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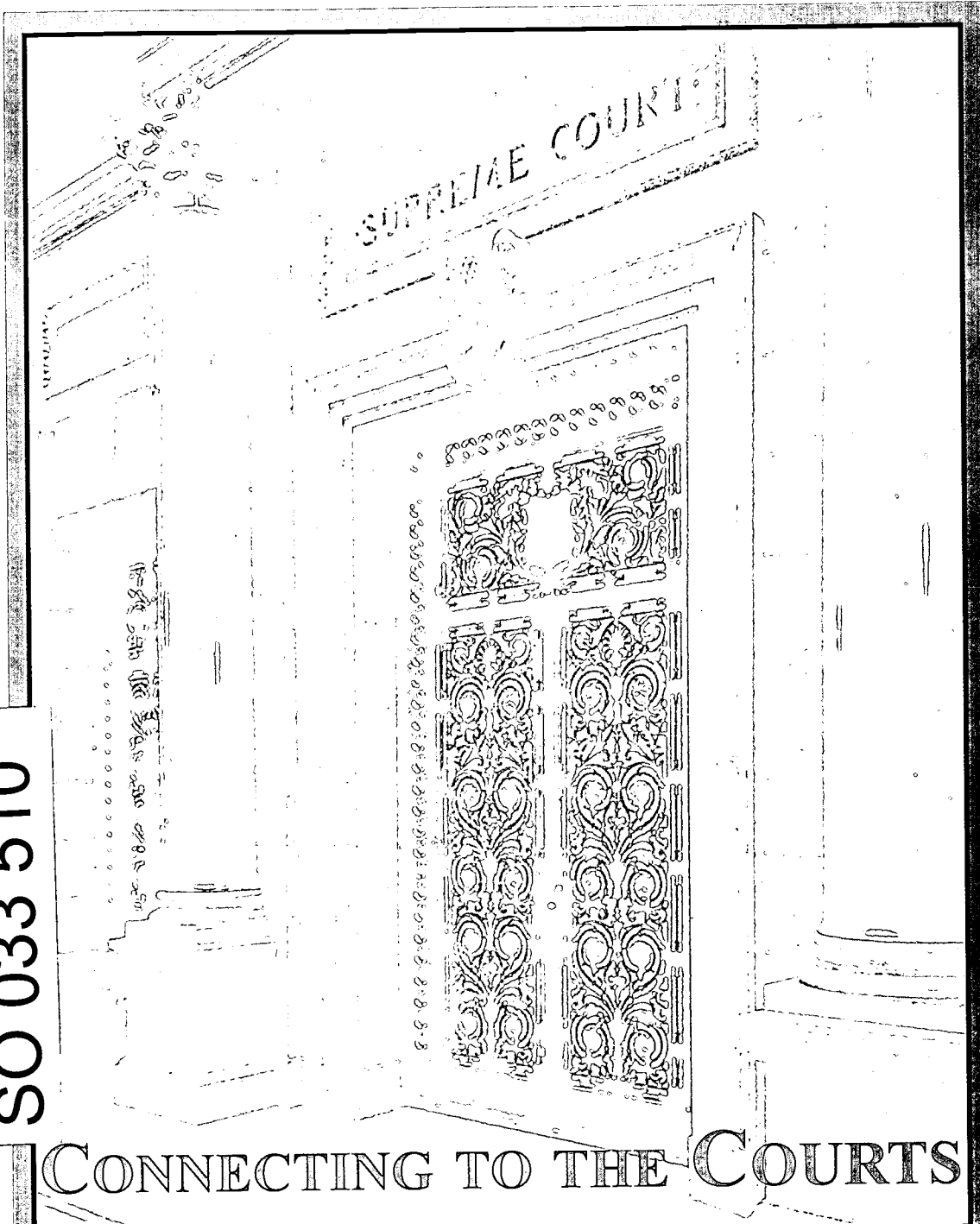
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ABSTRACT

In February 2000, the Wisconsin Supreme Court, the State Bar of Wisconsin, and the University of Wisconsin-Madison Department of Curriculum and Instruction brought together 28 high school teachers from around the state together for a 2-day intensive workshop on teaching about federal and state courts. A second institute was held in February 2001 that included everything from the first one and a new segment on teaching with technology that showcased a new Web-based "Case of the Month" activity. This guide blends the materials that were used in both institutes with information from the U.S. Supreme Court, the Administrative Office of the U.S. Courts, and the "Wisconsin Law Review." The materials in the guide are designed to help secondary students learn about constitutions, courts, and cases. Focusing on these topics as part of a comprehensive democracy education program has the potential to help young people build the understanding, skills, and attitudes necessary for active and informed participation in a democracy. The learning strategies embedded throughout the guide are highly interactive and collaborative and feature activities such as moot courts and the "grant/deny" petition exercise. Students work cooperatively to analyze core constitutional principles and apply them to real-life situations. The guide is divided into the following chapters: (1) "Federal Courts"; (2) "Overview of the Wisconsin Courts"; (3) "Wisconsin Supreme Court"; (4) "Wisconsin Court of Appeals"; (5) "Wisconsin Circuit Court"; (6) "Judicious Election of Judges"; and (7) "Connecting to the Courts." (Contains an appendix and a glossary of terms.) (BT)

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CONNECTING TO THE COURTS

A TEACHER'S GUIDE TO THE WISCONSIN COURTS

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This guide was originally created for *From the Courtroom to the Classroom*, an institute for teachers sponsored by the State Bar of Wisconsin, the University of Wisconsin-Madison Department of Curriculum and Instruction, the Wisconsin Law Foundation, and the Wisconsin Supreme Court. The guide and 2001 institute were funded by the Director of State Courts Office, State Bar of Wisconsin, and Wisconsin Humanities Council.

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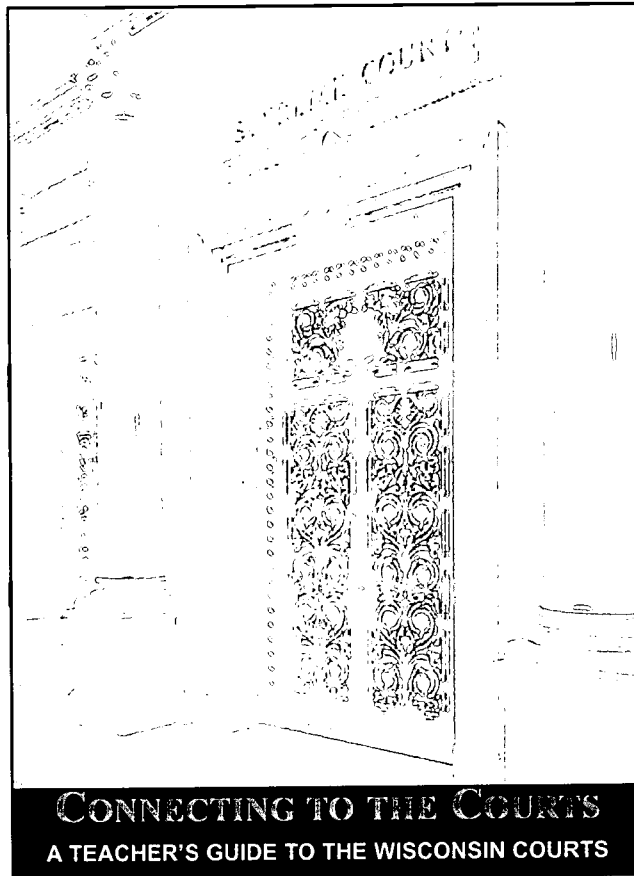
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Dear Educator,

In February 2000, the Wisconsin Supreme Court, the State Bar of Wisconsin, and the University of Wisconsin Department of Curriculum and Instruction conducted an experiment. With funding from Youth for Justice (a division of the Office of Juvenile Justice Delinquency Prevention of the U.S. Department of Justice) and additional support from the Wisconsin Law Foundation, we brought 28 high school teachers from around the state to Madison for a two-day intensive workshop on teaching about the courts. We:

- provided information on the structure and powers of the state and federal court systems, with particular emphasis on the Wisconsin court system;
- held a panel discussion with circuit court judges to explain the concept of judicial independence;
- identified historic “teachable” cases;
- introduced a process for selecting appropriate cases for study; and
- engaged the teachers in interactive exercises such as a moot court, a mock sentencing, and a grant/deny exercise using actual Supreme Court petitions for review.



**Chief Justice Shirley S. Abrahamson,
Wisconsin Supreme Court**

The faculty included myself and my colleague Justice N. Patrick Crooks, Circuit Court Judges Ramona Gonzalez, Joseph Troy, and Steven Weinke; Supreme Court Commissioner Joseph Wilson; Attorneys Tom Balistreri, Ellen Henak, Margaret Maroney, and Michael Tobin; and staff from the Supreme Court and State Bar. In addition, we were fortunate to have Georgetown Adjunct Law Professor Lee Arbetman, whose *Street Law* textbooks are now used in many Wisconsin high schools and in schools around the world. Professor Arbetman and Professor Diana Hess (University of Wisconsin-Madison), another presenter who helped to organize this event, also facilitate a summer institute for teachers at the U.S. Supreme Court.

Teachers from our first institute told us: *I may revamp a lot of my curriculum based on what I learned and This is the best seminar I have ever attended in my 27 years.* Faced with sentiments like these, we could do only one thing. We held the second institute in February 2001. It included everything that made the first one successful and a new segment on teaching with technology, showcasing a new Web page designed to complement the institute and a new Web-based Case of the Month activity. A law librarian from the Wisconsin State Law Library showed teachers how to find information that will help them develop their own law-related lesson plans on everything from body piercing to labor regulations for minors. And a teacher from the first institute joined us to give practical advice on using the exercises in the classroom.

The final piece that is new in 2001 is in your hands. The *Teacher's Guide to the Wisconsin Courts* blends the materials that were used in both institutes with information from the U.S. Supreme Court, the Administrative Office of the U.S. Courts, the *Wisconsin Law Review*, and more. I would also like to

recognize the Wisconsin Humanities Council, which provided a grant to produce this guide.

Alexis de Tocqueville, the great 19th-century writer and student of American democracy, observed that most public issues in the United States eventually become legal issues. Indeed, Americans do turn to the law every day to resolve their disputes. America's schools have an important role to play in fostering public understanding of the law and the justice system, but they can't be expected to do it alone. We hope that the institute, the Web materials, and this book will help our schools to build young adults who have confidence in our legal system, who feel that they have full access to the services this system can provide, and who value the role of law in our society.

Sincerely yours,

Shirley S. Abrahamson
Chief Justice, Wisconsin Supreme Court

Dear Educators:

On behalf of the State Bar of Wisconsin and its Law-Related Education Committee, I welcome you and your students to the study of the Wisconsin court system through this new publication, the *Teacher's Guide to the Wisconsin Courts*. The Wisconsin Supreme Court and the University of Wisconsin-Madison Department of Curriculum and Instruction produced the guide with funding from the Wisconsin Humanities Council.

This guide was inspired by *From the Courtroom to the Classroom*, the justice teaching institute sponsored by the Wisconsin Supreme Court, the State Bar of Wisconsin, the University of Wisconsin-Madison Department of Curriculum and Instruction, and the Wisconsin Law Foundation. The institute is one of the many resources available to Wisconsin educators through the State Bar of Wisconsin and the Law-Related Education Committee.



**Attorney Charles (Chuttie) Senn,
chair of the State Bar of Wisconsin
Law-Related Education Committee**

Public education about the law is an important mission of the State Bar of Wisconsin. We thank you, the educators, for preparing young Americans for their roles as citizens with both rights and responsibilities. We trust these materials will help you convey the importance of the judicial system in resolving disputes in a peaceful and orderly manner. The moral authority of an independent judiciary sets our country's political system apart from many others, and we thank you for educating your students about the courts and the important court decisions that have played a crucial role in American and Wisconsin history.

The Law-Related Education Committee of the State Bar extends its thanks to the many educators, judges, and lawyers who have volunteered their time and efforts to create the justice teaching institute. Without the experience of the institute and the help of the educators who went through it, we know that creating a useful teacher's guide would have been much more difficult. We thank all who have supported the institute, and congratulate our partners on developing this guide.

Sincerely yours,

Charles (Chuttie) Senn, chair
Law-Related Education Committee
State Bar of Wisconsin

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Introduction

Dear Teacher:

The materials in this book are designed to help secondary students learn about constitutions, courts, and cases. Focusing on these topics as part of a comprehensive democracy education program has the potential to help young people build the understanding, skills, and attitudes necessary for active and informed participation in a democracy.

Our political and legal systems are complex and often intimidating, but it is apparent from recent research that young people who learn about the legal and political systems in school are more willing to participate as citizens in this democracy.

To be effective, democracy education must (1) focus on controversial issues, (2) be taught interactively, (3) and involve outside resource people. The materials in this book are designed with those goals in mind. First, the lessons in the book do not shy away from controversy. Controversial issues are part and parcel of democracy, and it is imperative that young people learn how to develop and communicate well-reasoned opinions on these issues. Therefore, some of the most controversial issues facing society—hate crime legislation, the scope and limits of police power, the relationship between government and religion—are examined in the lessons. Focusing students' attention on controversial legal issues lends authenticity and helps to ensure that school prepares students for the real world.

Content alone, however, does not make for high quality democracy education. It is also important that the way students learn imparts core tenets of democracy. For this reason, the learning strategies embedded throughout this book are highly interactive and collaborative. Through activities such as moot courts and the “grant/deny” petition exercise, students are taught to work cooperatively to analyze core constitutional principles and apply them to real-life situations. While developing important content knowledge and academic skills, students are also learning how to come together as a “public” to make decisions about important issues.

Finally, many of the lessons and programs described in this book bring young people into contact with people in the community—judges, lawyers, politicians—who can work with teachers to enliven and lend authenticity to the curriculum. In addition to lessons that focus on how resource people can play a role in the classroom the book contains information on programs outside the school that can help students learn about law, politics, and the courts. One program, *Court with Class*, provides students with the opportunity to attend an oral argument before the Wisconsin Supreme Court, and then meet with a justice to ask questions about how the Court works. This remarkable opportunity has sparked the kinds of classroom exchanges that remind teachers why they went into education. One teacher, following a recent visit, wrote, “While the tension was building in the seconds before the oral argument began, Chief Justice Shirley Abrahamson unexpectedly asked the members of our class to rise as she welcomed us to the court. In that split instant the court became “real” to my students. There is nothing that I could have done to give them this feeling in our classroom. That was just the beginning.

To ensure that the legal and political systems honor the commitment to fairness and equality under the law, we must educate the nation's youth for active and informed democratic participation. I hope that the lessons and ideas presented here will help teachers inspire their students to care about the issues confronting our democracy and realize that only through their participation can we aspire to the development of a "more perfect union."

Sincerely,

Diana Hess, Ph.D
Department of Curriculum and Instruction
University of Wisconsin-Madison

Chapter 1: Federal Courts¹

History

Article III of the United States Constitution establishes the judicial branch as one of the three separate and distinct branches of the federal government. The other two are the legislative and executive branches. The federal courts often are called the guardians of the Constitution because their rulings protect rights and liberties guaranteed by the Constitution. Through fair and impartial judgments, the federal courts interpret and apply the law to resolve disputes. The courts do not make the laws. That is the responsibility of Congress. Nor do the courts have the power to enforce the laws. That is the role of the president and the many executive branch departments and agencies.

The highest federal court in the land is the U.S. Supreme Court. The Supreme Court has the authority to invalidate legislation or executive actions which, in the Court's judgment, conflict with the Constitution. This power of judicial review has given the Court a crucial responsibility for assuring individual rights and maintaining a living Constitution whose broad provisions are continually applied to complicated new situations. While the function of judicial review is not explicitly provided in the Constitution, it had been anticipated before the adoption of that document. Prior to 1789, state courts had already overturned legislative acts that conflicted with state constitutions. Moreover, many of the Founding Fathers expected the Supreme Court to assume this role in regard to the Constitution; Alexander Hamilton and James Madison, for example, had underscored the importance of judicial review in the *Federalist Papers*, urging adoption of the Constitution. Despite this background, the Court's power of judicial review was not confirmed until 1803, when it was invoked by Chief Justice John Marshall in Marbury v. Madison. In this decision, the chief justice asserted that the Supreme Court's responsibility to overturn unconstitutional legislation was a necessary consequence of its duty to uphold the Constitution. That oath could not be fulfilled any other way.²

The Founding Fathers considered an independent federal judiciary essential to ensure fairness and equal justice for

U.S. Constitution, Article III

The judicial power of the United States shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

¹ The material in this chapter is excerpted from *Understanding the Federal Courts*, a publication of the Administrative Office of the U.S. Courts. For further information contact the Outreach Office at (202) 502-2611.

² The foregoing was taken from *The Supreme Court of the United States*, a booklet prepared by the U.S. Supreme Court and published with funding from the Supreme Court Historical Society. The full booklet is available at www.supremecourtus.gov.

all citizens of the United States. Judicial independence embodies the concept that judges decide cases fairly, impartially and according to the facts and the law, not according to whim, prejudice, fear, the dictates of other branches of government or the latest public opinion poll. The Constitution promotes judicial independence in two major ways. First, federal judges, including justices of the U.S. Supreme Court, are appointed for life by the president with the advice and consent of the Senate, and they can be removed from office only through impeachment and conviction by Congress of "Treason, Bribery, or other high Crimes and Misdemeanors." Second, the Constitution provides that the compensation of federal judges "shall not be diminished

during their Continuance in Office," which means that neither the president nor Congress can reduce the salary of a federal judge. These two protections help an independent judiciary to decide cases free from popular passion and political influence.

Federal Court System

United States Supreme Court

- 9 justices
- the president appoints justices for life with the advice and consent of the Senate
- Court decides which cases to hear
- final authority in all matters regarding the U.S. Constitution and federal law

United States Circuit Court of Appeals

- 13 circuits (12 regional circuits, 1 federal circuit) with varying numbers of judges (179 judgeships)
- the president appoints judges for life with the advice and consent of the Senate
- Court hears all appeals brought before it
- Wisconsin is part of the Seventh Circuit, located in Chicago

Federal District Courts

- 94 districts throughout the United States and Puerto Rico, two special trial courts with nationwide jurisdiction (U.S. Court of International Trade and U.S. Court of Federal Claims), and U.S. Bankruptcy Courts (more than 600 judgeships)
- the president appoints judges for life with the advice and consent of the Senate
- trial courts with original jurisdiction in all cases involving federal law and cases involving citizens of different states or between U.S. citizens and those of another country
- Wisconsin has two district courts, the Eastern District located in Milwaukee and Green Bay and the Western District located in Madison

Jurisdiction

Although the details of the complex web of federal jurisdiction that Congress has given the federal courts is beyond the scope of this brief guide, it is important to understand that there are two main sources of cases coming before the federal courts: "federal question" jurisdiction and "diversity" jurisdiction.

In general, federal courts may decide cases that involve the U.S. government, the U.S. Constitution or federal laws, or controversies between states or between the U.S. and foreign governments. A case that raises such a "federal question" may be filed in federal court.

A case also may be filed in federal court based on the "diversity of citizenship" of the litigants (the individuals participating in the case), such as between citizens of different states, or between U.S.

citizens and those of another country. To ensure fairness to the out-of-state litigant, the Constitution provides that such cases may be heard in a federal court (the litigants may also bring these cases in a state court). An important limit to diversity jurisdiction is that only cases involving more than \$75,000 in potential damages may be filed in a federal court. Claims below that amount may only be pursued in state court.

Congress has provided specialized tribunals for initial decisions in cases involving certain federal laws. For example, bankruptcy judges in the federal districts oversee the process by which individuals or businesses that can no longer pay their creditors either seek a court-supervised liquidation of their assets, or reorganize their financial affairs and work out a plan to pay off their debts. In addition, administrative law judges based within federal agencies make initial decisions in areas as diverse as labor disputes and telecommunications.

Although federal courts are located in every state, they are not the only forum available to potential litigants. In fact, the great majority of legal disputes in American courts are addressed in the separate state court systems. For example, state courts have jurisdiction over virtually all divorce and child custody matters, probate and inheritance issues, real estate questions, and juvenile matters, and they handle most criminal cases, contract disputes, traffic violations, and personal injury cases.

Appeals

The losing party in the trial court in the federal system normally is entitled to appeal the decision to a federal Court of Appeals. Similarly, a litigant who is not satisfied with a decision made by a federal administrative agency usually may file a petition for review of the agency decision by a court of appeals. Judicial review in cases involving certain federal agencies or programs—for example, disputes over Social Security benefits—may be obtained first in a district court rather than directly to a court of appeals.

In a civil case either side may appeal the verdict. In a criminal case, the defendant may appeal a guilty verdict, but the government may not appeal if a defendant is found not guilty. Either side in a criminal case may appeal with respect to the sentence that is imposed after a guilty verdict.

In most bankruptcy courts, an appeal of a ruling by a bankruptcy judge may be taken to the district court. Several courts of appeals, however, have established a Bankruptcy Appellate Panel consisting of three bankruptcy judges to hear appeals directly from the bankruptcy courts. In either situation, the party that loses in the initial bankruptcy appeal may then appeal to the court of appeals.

A litigant who files an appeal, known as an “appellant,” must show that the trial court or administrative agency made a legal error that affected the decision in the case. The Court of Appeals makes its decision based on the record of the case established by the trial court or agency. It does not receive additional evidence or hear witnesses. The Court of Appeals also may review the factual findings of the trial court or agency, but typically may only overturn a decision on factual grounds if the findings were “clearly erroneous.”

Appeals are decided by panels of three Court of Appeals judges working together. The appellant presents his/her legal arguments to the panel in a brief that tries to persuade the judges that the trial court made an error, and that its decision should be reversed. On the other hand, the party defending against the appeal, known as the "appellee," tries in its brief to show why the trial court decision was correct, or why any error made by the trial court was not significant enough to affect the outcome of the case. Although some cases are decided on the basis of written briefs alone, many cases are selected for an oral argument before the court. Oral argument in the Court of Appeals is a structured discussion between the appellate lawyers and the panel of judges focusing on the legal principles in dispute. Each side is given a short time—usually about 15 minutes—to present arguments to the court.

The Court of Appeals decision usually will be the final word in the case, unless it sends the case back to the federal trial court for additional proceedings, or the parties ask the U.S. Supreme Court to review the case. In some cases the decision may be reviewed en banc, that is, by a larger group (usually all) of the Court of Appeals judges for the circuit.

Petition the U.S. Supreme Court

A litigant who loses in a federal court of appeals, or in the state Supreme Court, may file a petition for a "writ of *certiorari*," which is a document asking the Supreme Court to review the case. The Supreme Court, however, does not have to grant review. The Court typically will agree to hear a case only when it involves an unusually important legal principle, or when two or more federal appellate courts have interpreted a law differently. The Supreme Court also has original jurisdiction in a very small number of cases arising out of disputes between states or between a state and the federal government. There are also a small number of special circumstances in which the Supreme Court is required by law to hear an appeal.

The justices must exercise considerable discretion in deciding which cases to hear because more than 7,000 civil and criminal cases are filed in the Supreme Court for consideration each year from the various state and federal courts. When the Supreme Court rules on a constitutional issue, that judgment is virtually final; its decisions can be altered only by the rarely used procedure of constitutional amendment or by a new ruling of the Court. However, when the Court interprets a statute, new legislative action can be taken.

Teaching Resources

The Federal Courts

The Function of and Qualifications for Federal Jury Service

Overview

One of the most important ways that individual citizens become involved in the federal (or state) judicial process is by serving on a jury. Jury service is one of the few legal responsibilities citizens in the United States have in their government. Though some people complain about the imposition of serving on a jury, many find that their service gives them unique insights into the judicial process and an unusual opportunity to deliberate with others on weighty questions of law and evidence. In this lesson, students learn the difference between a trial jury and a grand jury and complete a brief activity that tests their understanding of juror qualifications and exemptions.

Objectives

At the end of the lesson, students will be able to:

- Describe the function and importance of a jury in U.S. government.
- Describe the difference between a trial jury and a grand jury.
- List the qualifications for a juror.

Standards

Wisconsin Model Academic Standards:

C.12.1: Students will identify the sources, evaluate the justification, and analyze the implications of certain rights and responsibilities of citizens.

C.12.9: Students will identify and evaluate the means through which advocates influence public policy, and identify the ways people may participate effectively in community affairs and the political process.

National Standards for Civics and Government:

Content Standard III (A), 1. Distributing government power and preventing its abuse. Students should be able to explain how the Constitution grants and distributes power to national and state governments and how it seeks to prevent the abuse of power.

Content Standard III (B), 1. The institutions of the national government. Students should be able to evaluate, take, and defend positions on issues regarding the purposes, organization, and functions of the institutions of the national government.

Content Standard III (D), 2. Judicial protection of the rights of individuals. Students should be able to evaluate, take, and defend positions on current issues regarding the judicial protection of individual rights.

National Council for the Social Studies Standards: Power, Authority, and Governance: Social studies programs should include experiences that provide for the study of how people create and change structures of power, authority, and governance.

Materials

An overhead transparency (“The Difference between Trial and Grand Juries”), handout, and teacher’s answer sheet are on pages 13-16.

Procedures

1. Before the lesson begins, write the following quotes from the Constitution on the board or overhead projector:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed...

Amendment VI, U.S. Constitution

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved...

Amendment VII, U.S. Constitution

2. Explain to students that the framers of the Constitution believed that trial by jury was so important that the right to a jury was preserved in the Sixth and Seventh Amendments to the U.S. Constitution. Ask students why this right is so important to be included with such other rights as freedom of speech and religion, freedom from unreasonable search and seizure, and other rights.

3. Through your initial discussion with students help them to understand that the jury trial is yet another way that government's powers can be kept in check. The assumption is that even if a court system becomes unduly influenced by other branches of government an impartial jury, along with other protections like the right to counsel, will help determine the truth and prevent the abuse of government.

4. Explain to students that there are two kinds of juries that serve separate functions in the federal courts, trial juries (also known as petit juries) and grand juries. Use "Overhead Transparency: The Difference between Trial and Grand Juries" to help students understand the difference between the two.

5. Explain to students that federal trial juries are not used very often. Sometimes a civil case is settled out of court, or a criminal makes a deal with prosecutors before a trial occurs. It is also possible to forgo a jury trial, in favor of having a judge decide the case, in certain circumstances. However, when there is a jury trial, there are some explicit qualifications for being a juror. Explain that the next activity will help students understand what those qualifications are.

6. Explain to students that in the federal system grand juries are used to bring charges against people who are believed to have committed crimes. If a federal prosecutor wants a grand jury to charge someone, the prosecutor reserves time with the grand jury and then presents evidence to them. In presenting the evidence, the prosecutor is trying to persuade the jurors that a person has committed certain crimes. The evidence can be testimony from witnesses, documents, video recordings, tape recordings, the test results (like DNA tests), photographs, etc. The grand jurors review the evidence and decide if it establishes probable cause to believe the person has committed the crime(s) the prosecutor claims.

After they hear all the evidence, the jurors vote on a set of proposed charges—known as an "indictment." If a majority of the grand jurors decide the evidence creates probable cause to believe the person committed the crimes, they vote to "return" the indictment—to charge the person with those crimes. If a grand jury votes to indict, a criminal case is then initiated. If a majority of the grand jurors do not think the prosecutor's evidence creates probable cause, they will vote not to return the indictment. In this case, a criminal case is not started.

7. Distribute "Student Handout: Qualifications for Being a Juror." Given what they know about the purpose of a jury, ask students on their own to determine whether the people described should be able to serve. Explain that the class will use the examples to draft a list of qualifications for juries.

8. When students have completed the handout, review it with them. After each description, help students draft a list of qualifications for a jury at the bottom of the page. They should place this list in their notes. You may wish to have students summarize these qualifications by explaining why they are important for a jury to function properly in the American legal system.

9. For homework, you may assign reading on qualifications, exemptions, and responsibilities for jurors. If students are going to visit a court, you may have them draft a list of questions about juries for a judge or administrative member of the court. Alternatively, students could interview someone who has been on a jury and report back on their experiences.

Resources

Understanding the Federal Courts (1999), by the Administrative Office of the U.S. Courts, Washington, D.C. Available online at www.uscourts.gov.

Federal Grand Jury Web site at www.udayton.edu/~grandjur/index.htm.

Overhead Transparency

The Difference between Trial and Grand Juries

Trial Jury

6-12 members

Role is to decide whether defendant injured the plaintiff (civil case) or committed the crime as charged (criminal case).

Trials are generally public, but jury deliberations are private.

Defendants have the right to appear, testify, and call witnesses on their behalf.

Final outcome is a verdict, in favor of plaintiff or defendant in civil case, or guilty/not guilty in a criminal case.

Grand Jury

16-23 members

Role is to determine whether there is "probable cause" to believe that an individual has committed a crime and should be put on trial.

Grand jury proceedings are not open to the public.

Neither defendants nor their attorneys have the right to appear before the grand jury.

Final outcome is decision to indict (formally accuse) the defendant or not.

Student Handout

Qualifications for Being a Juror

Read through the following descriptions and determine whether the people described should be able to serve on a jury. Write Y for yes and N for no. Be sure to include a brief explanation after each one. After you have recorded your initial impressions, your teacher will review them and together the class will draft a list of qualifications based on the discussion of the descriptions.

___ 1. Knut received a notice to serve on a jury in Washington, D.C. He is a resident of Washington, D.C., and is a German citizen.

Explain:

___ 2. Elia received a notice to serve on a jury in her town. She is 17 and a student at the local high school.

Explain:

___ 3. Juan received a notice to serve on a jury in his area. He speaks only Spanish.

Explain:

___ 4. Jackie received a notice to serve on a jury in her city. She has been living in the judicial district for two years. She is a waitress in a local diner and has never been convicted of a felony.

Explain:

___ 5. Roger received a notice to serve on a jury. He is currently in a hospital receiving treatment for schizophrenia.

Explain:

___ 6. Elizabeth received a notice to serve on a jury. She is a lawyer in town and knows the defendant in the trial.

Explain:

Based on your class discussion of the descriptions above, draft a list of qualifications for being a juror on the back of the worksheet.

Teacher Answers

Qualifications for Being a Juror

N 1. Knut received a notice to serve on a jury in Washington, D.C. He is a resident of Washington, D.C., and is a German citizen.

Explanation: Being a U.S. citizen is a qualification for being a juror, just as it is for voting.

N 2. Elia received a notice to serve on a jury in her town. She is 17 and a student at the local high school.

Explanation: Again, the requirements for voting and jury service are similar. You must be 18.

N 3. Juan received a notice to serve on a jury in his area. He speaks only Spanish.

Explanation: Proficiency in English is a requirement for understanding the trial proceedings.

Y 4. Jackie received a notice to serve on a jury in her city. She has been living in the judicial district for two years. She is a waitress in a local diner and has never been convicted of a felony.

Explanation: You must have lived in the judicial district for 1 year and usually you cannot have been convicted of a felony (or have charges pending).

N 5. Roger received a notice to serve on a jury. He is currently in a hospital receiving treatment for schizophrenia.

Explanation: Being in treatment for a mental condition, like schizophrenia, would disqualify a potential juror because of the effect the condition could have on objectivity.

Y 6. Elizabeth received a notice to serve on a jury. She is a lawyer in town and knows the defendant in the trial.

Explanation: Elizabeth would be qualified under the law, but the attorneys for the defendant or prosecutor may strike her from the jury pool because she is an attorney or because she knows the defendant. However, this would be up to the attorneys.

Qualifications for Jury Service

- U.S. citizen
- At least 18 years old
- Reside in the judicial district for at least 1 year
- Adequate proficiency in English
- No disqualifying mental or physical condition
- Not currently subject to felony charges
- Never convicted of a felony (unless civil rights have been legally restored)

Chapter 2:

Overview of the Wisconsin Courts³

The third branch—the court system—has been called the least understood branch of government, but it is also the branch with which the public comes into contact most closely and frequently. At one time or another, the courts touch almost every aspect of life. The courts provide a forum for the peaceful resolution of disputes and they act as referees between people and the government by determining the permissible limits of governmental power and the extent of an individual's rights and responsibilities.

Every day, in every county in the state of Wisconsin, people of many different backgrounds come together at the local courthouse. The business that brings them to the courts is as diverse as the individuals themselves. They are paying traffic tickets, going through divorces, adopting children, airing disputes with their neighbors, settling the estate of a deceased relative, serving on jury duty, volunteering in court-connected programs, and much more.

The court system does not command armies or levy taxes, like the executive and legislative branches, respectively. The sole source of its power to enforce the decisions that judges make is the trust and confidence of the people. To maintain and enhance this trust and confidence, the courts must strive to do justice by applying the law in a fair and equitable manner. This means that judges cannot make up their minds in advance on how they will decide a case based upon a personal bias. They cannot decide cases based upon whim, prejudice, fear, the wishes of the other branches of government, or editorials in the local newspaper. Indeed, judges cannot decide cases based upon anything but the facts in the individual case and the law. This concept—the bedrock of the court system—is called judicial independence.

The laws that judges apply in individual cases are derived from a variety of sources, including the state and federal constitutions, legislative acts (statutes), administrative rules, and the common law, which reflects society's customs and experience as expressed in previous court decisions. This body of law is constantly changing to meet the needs of an increasingly complex world. The courts have the task of finding the delicate balance between flexibility to accommodate each person's unique circumstances and stability to protect the fundamental principles of the constitutional system of the United States.

Both state and federal courts have jurisdiction over Wisconsin residents. State courts generally handle cases pertaining to state laws, but the federal government may give state courts jurisdiction over specified federal questions. The federal courts in Wisconsin handle cases

³ Some information for this overview was taken from the *1999-2000 Wisconsin Blue Book*.

involving violations of federal law and cases involving state law if one party is a Wisconsin resident and the other party resides in a different state.

The Wisconsin court system consists of:

The **Supreme Court**, the highest court in the state, with seven justices who are elected in statewide, non-partisan elections to 10-year terms. The Supreme Court has discretion to determine which appeals it will hear and only hears cases that will develop or clarify the law.

The **Court of Appeals**, the intermediate appellate court, with 16 judges serving in four appellate districts headquartered in Milwaukee, Waukesha, Wausau, and Madison. Each district hears appeals from a designated group of counties with the exception of District I, which handles cases only from Milwaukee County. Court of Appeals judges are elected every six years in non-partisan, district-wide races. The Court of Appeals hears all appeals that are brought to it, and is considered an "error-correcting" court.

The **Circuit Courts**, Wisconsin's trial courts, are located in every county in the state. The circuit courts are divided into branches. In 2001, there were 241 circuit court judges in Wisconsin, each elected in his/her own county to a six-year term in a non-partisan election. Twenty-seven Wisconsin counties have a single judge and six Wisconsin counties are paired together to share judges. A final judgment by the circuit court can be appealed to the Wisconsin Court of Appeals, but a decision by that appeals court will be reviewed only if the Wisconsin Supreme Court grants a petition for review.

Municipal Courts. Cities, villages, and towns may create municipal courts, and, as of May 2000, there were 224 municipal courts around the state. These courts have limited jurisdiction. Often, they handle non-criminal traffic matters and local ordinance violations. Municipal judgeships usually are not full-time positions.

In addition to the courts themselves, there are numerous state agencies that make the court system work. The Wisconsin Supreme Court appoints the director of state courts, the state law librarian and staff, the Board of Bar Examiners, the director of the Office of Lawyer Regulation, and the Judicial Education Committee. Other agencies that assist the judicial branch include the Judicial Commission, Judicial Conference, Judicial Council, and the State Bar of Wisconsin. The shared concern of these agencies is to improve the organization, operation, administration, and procedures of the state judicial system. They also function to promote professional standards, judicial ethics, and legal research and reform.

Administrative law judges are another component of the state's justice system. The Wisconsin Legislature, like the U.S. Congress, has assigned responsibility for initial decisions under many state laws to administrative law judges within state agencies in cases as diverse as state tax appeals, environmental issues, and unemployment claims. These cases may enter the court system on appeal.

Wisconsin Court System

Wisconsin Supreme Court

- 7 justices
- justices elected to 10-year terms in non-partisan elections
- the Court decides which cases to hear (reviews approximately 1,000 petitions annually and hears approximately 100 cases each session, September through June)
- appellate court with final authority on matters regarding the Wisconsin Constitution & state law

Wisconsin Court of Appeals

- 16 judges divided into four geographic districts (3 to 5 judges per district; districts located in Milwaukee, Waukesha, Wausau, and Madison)
- judges elected to six-year terms in non-partisan elections
- the Court reviews all appeals brought before it
- appellate jurisdiction
- Wisconsin's error-correcting courts

Wisconsin Circuit Courts

- 241 judges (number of judges per circuit depends on caseload)
- judges elected to six-year terms in non-partisan elections
- court commissioners (legally trained officers of the court) may handle certain administrative and pre-trial matters that come before the circuit courts
- generally, each county is a circuit, except for six counties which are combined to form three circuits (Menominee/Shawano, Buffalo/Pepin, Florence/Forest)
- trial courts have original jurisdiction in criminal and civil cases

Wisconsin Tribal Courts

- 11 tribal courts (10 with an appellate process)
- jurisdiction between tribal and state courts is complicated and sometimes concurrent. Generally, tribal courts have jurisdiction over civil matters and matters of tribal law involving tribal members or taking place on tribal land. State courts have jurisdiction over criminal matters.

Wisconsin Municipal Courts

- more than 200 judges in over 200 municipalities (not all municipalities choose to have a municipal court)
- judges elected to two- to four-year terms, as determined by the municipality, in non-partisan elections
- exclusive jurisdiction over ordinance violations

Teaching Resources

The Wisconsin Courts

How Tootsie the Goldfish Is Teaching People to Think Like a Judge (excerpt)

by Chief Justice Shirley S. Abrahamson, Wisconsin Supreme Court
The article appeared in *Judges' Journal* (spring 1982).

Editor's note: Since it is important that judges avoid discussing substantive issues that may come or have come before the courts, Chief Justice Abrahamson has proposed the following discussion to teach the public about the courts.

"The best way you can learn about judges, judicial decision making, and courts is for you all to be judges. Are you willing to serve as judges of the State of Wisconsin for the next forty-five minutes? Without pay?" (Audience responds "Why not?" And so we're off.)

