th) day of work, a weekend differential of ten percent (10%) shall be paid for all hours worked on such days.

(i) Employees who are required to standby because of an impending snow storm or hurricane or the like, will be compensated for hours spent on standby duty at one and one half (1-1/2) times regular straight time rates.

Other employees required to standby, will receive the same compensation as has been the practice, i.e. an employee who is required to standby for a week will receive, in addition to his regular pay, eleven (11) hours of straight time for that period.

(j) Employees may be scheduled not to work on any of the holidays listed in Article VI(a). If scheduled to work on a holiday, employees shall be compensated at one and one half (1-1/2) times the regular straight time for all hours worked on any holiday referred to in Article VI(a). Refuse Collectors shall also receive one and one half (1-1/2) days pay in addition to compensation for the holiday not worked, on condition that such Collector is scheduled to work the load day following the holiday day off in such a manner as to make up for the work customarily performed on the day of the week on which the holiday falls.

(k) For tardiness, each employee will be allowed a paid grace period of fifteen (15) minutes for a maximum of three (3) times in any twelve (12) consecutive month period, provided such tardiness does not result in actual additional cost to the City. If an employee is late more than fifteen (15) minutes, or is late more frequently than three (3) times in twelve (12) consecutive months, he shall not be paid for the total amount of time he is late on any occasion.

(l) Nothing in the foregoing paragraph shall limit the authority of a department supervisor to impose disciplinary action on any employee where attendance and/or tardiness record warrants the taking of such action. This action will include written warning to the employee that his record is not satisfactory.

(m) During snow storms and general emergencies, no employee shall be required to work more than fifteen (15) hours continuously without a rest period of six (6) hours in between.

**ARTICLE VI
HOLIDAYS AND PERSONAL LEAVE**

(a) All employees covered by this Agreement shall receive a full day's pay at their straight time rate of pay for the holidays listed below, or days celebrated as such, regardless of the day of the week upon which such holiday shall fall:

New Year's Day	Labor Day
Martin Luther King Day	Columbus Day

[continued]

A sample collective bargaining agreement between the City of Stamford, Connecticut, and Teamsters Union Local #415 (continued).

A sample collective bargaining agreement between the City of Stamford, Connecticut, and Teamsters Union Local #415 (continued).

Collective Bargaining Agreement

President's Day
Good Friday
Memorial Day
Independence Day

Veteran's Day
Thanksgiving Day
Day after Thanksgiving
Christmas Eve after 12:00 noon
Christmas Day

(b) Each employee shall have two(2) days of personal leave in each contract year to be taken at such time as the employee may elect, with the prior consent of his department head, which such consent shall not be unreasonably withheld. Effective July 1, 1997, in consideration of consolidating Washington's and Lincoln's Birthdays into President's Day, each employee will receive an additional one (1) day of personal leave, bringing the total number of personal days in each contract year to three (3) days.

Employees will receive pro-rated personal days during their first year of employment, as follows:

If employee is hired:

July 1 - August 31
September 1 - October 31
November 1 - December 31

Three (3) personal days
Two (2) personal days
One (1) personal day

Personal days may not be used by a new employee while that person is on probation. Personal days may not be accumulated from year to year.

(c) In the event the Mayor proclaims any day as an additional day off for all City employees, any employee covered by this Agreement who must work because of the nature of his job, shall be granted a compensatory day off at a time mutually convenient to the employee and his department head.

(d) Employees shall normally be entitled to at least three (3) days prior notice of any holiday on which they will be required to work.

TEAMSTERS Local #145 CONTRACT

erty interest. State-run institutions also are subject to state and often federal law.

Private institutions are not governed directly by the Constitution. Instead, they are regulated solely by state and federal law. Since the mid 1960s, federal laws enacted pursuant to Congress's power to regulate interstate commerce have enabled the federal government to regulate much private university activity that the Constitution cannot reach directly. Such federal statutes often protect against discriminatory behavior not otherwise foreclosed by the Constitution, such as discrimination based on age or disability. Accordingly, a university may not discriminate merely because it is a private entity. The most important statutes governing the behavior of private universities are the same statutes regulating public accommodations, employment, and federally funded activities:

- Title VI of the Civil Rights Act of 1964, 42 U.S.C.A. § 2000a et seq., which prohibits discrimination on the basis of race by entities that receive federal funding
- Title VII of the CIVIL RIGHTS ACT of 1964, which prohibits discrimination on the basis of race, color, national origin, gender, or religion, by entities employing a certain number of workers (generally 15)

- Title IX of the Education Amendments of 1972 (codified in scattered sections of 7, 12, 16, 20, and 42 U.S.C.A.), which prohibits discrimination on the basis of gender by entities that receive federal funding
- the Age Discrimination in Employment Act, 29 U.S.C.A. § 621 et seq., which prohibits employment discrimination on the basis of age against individuals between the ages of 40 and 70 by entities employing a certain number of workers (generally twenty)
- the Americans with Disabilities Act of 1990, codified in scattered sections of 2, 29, 42, and 47 U.S.C.A., which prohibits discrimination on the basis of disability in public accommodations, transportation, and employment, by a wide range of privately owned entities
- the Rehabilitation Act of 1973, 29 U.S.C.A. § 701 et seq., which prohibits discrimination on the basis of disability by entities that receive federal funding
- the Higher Education Act, 20 U.S.C.A. § 403 et seq., which establishes federal financial aid programs and the conditions accompanying them; the EDUCATION DEPARTMENT (until 1980, the Department of Health, Education, and Welfare) administers Title VI, Title IX, and the Higher Education Act.

Racial Discrimination

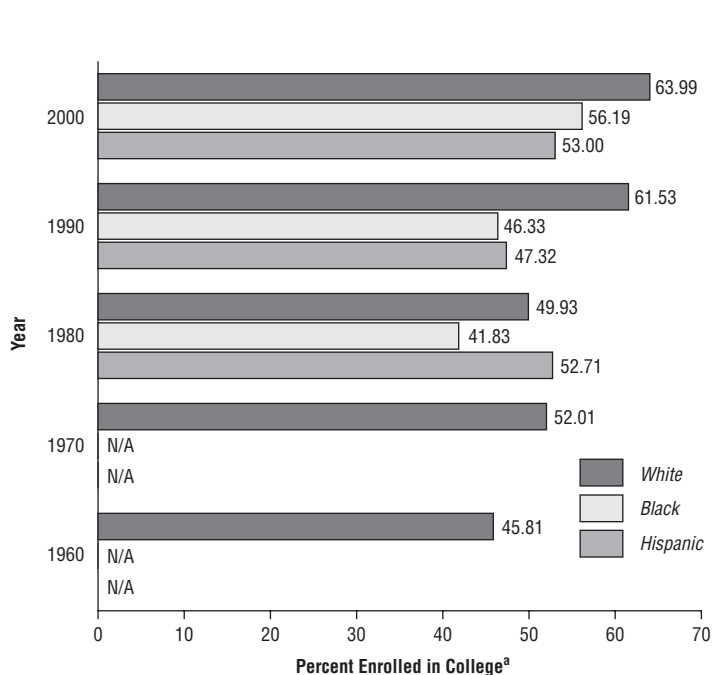
The Equal Protection Clause and Public Institutions The Equal Protection Clause of the Fourteenth Amendment prohibits a state from denying to individuals the equal protection of the laws. This clause requires, among other things, that a state and its instrumentalities may not treat members of different racial or ethnic backgrounds differently unless the discriminatory action is necessary to achieve a compelling government purpose and is narrowly tailored to satisfy that purpose. Despite the Fourteenth Amendment's passage in 1870, public higher education in the United States remained legally segregated on the basis of race until the mid-1950s. This *de jure* (i.e., legally sanctioned) SEGREGATION may be traced to a pre-Civil War decision by the Massachusetts Supreme Court upholding the legality of segregated schools in the heart of abolitionist territory (*Roberts v. Boston*, 59 Mass. [5 Cush.] 198 [1849]).

After the Civil War, Congress outlawed SLAVERY and made discrimination by the state unconstitutional, with the Thirteenth and Fourteenth Amendments to the Constitution. Not much changed, however, as states, obligated to provide all citizens with the equal protection of the laws, devised bifurcated educational systems that provided white citizens with one set of schools and black citizens with a supposedly parallel, but grossly underfunded and qualitatively inferior, set of schools. These systems were approved by the U.S. Supreme Court as "separate but equal" in *Cumming v. Board of Education of Richmond County*, 175 U.S. 528, 20 S. Ct. 197, 44 L. Ed. 262 (1899).

Public centers of higher education also remained segregated and unequal. Many states established dual systems of higher education. A number of states established whites-only flagship campuses, with separate blacks-only campuses that received less funding and fewer resources; others simply refused to admit black students.

In the early twentieth century, the National Association for the Advancement of Colored People (NAACP) began its attack against segregated schools at the university level, where it won a series of cases that eroded the SEPARATE-BUT-EQUAL principle. In the first of these cases, decided under the Equal Protection Clause, the U.S. Supreme Court ruled that a state could not avoid training qualified black law students by providing them tuition payments to out-of-state

College Enrollment of Recent High School Graduates, 1960 to 2000



^aPersons aged 16 to 24 who graduated from high school in the preceding 12 months. Includes persons receiving GEDs.

SOURCE: National Center for Education Statistics, *Digest of Education Statistics*, 2001.

law schools rather than permitting them to attend an in-state school (*Missouri ex rel. Gaines v. Canada*, 305 U.S. 337, 59 S. Ct. 232, 83 L. Ed. 208 [1938]). Next, in *McLaurin v. Oklahoma State Regents*, 339 U.S. 637, 70 S. Ct. 851, 94 L. Ed. 1149 (1950), the Court held that the University of Oklahoma could not force its only black graduate student to sit in a hallway adjoining the classroom in which a course was offered, nor could it require the student to sit behind a railing marked "Reserved for Colored." Finally, in *Sweatt v. Painter*, 339 U.S. 629, 70 S. Ct. 848, 94 L. Ed. 1114 (1950), the Court found that a proposed blacks-only law school in Texas would be unequal to the prestigious and then-all-white University of Texas Law School not only in the quality of its tangible facilities but also in the quality of such intangibles as reputation and education.

Despite these early victories, *de jure* racial segregation of public colleges and universities did not become illegal until the Court decided *BROWN V. BOARD OF EDUCATION OF TOPEKA, KANSAS*, 347 U.S. 483, 74 S. Ct. 686, 98 L. Ed. 873



In McLaurin v. Oklahoma (1950) the Supreme Court ruled that the University of Oklahoma could not force G.W. McLaurin, the school's only African American graduate student, to sit in a hallway adjoining the classroom.

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(1954). Following *Brown*, schools throughout the United States were required to adopt desegregation policies, but de facto (i.e., actual) segregation remained in many university systems.

Litigation in the federal courts continues more than 40 years after *Brown*. In 1992, the U.S. Supreme Court held that the state of Mississippi had failed to satisfy its duty to desegregate the state university system, in *United States v. Fordice*, 505 U.S. 717, 112 S. Ct. 2727, 120 L. Ed. 2d 575 (1992). In *Fordice*, the state had eliminated its requirement that blacks and whites be educated separately, but allowed previously white schools to remain distinct from previously black schools, and inaccessible to black students. By the mid-1980s, previously all-white schools in Mississippi remained over 80 percent white and previously all-black schools remained over 90 percent black. The Court found that the state's policy of requiring higher American College Test (ACT) scores for admission to white schools than to black schools perpetuated the state's formerly de jure dual system because it effectively foreclosed many black students from attending white schools and forced them to attend black schools, which received less funding. The Court ruled that merely abolishing legal segregation and implementing race-neutral policies (i.e., policies that purport to treat individuals equally without regard to race) did

not satisfy the state's duty to desegregate. Instead, the Court held, if schools or school policies maintain racially identifiable characteristics that can be traced to STATE ACTION, the state may be deemed to perpetuate former discriminatory practices in violation of the Equal Protection Clause. In the wake of *Fordice*, federal courts re-examined segregated systems of higher education in several states (*Knight v. Alabama*, 14 F.3d 1534 [11th Cir. 1994]; *United States v. Louisiana*, 9 F.3d 1159 [5th Cir. 1993]).

Federal Law and Private Institutions In 1964, in response to the slow pace of racial reform, Congress passed the Civil Rights Act of 1964, which prohibited discrimination on the basis of race (and sometimes gender) in public accommodations, federally funded programs, and employment. Title VI of the act prohibits discrimination "on the basis of race, color, or national origin," in "any program or activity receiving Federal financial assistance," which includes many centers of higher learning in the United States. Title VI reaches state and private schools that receive direct federal funding. It also reaches some institutions that receive no direct federal aid but that have a significant proportion of students who do (*Grove City College v. Bell*, 465 U.S. 555, 104 S. Ct. 1211, 79 L. Ed. 2d 516 [1984]).

Affirmative Action Beginning in the late 1960s, in response to the CIVIL RIGHTS MOVEMENT, many universities began adopting AFFIRMATIVE ACTION policies. Such policies attempt to encourage or to promote racial equality by ending de jure inequalities that remain even though legal inequalities have been abolished. In the beginning, many institutions employed quotas that reserved a certain number of spots for applicants of racial minorities. Other institutions considered membership in a racial minority as one variable in determining whether to admit a student.

It was not long before affirmative action policies came under legal attack as "reverse discrimination." The first serious challenge to affirmative action, *REGENTS OF THE UNIVERSITY OF CALIFORNIA V. BAKKE*, 438 U.S. 265, 98 S. Ct. 2733, 57 L. Ed. 2d 750 (1978), fundamentally changed its structure. In *Bakke*, Allan Bakke, a civil engineer of Norwegian descent, applied for admission to a medical program at the University of California. The program in question set aside 16 spaces for minority students out of a class of 100. Candidates for the set-aside spaces

did not have to meet the minimum grade-point-average threshold established for other candidates. Although Bakke's grade-point average fell slightly below the minimum, he argued that he would have been admitted on an evaluative basis if the set-aside spots had not existed. He sued the university under Title VI and the Equal Protection Clause, arguing that the affirmative action program discriminated against him on the basis of his race. The U.S. Supreme Court found that the university's affirmative action program violated Title VI because it used strict racial quotas to determine admission.

The Court found that the program also violated the Equal Protection Clause, because it was not narrowly tailored to meet a compelling government interest. The Court observed that the program was designed to remedy the effects of general societal discrimination (a legitimate, but not compelling, government interest), not its own specific discriminatory practices, which might constitute a compelling interest. Nonetheless, the Court held that the use of race as one criterion in determining admission does not violate either Title VI or the Fourteenth Amendment. In doing so, it did not prohibit all consideration of race in admission decisions, noting with approval certain programs that take race into account to promote educational diversity.

Following *Bakke*, programs that set aside a fixed number of spaces for minority students no longer constituted an acceptable means of affirmative action. Most universities that maintained affirmative action programs adopted the type of program approved in *Bakke*, which permits the consideration of race in admission or scholarship decisions in order to encourage diversity. Some schools also introduced scholarships that were designed to benefit only certain groups, such as students belonging to a particular race. Beginning in the mid-1980s, as the U.S. Supreme Court began holding that affirmative action programs designed to remedy the effects of past discrimination would need to satisfy the same strict standards as other race-based classifications (*City of Richmond v. J. A. Croson Co.*, 488 U.S. 469, 109 S. Ct. 706, 102 L. Ed. 2d 854 [1989]), race-restricted scholarships became the focus of lawsuits.

In *Podberesky v. Kirwan*, 38 F.3d 147 (4th Cir. 1994), the U.S. Court of Appeals for the Fourth Circuit considered a challenge to the University of Maryland's Banneker Scholarship program, a

merit-based scholarship for which only black students were eligible. Daniel J. Podberesky, a Hispanic student, qualified for the Banneker Scholarship in all respects but race. He sued the university, alleging that the scholarship program discriminated on the basis of race. The university countered that the program was designed to remedy the institution's own past discrimination, which had led to the underrepresentation of black students at the university. The court held that the Banneker program violated the Fourteenth Amendment because it was not narrowly tailored to remedy the effects of the university's past discrimination.

Gender Discrimination

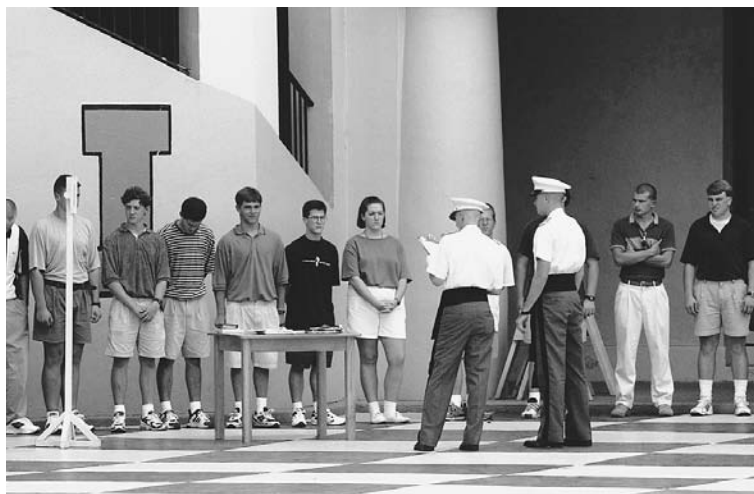
Segregated Public Institutions The Equal Protection Clause does not require states to satisfy the same strict standards for gender discrimination as for RACIAL DISCRIMINATION. Whereas states are held to a "strict scrutiny" requirement with regard to racial discrimination, they need only demonstrate that discrimination on the basis of gender substantially furthers an important government purpose.

The men-only policies maintained by the Virginia Military Institute (VMI) and the Citadel, of South Carolina, have been challenged throughout the years by women seeking admission. In the early 1990s, the U.S. Court of Appeals for the Fourth Circuit considered two unrelated cases that challenged the legality of men-only public colleges: *Faulkner v. Jones*, 51 F.3d 440 (1995), *cert. denied*, 516 U.S. 910, 116 S. Ct. 331, 133 L. Ed. 2d 202 (1995), and *UNITED STATES V. VIRGINIA*, 44 F.3d 1229 (1994), *cert. granted*, 516 U.S. 910, 116 S. Ct. 281, 133 L. Ed. 2d 201 (1995) (hereinafter *VMI*).

The same court reached two different results in *VMI* and *Faulkner*, because *Faulkner* involved an individual plaintiff who had sought admission to the Citadel, whereas *VMI* was brought by the DEPARTMENT OF JUSTICE and did not involve a particular student.

In *Faulkner*, the Court required the Citadel to admit the plaintiff, Shannon Faulkner, because Faulkner was a "real live plaintiff." The court explained that, although admission to the school was the only appropriate remedy in a case involving a live plaintiff, the state might later develop a parallel program, as recommended in *VMI*, or adopt a coeducational policy.

In *VMI*, the court held that because "homogeneity of gender" was integral to the type of



Shannon Faulkner sued for and won admission to The Citadel, a previously men-only public college. She is shown here (center) with other new cadets during orientation on August 12, 1995.

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leadership education provided at VMI, maintaining a men-only college substantially furthered the legitimate public purpose of providing unique leadership education. It then held that the establishment of a separate-but-parallel, state-sponsored women's college with substantially the same goals as VMI's would satisfy the requirements of the Equal Protection Clause. Faulkner withdrew shortly after the school year began, putting an end to any possible appeals in her case. However, the Court did hear the government's appeal from the VMI decision and held that Virginia's categorical exclusion of women from VMI denied equal protection to women (*United States v. Virginia*, 116 S. Ct. 2264). The Court agreed that gender-based classifications are not completely forbidden by the Equal Protection Clause, but it stated that Virginia had failed to provide "exceedingly persuasive justification" for excluding women from VMI. In addition, the Court held that the separate-but-parallel women's college that Virginia had proposed violated the Equal Protection Clause, terming the women's college a "pale shadow of VMI" in terms of its educational and leadership opportunities.

Title IX Eight years after Congress enacted Title VI of the Civil Rights Act of 1964, it amended the act to extend protection against discrimination in federally funded programs to include gender. Title IX of the Education Amendments of 1972 parallels Title VI and has been used to attack gender discrimination in such diverse areas as admissions, scholarships, discipline, and **SEXUAL HARASSMENT**. For example, in *Sharif v. New York State Education Department*, 709 F. Supp. 345 (S.D.N.Y. 1989), a

federal district court held that the state of New York could not use Scholastic Aptitude Test (SAT) scores as its sole criterion for awarding college scholarships, without violating Title IX. Because girls scored an average of 60 points lower on the test than boys did, and because the SAT was not, and did not purport to be, a measure of past performance in school, the court ruled that its use had a discriminatory effect on the awarding of scholarships without bearing any relationship to a reward for successful performance in high school. In *Yusuf v. Vassar College*, 35 F.3d 709 (1994), the U.S. Court of Appeals for the Second Circuit held that a private college may have discriminated against a male student who allegedly sexually harassed a female student, by systematically applying different and stricter standards to sexual harassment proceedings than to other disciplinary proceedings. And in *Franklin v. Gwinnett County Public Schools*, 503 U.S. 60, 112 S. Ct. 1028, 117 L. Ed. 2d 208 (1992), the U.S. Supreme Court held that Title IX also prohibits sexual harassment in educational institutions and that teachers who sexually harass or abuse students discriminate on the basis of sex in violation of Title IX.

Title IX's most visible effect has been in college athletics. Most colleges and universities operate men's and women's athletic programs, some of which participate in intercollegiate competitions administered by the National Collegiate Athletic Association (NCAA). Title IX caused a great deal of concern when first enacted, as many schools were concerned that they could not remedy unequal participation by men and women in various athletic programs without going to considerable expense or cutting successful programs to achieve gender equality. These schools also were uncertain about the degree of equalizing that would be necessary in order to avoid lawsuits.

In response, the Department of Health, Education, and Welfare (now the Department of Education) established a three-part test for determining whether an institution is complying with Title IX with respect to its athletic program. An institution has accommodated the interests of male and female students if it satisfies any of the three benchmarks:

... intercollegiate-level participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments; or

Where the members of one sex have been and are underrepresented among intercollegiate athletes, . . . the institution can show a history and continuing practice of program expansion which is demonstrably responsive to the developing interest and abilities of the members of that sex; or

Where members of one sex are underrepresented among intercollegiate athletics and the institution cannot show a continuing practice of program expansion, . . . it can be demonstrated that the interests and abilities of the members of that sex have been fully and effectively accommodated by the present program (44 Fed. Reg. 71,418 [1979]).