"We have three kinds of judges in Wisconsin—trial judges, court of appeals judges and supreme court judges. I'm going to ask you to serve as judges on these three courts. But before I do, I want you to know that all judges of the state must take the same oath, an important oath: to support the U.S. Constitution, to support the Constitution of Wisconsin, and to administer justice fairly and impartially to everyone—whether old or young, rich or poor, of one race or another, man or woman, religious or atheist.

"Poof—you are 'judges of the State of Wisconsin.' Well, 'judges,' here's the case that will wind its way through the courts.

"The Wisconsin legislature has enacted a statute saying that in multifamily dwellings (that is, with three or more dwelling units) the landlord may evict a tenant who has a pet. Now in your hometown there is a five-family unit, and a tenant asks the landlord to come repair a leaking kitchen faucet. The landlord arrives, and he sees a glass bowl on the kitchen table; in the glass bowl there are about

four cups of water, and, in the water, there are some pebbles and one three-inch goldfish.

"Now the landlord likes the tenant, but he doesn't want any pets. The landlord describes the statute and gives the tenant a choice: one, get rid of the fish and stay; or, two, keep the fish and leave the apartment for good. The tenant tells the landlord he likes the fish. The fish's name is Tootsie, and she is a good companion. The tenant thinks it's silly to have to move because he owns a fish. He tells the landlord there's a third alternative, and it is the one which he is going to take. He's keeping the fish and the apartment.

"Well, what happens when two people can't settle a dispute amicably?" (The group is warming up to the problem and the response quickly comes—"Take it to court.") The landlord brings his action in the trial court.

"In Wisconsin, the trial court is the circuit court."

The Trial: Landlord v. Tenant

"And the landlord takes the stand, is sworn to tell the truth, and he tells you about finding Tootsie. And then the tenant takes the stand,

is sworn to tell the truth, and he describes Tootsie. He also has a letter from each tenant in the building saying that the tenants have no objections to Tootsie—didn't even know she was in the building. And that's the sum total of the testimony. There's no dispute about the facts.

"In some cases, there is a jury, but in this case there is none. The judge takes the case under advisement and tells the parties she'll render the decision in a week."

The Decision

"The judge is alone. She has no one to talk to about Tootsie....The judge has to wrestle with the problem herself.

"But here we'll think out loud and all of us will discuss the issues facing the trial judge. We'll discuss the pros and cons of deciding the case in favor of the landlord or the tenant. After the discussion, I'll ask those of you in the left six rows to be the trial judge and to decide the case.

"Well, what's the issue the judge has to decide?" (A response: "Whether to evict the tenant?")

"Yes, but to decide that issue what must the judge decide?" (A comment from the back—"Whether the goldfish is a pet.")

"Well, then, define pet for me." (Great hesitation. Response: "Look at the dictionary.")

"The *Webster's New World Dictionary*, Second College Edition, defines pet as 'an animal that is tamed or domesticated and kept as a companion or treated with fondness.' Is Tootsie a pet as that word is defined in the dictionary?" ('Judges' discuss.)

"Why do we look at the dictionary? Because if a term is not specifically defined in a statute, we assume that the legislature, which regulates all our conduct, is using the word as it is commonly used and understood by everyone.

"What we as judges are doing in this search for the definition of pet is what your textbooks say judges are supposed to do—interpret the law....In deciding whether a goldfish is a pet, we are trying to determine legislative intent, legislative policy, legislative purpose. Did the legislature intend Tootsie the goldfish to be a pet within that statute subjecting her owner to eviction? That is the issue the trial judge must decide. One way to determine legislative intent is to look at the statutory definition of the term, another way is to look at the dictionary. Well, we took those two steps. What else can we do to determine legislative intent?" (Judges discuss.)

"Well, the week has passed; the case has to be decided. As you know, justice delayed is justice denied. But, remember, you have to give people time to prepare their cases for court, and the judge has to give each case due consideration. Justice rushed may be justice crushed. In any event, it's time for the trial judge to make a decision. Reaching a decision is hard work.

"I want you all to close your eyes and ponder the fate of Tootsie. I want each of you 'judges' to make up your own minds and not be influenced by how others decide the case. A key attribute of good judges is that they have open minds—they are neutral, they listen carefully to the facts, they search the law, they weigh the arguments. But each judge must make up his or her mind and vote independently, and not be pressured by other judges, the media, or public opinion. Tough decisions will not always be popular ones.

"How many of you decide that the legislature

intended the word pet in this statute to include a goldfish and that Tootsie must be evicted? Please raise your hands high.

“How many of you ‘trial judges’ decide that the legislature intended that the word pet in this statute not include a goldfish and that the tenant not be evicted? Please raise your hands high.”

(Invariably there’s a split vote. Suppose the tenant lost.)

“What can he do?”

(Response: He can take his loss and move, or he can appeal.)

“Right. And he appeals to the court of appeals—which is the middle six rows.”

The Appeal

“In the appellate court there are no witnesses, no jury—just the record, briefs (which include the written arguments of the tenant and the landlord), and oral argument by the attorneys. The appellate court reviews the decision of the trial court to determine if there was prejudicial error of law.

“There are three judges in the court of appeals, seven justices on the Wisconsin Supreme Court, and nine justices on the United States Supreme Court. All appellate courts have an odd number of judges—the judges are all right, but the number is odd. Why odd?”

(The ‘judges’ have the answer to this one—to avoid tie votes.)

“And so the judges of the court of appeals read the briefs, hear oral argument, and retire to the conference room to discuss the case. Their discussion will be similar to the one we

have been having. So we’ll take up our discussion where we left off. Remember? We were searching for legislative intent.”

(The ‘judges’ discuss.) And I may try to wind up the court of appeals discussion saying ...

“So the legislature may have intended ‘pet’ to mean not the dictionary definition, but those animals that create problems for the neighbors—noise, dirt, safety, health—and property damage. And it is time for the court of appeals judges—the middle six rows—to make their decision and cast their vote. And the issue is a legal issue—the same one the trial court faced. ‘Judges,’ close your eyes.”

(And I state again the questions and call for a decision. The ‘judges’ split again, perhaps differently, and the majority rules.)

“This time the landlord lost. What can he do?”

(The landlord wishes to appeal to the supreme court.)

The Supreme Court

(I describe the authority of our court, on a minority vote of three, to decide to review the decision of the court of appeals. And we discuss whether this case is a small-fish-in-a-small-bowl case or one involving an important matter of landlord-tenant law. Of course, the supreme court decides to hear the Tootsie appeal.

(I ask the “justices” to assume that they have read the briefs and heard oral argument, that they are in the supreme court conference room to discuss and decide the case, and that they should assign a justice to write the opinion.)

“Well, one supreme court justice might say that the court of appeals held Tootsie wasn’t a

pet because it didn't disturb the neighbors. She might ask the brethren, 'How would you vote if Tootsie were a toothless miniature schnauzer, who couldn't bite or chew, who had chronic laryngitis so it didn't make noise, who wore tennis shoes, was paper trained, and never left the apartment?'

"Do we want to interpret the law in such a way that the courts of this state must look at every dog to determine whether it's a good, quiet dog? Or do we want to say that because dogs generally bark and chew, all dogs must be classified as pets? What about fish? Can we say fish generally are not troublesome and therefore are not pets? What if Tootsie could bite and was kept in a tank near an open window on the ground level, accessible to a three-year-old child?

"Maybe a statutory interpretation that is easy for courts to administer and for people to understand is better than an interpretation that provides for judicial discretion and application of a complex definition." (One 'justice' suggests the court interpret the statute as providing a three-inch rule—all animals over three inches are pets; all animals under three inches are not.)

"What if the next goldfish, stretched end to end, measures three and one-tenth inches?" ("I'd stretch the rule," quickly comes the 'justice's' response.)

Interpretation v. Legislation

"Remember, 'justices,' we're here to interpret the laws, to fill the gaps left by the legislature. We're not here to legislate. Nevertheless we must recognize that to decide this case we have to make choices. Well, suppose we were the legislature, how could we have drafted a better statute?"

(The discussion shows that it's not easy to draft a statute that covers all eventualities and avoids ambiguity. I agree to take one more comment before the supreme court justices vote. A 'justice' thoughtfully asks whether this court or any other court has decided this issue before.)

"That is an excellent question. If another court had decided the issue, we would have the benefit of its thinking and reasoning. Also, a basic concern of our system of government is that all people similarly situated be treated the same. Courts follow precedent. The owner of a goldfish in this county should be treated the same as the owner of a goldfish in the next county, as long as the law remains the same. This concern for fairness finds its constitutional expression in the equal protection and the due process clauses of the state and federal constitutions, which we swore to uphold.

"But as judges we need not follow the cases of other states, just of our own state. The reasoning of the judges in other states may be helpful in persuading us, of course, and it's up to the lawyers and to us as judges to find those cases through research....But, too bad, our case is the first in the country."

(Again, it is time to vote, and I follow the procedure used with the 'trial judges' and the 'court of appeals judges.' Again, there is a split, and I announce that the majority wins. We discuss the rationale the opinion will use....Resolving the dispute requires the court to make choices considering the statute in issue, other rules of law, and the policy underlying the laws. The court must explain why and how it made the choice it did. The court's rationale will guide lawyers in advising clients and will guide other courts in deciding future cases.)

Our time is up, and so I conclude...

"I enjoyed serving with you 'judges' today. I

do not think you decided the case by applying labels to the issue – liberal or conservative, strict or liberal construction. You did not decide as you did because you identify with the landlord or the tenant, or because you like or dislike fish, dogs, or cats. I think that you did what all good judges do. You were guided by principles and policies set forth in our laws, not personal predilections. You tried to be reasonable and fair.

“Judging cases is similar to making other decisions in life. Each of us makes decisions every day....The fundamentals of judicial decision making are much the same as the approach we use to solve problems at home and at work. You have a rule that embodies a family or company policy, a family or company value. You have a set of facts. You try to apply the rule and the policy underlying the rule to the facts and come out with a sensible decision.

“Even though you came to the bench as ‘judges’ with certain experiences, personal beliefs and values, and preconceptions—all people have them—you tried to put them aside and to act in a principled way, to be fair,

to do justice. You tried to apply the policy established by the legislature in a rational, meaningful way in the fact situation presented to you. You applied the law to the facts of the case as best you understood the facts and the law. That is what we can and should expect from all our judges.

“I enjoyed serving with you. Now your term as ‘judge’ must end...Poof—you are no longer ‘judges.’ Oh, by the way, I have sad news to tell you. Just as the supreme court made its decision, Tootsie died. It takes about a year and a half for a case to go through the state court system, which is just about the average lifespan of a goldfish.”

(I sit down to laughter, but they want to talk some more about a variety of topics—mootness, frivolous actions, conflicting decisions of judges, uncertainty in the law, too much litigation, the costs of the system to the taxpayer, and on and on.)

The case of Tootsie is, of course, hypothetical and only one of many that can be used. Nevertheless, Tootsie does become real to some people who have been in the audience.

Chapter 3:

Wisconsin Supreme Court

The Wisconsin Supreme Court is the state's highest court. Seven justices make up the Court. They are elected to 10-year terms in statewide non-partisan elections.

As Wisconsin's court of last resort, the Supreme Court has appellate jurisdiction over all Wisconsin courts and has discretion to determine which appeals it will hear. The Supreme Court may also hear cases that have not been heard in a lower court, known as original actions. In addition to its case-deciding function, the Supreme Court has administrative and regulatory authority over all Wisconsin courts and the practice of law in the state. The chief justice, who is the justice with the most seniority, is the administrative head of the judicial system and exercises administrative authority according to procedures adopted by the Supreme Court.

Administrative Function

Beyond deciding cases, the Supreme Court administers the entire Wisconsin court system. In this capacity, the Court works to ensure that the Wisconsin court system operates fairly and efficiently. The Court's administrative role has many facets, including:

- Budgeting for the Supreme Court, Court of Appeals, and circuit courts.
- Long-range planning to chart the future of the state courts to ensure the expeditious handling of judicial matters.
- Adopting rules to simplify proceedings and promote the speedy and fair resolution of disputes.
- Setting standards for security, facilities, and staffing for courthouses throughout the state.
- Developing standards to ensure that jurors are treated well and that their time is not wasted.
- Identifying appropriate ways to use court-connected alternative dispute resolution (for example, a mediator might help disputing parties come to their own resolution), which may be less costly for consumers and may improve consumer satisfaction with the justice system.

The Court also initiates programs and special projects that are designed to improve the effectiveness of the court system. Examples include:

Public Trust and Confidence in the Justice System: The Wisconsin Initiative is an action plan released in October 2000 to give judges and court staff more tools to be better leaders. The plan addresses areas that need improvement in the Wisconsin justice system to ensure public trust and confidence in the courts.

Wisconsin Families, Children and Justice Initiative, which began in 1995 with an assessment of Wisconsin's handling of cases involving abused and/or neglected children, known as Child in Need of Protection and/or Services (CHIPS) cases. The initiative supports projects throughout the state designed to improve the handling of issues that families face in the justice system.

Public Outreach Efforts, begun in 1993, seek to foster court-community collaboration by engaging in a variety of public outreach activities and by involving the public in the work of the courts. Examples of public outreach projects are:

From the Courtroom to the Classroom, which is a professional development program that gives Wisconsin high school social studies teachers new resources to teach their students about the courts.

Court with Class, which invites high school classes to attend a Supreme Court oral argument and meet with a justice.

Justice on Wheels, which gives people in other parts of the state a chance to watch an oral argument before the Wisconsin Supreme Court. Between 1993 and 2000, the Court sat in Green Bay, Eau Claire, Wausau, Milwaukee, La Crosse, Superior, Janesville, Kenosha, and Baraboo. A total of more than 5,900 people have participated in the program.

The *Volunteers in the Courts Initiative*, which benefits the courts and the community by developing opportunities for volunteerism in the courts. More than 5,000 volunteers participate in court-related programs.

Regulatory Function

Another important function of the Supreme Court is to regulate the legal profession in Wisconsin. The Court has established a Board of Bar Examiners (BBE) to oversee bar admissions and monitors lawyers' compliance with Wisconsin's continuing legal education requirements. The Court also sets Rules of Professional Conduct for Attorneys and has established the Office of Lawyer Regulation (OLR), which investigates and prosecutes grievances involving attorney misconduct or medical incapacity.

The Supreme Court also regulates the Wisconsin judiciary. Through the Office of Judicial Education, the Court ensures that judges are able to meet their continuing education requirements. The state Constitution also gives the Court authority to discipline judges

according to procedures established by the Legislature. In 1996, the Court adopted a comprehensive revision of the Code of Judicial Conduct, which governs judges' conduct. The Court has appointed a Judicial Conduct Advisory Committee to give advice to judges on whether a contemplated action would be appropriate. The Court also appointed a blue ribbon Commission on Judicial Elections and Ethics to propose rules concerning the political and campaign activities of judges and candidates for judicial office.

Case-Deciding Function

A primary function of the Supreme Court is to ensure independent, open, fair, and efficient resolution of disputes in accordance with the federal and state constitutions and laws.

Cases come to the Supreme Court in a number of ways:

- A party who has lost a case in the Court of Appeals may file a petition for review.
- Any party may ask the Supreme Court to bypass the Court of Appeals and take a case.
- The Court of Appeals may ask the Supreme Court to take a case by certification, which means that the Court of Appeals received an appeal of a case, but because that court believed the

What do the statutes say about the kinds of cases the Wisconsin Supreme Court will decide?

Wisconsin Statutes Section 809.62:

809.62(1) A party may file with the supreme court a petition for review of an adverse decision of the court of appeals pursuant to Wisconsin Statutes Section 808.10 within 30 days of the date of the decision of the court of appeals. Supreme court review is a matter of judicial discretion, not of right, and will be granted only when special and important reasons are presented. The following, while neither controlling nor fully measuring the court's discretion, indicate criteria that will be considered:

809.62(1)(a) A real and significant question of federal or state constitutional law is presented.

809.62(1)(b) The petition for review demonstrates a need for the supreme court to consider establishing, implementing or changing a policy within its authority.

809.62(1)(c) A decision by the supreme court will help develop, clarify or harmonize the law, and

809.62(1)(c)1. The case calls for the application of a new doctrine rather than merely the application of well-settled principles to the factual situation; or

809.62(1)(c)2. The question presented is a novel one, the resolution of which will have statewide impact; or

809.62(1)(c)3. The question presented is not factual in nature but rather is a question of law of the type that is likely to recur unless resolved by the supreme court.

809.62(1)(d) The court of appeals' decision is in conflict with controlling opinions of the United States Supreme Court or the supreme court or other court of appeals' decisions.

809.62(1)(e) The court of appeals' decision is in accord with opinions of the supreme court or the court of appeals but due to the passage of time or changing circumstances, such opinions are ripe for reexamination.

case met the Supreme Court's criteria for accepting a case asked the Supreme Court to take the case directly.

- A party may begin a case of statewide significance in the Supreme Court (these are called original actions).

In an average year, the Wisconsin Supreme Court receives approximately 1,000 petitions for review. These are requests from individuals, groups, businesses, agencies, and others that the Court to hear a case. The Court grants review in about 100 cases per term.

Step 1: Petitions Conference⁴

The Court holds a Petitions Conference to decide which cases it will review. The criteria a case must meet in order to be heard by the Wisconsin Supreme Court are set out in state statute. (see sidebar). Briefly summarized, the Court accepts cases with issues that:

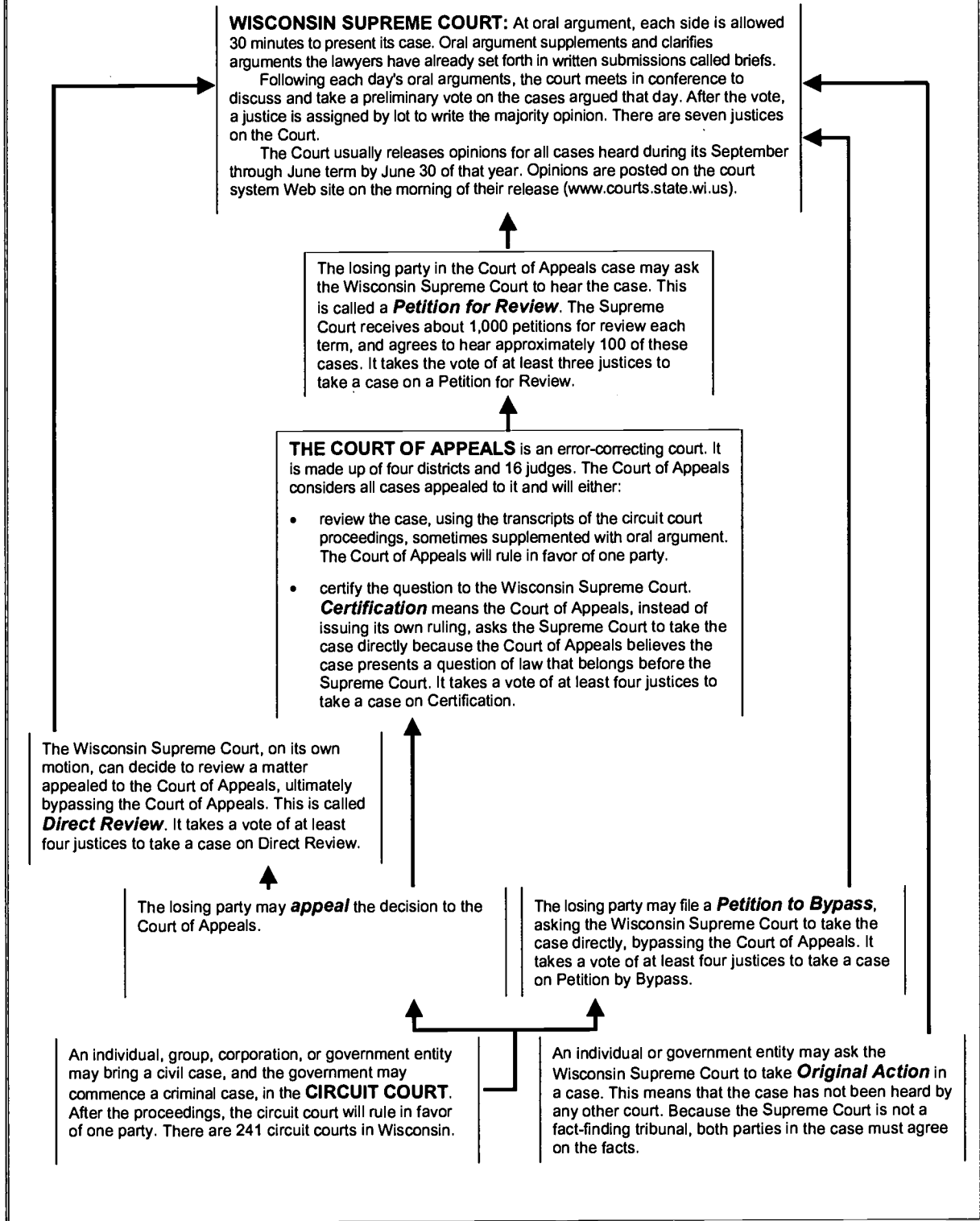
- concern a significant constitutional (federal or state) question; or
- once decided, will develop, clarify, or harmonize existing law(s); or
- involve issues that have not been decided by the Court before; or
- have statewide importance; or
- present a question of law that will likely reoccur unless resolved by the Court; or
- have resulted in conflicting decisions in the lower courts; or
- although previously decided, may be ripe for reexamination due to changing times and circumstances.

Because the Supreme Court has absolute discretion to decide which cases it hears, a case may meet none of the above criteria and yet the Court may choose to hear it.

When the Court agrees to decide a case, it receives written arguments, called briefs, from all sides, oral argument is scheduled, and a "reporting justice" is assigned to the case. Oral argument is to the Supreme Court what a trial is to a circuit court. But unlike a trial, oral argument does not involve the presentation of evidence or witnesses because the facts of the case are no longer in question (they were established in the lower courts). Instead, oral argument consists of carefully timed presentations by attorneys for each party. Each side has 30 minutes to present its case. Parties may request additional time for oral argument, but such requests are rarely granted.

⁴ Information for steps of a Supreme Court case excerpted from Internal Operating Procedures of the Wisconsin Supreme Court.

How a case comes to the Wisconsin Supreme



Step 2: Pre-Argument Conference

The pre-argument conference is held immediately before oral argument. At this conference the “reporting justices” for that day’s cases brief the other members of the Court on the details and important issues of the cases scheduled to be heard that day.

Step 3: Oral Argument

The attorneys may use their time to clarify the arguments set forth in the briefs or discuss developments in applicable law which have occurred subsequent to the filing of the briefs. During the presentation, the justices ask questions of the attorneys.

The attorney for the appellant (the party appealing the lower court decision) is the first to speak. The Supreme Court’s marshal monitors the time for the attorney’s oral argument by the use of lights on the podium. A green light signals an attorney to begin. Twenty-five minutes is allotted for opening argument, leaving five minutes for rebuttal. At the 20-minute mark, a yellow light comes on. When the time reserved for opening argument has expired, a red light comes on and attorneys are to terminate their arguments immediately.

The attorney for the respondent, the party who won in the lower court, speaks next, and the same procedure is followed. The only difference is that the respondent usually does not get to make a rebuttal, but instead speaks for 30 minutes straight.

The appellant’s attorney then takes the podium for a five-minute rebuttal.

Oral arguments are audio recorded and are available on the court Web site a few days after the case is argued. At this writing, gavel-to-gavel audio/video coverage of Supreme Court proceedings was in the planning stages.

Step 4: Decision Conference⁵

Following each day’s oral arguments, the court meets in closed conference. The “reporting justice” gives his/her analysis and recommendation, the court discusses the case, and each member of the court casts a preliminary vote, usually in descending order of seniority and beginning with the justice who has given the recommendation. When possible, the court reaches a decision in each of the cases argued that day, but any decision is tentative until the opinion is mandated. Prior to a tentative decision, any justice may have a case held for further consideration and discussion.

Immediately after the court reaches its tentative decision in a case, it is assigned to a member of the court for preparation of the opinion. No case is assigned to a justice until after oral argument and after the court has reached its decision. Cases are assigned by lot: each justice is given a number from one to seven according to seniority, and the chief justice draws one of seven numbered tokens lying facedown on the conference table. The number drawn for each case determines which justice will write the opinion. A case is assigned only to a justice who has voted with the majority of the court on the decision of the case.

⁵ The *Tootsie the Goldfish* exercise, page 21, gives students an introduction to decision making.

The Wisconsin Supreme Court



During oral argument of the Wisconsin Supreme Court, the justices often ask questions of the attorneys presenting their cases. The Supreme Court hears cases that relate to the development or clarification of a law or that have statewide legal significance. The Supreme Court is not an error-correcting court.

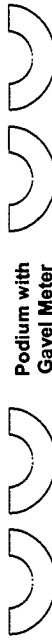
THE BENCH

THE MARSHAL'S DESK

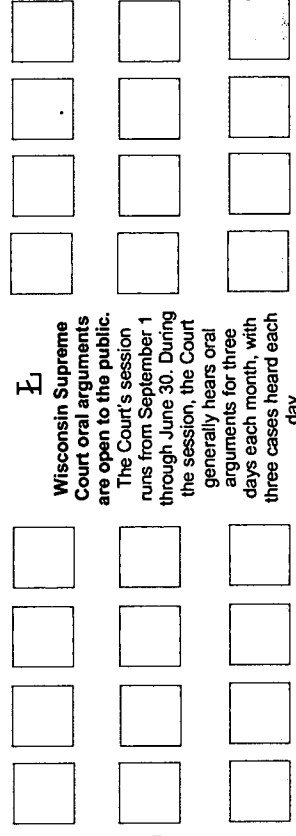
The marshal calls the Court to order, monitors the gavel meter, and maintains the security and decorum of the proceeding.

THE ATTORNEYS' TABLE

One or two attorneys for each side of the case sit at the attorneys' table. Each side has 30 minutes to present its arguments.



The Gavel Meter tells the attorneys how much time they have to present their arguments. First a green light appears telling the attorney to begin. A yellow light appears when five minutes remain, and a red light appears telling the attorney to stop his/her presentation.



Members of the media sit here.
Reporters, photographers, and videographers listen to and record oral argument.

Wisconsin Supreme Court oral arguments are open to the public.
The Court's session runs from September 1 through June 30. During the session, the Court generally hears oral arguments for three days each month, with three cases heard each day.

These seats are reserved for law clerks. Law clerks are usually recent law school graduates who are appointed by a justice for one- or two-year terms. They assist in researching and drafting opinions.

After the cases are assigned, each justice's law clerk prepares an in-depth memorandum on those cases assigned to his/her justice. The purpose of the memorandum is to research and analyze the issues in the case in support of the court's decision.

Step 5: Opinion Conferences

The justice assigned to write the opinion completes a draft and circulates it to the other justices for their comments prior to a scheduled opinion conference. The justices in the majority submit written objections or suggestions on the opinion to the author, with copies to all justices, before the conference. The draft is then discussed and approved, or revised and approved, at conference. If changes are more than minimal, the author revises the opinion and re-circulates it, and the Court takes it up again at a future conference.

Any justice, whether or not in the majority, may at any time prior to the time a case is mandated ask that the opinion be held and discussed again.

Non-authoring justices can write an opinion concurring with or dissenting from the Court's majority opinion. The decision to write a concurrence or dissent is ordinarily announced at the Opinion Conference.

Step 6: Mandating an Opinion

After the justices agree to release an opinion it is mandated, or filed with the Office of the Clerk of the Supreme Court, and made available to the parties in the case and to the public. Every opinion is posted to the Wisconsin court system Web site on the morning of release. All concurring and dissenting opinions are simultaneously issued. Until a decision is mandated, any justice may reconsider his or her vote on the case.

The Court usually mandates opinions for all cases heard during its September through June term by June 30.

Per Curiam Opinions

Per curiam ("by the Court" rather than authored) opinions are often drafted by Supreme Court commissioners (attorneys who work for the Court) for the Court's consideration. *Per curiam* opinions are issued in cases that do not involve the development of the law, such as disciplinary proceedings against judges or attorneys. The decisions in all cases are made by the court, and the *per curiam* opinions are reviewed by the entire court and are approved as to form and substance by the court prior to issuance.

Step 7: Publishing an Opinion

Wisconsin Supreme Court opinions are officially published in *Callaghan's Wisconsin Reports*.

Step 8: Reconsideration

Reconsideration, in the sense of a re-hearing of a case, is seldom granted. A change of decision on reconsideration will ensue only when the Court has overlooked controlling legal precedent or important policy considerations or has overlooked or misconstrued a controlling or significant fact appearing in the record. A motion for reconsideration may result in the Court's issuing a corrective or explanatory memorandum to its opinion without changing the original mandate.

From Petition to Decision

The Court holds a **petition conference** to review requests from parties for Supreme Court review of a case. For each case accepted, a "reporting justice" is assigned.

At the **pre-argument conference** the reporting justices for that day's cases brief the other members of the Court on the details and important issues of the cases scheduled to be heard that day.

Attorneys present their cases at **oral argument**. Typically, three cases are heard in one day, each lasting one hour.

The Court holds a post-argument **opinion conference** where the reporting justices present their analysis of the cases heard that day and the justices cast tentative votes on the cases. For each case, a justice is assigned by random lot to draft the opinion.

At a later date, the justices meet in an **opinion conference** to discuss and vote on draft opinions. At this point, justices announce their intentions to write concurring or dissenting opinions.

The Clerk of the Supreme Court Office **mandates an opinion** (making the Court's decision available to the parties and public) when all members of the Court have voted to release it. Concurring and dissenting opinions are released at the same time.

The Court's official opinion is published in *Callaghan's Wisconsin Reports* as the law of the state.

The Court will **reconsider an opinion** in very rare cases when a party can show that the Court has overlooked controlling legal precedent, important policy considerations, or a significant fact appearing in the record.

Famous Cases Decided by the Wisconsin Supreme Court

The booklet *Famous Cases of the Wisconsin Supreme Court* features 25 cases selected for their great importance, their interest, or simply their use as examples of the type of cases this court has handled at any given time in history. Following are the case names and brief summaries of the issues. The entire publication is available online at www.courts.state.wi.us/history/famous_cases.htm.

Note: Up until 1978 the Wisconsin court system consisted of county courts, circuit courts, and the Supreme Court. In 1978, the court system was restructured—eliminating the county courts and creating the Court of Appeals. This is an important distinction to note when studying cases that were decided before 1978. For more information on the restructured system and how it changed the role of the circuit courts and Supreme Court, see Chapter 4: Court of Appeals.

In Re: Booth, 3 Wis. 1 (1854): In the midst of the pre-Civil War states' rights movement, the Wisconsin Supreme Court boldly defied federal judicial authority and nullified the federal fugitive slave law.

Attorney General ex rel. Bashford v. Barstow, 4 Wis. 567 (1856): This case helped to create the tradition of independence and honesty which has marked Wisconsin politics and law ever since by establishing the independence of the Wisconsin Supreme Court.

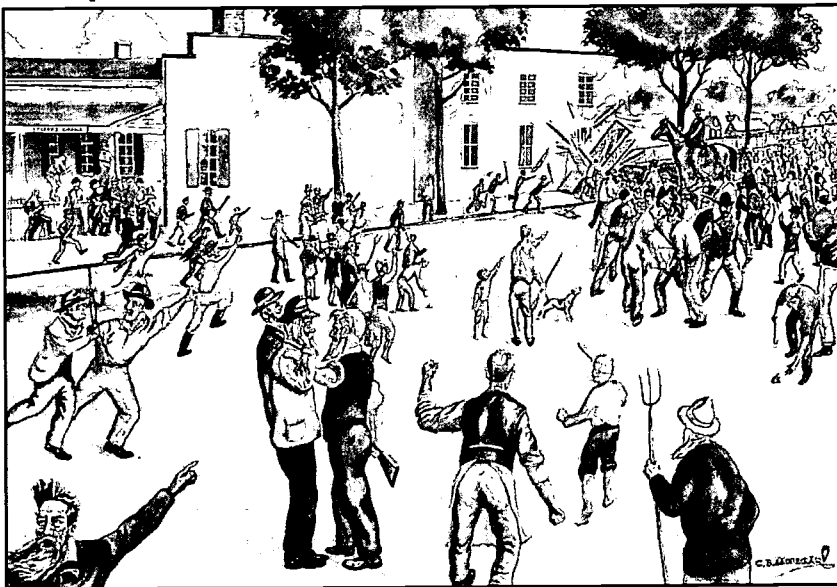
Chamberlain v. Milwaukee & Mississippi Railroad, 11 Wis. 248 (1860): This case represents an early effort on the part of the courts to give rights to injured workers.

In Re: Kemp, 16 Wis. 382 (1863): In this Civil War-era case, the Court ruled that President Abraham Lincoln could not suspend the writ of *habeas corpus* for civilians when marshal law was not in effect.

Whiting v. Sheboygan and Fond du Lac Railroad Company, 25 Wis. 167 (1870): Whiting established the important principle that the government may not impose a tax on its citizens for a private purpose.

Gillespie v. Palmer and others, 28 Wis. 544 (1866): The decision of the Wisconsin Supreme Court in Gillespie extended the right to vote to black residents of the state.

Attorney General v. Chicago & Northwestern Railroad Company, 35 Wis. 425 (1874): This case marked the beginning of the great



"The Glover Rescue" by Clarence Boyce Monegar. Courtesy of the Milwaukee County Historical Society.

struggle between corporate power and privilege and the rights of the individual citizen.

Motion to Admit Goodell to the Bar, 39 Wis. 232 (1875), Application of Goodell, 48 Wis. 693 (1879): These cases stand as a testament to the obstacles women faced in the 19th century as they attempted to work in traditionally male professions.

Vassau v. Thompson, 46 Wis. 345 (1879): This case is the only one in this group that is neither famous nor particularly important to the development of Wisconsin law. It is included here as an example of the type of cases the courts often handled in the 19th century.

Brown v. Phillips and others, 71 Wis. 239 (1888): In this case, the Wisconsin Supreme Court declined to expand women's suffrage. In doing so, the Court narrowly interpreted a state statute that gave women the right to vote only on school-related matters.

State ex rel. Weiss and others v. District Board, etc., 76 Wis. 177 (1890): In this case, popularly known as the Edgerton Bible case, the Wisconsin Supreme Court determined that Bible reading in public schools is unconstitutional.

State ex rel. Attorney General v. Cunningham, 81 Wis. 440 (1892), State ex rel. Lamb v. Cunningham, 83 Wis. 90 (1892): These cases demonstrate the power struggle, which is designed into a democratic system, among the three branches of government.

Nunnemacher v. State, 129 Wis. 190 (1906): In this case, the Wisconsin Supreme Court upheld a tax on inheritance, one of the key laws of the Progressives. In issuing this opinion, the Court departed from a course charted by many courts around the nation that had found a natural right to inherit.

Borgnis and others v. The Falk Company, 147 Wis. 327 (1911): In this case, the Wisconsin Supreme Court upheld a law creating workers' compensation and strengthened the rights of employees by finding that the law covered even individuals employed in "non-hazardous" trades.

Wait v. Pierce, 191 Wis. 202 (1926): In a 4-3 ruling, the Wisconsin Supreme Court granted women the right to sue their husbands. In so doing, the Court broadly interpreted a 1921 law which gave women the right to vote, finding that the law granted women a number of additional rights.

John F. Jelke Company v. Emery, 193 Wis. 311 (1927): This case centers on a quirky Wisconsin law that made it a crime to manufacture or sell margarine in the state.

State ex rel. Drankovich v. Murphy, 248 Wis. 433 (1945): In this case, the Wisconsin Supreme Court strengthened the right to legal counsel for defendants in criminal matters, determining that trial judges must make individuals aware of this right and that a lawyer must be provided at public expense, when necessary, even if the defendant does not request counsel.

State v. Yoder, 49 Wis.2d 430 (1971), Wisconsin v. Yoder, 406 US 205, 32 L Ed 15, 92 S Ct 1526: In this case, the Wisconsin Supreme Court weighed the state's interest in educating children against the First Amendment guarantee of religious



Chief Justice E. Harold Hallows authored the Court's opinion in State v. Yoder.

freedom. The Court held that a state law requiring children to attend school full time was unconstitutional.

State v. Stevens, 123 Wis.2d 303 (1985):

This is one of many cases that came to the courts in the 1980s and 1990s challenging the validity of a search or seizure under the federal and state constitutions.

State v. Mitchell, 169 Wis.2d 153 (1992):

This case illustrates legislative action against bigotry and the possible conflict between such laws and the free speech guarantees of the federal and state constitutions.

Thompson v. Benson, 199 Wis.2d 674

(1996): This case illustrates the restrictions the Wisconsin Constitution places on legislative enactments and the checks and balances that exist in a three-branch system of government.

Libertarian Party of Wisconsin v.

Thompson, 199 Wis.2d 790 (1996): This case illustrates the restrictions the state Constitution places on private laws and laws contracting public debt.

Risser v. Klauser, 207 Wis.2d 177, N.W.2d

(1997): This case is one of a number of cases that have come to the Wisconsin Supreme Court focusing on the governor's veto power.

Teaching Resources

Wisconsin Supreme Court

So Many Cases, So Little Time

The Wisconsin Supreme Court has decided thousands of cases. All of them are important and many are interesting, but only some are “teachable.” Some cases are simply overly complicated, and therefore too time-consuming, while others deal with issues that are relevant only to a specific place and time.

Ten criteria have been developed to help you identify cases that can be most effectively taught to secondary students. The idea underlying these criteria is that less is more. It is better to have students analyze a small number of cases thoroughly than it is to have them learn many cases in a cursory manner. The best cases to teach are the ones that score high in many of the criteria.

There are three categories of criteria:

- **Rationale & Purpose:** What are the “big ticket” outcomes that you want students to reach as a result of learning about the cases?
- **Learnability:** Are the case facts and issues appropriate for your students? Are quality resources available on the case?
- **Engagement:** Will you and your students be interested in the facts and issues of the case?

Rationale & Purpose: What are the “big ticket” outcomes that you want students to reach as a result of learning about the cases?

1. Disciplinary Knowledge

These are cases that will help young people understand both the history of Wisconsin and the United States and to make sound decisions about contemporary and future public policy issues. This criterion presumes that young people are not just “learning how to learn” about cases, but that some cases are so important they must actually know them. Examples of such cases are the U.S. Supreme Court case of Brown v. Board of Education [72 S.Ct.1070 (1954)], and on the state level, the 1992 case of State v. Mitchell [169 Wis.2d 153 (1992)] (followed by the U.S. Supreme Court’s decision reversing the majority opinion).

2. Case Facts and Issue(s) are Directly Aligned with Curricular Goals

To apply this criterion, start with the million-dollar question: “What should students know and be able to do as a result of this lesson/unit/course/four years in this school?” If a case is particularly “on point” toward an important student outcome, this criterion has been met. For example, if one goal in teaching a high school American Government course is that students understand separation of powers, look to cases like Youngstown Sheet & Tube Company v. Sawyer [72 S.Ct. 1075 (1952)]. In this case the U.S. Supreme Court ruled that President Harry Truman had overstepped executive authority when he seized the steel mills to prevent strikes during the Korean War. A Wisconsin case focusing on the same concept (separation of powers) is Risser v. Klauser [207 Wis.2d 177 (1997)], which dealt with the power of the governor to expand his authority to veto pieces of the state budget.

3. Hot Public Policy Issue

Cases that meet this criterion are—or soon will be—in the public policy arena regardless of how they have been decided by the Wisconsin or U.S. Supreme Court. Most Supreme Court decisions are not “final.” Legislatures react to them with new legislation, and less frequently, the federal and/or state constitutions are amended because of them. Knowing about these cases will help young people make better decisions about public policy. Affirmative action and hate crimes cases often meet this criterion, as do decisions about abortion. An example of this at the state level is the case of Vincent v. Voight [2000 WI 93 (2000)], which deals with the constitutionality of how public schools are funded in Wisconsin. Another example is State v. Janssen [213 Wis.2d 471(1998)]. In this case the Court found the state’s flag desecration statute unconstitutional. As a result, the Legislature took steps to change the statute.

4. Enduring Issue or Tension between Democratic Values

The legal or constitutional issue raised by the case is enduring because it represents a tension between democratic values, such as equal opportunity and liberty. Although many cases do this, some involve a particularly clear and difficult balancing between the core values of the state and federal constitutions. These are good cases for young people to learn because they create cognitive dissonance, which according to Jean Piaget sparks learning and moral growth. Also, even though the immediate issue may change, the conflict between the values it represents will come up again and again. A good test for this is to ask: “What is this case about?” If the answer is something that will crop up repeatedly, this criterion has been met. An example of this is Texas v. Johnson [109 S.Ct. 2533 (1989)], a U.S. Supreme Court case about whether laws criminalizing flag burning violated the First Amendment. A Wisconsin case that meets this criterion is State v. Yoder [49 Wis.2d 430 (1971)], a case involving the tension between the state’s interest in educating children and the First Amendment’s guarantee of religious freedom.

5. Future Orientation

A case that has a future orientation confronts issues that might be destined to affect our society’s future. How does the law change, adapt, or react to, changes in American society? What are the issues that appear particularly vexing for the future? Be on the lookout for cases related to technology or cases about the increasingly multicultural society in which we live. The 1996 U.S. Supreme Court case of Romer v. Evans [116 S.Ct. 1620 (1996)] meets this criterion. This case dealt with whether an amendment to the Colorado Constitution making it more difficult for gays

to exert political influence violated the U.S. Constitution. A Wisconsin case that meets this criterion is Holtzman v. Knott [193 Wis.2d 649 (1995)], a case about child visitation rights between members of non-traditional families.

Learnability: Are the case facts and issues appropriate for your students? Are quality resources available on the case?

6. Reachable Facts

The facts of the case are “reachable” for your students, and thus the case is efficient. Some cases might meet many of the other criteria, but are so difficult, or so convoluted, that it takes forever to get to the heart of the matter. A case that meets this criterion might have stunningly simple facts that allow you to spend the bulk of instructional time on the issues. For example, Gideon v. Wainwright [83 S.Ct. 792 (1963)], the 1963 U.S. Supreme Court case about whether poor people accused of serious crimes have the right to publicly funded legal counsel, meets this criterion because it combines simple facts with a powerful issue. The Wisconsin Supreme Court’s decision in State v. Stevens [123 Wis.2d 303 (1985)], which focused on whether the police need a warrant to search a person’s garbage, is similarly “reachable” because the facts are understandable and the underlying constitutional issue is extremely important.

7. Availability of High-Quality Instructional Materials

There are readily available, high quality resources that students can understand for many cases. While the Internet will make lots of cases available that have previously been buried in law libraries, there is still an issue about how much time to spend translating for students. For many older students, learning from Web sites is fine, but a number of excellent teachers use materials that someone else has taken the time to develop for students. The *Case of the Month Project*, developed by the Wisconsin Supreme Court with assistance from the Wisconsin State Law Library, provides new case resources for each month of the Supreme Court’s session. See page 103 for more information on *Case of the Month*. You may also refer to *Famous Cases of the Wisconsin Supreme Court* for summaries of 25 cases decided by the Court between 1854 and 1997. The index is available on page 36; the full booklet is on the Wisconsin Court System Web site at www.courts.state.wi.us/history/famous_cases.htm.

Another component of this criterion is whether there are outside resource people in the community who could help your students understand the case. To find local resource people, contact the Judicial Speakers Bureau at (608) 264-6256 or the State Bar of Wisconsin Law-Related Education Office at (608) 250-6191.

Engagement: Will you and your students be interested in the facts and issues of the case?

8. Interesting Facts

These are cases that have facts that resonate with young people. Some of these cases were initiated by, or on the behalf of, young people. Many school cases fit into this category, but beware of too much of an emphasis on school law because the opportunity cost (that is, what is not learned because so many school cases are learned) can be high. Also beware of presuming that all young people are interested in the same things—we know that is not true. United States v. Virginia [116 S.Ct. 2264 (1996)], a U.S. Supreme Court case about whether a publicly funded, single-sex university violated the Constitution, may meet this criterion. The Wisconsin Supreme Court's decision in Isiah B. v. State [176 Wis.2d 639 (1993)] is often interesting to students because it focuses on whether students have a reasonable expectation of privacy in their lockers.

9. Human Side

Cases that show the human dimension of the judicial process in a particularly bold or interesting way meet this criterion. Some cases do a good job showcasing the adventure of a person's life; others illustrate that individuals can make a powerful difference in society. The key question here is to what extent the case offers a window into a better understanding of humanity. Cases that are about one person (who often stands as representative for many) can be very compelling. It is important that we keep our eyes on the prize—real people in real circumstances bring these cases and are affected by them. A U.S. Supreme Court case that meets this criterion is Hirabayashi v. United States [63 S.Ct. 860 (1943)]. A Wisconsin case is Application of Miss Goodell [39 Wis. 232 (1875)], focusing on whether women should be admitted to the bar (it is necessary to be a member of the bar in order to practice law).

10. Cases that Interest You

Students will respond to a teacher's passion for particular topics. In addition to teaching about the case, the issues, the future, the past, the human drama, etc., you are also teaching about the love of learning. Perhaps as a tiebreaker (presuming other important criteria have been met), it would be wise to choose cases that will make it easy for you to be genuinely engaged in the issue or facts of the case.

The following chart identifies six Wisconsin Supreme Court cases and asks how well each case meets the 10 criteria for teachability. Brief summaries of these cases are available in *Famous Cases of the Wisconsin Supreme Court* (see page 36). Determine the extent to which each Wisconsin Supreme Court case meets each criterion. Mark "1" if it does not meet the criterion, "2" if it meets the criterion somewhat, and "3" if it clearly meets the criterion. The cases with the highest total points are the most "teachable."

	Rationale & Purpose				Learnability		Engagement		TOTAL	
	Disciplinary Knowledge	Curricular Goals	Hot Public Policy Issue	Democratic Values	Future Orientation	Reachable Facts	Instructional Materials	Interesting Facts		Human Interest
<u>State v. Stevens</u>										
<u>State v. Yoder</u>										
<u>State v. Mitchell</u>										
<u>Brown v. Phillips</u>										
<u>In Re: Booth</u>										
<u>Risser v. Klauser</u>										

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Wisconsin Supreme Court Grant/Deny Exercise

Overview

This exercise uses background information from real petitions to the Wisconsin Supreme Court to help students understand how to apply the criteria justices use to determine which cases to review.

Objectives

As a result of this activity, students will be able to:

- Identify the main issues of the exercise cases.
- Explain the criteria used to determine which cases the Supreme Court reviews.
- Comprehend the different paths cases take to get to the Supreme Court.

Standards

This lesson meets the following Wisconsin Model Academic Standards:

C.12.6: Students will identify and analyze significant political benefits, problems, and solutions to problems related to federalism and the separation of powers.

C.12.4: Students will explain the multiple purposes of democratic government, analyze historical and contemporary examples of the tensions between those purposes, and illustrate how governmental powers can be acquired, used, abused, or legitimated.

E.12.4: Students will analyze the role of economic, political, educational, familial, and religious institutions as agents of both continuity and change.

Materials

Handouts and teacher's guide, pages 46-56

Procedures

1. Present a lecture on the criteria justices use to determine which cases are appropriate for Supreme Court review. Wisconsin Statutes Section 809.62, available on page 29, outlines what the criteria are.
2. Divide the class into two to three groups. Ask the students to read each case summary and determine which, if any, criteria are met. Distribute worksheet found on page 54.
3. Have a student from each group report the group's recommendation in CASE 1. Then tell the students what the Wisconsin Supreme Court decided in that case (see page 55). Use the same reporting procedure for each case, with a different student speaking each time.
4. As a follow-up activity, students may find the Court's opinion in one of the cases that was accepted for review. With your help, have them review the opinion to learn how the Court resolved the questions raised in the petition.

CASE 1:

State of Wisconsin v. Douglas D., 99-1767-FT

Douglas D., who was 13 at the time this incident occurred, was given a creative writing assignment by his eighth grade English teacher, popularly known as Mrs. C. He was to start a story that would be passed on to other students to finish. The teacher gave the story a title—"Top Secret"—and neither assigned nor prohibited any particular topic. The assignment was to be completed during the class period. Instead of starting the assignment, Douglas talked with friends and, according to Mrs. C., disrupted the other students. She sent him into the hall to begin writing. At the end of class, Douglas handed in his assignment, which read as follows:

There one lived an old ugly woman her name was Mrs. C. That stood for crab. She was a mean old woman that would beat children senseless. I guess that's why she became a teacher.

Well one day she kick a student out of her class & he din't like it. That student was named Dick.

The next morning Dick came to class & in his coat he conseled a machedy. When the teacher told him to shut up he whiped it out & cut her head off.

When the sub came 2 days later she needed a paperclipp so she opened the droor. Ahh she screamed as she found Mrs. C.'s head in the droor.

Upon reading this, Mrs. C. became upset and notified the assistant principal, who called Douglas to the office. The student apologized, saying that he had not intended any harm and that he had not meant the essay as a threat. He repeated this claim to an Oconto County juvenile court worker and also apologized to his teacher during a meeting in the principal's office.

A juvenile delinquency petition was filed alleging that Douglas D. had "engaged in abusive conduct under circumstances in which the conduct tends to cause a disturbance" in violation of the state's disorderly conduct statute, which reads as follows:

Whoever, in a public or private place, engages in violent, abusive, indecent, profane, boisterous, unreasonably loud or otherwise disorderly conduct under circumstances in which the conduct tends to cause or provoke a disturbance is guilty of a Class B misdemeanor.

The circuit court ruled that this statute applies to pure written speech and that Douglas D.'s conduct was not protected by the First Amendment. The judge sentenced Douglas D. to one year of formal supervision with several conditions including a curfew and an apology letter to the teacher. The judge wrote:

Here there is absolutely no social value achieved by the juvenile's conduct in completing an assignment allegedly that makes a direct threat to his teacher. That is not the type of activity that is allowed either under the First Amendment or any other right that a student has in a classroom.

The Court of Appeals affirmed, holding that the creative writing assignment constituted a “direct threat” against the teacher and therefore was not protected by the First Amendment. The Court of Appeals further found that the disorderly conduct statute could be applied to pure written speech, unconnected to action.

Petitioner’s (Douglas D.) Petition for Review: Wisconsin’s disorderly conduct statute does not criminalize pure written speech unless that speech is intertwined with actions that are both disorderly and likely to cause a disturbance.

Wisconsin’s disorderly conduct statute makes conduct illegal only if it is likely to provoke a disturbance to the public order—not just because it might result in personal discomfort.

The State failed to prove beyond a reasonable doubt that Douglas D. engaged in abusive conduct under circumstances likely to cause a disturbance by writing this essay.

Petitioner’s Bottom Line: The Wisconsin Supreme Court should take the case to vindicate Douglas D.’s constitutional right to freedom of speech and to correct the lower courts’ rulings that language can be defined as “conduct.”

Respondent’s (the state) Opposition to Review: Had Douglas D.’s essay been merely offensive—had he, for example, stopped after calling Mrs. C. “mean” and an “ugly old woman”—he could not have been criminally prosecuted.

Case law defines a “true threat” as causing a reasonable person to foresee that the listener will believe that s/he will be subjected to physical violence upon his person. This essay clearly fits the definition of “true threat” and therefore is unprotected by the First Amendment.

Respondent’s Bottom Line: The Wisconsin Supreme Court should deny review because the case does not present any substantial statutory or constitutional issues for the Court’s review. It is a well-established law that direct threats of violence are not constitutionally protected.

CASE 2:

Leon M. Reyes v. Greatway Insurance Co., 97-1587

On Oct. 6, 1993, Aaron Rothering, 17, and Marlon Jamison, 19, after playing some video games and shooting guns in the backyard of Rothering's mother's house, went cruising in Racine. They purchased five 32-ounce bottles of malt liquor and each drank more than one bottle. Rothering drove his car past a group of pedestrians on Prospect Street several times that evening. Although he and Jamison did not recognize anyone, they thought the pedestrians belonged to a gang and decided to scare them. Parking around the corner, they pulled two shotguns from the trunk. They then turned off the headlights and cruised slowly back down the street. When they came to the pedestrians, Rothering held the gun in one hand and the steering wheel in the other and opened fire. At the same time, Jamison sat on the passenger side windowsill and leaned over the hood of the car and fired. Rothering testified that he only wanted to scare the pedestrians, and tried to fire the gun into the air. Leon Reyes was struck in the eye, neck, side, hands and ribs. Physical evidence indicated it probably was a ricochet that hit Reyes, and it was not determined whether the shots that caused injury came from Rothering or Jamison.

At the time of the shooting, Rothering was a minor with a driver's license sponsored by his mother, Cheryl Rothering, as required under state law. The car used in this stunt was insured by Greatway Insurance Co.

Reyes sued Cheryl Rothering based upon her liability under the Sponsorship Liability Statute and also sued Greatway, arguing that Cheryl Rothering's liability was covered by Greatway. The Sponsorship Liability Statute reads as follows:

Any negligence or willful misconduct of a person under the age of 18 years when operating a motor vehicle upon the highways is imputed to the parents where both have custody and either parent signed as sponsor, otherwise, it is imputed to the adult sponsor who signed the application for such person's license. The parents or the adult sponsor is jointly and severally liable with such operator for any damages caused by such negligent or willful misconduct.

The circuit court found that the Sponsorship Liability Statute applied in this situation and that Cheryl Rothering and Greatway were liable for Reyes' injuries. A jury awarded Reyes over \$300,000 in compensatory damages, of which Greatway was to pay its \$25,000 policy limits. Greatway appealed, and the Court of Appeals reversed, finding that the Sponsorship Liability Statute applies only in situations involving the 'skill' of driving an automobile and the 'mental discretion' involved in exercising that skill.

Petitioner's (Leon Reyes) Petition for Review: There was a direct and immediate relationship between Rothering's use of the car and Reyes' injuries. The car was an indispensable component as it provided Rothering with mobility, anonymity and ease of escape not available to him on foot.

The state's Sponsorship Liability Statute makes parents responsible for any negligence or willful misconduct of a person under age 18 of whom they have custody who is operating a motor vehicle. No one can rationally dispute that shooting at a group of people while driving is "negligence or willful misconduct of a person...while operating a motor vehicle."

The issue of whether parents are liable for drive-by shootings under the Sponsorship Liability Statute is likely to recur.

Petitioner's Bottom Line: This case presents a novel question that is likely to recur. Resolution of the question will have statewide impact. The Court of Appeals misinterpreted the state's Sponsorship Liability Law and improperly limited its scope. The public policy underlying the Sponsorship Liability Statute—to place liability for the misdeeds of juvenile drivers upon those who allow them to drive—is undermined by the Court of Appeals' impermissible construction of an unambiguous statute and by its misinterpretation of controlling opinions. The Supreme Court should review the case and reverse the lower court.

Respondent's (Greatway) Opposition to Review: The conduct must relate to the act of operating a motor vehicle in order for there to be liability on the part of the parent under the Sponsorship Statute. Liability does not follow for "willful misconduct" that just happens to occur in a car. Under such logic, the parent would be liable when a minor assaulted a passenger while driving, or drove through a teller line and robbed a bank, or made obscene calls from the car phone.

Automobile insurance covers accidents arising from the "use" of a vehicle. The "use" needs to be reasonably consistent with the inherent nature of the vehicle. A drive-by shooting is not reasonably expected as a normal incident of the vehicle's use and therefore no coverage is provided.

Respondent's Bottom Line: This is not an issue that is going to recur, and the Court of Appeals handled it properly. The Court of Appeals interpreted the Sponsorship Liability Statute in a common-sense way, as no reasonable person could think that signing to sponsor a minor's license would create liability for any action that has any relation whatsoever to a car. The Court of Appeals reversed an erroneous trial court ruling as a proper exercise of its error-correcting function.

CASE 3:

Ann Puchner v. John Puchner, 94-1526

In October 1992, Ann and John Puchner were divorced in Hennepin County, Minnesota. At the time of the divorce, John Puchner was ordered to pay \$480 per month in child support for their only child, who was six months old at the time.

Ann Puchner moved to Wisconsin and John Puchner to Michigan. Ann Puchner had the child support judgment registered in Wisconsin and the divorce case was transferred to Waukesha County. John Puchner continued to send his child support to the Hennepin County Support Services Office, per the original court order. That office returned the checks to him and he testified that he then tried to send the money directly to his ex-wife, but it was returned, stamped "return to sender" on the envelope.

In December 1993, John Puchner was ordered to appear at a contempt of court hearing in Waukesha County for not paying the child support. The procedure followed at that hearing gave rise to this appeal.

At the hearing, John Puchner appeared by telephone without an attorney and told the judge he could not afford to pay \$480 per month, and that he had attempted to comply with the court order. Ann Puchner's attorney appeared on her behalf in court. No witnesses were sworn, and no evidence was presented, but the judge established based upon John Puchner's statements that he had an income of \$33,000 per year and could afford the payments. At the conclusion of the hearing, the judge found John Puchner in contempt of court and ordered him to pay \$2,920 in back child support and sentenced him to 60 days in jail if he failed to comply.

He did not comply with the court order, and, on Sept. 2, 1994, when he returned to Wisconsin, John Puchner was arrested and jailed.

He appealed his conviction, arguing that, because no testimony was taken and no evidence was introduced at the contempt of court hearing, no case had been made against him. The Court of Appeals disagreed, saying: "The trial court's findings of fact in a contempt proceeding are conclusive unless clearly erroneous." John Puchner then appealed to the Wisconsin Supreme Court.

Petitioner's (John Puchner) Petition for Review: John Puchner was convicted of contempt of court and sentenced to jail when there was no proper case made against him. There is no state policy identifying the minimum necessary components that a case needs in order to proceed through the judicial process. This is an unresolved issue of law that is likely to recur in many types of cases.

In deciding that it should defer to the trial court's finding simply because it didn't spot anything clearly erroneous, the Court of Appeals erred. The Supreme Court needs to clarify the standard that is to be used in assessing whether an adequate case has been made.

The Supreme Court should examine the constitutional implications of a court finding a person in contempt without conducting a formal, on-the-record hearing.

Petitioner's Bottom Line: A litigant's most meaningful source of review of a trial court's adverse decision is through appeal. Therefore, it is critical that the Supreme Court clarify the standard of review that the Court of Appeals should be using when it looks at cases such as this. Further, the Supreme Court as the administrative head of the court system should identify the minimum necessary components needed to establish a case. These should include a formal, one-the-record hearing with sworn witnesses and evidence.

Respondent's (Ann Puchner) Opposition to Review: John Puchner's petition should be denied because the Court of Appeals correctly applied established law to the facts of the case. He is merely seeking to correct errors that he perceives to have occurred in the trial court, and correcting errors is the job of the Court of Appeals, not the Supreme Court.

The argument that the Supreme Court needs to take this case to establish minimum requirements of a case ignores that the Supreme Court has already done just that, through numerous published decisions detailing the procedures to be followed in contempt proceedings.

John Puchner wrongly characterizes the trial court hearing as an informal gathering from which he was excluded. It was, in fact, an on-the-record, fully transcribed, and procedurally proper hearing. He chose to appear by telephone and not to be represented by an attorney.

Respondent's Bottom Line: This case does not involve complicated legal issues or conflicting judicial determinations, nor does it present any law that needs development of clarification. The trial court gave John Puchner an opportunity to challenge his ex-wife's affidavit and he not supply any evidence to contradict her claim that he was not paying the child support. The judge permitted him to argue on his own behalf at length and yet he did nothing to refute the allegation that he had acted in contempt of a court order. The trial judge properly found him to be in contempt, and the Court of Appeals properly affirmed this conviction. He has raised this appeal now simply to delay as long as possible his payment of the child support or his incarceration.

CASE 4:

State of Wisconsin v. Robert Minued, 86-1187-CR

On March 11, 1985, shortly before 5 p.m., Robert White and John Neis, Jr., arrived at a downtown Racine apartment building. The two men had been drinking together at a local bar prior to their visit. Witness accounts differed as to how White and Neis entered the locked apartment building, but once they were in, numerous residents reported hearing banging on doors and shouting. Witnesses reported the men looked drugged and zombie-like.

Robert Minued was a resident of the building and he was in his pajamas watching TV when the men knocked on, kicked, and tried to open his door. Minued opened the door and confronted White and Neis just as White finished urinating in the hallway. The men said they were looking for "Dennis." Minued told them that Dennis lived across the hall, but as soon as he closed his door they began pounding on it again. He retrieved a pistol and opened his door again. White stepped toward him, and Neis stood behind White with his hands in his pockets. Minued backed up several steps and when he was backed against a wall, he opened fire, killing White. He fired a second shot at Neis as Neis ran away. Minued then went to his parents' home and they accompanied him to the police station where he turned himself in.

He was charged the next day with three felony counts: (1) first-degree murder, (2) attempted murder, and (3) possession of a firearm by a felon. At trial, Minued was found not guilty on the first charge (it was justifiable self defense), guilty of the lesser—included offense of endangering safety while armed on the second charge, and he pleaded guilty to the third charge. A judgment of conviction was entered on June 18, 1985, and the Court of Appeals affirmed the conviction. Minued then petitioned the Wisconsin Supreme Court to take his case.

Petitioner's (Robert Minued) Petition for Review: The trial court's refusal to give the jury the option of finding that Minued was acting in self defense when he shot at Neis denied Minued a fair trial. Case law has established that a defendant is entitled to a self-defense instruction to the jury if there is a basis in the evidence for concluding that he "reasonably believed" that force likely to cause death or great bodily harm was "necessary to prevent imminent death or great bodily harm to himself."

Petitioner's Bottom Line: The Wisconsin Supreme Court should take the case because it presents a question of first impression. There are no reported Wisconsin cases which address the question of whether a person is justified in shooting at another person right after that individual's cohort is justifiably shot in self defense.

Respondent's (the state) Opposition to Review: The trial court properly declined to give a self-defense instruction to the jury, and the Court of Appeals properly sustained that determination. Well-established law was followed.

Faced with a fleeing victim, Minued could not possibly have reasonably believed that his use of deadly force was necessary to prevent imminent death or great bodily harm to himself.

Respondent's Bottom Line: The Wisconsin Supreme Court should not review this case because it does not present a questions that merits the Court's review. The criteria for when a defendant is entitled to have the jury given a self-defense instruction are clearly set out in Wisconsin law.

Grant/Deny Worksheet

In order to be accepted for review by the Wisconsin Supreme Court a case must:

- concern a significant constitutional (federal or state) question; or
- once decided, will develop, clarify, or harmonize existing law(s); or
- involve issues that have not been decided by the Court before; or
- have statewide importance; or
- present a question of law that will likely reoccur unless resolved by the Court; or
- have resulted in conflicting decisions in the lower courts; or
- although previously decided, may be ripe for reexamination due to changing times and circumstances.

Case	Grant or Deny	Why?
<u>State of Wisconsin v. Douglas D.</u>		
<u>Leon M. Reyes v. Greatway Insurance Co.</u>		
<u>Ann Puchner v. John Puchner</u>		
<u>State of Wisconsin v. Robert Minued</u>		

Grant/Deny Exercise Teacher's Guide

CASE 1:

State of Wisconsin v. Douglas D., 99-1767-FT

The Supreme Court granted review of this case. The case met two of the criteria the Court has adopted for granting review:

1. A real and significant question of federal or state constitutional law is presented.
2. The question presented is a novel one, the resolution of which will have statewide impact.

The oral argument was held in October 2000 (to listen to the oral argument, visit the Wisconsin court system Web site at www.courts.state.wi.us/supreme/Wisconsin_Supreme_Court_Oral_Arguments.html). The Supreme Court released its opinion in this case in May 2001. The Court, in an opinion written by Justice Jon P. Wilcox, concluded that "purely written speech, even written speech that fails to cause an actual disturbance, can constitute disorderly conduct as defined by § 947.01; however, because Douglas's speech falls within the protection of the First Amendment, the State nonetheless is barred from prosecuting Douglas for disorderly conduct," reversing the decision of the Court of Appeals. To access the opinion, go to www.courts.state.wi.us/supreme/Wisconsin_Supreme_Court_Opinions.html.

CASE 2:

Leon M. Reyes v. Greatway Insurance Co., 97-1587

The Supreme Court granted review of this case. The case met two of the criteria the Court has adopted for granting review:

1. The question presented is a novel one, the resolution of which will have statewide impact.
2. The question presented is not factual in nature but rather is a question of law of the type that is likely to recur unless resolved by the Supreme Court.

The oral argument was held in March 1999 (to listen to the oral argument, visit the Wisconsin court system Web site at www.courts.state.wi.us/supreme/Wisconsin_Supreme_Court_Oral_Arguments.html). In an opinion written by Justice David Prosser Jr., the Court unanimously affirmed the Court of Appeals (available online at www.courts.state.wi.us/supreme/Wisconsin_Supreme_Court_Opinions.html).

CASE 3:

Ann Puchner v. John Puchner, 94-1526

The Supreme Court denied review of this case.

CASE 4:

State of Wisconsin v. Robert Minued, 86-1187-CR

The Supreme Court initially granted review of this case, but later reversed itself, declaring that review had been improvidently granted.

Moot Court

Overview

A moot court is a simulation of an appellate court argument and decision. This moot court case is based on a 1985 Wisconsin Supreme Court case in which the issue was a police search of a person's garbage without a warrant. Other U.S. or Wisconsin Supreme Court cases that raise constitutional issues can be used in this activity. See *So Many Cases, So Little Time* on page 39 for suggestions on how to choose other teachable cases.

Students will study the facts of this case, as well as the governing constitutional provisions and previous court decisions in similar cases. They will then serve as Wisconsin Supreme Court justices, attorneys for the petitioner (David Stevens, whose garbage was searched by the police), attorneys for the respondent (State of Wisconsin), or journalists (both print and television) covering the Court.

Resource people from the legal community could also help students understand the processes used by the Wisconsin Supreme Court, the Fourth Amendment to the U.S. Constitution and its counterpart in the Wisconsin Constitution (Article 1, Section 11), and how the existing law and the court system interacted in a case that will engage the interest of secondary students. To find resource people, contact the Court Information Office at (608) 264-6256 or the State Bar of Wisconsin at (608) 250-6191.

Objectives

As a result of this activity, students will be able to:

- Analyze case facts to uncover constitutional questions.
- Develop and present a persuasive argument based on the constitutional issues.
- Gain an understanding of how the Wisconsin Supreme Court reviews cases.

Standards

This lesson meets the following **Wisconsin Model Academic Standards**:

B.12.2: Students will analyze primary and secondary sources related to an historical question to evaluate their relevance, make comparisons, integrate new information with prior knowledge, and come to a reasoned conclusion.

B.12.5: Students will gather various types of historical evidence, form a reasoned conclusion, and develop a coherent argument.

B.12.15: Students will identify a historical event in which a person was forced to take an ethical position, and explain the issues involved.

C.12.1: Students will identify the sources, evaluate the justification, and analyze the implications of certain rights and responsibilities of citizens.

C.12.3: Students will trace how interpretations of liberty, equality, justice, and power, as identified in various documents, have changed and evolved over time.

C.12.8: Students will analyze information from various sources to understand and communicate a political position.

Materials

Handouts on pages 60 through 64. The Court of Appeals and Wisconsin Supreme Court opinions in State v. Stevens are available on the Wisconsin Supreme Court Web site at www.courts.state.wi.us.

Procedures

The procedures used in this simulation will be slightly different than those actually used by the Wisconsin Supreme Court and other appellate courts. The attorneys' oral arguments to the Court will be shorter. The justices will allow attorneys to complete their formal presentations to the Court before asking questions, rather than interrupting the presentation with questions. We are sacrificing some authenticity so as to enhance the educational value of the simulation through more active participant involvement and more efficient time management. The simulation is set up as a cooperative learning activity with every participant having a role to play that will contribute to the overall success of the activity.

1. Have students, working in pairs or small groups, read and clarify the facts of the cases, answering questions like:

What happened in the case?

Who is involved?

How did the lower court rule in the case?

Who is the petitioner, the respondent?

2. Facilitate a class discussion on the issues of the case. Ask students to identify the main issues by phrasing them as questions. Focus on the constitutional questions raised by the case.

3. Select an odd number of students (seven to nine) to be justices. Divide the remaining students into two teams. One team will represent the petitioner. The other team will represent the respondent. To increase student participation, several students can be selected to play the role of journalists. Give each student the handout pertaining to the role he/she is playing.

4. Conduct moot court. Note: either the teacher or a student from one of the “attorney” teams should keep time during the argument.

5. The teacher now explains how the case was actually decided by the Wisconsin Supreme Court and notes ways in which the processes used in the simulation were similar and different from those actually used by the Court. In the event the student’s decision and the Court’s are different it is helpful for the students to understand the reasoning in the dissenting opinions as well as the majority. The students are not wrong, but the majority of the real Court was influenced by different compelling arguments. Ask the students to evaluate the reasoning the Court used in the majority and dissenting opinions and compare these to their reasoning. Continue to debrief the activity by discussing what the decision means for the both sides and for society.

Structure for the Moot Court

- The chief justice officially opens the Court session and calls the case.
- Attorneys for David Stevens have five minutes to present their formal arguments. The justices then have three minutes to ask questions of Stevens’ counsel.
- Attorneys for the State of Wisconsin have five minutes to present their formal arguments. The justices then have three minutes to question the State’s attorney.
- The justices retire to deliberate. Each justice must make a decision about how she/he will vote on the case and why.
- While the justices are deliberating, the journalists present their stories to the rest of the participants.
- The justices come back to the courtroom and announce their decision and give a brief explanation. If there is a dissent from the majority opinion, that is also announced and explained.

Facts of the Case: State v. Stevens (1985)

In 1979, Deputy Sheriff David Lushewitz of the Drug Enforcement Unit of the Milwaukee County Sheriff's Office was in charge of investigating the alleged drug dealing activities of David Stevens at his residence in River Hills, Milwaukee County. Deputy Lushewitz was informed by the River Hills Department of Public Works that garbage at the Stevens' residence was normally picked up every second Friday morning.

The Deputy then met with the garbage collector and told him to go about his normal routine of picking up garbage at the Stevens' house. After he picked up Stevens' garbage, he was to turn it over to Lushewitz. When the garbage collector arrived at Stevens' house he found that the garbage had not been put outside of the garage where it was normally collected. The garage door was locked. The collector then went to the door of the house, and knocked. When Stevens came to the door, the collector asked if he could get the garbage. Stevens then opened the garage door, allowing the collector access to the garbage. Stevens testified that he opened the garage door so the collector could do "what he wanted to do."

The garbage collector picked up four plastic garbage bags and loaded them into the truck. After leaving Stevens' property, the collector gave the garbage to Lushewitz who searched the bags.

The same procedure was repeated two weeks later during the next regularly scheduled pickup.

Later that same day, a circuit judge issued a search warrant for the search of Stevens' River Hills residence based in part on the evidence turned up in the garbage bags. The next day, when Stevens was not home, his house was searched. This search resulted in the seizure of cocaine, marijuana, drug paraphernalia, money, and other miscellaneous objects.

Lushewitz had information that Stevens, who had been on vacation, would be returning home the next day. When Stevens arrived home, the deputies arrested him on the driveway outside his home. After being told that he might be spending a lot of time in jail, Stevens was asked if wanted to bring anything with him. He indicated "in my car," and pointed to a brown leather shoulder type bag. This bag was found in the car and was subjected to an inventory search at the police station. The bag contained two grams of marijuana and one gram of cocaine.

Based upon the search of his home, Stevens was charged with possession of cocaine with intent to deliver and possession of marijuana with intent to deliver. Based upon the search of his shoulder bag, Stevens was charged with possession of cocaine and possession of marijuana.

Stevens moved to suppress the evidence seized from his home because he claimed that the warrantless search of his garbage was unlawful, and therefore, the warrant should not have been issued. The trial court denied the motion, holding that Stevens did not have a reasonable expectation of privacy in his garbage.

Stevens entered a guilty plea to the simple possession charges that were based on the shoulder bag search, and that plea was accepted. Stevens then moved to dismiss the charges of possession with intent to deliver based on a double jeopardy argument. This motion was denied. (This double jeopardy issue is not part of the moot court argument.)

After a trial, a jury returned guilty verdicts on both counts of possession with intent to deliver and Stevens was sentenced to three years in prison and a fine.

Stevens appealed to the Court of Appeals. This court issued a ruling in 1984 agreeing with the trial court that Stevens did not have a reasonable expectation of privacy in his garbage. Stevens then appealed to the Wisconsin Supreme Court, which heard the case in 1985.

Constitutional Issue:

Was Steven's garbage unlawfully searched and seized?

To address this question, consider the language of the Fourth Amendment to the U. S. Constitution—which is identical to Article 1, Section 11, of the Wisconsin Constitution:

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

Also, consider these important precedents:

Ball v. State (57 Wis.2d 653, 205 N.W. 2d 353 (1973))

A person in Wisconsin has a reasonable expectation of privacy in his garbage until there is clear and irrevocable abandonment. In *Ball*, items found in a large barrel that had been used for burning trash in the rear of the home were found not to be abandoned.

United States v. Shelby (573 F. 2d 971 (7th Cir.) cert. denied, 493 U.S. 841 (1978))

Shelby argued that he had a reasonable expectation of privacy in his trash because he thought it would be mingled with other trash and destroyed. The court disagreed, stating, “the garbage cans cannot be equated to a safety deposit box. The contents of the cans could not reasonably be expected by defendant to be secure, not entitled to respectful, confidential and careful handling on the way to the dump.” In short, the court ruled that *Shelby* had abandoned his garbage when “he placed his trash in the garbage cans at the time and place for anticipated collection. . . .”

State v. Stevens Attorneys

Attorneys for David Stevens are responsible for constructing and presenting an oral argument to the Court that Stevens' privacy rights were violated when the police searched his garbage without a warrant.

Attorneys for the State of Wisconsin will construct and present the opposite position: that Stevens' privacy rights were not violated.

As an attorney, your job is to:

1. Identify and discuss the best arguments supporting your team's position. These arguments can be constructed from sources such as the facts of this case, important legal precedents, and the language of the Fourth Amendment and its Wisconsin counterpart.
2. Working as a team, prioritize the arguments supporting your position that are the most powerful, and develop an outline for your formal presentation, which can be no longer than five minutes. Remember that the facts have already been established by the lower courts, so do not argue their accuracy.
3. Identify and discuss the most powerful points in favor of the opposing position, or the weak points in your team's position. This will help prepare you for questions from the Court, which will be a three-minute segment after completion of your team's formal presentation.
4. Select three people from your team to present the argument. You may want to divide the five minutes for the formal presentation in half, with two team members each taking half of the time. Another person may respond to the justices' questions. Remember that the justices will not interrupt the formal presentation, but the person responding to questions must be prepared to improvise based on their questions.

Wisconsin Supreme Court Justices

As a justice, your job is to:

1. Identify possible arguments that each side will use and develop questions to ask the attorneys. Please note that you may not interrupt the attorneys during their five-minute formal presentation. Once that has been completed, you will have three minutes for the entire Court to ask questions of the attorney designated to answer questions. Then, the other side will make its formal presentation, and you will have three minutes to ask questions of that side's attorney. Your questions should be designed to draw out and challenge the reasons each side will use to support its position.
2. Select a chief justice. The chief justice will begin the oral argument and will ask each side to present their arguments.
3. After the oral argument, discuss the arguments made by each side. Each justice must vote on a decision and be prepared to explain his/her vote.
4. The chief justice will announce the Court's decision to the class, then each justice will explain his/her vote.

Journalists

As a journalist, your job is:

1. Working in teams of two, circulate among the three different groups (two attorney groups and the justices) to learn about the case and the arguments that will be presented and questioned. Prepare an outline for the news article or television news segment about the case.

2. Attend the oral arguments and be ready to give an “on the spot at the Wisconsin Supreme Court” report (if you are a television journalist) or present your article to your editor (if you are a print journalist) after the arguments have been completed. Your report or article should take into careful consideration the everyday implications of the case for your viewers or readers. Remember that in real appellate cases, there are no same-day decisions, so many of the reports legal journalists file are of this nature—reports on the arguments by counsel, the tone of the court’s questions, and predictions of what the court might do based on the questions asked.

Chapter 4: Wisconsin Court of Appeals

History⁶

In 1977, Wisconsin voters approved an amendment to the state Constitution to allow for the creation of the Court of Appeals. On August 1, 1978, the first judges of the Wisconsin Court of Appeals were sworn into office.