The balance between a university's interest in maintaining a profitable and successful athletic program and its need to comply with Title IX is a delicate one. In *Kelley v. Board of Trustees*, 35 F.3d 265 (1994), the U.S. Court of Appeals for the Seventh Circuit addressed a typical case involving these competing interests. In *Kelley*, the men's swim team at the University of Illinois sued the university for violating Title IX after the school cut the men's, but not the women's, swimming program in an attempt to eliminate unprofitable athletic programs and to reduce its budget deficit. Although neither swim team was popular with spectators, and both programs were historically weak, the university did not cut the women's program because its legal counsel advised that doing so would violate Title IX. The court ruled that eliminating the men's program, but retaining the women's program, did not violate Title IX even though the school treated the two programs differently.

Although Title IX continues to have many critics, the effect that it has had upon women's athletics is practically unquestioned. Twenty-four years after the enactment of Title IX, the number of female athletes at the Olympic Games in Atlanta had risen to 287. The interest among spectators was almost startling, especially because women's athletics had suffered for years in order to garner support. About 65,000 fans watched the women's soccer team in 1996 win the gold medal, and another 35,000 spectators watched the women fall in the finals of the softball competition.

Interest in women's sports continued to increase throughout the 1990s. Although several professional women's basketball leagues had been established, few were successful. This changed in 1997 with the establishment of the Women's National Basketball Association (WNBA), which garnered support from the

established National Basketball Association. The league has had unprecedented success, maintaining contracts with television networks that show the games. The focus on women's athletics expanded to a national scale in 1999, when the United States women's soccer team won a stunning victory in the World Cup competition. Neither the men's nor the women's soccer teams had had success in world-class competition, and the women's victory transformed many of the female athletes to celebrity status.

Few question that these events would have occurred were it not for Title IX. Women's college basketball, probably the highest-profiled sport for female athletes, typically receives equal attention as the corresponding men's programs. Likewise, softball and soccer have gained popularity among individual schools as spectator sports. Nevertheless, college and universities continue to pour extensive resources into larger men's program, especially football and men's basketball.

Many athletic departments note that these men's programs earn more revenues based upon a much larger fan base, so the support is justified. Athletic departments often chose to drop minor men's sports instead of adding women's sports, citing the budgetary constraints. Advocates for women's programs counter that cutting the budgets of these programs would not likely hinder the revenues significantly and that it would allow athletic programs both to add women's programs and to retain smaller men's programs.

Policies under the administration of President GEORGE W. BUSH have come under fire from supporters of women's athletics. During his campaign, Bush stated his opposition toward any racial or gender quotas, and some felt that this policy could cause conflict with Title IX. In 2002, the secretary of education established the Commission on Opportunity in Athletics, which issued its final report on February 28, 2003. Although the commission found that opportunities should be improved for all competitors, women's groups claimed that the report undermines the importance of improving opportunities for women's programs specifically.

Academic Freedom: The Right to Speak Freely

The First Amendment prohibits the federal and state governments from infringing on freedom of speech. Not surprisingly, freedom of speech, which is central to academic freedom, is

highly prized on college and university campuses. At the same time, most educational institutions recognize the importance of maintaining an atmosphere in which all students enjoy equal educational opportunities and freedom from discrimination. The need to balance differing individual rights has led many universities to enact policies purporting to regulate or discipline certain types of speech, and was the focus of many First Amendment cases in the 1980s and early 1990s.

Racially and religiously motivated acts of VANDALISM, intimidation, and violence on college campuses began to attract increased attention in the mid 1980s. Much of this activity involved incidents like the following:

- A fraternity fund-raising “slave auction” featuring fraternity members in blackface who were “sold” to provide services to bidders
- The distribution at a state school of leaflets warning, “The Knights of the KU KLUX KLAN Are Watching You”
- A poster made by a student and hung on her dormitory room door, listing “homos” as a category of people who would be “shot on sight”

In response, many universities adopted policies that prohibited speech and conduct that caused offense or interfered with educational opportunities based on any number of characteristics, especially race, national origin, gender, and religion. The University of Michigan adopted a typical policy on discrimination and discriminatory harassment that became the subject of a lawsuit in 1989. In *Doe v. University of Michigan*, 721 F. Supp. 852 (1989), the U.S. District Court for the Eastern District of Michigan examined this policy and determined that it violated the First Amendment because it was vague and overbroad—that is, it was unclear about the scope of the speech that it would affect and thus potentially encompassed constitutionally protected speech. *Doe* was filed by a graduate student who feared that his theories about genetic bases for differences between men’s and women’s relative abilities to perform certain tasks would be regarded as a violation of the policy were he to discuss them in class, because some students might regard them as sexist and offensive.

The court agreed that the university policy violated the First Amendment and had a “chilling effect” on the free exchange of ideas. The court observed that the policy certainly applied

to speech that would not be constitutionally protected, such as imminent threats of violence, but also swept under its umbrella speech that might be controversial or even offensive but otherwise constitutionally protected. “It is firmly settled,” noted the court,

that under our Constitution the public expression of ideas may not be prohibited merely because the ideas are themselves offensive to some of their hearers. These principles acquire a special significance in the university setting, where the free and unfettered interplay of competing views is essential to the institution’s education mission.

The court then observed that because Michigan’s policy was so vague that it encompassed even constitutionally protected speech, and because this vagueness led to the potential for ARBITRARY enforcement, the policy was unconstitutional.

First Amendment protection is not limited to the classroom setting alone. In *Iota Xi Chapter v. George Mason University*, 993 F.2d 386 (1993), the U.S. Court of Appeals for the Fourth Circuit held that George Mason University, a state university, had violated the Sigma Chi Fraternity’s First Amendment rights by suspending its privileges as a university organization after the fraternity held an event, called the Ugly Woman Contest, that depicted women in a particularly degrading manner. The court held that skits, like motion pictures, movies, theatrical productions, and nude dancing, are a form of expression that are entitled to First Amendment protection.

Public university professors and employees also enjoy First Amendment protection, but as workers in the public sector, they are subject to certain limits. Generally, unlike private-sector employees, who may be disciplined or terminated for nearly anything that is not prohibited by state or federal law, public-sector employees may not be disciplined on the basis of their speech if the speech involves a matter of public concern. The state may discipline an employee if it can show that it would have done so regardless of the speech, or if the speech actually interfered with the effective fulfillment of public responsibilities.

In *Jeffries v. Harleston*, 52 F.3d 9 (1995), the U.S. Court of Appeals for the Second Circuit held that the City College of New York could reduce the term of a black studies professor’s chairmanship based on an off-campus speech he had made (which had included derogatory remarks about Jews) about bias in the New York

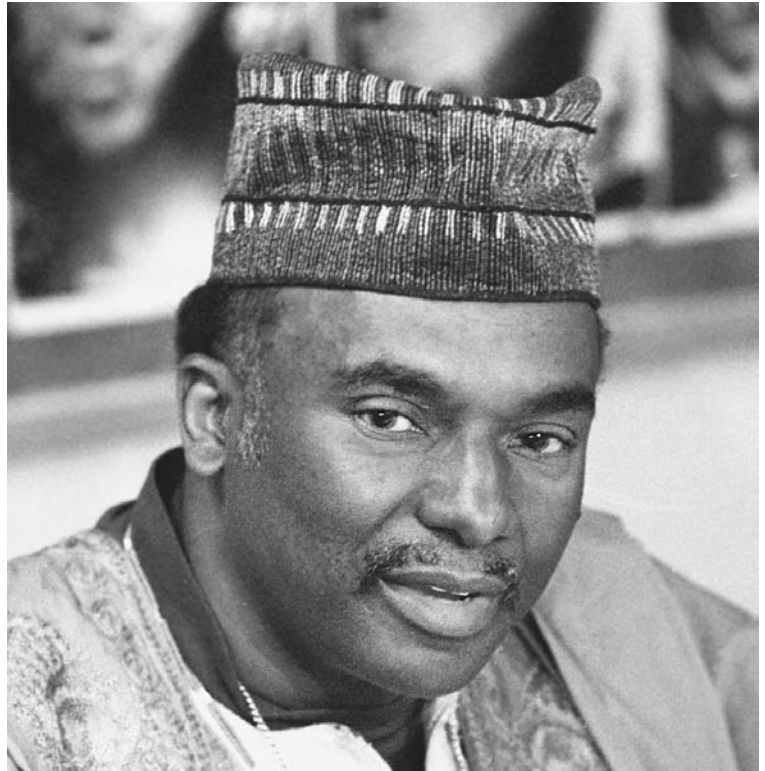
public-school system. The court ruled that although the speech involved an area of public concern, the college was justified in reducing Jeffries's term because it was motivated by a reasonable prediction that the speech would adversely affect the school's operation. In an earlier case, the same court had held that the City College of New York could not undermine a philosophy professor's classes by setting up "alternative" sessions for students who might want to transfer out of the classes after the professor had published letters to scholarly journals that denigrated the intelligence of blacks (*Levin v. Harleston*, 966 F.2d 85 [1992]).

Even so, not all speech by public university employees is protected. Employees still may be disciplined for speech that does not involve an area of public concern, as the courts have defined it. In *Dambrot v. Central Michigan University*, 839 F. Supp. 477 (E.D. Mich. 1993), *aff'd*, 55 F.3d 1177 (6th Cir. 1995), the district court upheld the termination of a basketball coach who used the term *nigger* in a locker-room pep talk. The university refused to renew the coach's employment contract, arguing that his use of the term violated the university's policy on racial and ethnic harassment. Although the court found that the school's policy violated the First Amendment (for the same reasons as in *Doe*), it also found that the coach's speech did not involve an area of public concern.

A public institution also may restrict religious speech by faculty if failure to do so would violate the First Amendment's Establishment Clause (*Bishop v. Aronov*, 926 F.2d 1066 [1991]). In *Bishop*, the U.S. Court of Appeals for the Eleventh Circuit held that the University of Alabama could constitutionally restrict a professor from discussing his religious views during class, and could instruct him not to hold optional class sessions to discuss Christian perspectives on academic topics. The court noted that were the professor permitted to engage in these activities, the university would risk violating the Establishment Clause, which prohibits states from establishing religion and, by extension, extending preferential treatment to, or endorsement of, a particular religious view.

Religion and Public Funding

The Establishment Clause prohibits states from establishing an official religion. Thus, a public university may not denominate itself as a religious school, nor may the state directly fund



a private religious school. At the same time, the Free Exercise Clause prohibits states from restricting individuals in the practice of religion. Thus, a public university may not permit all student groups except for religious groups to use its facilities. Maintaining a balance between the two clauses is not simple, and it has generated controversy in two principal areas: the extent to which the state may fund attendance at private religious schools indirectly, and the extent to which public schools may fund religious activities on campus directly.

Public Funding of Private Religious Practice In 1971, the U.S. Supreme Court decided *Lemon v. Kurtzman*, 403 U.S. 602, 91 S. Ct. 2105, 29 L. Ed. 2d 745 (1971), which defined the scope of the Establishment Clause. In *Lemon*, the Court held that a state policy or practice violates the Establishment Clause if it fails to satisfy a three-part test: First, the policy must serve a secular purpose. Second, the primary effect of the policy cannot be to advance or inhibit religion. Third, the policy cannot foster an excessive entanglement of the state with religion.

Unfortunately, the *Lemon* test is easier to state than to apply, and it has led to numerous lawsuits concerning the relationship of state-funding programs to private religious organiza-

In 1995 the Second Circuit Court of Appeals held that the City College of New York could reduce the term of Leonard Jeffries, a black studies professor and chairman at the school, based on an off-campus speech he made in 1992.

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PHOTOS

tions. Generally, a state law that provides benefits to individuals without regard to religion does not violate the Establishment Clause even if an individual uses the state benefits for a religious purpose. For example, in *Witters v. Washington Department of Services for the Blind*, 474 U.S. 481, 106 S. Ct. 748, 88 L. Ed. 2d 846 (1986), the U.S. Supreme Court held that a blind Washington resident was eligible for state vocational rehabilitation assistance, even though he planned to use the funds to complete his religious training at a Christian college. The Court held that payment of public assistance by the state satisfied the *Lemon* test because the aid was provided directly to the individual, was not skewed toward religion in any way, and created no financial incentive for students to undertake religious education. Furthermore, the Court noted that the primary effect of the assistance program was not to advance religion and that religious programs would not benefit in any significant or disproportionate way from the state program.

In contrast, in *Stark v. St. Cloud State University*, 802 F.2d 1046 (1986), the U.S. Court of Appeals for the Eighth Circuit held that a state university violated the Establishment Clause by permitting education students to satisfy their student-teaching requirement at parochial schools. The court noted that the public university approved the use of religious schools, including them on a list of appropriate schools for student teaching, and that because of this, the university had entangled itself excessively with religion.

Public Schools and Religious Activity

Funding of religious activities in public schools requires similar **BALANCING**. The U.S. Supreme Court held in 1995 that a public university may fund a student-run religious publication without violating the Establishment Clause. In *Rosenberger v. Rector of the University of Virginia*, 515 U.S. 819, 115 S. Ct. 2510, 132 L. Ed. 2d 700 (1995), a sharply divided Court considered a Christian student group's claim that the university's refusal to pay the publication costs of its newspaper, even though it paid the costs of printing other student publications, violated the Free Speech Clause of the First Amendment. The university had convinced the U.S. Court of Appeals for the Fourth Circuit that it had a compelling interest in not funding the newspaper: specifically, to avoid violating the Constitution's Establishment Clause, which prohibits the gov-

ernment from establishing, or promoting, religion. Before the U.S. Supreme Court, the university backed off on this argument and instead stated that it had a right to be selective in its choice of recipients of public funds (i.e. university student fees). The Court considered both arguments and found that the university's policy regarding the distribution of monies from student fees was neutral, that is, that it could not be seen as a policy designed to advance religion; the Court therefore concluded that the free speech rights of the student publication prevailed and ordered the university to pay the publication costs of the Christian student group's newspaper.

Termination of Employment Claims

Colleges and universities have often been the subject of lawsuits by former employees who have been terminated. Many of these claims arise when an institution refuses to grant tenure to a faculty member. In most educational institutions, teachers and other faculty members are not guaranteed permanent employment when they are hired for a teaching position. The institution generally requires the teacher or professor to achieve certain goals, such as publishing scholarly articles or demonstrating superior teaching skills, within a prescribed period of time, often six to eight years. In state institutions, the process for granting tenure is usually prescribed by statute.

At the conclusion of this time period, an institution reviews the performances of the teacher, professor, or other employee. If the review is favorable, the institution may award tenure to the employee. Although tenure does not necessarily guarantee lifetime employment, it provides considerable protection for the employee from being terminated by the institution. On the other hand, if the employee is denied tenure, he or she will not be retained as an employee of the institution.

More often than not, disgruntled former employees lose their cases when they contest denial of tenure. Many contest the tenure process, while others claim breach of contract on the part of the institution. Additionally, several courts have had to consider whether a college or university has violated the constitutional rights of an employee by denying him or her tenure. For example, in *Hendrich v. Board of Regents of University of Wisconsin System*, 274 F.3d 1174 (7th Cir. 2001), the complainant claimed that the University of Wisconsin at

WHITEWATER had violated her equal protection and due process rights when the school denied her tenure. The U.S. Court of Appeals for the Seventh Circuit denied her claims, finding that she had failed to meet the necessary **BURDEN OF PERSUASION** on these issues.

FURTHER READINGS

- Census Bureau. *Statistical Abstract of the United States*. Available online at <www.census.gov/statab/www/> (accessed November 11, 2003).
- Eisenberg, Theodore. 1996. *Civil Rights Legislation: Cases and Materials*. 4th ed. Charlottesville, Va. Michie.
- Giamatti, A. Bartlett. 1988. *A Free and Ordered Space: The Real World of the University*. New York: Norton.
- Grossman, Joel B., and Richard S. Wells. 1988. *Constitutional Law and Judicial Policy Making*. 3d ed. White Plains, N.Y.: Longman.
- Journal of College and University Law*. Various issues.
- Kaplin, William A., and Barbara A. Lee. 1997. *Legal Guide for Student Affairs Professionals*. San Francisco: Jossey-Bass.
- . 1995. *Law of Higher Education*. 3d ed. San Francisco: Jossey-Bass.

CROSS-REFERENCES

Religion; School Desegregation; Schools and School Districts.

❖ COLLIER, WILLIAM MILLER

William Miller Collier was born November 11, 1867, in Lodi, New York. He graduated from Hamilton College with a bachelor of arts degree in 1889 and a master of arts degree in 1892. He was the recipient of several other degrees from various institutions, including an honorary doctor of laws degree from New York University in 1920; a doctor of **CIVIL LAW** degree from Wesleyan University in 1920; and a doctor of letters and humanities degree from Hobart College in 1920.



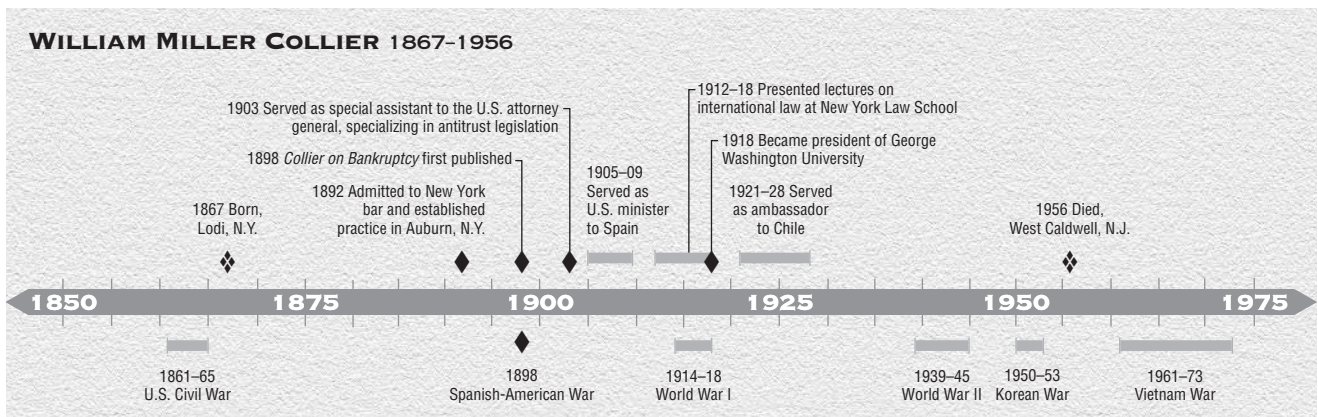
William Miller Collier.

LIBRARY OF CONGRESS

After his admission to the New York bar in 1892 Collier established his law firm in Auburn and practiced law until 1903. From 1903 to 1904 he performed the duties of special assistant to the U.S. attorney general where his main task was the enforcement of **ANTITRUST LAWS**.

In 1905 Collier entered the diplomatic field and for the next four years he served as U.S. minister to Spain.

Collier's next field of endeavor was that of education. He presented a series of lectures on **INTERNATIONAL LAW** at New York Law School from 1912 to 1918. He became president of George Washington University in that same year



and served in this capacity for the next three years.

In 1921 Collier reentered the foreign service and served as ambassador to Chile until 1928.

Collier was the author of several noteworthy publications, including *Collier on Bankruptcy* (1898); *Collier on Civil Service Law* (1901); *The Trusts: What Can We Do with Them—What Can They Do for Us?* (1900); and *The Influence of Lawyers in the Past and in the Future* (1921).

He died April 15, 1956, in West Caldwell, New Jersey.

COLLISION

The violent contact of one vehicle—such as an automobile, ship, or boat—with another vehicle.

Collision insurance is a type of policy that motorists purchase to cover property losses in the event of a car accident.

A collision that does not result from the NEGLIGENCE of either vessel involved is considered to be an inevitable accident. In the event of an inevitable accident, neither party is liable to the other, but each bears his or her own individual losses. Exclusion from fault is ordinarily determined with reference to the safeguards observed by the parties to the inevitable accident.

COLLUSION

An agreement between two or more people to defraud a person of his or her rights or to obtain something that is prohibited by law.

A secret arrangement wherein two or more people whose legal interests seemingly conflict conspire to commit FRAUD upon another person; a pact between two people to deceive a court with the purpose of obtaining something that they would not be able to get through legitimate judicial channels.

Collusion has often been used in DIVORCE proceedings. In the past some jurisdictions made it extremely difficult for a couple to obtain a divorce. Often a “sweetheart” agreement would take place, whereby a husband or wife would commit, or appear to commit, ADULTERY or other acts that would justify a divorce. The public policy against collusive divorces is based on the idea that such actions would conflict with the effective administration by society of laws on marriage and divorce and would undermine marriage as a stabilizing force in society.

Virtually all jurisdictions have adopted no-fault divorce statutes or laws that allow a couple to obtain a divorce without traditional fault grounds, such as adultery or cruel and inhuman treatment. Because of this development, collusive divorces should diminish in number, since it will no longer be necessary for persons seeking a divorce to resort to such measures.

The fundamental societal objection to collusion is that it promotes dishonesty and fraud, which, in turn, undermines the integrity of the entire judicial system.

COLOR

The appearance or semblance of a thing, as distinguished from the thing itself.

The thing to which the term *color* is applied does not necessarily have to possess the character imputed to it. A person who holds land under color of title does not have actual title to it.

COLOR OF LAW

The appearance of a legal right.

The act of a state officer, regardless of whether or not the act is within the limits of his or her authority, is considered an act under color of law if the officer purports to be conducting himself or herself in the course of official duties.

Under the CIVIL RIGHTS ACT of 1871 (42 U.S.C.A. SECTION 1983), color of law is synonymous with STATE ACTION, which is conduct by an officer that bears a sufficiently close nexus to a state so that the action is treated as though it is by the state.

CROSS-REFERENCES

Ku Klux Klan Act.

COLOR OF OFFICE

A description of an act by an officer done without authority under the pretext that he or she has an official right to do the act by reason of the officer's position.

An officer acts under color of office when he or she extracts a fee from another under the pretense that the office confers the authority on him or her to do so. Such conduct may constitute EXTORTION, a crime proscribed by statute in most states. The penalty imposed on a public officer for extortion may include FORFEITURE of office in addition to a fine, imprisonment, or both.

COLOR OF TITLE

The appearance of a legally enforceable right of possession or ownership. A written instrument that purports to transfer ownership of property but, due to some defect, does not have that effect. A document purporting to pass title to land, such as a deed that is defective due to a lack of title in the grantor, passes only color of title to the grantee.

It has been held that in order to pass color of title, the instrument appearing to pass title must be in good form, duly executed, and profess to pass good title.

COLORABLE

False; counterfeit; something that is false but has the appearance of truth.