Prior to this, the state had a system that consisted of a two-level trial court (the county court and the circuit court) and the Supreme Court. At that time, anyone who was unhappy with a lower-court ruling had the right to be heard in the Wisconsin Supreme Court. As a result, the Supreme Court's caseload was heavy, and litigants regularly waited between 18 and 22 months for final disposition of a case.⁷

The creation of the Court of Appeals permitted the Supreme Court to clear up its backlog and to begin functioning as a law-developing court. Today, litigants who wish to appeal a decision of the trial court have a right to be heard in the Court of Appeals, the state's error-correcting court. The Court of Appeals now processes about 4,000 cases per year and almost half of those cases are criminal matters.

Litigants do not have a right to review by the Supreme Court. The Supreme Court now only takes cases that will develop or clarify the law.

Structure

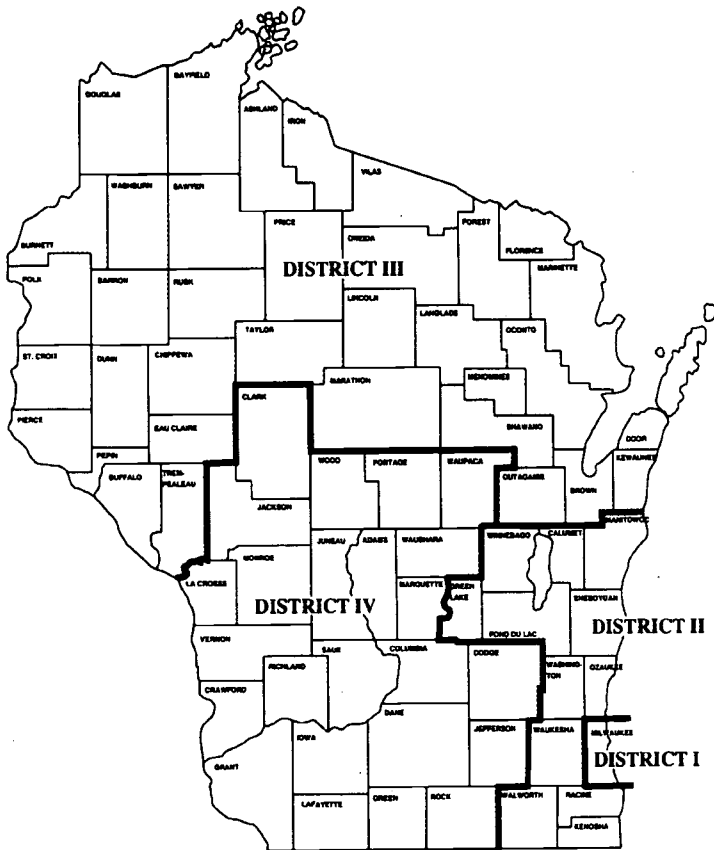
The Court of Appeals is divided into four districts. Each district hears appeals from a designated geographic area (see map). The districts are as follows:

District I (headquartered in Milwaukee and composed of four judges)

District II (headquartered in Waukesha and composed of four judges)

⁶ *Justice in Their Own Words*, a September 25, 1997 interview with Justice William A. Bablitch, Judge Thomas H. Barland, and Reserve Judges Frederick P. Kessler and James W. Rice; available at the Wisconsin Supreme Court, the Wisconsin State Historical Society, and the University of Wisconsin and Marquette University Law Schools. Another excellent source of information on the Wisconsin Court of Appeals is Justice Bablitch's "Court Reform of 1977: The Wisconsin Supreme Court Ten Years Later," *Marquette Law Review*, Vol. 72 No. 1, fall 1988.

⁷ Citizens Study Committee on Judicial Organization, report to Gov. Patrick Lucey (Jan. 1973).



District III (headquartered in Wausau and composed of three judges)

District IV (headquartered in Madison and composed of five judges)

All Court of Appeals judges are elected to six-year terms in district-wide, non-partisan elections.

Case-Deciding Procedures⁸

From the time they are filed until they are decided, cases go through several steps at the Court of Appeals. All Court of Appeals cases are decided either by a single judge or a panel of judges.

Step 1: Screening

Each case that comes to the Court of Appeals is examined by the judges in that district to determine what path it will take. This examination takes place at a screening conference. At the screening conference, the panel places each case on one of the following tracks:

Summary Disposition: More than half of Court of Appeals cases are disposed of in this manner. These are cases in which the panel unanimously agrees on the decision and agrees that the issues involve no more than the application of well-settled law or unquestioned and controlling precedent. Other cases that are likely to result in summary orders or memorandum opinions are those in which it is clear that the evidence was sufficient to support the trial court result, and the trial judge used his/her discretion properly. These opinions are drafted by staff attorneys and reviewed by the panel. They normally consist of a short statement of the decision and the reason for it without a detailed analysis.

Decision on the Submitted Briefs, Without Oral Argument: If, after analyzing the briefs, the panel determines that the briefs contain all the information needed to make a reasoned decision, the panel may make that decision without hearing from the parties in oral argument.

⁸ From the Internal Operating Procedures of the Wisconsin Court of Appeals.

Oral Argument: Oral argument is the favored way to proceed in a case when the panel's workload permits. A constantly increasing number of filings has restricted the amount of time the Court of Appeals has available for oral argument, and in the past several years the total number of Court of Appeals oral arguments has stood between 50 and 60 per year. If the briefs do not adequately address an issue, or if one or both parties request oral argument, the panel may schedule an argument. Oral argument is conducted according to strict rules and under time limits, and the Court may limit the parties to specific areas omitted or not thoroughly discussed in the briefs. Also see accompanying diagram of a Court of Appeals oral argument.

Consolidation: Cases may be consolidated, meaning that similar cases are decided together.

Certification to the Wisconsin Supreme Court: Cases are certified to the Supreme Court when they present questions that cannot be answered adequately by applying existing law, or when two or more Court of Appeals panels have arrived at different results in cases that raise similar issues.

Step 2: Assignment to Submission Calendars

In order to ensure the speedy disposition of cases, the presiding judge for each district organizes a submission calendar to keep the cases moving along their various tracks. Except in unusual circumstances, a decision will be released or an oral argument will be scheduled within 45 days from when the last brief is received. When possible, and without undue delay in civil cases, preference is given to expedited and criminal appeals and appeals required by statute to be given preference.

Step 3: Submission

After the case is placed on the submission calendar, each judge who will participate in the case reads the briefs and becomes familiar with the record, the parties' contentions, and the principal authorities relevant to the questions presented. If a case is set for oral argument, the judges who will make up the panel will confer prior to the argument to identify the issues needing exploration and to plan its questioning of counsel.

Step 3A: Oral Argument (only conducted in selected cases)

The three-judge panel hears attorneys' arguments and asks questions.

Step 4: The Decision

Tentative decision conferences are held as soon as possible following oral arguments. Cases decided on briefs alone are taken up in decision conferences scheduled by the presiding judge. Tentative decisions can be revised, altered, or reversed throughout the process until an opinion is released.

After the tentative decision is reached, a judge who is part of the majority is chosen by lot to write the opinion. The author then completes a draft and circulates it to the other members of the

panel. The panel reviews the proposed opinion. If all the deciding judges agree, the opinion becomes final. If a deciding judge thinks changes are necessary or disagrees with the decision, s/he informs the opinion writer, preferably prior to opinion conference. The opinion writer may accept some or all of the suggestions. If substantial changes are made, the rewritten version is circulated.

The average time for rendering a decision should not exceed 40 days, and the maximum time for any case, except one of extraordinary complexity, should not exceed 70 days.

Step 5: Opinion Releases

Each district releases its opinions to the parties and the public on a designated day of the week. After the decision is filed, parties may promptly file requests with the clerk asking for reconsideration of a decision. The court is obliged to consider such requests but need not respond to them. The party that loses may petition the Wisconsin Supreme Court to review the case, but unlike the Court of Appeals, the Supreme Court only takes cases that meet specific criteria (see Chapter 3: Wisconsin Supreme Court).

Step 6: Publication

When appellate opinions are published, they become the law of the state and will be cited as precedent in future cases. The judges who decide a case make a recommendation to the Publication Committee (comprised of judges designated from each Court of Appeals district) regarding whether the case merits publication. The Publication Committee meets monthly to decide which opinions should be published. In addition, the chief staff attorney may prepare a memorandum analyzing the publication position taken by the parties in their briefs, potentially conflicting opinions from other panels, and recent applicable pronouncements by the United States and Wisconsin Supreme Courts. The Publication Committee reviews the panel's and staff attorney's positions and votes on whether an opinion should be published. Opinions are published upon a majority vote of the committee.

Chapter 5: Wisconsin Circuit Court

History

Article VII of the Wisconsin Constitution as amended in April 1977 creates the circuit court as a single level, unified trial court with original jurisdiction in all civil and criminal matters within the state.

Organization

The state's 241 circuit court judges sit in circuits which, under the state Constitution, are bound by county lines. With the exception of six counties that are paired together, each county constitutes one circuit comprised of one or more branches. The number of branches is equal to the number of judges on a particular circuit. The six paired counties are Buffalo/Pepin, Florence/Forest, and Shawano/Menominee. The first two pairs are each staffed by a single judge who travels between the courthouses. Menominee County is a federal reservation and both judges for this circuit are located in Shawano. Of the remaining circuits, 27 have a single judge and the largest circuit is Milwaukee County with 47 judges.

The state's 72 counties are grouped into 10 judicial administrative districts. Districts range in size and geography from District One, consisting of only Milwaukee County, to District Ten with 23 judges in 13 counties covering 12,633 square miles.

Management

In each judicial administrative district there is a chief judge appointed by the Wisconsin Supreme Court. The chief judge supervises and directs the administration of the district. Each chief judge appoints a deputy chief judge to act in the event of his or her absence or unavailability. A professional district court administrator and a court management assistant work with the chief judge to administer the business of the courts. The chief judges meet monthly as a committee, as do the district court administrators.

Overall court system management is directed by the chief justice of the state Supreme Court and managed by the director of state courts, the chief non-judicial officers of the court system. The director and central staff work with the chief judges, district court administrators, clerks of

court, registers in probate, juvenile court clerks, and others to continually assess the management of the trial courts, relay and implement Supreme Court policies, and assist in policy development.

Selection of Judges and Clerks

The Wisconsin Constitution requires that judges be licensed to practice law in Wisconsin for at least five years prior to election or appointment to the bench. Circuit judges are elected in individual counties to six-year terms in non-partisan spring elections. Vacancies are filled by gubernatorial appointment and the appointee is required to stand for election to a full six-year term the next spring.

Since 1955, Wisconsin has permitted retired justices and judges to serve as "reserve" judges. At the request of the chief justice of the supreme court, reserve judges temporarily fill vacancies or help to relieve congested calendars. They exercise all the powers of the court to which they are assigned.

Clerks of circuit court are independently elected, constitutional officers who work in close cooperation with the chief judges, district court administrators, and central staff of the Director of State Courts Office. They serve two-year terms and run for election on party tickets in fall elections. The clerks provide vital management and administrative leadership in each circuit.

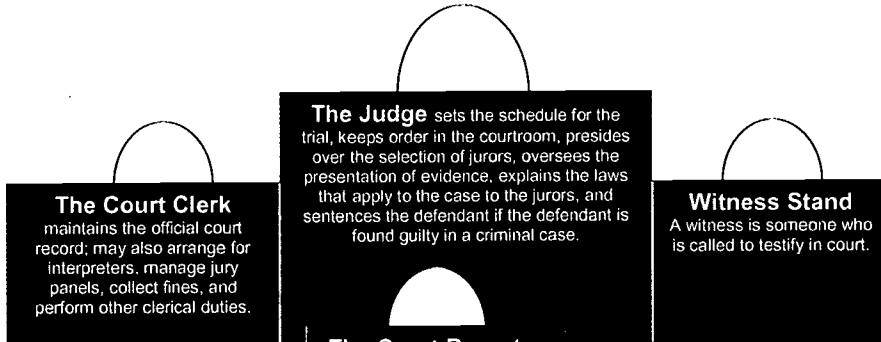
Funding for the Circuit Courts

The circuit courts are funded with a combination of state and county money. State funds are used to pay the salaries of the judges, official court reporters, and reserve judges. The state also funds travel and training for the judges. By law, the counties are responsible for all other operating costs except those enumerated by statute. For those exceptions, which include among other things the costs of providing guardians ad litem (court-appointed attorneys), court-appointed witnesses, interpreters, and jurors, the state provides assistance in the form of grants. In 1999, state funds expended on the circuit courts totaled \$71.5 million while the counties contributed \$92.8 million.

Workload of the Circuit Courts

The state's judges and court staff are busy. In 1999, 395,796 contested cases were filed in the trial courts. An additional 610,034 uncontested cases were disposed. In contested matters, the caseload consists of the following: 34 percent criminal cases, 26 percent civil cases (including family), 8 percent delinquency and CHIPS (children in need of protection and/or services) cases, 10 percent probate cases, and 22 percent forfeiture cases.

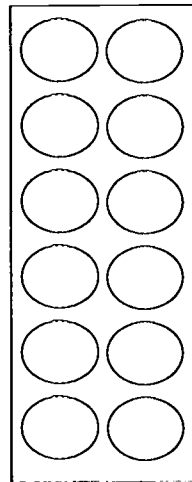
WISCONSIN CIRCUIT COURTS



The Bailiff
keeps order in the courtroom and takes charge of the jury to ensure that nothing interferes with its deliberations.

The Court Reporter
records what is said during a proceeding and prepares an official transcript. If the case is appealed to a higher court, the transcript is used to review what happened in the trial court.

A Jury consists of 12 people who are selected to hear the evidence in a civil or criminal trial. The evidence is offered by the plaintiff in a civil trial and by the prosecutor in a criminal trial. After the jurors hear the evidence presented during a criminal trial, they must try to decide if the defendant is guilty or not guilty. In a civil trial, at least 9 of the 12 members of the jury must agree. In a criminal trial, all 12 members of the jury must agree.



An Interpreter may also take part in a case when non-English speaking parties are involved.

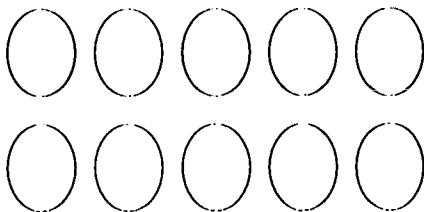
Counsel for the Plaintiff
This lawyer explains the case to the judge and jury. He/she wants the court to find that what happened WAS NOT legal.

Counsel for the Defendant
This lawyer explains the case to the judge and jury. He/she wants the court to find that what happened WAS legal.

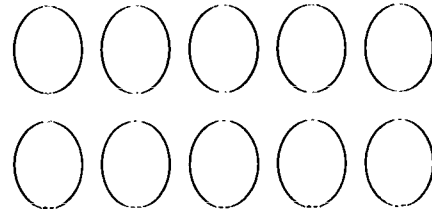
A plaintiff (or complainant) is an individual, group of people, government, or corporation that feels wronged in some way and brings the issue to court to be resolved. In a criminal case, a attorney who works for the government, called a prosecutor, brings the case to the court.

In a criminal case, the defendant has been charged with a crime; in a civil case, the defendant has been accused by the plaintiff of causing some harm.

The plaintiff and the defendant are called the parties in a case. In some instances, either party may choose not to be represented by a lawyer. When a non-lawyer represents himself/herself, s/he is called a pro se litigant.



The Public
Most state court proceedings are open to the public, including members of the media.



Teaching Resources

Wisconsin Circuit Courts

The Sentencing Exercise

Overview

This exercise is based on an actual Wisconsin case. The names and location have been changed and the date of the offense was moved up so that the sentencing could be handled under the state's Truth in Sentencing law, which went into effect for crimes committed on or after December 31, 1999.

Under Wisconsin's previous sentencing system, an offender rarely served the prison term actually imposed. Instead, incarceration would run between one-quarter and two-thirds of the court-imposed sentence and the offender would then become eligible for parole. Because the Parole Commission made the decision on whether to grant parole, the judge often had only a general notion at sentencing of how long the defendant might actually serve.

Those taking part in this sentencing exercise will know for certain that Lisa Williams will serve every day of any prison time she might be given.

Objectives

As a result of this activity, students will be able to:

- Explain how circuit courts review cases and how judges determine sentences.
- Determine the appropriate sentence for an offense based on the facts and the law.

Standards

This lesson meets the following **Wisconsin Model Academic Standards**:

C.12.1: Students will identify the sources, evaluate the justification, and analyze the implications of certain rights and responsibilities of citizens.

C.12.5: Students will analyze different theories of how governmental powers might be used to help promote or hinder liberty, equality, and justice and develop a reasonable conclusion.

C.12.8: Students will analyze information from various sources to understand and communicate a political position.

E.12.16: Students will identify and analyze factors that influence a person's mental health.

Materials

Handouts on pages 76 through 83.

Procedures

There are two ways to conduct this exercise.

Method #1 (90 minutes)

1. Invite a circuit court judge from your county to come to class and help conduct the exercise.
2. Before the judge says anything, have the class sentence Lisa Williams based solely upon the news article.
3. Ask for a show of hands on various broad sentencing options (i.e. how many for straight probation? How many for less than 10 years in prison, etc.) Record the results.
4. Now let the judge explain the steps that the case would have gone through prior to the sentencing and have him/her preside over a mock sentencing hearing. Students who have been prepared in advance can act out the hearing, playing the defense attorney, the defendant, the prosecutor, and the victim. The "attorneys" give their arguments and the defendant and victim each give a heartfelt statement. In preparation, you might have real attorneys work with the students to prepare them.
5. After they hear the testimony, students should be given 10 minutes to study the presentence report.
6. Have the class sentence Lisa Williams again, based upon the testimony and presentence report.
7. Again, ask for a show of hands to glean where sentences are falling (generally sentences based solely on the media account are much stiffer than those based on the facts of the case).
8. Have the judge tell how he/she would have sentenced the offender and why.
9. Discuss the sentencing process and judicial independence, the concept upon which the integrity of the court system rests. Judicial independence means that judges decide cases fairly,

impartially and according to the facts and the law, not according to whim, prejudice, fear, editorials or newspaper articles, the dictates of other branches of government or the latest public opinion poll.

Method #2 (45 minutes)

1. Have the class sentence Lisa Williams based solely upon the news article.
2. Ask for a show of hands on various broad sentencing options (i.e. how many for straight probation? How many for less than 10 years in prison, etc.) Record the results.
3. Now the resource person (an invited local judge or attorney) explains the steps that the case would have gone through prior to the sentencing. S/he then gives a brief summary of what each side would be expected to say (having the presenter switch between a black robe and two different suit jackets may help make the judge/prosecutor/defense attorney roles more clear, and definitely adds interest).
4. After they hear from "both sides," the students should be given 10 minutes to study the presentence report.
5. Have the class sentence Lisa Williams again, based upon the summaries and presentence report.
6. Again, ask for a show of hands to glean where sentences are falling (generally sentences based solely on the media account are much stiffer than those based on the facts of the case).
7. Have the resource person give his/her sentence and explain it.
8. Discuss the sentencing process and judicial independence, the concept upon which the integrity of the court system rests. Judicial independence means that judges decide cases fairly, impartially and according to the facts and the law, not according to whim, prejudice, fear, editorials or newspaper articles, the dictates of other branches of government or the latest public opinion poll.

Boy Injured by Drunk Driver Succumbs to Head Injury

Greendale - James Day, the 14-year-old boy who was critically injured by an alleged drunken driver three days ago died last night at Mercy Hospital.

Prosecutors plan to upgrade the charge against Lisa Williams to homicide by intoxicated use of a motor vehicle. Williams will face additional charges for injuring Day's father, Patrick, and for driving drunk with her own two young children in her vehicle.

James and Patrick Day were riding their bicycles together on the side of the road when Williams' mini-van struck them. The boy suffered severe head injuries and never regained consciousness; his father lost his right arm in the accident.

Police reported that Williams was slurring her speech and stumbling at the scene of the accident. Her blood-alcohol content was .12, which is above the legal limit.

Presentence Investigation Face Sheet

Wisconsin Department of Corrections

Name of Offender: Lisa Williams

Date of Birth: 2/1/60

Residence: 1000 Overlook Lane
Greendale, WI 53129

Race: African-American

Birthplace: New York

Offense(s)

And Penalties: Homicide by Intoxicated Use of a Motor Vehicle, 940.09(1)(a) & (b)
Imprisonment of up to 80 years (40 years doubled because of presence
of minors in car). Followed by extended supervision for up to 20 years.

Injury by Intoxicated Use of a Motor Vehicle, 940.25(1)(a) & (b)
Imprisonment of up to 10 years (5 years doubled because of presence of
minors in car). Followed by extended supervision for up to 5 years.

Date of Offenses: 6/3/00

Plea(s): Guilty

Date of Conviction: 8/3/00

Date Sentenced: Today

Court Case Number: F98-1111

County of Offense: Milwaukee

Court Branch: 1

Agent Name: Joan Friendly

Presentence Report

DESCRIPTION OF OFFENSES

On June 3, 2000, at 10:30 p.m., Lisa Williams was driving home in her 1997 Chrysler van with her children (Ann, 6, and John, 8). She veered off the road as she reached the top of a hill and her van struck Patrick Day, 45, and his son James, 14, as they rode bicycles on the shoulder. As a result of the accident, Patrick Day lost the use of his right arm. James suffered severe head injuries and died after three days in the hospital. Williams and her two children were not injured.

When police arrived, they smelled a strong odor of alcohol on Williams' breath, her speech was slightly slurred, and she had balance problems. Police took her to the station, where she submitted a breath sample. The results of the Intoxilyzer revealed an alcohol concentration of .12.

Williams was charged with Homicide by Intoxicated Use of a Motor Vehicle contrary to Wisconsin Statutes Section 940.09 (1)(a) & (b), and Injury by Intoxicated Use of a Motor Vehicle contrary to Wisconsin Statutes Section 940.25 (1)(a) & (b). Because she had minor children in her vehicle at the time of the accident, the potential penalties for each offense are doubled.

OFFENDER'S STATEMENT

This agent interviewed Williams on three occasions. She was extremely emotional, appeared depressed, and was very remorseful for her actions.

She reported that, on June 3, 2000, she awoke at approximately 5 a.m. as is her normal routine. She did some work on her computer for one hour and then woke her two children and got them ready for school. Ann is in first grade at Canterbury School in Greendale and John is in second grade at the same school.

After taking her children to school, Williams went to her office in downtown Milwaukee. She owns and operates a computer business that employs 10 people.

She worked until 5 p.m. when she went to the Greendale Village Hall to chair the monthly School Board meeting. Williams was elected to the Greendale School Board in 1994 and was selected as chair in 1997.

When the meeting concluded at 7:30 p.m., Williams went to a bar/restaurant in Greenfield with a friend. She stayed there until 9:45 p.m., discussing with a friend the recent death of her husband. While at the bar/restaurant, she drank scotch. She does not know the exact number of drinks she had, but she stated that she knew she had too much to drink. Her friend offered to drive her to the home of her child-care provider to pick up the children and then drive them all home, but Williams declined. She picked up her children at about 10:15 p.m. and headed home. The children had been asleep and were cranky and causing a disturbance in the back seat of the van. As she approached the crest of a hill, she turned around to tell the children to calm down and her van then veered off the road and onto the shoulder. Just after she went over the crest of

the hill, she turned forward and saw a man and a boy on bicycles on the shoulder directly in front of her van. She tried to pull her van back onto the roadway to avoid hitting the man and the boy but she was unsuccessful. She immediately stopped her van and got out to check on them. She observed that the boy was extremely bloody and "he seemed to be in excruciating pain" and that the man's right arm was almost severed from his body at the shoulder. She then used her cell phone to call 911. The police and an ambulance arrived within minutes and took the man and boy to the hospital and Williams to the police station. After she tested at .12, she was arrested and her children were turned over to the Department of Health and Family Services. The children were initially placed in foster care because Williams does not have family in the Milwaukee area. After she was released, they were returned to her. They currently live together as a family.

Williams said she knows she had too much to drink and should not have been driving. She said that talking with her friend about the recent death of her husband (a cardiologist who was shot and killed in April 2000 while attempted to stop a sexual assault in the parking structure at Milwaukee Hospital) caused her to drink more than she otherwise would have.

Williams is very concerned about the upcoming sentencing. She knows that what she did is extremely serious and recognizes that she must be punished for what occurred. She also indicated that she knows the Day family has suffered severe financial hardship as a result of her conduct and she is willing to take financial responsibility for them. She indicated that she is a good mother and a good person and she believes that if she goes to prison her children will be "harmed for life" and that she will lose her business. She hopes that the court will put her on probation and allow her to remain in the community. She also stated that more than 100 people from the community will be submitting a petition to the court asking that she be given probation.

VICTIM'S STATEMENT

This agent interviewed Patrick Day on two occasions. He advised that on June 3, 2000, at around 9 p.m. he and his son, James, went for a bike ride. They were training for a 50-mile race later in the month. As they were on their way home approaching the top of a hill, riding on the shoulder, Williams' van hit them and threw them both a great distance. Patrick Day's arm was almost severed at the shoulder and James Day sustained severe head trauma. Patrick Day's arm was reattached but he has lost use of it for work purposes. James Day died three days later, and his father stated that the boy suffered terribly during the last three days of his life.

Patrick Day was an auto mechanic before this accident. He owned his own, one-man business that he has now lost as a result of his injury. He has filed for bankruptcy and feels ashamed.

Patrick Day said that he and his wife, Jane, (who is president of the local chapter of MADD) have been married for 20 years. When they wed, they hoped to have a large family; however, because of a medical condition, they were advised that they might never have a child. After six years of trying, Jane Day became pregnant with James. He was born healthy, but Jane Day will not be able to have more children. The doctors told them that it was a "miracle" that James was born. He was the center of their lives.

Patrick Day said that he wishes Wisconsin had the death penalty. He will appear in court to ask the judge to sentence Williams to the maximum. His wife and many members of MADD will also be present. MADD will deliver a petition signed by more than 100 people asking for the maximum sentence.

PRIOR RECORD

Adult Record: None
Juvenile Record: None
Traffic Record: Reckless Driving (reduced from Operating a Motor Vehicle While Under the Influence of an Intoxicant). Occurred in New York in 1990
Pending Charges: No others

FAMILY BACKGROUND

Father: John, 60, physician in New York
Mother: Mary, 60, attorney in New York
Siblings: None

PERSONAL HISTORY

Academics: BA, Business Administration, New York University, 1981; MBA, Columbia University, 1983

Employment: Owns and operates a computer business in Milwaukee. Has been in business since move to Milwaukee in 1992. Business has expanded and now employs 10 people. From 1983 to 1992 was a consultant at IBM in New York City.

Financial Management: Currently grosses approximately \$95,000 per year. Paying off a mortgage on her home. Expects to receive more than \$500,000 from late husband's estate.

Marital Relationships: Married David Williams in New York in 1991. Happily married with two children. She felt her life was over when he died. Has been extremely depressed and had scheduled first grief counseling appointment for June 5, 2000.

Leisure Activities: Spends much time with her children and devotes substantial time to school board.

Emotional Health: Since accident, reports that she has had thoughts of suicide. Very depressed about grief she has caused and concerned about what will happen to her children. They will go to New York to live with her parents if she is incarcerated; she reports fearing they will grow apart and forget her. Reports that life is a "living hell."

Physical Health: Diagnosed with breast cancer in 1993, one year after birth of daughter Ann. Underwent lumpectomy, chemotherapy, and radiation therapy. No further problems, but she fears it could recur.

Alcohol/Drug Use: Reports that she has never used illegal drugs. In 1990, was arrested for drunk driving but it was reduced due to her clean record. That incident did not involve an accident. Indicated that she successfully completed a counseling program and that the night of this accident was the first time since then that she has driven after drinking.

Religion: Practicing Roman Catholic. Children attend CCD classes at the church; she is a CCD teacher at the church.

ADDITIONAL INFORMATION

This agent has been contacted by many individuals regarding this sentencing. People have called in support of Williams and on behalf of the Day family. Petitions have been received on

SUMMARY AND CONCLUSIONS

Agent's Assessment and Impressions: Williams was very cooperative with the pre-sentence process. She admits the offenses and shows genuine remorse for her conduct and for the emotional, physical, and financial pain she has brought upon the Day family. She was raised with strong values, is gainfully employed, and is a good mother. Williams had a problem with alcohol in the past that this agent does not believe she adequately addressed.

Restitution Information: The Day family has suffered extreme economic hardship. An exact figure is not available at this time.

Recommendation: Sentencing in this case is extremely difficult. There is much good to be said about Williams. She is a woman who has worked hard to make a good life for herself, her family, and her community. She has devoted her life to others and has tried to overcome difficulties such as her husband's death and her breast cancer by maintaining a positive attitude. This agent has never encountered such genuine remorse from a defendant.

On the other hand, her offenses are egregious and their impact on the Day family is tragic. This court must attempt to fashion a sentence that properly balances the nature of the offenses with the character of the defendant in light of the interests of society.

Respectfully submitted,

Joan Friendly, MSSW
Probation Agent

Goals of Sentencing

In sentencing offenders, judges should be cognizant of the reasons they are selecting certain sentences. There are four primary sentencing goals:

1. Deterrence of crime

General deterrence: the offender is punished as an example to others.

Specific deterrence: the threat of repeated punishment deters the offender from future acts of criminal behavior.

2. Incapacitation of the offender

The offender will continue to commit crimes unless such conduct is made physically impossible either by banishment, incarceration, or death. The goal is to remove the offender from society because the criminal behavior is a risk to the community's safety.

3. Retribution

The social peace and order of the community must be preserved and reaffirmed by sanctions against the criminal behavior. The goal is to punish the offender for the criminal behavior involved.

4. Rehabilitation

Future criminal conduct can be prevented by programs designed to eliminate or substantially reduce the offender's criminal propensities. The goal is to restore the criminal offender to a useful life through education and therapy.

Sentencing Worksheet

	Based on news report	Based on all information
<p>Count 1: Homicide by Intoxicated Use of a Motor Vehicle</p> <p>Maximum sentence: 80 years in prison.</p> <p>Count 2: Injury by Intoxicated Use of a Motor Vehicle</p> <p>Maximum sentence: \$20,000 fine, 10 years in prison.</p>	State Prison: ____ years/count 1 State Prison: ____ years/count 2	State Prison: ____ years/count 1 State Prison: ____ years/count 2
	Probation: ____ years/count 1 Probation: ____ years/count 2 Conditions of Probation:	Probation: ____ years/count 1 Probation: ____ years/count 2 Conditions of Probation:
	County Jail: ____ months/count 1 County Jail: ____ months/count 2	County Jail: ____ months/count 1 County Jail: ____ months/count 2

In the actual case, the defendant faced a maximum of 10 years on the homicide charge. In recent years, the Legislature has reclassified this crime and increased the maximum penalty on each count substantially.

Chapter 6:

Judicious Election of Judges

Judicial Independence and Wisconsin's Electoral Tradition

The concern for judicial independence goes back to the Declaration of Independence, where, in listing their grievances against King George, the authors complained: "He has made judges dependent on his will alone, for the tenure of their offices, and the amount and payment of their salaries." What is judicial independence? It is the concept that judges can and must make decisions based on the facts and the law alone. It means that a judge's decisions cannot be swayed by his/her personal beliefs or by the beliefs and opinions of others, including other branches of government. Chief Justice Shirley S. Abrahamson, in her 1999 State of the Judiciary address, explained judicial independence this way:

Judicial independence embodies the concept that judges decide cases fairly, impartially and according to the facts and the law, not according to whim, prejudice, fear, the dictates of other branches of government or the latest public opinion poll. Judicial independence is a means to an end, the end being the resolution of disputes based on law. Judges must have the independence to adhere to the rule of law and protect the rights of the few against the many. Yet they must also be accountable so that the public is assured of fairness and competence.

To protect judicial independence, the framers of the U.S. Constitution made the judicial branch separate from the executive and legislative branches. The other branches do, however, share the power to select federal judges. As the frontier pushed westward and states wrote their own constitutions during the era of Jacksonian democracy (1828-1845), many states chose to give their judiciaries even greater independence from the executive and legislative branches. Wisconsin is an example of a state that instituted an elective system for its judges. State founders believed that "inasmuch as both executive and legislative officers were elected by the people, consistency demanded that the judicial branch, of a constitutionally co-equal and independent dimension, also be elected in order to have a claim to legitimacy." Today, the people of Wisconsin elect all of their judges in non-partisan spring elections. Around the nation, 87 percent of appellate and trial judges in state courts are selected through direct (sometimes partisan, sometimes non-partisan) or retention election (where voters are not choosing between two candidates, but instead deciding whether to retain a sitting judge). The rest are selected in various ways, including merit selection by nominating commissions and gubernatorial appointment.

The Wisconsin Constitution has few specific directives regarding the election of judges. These two directives apply to judges for all courts:

• First, because judgeships in Wisconsin are non-partisan, judicial elections take place with the elections for other non-partisan offices on the first Tuesday in April. This date is chosen to fulfill the Constitution's requirement that "There shall be no election for a justice or judge at the partisan general election for state or county officers, nor within 30 days either before or after such election" (Article VII, Section 9). Many believe that if judges were permitted to belong to political parties and run with party labels, they might feel obligated to make decisions that uphold that party's values, or might not be perceived as fair by a litigant of a different political stripe who appeared before them.

• Second, there is but one constitutional qualification to run for a judgeship: "A person must be an attorney licensed to practice law in this state and have been so licensed for 5 years immediately prior to election or appointment" (Article VII, Section 24, Subsection 1). Some believe that abolishing Wisconsin's electoral tradition and adopting an executive nomination/legislative approval formula for selecting state judges at all levels would ensure that judicial candidates have far more than the minimum experience. Others argue that infusing politics into the selection of judges could produce judges who are less qualified, but well connected.

In reality, the governor and his screening committee do choose many of Wisconsin's judges. When a mid-term vacancy occurs in the trial or appellate courts, a judicial nominating commission established by state law screens applicants for the open judgeship and makes recommendations to the governor, who then makes the final selection. Following appointment, the new judge runs in the next spring election as an incumbent. About half of all sitting judges in Wisconsin initially ascended to the bench by gubernatorial appointment rather than election. Some see this as weakening the state's commitment to letting the people select judges. Others point out that the appointive process has brought diversity to the judiciary, as most of the state's minority judges initially rose to the bench through appointment, and that the judicial nominating commission has a long history of selecting well qualified candidates.

Teaching Resources

Judicious Election of Judges

Mock Judicial Campaign

Overview

In this 135-minute lesson, students will learn about the selection of Wisconsin judges and will form opinions on whether reforms are needed to control campaign conduct. Working in a group, students will wage a judicial campaign and then discuss how restrictions on campaign speech affect voters, candidates, and ultimately judicial independence.

Note: This lesson does not explore campaign finance reform. There are two reasons for this: first, the question of how election campaigns should be financed is for the Legislature, and not the courts, to decide. Second, because proposals on campaign finance reform surface nearly every legislative session, we believe any information we might commit to print would quickly become outdated and misleading.

Objectives

Through this lesson, students will:

- Learn how judges are selected in Wisconsin and the restrictions placed on judicial campaigns.
- Analyze the role of the citizen as voter and media consumer.
- Make individual and cooperative judgments about contemporary policy debates, and share their judgments with others.
- Define and apply the concept of judicial independence, including its history, its implications for the separation of powers, and the ways people negotiate its meaning and enactment in Wisconsin today.

Standards

This lesson meets the following Wisconsin Model Academic Standards:

C.12.4: Explain the multiple purposes of democratic government, analyze historical and contemporary examples of the tensions between those purposes, and illustrate how governmental powers can be acquired, used, abused, or legitimized.

C.12.1: Identify the sources, evaluate the justification, and analyze the implications of certain rights and responsibilities of citizens.

C.12.8: Locate, organize, analyze, and use information from various sources to understand an issue of public concern, take a position, and communicate the position.

C.12.6: Identify and analyze significant political benefits, problems, and solutions to problems related to federalism and the separation of powers.

Materials

Background materials and sample incumbent and challenger biographies are on pages 90-97.

Procedures

1. Students begin learning the background of these issues either by reading the information on pages 90-95 or through a short lecture by a teacher or resource person. (30 minutes)

2. Following this, the class splits into two teams—the Incumbent Team and the Challenger Team (see handouts describing each of the “candidates”). Each team will conduct a mini judicial campaign, which will include developing print and radio announcements and writing and delivering a brief campaign speech. Teachers may choose to have students conduct the campaign under stringent limits on campaign speech, or under looser limits, and discuss the pros and cons of each approach. and Each group divides into three subgroups, one to work on each component of the project. One person in each group is chosen to be the judicial candidate. (15 minutes)

3. The subgroups develop:

- A 30-second radio spot
- A print ad or campaign flyer (students could be given transparencies to create these so that they could be shown to the entire class)
- A three-minute speech

(45 minutes)

4. Each group airs its radio advertisement, previews its flyer or print ad, and presents its speech. (25 minutes)

5. The teacher leads a discussion of the pros and cons of restrictions on judicial campaign speech:

- How the restrictions or lack thereof affected their opinions, as voters, of the candidates.
- Whether each approach diminished or increased their trust and confidence in the court system, and their perception of the dignity of the office.
- What challenges the restrictions created in the development of an effective campaign.

(20 minutes)

Possible follow-up activities:

- Write a letter to the editor of the local newspaper or to the Wisconsin Supreme Court on the issue.
- Meet with a local judge to discuss how s/he conducted a recent election.
- If this lesson is conducted between March and April (when judges are campaigning throughout the state), track a local or statewide judicial campaign in the media.

Lesson developed by Diana Hess, Karen Leone de Nie, Julie Posselt, Amanda Todd

The Future of Judicial Elections

In March 1997, the Wisconsin Supreme Court created the Commission on Judicial Elections and Ethics. The body is more commonly called the Fairchild Commission, for Chair Thomas E. Fairchild, senior judge, U.S. Court of Appeals, Seventh Circuit. The commission's task was to review the provisions of the current Code of Judicial Conduct that address political and campaign activity of judges and candidates for judicial office, determine how well those provisions address issues relevant to the Wisconsin non-partisan elective system, and recommend changes. The Commission issued its report in June 1999 and the Court held a public hearing on it in November 2000. As of June 2001, the Court was still debating the proposal.