ABBREVIATIONS

A.	Atlantic Reporter	ACT	American College Test
A. 2d	Atlantic Reporter, Second Series	Act'g Legal Adv.	Acting Legal Advisor
AA	Alcoholics Anonymous	ACUS	Administrative Conference of the United States
AAA	American Arbitration Association; Agricultural Adjustment Act of 1933	ACYF	Administration on Children, Youth, and Families
AALS	Association of American Law Schools	A.D. 2d	Appellate Division, Second Series, N.Y.
AAPRP	All African People's Revolutionary Party	ADA	Americans with Disabilities Act of 1990
AARP	American Association of Retired Persons	ADAMHA	Alcohol, Drug Abuse, and Mental Health Administration
AAS	American Anti-Slavery Society	ADC	Aid to Dependent Children
ABA	American Bar Association; Architectural Barriers Act of 1968; American Bankers Association	ADD	Administration on Developmental Disabilities
ABC	American Broadcasting Companies, Inc. (formerly American Broadcasting Corporation)	ADEA	Age Discrimination in Employment Act of 1967
ABM	Antiballistic missile	ADL	Anti-Defamation League
ABM Treaty	Anti-Ballistic Missile Treaty of 1972	ADR	Alternative dispute resolution
ABVP	Anti-Biased Violence Project	AEC	Atomic Energy Commission
A/C	Account	AECB	Arms Export Control Board
A.C.	Appeal cases	AEDPA	Antiterrorism and Effective Death Penalty Act
ACAA	Air Carrier Access Act	A.E.R.	All England Law Reports
ACCA	Armed Career Criminal Act of 1984	AFA	American Family Association; Alabama Freethought Association
ACF	Administration for Children and Families	AFB	American Farm Bureau
ACLU	American Civil Liberties Union	AFBF	American Farm Bureau Federation
ACRS	Accelerated Cost Recovery System	AFDC	Aid to Families with Dependent Children
ACS	Agricultural Cooperative Service	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	ANA	Administration for Native Americans
AFRes	Air Force Reserve	Ann. Dig.	Annual Digest of Public International Law Cases
AFSC	American Friends Service Committee	ANPA	American Newspaper Publishers Association
AFSCME	American Federation of State, County, and Municipal Employees	ANSCA	Alaska Native Claims Act
AGRICOLA	Agricultural Online Access	ANZUS	Australia-New Zealand-United States Security Treaty Organization
AIA	Association of Insurance Attorneys	AOA	Administration on Aging
AIB	American Institute for Banking	AOE	Arizonans for Official English
AID	Artificial insemination using a third-party donor's sperm; Agency for International Development	AOL	America Online
AIDS	Acquired immune deficiency syndrome	AP	Associated Press
AIH	Artificial insemination using the husband's sperm	APA	Administrative Procedure Act of 1946
AIM	American Indian Movement	APHIS	Animal and Plant Health Inspection Service
AIPAC	American Israel Public Affairs Committee	App. Div.	Appellate Division Reports, N.Y. Supreme Court
AIUSA	Amnesty International, U.S.A. Affiliate	Arb. Trib., U.S.-British	Arbitration Tribunal, Claim Convention of 1853, United States and Great Britain Convention of 1853
AJS	American Judicature Society	Ardcor	American Roller Die Corporation
ALA	American Library Association	ARPA	Advanced Research Projects Agency
Alcoa	Aluminum Company of America	ARPANET	Advanced Research Projects Agency Network
ALEC	American Legislative Exchange Council	ARS	Advanced Record System
ALF	Animal Liberation Front	Art.	Article
ALI	American Law Institute	ARU	American Railway Union
ALJ	Administrative law judge	ASCME	American Federation of State, County, and Municipal Employees
All E.R.	All England Law Reports	ASCS	Agriculture Stabilization and Conservation Service
ALO	Agency Liaison	ASM	Available Seatmile
A.L.R.	American Law Reports	ASPCA	American Society for the Prevention of Cruelty to Animals
ALY	<i>American Law Yearbook</i>	Asst. Att. Gen.	Assistant Attorney General
AMA	American Medical Association	AT&T	American Telephone and Telegraph
AMAA	Agricultural Marketing Agreement Act	ATFD	Alcohol, Tobacco and Firearms Division
Am. Dec. amdt.	American Decisions Amendment	ATLA	Association of Trial Lawyers of America
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	ATO	Alpha Tau Omega
AMS	Agricultural Marketing Service	ATTD	Alcohol and Tobacco Tax Division
AMVETS	American Veterans (of World War II)	ATU	Alcohol Tax Unit
		AUAM	American Union against Militarism
		AUM	Animal Unit Month
		AZT	Azidothymidine

BAC	Blood alcohol concentration	CAA	Clean Air Act
BALSA	Black-American Law Student Association	CAB	Civil Aeronautics Board; Corporation for American Banking
BATF	Bureau of Alcohol, Tobacco and Firearms	CAFE	Corporate average fuel economy
BBS	Bulletin Board System	Cal. 2d	California Reports, Second Series
BCCI	Bank of Credit and Commerce International	Cal. 3d	California Reports, Third Series
BEA	Bureau of Economic Analysis	CALR	Computer-assisted legal research
Bell's Cr. C.	Bell's English Crown Cases	Cal. Rptr.	California Reporter
Bevans	United States Treaties, etc. <i>Treaties and Other International Agreements of the United States of America, 1776-1949</i> (compiled under the direction of Charles I. Bevans, 1968-76)	CAP	Common Agricultural Policy
		CARA	Classification and Ratings Administration
		CATV	Community antenna television
BFOQ	Bona fide occupational qualification	CBO	Congressional Budget Office
BI	Bureau of Investigation	CBS	Columbia Broadcasting System
BIA	Bureau of Indian Affairs; Board of Immigration Appeals	CBOEC	Chicago Board of Election Commissioners
BID	Business improvement district	CCC	Commodity Credit Corporation
BJS	Bureau of Justice Statistics	CCDBG	Child Care and Development Block Grant of 1990
Black.	Black's United States Supreme Court Reports	C.C.D. Pa.	Circuit Court Decisions, Pennsylvania
Blatchf.	Blatchford's United States Circuit Court Reports	C.C.D. Va.	Circuit Court Decisions, Virginia
BLM	Bureau of Land Management	CCEA	Cabinet Council on Economic Affairs
BLS	Bureau of Labor Statistics	CCP	Chinese Communist Party
BMD	Ballistic missile defense	CCR	Center for Constitutional Rights
BNA	Bureau of National Affairs	C.C.R.I.	Circuit Court, Rhode Island
BOCA	Building Officials and Code Administrators International	CD	Certificate of deposit; compact disc
BOP	Bureau of Prisons	CDA	Communications Decency Act
BPP	Black Panther Party for Self-defense	CDBG	Community Development Block Grant Program
Brit. and For.	British and Foreign State Papers	CDC	Centers for Disease Control and Prevention; Community Development Corporation
BSA	Boy Scouts of America	CDF	Children's Defense Fund
BTP	Beta Theta Pi	CDL	Citizens for Decency through Law
Burr.	James Burrows, <i>Report of Cases Argued and Determined in the Court of King's Bench during the Time of Lord Mansfield</i> (1766-1780)	CD-ROM	Compact disc read-only memory
BVA	Board of Veterans Appeals	CDS	Community Dispute Services
c.	Chapter	CDW	Collision damage waiver
C ³ I	Command, Control, Communications, and Intelligence	CENTO	Central Treaty Organization
C.A.	Court of Appeals	CEO	Chief executive officer
		CEQ	Council on Environmental Quality

CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act of 1980	CLASP	Center for Law and Social Policy
cert.	<i>Certiorari</i>	CLE	Center for Law and Education; Continuing Legal Education
CETA	Comprehensive Employment and Training Act	CLEO	Council on Legal Education Opportunity; Chief Law Enforcement Officer
C & F	Cost and freight	CLP	Communist Labor Party of America
CFC	Chlorofluorocarbon	CLS	Christian Legal Society; critical legal studies (movement); Critical Legal Studies (membership organization)
CFE Treaty	Conventional Forces in Europe Treaty of 1990	C.M.A.	Court of Military Appeals
C.F. & I.	Cost, freight, and insurance	CMEA	Council for Mutual Economic Assistance
C.F.R.	Code of Federal Regulations	CMHS	Center for Mental Health Services
CFNP	Community Food and Nutrition Program	C.M.R.	Court of Military Review
CFTA	Canadian Free Trade Agreement	CNN	Cable News Network
CFTC	Commodity Futures Trading Commission	CNO	Chief of Naval Operations
Ch.	Chancery Division, English Law Reports	CNOL	Consolidated net operating loss
CHAMPVA	Civilian Health and Medical Program at the Veterans Administration	CNR	Chicago and Northwestern Railway
CHEP	Cuban/Haitian Entrant Program	CO	Conscientious Objector
CHINS	Children in need of supervision	C.O.D.	Cash on delivery
CHIPS	Child in need of protective services	COGP	Commission on Government Procurement
Ch.N.Y.	Chancery Reports, New York	COINTELPRO	Counterintelligence Program
Chr. Rob.	Christopher Robinson, <i>Reports of Cases Argued and Determined in the High Court of Admiralty</i> (1801–1808)	Coke Rep.	Coke's English King's Bench Reports
CIA	Central Intelligence Agency	COLA	Cost-of-living adjustment
CID	Commercial Item Descriptions	COMCEN	Federal Communications Center
C.I.F.	Cost, insurance, and freight	Comp.	Compilation
CINCNOAD	Commander in Chief, North American Air Defense Command	Conn.	Connecticut Reports
C.I.O.	Congress of Industrial Organizations	CONTU	National Commission on New Technological Uses of Copyrighted Works
CIPE	Center for International Private Enterprise	Conv.	Convention
C.J.	Chief justice	COPA	Child Online Protection Act (1998)
CJIS	Criminal Justice Information Services	COPS	Community Oriented Policing Services
C.J.S.	Corpus Juris Secundum	Corbin	Arthur L. Corbin, <i>Corbin on Contracts: A Comprehensive Treatise on the Rules of Contract Law</i> (1950)
Claims Arb. under Spec. Conv., Nielsen's Rept.	Frederick Kenelm Nielsen, <i>American and British Claims Arbitration under the Special Agreement Concluded between the United States and Great Britain, August 18, 1910</i> (1926)	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	DACORB	Department of the Army
CPB	Corporation for Public Broadcasting, the		Conscientious Objector Review Board
CPI	Consumer Price Index	Dall.	Dallas's Pennsylvania and United States Reports
CPPA	Child Pornography Prevention Act	DAR	Daughters of the American Revolution
CPSC	Consumer Product Safety Commission	DARPA	Defense Advanced Research Projects Agency
Cranch	Cranch's United States Supreme Court Reports	DAVA	Defense Audiovisual Agency
CRF	Constitutional Rights Foundation	D.C.	United States District Court; District of Columbia
CRR	Center for Constitutional Rights	D.C. Del.	United States District Court, Delaware
CRS	Congressional Research Service; Community Relations Service	D.C. Mass.	United States District Court, Massachusetts
CRT	Critical race theory	D.C. Md.	United States District Court, Maryland
CSA	Community Services Administration	D.C.N.D.Cal.	United States District Court, Northern District, California
CSAP	Center for Substance Abuse Prevention	D.C.N.Y.	United States District Court, New York
CSAT	Center for Substance Abuse Treatment	D.C.Pa.	United States District Court, Pennsylvania
CSC	Civil Service Commission	DCS	Deputy Chiefs of Staff
CSCE	Conference on Security and Cooperation in Europe	DCZ	District of the Canal Zone
		DDT	Dichlorodiphenyltrichloro- ethane
CSG	Council of State Governments	DEA	Drug Enforcement Administration
CSO	Community Service Organization	Decl. Lond.	Declaration of London, February 26, 1909
CSP	Center for the Study of the Presidency	Dev. & B.	Devereux & Battle's North Carolina Reports
C-SPAN	Cable-Satellite Public Affairs Network	DFL	Minnesota Democratic- Farmer-Labor
CSRS	Cooperative State Research Service	DFTA	Department for the Aging
CSWPL	Center on Social Welfare Policy and Law	Dig. U.S. Practice in Intl. Law	Digest of U.S. Practice in International Law
CTA	<i>Cum testamento annexo</i> (with the will attached)	Dist. Ct.	D.C. United States District Court, District of Columbia
Ct. Ap. D.C.	Court of Appeals, District of Columbia	D.L.R.	Dominion Law Reports (Canada)
Ct. App. No. Ireland	Court of Appeals, Northern Ireland	DMCA	Digital Millennium Copyright Act
Ct. Cl.	Court of Claims, United States	DNA	Deoxyribonucleic acid
Ct. Crim. Apps.	Court of Criminal Appeals (England)	Dnase	Deoxyribonuclease
		DNC	Democratic National Committee
CTI	Consolidated taxable income	DOC	Department of Commerce
Ct. of Sess., Scot.	Court of Sessions, Scotland	DOD	Department of Defense
CU	Credit union	DODEA	Department of Defense Education Activity
CUNY	City University of New York		
Cush.	Cushing's Massachusetts Reports	Dodson	Dodson's Reports, English Admiralty Courts
CWA	Civil Works Administration; Clean Water Act	DOE	Department of Energy

DOER	Department of Employee Relations	ERA	Equal Rights Amendment
DOJ	Department of Justice	ERDC	Energy Research and Development Commission
DOL	Department of Labor	ERISA	Employee Retirement Income Security Act of 1974
DOMA	Defense of Marriage Act of 1996	ERS	Economic Research Service
DOS	Disk operating system	ERTA	Economic Recovery Tax Act of 1981
DOT	Department of Transportation	ESA	Endangered Species Act of 1973
DPT	Diphtheria, pertussis, and tetanus	ESF	Emergency support function; Economic Support Fund
DRI	Defense Research Institute	ESRD	End-Stage Renal Disease Program
DSAA	Defense Security Assistance Agency	ETA	Employment and Training Administration
DUI	Driving under the influence; driving under intoxication	ETS	Environmental tobacco smoke
DVD	Digital versatile disc	et seq.	<i>Et sequentes</i> or <i>et sequentia</i> ("and the following")
DWI	Driving while intoxicated	EU	European Union
EAHCA	Education for All Handicapped Children Act of 1975	Euratom	European Atomic Energy Community
EBT	Examination before trial	Eur. Ct. H.R.	European Court of Human Rights
E.coli	Escherichia coli	Ex.	English Exchequer Reports, Welsby, Hurlstone & Gordon
ECPA	Electronic Communications Privacy Act of 1986	Exch.	Exchequer Reports (Welsby, Hurlstone & Gordon)
ECSC	Treaty of the European Coal and Steel Community	Ex Com	Executive Committee of the National Security Council
EDA	Economic Development Administration	Eximbank	Export-Import Bank of the United States
EDF	Environmental Defense Fund	F.	Federal Reporter
E.D.N.Y.	Eastern District, New York	F. 2d	Federal Reporter, Second Series
EDP	Electronic data processing	FAA	Federal Aviation Administration; Federal Arbitration Act
E.D. Pa.	Eastern-District, Pennsylvania	FAAA	Federal Alcohol Administration Act
EDSC	Eastern District, South Carolina	FACE	Freedom of Access to Clinic Entrances Act of 1994
EDT	Eastern daylight time	FACT	Feminist Anti-Censorship Task Force
E.D. Va.	Eastern District, Virginia	FAIRA	Federal Agriculture Improvement and Reform Act of 1996
EEC	European Economic Community; European Economic Community Treaty	FAMLA	Family and Medical Leave Act of 1993
EEOC	Equal Employment Opportunity Commission	Fannie Mae	Federal National Mortgage Association
EFF	Electronic Frontier Foundation	FAO	Food and Agriculture Organization of the United Nations
EFT	Electronic funds transfer	FAR	Federal Acquisition Regulations
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		

FAS	Foreign Agricultural Service	FIP	Forestry Incentives Program
FBA	Federal Bar Association	FIRREA	Financial Institutions Reform, Recovery, and Enforcement Act of 1989
FBI	Federal Bureau of Investigation	FISA	Foreign Intelligence Surveillance Act of 1978
FCA	Farm Credit Administration	FISC	Foreign Intelligence Surveillance Court of Review
F. Cas.	Federal Cases	FJC	Federal Judicial Center
FCC	Federal Communications Commission	FLSA	Fair Labor Standards Act
FCIA	Foreign Credit Insurance Association	FMC	Federal Maritime Commission
FCIC	Federal Crop Insurance Corporation	FMCS	Federal Mediation and Conciliation Service
FCLAA	Federal Cigarette Labeling and Advertising Act	FmHA	Farmers Home Administration
FCRA	Fair Credit Reporting Act	FMLA	Family and Medical Leave Act of 1993
FCU	Federal credit unions	FNMA	Federal National Mortgage Association, "Fannie Mae"
FCUA	Federal Credit Union Act	F.O.B.	Free on board
FCZ	Fishery Conservation Zone	FOIA	Freedom of Information Act
FDA	Food and Drug Administration	FOMC	Federal Open Market Committee
FDIC	Federal Deposit Insurance Corporation	FPA	Federal Power Act of 1935
FDPC	Federal Data Processing Center	FPC	Federal Power Commission
FEC	Federal Election Commission	FPMR	Federal Property Management Regulations
FECA	Federal Election Campaign Act of 1971	FPRS	Federal Property Resources Service
Fed. Cas.	Federal Cases	FR	Federal Register
FEHA	Fair Employment and Housing Act	FRA	Federal Railroad Administration
FEHBA	Federal Employees Health Benefit Act	FRB	Federal Reserve Board
FEMA	Federal Emergency Management Agency	FRC	Federal Radio Commission
FERC	Federal Energy Regulatory Commission	F.R.D.	Federal Rules Decisions
FFB	Federal Financing Bank	FSA	Family Support Act
FFDC	Federal Food, Drug, and Cosmetics Act	FSB	Federal'naya Sluzhba Bezopasnosti (the Federal Security Service of Russia)
FGIS	Federal Grain Inspection Service	FSLIC	Federal Savings and Loan Insurance Corporation
FHA	Federal Housing Administration	FSQS	Food Safety and Quality Service
FHAA	Fair Housing Amendments Act of 1998	FSS	Federal Supply Service
FHWA	Federal Highway Administration	F. Supp.	Federal Supplement
FIA	Federal Insurance Administration	FTA	U.S.-Canada Free Trade Agreement of 1988
FIC	Federal Information Centers; Federation of Insurance Counsel	FTC	Federal Trade Commission
FICA	Federal Insurance Contributions Act	FTCA	Federal Tort Claims Act
FIFRA	Federal Insecticide, Fungicide, and Rodenticide Act	FTS	Federal Telecommunications System
		FTS2000	Federal Telecommunications System 2000
		FUCA	Federal Unemployment Compensation Act of 1988

FUTA	Federal Unemployment Tax Act	HBO	Home Box Office
FWPCA	Federal Water Pollution Control Act of 1948	HCFA	Health Care Financing Administration
FWS	Fish and Wildlife Service	H.Ct.	High Court
GAL	Guardian ad litem	HDS	Office of Human Development Services
GAO	General Accounting Office; Governmental Affairs Office	Hen. & M.	Hening & Munford's Virginia Reports
GAOR	General Assembly Official Records, United Nations	HEW	Department of Health, Education, and Welfare
GAAP	Generally accepted accounting principles	HFCA	Health Care Financing Administration
GA Res.	General Assembly Resolution (United Nations)	HGI	Handgun Control, Incorporated
GATT	General Agreement on Tariffs and Trade	HHS	Department of Health and Human Services
GCA	Gun Control Act	Hill	Hill's New York Reports
Gen. Cls. Comm.	General Claims Commission, United States and Panama; General Claims United States and Mexico	HIRE	Help through Industry Retraining and Employment
Geo. II	King George II (Great Britain)	HIV	Human immunodeficiency virus
Geo. III	King George III (Great Britain)	H.L.	House of Lords Cases (England)
GHB	Gamma-hydroxybutrate	H. Lords	House of Lords (England)
GI	Government Issue	HMO	Health Maintenance Organization
GID	General Intelligence Division	HNIS	Human Nutrition Information Service
GM	General Motors	Hong Kong L.R.	Hong Kong Law Reports
GNMA	Government National Mortgage Association, "Ginnie Mae"	How.	Howard's United States Supreme Court Reports
GNP	Gross national product	How. St. Trials	Howell's English State Trials
GOP	Grand Old Party (Republican Party)	HUAC	House Un-American Activities Committee
GOPAC	Grand Old Party Action Committee	HUD	Department of Housing and Urban Development
GPA	Office of Governmental and Public Affairs	Hudson, Internatl. Legis.	Manley Ottmer Hudson, ed., <i>International Legislation: A Collection of the Texts of Multipartite International Instruments of General Interest Beginning with the Covenant of the League of Nations</i> (1931)
GPO	Government Printing Office	Hudson, World Court Reps.	Manley Ottmer Hudson, ea., <i>World Court Reports</i> (1934–)
GRAS	Generally recognized as safe	Hun	Hun's New York Supreme Court Reports
Gr. Br., Crim. Ct. App.	Great Britain, Court of Criminal Appeals	Hunt's Rept.	Bert L. Hunt, <i>Report of the American and Panamanian General Claims Arbitration</i> (1934)
GRNL	Gay Rights-National Lobby	IAEA	International Atomic Energy Agency
GSA	General Services Administration	IALL	International Association of Law Libraries
Hackworth	Green Haywood Hackworth, <i>Digest of International Law</i> (1940–1944)		
Hay and Marriott	Great Britain. High Court of Admiralty, <i>Decisions in the High Court of Admiralty during the Time of Sir George Hay and of Sir James Marriott, Late Judges of That Court</i> (1801)		