The current Code of Judicial Conduct contains the following language on campaign-related speech:

A judge who is a candidate for judicial office shall not make or permit others to make in his or her behalf promises or suggestions of conduct in office which appeal to the cupidity or partisanship of the electing or appointing power. A judge shall not do or permit others to do in his or her behalf anything which would commit the judge or appear to commit the judge in advance with respect to any particular case or controversy or which suggests that, if elected or chosen, the judge would administer his or her office with partiality, bias or favor.

The Fairchild Commission has recommended that the above language be replaced with:

A judge or judicial candidate shall not do or authorize others to do in his or her behalf anything which would commit or appear to commit the judge or judicial candidate in advance with respect to any particular case, or controversy, or legal issue likely to come before the court to which election or appointment is sought, or which suggests that, if elected or chosen, the judge or judicial candidate would administer his or her office with partiality, bias or favor. Nothing herein shall restrict a judge or judicial candidate from making statements of position concerning court rules or administrative practices or policies.

The proposed rule eliminates the reference to appeals to cupidity or partisanship and substitutes the word "authorize" for "permit" to make it clearer that a judge or candidate cannot be held responsible for the actions of others. The last sentence, coupled with the earlier reference to "legal issues," makes it clear that candidates are free to take campaign positions concerning court rules, policies and practices not related to legal issues before the court or likely to come before the court. Most states have some rule like this, although some that have general prohibitions rather than specific directions have been found to be unconstitutional.

Advocates of the change say that this new rule would maintain judicial independence without compromising a candidate's ability to discuss judicial philosophy, experience, and other qualifications for office. In addition, it would help to prevent inappropriate rhetoric. The new rule would not prohibit discussion of judicial philosophy or even discussion of a particular case, as long as the discussion did not lead to promises by either candidate on how they would decide similar cases. But there is controversy over this proposed new rule. What kind of past cases could be discussed under the proposed language? Only those that have constitutional implications? None at all? Does the public understand that legislators and judges make their decisions based on extensive research that the public has not seen (and not just based on personal opinions toward an issue)? The justices' answers to these and other questions will determine whether the proposed rule is adopted.

Overhead Transparency

What Can Judges and Judge-Candidates Say During Campaigns?

Current:

(3) Promises. A judge who is a candidate for judicial office shall not make or permit others to make in his or her behalf promises or suggestions of conduct in office which appeal to the cupidity or partisanship of the electing or appointing power. A judge shall not do or permit others to do in his or her behalf anything which would commit the judge or appear to commit the judge in advance with respect to any particular case or controversy or which suggests that, if elected or chosen, the judge would administer his or her office with partiality, bias or favor.

Proposed:

(b) Promises and commitments. A judge or judicial candidate shall not do or authorize others to do in his or her behalf anything which would commit or appear to commit the judge or judicial candidate in advance with respect to any particular case, or controversy, or legal issue likely to come before the court to which election or appointment is sought, or which suggests that, if elected or chosen, the judge or judicial candidate would administer his or her office with partiality, bias or favor. Nothing herein shall restrict a judge or judicial candidate from making statements of position concerning court rules or administrative practices or policies.

Freedom of Speech and Judicial Elections: Accountability v. Judicial Independence

To protect judicial independence, ethics canons prohibit judges and candidates for judgeships from making campaign promises, and limit what judicial candidates can say on their own behalf. Judicial candidates may not discuss their political philosophies, their stands on certain political issues, and their opinions on cases that could come before them if they were elected. Judicial candidates cannot reward their supporters with favorable case decisions or work with special interests to advance shared objectives. And because judicial candidates do not run on platforms, judicial elections tend to attract scant media attention, giving the public little information to weigh the candidates' qualifications.

Many say this is unfair to candidates and to voters, and leads to weak public participation in judicial elections. Here are the arguments on both sides:

Accountability

If judges and judge candidates cannot discuss their positions on issues, what can they discuss that will allow voters to learn about them? Incumbent judges should be free to answer questions about why they have ruled in certain ways in past cases, and challengers should be able to highlight differences between themselves and the incumbent by discussing how they might have ruled. Judges and judge-candidates can easily make clear in their public discussions that they are speaking only about the past case with its unique facts and not suggesting what they might do in a future case with different facts.

In its recommended rule on judicial elections and ethics, the Fairchild Commission was sensitive to the need to preserve candidates' First Amendment rights. The commission wrote: "[this] rule is not intended to nor does it prohibit judicial candidates from commenting on a particular 'controversy, or legal issue likely to come before the court', but rather from committing or appearing to commit in advance with respect to outcomes or decisions. The commission declined to specify where judicial campaign speech crosses the line: "It is most difficult to codify a line between a challenger's criticism of a judge's past ... opinions ... which is relevant to that judge's (or candidate's) judicial philosophy and ... criticism which is an attempt to exploit emotional public response to such decisions or opinions...."

An article titled *Electing Justice* from the American Judicature Society says, "It could also be argued that restrictions on legal and political debate cut off discussion that could enliven judicial campaigns. No one suggests that liveliness be purchased at any cost, but restrictions on legal and political debate arguably exacerbate the already serious problem of voter apathy in judicial elections. Set against these concerns is the state's interest, and indeed the public's interest, in preserving the independence and integrity of the judiciary, and in assuring that the electorate is not misled about the nature of the judicial office."

Judicial Independence

Judicial campaigns are different than other campaigns and must be run differently. Judges cannot make promises to vote a certain way on certain cases if elected. Challengers cannot be permitted to assail incumbents on their decisions, because the obvious inference is that the challenger would decide the case differently.

All legal issues come back to court again and again in slightly different forms. Engaging in analysis of past case decisions will take candidates dangerously close to signaling how they will vote in future cases. The Fairchild Commission wrote: "Transforming an election into an electoral review of a judge's opinion, conscientiously arrived at, is an attack on the independence of all our judges. Moreover, an attack on a past decision or opinion almost always implies a promise that the challenger would decide or vote differently on similar issues in future cases and thus violates [the Supreme Court Rules]."

The American Bar Association's Model Code Canon 5A does not require fairness in judicial campaigns, only that a candidate not "knowingly misrepresent" facts concerning him/herself or his/her opponent. Even truthful statements, however, can be misleading. One form of misleading irrelevancy is judicial campaigning on political issues such as whether penalties for a crime should be toughened. Judges have no power to change laws; that power resides with the Legislature. But voters may be misled, according to *Electing Justice*, "into believing that these views are relevant, and thus a legitimate basis on which to choose between candidates...."

Freedom of Speech and Judicial Elections: three views

Judicial candidates must remain silent on their personal views

Guest column by: Judge Harold V. Froehlich, Outagamie County Circuit Court Judge
The Capital Times, March 11, 2000

Recent editorials have called upon the candidates for Supreme Court to openly discuss their views on major legal issues. The Wisconsin Trial Judges Association has adopted a position opposing that practice.

We are very concerned about this request because any judicial candidate who complied would be in violation of the Wisconsin Judicial Code and therefore subject to discipline by the Wisconsin Judicial Commission.

Most state judicial ethics codes, including Wisconsin's, forbid candidates from announcing their views on disputed illegal and political issues. The rule is based on the proposition that such views are, or should be, irrelevant to the judge's task.

Specifically, the Wisconsin Judicial Codes prohibits a judicial candidate from making promises or suggestions of conduct while in office or commit in advance with respect to any particular case or controversy—that suggests the judge would administer his or her office with bias or favor.

For example: How can a party to a lawsuit whose position is opposite to the announced view of a judicial candidate believe they can get a fair trial or fair ruling from that candidate once on the bench? If the Supreme Court candidates respond as suggested in various editorials, public confidences in a fair and impartial justice system will be eroded. Judges take an oath to decide cases based upon the constitution, statutes, and case law, not on personal beliefs.

Editorials have also asked for comment on past decisions. This undermines the independence of all our judges. Moreover, an attack on a past decision almost always implies a promise that the challenger would decide or vote differently on similar issues in future cases—which, as previously mentioned, violates the Wisconsin Judicial Code.

We elect judges to apply the rule of law and protect our rights. A judge cannot judge issues prior to their being brought before the court and only after all sides are allowed to argue the law and facts of the case. Any judge or judicial candidate who prejudices issues not only violates the Judicial Code of Conduct, but more importantly, betrays the trust and faith we place in our courts.

Simply put, judges and judicial candidates cannot be allowed and should not be encouraged to prejudice issues and controversies during a campaign lest the fairness and impartiality of our system of justice be destroyed.

Protecting judges at voters' expense

Wisconsin State Journal, Jan. 15, 2001 (excerpted)

It is pointless to vote for a candidate when you have absolutely no idea where the candidate stands, especially when the candidate—and the candidate's opponent—are forbidden from telling you. You might as well decide by flipping a coin, playing "Eeny meeny miney mo" or deciding which one has the better hair style.

In short [the proposal of the Commission on Judicial Elections and Ethics, which has recommended that judges and candidates for judgeships not be permitted to make statements during a campaign that might telegraph how they would rule on a given issue] allows judges to bury their mistakes faster than doctors do. It protects them from legitimate criticism. And it virtually ensures an ignorant electorate.

As Justice William Bablitch said, the proposed rule is "anti-democratic, anti-accountability."

This election isn't worth it

Stevens Point Journal, Feb. 8, 1996 (excerpted)

Let's admit it. Electing Supreme Court judges doesn't work very well in Wisconsin. Same goes for Court of Appeals judges.

We should stop fooling ourselves and make these appointive positions. Days like Tuesday are a waste of everyone's time and money. Almost no one cares about these elections. To be more precise, more than 92 percent of the eligible voters in Wisconsin didn't care on Tuesday.

Little wonder that there isn't a lot of interest. Supreme Court judges run only once every 10 years. Candidates for these positions claim that they can't speak about key judicial issues because they may end up having to ponder those issues on the bench. On the one hand, this makes perfectly good sense. On the other, it's ridiculous.

Most of the candidates speak in generalities about their backgrounds and experience—it's always extensive—and spend a lot of time looking for names to put on lists of campaign supporters.

Wisconsin has a tradition of progressive government, which has always meant involving as many people as possible. In this case, though, an overwhelming majority of the citizens don't want to be involved. They don't give a hoot.

Biography of Incumbent

Charles Winston has been a justice of the Wisconsin Supreme Court since his appointment by Governor Tommy Thompson in 1990. He won election in an uncontested race in 1991 and is now running for re-election to another 10-year term.

Winston is of Native American descent (he is part Menominee) and was raised on the reservation in Keshena. He was the first in his family to earn a college degree, and earned his law degree at the University of Wisconsin Law School. He then returned to the reservation and started a free legal clinic for low income people. At the clinic, he worked mainly on family law matters. His "bread-and-butter" work consisted of helping the tribe to navigate the maze of legalities involved with opening and running casinos. It was through this work that he came to the attention of the Thompson Administration.

When the governor announced Winston's appointment to the Court (he filled the seat of a justice who retired mid-term), he emphasized Winston's breadth of legal knowledge and also the fact that he was the first Native American to sit on the state's highest court. Critics of the appointment were few, and came mostly from the far right wing of the Republican party which felt that Winston was a "feel-good" appointee who would not vote reliably with the conservatives.

During Winston's tenure on the Court, he has earned a reputation as a very hard worker and a superb writer. He has been middle-of-the-road and has been considered the swing vote in a number of key cases. One of the cases struck down a lower court ruling that had given police the authority to execute search warrants in drug cases without first knocking and announcing themselves. This decision, predictably, was met with outrage by law enforcement.

Winston has won the endorsement of nearly every trial court judge in the state. They value his well written opinions and appreciate the fact that he never turns down an opportunity to attend local judges' meetings and keep in touch.

Winston is married to a Native American woman and is the father of five sons, one of whom was arrested last month for drunken driving.

Biography of Challenger

Anne Tile has been on the bench in Milwaukee County Circuit Court for 15 years. She applied for the opening on the Supreme Court in 1990 when Justice Winston was selected and she was one of the finalists for the post.

Tile is white and was raised in the Milwaukee suburb of Whitefish Bay. Her father was a lawyer and a longtime, well-respected Milwaukee County judge and she ran for, and won, election to his seat when he retired. Prior to joining the bench, Tile worked for a "silk stocking" law firm with offices in Milwaukee, Chicago, and Madison. She concentrated on employment discrimination litigation, representing employers who were being sued by employees for alleged violation of anti-discrimination and safe-workplace laws. She won several high-profile cases for clients including Miller Brewing Company and St. Francis Hospital. Before she became a judge, Tile was very active in the Republican Party. She helped to organize fundraisers for several legislators and gave money to a variety of state and local candidates.

When she ran for the circuit court, Tile was opposed by a woman who helped to organize the Marquette University Poverty Law Clinic. Her opponent had substantial support, but did not have the personal wealth or fundraising ability of Tile. During that campaign, the opponent tried to make an issue of Tile's representation of a corporation that had fired a pregnant woman for taking too many sick days. Tile, in contrast, did not criticize her opponent. She instead emphasized her substantial knowledge of courtroom procedure in complicated civil cases and pointed out awards she had won for her dedication to pro bono work and for mentoring young lawyers.

In this race, Tile is emphasizing her 15 years on the trial bench and pointing out that Justice Winston has never sat in a trial court. She further has gathered the endorsements of 70 of Wisconsin's 72 sheriffs and has given several "tough on crime" speeches. Tile's tenure in the circuit court has demonstrated this tough approach. She has been especially strict with sex offenders and often sentences above the prosecutor's recommendation in plea agreements. For this reason, many criminal defense attorneys use their option to ask for a substitute judge when she is assigned a criminal case.

Tile is also supported by a number of lawyers and politicians, but the majority of her fellow judges are supporting Justice Winston.

She is married and does not have children.

Chapter 7:

Connecting to the Courts⁹

Visiting the Courthouse

What can students and teachers do at the courts?

There are many learning opportunities awaiting students at Wisconsin's federal and state courts. Students might sit in on a trial, meet with a judge, attorney, or clerk of court, and/or tour the courthouse to learn more about all of the offices and agencies involved in a case before it comes to court.

Some suggested activities are:

Observe a trial: Often there will be a court session when students are visiting. Most, but not all, of these sessions are open to the public. Teachers can find out what is on the docket for the day they are planning to visit and request to bring students into the courtroom. Students should be prepared for the visit so that they understand it (see below). Proper rules of decorum, including dress codes, must be followed if a class comes to observe a court session—ask when arranging the visit.

Take a tour: Taking a tour of a courthouse can help students better understand court procedure and the jobs of those who work in the courts. Students will learn what happens behind the scenes—information they don't see on television court dramas. While students usually cannot visit judges' chambers, they can tour a courtroom and talk to court personnel about how trials and hearings are conducted. If time permits, students may even be able to role play certain aspects of court procedure, such as voir dire, in the courtroom.

Talk with a judge or other personnel: Many judges will talk to students; however, judges have ethical guidelines that prohibit them from discussing cases that are pending or may come before them. Speaking personally to a judge can demystify the court experience for students, making them less fearful or suspicious of the legal process. Other participants in the legal process—from the clerk of court to the bailiff to the court reporter to social service agents—also may be willing to speak to students. Prosecutors and public defenders can help to illuminate the adversarial system. It is important that students be prepared for the interaction. Help them draft questions before and during the visit to ensure a productive learning experience.

⁹ Some of the materials in this chapter are excerpted from *Understanding the Federal Courts*, a publication of the Administrative Office of the U.S. Courts. For further information call (202) 502-2611.

How are visits set up?

Teachers who wish to take a class to court should call the court they want to visit to find out what services are available there to help students learn about the court system. Because the courts tend to be very busy, teachers should be prepared to allow several weeks of lead time when they are arranging a visit. Information about visiting courts is available by phone or online (see pages 100-102).

Whether the class is visiting a federal or state court, the personnel in the clerk's office or court information office can help teachers select an appropriate date for a class visit and can even find out what cases are on the docket if students wish to observe a court session. These court offices also will provide important logistical information, such as parking locations and directions. Some questions you may want to ask when scheduling a trip:

- How many students may I bring to the court at one time?
- Which days and times are best to bring students to the court?
- What can my students do at the court?
- If we come to see a specific case and it settles is there a back-up activity?
- What are the rules of decorum and dress the students must follow? (Generally, these include: no food or drink in the courtroom, no gum, no hats. There may be different rules for an individual court).
- Are there any judges who would be willing to speak to students? Prosecutors? Public defenders? Other court personnel? How can I set up a meeting with them?

Contacting the Courts

Wisconsin Circuit Courts

www.courts.state.wi.us/circuit

To contact the county circuit courts, look in the government pages of the telephone directory or call the Court Information Office at (608) 264-6256. The telephone numbers for the Clerk of Circuit Court Office in each county are also posted on the court system Web site at www.courts.state.wi.us/directory/Index.

Wisconsin Court of Appeals

www.courts.state.wi.us/appeals

Court of Appeals-District I

633 W. Wisconsin Ave., Suite 1400
Milwaukee, WI 53203-1908
(414) 227-4680

District I hears appeals of cases originating in Milwaukee County.

Court of Appeals-District II

2727 N. Grandview Blvd., Suite 300
Waukesha, WI 53188-1672
(262) 521-5230

District II hears appeals of cases originating in Calumet, Fond du Lac, Green Lake, Kenosha, Manitowoc, Ozaukee, Racine, Sheboygan, Walworth, Washington, Waukesha, and Winnebago counties.

Court of Appeals-District III

2100 Stewart Ave., Suite 310
Wausau, WI 54401
(715) 848-1421

District III hears appeals of cases originating in Ashland, Barron, Bayfield, Brown, Buffalo, Burnett, Chippewa, Door, Douglas, Dunn, Eau Claire, Florence, Forest, Iron, Kewaunee, Langlade, Lincoln, Marathon, Marinette, Menominee, Oconto, Oneida, Outagamie, Pepin, Pierce, Polk, Price, Rusk, Sawyer, Shawano, St. Croix, Taylor, Trempealeau, Vilas, and Washburn counties.

Court of Appeals-District IV

10 E. Doty St., Suite 700
Madison, WI 53703-3397
(608) 266-9250

District IV hears appeals of cases originating in Adams, Clark, Columbia, Crawford, Dane, Dodge, Grant, Green, Iowa, Jackson, Jefferson, Juneau, La Crosse, Lafayette, Marquette, Monroe, Portage, Richland, Rock, Sauk, Vernon, Waupaca, Waushara, and Wood counties.

Wisconsin Supreme Court

www.courts.state.wi.us/supreme

16 E. State Capitol
P.O. Box 1688
Madison, WI 53701-1688
(608) 266-1298

Note: The *Court with Class* program brings students to the Wisconsin Supreme to attend an oral argument and meet with a justice (see page 104), but presentations by justices can also be arranged on days that the Court is not hearing cases.

Federal Courts in Wisconsin (the Seventh Circuit)

U.S. District Court, Eastern District of Wisconsin

www.wied.uscourts.gov
362 United States Courthouse
517 East Wisconsin Avenue
Milwaukee, WI 53202
(414) 297-3394

The Eastern District hears cases from Brown, Calumet, Dodge, Door, Florence, Fond du Lac, Forest, Green Lake, Kenosha, Kewaunee, Langlade, Manitowoc, Marinette, Marquette, Menominee, Milwaukee, Oconto, Outagamie, Ozaukee, Racine, Shawano, Sheboygan, Walworth, Washington, Waukesha, Waupaca, Waushara, and Winnebago counties.

U.S. District Court, Western District of Wisconsin

www.wiw.uscourts.gov/
120 N. Henry Street, Room 320
P. O. Box 432
Madison, WI 53701-0432
(608) 264-5156, press 0

The Western District hears cases from Adams, Ashland, Barron, Bayfield, Buffalo, Burnett, Chippewa, Clark, Columbia, Crawford, Dane, Douglas, Dunn Eau Claire, Grant, Green Iowa, Iron Jackson, Jefferson, Juneau, La Crosse, Lafayette, Lincoln, Marathon, Monroe, Oneida, Pepin, Pierce, Polk, Portage, Price, Richland, Rock, Rusk, St. Croix, Sauk, Sawyer, Taylor, Trempealeau, Vernon, Vilas, Washburn, and Wood counties.

How should students be prepared for the visit?

The best time to visit a court is during a unit on the judicial system or the rights that the system protects. In this context, students can put their new knowledge to use by observing and interpreting court sessions and finding out more information from judges and other court personnel. In particular, it may be helpful for students to learn about the structure, functions, and procedures of the court before visiting. If students are talking with court personnel, it is often helpful for them to prepare questions before visiting the court. Students can write questions that relate to information they already have learned about the courts, or satisfy their curiosity about an issue they may have seen in the media or other source. You may give students some guidance on their questions by providing models or steering them away from inappropriate questions about pending cases.

How should teachers follow up with students and court personnel?

Teachers should reinforce learning from the court experience through continued classroom activities on the judicial system. Whenever possible, refer to what students learned while at the courts to help them make connections between the court and their classroom experiences.

It is also important to follow up with a note of thanks, preferably signed by the students, addressed to those who helped make the experience meaningful. Before leaving the court, be sure to get the names and addresses of those who set up the visit or spoke to the students.

Resources

Federal Courts

The federal courts have lesson plans about the federal judicial system that teachers may use for free. Some of that material is included in this book and more is available on the “Courts to Classes” program page at www.uscourts.gov/outreach. It also may be useful to conduct one or more basic lessons—perhaps with the help of a judge or court employee—while the students visit the court. If you choose to conduct a lesson while at the court, talk to the judge or other court employee beforehand to make sure that they understand their roles in the learning process.

The Administrative Office of the U.S. Courts has also published a guide entitled *Understanding the Federal Judiciary*, which is available online at www.uscourts.gov/UFC99.pdf.

State Courts

The state courts and the State Bar of Wisconsin offer a variety of materials and programs designed to help teachers educate their students about the justice system.

The Bill of Rights: An Introduction

www.legalexplorer.com/resources/database/PubPDFs/54-BILLRGHT.pdf

This booklet will help students to understand the Bill of Rights.

Case of the Month

www.courts.state.wi.us/media/CaseMonth/Case_of_the_Month.htm

The Case of the Month Project is an Internet service that provides all the information teachers will need to develop a lesson plan around a recent state Supreme Court case. A new case will be featured each month, and an archive will be established to enable teachers to choose the case that best fits their needs. Teachers can also request e-mail notification when the opinion is issued.

Court with Class

www.courts.state.wi.us/media/court_with_class.htm

For a registration form, call the State Bar of Wisconsin at (608) 250-6181

Court with Class is a joint venture of the Wisconsin Supreme Court and the State Bar of Wisconsin. The program brings high school students to the state Supreme Court to hear oral argument and meet with a justice over the lunch hour. The program has won two national awards for public service. A teaching kit is provided in advance to help teachers prepare the students, and the media and legislators from the school district are alerted to the visit. Every public and private high school in the state is invited to participate in the program and available slots go quickly.

From the Courtroom to the Classroom

www.legalexplorer.com and

www.courts.state.wi.us/media/reports/Teaching_Institute.htm

Court Information Office, (608) 264-6256

State Bar of Wisconsin, (608) 250-6191

The institute brings high school teachers from around the state together with Supreme Court justices, circuit court judges, attorneys, and university professors, for two days of hands-on learning about the court system. The Wisconsin Supreme Court, the State Bar of Wisconsin, and the University of Wisconsin Department of Curriculum and Instruction organize the institute.

From the Courtroom to the Classroom Web Site

www.legalexplorer.com/education/education-teacherinst.asp

The site provides both Internet- and classroom-based resources on the law and the courts.

High School Mock Trial

State Bar of Wisconsin, (608) 250-6191

The State Bar of Wisconsin has run the Mock Trial program for 18 years. Each year more than 100 teams from schools around the state learn about the law and the justice system through participation in a simulated trial.



Judicial Commission Director James C. Alexander helps teachers prepare for a mock Supreme Court election at the 2001 From the Courtroom to the Classroom Justice Teaching Institute.

Judicial Speakers Bureau

Court Information Office, (608) 264-6256

The Bureau helps schools and community groups find speakers to talk about how civil and criminal courts work, careers in the law, the juvenile justice system, alternative dispute resolution, considerations in sentencing, and other topics. There is no charge for the service or the speech.

Law Day and Planning Guide

Law Day Kit, www.courts.state.wi.us/media/pdf/LawDayKit

Court Information Office, (608) 264-6256

Law Day is celebrated throughout the nation on, or around, May 1. Local courthouses celebrate with mock trials, tours, legal advice booths, and other activities. The Director of State Courts Office publishes the Law Day Kit to help courts and bar associations plan celebrations. Teachers may want to access the guide to connect with the Law Day contacts listed for their counties and learn more about what activities will be planned. The guide also provides speaking points on various areas of the law, information on how to set up essay contests, and order forms for publications.

LegalExplorer.com

www.legalexplorer.com

LegalExplorer.com provides information on the State Bar of Wisconsin law-related education programs and services, as well as a legal Q & A section and a page to search for legal resources.

Localized Courthouse Visitors' Guides

Court Information Office, (608) 264-6256

Brochures that contain county courthouse history and a map of the building; only available for some courthouses.

On Being 18: Your Legal Rights and Responsibilities

www.legalexplorer.com/resources/database/PubPDFs/54-ONB18.pdf

This booklet focuses on the changes in legal rights and responsibilities that occur when a person becomes 18 and is considered an adult. The purpose is to inform readers of their rights and to help them identify and avoid possible problems.

Opportunities in Law

www.legalexplorer.com/resources/database/PubPDFs/54-OPPLAW.pdf

A publication with information on careers in the law.

Pioneers in the Law: The First 150 Women

www.wisbar.org/pioneers

The Web site, sponsored by the State Bar of Wisconsin, includes biographies and articles on the first 150 women to practice law in Wisconsin. Photographs, a quiz, and real audio interviews with legal professionals are also available.

Public Outreach Programs

www.courts.state.wi.us/media/pubout.htm

A summary of Wisconsin court system programs to connect with the community.

Supreme Court Case Synopsis

www.courts.state.wi.us/supreme/sc_oralargs.asp

A monthly, plain-English summary of upcoming cases being heard by the Wisconsin Supreme Court.

Supreme Court Color Photograph

Wisconsin Supreme Court, (608) 266-1298

The photograph of the justices of the Wisconsin Supreme Court with historical information.

Supreme Court Hearing Room Brochure

www.courts.state.wi.us/supreme/Supreme_Court_Hearing_Room.htm

A guide to the art in the Wisconsin Supreme Court Hearing Room.

Supreme Court Seal Flyer

www.courts.state.wi.us/supreme/Supreme_Court_Seal.htm

A one-page explanation of the symbolism of the seal.

Wisconsin Supreme Court Visitors' Guide

Wisconsin Supreme Court, (608) 266-1298

A brochure that includes a brief history of the Court, biographies and portraits of each justice, and a calendar of oral argument.

We the People...The Citizen and the Constitution

State Bar of Wisconsin, (608) 250-6191

This is a national program directed by the Center for Civic Education and funded by the U.S. Department of Education. Based on curriculum designed to promote a deeper understanding of the Constitution and the Bill of Rights, the goal is to promote civic competence and responsibility among elementary and secondary students. The curriculum is created to involve students in the learning process and give them an opportunity to analyze and discuss a particular problem or issue related to the subject of the lesson. The culminating activity of the materials is a mock congressional hearing.

Wisconsin Court System Web Site

www.courts.state.wi.us

The Web site also provides up-to-the-minute opinion releases from the Wisconsin Supreme Court and Court of Appeals, calendars for both courts' hearings, and several publications that explain the history, structure, function, and recent initiatives of all levels of court.

Wisconsin State Law Library (WSLL)

wsll.state.wi.us

Wisconsin State Law Library, (800) 322-9755

WSLL provides access to legal research resources. Reference staff provide assistance in person, or by telephone, fax, or e-mail. Library tours and workshops on using legal information are available. The WSLL provides online access to the catalog of library resources, links to government and law-related resources, and a section on Wisconsin legal topics that provides information on subjects from adoption to wills.

Wisconsin Supreme Court Table of Pending Cases

www.courts.state.wi.us/supreme/sc_tabpend.asp

A monthly listing of cases, with a short synopsis of the issue each presents.

Appendix

- 109 **“Building a More Perfect Union: Wisconsin’s Contribution to Constitutional Jurisprudence”** (includes a list of all cases reviewed by the U.S. Supreme Court that originated in Wisconsin)
- 141 **Glossary of Legal Terms**

Building A More Perfect Union: Wisconsin's Contribution to Constitutional Jurisprudence

This article first appeared in the *Wisconsin Law Review*. It is reprinted here with permission from both authors and the *Wisconsin Law Review*. Endnotes begin on page 136.

By Shirley S. Abrahamson (chief justice, Wisconsin Supreme Court) and Elizabeth A. Hartman (associate, Quarles & Brady of Madison, Wisconsin; B.S., University of Wisconsin-Oshkosh, 1993; J.D., University of Wisconsin-Madison, 1998; intern to Honorable Shirley S. Abrahamson, Spring 1997). Appendix was compiled by Elizabeth A. Hartman. The case names are presented in abbreviated footnote form.

I. Introduction

When Americans think about constitutional law, often we think about the United States Supreme Court and the cases decided by that court. And in talking about the Court we tend to group the cases and talk about them by subject matter. At the end of each Court term, the scholars pick over the cases, trying to divine movements and changes in the Court's views and to predict future decisions. At the end of the reign of a chief justice (if reign is the appropriate word), commentators examine the cases for insights, changes, and predictive events. Paying close attention to the Court makes sense, considering the profound impact many decisions of the United States Supreme Court have had on American life and American law.

This Article takes a different approach to the docket of the United States Supreme Court. Our focus is on the state in which the case arose. More specifically, during this year of Wisconsin's Sesquicentennial, we decided to examine cases that came to the United States Supreme Court through the Wisconsin court system. We wanted to discover what story or stories these cases would reveal about Wisconsin case law and their significance not only in Wisconsin legal history but in the legal history of the entire nation.

In Part II of this Article we describe the methodology we used to ascertain Wisconsin's contribution to constitutional jurisprudence. We offer a statistical examination of the cases that

went from the Wisconsin court system to the United States Supreme Court. In Part III, we review the important cases, their Wisconsin heritage, and their impact on the law. In Part IV, we offer some conclusions about Wisconsin's contribution to constitutional jurisprudence.

II. How To Ascertain Wisconsin's Contribution: Methodology

Our computer search revealed that from territorial days through 1997, 143 cases from the Wisconsin state court system and 302 cases from the Wisconsin federal court system went to the United States Supreme Court.¹¹ We focus on the cases that originated in the Wisconsin state court system because state court decisions seem the best route to examining the contributions of Wisconsin as a state.

We recognize that these 143 cases may not tell the whole Wisconsin story. Many Wisconsin cases reached the United States Supreme Court only to have that Court choose to decide a different state's case raising the same issues. For example, the Wisconsin case challenging the Wisconsin sexual predator law was before the United States Supreme Court¹² but the Court selected a Kansas case in which to decide the issue.¹³

At the outset we had expectations about what we would find in the cases. Many of these expectations were met but others were not. We also encountered some surprises along the way.

For example, we believed that we would not find individual rights cases until the incorporation of the Bill of Rights into the Fourteenth Amendment Due Process Clause beginning in the 1920s. On this count, we were right. We were also right to expect to find among the older cases issues involving interstate commerce, taxation, public land, and railroads, and we were also right when we guessed that interstate commerce cases would decrease after the 1930s. We expected to find cases involving challenges to legislative protection of Wisconsin industries—maybe the dairy or beer industries—but we did not find as many as we thought we would. We expected to see post-1950 cases raising procedural criminal law issues of federal constitutional dimension and cases involving the First Amendment, and there were some. We also predicted we would find cases raising issues of federalism—cases about the relation between the federal and state governments—and were vindicated on this count as well. Federalism has been, and will continue to be, an issue of significant importance in our constitutional system, and we can expect cases raising this issue to continue. However, there were more federalism cases involving preemption, that is, whether state action invades the domain of federal legislation, than we expected.

Until we analyzed the cases, we did not realize that Wisconsin labor cases would play such a large role in the United States Supreme Court. Between 1937 and 1985 the United States Supreme Court decided 17 cases involving labor issues that came up from Wisconsin state courts.¹⁴ After looking at the cases we also realized we had forgotten about a very important procedural due process case that arose in Wisconsin, involving the challenge to Wisconsin legislation allowing a creditor to garnishee wages without notice to the debtor.¹⁵

Faced with these 143 Wisconsin cases in the United States Supreme Court, we had to decide how to analyze and report on them in a meaningful fashion. First we divided the cases pre- and post-1920, selecting 1920 because that date is approximately half way through the life of Wisconsin statehood and because that date coincides with the beginning of the selective incorporation of the federal Bill of Rights. We learned that of the approximately 300 cases arising in Wisconsin that went to the United States Supreme Court through the federal courts sitting in the Seventh Circuit between 1848 and 1997, more than 70 percent (211) were decided before 1920.¹⁶ In contrast, of the 143 cases that were heard by the United State Supreme Court from the Wisconsin state courts between territorial days and 1997, only 43 percent (61) were decided before 1920.

Thus we learned that in the 150 years of Wisconsin statehood, the United States Supreme Court took more than twice the number of cases from the Seventh Circuit federal courts sitting on Wisconsin cases than from the Wisconsin state courts. But if we look only at the cases decided after 1920, the United States Supreme Court decided approximately the same number of Wisconsin-related cases arising in the Wisconsin court system as in the federal courts sitting in the Seventh Circuit.¹⁷

We also learned about the Wisconsin courts' "batting average"—the affirmance and reversal rates. Of the 143 United States Supreme Court cases coming from the Wisconsin court system, the Wisconsin courts were affirmed in 67 cases and reversed in 51. In 17 cases the state court mandate was vacated. Eight cases were dismissed and in one case the Court denied, with a full opinion, the motion to review the lower court's decision. Looking only at the cases that were reversed or affirmed, the Wisconsin Supreme Court was affirmed 57 percent of the time and reversed 43 percent. If the cases where the

mandate was vacated are counted as reversals, the Wisconsin court system's affirmance/reversal rate is approximately 50/50.⁸

Looking only at the cases decided before 1920, 37 were affirmed, 15 were reversed, 8 were dismissed; in one case the motion for review was denied. For the cases decided after 1920, the reversal and vacating numbers are greater than the number of affirmances. After 1920, 30 cases were affirmed, 36 reversed, and 17 vacated. Thus, Wisconsin's affirmance/reversal record is 71/29 before 1920 and 45/55 after (37/63 with vacated mandates included in the post-1920 ratio; there were no vacated mandates before 1920).

In 1937, the United States Supreme Court for the first time decided a case from the Wisconsin Supreme Court by a 5-4 majority. Between 1937 and 1997 we found a total of seven cases with 5-4 decisions.⁹ It is also interesting to note that of the 143 cases, one was subsequently overruled by the United States Supreme Court in another case from the Wisconsin Supreme Court. Both were labor cases. The first was decided in 1949,¹⁰ then was overruled in 1976.¹¹

So much for the statistical tidbits about the 143 cases. Our task was to determine which cases were merely a product of their time, with little lasting importance, and which cases were of long-lasting importance in state history or federal constitutional law. In other words, which were the great cases?

In deciding on the criteria to use to identify the important cases, we had two choices: We could examine the cases and use a subjective standard to make this determination, or we could examine the cases and use an objective, scientific-appearing standard. We opted, of course, for the objective, scientific-appearing standard to identify the great cases.

Our standard would be, we decided, one used

by Judge Richard Posner in his book *Cardozo: A Study in Reputation*.¹² Posner asked, "What makes a great judge?" He asked, "Why do some reputations endure, while others crumble?" And, "How can we know whether a reputation is fairly deserved?" Judge Posner attempted to provide a model for a study of great judges—a balanced, objective, and critical assessment of a judicial career. He offered a new way of looking at how reputations are made and unmade: the empirical evidence of Justice Cardozo's fame would be a computer printout showing how often Cardozo's opinions were cited. The number of citations to Cardozo's opinions would be evidence, according to Posner, of the influence of the written decisions and the endurance of the ideas Cardozo expressed in his opinions.¹³

It appeared to us that this criterion—how many times these 143 United States Supreme Court cases from the Wisconsin state courts were cited by courts and law reviews—would be, at least initially, a way of calculating the significance of the cases.

However, Posner offered some cautions about his method that we would also have to consider. He noted that "judicial reputations are to a significant degree a function of recency,"¹⁴ and that "the important legal cases from a practical standpoint are recent decisions by the nation's highest court."¹⁵ Posner then made an effort to ensure that his quantitative analysis accounted for recency when comparing the number of citations to Cardozo's opinions to the number of citations to other more recent judges.¹⁶ We do not make Posner's valiant efforts to massage the computer printout. We do, however, urge caution about what we call the "recency" phenomenon.

The "recency" phenomenon comes into play in two ways in our study. First, if a case is too recent, there has not been much time for it to be cited. We adjust for this recency

phenomenon by attempting to predict which recent cases will, with aging, turn out to be frequently cited. Second, as Posner suggested, we found that as a case ages, the citations to it decrease. One would think old law is good law under our system of precedent. It may be good law but it is not often-cited law. Too old law is, at least for citation purposes, forgotten law. We have not made an attempt to adjust for this aspect of the recency phenomenon except to note that 40 of the 61 cases decided prior to 1920 have been cited fewer than 100 times.¹⁷ Also, 44 of the pre-1920 cases have not been cited by the United States Supreme Court for the past 40 years or longer.¹⁸

Keeping these cautions in mind, we proceeded to search for the top 20 most frequently cited Wisconsin cases on the case citation "Hit Parade."

III. The Top 20 Wisconsin State Court Cases in the United States Supreme Court

The top 20 cases range in date from 1844 to 1991. The 1844 case is the only one of the top 20 from the nineteenth century.¹⁹ The other 19 cases were decided between 1937 and 1991: three in the 1930s, five in the 1940s, three in the 1950s, one in 1969, three in the 1970s, three in the 1980s, and one in 1991. The top three most-cited cases have each been cited more than 2000 times. The fifth most-cited case has about 1000 citations. And by the time we reach the twentieth most-cited case, we found it has been cited barely 400 times. In the top 20 cases, the Wisconsin courts were reversed 11 times. In nine instances the U.S. Supreme court affirmed the Wisconsin courts. These cases cover a wide variety of subject matter, including labor, criminal procedure, preemption, tax, the First Amendment, and due process.

The Twenty Most Frequently Cited United States Supreme Court Cases Originating in the Wisconsin State Court System

1. Allis-Chalmers Corp. v. Lueckⁿ²⁰ (cited 2312 times)
2. Wisconsin v. Yoderⁿ²¹ (cited 2106 times)
3. Sniadach v. Family Finance Corp.ⁿ²² (cited 2008 times)
4. Schneider v. New Jerseyⁿ²³ (cited 1721 times)
5. Allen-Bradley Local No. 1111 v. Wisconsin Employment Relations Boardⁿ²⁴ (cited 1062 times)
6. International Union, UAW, AFL, Local 232 v. Wisconsin Employment Relations Boardⁿ²⁵ (cited 944 times)
7. Senn v. Tile Layers Protective Unionⁿ²⁶ (cited 898 times)
8. Lodge 76, International Ass'n of Machinists and Aerospace Workers v. Wisconsin Employment Relations Comm'nⁿ²⁷ (cited 886 times)
9. International Brotherhood of Teamsters, Local 695 v. Vogt, Inc.ⁿ²⁸ (cited 663 times)
10. Welsh v. Wisconsinⁿ²⁹ (cited 648 times)
11. Amalgamated Ass'n of Street, Electric Railway & Motor Coach Employees, Division 998 v. Wisconsin Employment Relations Boardⁿ³⁰ (cited 615 times)
12. Wisconsin v. J.C. Penney Co.ⁿ³¹ (cited 610 times)
13. Kalb v. Feuersteinⁿ³² (cited 590 times)
14. Welch v. Henryⁿ³³ (cited 560 times)

15. Grignon's Lessee v. Astorⁿ³⁴ (cited 516 times)

16. United Automobile, Aircraft, and Agricultural Implement Workers v. Wisconsin Employment Relations Boardⁿ³⁵ (cited 497 times)

17. Algoma Plywood & Veneer Co. v. Wisconsin Employment Relations Boardⁿ³⁶ (cited 473 times)

18. Felder v. Caseyⁿ³⁷ (cited 435 times)

19. Hortonville Joint School District No. 1 v. Hortonville Education Ass'nⁿ³⁸ (cited 430 times)

20. McNeil v. Wisconsinⁿ³⁹ (cited 394 times)

A. Labor

The big story in the top twenty is labor. Ten of Wisconsin's top twenty most-cited cases involve labor disputes in one form or another. This finding surprised us. We had not predicted that labor would be the predominant topic of the important Wisconsin cases. The labor cases are numbers 1, 5, 6, 7, 8, 9, 11, 16, 17, and 19 in the top twenty. Collectively these cases have been cited almost 9000 times.

The most often cited single case of all the 143 cases is a 1985 Allis-Chalmers labor case.ⁿ⁴⁰ The Wisconsin Supreme Court held that an employee could sue the insurance company for the tort of bad faith for the handling of a claim under a disability plan included in a collective bargaining agreement.ⁿ⁴¹ The United States Supreme Court reversed, holding that the state tort claim was preempted by the national labor laws.ⁿ⁴² The Court concluded that Congress had intended preemption because "only that result preserves the central role of arbitration in our

"system of industrial self-government."ⁿ⁴³

Six more labor cases raised the issue of whether a national labor act preempted Wisconsin state legislation.ⁿ⁴⁴ In four cases, the court upheld the state action as not conflicting with national labor acts.ⁿ⁴⁵ In two cases, the Court held Wisconsin state action invalid because it infringed on a field of legislation already occupied by the federal statutes.ⁿ⁴⁶

In Allen-Bradley Local No. 1111 v. Wisconsin Employment Relations Board, the Wisconsin Supreme Court upheld an order of the Wisconsin Employment Relations Board forbidding the union and its members, during a labor dispute, to engage in mass picketing, threaten employees, or obstruct the entrance to the employer's factory.ⁿ⁴⁷ The United States Supreme Court affirmed, holding that the National Labor Relations Act did not preempt the Wisconsin Employment Relations Board order because the states were free to prevent breaches of the peace connected with labor disputes.ⁿ⁴⁸ The Allen-Bradley case is number five in the top twenty, with 1062 cites.

International Union, UAW, AFL, Local 232 v. Wisconsin Employment Relations Board involved a challenge to a labor union's concerted efforts to interfere with production by calling intermittent, "surprise" work stoppages during working hours to encourage the employer to accept its demands during contract negotiations.ⁿ⁴⁹ The Wisconsin Supreme Court held that the Wisconsin Employment Peace Act authorized the Wisconsin Employment Relations Board to order the labor union to cease and desist from engaging in the work stoppages.ⁿ⁵⁰ The United States Supreme Court affirmed, holding that the Wisconsin Act and the state board's order did not conflict with the Commerce Clause, National Labor Relations Act, or Labor Management Relations Act and was not otherwise invalid.ⁿ⁵¹ Local 232 was subsequently overruled by another United States Supreme Court case from the

Wisconsin court system.ⁿ⁵² Despite being overruled, Local 232 is number six on the list with 944 cites.

In United Automobile, Aircraft, and Agricultural Implement Workers v. Wisconsin Employment Relations Board, the United States Supreme Court, in a 6-3 decision, affirmed the Wisconsin Supreme Court, holding that the state had power to enjoin violent union conduct during the course of a strike even if the conduct constituted an unfair labor practice under the federal labor laws.ⁿ⁵³ The Court ruled that the National Labor Relations Act was not meant to be the exclusive method of controlling violence.ⁿ⁵⁴ This case is number sixteen of the top twenty cases, with 497 cites.

Wisconsin legislation was again upheld in Algoma Plywood & Veneer Co. v. Wisconsin Employment Relations Board.ⁿ⁵⁵ The Court held that the order of the Wisconsin Employment Relations Board requiring the petitioner to cease and desist from giving effect to a maintenance of membership clause and to reinstate an employee and compensate him for lost back wages under the Wisconsin Employment Peace Act was not in conflict with the federal labor laws.ⁿ⁵⁶ Algoma Plywood is seventeenth on the citation list with 473 cites.

In contrast, in Amalgamated Ass'n of Street, Electric Railway & Motor Coach Employees, Division 998 v. Wisconsin Employment Relations Board, Wisconsin legislation was invalidated on federal preemption grounds.ⁿ⁵⁷ The Wisconsin Supreme Court upheld an order enjoining the union from calling a strike that would interrupt the passenger service of a transit company.ⁿ⁵⁸ The United States Supreme Court reversed, holding that the Wisconsin public utility law under which the injunctions had been issued was invalid because it was in direct conflict with federal labor laws that had occupied the field.ⁿ⁵⁹ Amalgamated 998 has been cited 615 times,

earning it the number eleven spot on the list.

Lodge 76, International Association of Machinists and Aerospace Workers v. Wisconsin Employment Relations Commissionⁿ⁶⁰ overruled Local 232ⁿ⁶¹ and was another case in which the Court found federal preemption. The union in Machinists refused to work overtime during negotiations over terms of a collective bargaining agreement.ⁿ⁶² The Wisconsin Supreme Court held that the union's refusal was an unfair labor practice under state law and could be enjoined.ⁿ⁶³ The United States Supreme Court reversed, holding that the union's concerted refusal to work overtime during contract negotiations was peaceful conduct that, if subject to state regulation, would conflict with congressional purpose in enacting comprehensive federal labor relations laws.ⁿ⁶⁴ This case is number eight in the top twenty with 886 cites.

Two of the ten labor cases in the top twenty involved picketing.ⁿ⁶⁵ In a 1937 United States Supreme Court case, Senn v. Tile Layers Protective Union, the Court in a 5-4 decision affirmed the Wisconsin Supreme Court, upholding the constitutionality of Wisconsin labor code provisions allowing peaceful picketing against due process and equal protection challenges.ⁿ⁶⁶ Senn is number seven on the top twenty with 898 cites.

In 1957, International Bhd. of Teamsters, Local 695 v. Vogtⁿ⁶⁷ also raised the legality of picketing. A Wisconsin statute made it an unfair labor practice to coerce or intimidate an employee in the enjoyment of his legal right to organize or to induce an employer to interfere with employees in their right to self organize.ⁿ⁶⁸ The union stationed a picket line at the entrance of a gravel pit with a sign saying "The men on this job are not 100 percent affiliated with the A.F.L." with the purpose of inducing Vogt's employees to organize and affiliate with the union.ⁿ⁶⁹ The Wisconsin Supreme Court upheld the statute

and enjoined the picketing because it was engaged in for an unlawful purpose.ⁿ⁷⁰ A five-member majority of the United States Supreme Court affirmed, holding that enjoining picketing did not violate the Fourteenth Amendment when the purpose of picketing was to coerce the employer to put pressure on employees to join a union in violation of the policy of the state to allow workers liberty of self-organization.ⁿ⁷¹

These two Wisconsin cases illustrate twenty years of labor picketing cases. In the early cases, particularly Thornhill v. Alabamaⁿ⁷² and its precursor Senn,ⁿ⁷³ the Court held that peaceful picketing to publicize the existence of a labor dispute was constitutionally protected. Later, picketing did not get protection from the Court.ⁿ⁷⁴ It appears that the Court came full circle, and, indeed, Professor Tribe is of the opinion that states can today enjoin picketing as if the early cases had never been decided.ⁿ⁷⁵

The Vogt case is also an example of the Court's use of the speech-conduct distinction.ⁿ⁷⁶ The picketing was not protected because it was not pure speech. Professor Tribe opines that the trouble with the speech-conduct distinction is that it is oversimplified; some conduct is expressive, while some speech is not.ⁿ⁷⁷ The Court has "never articulated a basis for its distinction," leading to the conclusion that "any particular course of conduct may be hung almost randomly on the 'speech' peg or the 'conduct' peg as one sees fit."ⁿ⁷⁸

The tenth labor case and the nineteenth on our case "Hit Parade," but extremely well-known to all who were in Wisconsin in the 1970s, is the bitterly fought Hortonville teacher case.ⁿ⁷⁹ In that case the union charged that it was deprived of its due process right to an impartial decision maker because the school board members deciding the dispute were not sufficiently impartial.ⁿ⁸⁰ The Wisconsin Supreme Court agreed with the union, but the United States Supreme Court reversed,

finding that there was no denial of due process.ⁿ⁸¹

Perhaps we should not have been surprised to us to find labor playing such an important role in Wisconsin. In 1911, Wisconsin became the first state to enact "a broad, constitutionally valid worker's compensation" law.ⁿ⁸² In 1931, Wisconsin adopted a comprehensive labor code and, again, was the first state in the nation to enact unemployment compensation.ⁿ⁸³ Wisconsin reformers also played a significant role in shaping the Social Security Act of 1935 on the national level.ⁿ⁸⁴ Wisconsin's lawmakers were often at the forefront, anticipating federal labor legislation.ⁿ⁸⁵ Wisconsin's unwillingness to rely exclusively on federal law to regulate the workplace may explain the numerous cases challenging various state labor laws on the ground that they were preempted by federal labor laws.

B. Preemption

In addition to the seven labor cases raising the issue of preemption, two other non-labor preemption cases are in the top twenty cases.ⁿ⁸⁶ Thus, a total of nine cases present federalism issues.

In 1940, Kalb v. Fauerstein presented the question of whether federal bankruptcy laws displaced the jurisdiction of state courts to foreclose on the debtor's property.ⁿ⁸⁷ The Wisconsin Supreme Court had held that they did not.ⁿ⁸⁸ The United States Supreme Court reversed, holding that the farmer's filing of a petition under the Bankruptcy Act operated as a stay on the power of the state court in a pending proceeding to foreclose a mortgage on his property.ⁿ⁸⁹ This case is number thirteen with 590 cites over the last 58 years.

In a more recent preemption case, Felder v. Casey, the Court again reversed the Wisconsin

Supreme Court's determination that Wisconsin legislation was not preempted by federal law.ⁿ⁹⁰ The Court held that the Wisconsin notice of claims statute that applies when a claimant brings action against the government is preempted by federal law when a section 1983 action is brought in state court.ⁿ⁹¹ Felder v. Casey is eighteenth in the top twenty, with 435 citations, after a mere ten years.

A 1991 preemption case did not make the top twenty, but falls into the category titled "too soon to know its significance but looks promising."ⁿ⁹² In Mortier v. Town of Casey,ⁿ⁹³ the Wisconsin Supreme Court was faced with the question of whether the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) preempted local regulation of pesticide use. The Wisconsin Supreme Court answered this question in the affirmative, holding that the congressional intent to preempt was clear.ⁿ⁹⁴ The United States Supreme Court disagreed with the Wisconsin Supreme Court, holding that the federal law did not preempt the Town of Casey regulation of pesticide use.ⁿ⁹⁵ In sum, the Court concluded that FIFRA "implies a regulatory partnership between federal, state, and local governments."ⁿ⁹⁶

Mortier may become an important case for several reasons. First, pesticide associations considered Mortier to be the "most devastating news ever to hit their industry."ⁿ⁹⁷ It is not clear that there was any reason to panic over Mortier. Although there are nearly 83,000 units of government in the United States that could potentially enact pesticide ordinances, Thomas Dawson, petitioner in Mortier, claimed that the decision did nothing but authorize what local governments had been doing for a long time and, thus, there were no "floodgates" to open.ⁿ⁹⁸ Mortier may also have an impact beyond local pesticide regulation. One commentator has suggested that "Mortier is significant in the effect it will have on the issue of whether FIFRA preempts state-based tort law claims," particularly in

failure to warn cases.ⁿ⁹⁹ Additionally, Mortier may be significant for what it does not say about the uses of legislative history. One commentator has criticized the Mortier Court for not resolving the issue of what weight courts should give to legislative history and by what standard they should judge it.ⁿ¹⁰⁰

C. The First Amendment

Two cases involving the First Amendment made it into the top four on the top twenty citation list. The fourth and second cases are the 1939 Snyder case,ⁿ¹⁰¹ reported as Schneider v. New Jersey,ⁿ¹⁰² and the 1972 Wisconsin v. Yoder.ⁿ¹⁰³ Both are not only frequently cited (1721 and 2106, respectively), but also have been extensively studied by scholars as important in First Amendment jurisprudence.

Milwaukee's ordinance in the Snyder case prohibited distribution of handbills and various other circulars "in or upon any sidewalk, street, alley."ⁿ¹⁰⁴ The Wisconsin Supreme Court affirmed a conviction under the statute, upholding the constitutionality of the statute because its valid governmental purpose was the prevention of littering.ⁿ¹⁰⁵ The United States Supreme Court disagreed, holding that Milwaukee's ordinance violated free speech.ⁿ¹⁰⁶ The Court declared that "the public convenience in respect of cleanliness of the streets does not justify an exertion of the police power which invades the free communication of information and opinion secured by the Constitution."ⁿ¹⁰⁷ The streets were a natural public forum for dissemination of information, and other methods of preventing littering that did not involve the banning of the distribution of literature were available.ⁿ¹⁰⁸

This case held for the first time that even a neutral governmental objective, such as combating litter, may be invalid if "it leaves

too little breathing space for communicative activity.”ⁿ¹⁰⁹

The other First Amendment case, Wisconsin v. Yoder,ⁿ¹¹⁰ is the second most-cited case in Wisconsin federal constitutional history and is probably the best-known Wisconsin case to reach the United States Supreme Court. In this case, Amish fathers were found guilty of violating the Wisconsin compulsory school attendance law for failing to allow their children to go to school through age sixteen.ⁿ¹¹¹ The Wisconsin Supreme Court reversed the convictions, holding the criminal statute unconstitutional under the Free Exercise Clause of the First Amendment.ⁿ¹¹² The court examined Amish culture and history and concluded that sending Amish children to high school placed a “heavy” burden on the Amish exercise of religion.ⁿ¹¹³ On the other side of the calculus, the court agreed that the state has an interest in educating its citizenry but concluded that because the Amish do not require considerable formal education and receive vocational education through the informal Amish system, the state’s interest was not sufficiently compelling to justify the state’s interference in the Amish religion.ⁿ¹¹⁴

The United States Supreme Court affirmed,ⁿ¹¹⁵ concluding that formal high school education was contrary to the Amish religion because it placed their children in an environment hostile to their beliefs away from their community at a crucial developmental stage in their lives.ⁿ¹¹⁶ The Court concluded that requiring the Amish to send their children to high school could threaten the very existence of the religion.ⁿ¹¹⁷ The Court agreed with the majority of the Wisconsin Supreme Court justices that the state’s interests were not compelling in the face of the kind of life for which the Amish children were being prepared.ⁿ¹¹⁸ Ultimately, said the Court, the parents’ right to free exercise of religion and their right to determine the religious and educational upbringing of their children, rather than the children’s rights, controlled.ⁿ¹¹⁹

Yoder provides an example of the need for the state to be accommodating when government actions, even though neutral and applicable to all persons, burden some. The case also raises issues about a parent’s right to raise children and a child’s right to be protected from parental decision making. The Yoder case is apparently the only time a religious group has been exempted from a penal statute.ⁿ¹²⁰ The case illustrates the challenge of balancing the Free Exercise and Establishment Clauses. Free Exercise Clause jurisprudence is presently in flux, and Yoder continues to play a role in the controversy.ⁿ¹²¹

A comer in the First Amendment field may be the Mitchell case in which the Court upheld a Wisconsin penalty enhancer statute increasing a criminal penalty when the offender selected the victim on the basis of race.ⁿ¹²² Jurisprudence in the “hate crime” area is still in the developmental stages, and the Court is likely to revisit Mitchell in the coming years.

D. Procedural Due Process

The number three case in the top twenty is Snjadach v. Family Finance Corp.,ⁿ¹²³ a 1969 procedural due process case that has been cited 2008 times. In this case, a wage earner challenged Wisconsin’s prejudgment garnishment statute, under which a debtor was not given notice or a hearing before his wages were removed from his control.ⁿ¹²⁴ The Wisconsin Supreme Court upheld the constitutionality of the statute,ⁿ¹²⁵ reasoning that there was no due process violation because case law provided a mechanism by which the debtor could obtain court review of the garnishment before being permanently deprived of the property.ⁿ¹²⁶ The court further noted that garnishment proceedings do not involve a final determination of title to property, and that temporary liens on property have been accepted since medieval times.ⁿ¹²⁷

The United States Supreme Court reversed the decision of the Wisconsin Supreme Court, holding that absent notice and a prior hearing, Wisconsin's statute violated due process.¹²⁸

The Court concluded that while a summary procedure may be acceptable in extraordinary situations, no summary procedure was needed in this case to protect a state or creditor interest.¹²⁹ The United States Supreme Court concluded that garnishment of wages may impose tremendous hardship on wage earners; garnishment "may as a practical matter drive a wage-earning family to the wall."¹³⁰

1969 was the last year of the Warren Court, a court noted for its commitment to individual rights. *Sniadach* is a classic opinion from that era, extending constitutional procedural protections to statutorily created rights.¹³¹ According to Professor Tribe, *Sniadach*, and other procedural due process cases decided during that period, stand for more than just procedural safeguards; they indicate some sort of substantive right to subsistence provided by the state.¹³² The cases "imply that the affirmative governmental duty to meet basic human needs cannot always be enforced directly ... instead, it will usually be necessary to reflect affirmative duties ... through governmental obligations to provide various procedural safeguards."¹³³

E. Criminal Procedure

Two cases in the top twenty involve criminal procedure—one Fourth Amendment case and one Sixth Amendment case.

Welsh v. Wisconsin,¹³⁴ the Fourth Amendment case, ranks as the tenth case in the top twenty with 648 cites. This case was decided in 1984 with Gordon B. Baldwin, Professor of Law, University of Wisconsin Law School, representing the defendant before the Court. The issue in *Welsh* was the validity of a warrantless nighttime entry into a

home to arrest an individual who had been reported as possibly driving while under the influence of an intoxicant.¹³⁵

The Wisconsin Supreme Court held that the search was reasonable under the Fourth Amendment because the facts supported a finding that the officer had probable cause.¹³⁶ Further, the court found that exigent circumstances were present: hot pursuit, imminent threat to safety, and destruction of evidence.¹³⁷

The dissent questioned the legality of the statute authorizing a warrantless arrest for a civil traffic offense committed outside the presence of an officer.¹³⁸ Further, the dissent argued that the facts in the record did not support the finding that the officer had probable cause to believe that defendant had driven while intoxicated or that exigent circumstances existed to justify dispensing with a warrant.¹³⁹ There was no hot pursuit and Welsh was not a danger to public safety because there was nothing to indicate that he would have driven another vehicle.¹⁴⁰ And, although time does dissipate alcohol, leading to destruction of the evidence of intoxication, the dissent observed that the police had introduced no evidence that a warrant would have come too late to preserve the evidence.¹⁴¹

The United States Supreme Court reversed the decision of the Wisconsin high court,¹⁴² holding that a warrantless nighttime entry into a home to arrest an individual for driving while under the influence of an intoxicant was prohibited by the Fourth Amendment.¹⁴³ The Court concluded that the seriousness of the underlying offense is an important factor to consider when determining the reasonableness of a search.¹⁴⁴ Where "the underlying offense for which there is probable cause to arrest is relatively minor," the presumption of unreasonableness of the warrantless search is harder to rebut.¹⁴⁵

Further, there had been no exigent

circumstances present in this case to justify the warrantless entry. ⁿ¹⁴⁶ There was no hot pursuit because there was “no immediate or continuous pursuit of the petitioner from the scene of a crime.” ⁿ¹⁴⁷ Welsh presented no safety risk because he was at home in bed and had abandoned his car. ⁿ¹⁴⁸ The only potential exigency was presented by the need to ascertain blood alcohol level, but given the expression of governmental interest from Wisconsin by classifying the offense as a civil forfeiture, a weak preservation of the evidence claim was not enough to justify the warrantless entry and arrest. ⁿ¹⁴⁹

Professor Baldwin suggests that Welsh teaches us two lessons. First, the hot pursuit doctrine is limited, and second, “the exigent circumstances doctrine remains a significant exception to the warrant requirement.” ⁿ¹⁵⁰ Welsh may also be important for its exposition on the importance of the severity of the offense in the warrantless entry calculus. Professor Baldwin agrees that the line between major and minor crimes appears to be decisive to the application of the exigent circumstances doctrine but that in turn raises problems of how to classify major and minor crimes. ⁿ¹⁵¹

A Fourth Amendment case in the “too soon to know the significance but looks promising” category is Richards v. Wisconsin, ⁿ¹⁵² decided in 1997. The Richards Court affirmed the judgment of the Wisconsin Supreme Court, but unlike the Wisconsin Supreme Court, did not adopt a blanket exception to the knock and announce rule for felony drug searches. ⁿ¹⁵³ The United States Supreme Court concluded that:

an officer may dispense with the rule of announcement when executing a search warrant if the officer has a reasonable suspicion, based upon the particular facts of a given case and the reasonable inferences drawn therefrom, that knocking and announcing the officer’s presence

would be dangerous or futile, or inhibit the effective investigation of the crime. ⁿ¹⁵⁴

The search in this case was reasonable, the court determined, because the officers had reason to believe that Richards would destroy evidence based on his apparent recognition of the officers when he answered the door and the easily disposable nature of drugs. ⁿ¹⁵⁵

Richards has been cited 50 times as of June 1, 1998. In a recent knock and announce case from the Ninth Circuit, ⁿ¹⁵⁶ the Court reversed the Ninth Circuit’s ruling that exigent circumstances did not justify the no-knock entry. ⁿ¹⁵⁷ The Court’s continued interest in knock and announce cases bodes well for Richards eventually earning a top twenty position.

McNeil v. Wisconsin also raises criminal procedure issues, but in the context of the Sixth Amendment. ⁿ¹⁵⁸ McNeil is a 1991 United States Supreme Court case and is the twentieth most frequently cited case with 394 citations. The Wisconsin Supreme Court had held that an accused’s request for counsel pursuant to the Sixth Amendment at an initial proceeding did not constitute an invocation of his Fifth Amendment right to counsel on unrelated, uncharged offenses. ⁿ¹⁵⁹ The United States Supreme Court affirmed, agreeing that the Fifth Amendment had not come into play so as to preclude police from giving Miranda warnings and from interrogating the accused on unrelated, uncharged offenses. ⁿ¹⁶⁰

F. Taxation

Two cases involving interstate taxation are in the top twenty, J.C. Penney ⁿ¹⁶¹ from 1940 and Welch from 1938. ⁿ¹⁶² J.C. Penney is twelfth on the list with 610 cites, while Welch has been cited 560 times, putting it at fourteen on the list.

In Wisconsin, prior to the Progressive era, state and local governments raised revenue almost exclusively from property taxes.ⁿ¹⁶³ As the government needed more money for programs, as the economy expanded and as large corporations arose, property taxes were no longer a fair, effective way to tax.ⁿ¹⁶⁴ Wisconsin tried to solve these problems by enacting “the United States’ first workable state income tax in 1911.”ⁿ¹⁶⁵

A challenge Wisconsin faced in implementing the nation’s first state income tax was deciding how to tax corporations that derived income from assets and operations both in state and out of state.ⁿ¹⁶⁶ To avoid this difficulty Wisconsin had traditionally exempted corporate dividends from taxation but as the problems of the Depression increased, Wisconsin had enacted various social programs that it needed to fund.ⁿ¹⁶⁷ Wisconsin responded by enacting various taxing measures to help equalize the tax burden and raise revenue. These measures included the privilege dividend tax,ⁿ¹⁶⁸ which provided for a tax on the dividends declared by a corporation.ⁿ¹⁶⁹

In J.C. Penney, the company challenged the tax on the ground that the tax deprived the foreign corporation of property without due process of law because Wisconsin had no jurisdiction to impose such a tax on transactions that took place outside its borders.ⁿ¹⁷⁰ The Wisconsin Supreme Court invalidated the law.ⁿ¹⁷¹ The court determined that its decision was controlled by the United States Supreme Court opinion in Connecticut General Life Insurance Company v. Johnson,ⁿ¹⁷² which had disallowed a California tax on a reinsurance contract issued in Connecticut.ⁿ¹⁷³

The United States Supreme Court reversed by a 5-4 vote, concluding that the Wisconsin statute did not violate due process because the taxing power exercised by the state bore a fiscal relation to the protection, opportunities, and benefits given the corporation by the

state.ⁿ¹⁷⁴ The Court recognized the new pressures on the states to generate revenue and the potential problems of courts questioning tax policy: “Nothing can be less helpful than for courts to ... inject themselves in a merely negative way into the delicate processes of fiscal policy-making.”ⁿ¹⁷⁵

In J.C. Penney, the Court moved away from using formalistic categories such as “situs” and “jurisdiction” to test state taxing policies, to a less formalistic “nexus” test. The “nexus” theory would be used by the Court for years to come.ⁿ¹⁷⁶

In the other tax case, Welch v. Henry, the United States Supreme Court affirmed the Wisconsin Supreme Court’s determination that taxing an individual for corporate dividends at a different rate from and without the deductions allowed on other income did not deny equal protection, nor did retroactive application of the statute deny due process.ⁿ¹⁷⁷ The Court concluded that the legislation was well within the taxing power of the state.ⁿ¹⁷⁸

G. Two Other Important Cases

A case not in the top twenty but nearly there with 386 citations is Dean Milk v. City of Madison.ⁿ¹⁷⁹ This case has also received a fair amount of scholarly attention. In Dean Milk, a Madison City Ordinance prohibited the sale of milk unless bottled within five miles of the central square of Madison.ⁿ¹⁸⁰ Furthermore, the ordinance required city officials to inspect and issue permits to farms that were the source of milk sold in Madison.ⁿ¹⁸¹ The city officials were relieved of any duty to inspect any farm located more than 25 miles from the city.ⁿ¹⁸² An Illinois corporation was denied a license to sell milk in Madison because its pasteurization plants were more than five miles away.ⁿ¹⁸³

The Wisconsin Supreme Court concluded that the city ordinance was a reasonable exercise of the city's police powers to promote health and safety due to the perishable nature of milk and the fact that it is easily contaminated.¹⁸⁴ Ultimately, the court found that in the interests of public health, the city was entitled to set up its own system of milk inspection so long as it was reasonable and did not intentionally discriminate.¹⁸⁵

The United States Supreme Court vacated the Wisconsin Supreme Court decision and held that the ordinance unjustifiably discriminated against interstate commerce.¹⁸⁶ Protection of health and safety did not warrant this particular economic barrier when "reasonable and adequate nondiscriminatory alternatives" were available to serve legitimate local interests.¹⁸⁷ The Court was ultimately concerned with protectionism: "to permit Madison to adopt a regulation not essential for the protection of local health interests and placing a discriminatory burden on interstate commerce would invite a multiplication of preferential trade areas destructive of the very purpose of the Commerce Clause."¹⁸⁸

By 1920, dairy products had replaced timber products as Wisconsin's number one industry¹⁸⁹ and soon Wisconsin's nickname became "the Dairy State." In Dean Milk, it is likely that Wisconsin was trying to protect its number one industry from outside competition. An example of early dormant Commerce Clause jurisprudence, this case is where the Court announced the requirement that state and local governments must pursue "reasonable nondiscriminatory alternatives" to health and safety measures that burden interstate commerce.¹⁹⁰

Another famous Wisconsin case, which did not quite make the top twenty—with 377 cites—but which has received attention in scholarly circles, is Ableman v. Booth.¹⁹¹ The case is important for the federalism and slavery issues it raised. Ableman, a

Milwaukee citizen, was arrested for releasing an escaped slave who had been captured pursuant to the Fugitive Slave Act.¹⁹² Justice Smith of the Wisconsin Supreme Court released Ableman on a writ of habeas corpus, asserting that the court had authority to release any prisoner held within the bounds of the state.¹⁹³ The full Wisconsin Supreme Court, in a classic exposition of state's rights, affirmed, holding that the Fugitive Slave Act was unconstitutional because the Act did not provide the accused fugitive slave a jury trial and because it vested judicial powers in a non-judicial officer.¹⁹⁴

The United States Supreme Court reversed, holding that state courts cannot issue a writ of habeas corpus when a party is imprisoned under the authority of the United States.¹⁹⁵ Chief Justice Taney wrote that the state courts cannot claim supremacy over the courts of the United States in cases arising under the Constitution or laws of the United States: otherwise the very existence of the Union would be jeopardized.¹⁹⁶ The Constitution itself contemplated a federal system where the courts of the United States are supreme and the states, upon entering the Union, voluntarily accept this fact.¹⁹⁷

In the aftermath of Booth, In re Tarble¹⁹⁸ (another case arising in Wisconsin), and Dred Scott,¹⁹⁹ the antislavery movement gained momentum and, according to many historians, led to the birth of the Republican party here in Wisconsin.²⁰⁰ The events of the Booth case took place between March and July of 1854, close on the heels of the introduction of the federal Kansas-Nebraska Bill that had served to revive a militant antislavery sentiment.²⁰¹ This sentiment was further fueled by the Court's decision in Dred Scott. "Taney's opinion [in Dred Scott] threw the weight of national legal authority squarely on the side of slaveholders.... Once the Court made clear that it favored the interests of one section over another, the remaining ties of political unity snapped"²⁰² and the country careened

toward Civil War.

Booth and Tarble can also be partly credited for Congress's decision in 1867 to give habeas jurisdiction to United States courts and judges.ⁿ²⁰³ "Without being fully aware of the significance of what it was doing, Congress had here made a great enactment for securing liberty."ⁿ²⁰⁴ McCardle later allowed for appeal to the United States Supreme Court, but otherwise the "basic grant remains a part of the law today."ⁿ²⁰⁵

IV. Some Conclusions About Wisconsin's Contribution to Constitutional Jurisprudence

So, what do these cases say about Wisconsin and its contribution to constitutional jurisprudence? We can't say for sure whether Wisconsin's contribution is unique without comparing it to that of other states. But we do believe that the subject matter and the cases sketch the unique historical patina that is Wisconsin's own.

It was fitting to find an important anti-slavery case in light of our abolitionist history. It was fitting to find so many important labor cases, for we were the first to enact comprehensive worker's compensation and unemployment compensation laws. It was fitting to find significant taxation cases, for we were also the first state to enact a workable state income tax. It was also fitting to find a milk case originating in the great dairy state (and involving our capital city).

In all, woven into each of the cases is a small part of Wisconsin's unique history—and part of the state's history is then woven into the law of the nation.

Let us end by paraphrasing Garrison Keillor's conclusion to his radio reports from Lake Wobegon: That's the news from Lake Monona, Wisconsin, where all the women judges are strong, all the men judges are good looking, and all the decisions are above average.

Appendix to “Building A More Perfect Union”

*United States Supreme Court Cases Originating in the Wisconsin State Court System**

City News and Novelty, Inc. v. City of Waukesha, 121 S. Ct. 743 (2001) (holding that an owner of an adult-oriented shop no longer had a legally cognizable interest in the outcome of a dispute once he voluntarily withdrew its renewal application and closed the business), aff’g in part and rev’g in part 604 N.W. 2d.

Planned Parenthood of Wisconsin v. Doyle, 120 S. Ct. 2738, mem. vacating and remanding for further consideration in light of Stenberg v. Carhart, 120 S. Ct. 2597 (2000) (holding statute banning partial birth abortion unconstitutionally overbroad).

Christensen v. Doyle, 120 S. Ct. 2738, mem. vacating and remanding for further consideration in light of Stenberg v. Carhart, 120 S. Ct. 2597 (2000) (holding statute banning partial birth abortion unconstitutionally overbroad).

Williams v. Wisconsin, 120 S. Ct. 1552 (2000), mem. vacating and remanding for further consideration in light of Florida v. J.L., 120 S. Ct. 1375 (2000) (holding anonymous tips lacked the necessary indicia of reliability for an investigatory stop).

Larson v. Wisconsin, 117 S. Ct. 1689 (1997), mem. vacating and remanding 203 Wis. 2d 270, 551 N.W.2d 870 (Ct. App. June 27, 1996) (unpublished table decision) for further consideration in light of Richards v. Wisconsin, 117 S. Ct. 1416 (1997) (see infra number 2).

Richards v. Wisconsin, 117 S. Ct. 1416 (1997) (holding there is no blanket exception to the “knock and announce” rule for felony drug investigations; court must review the reasonableness of an officer’s decision not to knock under a standard of whether announcing presence, under the circumstances, would be dangerous or futile or would inhibit the effective investigation of the crime), aff’g 201 Wis. 2d 845, 549 N.W.2d 218 (1996).

Wisconsin v. Mitchell, 508 U.S. 476 (1993) (holding Wisconsin statute applying a penalty

enhancer for hate crimes did not violate defendant’s right to free speech and was not unconstitutionally overbroad), rev’g 169 Wis. 2d 153, 485 N.W.2d 807 (1992).

Wisconsin Dep’t of Revenue v. William Wrigley, Jr. Co., 505 U.S. 214 (1992) (holding Wisconsin could permissibly tax out-of-state gum manufacturer under Interstate Commerce Tax Act because company’s activities were not de minimus and fell outside immunity provision for “solicitation of orders”), rev’g 160 Wis. 2d 53, 465 N.W.2d 2d 800 (1991).

Wisconsin Pub. Intervenor v. Mortier, 501 U.S. 597 (1991) (holding the Federal Insecticide, Fungicide, and Rodenticide Act did not preempt Wisconsin local governmental regulation of pesticide use), rev’g Mortier v. Town of Casey, 154 Wis. 2d 18, 452 N.W.2d 555 (1990).

McNeil v. Wisconsin, 501 U.S. 171 (1991) (holding accused’s invocation of Sixth Amendment right to counsel during judicial proceeding did not constitute invocation of right to counsel derived from Miranda v. Arizona and Fifth Amendment’s guarantee against compelled self-incrimination), aff’g 155 Wis. 2d 24, 454 N.W.2d 742 (1990).

Conley v. Wisconsin, 487 U.S. 1230 (1988), mem. vacating and remanding 141 Wis. 2d 384, 416 N.W.2d 69 (Ct. App. 1987) for further consideration in light of Coy v. Iowa, 487 U.S. 1012 (1988) (holding placement of a screen between criminal defendant and child sexual assault victim during testimony against defendant violated defendant’s right to confront witnesses giving testimony against him at trial).

Felder v. Casey, 487 U.S. 131 (1988) (holding Wisconsin’s notice-of-claim statute is preempted by federal law when a 1983 action is brought in state court because it conflicts in both its purpose and effects with the remedial objectives of 1983 and because its enforcement in state court actions would frequently produce different outcomes based solely on whether the 1983 claim was asserted in state or federal court), rev’g 139 Wis. 2d 614, 408 N.W.2d 19 (1987).

Gerhardt ex rel. Krueger v. Estate of Moore, 486 U.S. 1050 (1988), mem. vacating and remanding 139 Wis. 2d 833, 407 N.W.2d 895 (1987) for further consideration in light of Clark v. Jeter, 486 U.S. 456 (1988) (holding Pennsylvania’s six year

statute of limitations for child support claims denied equal protection).

McCoy v. Court of Appeals, 486 U.S. 429 (1988) (holding Wisconsin Supreme Court rule requiring court-appointed counsel wanting to withdraw from representing client to file a brief including a discussion of why the issue lacks merit does not violate client's rights under the Sixth and Fourteenth Amendments), aff'g State ex rel. McCoy v. Court of Appeals, 137 Wis. 2d 90, 403 N.W.2d 449 (1987).

Griffin v. Wisconsin, 483 U.S. 868 (1987) (holding Wisconsin State Department of Health and Social Services regulation allowing a probation officer to search a probationer's home without a warrant so long as a supervisor approves and there are reasonable grounds to believe there is contraband present satisfies Fourth Amendment because regulation is itself a reasonable response to the special needs of the probation system), aff'g 131 Wis. 2d 41, 388 N.W.2d 535 (1986).

Allis-Chalmers Corp. v. Lueck, 471 U.S. 202 (1985) (holding the bad faith handling of an insurance claim under a non-occupational disability insurance plan included in a collective bargaining agreement must be treated as a 301 Labor Management Relations Act claim or be dismissed as preempted by federal law because resolution of the issue depends on analysis of terms in collective bargaining agreement), rev'g Lueck v. Aetna Ins. Co., 116 Wis. 2d 559, 342 N.W.2d 699 (1984).