IBA	International Bar Association	IRA	Individual retirement account;
IBM	International Business Machines	IRC	Irish Republican Army
ICA	Interstate Commerce Act	IRCA	Internal Revenue Code
ICBM	Intercontinental ballistic missile	IRS	Immigration Reform and Control Act of 1986
ICC	Interstate Commerce Commission; International Criminal Court	ISO	Internal Revenue Service
ICJ	International Court of Justice	ISP	Independent service organization
ICM	Institute for Court Management	ISSN	Internet service provider
IDEA	Individuals with Disabilities Education Act of 1975	ITA	International Standard Serial Numbers
IDOP	International Dolphin Conservation Program	ITI	International Trade Administration
IEP	Individualized educational program	ITO	Information Technology Integration
IFC	International Finance Corporation	ITS	International Trade Organization
IGRA	Indian Gaming Regulatory Act of 1988	ITT	Information Technology Service
IJA	Institute of Judicial Administration	ITU	International Telephone and Telegraph Corporation
IJC	International Joint Commission	IUD	International Telecommunication Union
ILC	International Law Commission	IWC	Intrauterine device
ILD	International Labor Defense	IWW	International Whaling Commission
Ill. Dec.	Illinois Decisions	JAGC	Industrial Workers of the World
ILO	International Labor Organization	JCS	Judge Advocate General's Corps
IMF	International Monetary Fund	JDL	Joint Chiefs of Staff
INA	Immigration and Nationality Act	JNOV	Jewish Defense League
IND	Investigational new drug		Judgment <i>non obstante</i> <i>veredicto</i> ("judgment nothing to recommend it" or "judgment notwithstanding the verdict")
INF Treaty	Intermediate-Range Nuclear Forces Treaty of 1987	JOBS	Jobs Opportunity and Basic Skills
INS	Immigration and Naturalization Service	John. Ch.	Johnson's New York Chancery Reports
INTELSAT	International Telecommunications Satellite Organization	Johns.	Johnson's Reports (New York)
Interpol	International Criminal Police Organization	JP	Justice of the peace
Int'l. Law Reps.	International Law Reports	K.B.	King's Bench Reports (England)
Intl. Legal Mats.	International Legal Materials	KFC	Kentucky Fried Chicken
IOC	International Olympic Committee	KGB	Komitet Gosudarstvennoi Bezopasnosti (the State Security Committee for countries in the former Soviet Union)
IPDC	International Program for the Development of Communication	KKK	Ku Klux Klan
IPO	Intellectual Property Owners	KMT	Kuomintang (Chinese, "national people's party")
IPP	Independent power producer		Law Against Discrimination
IQ	Intelligence quotient		
I.R.	Irish Reports	LAD	

LAPD	Los Angeles Police Department		II, 35 vols. [1876–1908]; Series III [1909–]
LC	Library of Congress	Mass.	Massachusetts Reports
LCHA	Longshoremen's and Harbor Workers Compensation Act of 1927	MCC	Metropolitan Correctional Center
LD50	Lethal dose 50	MCCA	Medicare Catastrophic Coverage Act of 1988
LDEF	Legal Defense and Education Fund (NOW)	MCH	Maternal and Child Health Bureau
LDF	Legal Defense Fund, Legal Defense and Educational Fund of the NAACP	MCRA	Medical Care Recovery Act of 1962
LEAA	Law Enforcement Assistance Administration	MDA	Medical Devices Amendments of 1976
L.Ed.	Lawyers' Edition Supreme Court Reports	Md. App.	Maryland, Appeal Cases
LI	Letter of interpretation	M.D. Ga.	Middle District, Georgia
LLC	Limited Liability Company	Mercy	Movement Ensuring the Right to Choose for Yourself
LLP	Limited Liability Partnership	Metc.	Metcalf's Massachusetts Reports
LMSA	Labor-Management Services Administration	MFDP	Mississippi Freedom Democratic party
LNTS	League of Nations Treaty Series	MGT	Management
Lofft's Rep.	Lofft's English King's Bench Reports	MHSS	Military Health Services System
L.R.	Law Reports (English)	Miller	David Hunter Miller, ea., <i>Treaties and Other International Acts of the United States of America</i> (1931–1948)
LSAC	Law School Admission Council		
LSAS	Law School Admission Service		
LSAT	Law School Aptitude Test	Minn.	Minnesota Reports
LSC	Legal Services Corporation; Legal Services for Children	MINS	Minors in need of supervision
LSD	Lysergic acid diethylamide	MIRV	Multiple independently targetable reentry vehicle
LSDAS	Law School Data Assembly Service	MIRVed ICBM	Multiple independently targetable reentry vehicled intercontinental ballistic missile
LTBT	Limited Test Ban Treaty		
LTC	Long Term Care		
MAD	Mutual assured destruction	Misc.	Miscellaneous Reports, New York
MADD	Mothers against Drunk Driving	Mixed Claims Comm., Report of Decs	Mixed Claims Commission, United States and Germany, Report of Decisions
MALDEF	Mexican American Legal Defense and Educational Fund		
Malloy	William M. Malloy, ed., <i>Treaties, Conventions International Acts, Protocols, and Agreements between the United States of America and Other Powers</i> (1910–1938)	M.J.	Military Justice Reporter
		MLAP	Migrant Legal Action Program
		MLB	Major League Baseball
		MLDP	Mississippi Loyalist Democratic Party
		MMI	Moslem Mosque, Incorporated
Martens	Georg Friedrich von Martens, ea., <i>Nouveau recueil général de traités et autres actes relatifs aux rapports de droit international</i> (Series I, 20 vols. [1843–1875]; Series	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, <i>A Digest of International Law</i> , 8 vols. (1906)	NARAL	National Abortion and Reproductive Rights Action League
Moore, Intl. Arbs.	John Bassett Moore, <i>History and Digest of the International Arbitrations to Which United States Has Been a Party</i> , 6 vols. (1898)	NARF NARS NASA	Native American Rights Fund National Archives and Record Service National Aeronautics and Space Administration
Morison	William Maxwell Morison, <i>The Scots Revised Report: Morison's Dictionary of Decisions</i> (1908–09)	NASD NATO	National Association of Securities Dealers North Atlantic Treaty Organization
M.P.	Member of Parliament	NAVINFO	Navy Information Offices
MP3	MPEG Audio Layer 3	NAWSA	National American Woman's Suffrage Association
MPAA	Motion Picture Association of America	NBA	National Bar Association; National Basketball Association
MPAS	Michigan Protection and Advocacy Service		National Broadcasting Company
MPEG	Motion Picture Experts Group	NBC	National Black Law Student Association
mpg	Miles per gallon	NBSA	National Bureau of Standards
MPPDA	Motion Picture Producers and Distributors of America	NBS	Noise Control Act; National Command Authorities
MPRSA	Marine Protection, Research, and Sanctuaries Act of 1972	NCA NCAA	National Collegiate Athletic Association
M.R.	Master of the Rolls		National Coalition against Censorship
MS-DOS	Microsoft Disk Operating System	NCAC	National Consumer Cooperative Bank
MSHA	Mine Safety and Health Administration	NCCB	Northwest Community Exchange
MSPB	Merit Systems Protection Board	NCE	National Chamber Foundation
MSSA	Military Selective Service Act	NCF	National Crime Insurance Program
N/A	Not Available		National Criminal Justice Association
NAACP	National Association for the Advancement of Colored People	NCIP NCJA	National Civil Liberties Bureau
NAAQS	National Ambient Air Quality Standards	NCLB	National contingency plan
NAB	National Association of Broadcasters	NCP	National Center for State Courts
NABSW	National Association of Black Social Workers	NCSC	National Credit Union Administration
NACDL	National Association of Criminal Defense Lawyers	NCUA	New drug application
NAFTA	North American Free Trade Agreement of 1993	NDA N.D. Ill.	Northern District, Illinois
NAGHSR	National Association of Governors' Highway Safety Representatives	NDU N.D. Wash.	National Defense University Northern District, Washington
NALA	National Association of Legal Assistants	N.E. N.E. 2d	North Eastern Reporter North Eastern Reporter, Second Series
NAM	National Association of Manufacturers	NEA	National Endowment for the Arts; National Education Association
NAR	National Association of Realtors		

NEH	National Endowment for the Humanities	NORML	National Organization for the Reform of Marijuana Laws
NEPA	National Environmental Protection Act; National Endowment Policy Act	NOW	National Organization for Women
NET Act	No Electronic Theft Act	NOW LDEF	National Organization for Women Legal Defense and Education Fund
NFIB	National Federation of Independent Businesses	NOW/PAC	National Organization for Women Political Action Committee
NFIP	National Flood Insurance Program	NPDES	National Pollutant Discharge Elimination System
NFL	National Football League	NPL	National priorities list
NFPA	National Federation of Paralegal Associations	NPR	National Public Radio
NGLTF	National Gay and Lesbian Task Force	NPT	Nuclear Non-Proliferation Treaty of 1970
NHL	National Hockey League	NRA	National Rifle Association; National Recovery Act
NHRA	Nursing Home Reform Act of 1987	NRC	Nuclear Regulatory Commission
NHTSA	National Highway Traffic Safety Administration	NRLC	National Right to Life Committee
Nielsen's Rept.	Frederick Kenelm Nielsen, <i>American and British Claims Arbitration under the Special Agreement Concluded between the United States and Great Britain, August 18, 1910</i> (1926)	NRTA	National Retired Teachers Association
NIEO	New International Economic Order	NSA	National Security Agency
NIGC	National Indian Gaming Commission	NSC	National Security Council
NIH	National Institutes of Health	NSCLC	National Senior Citizens Law Center
NIJ	National Institute of Justice	NSF	National Science Foundation
NIRA	National Industrial Recovery Act of 1933; National Industrial Recovery Administration	NSFNET	National Science Foundation Network
NIST	National Institute of Standards and Technology	NSI	Network Solutions, Inc.
N.J.	New Jersey Reports	NTIA	National Telecommunications and Information Administration
N.J. Super.	New Jersey Superior Court Reports	NTID	National Technical Institute for the Deaf
NLEA	Nutrition Labeling and Education Act of 1990	NTIS	National Technical Information Service
NLRA	National Labor Relations Act	NTS	Naval Telecommunications System
NLRB	National Labor Relations Board	NTSB	National Transportation Safety Board
NMFS	National Marine Fisheries Service	NVRA	National Voter Registration Act
No.	Number	N.W.	North Western Reporter
NOAA	National Oceanic and Atmospheric Administration	N.W. 2d	North Western Reporter, Second Series
NOC	National Olympic Committee	NWSA	National Woman Suffrage Association
NOI	Nation of Islam	N.Y.	New York Court of Appeals Reports
NOL	Net operating loss	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	OPIC	Overseas Private Investment Corporation
NYSE	New York Stock Exchange	Ops. Atts. Gen.	Opinions of the Attorneys- General of the United States
NYSLA	New York State Liquor Authority	Ops. Comms.	Opinions of the Commissioners
N.Y. Sup.	New York Supreme Court Reports	OPSP	Office of Product Standards Policy
NYU	New York University	O.R.	Ontario Reports
OAAU	Organization of Afro American Unity	OR	Official Records
OAP	Office of Administrative Procedure	OSHA	Occupational Safety and Health Act
OAS	Organization of American States	OSHRC	Occupational Safety and Health Review Commission
OASDI	Old-age, Survivors, and Disability Insurance Benefits	OSM	Office of Surface Mining
OASHDS	Office of the Assistant Secretary for Human Development Services	OSS	Office of Strategic Services
OCC	Office of Comptroller of the Currency	OST	Office of the Secretary
OCED	Office of Comprehensive Employment Development	OT	Office of Transportation
OCHAMPUS	Office of Civilian Health and Medical Program of the Uniformed Services	OTA	Office of Technology Assessment
OCSE	Office of Child Support Enforcement	OTC	Over-the-counter
OEA	Organización de los Estados Americanos	OTS	Office of Thrift Supervisors
OEM	Original Equipment Manufacturer	OUI	Operating under the influence
OFCCP	Office of Federal Contract Compliance Programs	OVCI	Offshore Voluntary Compliance Initiative
OFPP	Office of Federal Procurement Policy	OWBPA	Older Workers Benefit Protection Act
OIC	Office of the Independent Counsel	OWRT	Office of Water Research and Technology
OICD	Office of International Cooperation and Development	P.	Pacific Reporter
OIG	Office of the Inspector General	P. 2d	Pacific Reporter, Second Series
OJARS	Office of Justice Assistance, Research, and Statistics	PAC	Political action committee
OMB	Office of Management and Budget	Pa. Oyer and Terminer	Pennsylvania Oyer and Terminer Reports
OMPC	Office of Management, Planning, and Communications	PATCO	Professional Air Traffic Controllers Organization
ONP	Office of National Programs	PBGC	Pension Benefit Guaranty Corporation
OPD	Office of Policy Development	PBS	Public Broadcasting Service; Public Buildings Service
OPEC	Organization of Petroleum Exporting Countries	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)	PNET	Peaceful Nuclear Explosions Treaty
	Series D-Acts and Documents concerning the Organization of the World Court (1922–47)	PONY	Prostitutes of New York
	Series E-Annual Reports (1925–45)	POW-MIA	Prisoner of war-missing in action
PCP	Phencyclidine	Pratt	Frederic Thomas Pratt, <i>Law of Contraband of War, with a Selection of Cases from Papers of the Right Honourable Sir George Lee</i> (1856)
P.D.	Probate Division, English Law Reports (1876–1890)	PRIDE	Prostitution to Independence, Dignity, and Equality
PDA	Pregnancy Discrimination Act of 1978	Proc.	Proceedings
PD & R	Policy Development and Research	PRP	Potentially responsible party
Pepco	Potomac Electric Power Company	PSRO	Professional Standards Review Organization
Perm. Ct. of Arb.	Permanent Court of Arbitration	PTO	Patents and Trademark Office
PES	Post-Enumeration Survey	PURPA	Public Utilities Regulatory Policies Act
Pet.	Peters' United States Supreme Court Reports	PUSH	People United to Serve Humanity
PETA	People for the Ethical Treatment of Animals	PUSH-Excel	PUSH for Excellence
PGA	Professional Golfers Association	PWA	Public Works Administration
PGM	Program	PWSA	Ports and Waterways Safety Act of 1972
PHA	Public Housing Agency	Q.B.	Queen's Bench (England)
Phila. Ct. of Oyer and Terminer	Philadelphia Court of Oyer and Terminer	QTIP	Qualified Terminable Interest Property
PhRMA	Pharmaceutical Research and Manufacturers of America	Ralston's Rept.	Jackson Harvey Ralston, ed., <i>Venezuelan Arbitrations of 1903</i> (1904)
PHS	Public Health Service	RC	Regional Commissioner
PIC	Private Industry Council	RCRA	Resource Conservation and Recovery Act
PICJ	Permanent International Court of Justice	RCWP	Rural Clean Water Program
Pick.	Pickering's Massachusetts Reports	RDA	Rural Development Administration
PIK	Payment in Kind	REA	Rural Electrification Administration
PINS	Persons in need of supervision	Rec. des Decs. des Trib. Arb. Mixtes	G. Gidel, ed., <i>Recueil des décisions des tribunaux arbitraux mixtes, institués par les traités de paix</i> (1922–30)
PIRG	Public Interest Research Group	Redmond	Vol. 3 of Charles I. Bevans, <i>Treaties and Other International Agreements of the United States of America, 1776–1949</i> (compiled by C. F. Redmond) (1969)
P.L.	Public Laws	RESPA	Real Estate Settlement Procedure Act of 1974
PLAN	Pro-Life Action Network	RFC	Reconstruction Finance Corporation
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		