Welsh v. Wisconsin, 466 U.S. 740 (1984) (holding warrantless nighttime entry into home to arrest individual for driving while under the influence of an intoxicant is prohibited by the Fourth Amendment), vacating 108 Wis. 2d 319, 321 N.W.2d 245 (1982).

Democratic Party of the United States v. Wisconsin ex rel. LaFollette, 450 U.S. 107 (1981) (holding Wisconsin could not constitutionally compel the national Democratic Party to seat a delegation chosen in a way contrary to the party's rules because the national party enjoys a constitutionally protected right of political association under the First Amendment and state's asserted interests did not justify the state's interference with the associational freedom of national party members), rev'g 93 Wis. 2d 473, 287 N.W.2d 519 (1980).

Exxon Corp. v. Wisconsin Dep't of Revenue, 447 U.S. 207 (1980) (holding neither the Due Process Clause nor the Commerce Clause prevented Wisconsin from applying its statutory apportionment formula for taxation purposes to appellant's total income), aff'g 90 Wis. 2d 700, 281 N.W.2d 94 (1979).

Percy v. Terry, 443 U.S. 902 (1979), mem. vacating and remanding State ex rel. Terry v. Schubert, 74 Wis. 2d 487, 247 N.W.2d 109 (1976); State ex rel. Terry v. Percy, 84 Wis. 2d 693, 267 N.W.2d 380 (1978) for further consideration in light of Parham v. J.R., 442 U.S. 584 (1979) (holding risk of error inherent in parental decision to have a child institutionalized was sufficient enough to require a neutral fact finder to make some kind of inquiry when admitting child for treatment at a mental hospital) and Greenholtz v. Inmates of Neb. Penal & Correctional Complex, 442 U.S. 1 (1979) (holding parole procedure that affords opportunity to be heard and informs inmate in what respects he fails to qualify for parole if parole is denied complies with due process).

Rudolph v. Wisconsin, 429 U.S. 1034 (1977), mem. vacating and remanding 71 Wis. 2d 845, 240 N.W.2d 430 (Mar. 2, 1976) (unpublished table decision) for further consideration in light of Doyle v. Ohio, 426 U.S. 610 (1976) (holding assurance that silence will contain no penalty is implicit in Miranda warning, prosecutor's cross examination of defendants as to why they had not told story previously was not justified because any discrepancy would not imply that defendants were not telling the truth).

City of Madison. Joint Sch. Dist. No. 8 v. Wisconsin Employment Relations Comm'n, 429 U.S. 167 (1976) (holding a non-union teacher could not be prohibited from speaking at a school board meeting about pending negotiations on the grounds that it is an unfair labor practice to negotiate with a member of the bargaining unit other than the collective bargaining representative because it would be an improper prior restraint on the teacher's First Amendment rights and circumstances did not present such a danger to labor-management relations to justify prior restraint on speech), rev'g 69 Wis. 2d 200, 231 N.W.2d 206 (1975).

Lodge 76. Int'l Ass'n of Machinists and Aerospace Workers v. Wisconsin Employment Relations

Comm'n, 427 U.S. 132 (1976) (holding union's concerted refusal to work overtime during contract negotiations was peaceful conduct constituting activity that, if subject to state regulation, would conflict with congressional purpose in enacting comprehensive federal labor relations law), rev'g 67 Wis. 2d 13, 226 N.W.2d 203 (1975).

Hortonville Joint Sch. Dist. No. 1 v. Hortonville Educ. Ass'n, 426 U.S. 482 (1976) (holding teachers who were discharged by school board for engaging in a strike which was prohibited by state law were not deprived of due process right to an impartial decision-maker merely because school board members were familiar with the facts of the case and occupied statutory role of negotiator), rev'g 66 Wis. 2d 469, 225 N.W.2d 658 (1975).

Court v. Wisconsin, 413 U.S. 911 (1973), mem. vacating and remanding 51 Wis. 2d 683, 188 N.W.2d 475 (1971) for further consideration in light of Alexander v. Virginia, 413 U.S. 836 (1973) (per curiam) (holding trial by jury was not required in state civil proceeding involving magazines alleged to be obscene); Roaden v. Kentucky, 413 U.S. 496 (1973) (holding seizure of film being exhibited to general public presented essentially same restraint on expression as seizure of books in a bookstore, and action by office, without authority of constitutionally sufficient warrant, was a form of prior restraint unreasonable under Fourth Amendment); Heller v. New York, 413 U.S. 483 (1973) (holding adversary hearing prior to seizure of allegedly obscene film at commercial movie house was not required where judge saw entire film before signing warrant for its seizure); United States v. Orto, 413 U.S. 139 (1973) (holding Congress has the power to prevent obscene material, which is not protected by the First Amendment, from entering the stream of commerce and that the constitutionally protected zone of privacy does not extend beyond the home); United States v. 12 200-ft Reels of Film, 413 U.S. 123 (1973) (holding Congress has constitutional power to proscribe the importation of obscene matter even though the material was for importer's private, personal use and possession); Kaplan v. California, 413 U.S. 115 (1973) (holding community standards in state, rather than national standard, were adequate for determining whether book was obscene); Paris Adult Theatre I v. Slaton, 413 U.S. 49 (1973) (holding nothing in Constitution precludes the state from regulating obscene materials, provided

that state law meets standards under the First Amendment as enumerated in Miller v. California); Miller v. California, 413 U.S. 15 (1973) (holding sexually explicit material may be subject to state regulation where the material, taken as a whole, appeals to the prurient interest in sex, portrays in a patently offensive way sexual conduct specifically defined by the applicable state law, and taken as a whole, does not have serious literary, artistic, political or scientific value).

Farrell v. Schmidt, 408 U.S. 915 (1972), mem. vacating and remanding State ex rel. Farrell v. Schubert, 52 Wis. 2d 351, 190 N.W.2d 529 (1971) for further consideration in light of Humphrey v. Cady, 405 U.S. 504 (1972) (holding prisoner held under Wisconsin Sex Crimes Act must be afforded an evidentiary hearing on whether he was denied equal protection because he was not entitled to a jury at his renewal commitment hearing; waiver of state court remedies that will bar federal habeas corpus must be the product of an understanding and knowing decision by prisoner).

Kois v. Wisconsin, 408 U.S. 229 (1972) (holding conviction of newspaper publisher for publishing an article containing nude pictures of a man and a woman and a poem entitled "Sex Poem" about sexual intercourse violated First Amendment because pictures were not obscene and were rationally related to the purpose of the article and poem did not, as a dominant theme, appeal to the prurient interest), rev'g per curiam 51 Wis. 2d 668, 188 N.W.2d 467 (1971).

Wisconsin v. Yoder, 406 U.S. 205 (1972) (holding First Amendment Free Exercise Clause prevents state from compelling Amish parents to send their children who have graduated from eighth grade until formal high school to age sixteen), aff'g 49 Wis. 2d 430, 182 N.W.2d 539 (1971).

Rothstein v. Lutheran Social Servs., 405 U.S. 1051 (1972), mem. vacating and remanding State ex rel. Lewis v. Lutheran Social Servs., 47 Wis. 2d 420, 178 N.W.2d 56 (1970) for further consideration in light of Stanley v. Illinois, 405 U.S. 645 (1972) (holding due process requires unwed father to be given a hearing on his fitness as a parent before his children could be taken from him in state dependency proceeding after the death of the children's natural mother).

Groppi v. Wisconsin, 400 U.S. 505 (1971) (holding statute preventing change of venue in a criminal trial regardless of extent of local

prejudice on the ground that the charge is a misdemeanor violates defendant's right to trial by impartial jury), vacating 41 Wis. 2d 312, 164 N.W.2d 266 (1969).

Sniadach v. Family Fin. Corp., 395 U.S. 337 (1969) (holding, absent notice and prior hearing, Wisconsin's pre-judgment garnishment procedure in which creditor's lawyer obtains summons and by serving garnishee sets in motion procedure that freezes garnishee's wages before trial of main suit without an opportunity on part of garnishee to be heard or to offer a defense denies due process), rev'g 37 Wis. 2d 163, 154 N.W.2d 259 (1967).

Copas v. Schmidt, 392 U.S. 660 (1968), vacating and remanding per curiam State ex rel. Copas v. Burke, 28 Wis. 2d 188, 136 N.W.2d 778 (1965) for further consideration in light of Mempa v. Rhay, 389 U.S. 128 (1967) (invalidating imposition of sentence after revocation of defendant's probation where defendant was not offered services of or was represented by counsel at proceedings).

Greenwald v. Wisconsin, 390 U.S. 519 (1968) (holding confession of defendant obtained prior to advising him of his rights was involuntary and inadmissible under totality of circumstances), rev'g per curiam 35 Wis. 2d 146, 150 N.W.2d 507 (1967).

Belcher v. Wisconsin, 387 U.S. 241 (1967), vacating and remanding per curiam unpublished order of Wisconsin Supreme Court (Oct.-Dec. 1965) for further consideration in light of Anders v. California, 386 U.S. 738 (1967) (holding failure to grant indigent defendant seeking initial review of his conviction the services of an advocate violates his Fourteenth Amendment rights to fair procedure and equality).

Hanna Mining Co. v. District 2. Marine Eng'rs Beneficial Ass'n, 382 U.S. 181 (1965) (holding National Labor Relations Act did not preempt state's authority to enjoin marine engineer's union from alleged organizational picketing of employer's ships where National Labor Relations Board had previously determined engineers were supervisors and not employees), rev'g 23 Wis. 2d 433, 127 N.W.2d 393 (1964).

Keller v. Wisconsin ex rel. State Bar, 374 U.S. 102 (1963), vacating and remanding per curiam 16 Wis. 2d 377, 114 N.W.2d 796 (1962) for further consideration in light of Sperry v. Florida ex rel.

Fla. Bar, 373 U.S. 379 (1963) (holding state could not enjoin a non-lawyer registered to practice before the United States Patent Office from preparing and prosecuting patent applications in the state, even if such activity constituted practice of law in state, in view of federal statute and Patent Office regulations authorizing practice before Patent Office by non-lawyers).

Lathrop v. Donohue, 367 U.S. 820 (1961) (holding Wisconsin Supreme Court order integrating Wisconsin Bar and requiring attorneys practicing law in Wisconsin to pay dues to the Treasurer of the Wisconsin Bar did not violate right to freedom of association because the rules of the State Bar did not compel association with anyone and the state has an interest in an integrated bar), aff'g 10 Wis. 2d 230, 102 N.W.2d 404 (1960).

Plumbers, Steamfitters, Refrigeration, Petroleum Fitters, and Apprentices of Local 298 v. Door County, 359 U.S. 354 (1959) (holding county is a person entitled to National Labor Relations Board protection from unfair labor practices; fact that county was a plaintiff in the suit did not deprive Board of jurisdiction and re-establish state power and it was error for state courts to exercise jurisdiction), rev'g 4 Wis. 2d 142, 89 N.W.2d 920 (1958).

Youngstown Sheet & Tube Co. v. Bowers, 358 U.S. 534 (1959) (holding state could permissibly tax imported iron ore and lumber under Import-Export Clause where materials were imported for use in manufacturing and materials had been put to use for which they were imported), aff'g United States Plywood Corp. v. City of Algoma, 2 Wis. 2d 567, 87 N.W.2d 481 (1958).

American Motors Corp. v. City of Kenosha, 356 U.S. 21 (1958), aff'g per curiam without opinion, 274 Wis. 315, 80 N.W.2d 363 (1957) (holding valid tax on aircraft engine inventory produced for the U.S. government but remaining in possession of the company).

International Bhd. of Teamsters, Local 695 v. Vogt, Inc., 354 U.S. 284 (1957) (holding state's enjoyment of picketing by union did not violate Fourteenth Amendment where purpose of picketing was to coerce employer to put pressure on employees to join union in violation of declared policy of state to allow workers liberty of self-organization), aff'g 270 Wis. 315, 74 N.W.2d 749 (1956) (on rehearing).

Wisconsin Elec. Power Co. v. City of Milwaukee, 352 U.S. 948 (1956), vacating and remanding per curiam 272 Wis. 575, 76 N.W.2d 341 (1956) for further consideration in light of Walker v. City of Hutchinson, 352 U.S. 112 (1956) (holding due process requires that an owner whose property is taken for public use must be given notice and a hearing in determining just compensation; notice must be reasonably calculated to inform parties of proceedings which may directly and adversely affect their legally protected interests).

United Auto., Aircraft, and Agric. Implement Workers v. Wisconsin Employment Relations Bd., 351 U.S. 266 (1956) (holding state had power to enjoin violent union conduct during course of a strike even if such conduct constituted an unfair labor practice under the National Labor Relations Act because section of National Labor Relations Act was not meant to be exclusive method of controlling violence), aff'g 269 Wis. 578, 70 N.W.2d 191 (1955).

Hughes v. Fetter, 341 U.S. 609 (1951) (holding Wisconsin's wrongful death statute that excluded an Illinois cause of action involved in a case violated national policy of full faith and credit), rev'g 257 Wis. 35, 42 N.W.2d 452 (1950).

Amalgamated Ass'n of St., Elec. Ry. & Motor Coach Employees, Div. 998 v. Wisconsin Employment Relations Bd., 340 U.S. 416 (1951) (holding attack on arbitration award was moot because the award was superseded by agreement and one year effectiveness period of agreement had elapsed), vacating as moot 257 Wis. 53, 42 N.W.2d 477 (1950)

Amalgamated Ass'n of St., Elec. Ry. & Motor Coach Employees, Div. 998 v. Wisconsin Employment Relations Bd., 340 U.S. 383 (1951) (holding invalid a Wisconsin public utility law under which labor injunctions had been issued because it infringed on a field of legislation already occupied by federal law), rev'g 257 Wis. 43, 42 N.W.2d 471 (1950); Wisconsin Employment Relations Bd. v. Milwaukee Gas Light Co., 258 Wis. 1, 44 N.W.2d 547 (1950).

Dean Milk Co. v. City of Madison, 340 U.S. 349 (1951) (holding ordinance prohibiting sale of milk unless bottled within five miles of the central square of Madison unduly burdened interstate commerce in view of the availability of reasonable and adequate alternatives to ensure milk quality such as Model Milk Ordinance), rev'g 257 Wis.

308, 43 N.W.2d 480 (1950).

Treichler v. Wisconsin, 340 U.S. 868 (1950) (affirming Wisconsin Supreme Court on issue of validity of computation of appellant's tax under Wisconsin Emergency Tax on Inheritance and dismissing attack on validity of tax computation under Wisconsin Estate Tax because it rested on adequate nonfederal grounds) aff'g in part, dismissing in part per curiam In re Miller's Estate, 257 Wis. 439, 43 N.W.2d 428 (1950).

Plankinton Packing Co. v. Wisconsin Employment Relations Bd., 338 U.S. 953 (1950), rev'g per curiam 255 Wis. 285, 38 N.W.2d 688 (1949) on authority of Bethlehem Steel Co. v. New York State Labor Relations Bd., 330 U.S. 767 (1947) (holding where National Labor Relations Board has jurisdiction of industry and has refused to designate bargaining units, this constitutes a determination that such units are not appropriate for bargaining purposes; state labor relations board did not have jurisdiction to determine that foreman's units constituted a proper bargaining unit); La Crosse Tel. Corp. v. Wisconsin Employment Relations Bd., 336 U.S. 18 (1949) (see infra number 49).

Treichler v. Wisconsin, 338 U.S. 251 (1949) (holding emergency tax of thirty percent on inheritances was invalid where it measured tangible property held outside Wisconsin), rev'g In re Miller's Estate, 254 Wis. 24, 35 N.W.2d 404 (1948).

Algoma Plywood & Veneer Co. v. Wisconsin Employment Relations Bd., 336 U.S. 301 (1949) (holding order of Wisconsin Employment Relations Board requiring petitioner to cease and desist from giving effect to maintenance of membership clause and to reinstate employee and compensate him for lost back wages under Wisconsin Employment Peace Act was not in conflict with the Taft-Hartley Act or the Wagner Act), aff'g 252 Wis. 549, 32 N.W.2d 417 (1948).

International Union, UAW, AFL, Local 232 v. Wisconsin Employment Relations Bd., 336 U.S. 245 (1949) (holding Wisconsin Employment Peace Act, as applied by order of Wisconsin Employment Relations Board, directing labor union to cease and desist from engaging in concerted effort to interfere with production by arbitrarily calling union meetings and inducing work stoppages during working hours was valid and did not conflict with the Commerce Clause,

National Labor Relations Act or Labor Management Relations Act and was not invalid as imposing involuntary servitude and did not violate union's rights of free speech or public assembly), aff'g 250 Wis. 550, 27 N.W.2d 875 (1947), overruled by Lodge 76, Int'l Ass'n of Machinists & Aerospace Workers v. Wisconsin Employment Relations Comm'n, 427 U.S. 132 (1976) (see supra number 19).

La Crosse Tel. Corp. v. Wisconsin Employment Relations Bd., 336 U.S. 18 (1949) (holding certification by Wisconsin Employment Relations Board of union as collective bargaining representative sustained by Wisconsin Supreme Court is a final judgment within federal statute authorizing review by the United States Supreme Court; Wisconsin Employment Relations Board did not have jurisdiction to determine bargaining representative even though national board had not acted on particular case), rev'g 251 Wis. 583, 30 N.W.2d 241 (1947).

Dyer v. City Council of Beloit, 333 U.S. 825 (1948) vacating as moot per curiam 250 Wis. 613, 27 N.W.2d 733 (1947).

Industrial Comm'n v. McCartin, 330 U.S. 622 (1947) (holding Illinois Workmen's Compensation Act was not designed to preclude any recovery in proceedings brought in another state for injuries received there in course of Illinois employment), rev'g 248 Wis. 570, 22 N.W.2d 522 (1946).

State Farm Mut. Auto. Ins. Co. v. Duel, 324 U.S. 154 (1945) (holding Wisconsin statute requiring every insurance company doing business in Wisconsin to compute unearned premium reserve by a specified percent of premiums received and show them as a liability in annual statement as applied to appellant did not deny appellant due process or equal protection because regulating financial stability of insurance companies is within state's police power and statute was relevant to that end), aff'g 244 Wis. 429, 12 N.W.2d 696 (1944).

International Harvester Co. v. Wisconsin Dep't of Taxation, 322 U.S. 435 (1944) (holding Wisconsin statute imposing tax on privilege of declaring and receiving dividends out of Wisconsin income by domestic and foreign corporations and requiring deduction of tax by corporations from such dividends is constitutional under Fourteenth Amendment), aff'g 243 Wis. 198, 10 N.W.2d 169 (1943); Minnesota Mining & Mfg. Co. v.

Department of Taxation, 243 Wis. 211, 10 N.W.2d 174 (1943).

Allen-Bradley Local No. 1111 v. Wisconsin Employment Relations Bd., 315 U.S. 740 (1942) (holding order of Wisconsin Employment Relations Board forbidding union and its members in connection with labor dispute to engage in mass picketing, picketing employee's homes, threatening employees, and obstructing entrance to employer's factory did not conflict with National Labor Relations Act), aff'g 237 Wis. 164, 295 N.W. 791 (1941).

Hotel & Restaurant Employees' Int'l Alliance, Local No. 122 v. Wisconsin Employment Relations Bd., 315 U.S. 437 (1942) (holding order of the Wisconsin Employment Relations Board enjoining violent picketing did not violate picketer's rights to free speech), aff'g 236 Wis. 329, 294 N.W. 632 (1940).

Wisconsin v. F.W. Woolworth Co., 311 U.S. 622 (1940), rev'g per curiam F.W. Woolworth Co. v. Tax Comm'n, 233 Wis. 305, 289 N.W. 685 (1940) on the authority of Wisconsin v. J.C. Penney Co., 311 U.S. 435 (1940) (see infra number 58).

Wisconsin v. Minnesota Mining & Mfg. Co., 311 U.S. 452 (1940), rev'g per curiam Minnesota Mining & Mfg. Co. v. Tax Comm'n, 233 Wis. 306, 289 N.W. 686 (1940) on authority of Wisconsin v. J.C. Penney Co., 311 U.S. 435 (1940) (see infra number 58).

Wisconsin v. J.C. Penney Co., 311 U.S. 435 (1940) (holding Wisconsin statute taxing dividends of foreign corporations did not deny equal protection or due process because the taxing power exercised by the state bore a fiscal relation to protection, opportunities, and benefits given by state), rev'g J.C. Penney v. Tax Comm'n, 233 Wis. 286, 289 N.W. 677 (1940).

Van Dyke v. Wisconsin Tax Comm'n, 311 U.S. 605 (1940) aff'g per curiam 235 Wis. 128, 292 N.W. 313 (1940) on authority of Pearson v. McGraw, 308 U.S. 313 (1939) (holding state's jurisdiction over intangible property for purpose of imposing tax on transfers made in contemplation of death is dependent, not on physical location of property in state, but on owner's control over the property; two steps to a transaction did not preclude taxation of transfer under state inheritance tax statute).

Kalb v. Feuerstein, 308 U.S. 433 (1940) (holding federal Frazier-Lemke Act regulating bankruptcy of farmers deprived state courts of jurisdiction over contemporaneous foreclosure proceedings), rev'g 231 Wis. 185, 285 N.W. 431 (1939); Kalb v. Luce, 231 Wis. 186, 285 N.W. 431 (1939).

Schneider v. New Jersey, 308 U.S. 147 (1939) (holding Milwaukee ordinance prohibiting the circulation and distribution of circulars and handbills violated the First Amendment), rev'g City of Milwaukee v. Snyder, 230 Wis. 131, 283 N.W. 301 (1939).

Welch v. Henry, 305 U.S. 134 (1938) (holding statute taxing corporate dividends at a different rate than other income and without deductions allowed on other income did not deny equal protection nor did retroactive application of the statute deny due process), aff'g 226 Wis. 595, 277 N.W. 183 (1938).

Senn v. Tile Layers Protective Union, Local No. 5, 301 U.S. 468 (1937) (holding provisions of the Wisconsin Labor Code which authorized giving publicity to labor disputes, declaring peaceful picketing, patrolling lawful picketing, and prohibiting injunctions against such conduct did not deny due process or equal protection), aff'g 222 Wis. 383, 268 N.W. 270 (1936).

Hopkins Fed. Savings & Loan Ass'n v. Cleary, 296 U.S. 315 (1935) (holding conversion of Wisconsin building and loan association into a federal savings and loan association was of no effect when voted against the protest of the state because the Federal Home Owners Act authorizing such a conversion without the state's consent violated the Tenth Amendment), aff'g State ex rel. Cleary v. Hopkins St. Bldg. & Loan Ass'n, 217 Wis. 179, 257 N.W. 684 (1934).

Consolidated Textile Corp. v. Gregory, 289 U.S. 85 (1933) (holding foreign corporation cannot be sued in a state merely because it sells goods there through a subsidiary; corporation not licensed to do business in state must be carrying on business there when service is attempted), rev'g State ex rel. Consolidated Textile Corp. v. Gregory, 209 Wis. 476, 245 N.W. 194 (1932).

Pobreslo v. Joseph M. Boyd Co., 287 U.S. 518 (1933) (holding Wisconsin statute providing voluntary assignments for benefit of creditors was not in conflict with federal bankruptcy act where statutory proceedings did not contemplate

discharge of assignor from debts), aff'g 210 Wis. 20, 242 N.W. 725 (1932).

Hoeper v. Tax Comm'n, 284 U.S. 206 (1931) (holding state's attempt to measure tax on a person's property or income by reference to another's property and provision of state law that added wife's income to husband's in computing husband's tax liability denied due process), rev'g 202 Wis. 493, 233 N.W. 100 (1930).

Nekoosa Edwards Paper Co. v. Railroad Comm'n, 283 U.S. 787 (1931), aff'g per curiam 201 Wis. 40, 228 N.W. 144 (1929) on authority of Portland Ry. Light & Power Co. v. Railroad Comm'n, 229 U.S. 397 (1913) (holding state may validly prohibit fares that are discriminatory against a locality); Miedreich v. Lauenstein, 232 U.S. 236 (1914) (holding United States Supreme Court will not reverse findings of state supreme court where there is evidence supporting the state court's conclusion); Northern Pacific Ry. v. North Dakota ex rel. McCue, 236 U.S. 585 (1915) (same holding).

Northern Coal & Dock Co. v. Strand, 278 U.S. 142 (1928) (holding rights of parties regarding death of employee working on vessel lying in navigable waters is governed by maritime law and state industrial commission had no jurisdiction to hear claim), rev'g Northern Coal & Dock Co. v. Industrial Comm'n, 193 Wis. 515, 215 N.W. 448 (1927).

Northwestern Mut. Life Ins. Co. v. Wisconsin, 275 U.S. 136 (1927) (holding United States bonds and interest income earned on them cannot be taxed by the states), rev'g 189 Wis. 103, 207 N.W. 430; 189 Wis. 114, 207 N.W. 434 (1926).

Fox River Paper Co. v. Railroad Comm'n, 274 U.S. 651 (1927) (holding Wisconsin's determination that rights of riparian landowners to develop water power by the construction of dams remains inchoate until state gives its consent was binding on the United State Supreme Court; Fourteenth Amendment does not protect alleged rights of property which the state courts have determined to be nonexistent), aff'g 189 Wis. 626, 208 N.W. 266 (1926).

Pierce v. Barker, 274 U.S. 718 (1927), aff'g per curiam Pierce v. Industrial Comm'n, 188 Wis. 53, 205 N.W. 496 (1925) on authority of Booth Fisheries Co. v. Industrial Comm'n, 271 U.S. 208 (1926) (see infra number 76).

First Nat'l Bank v. City of Hartford, 273 U.S. 548 (1927) (holding national banks may be taxed only so far as authorized by Congress), rev'g 187 Wis. 290, 203 N.W. 721 (1925).

Napier v. Atlantic Coast Line R.R., 272 U.S. 605 (1926) (holding Congress may preclude state legislation regulating locomotive equipment in interstate commerce), rev'g Chicago & Northwestern Ry. v. Railroad Comm'n, 188 Wis. 232, 205 N.W. 932 (1925).

Uihlein v. Wisconsin, 273 U.S. 642 (1926), rev'g per curiam *In re Uihlein's Will*, 187 Wis. 101, 203 N.W. 742 (1925) on authority of Schlesinger v. Wisconsin, 270 U.S. 230 (1926) (see infra number 78).

Booth Fisheries Co. v. Industrial Comm'n, 271 U.S. 208 (1926) (holding employer that has elected to accept provisions of Wisconsin Workmen's Compensation Act is estopped and has waived right to assert unconstitutionality of particular sections of the Act; provision denying judicial review of question whether Industrial Commission's findings are against preponderance of evidence does not violate Fourteenth Amendment), aff'g 185 Wis. 127, 200 N.W. 775 (1924).

Rissling v. City of Milwaukee, 271 U.S. 644 (1926), aff'g per curiam 184 Wis. 517, 199 N.W. 61 (1924) on authority of Reinman v. City of Little Rock, 237 U.S. 171 (1915) (holding ordinance making it unlawful to operate a livery stable within a designated area did not deny due process because it is within the state's police power); Barbier v. Connolly, 113 U.S. 27 (1885) (holding city ordinance prohibiting washing and ironing in public laundries between 10 p.m. and 6 a.m. did not deny equal protection because it is within the state's police power); Gundling v. Chicago, 177 U.S. 183 (1900) (holding ordinance giving mayor power to grant licenses to sell cigarettes upon a determination that person applying is of good character did not deny due process because regulating the pursuit of lawful trade is within the state's police power).

Schlesinger v. Wisconsin, 270 U.S. 230 (1926) (holding state inheritance tax construing gifts within six years of donor's death as made in contemplation of death is an arbitrary classification invalid under the Fourteenth Amendment), rev'g *In re Schlesinger's Estate*, 184 Wis. 1, 199 N.W. 951 (1924).

Superior Water, Light & Power Co. v. City of Superior, 263 U.S. 125 (1923) (holding provisions of state public utility act that substituted an indeterminate permit for a water company's franchise with a city and allowed purchase of the waterworks by the city on stated conditions when term expired impaired obligation of contracts), rev'g 176 Wis. 626, 187 N.W. 677 (1922); 174 Wis. 257, 183 N.W. 254 (1921).

Kentucky Fin. Corp. v. Paramount Auto Exch. Corp., 262 U.S. 544 (1923) (holding foreign corporation is a person within meaning of the Equal Protection Clause; requirement that officer of foreign corporation which brought suit in the state attend at a time and place within the state for examination or the suit will be dismissed violates equal protection), rev'g 171 Wis. 586, 178 N.W. 9 (1920).

Munday v. Wisconsin Trust Co., 252 U.S. 499 (1920) (holding Wisconsin statute forbidding a foreign corporation from transacting business in the state and declaring its contracts void until it has filed copies of its charter does not violate Contracts Clause or deny due process), aff'g 168 Wis. 31, 168 N.W. 393 (1918).

Milwaukee Elec. Ry. & Light Co. v. Wisconsin ex rel. City of Milwaukee, 252 U.S. 100 (1920) (holding Wisconsin Supreme Court decision requiring a railway company to repave a portion of the street did not deny equal protection even where court had reached a contrary result in a similar case; statute requiring the repavement did not violate Contracts Clause), aff'g 166 Wis. 163, 164 N.W. 844 (1917).

Chicago, Milwaukee and St. Paul Ry. v. O'Connor, 248 U.S. 536 (1918), aff'g per curiam 163 Wis. 653, 158 N.W. 343 (1916) on authority of Southern Ry. v. Puckett, 244 U.S. 571 (1917); Great N. Ry. v. Knapp, 240 U.S. 464 (1916); Seaboard Air Line Ry. v. Padgett, 236 U.S. 668 (1915) (all holding that ruling of highest state court that suit under Federal Employee's Liability Act was properly left for the jury is reviewable by United States Supreme Court but will not be disturbed on writ of error, except for clear error).

United States Glue Co. v. Town of Oak Creek, 247 U.S. 321 (1918) (holding general income tax upon net income of Wisconsin corporation derived from transactions in interstate commerce does not violate Commerce Clause), aff'g 161 Wis. 211, 153 N.W. 241 (1915).

Northwestern Mut. Life Ins. Co. v. Wisconsin, 247 U.S. 132 (1918) (holding license tax on gross income of domestic insurance companies but not foreign insurance companies does not violate Commerce Clause or deny equal protection of the laws), aff'g 163 Wis. 507, 158 N.W. 328 (1916); 163 Wis. 484, 155 N.W. 609 (1915).

Martin v. Chicago, Milwaukee & St. Paul Ry., 246 U.S. 649 (1918), aff'g per curiam 162 Wis. 595, 156 N.W. 1087 (1916) on authority of Baltimore & Ohio R.R. v. Whitacre, 242 U.S. 169 (1916); Great N. Ry. v. Knapp, 240 U.S. 464 (1916); Seaboard Air Line Ry. v. Koennecke, 239 U.S. 352 (1915); Seaboard Air Line Ry. v. Padgett, 236 U.S. 668 (1915); Chicago Junction Ry. v. King, 222 U.S. 222 (1911) (all holding that ruling of highest state court that suit under Federal Employee's Liability Act was properly left for the jury is reviewable by United States Supreme Court but will not be disturbed on writ of error, except for clear error).

Menasha Wooden Ware Co. v. Minneapolis, St. Paul & Sault Ste. Marie Ry., 245 U.S. 633 (1917), aff'g per curiam 159 Wis. 130, 150 N.W. 411 (1914) on authority of New York Central & Hudson River R.R. v. Gray, 239 U.S. 583 (1916) (holding the federal Hepburn Act required a carrier to pay the unpaid balance of the price of a map rather than provide transportation services in trade because the Act made free transportation unlawful); Portland Light & Power Ry. v. Railroad Comm'n, 229 U.S. 397 (1913) (see supra number 68); Louisville & Nashville R.R. v. Mottley, 219 U.S. 467 (1911) (holding congressional act prohibiting any carrier from demanding, collecting, or receiving a greater, less, or different compensation for transportation of goods or property than the published railway rates does not violate Contracts Clause where it voids a prior contract releasing railroad from a damages claim in exchange for annual passes); Armour Packing Co. v. United States, 209 U.S. 56 (1908) (sustaining conviction under Elkins Act making it a crime for any person or corporation to offer, grant, solicit, give or accept any rebate, concession, or discrimination in respect to transportation of property in interstate commerce when the property will be transported at less than carrier's published rates).

Menasha Paper Co. v. Chicago & Northwestern Ry., 241 U.S. 55 (1916) (holding railroad embargo violated Hepburn Act), aff'g 159 Wis. 508, 149

N.W. 751 (1914).

Bullen v. Wisconsin, 240 U.S. 625 (1916) (holding inheritance tax upon trust fund held outside state did not violate Contracts Clause or Fourteenth Amendment), aff'g In re Bullen's Estate, 143 Wis. 512, 128 N.W. 109 (1910).

Southern Wis. Ry. v. City of Madison, 240 U.S. 457 (1916) (holding municipal ordinance assessing railway for costs of repaving area around tracks did not deny due process or equal protection because the duty to keep the space in repair fell within rules and regulations the company was bound to obey), aff'g 156 Wis. 352, 146 N.W. 492 (1914).

Chicago, Milwaukee & St. Paul R.R. v. Wisconsin, 238 U.S. 491 (1915) (holding Wisconsin statute prohibiting the letting down of an unoccupied upper berth in a sleeping car when lower berth is occupied took property without just compensation contrary to due process), rev'g 152 Wis. 341, 140 N.W. 70 (1913).

Milwaukee Electric Ry. & Light Co. v. Railroad Comm'n, 238 U.S. 174 (1915) (holding exercise of state power to fix railway rates is not a taking, construction of Wisconsin statute by the Wisconsin Supreme Court will be followed by the United States Supreme Court), aff'g 153 Wis. 502, 142 N.W. 491 (1913).

Chicago & Northwestern Ry. v. Gray, 237 U.S. 399 (1915) (holding it was not reversible error for the court to exclude evidence in a personal injury action that railroad track where plaintiff was struck was an interstate road), aff'g 153 Wis. 637, 142 N.W. 505 (1913).

Chicago, Burlington & Quincy R.R. v. Railroad Comm'n, 237 U.S. 220 (1915) (holding statute that required that certain villages must be given two passenger trains each way each day without regard to the adequacy of the existing passenger service was an unlawful burden on interstate commerce when applied to a railroad running only interstate trains), rev'g 152 Wis. 654, 140 N.W. 296 (1913).

Knapp v. Alexander-Edgar Lumber Co., 237 U.S. 162 (1915) (holding homesteader could recover damages for timber cut on his land by a trespasser after homesteader's entry but before he took possession of land), rev'g 145 Wis. 528, 130 N.W. 504 (1911).

Union Lime Co. v. Chicago & Northwestern Ry., 233 U.S. 211 (1914) (holding order condemning land for extension of railroad spur track was not a taking for a private use and did not deny due process or equal protection), aff'g In re Chicago & Northwestern Ry., 152 Wis. 633, 140 N.W. 346 (1913).

Wisconsin ex rel. Bolens v. Frear, 231 U.S. 616 (1914) (holding where state is the real party in interest and the relator has no authority to sue except on consent of the state and state does not so consent writ of error will be dismissed because reviewing court has no jurisdiction), dismissing 148 Wis. 456, 134 N.W. 673 (1912).

Adams v. City of Milwaukee, 228 U.S. 572 (1913) (holding milk from cows outside city was not unconstitutionally discriminated against by ordinance prohibiting shipment into the city unless the cows had been subjected to a tuberculosis test; provision of statute ordering confiscation and destruction of milk for violations was not a taking without due process), aff'g 144 Wis. 371, 129 N.W. 518 (1911).

McDermott v. Wisconsin, 228 U.S. 115 (1913) (holding Wisconsin statute permitting sale of product in the state only when labels prescribed by statute were substituted for those already in place in an attempt to comply with the Food and Drug Act was unlawful because it conflicted with legitimate federal regulations of interstate commerce), rev'g 143 Wis. 18, 126 N.W. 888 (1910).

Converse v. Hamilton, 224 U.S. 243 (1912) (holding refusal of Wisconsin courts to permit receiver of an insolvent Minnesota corporation, who under Minnesota statute became quasi-assignee of stockholder's liability, to maintain an action to enforce liability of stockholders denied full faith and credit to Minnesota laws), rev'g 136 Wis. 589, 118 N.W. 190 (1908); Converse v. McCauley, 136 Wis. 594, 118 N.W. 192 (1908).

International Textbook Co. v. Lynch, 218 U.S. 664 (1910), rev'g per curiam International Textbook Co. v. Peterson, 133 Wis. 302, 113 N.W. 730 (1907) on authority of International Textbook Co. v. Pigg, 217 U.S. 91 (1910) (holding foreign correspondence school had right to maintain action in the state courts).

Rankin v. Emigh, 218 U.S. 27 (1910) (holding milk producers were entitled to recover the

proceeds of sales of butter from the receiver of a national bank which had taken over the operation of an insolvent creamery company and to participate pro rata as general creditors to the extent such proceeds had been diverted and appropriated by the bank), aff'g Emigh v. Earling, 134 Wis. 565, 115 N.W. 128 (1908).

Disconto Gesellschaft v. Umbreit, 208 U.S. 570 (1908) (holding rights of citizens of Prussia were not violated under a treaty entitling them to the same security and protection as natives of this country by refusal of state court on grounds of public policy to apply the doctrine of comity nor were Prussian citizens denied due process of law), aff'g 127 Wis. 651, 106 N.W. 821 (1906).

Eau Claire Nat'l Bank v. Jackman, 204 U.S. 522 (1907) (holding validity of claims against bankrupt and question of whether other claims had received voidable preferences under federal bankruptcy act cannot be litigated in state court because this would effectively transfer the administration of the bankrupt's estate from the federal courts to state court), aff'g 125 Wis. 465, 104 N.W. 98 (1905).

Hill v. McCord, 195 U.S. 395 (1904) (holding entryman was not prevented from taking a reconveyance of land and residing again upon it for the purpose of securing title for his grantees after his prior confirmation of commutation entry was found invalid due to his premature entry under federal homestead laws), aff'g 117 Wis. 306, 94 N.W. 65 (1903).