RFRA	Religious Freedom Restoration Act of 1993	SCCC	South Central Correctional Center
RIAA	Recording Industry Association of America	SCLC	Southern Christian Leadership Conference
RICO	Racketeer Influenced and Corrupt Organizations	Scott's Repts.	James Brown Scott, ed., <i>The Hague Court Reports</i> , 2 vols. (1916–32)
RLUIPA	Religious Land Use and Institutionalized Persons Act	SCS	Soil Conservation Service; Social Conservative Service
RNC	Republican National Committee	SCSEP	Senior Community Service Employment Program
Roscoe	Edward Stanley Roscoe, ed., <i>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</i> (1905)	S.Ct. S.D. Cal. S.D. Fla. S.D. Ga. SDI S.D. Me. S.D.N.Y. SDS	Supreme Court Reporter Southern District, California Southern District, Florida Southern District, Georgia Strategic Defense Initiative Southern District, Maine Southern District, New York Students for a Democratic Society
ROTC	Reserve Officers' Training Corps	S.E. S.E. 2d	South Eastern Reporter South Eastern Reporter, Second Series
RPP	Representative Payee Program	SEA	Science and Education Administration
R.S.	Revised Statutes	SEATO	Southeast Asia Treaty Organization
RTC	Resolution Trust Corp.	SEC	Securities and Exchange Commission
RUDs	Reservations, understandings, and declarations	Sec.	Section
Ryan White CARE Act	Ryan White Comprehensive AIDS Research Emergency Act of 1990	SEEK	Search for Elevation, Education and Knowledge
SAC	Strategic Air Command	SEOO	State Economic Opportunity Office
SACB	Subversive Activities Control Board	SEP	Simplified employee pension plan
SADD	Students against Drunk Driving	Ser.	Series
SAF	Student Activities Fund	Sess.	Session
SAIF	Savings Association Insurance Fund	SGLI	Servicemen's Group Life Insurance
SALT	Strategic Arms Limitation Talks	SIP	State implementation plan
SALT I	Strategic Arms Limitation Talks of 1969–72	SLA	Symbionese Liberation Army
SAMHSA	Substance Abuse and Mental Health Services Administration	SLAPPs	Strategic Lawsuits Against Public Participation
Sandf.	Sandford's New York Superior Court Reports	SLBM	Submarine-launched ballistic missile
S and L	Savings and loan	SNCC	Student Nonviolent Coordinating Committee
SARA	Superfund Amendment and Reauthorization Act	So.	Southern Reporter
SAT	Scholastic Aptitude Test	So. 2d	Southern Reporter, Second Series
Sawy.	Sawyer's United States Circuit Court Reports	SPA	Software Publisher's Association
SBA	Small Business Administration	Spec. Sess.	Special Session
SBI	Small Business Institute	SPLC	Southern Poverty Law Center
		SRA	Sentencing Reform Act of 1984

SS	<i>Schutzstaffel</i> (German, "Protection Echelon")	TVA	Tennessee Valley Authority
SSA	Social Security Administration	TWA	Trans World Airlines
SSI	Supplemental Security Income	UAW	United Auto Workers; United Automobile, Aerospace, and Agricultural Implements Workers of America
START I	Strategic Arms Reduction Treaty of 1991	U.C.C.	Uniform Commercial Code; Universal Copyright Convention
START II	Strategic Arms Reduction Treaty of 1993	U.C.C.C.	Uniform Consumer Credit Code
Stat.	United States Statutes at Large	UCCJA	Uniform Child Custody Jurisdiction Act
STS	Space Transportation Systems	UCMJ	Uniform Code of Military Justice
St. Tr.	State Trials, English	UCPP	Urban Crime Prevention Program
STURAA	Surface Transportation and Uniform Relocation Assistance Act of 1987	UCS	United Counseling Service
Sup. Ct. of Justice, Mexico	Supreme Court of Justice, Mexico	UDC	United Daughters of the Confederacy
Supp.	Supplement	UFW	United Farm Workers
S.W.	South Western Reporter	UHF	Ultrahigh frequency
S.W. 2d	South Western Reporter, Second Series	UIFSA	Uniform Interstate Family Support Act
SWAPO	South-West Africa People's Organization	UIS	Unemployment Insurance Service
SWAT	Special Weapons and Tactics	UMDA	Uniform Marriage and Divorce Act
SWP	Socialist Workers Party	UMTA	Urban Mass Transportation Administration
TDP	Trade and Development Program	U.N.	United Nations
Tex. Sup.	Texas Supreme Court Reports	UNCITRAL	United Nations Commission on International Trade Law
THAAD	Theater High-Altitude Area Defense System	UNCTAD	United Nations Conference on Trade and Development
THC	Tetrahydrocannabinol	UN Doc.	United Nations Documents
TI	Tobacco Institute	UNDP	United Nations Development Program
TIA	Trust Indenture Act of 1939	UNEF	United Nations Emergency Force
TIAS	Treaties and Other International Acts Series (United States)	UNESCO	United Nations Educational, Scientific, and Cultural Organization
TNT	Trinitrotoluene	UNICEF	United Nations Children's Fund (formerly United Nations International Children's Emergency Fund)
TOP	Targeted Outreach Program	UNIDO	United Nations Industrial and Development Organization
TPUS	Transportation and Public Utilities Service	Unif. L. Ann.	Uniform Laws Annotated
TQM	Total Quality Management	UN Repts. Intl. Arb. Awards	United Nations Reports of International Arbitral Awards
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		

UNTS	United Nations Treaty Series	VIN	Vehicle identification number
UPI	United Press International		
URESA	Uniform Reciprocal Enforcement of Support Act	VISTA	Volunteers in Service to America
U.S.	United States Reports	VJRA	Veterans Judicial Review Act of 1988
U.S.A.	United States of America	V.L.A.	Volunteer Lawyers for the Arts
USAF	United States Air Force	VMI	Virginia Military Institute
USA PATRIOT Act	Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act	VMLI	Veterans Mortgage Life Insurance
U.S. App. D.C.	United States Court of Appeals for the District of Columbia	VOCAL	Victims of Child Abuse Laws
U.S.C.	United States Code; University of Southern California	VRA	Voting Rights Act
U.S.C.A.	United States Code Annotated	WAC	Women's Army Corps
U.S.C.C.A.N.	United States Code Congressional and Administrative News	Wall.	Wallace's United States Supreme Court Reports
USCMA	United States Court of Military Appeals	Wash. 2d	Washington Reports, Second Series
USDA	U.S. Department of Agriculture	WAVES	Women Accepted for Volunteer Service
USES	United States Employment Service	WCTU	Women's Christian Temperance Union
USF	U.S. Forestry Service	W.D. Wash.	Western District, Washington
USFA	United States Fire Administration	W.D. Wis.	Western District, Wisconsin
USGA	United States Golf Association	WEAL	<i>West's Encyclopedia of American Law</i> , Women's Equity Action League
USICA	International Communication Agency, United States	Wend.	Wendell's New York Reports
USMS	U.S. Marshals Service	WFSE	Washington Federation of State Employees
USOC	U.S. Olympic Committee	Wheat.	Wheaton's United States Supreme Court Reports
USSC	U.S. Sentencing Commission	Wheel. Cr. Cases	Wheeler's New York Criminal Cases
USSG	United States Sentencing Guidelines	WHISPER	Women Hurt in Systems of Prostitution Engaged in Revolt
U.S.S.R.	Union of Soviet Socialist Republics	Whiteman	Marjorie Millace Whiteman, <i>Digest of International Law</i> , 15 vols. (1963–73)
UST	United States Treaties	WHO	World Health Organization
USTS	United States Travel Service	WIC	Women, Infants, and Children program
v.	<i>Versus</i>	Will. and Mar.	King William and Queen Mary (Great Britain)
VA	Veterans Administration	WIN	WESTLAW Is Natural; Whip Inflation Now; Work Incentive Program
VAR	Veterans Affairs and Rehabilitation Commission	WIPO	World Intellectual Property Organization
VAWA	Violence against Women Act	WIU	Workers' Industrial Union
VFW	Veterans of Foreign Wars	W.L.R.	Weekly Law Reports, England
VGLI	Veterans Group Life Insurance	WPA	Works Progress Administration
Vict.	Queen Victoria (Great Britain)	WPPDA	Welfare and Pension Plans Disclosure Act

WTO	World Trade Organization	YMCA	Young Men's Christian Association
WWI	World War I		
WWII	World War II	YWCA	Young Women's Christian Association
Yates Sel. Cas.	Yates's New York Select Cases		