Aikens v. Wisconsin, 195 U.S. 194 (1904) (upholding convictions for wilfully and maliciously injuring another in business by combining for purpose to refuse space to advertisers who would pay increased rate charged by rival), aff'g 113 Wis. 419, 89 N.W. 1135 (1902).

Finney v. Guy, 189 U.S. 335 (1903) (holding question of whether a state court should permit an action to be maintained on the principle of comity between the states is exclusively for the courts of that state to decide and not a question for a federal court; corporation was not denied full faith and credit where Wisconsin court denied it the right to maintain a further action where laws of home state of corporation provided an exclusive remedy), aff'g 111 Wis. 296, 87 N.W. 255 (1901).

Oshkosh Waterworks Co. v. City of Oshkosh, 187 U.S. 437 (1903) (holding obligation of contracts

not impaired when city revised its charter to require those bringing suit against the city to present suit to the city council and providing that decision of city council disallowing the suit is final unless appealed to circuit court within twenty days), aff'g 109 Wis. 208, 85 N.W. 376 (1901).

National Foundry & Pipe Works v. Oconto Water Supply Co., 183 U.S. 216 (1902) (holding claimants must raise claim that federal courts have exclusive jurisdiction of the res in a foreclosure proceeding of bankrupt in the state court or it is waived; claim between parties for judgment on a lien where court had already determined their rights in foreclosure is res judicata), aff'g 105 Wis. 48, 81 N.W. 125 (1899).

Hale v. Lewis, 181 U.S. 473 (1901) (holding a state court decision that a corporation was estopped from asserting the invalidity of a statute even if it is unconstitutional was not reviewable because non-federal ground was broad enough to support judgment), dismissing Lewis v. American Sav. & Loan Ass'n, 98 Wis. 203, 73 N.W. 793 (1897).

Doherty v. Northern Pacific Ry., 177 U.S. 421 (1900) (holding land department committed no error when it held that railroad company had authority under its charter to locate its eastern terminus at Ashland), aff'g 100 Wis. 39, 75 N.W. 1079 (1898).

Thormann v. Frame, 176 U.S. 350 (1900) (holding appointment of an administrator in a state where decedent died does not constitute an adjudication that the decedent was domiciled there at the time of death), aff'g 102 Wis. 653, 79 N.W. 39 (1899).

Green Bay & Mississippi Canal Co. v. Patten Paper Co., 172 U.S. 58 (1898) (holding state could lawfully reserve water power incidentally created in public project and subsequent conveyances of improvement passed full title and rights; injured riparian owners could obtain compensation; power and control over disposition of surplus water vested in the United States when it took title to the improvement; when canal company took title from the United States by contract, control over the waters was subject to regulation by the United States), rev'g 93 Wis. 283, 66 N.W. 601 (1896).

Wisconsin ex rel. Baltzell v. Seibecker, 164 U.S. 702 (1896), aff'g per curiam State ex rel. Baltzell v. Stewart, 74 Wis. 620, 43 N.W. 947 (1889) on authority of Fallbrook Irrigation Dist. v. Bradley,

164 U.S. 112 (1896) (holding statute providing for the organization of districts for the irrigation of arid lands and authorizing an assessment on the lands to pay for cost of irrigation did not deprive landowner of property without due process of law); Wurts v. Hoagland, 114 U.S. 606 (1885) (holding statute providing for drainage of marshy lands upon assent of majority of landowners and assessing all owners for costs after notice and hearing applicable to all lands of the same kind did not deny equal protection).

Great W. Tel. Co. v. Burnham, 162 U.S. 339 (1896) (holding remand by state court is not a final judgment appealable to the United States Supreme Court), dismissing 79 Wis. 47, 47 N.W. 373 (1890).

Northern Pacific R.R. v. Ellis, 144 U.S. 458 (1892) (holding decision of the Wisconsin Supreme Court that rights of the parties were res judicata was not reviewable by the United States Supreme Court), dismissing 80 Wis. 459, 50 N.W. 397 (1891).

Kaukauna Water Power Co. v. Green Bay & Mississippi Canal Co., 142 U.S. 254 (1891) (holding riparian landowner was entitled to compensation for land taken to erect a dam on his embankment but was not entitled to compensation for loss of water flow), aff'g 70 Wis. 635, 35 N.W. 529 (1887).

In re Manning, 139 U.S. 504 (1891) (holding appointee was judge de facto during term of appointment because court was legally in existence), aff'g 76 Wis. 365, 45 N.W. 26 (1890).

In re Graham, 138 U.S. 461 (1891) (holding decision by state court denying writ of habeas corpus for a convicted prisoner sentenced in excess of maximum punishment fixed by state law not reviewable by United States Supreme Court because it presented no federal question), aff'g 74 Wis. 450, 43 N.W. 148 (1889); 76 Wis. 366, 44 N.W. 1105 (1890).

Wisconsin Cent. R.R. v. Price County, 133 U.S. 496 (1890) (holding indemnity clause in land grant contract with railroad covered losses from grant by reason of sales of homestead and preemption rights before the date of the grant, and from between date of the grant and the date of the location of the railroad), rev'g 64 Wis. 579, 26 N.W. 93 (1885).

Cornelius v. Kessel, 128 U.S. 456 (1888) (holding party was entitled to have legal title to land he had paid for at public land office conveyed to him even though one tract was not subject to entry and entry to all tracts had been canceled by commissioner of land office), aff'g 58 Wis. 237, 16 N.W. 550 (1883).

Polleys v. Black River Improvement Co., 113 U.S. 81 (1885) (holding two year statute of limitations to bring a writ of error started to toll when judgment was entered and had run in particular action), dismissing May 24, 1882 unpublished decision of La Crosse County Circuit Court.

Whitney v. Morrow, 112 U.S. 693 (1885) (holding landowner validly owned land where title had been confirmed by the legislature and party disputing ownership could not produce evidence that the land was used for military purposes at time of entry contrary to statute), aff'g 50 Wis. 197, 6 N.W. 494 (1880).

United States v. Jones, 109 U.S. 513 (1883) (holding provision of congressional act that the United States will compensate riparian landowners for damages caused by dams that have overflowed in a manner prescribed by laws of the state waived federal immunity and was valid insofar as it did not infringe on the exclusive eminent domain power of the United States), aff'g 48 Wis. 385, 4 N.W. 519 (1879).

Hall v. Wisconsin, 103 U.S. 5 (1880) (holding where state makes a contract with a person for employment for a specified term and to pay a specified compensation it is bound by that contract like a private person), rev'g 39 Wis. 79 (1875).

Morrill v. Wisconsin, 154 U.S. 626 (1877), rev'g 38 Wis. 428 (1875) on authority of Welton v. Missouri, 91 U.S. 275 (1875) (holding license tax imposed on sellers of goods not manufactured or grown in the state conflicted with federal power to govern interstate commerce).

Morrow v. Whitney, 95 U.S. 551 (1877) (holding it was error for the Wisconsin Supreme Court to exclude evidence that lands in ejectment action were occupied by the military at the time Congress passed confirmatory act), rev'g 36 Wis. 438 (1874).

Stone v. Wisconsin, 94 U.S. 181 (1876) (holding construction by Wisconsin Supreme Court that a railway company did not have a right to fix its

rates under its act of incorporation was binding on the United States Supreme Court), aff'g 37 Wis. 204 (1875).

Chicago, Milwaukee, and St. Paul R.R. v. Ackley, 94 U.S. 179 (1876), aff'g 36 Wis. 252 (1874) on authority of Peik v. Chicago & Northwestern Ry., 94 U.S. 164 (1876) (railroad company could not charge more than the statutory maximum railway rates even if it could show the amount charged was reasonable compensation for services rendered).

Doyle v. Wisconsin, 94 U.S. 50 (1876) (holding statute providing that execution of a writ of error shall not issue until ten days after judgment only applied to federal courts), denying motion State ex rel. Drake v. Doyle, 40 Wis. 175 (1876).

West Wis. Ry. v. Board of Supervisors, 93 U.S. 595 (1876) (holding act of legislation exempting property of a railroad from taxation was not a contract to keep property exempt from taxation but was a gratuity offered by the state subject to revocation), aff'g 35 Wis. 257 (1874).

Insurance Co. v. Morse, 87 U.S. (20 Wall.) 445 (1874) (holding unconstitutional a statute requiring insurance companies wishing to conduct business in Wisconsin to contract not to remove any suit for trial to the federal courts), rev'g Morse v. Home Ins. Co., 30 Wis. 496 (1872).

Eldred v. Sexton, 86 U.S. (19 Wall.) 189 (1873) (holding plaintiff's entries for purchase of land were invalid because they were made before the lands had been subject to public sale at the minimum price in accordance with general public land sale policy), aff'g 30 Wis. 193 (1872).

Tarble's Case, 80 U.S. (13 Wall.) 397 (1871) (holding court commissioner is without jurisdiction to issue a writ of habeas corpus when the prisoner is held by an officer of the United States as an enlisted soldier mustered into military service by the national government and under the jurisdiction of the United States), rev'g 25 Wis. 390 (1870).

Curtis v. Whitney, 80 U.S. (13 Wall.) 68 (1871) (holding statute requiring holder of a tax certificate to give notice to occupant of land before he takes his tax deed did not impair obligation of contracts; nor did it impair obligation of contracts because the statute may affect parties retrospectively or because it may make

performance more difficult for one party or reduce the value of performance to the other party provided it leaves obligation of performance in full force), aff'g Curtis v. Morrow, 24 Wis. 664 (1869).

Van Slyke v. Wisconsin, 154 U.S. 581 (1871), aff'g Van Slyke v. State, 23 Wis. 655 (1869); Bagnall v. State, 25 Wis. 112 (1869) on authority of National Bank v. Kentucky, 76 U.S. (9 Wall.) 353 (1869); Lionberger v. Rouse, 76 U.S. (9 Wall.) 468 (1869) (both holding state may tax shares of shareholders in national banking associations).

Comstock v. Crawford, 70 U.S. (3 Wall.) 396 (1865) (holding decisions of probate court, a court of limited jurisdiction, could not be attacked collaterally), aff'g unpublished decision of Probate Court of Grant County.

Ableman v. Booth, 62 U.S. (21 How.) 506 (1858) (holding Fugitive Slave Law constitutional; commissioner had lawful authority to issue the warrant and take party into custody; district court had exclusive jurisdiction and state court could not reverse conviction), rev'g In re Booth, 3 Wis. 1 (1854); Ex parte Booth, 3 Wis. 145 (1854).

Walworth v. Kneeland, 56 U.S. (15 How.) 348 (1853), dismissing Kneeland v. Cowles, 3 Pin. 316 (1851) for want of jurisdiction because plaintiff had not established a cause of action under the 25th Section of the Judiciary Act of 1789.

Preston v. Bracken, 51 U.S. (10 How.) 81 (1850) (holding territorial court had no jurisdiction after Wisconsin was admitted to the Union), dismissing 1 Pin. 365 (1843).

McNulty v. Batty, 51 U.S. (10 How.) 72 (1850) (holding territorial court had no jurisdiction after Wisconsin was admitted to the Union), dismissing 2 Pin 53 (1847).

Gear v. Parish, 46 U.S. (5 How.) 168 (1846) (holding plaintiff was entitled to enforce an agreement between the parties for a sum of money due to him as a creditor), rev'g 1 Pin 261 (1842).

Grignon's Lessee v. Astor, 43 U.S. (2 How.) 319 (1844) (holding state circuit court had jurisdiction to adjudicate a dispute between heir and the administrator of deceased's estate as to whether the administrator could sell assets to pay creditors pursuant to Michigan law because jurisdiction attaches on the decease of any person indebted beyond the personal estate he leaves), aff'g Jackson ex rel. Grignon v. Astor, 1 Pin. 137 (1841).

Endnotes:

n1. We relied primarily on WESTLAW to locate the United States Supreme Court cases that originated in the Wisconsin courts. We chose the SCT or SCT-OLD database, as applicable, and used the key word "Wisconsin" and a date restriction covering a ten- or twenty-year period, to avoid bringing up a large volume of cases at once. After retrieving the cases, we scrolled the cite list for the cases WESTLAW designated as having originated in Wisconsin. (Also, we examined any cases that were not designated as originating in Wisconsin and looked ambiguous to determine their state of origin.) We retained all full opinions, per curiam opinions, memorandum opinions, and any dismissals or other final dispositions that were accompanied by an opinion. We discarded cases where certiorari was denied, cases involving attorney disbarment, cases dismissed without an opinion, cases invoking the original jurisdiction of the United States Supreme Court, applications for a stay, and cases that originated in an administrative tribunal, e.g., the NLRB, or a subject matter court, e.g., the Commerce Court or Tax Court. We then printed in full all the cases that originated in the Wisconsin state court system, and the cite list of the cases that originated in the federal court system in Wisconsin and conducted our statistical analysis. All of the Wisconsin state court cases were checked on WESTLAW to determine the number of times they have been cited. References to the number of times a case has been cited include all citations listed in the United States Reports as of January 27, 1998.

See the Appendix, prepared by Elizabeth Hartman, for a listing and brief summary, in reverse chronological order, of the 143 United States Supreme Court cases that originated in the Wisconsin state court system.

n2. *State v. Carpenter*, 197 Wis. 2d 252, 541 N.W.2d 105 (1995), cert. denied sub nom. *Schmidt v. Wisconsin*, 117 S. Ct. 2507 (1997).

n3. *Kansas v. Hendricks*, 117 S. Ct. 2072 (1997) (upholding the constitutionality of the Kansas Sexually Violent Predator Act).

n4. *Senn v. Tile Layers Protective Union, Local No. 5*, 301 U.S. 468 (1937) (see discussion infra text accompanying notes 65-66 or Appendix for summary); *Hotel & Restaurant Employees' Int'l Alliance, Local No. 122 v. Wisconsin Employment Relations Bd.*, 315 U.S. 437 (1942) (see Appendix for summary); *Allen-Bradley Local No. 1111 v. Wisconsin Employment Relations Bd.*, 315 U.S. 740 (1942) (see discussion infra text accompanying notes 47-48 or Appendix for summary); *LaCrosse Tel. Corp. v. Wisconsin Employment Relations Bd.*, 336 U.S. 18 (1949) (see Appendix for summary); *International Union, UAW, AFL, Local 232 v. Wisconsin Employment Relations Bd.*, 336 U.S. 245 (1949) (see discussion infra text accompanying notes 49-52 or Appendix for summary); *Algoma Plywood & Veneer Co. v. Wisconsin Employment Relations Bd.*, 336 U.S. 301 (1949) (see discussion infra text accompanying notes 55-56 or Appendix for summary); *Plankinton Packing Co. v. Wisconsin Employment Relations Bd.*, 338 U.S. 953 (1950) (see Appendix for summary); *Amalgamated Ass'n of St. Elec. Ry. & Motor Coach Employees, Div. 998 v. Wisconsin Employment Relations Bd.*, 340 U.S. 383 (1951) (see Appendix for summary); *Amalgamated Ass'n of St. Elec. Ry. & Motor Coach Employees, Div. 998 v. Wisconsin Employment Relations Bd.*, 340 U.S. 416 (1951) (see

discussion infra text accompanying notes 57-59 or Appendix for summary); *United Auto., Aircraft, and Agric. Implement Workers v. Wisconsin Employment Relations Bd.*, 351 U.S. 266 (1956) (see discussion infra text accompanying notes 53-54 or Appendix for summary); *International Bhd. of Teamsters, Local 695 v. Vogt, Inc.*, 354 U.S. 284 (1957) (see discussion infra text accompanying notes 67-71 or Appendix for summary); *Plumbers, Steamfitters, Refrigeration, Petroleum Fitters, and Apprentices of Local 298 v. Door County*, 359 U.S. 354 (1959) (see Appendix for summary); *Hanna Mining Co. v. District 2, Marine Eng'rs Beneficial Ass'n*, 382 U.S. 181 (1965) (see Appendix for summary); *Hortonville Joint Sch. Dist. No. 1 v. Hortonville Educ. Ass'n*, 426 U.S. 482 (1976) (see discussion infra text accompanying notes 79-81 or Appendix for summary); *Lodge 76, Int'l Ass'n of Machinists and Aerospace Workers v. Wisconsin Employment Relations Comm'n*, 427 U.S. 132 (1976) (see discussion infra text accompanying notes 60-64 or Appendix for summary); *City of Madison, Joint Sch. Dist. No. 8 v. Wisconsin Employment Relations Comm'n*, 429 U.S. 167 (1976) (see Appendix for summary); *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202 (1985) (see discussion infra text accompanying notes 40-43 or Appendix for summary).

n5. *Sniadach v. Family Fin. Corp.*, 395 U.S. 337 (1969) (see discussion infra text accompanying notes 123-33 or Appendix for summary).

n6. Of the 302 total federal cases, 130 were decided before 1880.

n7. After 1920, the United States Supreme Court took 91 cases from the Wisconsin federal courts and 80 from the Wisconsin state courts.

n8. Sixty-seven cases were affirmed and sixty-eight were reversed/vacated.

n9. *Griffin v. Wisconsin*, 483 U.S. 868 (1987) (see Appendix for summary); *American Motors Corp. v. City of Kenosha*, 356 U.S. 21 (1958), aff'd per curiam 274 Wis. 315, 80 N.W.2d 363 (1957); *Hughes v. Fetter*, 341 U.S. 609 (1951) (see Appendix for summary); *International Union, UAW, AFL, Local 232 v. Wisconsin Employment Relations Bd.*, 336 U.S. 245 (1949) (see discussion infra text accompanying notes 49-52 or Appendix for summary); *Wisconsin v. Minn. Mining & Mfg. Co.*, 311 U.S. 452 (1940) (see Appendix for summary); *Wisconsin v. J.C. Penney Co.*, 311 U.S. 435 (1940) (see discussion infra text accompanying notes 170-76 or Appendix for summary); *Senn v. Tile Layers Protective Union, Local No. 5*, 301 U.S. 468 (1937) (see discussion infra text accompanying notes 65-66).

n10. *International Union, UAW, AFL, Local 232 v. Wisconsin Employment Relations Bd.*, 336 U.S. 245 (1949) (see discussion infra text accompanying notes 49-52).

n11. *Lodge 76, Int'l Ass'n of Machinists and Aerospace Workers v. Wisconsin Employment Relations Comm'n*, 427 U.S. 132 (1976) (see discussion infra text accompanying notes 60-64).

n12. Richard A. Posner, Cardozo: A Study in Reputation (1990).

n13. See id. at 69-73.

n14. Id. at 75.

n15. Id. at 77.

- n16. See *id.* at 79-80. Posner corrected his statistics for recency.
- n17. This statistic includes citations to per curiam opinions.
- n18. Again, this statistic includes citations to per curiam opinions.
- n19. Grignon's Lessee v. Astor, 43 U.S. (2 How.) 319 (1844). This case is the fifteenth most frequently cited Wisconsin case in the United States Supreme Court. The case involved a dispute over who had title to the land of a decedent, his heirs or persons purchasing the land at a sale after court proceedings. The outcome of the case turned on whether the probate court had jurisdiction to hear the case. This case was cited 516 times between 1844 and 1922. It has not been cited since 1922.
- n20. 471 U.S. 202 (1985).
- n21. 406 U.S. 205 (1972).
- n22. 395 U.S. 337 (1969).
- n23. 308 U.S. 147 (1939).
- n24. 315 U.S. 740 (1942).
- n25. 336 U.S. 245 (1949).
- n26. 301 U.S. 468 (1937).
- n27. 427 U.S. 132 (1976).
- n28. 354 U.S. 284 (1957).
- n29. 466 U.S. 740 (1984).
- n30. 340 U.S. 383 (1951).
- n31. 311 U.S. 435 (1940).
- n32. 308 U.S. 433 (1940).
- n33. 305 U.S. 134 (1938).
- n34. 43 U.S. (2 How.) 319 (1844).
- n35. 351 U.S. 266 (1956).
- n36. 336 U.S. 301 (1949).
- n37. 487 U.S. 131 (1988).
- n38. 426 U.S. 482 (1976).
- n39. 501 U.S. 171 (1991).
- n40. Allis-Chalmers Corp. v. Lueck, 471 U.S. 202 (1985).
- n41. See Lueck v. Aetna Life Ins. Co., 116 Wis. 2d 559, 576, 342 N.W.2d 699, 707 (1984).
- n42. See Allis-Chalmers Corp., 471 U.S. at 220.
- n43. See *id.* at 219.
- n44. Other issues, such as interstate commerce and free speech, also were involved.
- n45. Allen-Bradley Local No. 1111 v. Wisconsin Employment Relations Bd., 315 U.S. 740 (1942); International Union, UAW, AFL, Local 232 v. Wisconsin Employment Relations Bd., 336 U.S. 245 (1949); Algoma Plywood & Veneer Co. v. Wisconsin Employment Relations Bd., 336 U.S. 301 (1949); United Auto., Aircraft, and Agric. Implement Workers v. Wisconsin Employment Relations Bd., 351 U.S. 266 (1956).
- n46. Amalgamated Ass'n of St. Elec. Ry. & Motor Coach Employees, Div. 998 v. Wisconsin Employment Relations Bd., 340 U.S. 383 (1951); Lodge 76, Int'l Ass'n of Machinists and Aerospace Workers v. Wisconsin Employment Relations Comm'n, 427 U.S. 132 (1976).
- n47. 237 Wis. 164, 169, 295 N.W. 791,793-94 (1941).
- n48. See Allen-Bradley, 315 U.S. at 751.
- n49. Local 232, 336 U.S. at 248-49.
- n50. See International Union, UAW, AFL, Local 232 v. Wisconsin Employment Relations Bd., 250 Wis. 550, 560, 27 N.W.2d 875, 880 (1947).
- n51. See Local 232, 336 U.S. at 264-65 (citing Allen-Bradley to support its holding).
- n52. Lodge 76, Int'l Ass'n of Machinists and Aerospace Workers v. Wisconsin Employment Relations Comm'n, 427 U.S. 132 (1976).
- n53. 351 U.S. 266, 274-75 (1956).
- n54. See *id.* at 272.
- n55. 336 U.S. 301, 314-15 (1949).
- n56. See *id.*
- n57. 340 U.S. 383, 399 (1951).
- n58. See Wisconsin Employment Relations Bd. v. Amalgamated Ass'n of St. Elec. Ry. & Motor Coach Employees, Div. 998, 257 Wis. 43, 47, 52, 42 N.W.2d 471, 474, 476 (1950) (consolidated with Wisconsin Employment Relations Board v. Milwaukee Gas Light Co., 258 Wis. 1, 44 N.W.2d 347 (1950)).
- n59. See Amalgamated 998, 340 U.S. at 399.
- n60. 427 U.S. 132 (1976).
- n61. 336 U.S. 245 (1949).
- n62. See Lodge 76, Int'l Ass'n of Machinists and Aerospace Workers v. Wisconsin Employment Relations Comm'n, 67 Wis. 2d 13, 17, 226 N.W.2d 203, 205 (1975).
- n63. See *id.* at 25-26, 226 N.W.2d at 209.
- n64. See Machinists, 427 U.S. at 155.
- n65. Senn v. Tile Layers Protective Union, 301 U.S. 468 (1937); International Bhd. of Teamsters, Local 695 v. Vogt, Inc., 354 U.S. 284 (1957).
- n66. 301 U.S. at 481-82.
- n67. 354 U.S. at 284.
- n68. See Vogt, Inc. v. International Bhd. of Teamsters, Local 695, 270 Wis. 315, 318-19, 74 N.W.2d 749, 752 (1956).
- n69. Vogt, 354 U.S. at 285.
- n70. See Vogt, 270 Wis. at 321m, 74 N.W. 2d at 756.
- n71. See Vogt, 354 U.S. at 294.

- n72. 310 U.S. 88 (1940) (reversing union member's conviction for picketing and loitering contrary to Alabama statute).
- n73. 301 U.S. 468 (1937). Senn is relied on extensively by the Thornhill court. See Thornhill, 310 U.S. at 102-04.
- n74. See, e.g., Vogt, 354 U.S. at 294.
- n75. See Laurence H. Tribe, *American Constitutional Law* 12-7, at 825-27 (2d ed. 1988).
- n76. See id. at 826.
- n77. See id. at 827.
- n78. Id.
- n79. Hortonville Sch. Dist. No. 1 v. Hortonville Educ. Ass'n, 426 U.S. 482 (1976).
- n80. See id. at 486.
- n81. See id. at 497.
- n82. Joseph A. Ranney, "Law and the Progressive Era, Part III: Reforming the Workplace," *Wis. Law.*, Oct. 1994 at 16, 18.
- n83. See Joseph A. Ranney, "The Rise of Labor and Wisconsin's 'Little New Deal,'" *Wis. Law.*, May 1995 at 18, 20-21.
- n84. See id. at 22.
- n85. For example, the Wisconsin Employment Peace Act "in many ways foreshadowed the federal Taft-Hartley Act of 1947." Id. at 21.
- n86. Kalb v. Fauerstein, 308 U.S. 433 (1940); Felder v. Casey, 487 U.S. 131 (1988).
- n87. 308 U.S. at 436.
- n88. See Kalb v. Luce, 228 Wis. 519, 522, 279 N.W. 685, 686 (1938).
- n89. See Fauerstein, 308 U.S. at 444.
- n90. Felder, 487 U.S. at 153.
- n91. See id.
- n92. Wisconsin Pub. Intervenor v. Mortier, 501 U.S. 597 (1991).
- n93. 154 Wis. 2d 18, 452 N.W.2d 555(1990).
- n94. See id. at 20, 452 N.W.2d at 555.
- n95. See Mortier, 501 U.S. at 600.
- n96. Id. at 615.
- n97. Elena S. Rutrick, Comment, "Local Pesticide Regulation Since Wisconsin Public Intervenor v. Mortier," 20 B.C. Envtl. Aff. L. Rev. 65, 84 (1993).
- n98. James Ford Lang, Note, "Federal Preemption of Local Pesticide Use Regulation: The Past, Present and Future of Wisconsin Public Intervenor v. Mortier," 11 Va. Envtl. L.J. 241, 273 (1992).
- n99. James P. Harrington, Note, "Environmental Law - Local Regulation of Pesticide Use and State Failure to Warn Claims, What Does FIFRA Preempt? - Wisconsin Public Intervenor v. Mortier," 111 S. Ct. 2476 (1991), Temple Envtl. L. & Tech. J. 317, 335 (1992).
- n100. See Timothy A. Quarberg, Note, "Getting the Bugs Out: The Role of Legislative History in Determining the Preemptive Effect of FIFRA upon Local Regulation of Pesticides in Wisconsin Public Intervenor v. Mortier," 15 Hamline L. Rev. 223, 234 (1991).
- n101. Milwaukee v. Snyder, 230 Wis. 131, 283 N.W. 301 (1939).
- n102. 308 U.S. 147 (1939) (consolidating Schneider v. New Jersey, 200 A. 799 (1938); Young v. California, 85 P.2d 231 (1938); Snyder, 230 Wis. 131, 283 N.W. 301 (1939); and Nichols v. Massachusetts, 18 N.E.2d 166 (1938)).
- n103. 406 U.S. 205 (1972).
- n104. Schneider, 308 U.S. at 155.
- n105. See Snyder, 230 Wis. at 135-36, 283 N.W. at 302. The handbills were circulated in connection with picketing stores in a labor dispute.
- n106. See Schneider, 308 U.S. at 162.
- n107. Id. at 163.
- n108. See id.
- n109. Tribe, *supra* note 75, 12-23, at 978. This case also introduced the "public forum" doctrine. This doctrine is important for the recognition that "it is not enough for government to refrain from invading certain areas of liberty. The state may, even at some cost to the public fisc, have to provide at least a minimally adequate opportunity for the exercise of certain freedoms." Id. 12-20, at 964. And abridgment of rights in a public forum are not "insignificant simply because alternative channels are available to the speaker or the listener." Id. 12-23, at 981-82.
- n110. 406 U.S. 205 (1972).
- n111. See id. at 207-08.
- n112. See State v. Yoder, 49 Wis. 2d 430, 447, 182 N.W.2d 539, 547 (1971).
- n113. Id. at 437, 182 N.W.2d at 542.
- n114. See id. at 438-443, 182 N.W.2d at 542-545.
- n115. See Yoder, 406 U.S. at 236.
- n116. See id. at 211.
- n117. See id. at 212.
- n118. See id. at 228-29.
- n119. See id. at 232-33.
- n120. See Tribe, *supra* note 75, 14-7, at 1193.
- n121. Following Yoder, the Court in 1990 decided Employment Division, Department of Human Resources of Oregon v. Smith, 494 U.S. 872 (1990) (holding that the Free Exercise Clause permits the state of Oregon to include religiously inspired peyote use in its general criminal prohibitions against drugs). This decision in turn inspired Congress to enact the Religious Freedom Restoration Act (RFRA), which purported to get back to protecting religious

- freedom as the Yoder case did. The constitutionality of RFRA was successfully challenged in City of Boerne v. Flores, 117 S. Ct. 2157 (1997).
- n122. Wisconsin v. Mitchell, 508 U.S. 476, 490 (1993).
- n123. 395 U.S. 337 (1969).
- n124. See *id.* at 338.
- n125. See Family Fin. Corp. v. Sniadach, 37 Wis. 2d 163, 174, 154 N.W.2d 259, 265 (1968).
- n126. See *id.* at 173, 154 N.W.2d at 265.
- n127. See *id.* at 169, 171, 154 N.W.2d at 262, 264.
- n128. See Sniadach, 395 U.S. at 341-42.
- n129. See *id.* at 339.
- n130. *Id.* at 341-42.
- n131. See also Fuentes v. Shevin, 407 U.S. 67 (1972) (holding prejudgment ex parte replevin of house goods sold under a conditional sales contract violated due process because there was a "possessory interest in the goods, dearly bought and protected by contract"); Goldberg v. Kelly, 397 U.S. 254 (1970) (holding state cannot terminate public assistance benefits without first giving recipient prior notice and evidentiary hearing).
- n132. See Tribe, *supra* note 75, 15-9, at 1336.
- n133. *Id.*
- n134. 466 U.S. 740 (1984).
- n135. See *id.* at 742.
- n136. See State v. Welsh, 108 Wis. 2d 319, 326, 321 N.W.2d 245, 249-50 (1982).
- n137. See *id.* at 336-39, 321 N.W.2d at 254-55.
- n138. See *id.* at 341, 321 N.W.2d at 256-57 (Abrahamson, J., Heffernan, J., dissenting).
- n139. See *id.* at 341-42, 321 N.W.2d at 256-57.
- n140. See *id.* at 356-57, 321 N.W.2d at 263-64.
- n141. See *id.* at 358, 321 N.W.2d at 264.
- n142. See Welsh, 466 U.S. at 755.
- n143. See *id.*
- n144. See *id.* at 752.
- n145. *Id.* at 750.
- n146. See *id.* at 753.
- n147. *Id.*
- n148. See *id.*
- n149. See *id.* at 754.
- n150. Gordon B. Baldwin, "Welsh v. Wisconsin - A View from Counsel," 68 Marq. L. Rev. 623, 644-45 (1985).
- n151. See Baldwin, *supra* note 150, at 644-45.
- n152. 117 S. Ct. 1416 (1997).
- n153. See *id.* at 1422.
- n154. State v. Meyer, 216 Wis. 2d 729, 734-35, 576 N.W.2d 260, 263-64 (1998).
- n155. See Richards, 117 S. Ct. at 1422.
- n156. United States v. Ramirez, 91 F.3d 1297 (9th Cir. 1996).
- n157. See United States v. Ramirez, 118 S. Ct. 992 (1998) (applying Richards).
- n158. 501 U.S. 171 (1991).
- n159. See State v. McNeil, 155 Wis. 2d 24, 34, 454 N.W.2d 742, 745-56 (1990).
- n160. See McNeil, 501 U.S. at 175, 182.
- n161. Wisconsin v. J.C. Penney, 311 U.S. 435 (1940).
- n162. Welch v. Henry, 305 U.S. 134 (1938).
- n163. See Joseph A. Ranney, "Law and the Progressive Era, Part 2: The Transformation of Wisconsin's Tax System, 1887-1925," *Wis. Law.*, Aug. 1994, at 22.
- n164. See *id.*
- n165. *Id.*
- n166. See *id.* at 25.
- n167. See Welch, 305 U.S. at 143.
- n168. See J.C. Penney, 311 U.S. at 442.
- n169. See *id.* at 441.
- n170. J.C. Penney Co. v. Tax Comm'n, 233 Wis. 286, 291, 289 N.W. 677, 679 (1940).
- n171. See *id.* at 297, 289 N.W. at 682.
- n172. 303 U.S. 77 (1938).
- n173. See J.C. Penney, 233 Wis. 286 at 295-96, 289 N.W. at 680.
- n174. See J.C. Penney, 311 U.S. at 444, 446.
- n175. *Id.* at 445.
- n176. See Donald P. Simet, "The Concept of 'Nexus' and State Use and Unapportioned Gross Receipts Taxes," 73 Nw. U. L. Rev. 112 (1978).
- n177. 305 U.S. at 151.
- n178. See *id.*
- n179. 340 U.S. 349 (1951).
- n180. See *id.* at 350.
- n181. See *id.*
- n182. See *id.* at 350-51.
- n183. See *id.* at 351.
- n184. See Dean Milk v. City of Madison, 257 Wis. 308, 311, 315, 43 N.W.2d 480, 482-83 (1950).

n185. See *id.* at 314-15, 43 N.W.2d at 483.

n186. See Dean Milk, 340 U.S. at 356.

n187. See *id.* at 354.

n188. *Id.* at 356.

n189. See Robert C. Nesbit, *Wisconsin: A History* 471 (1973).

n190. Tribe, *supra* note 75, 6-13, at 438 (quoting Dean Milk, 340 U.S. at 354).

n191. 62 U.S. (21 How.) 506 (1858).

n192. See *id.* at 507.

n193. See In re Booth, 3 Wis. 13, 9-10 (1854).

n194. See *id.* at 64-65.

n195. See Booth, 62 U.S. (21 How.) at 523-24. Commentators have suggested that the Booth case brought from Chief Justice Taney "one of the outstanding statements in all American history on the relations of the federal government and on the states and the position of the Supreme Court in the American constitutional system." 5 Carl Brent Swisher, *History of the Supreme Court of the United States: The Taney Period 1836-64*, at 653 (1974).

n196. See Booth, 62 U.S. (21 How.) at 517-18.

n197. See *id.* at 525.

n198. 80 U.S. (13 Wall.) 397 (1871) (holding that a court commissioner is without jurisdiction to issue a writ of habeas corpus when the prisoner is held by an officer of the United States as an enlisted soldier mustered into military service by the national government and under the jurisdiction of the United States).

n199. Dred Scott v. Sanford, 60 U.S. (19 How.) 393 (1857) (holding that blacks were not citizens under the Constitution and thus a black slave who traveled to free territory and back to slave territory could not sue for his freedom).

n200. See Nesbit, *supra* note 189, at 238-39.

n201. *Id.* at 238.

n202. Kermit L. Hall, *The Magic Mirror: Law in American History* 142 (1989).

n203. See 6 Charles Fairman, *History of the Supreme Court of the United States: Reconstruction and Reunion 1864-88*, at 1425 (1971).

n204. *Id.*

n205. Fairman, *supra* note 203, at 1425-26.

Glossary of Law-Related Terms¹⁰

This glossary defines a number of legal terms in common use that generally are not understood. The following definitions are not legal definitions of these terms. Most of them have very definite legal meanings that vary from one state to another. These are merely plain-English definitions intended to give you a general idea of the meanings.

A

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

Accomplice: 1. A partner in a crime. 2. A person who knowingly and voluntarily participates with another in a criminal activity.

Acknowledgment: 1. A statement of acceptance of responsibility. 2. The short declaration at the end of a legal paper showing that the paper was duly executed and acknowledged.

Acquit: To find a defendant not guilty in a criminal trial.

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

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

Adjudication: Giving or pronouncing a judgment or decree. Also the judgment given.

Ad Litem: A Latin term meaning for the purposes of the lawsuit. For example, a guardian "ad litem" is a person appointed by the court to protect the interests of a minor or legally incompetent person in a lawsuit.

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

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

Admonish: To advise or caution. For example the Court may caution or admonish counsel for wrong practices.

Adversary System: The trial method used in the U.S. and some other countries. This system is based on the belief that truth can best be determined by giving opposing parties full opportunity to present and establish their evidence, and to test by cross-examination the evidence presented by their adversaries. All this is done under the established rules of procedure before an impartial judge and/or jury.

Affiant: A person who makes and signs an affidavit.

Affidavit: A written statement of facts confirmed by the oath of the party making it, before a notary or officer having authority to administer oaths. For example, in criminal cases, affidavits are often used by police officers seeking to convince courts to grant a warrant to make an arrest or a search. In civil cases, affidavits of witnesses are often used to support motions for summary judgment.

¹⁰ This Glossary of Terms was compiled by the Nation Association for Court Managers (NACM) Trial Court Management Committee (Cameron Burke (chair), Gilbert Austin, Ed Brekke, Mary Majich Davis, John Dunmire, Marsha Edwards, John Ferry Jr., Charles Foster, Paul Kuntz, Dottie McDonald, Elena Marino, Dennis Metrick, David Egar, Dennis Morgan, Jaci Morgan, Todd Nuccio, Yvonne Pettus, Jack Provo, Dale Stockley, Harvey Solomon, Jennifer Wenger, Nora Wilcher, Yolande Williams, Robert Zastany). NACM extends its appreciation to the American Bar Association, the Administrative Office of the U.S. Courts, The Washington State Administrative Office of the Courts, and the Idaho State Administrative Office of the Courts for permission to use some of their excellent material. NACM, 300 Newport Avenue, Williamsburg, VA 23185; Phone: (757) 259-1841; Web site: www.nacmnet.org.

Affirmative Defense: Without denying the charge, the defendant raises circumstances such as insanity, self-defense, or entrapment to avoid civil or criminal responsibility.

Affirmed: In the practice of appellate courts, the word means that the decision of the trial court is correct.

Aid and Abet: To actively, knowingly or intentionally assist another person in the commission or attempted commission of a crime.

Allegation: A statement of the issues in a written document (a pleading) which a person is prepared to prove in court. For example, an indictment contains allegations of crimes against the defendant.

Alternative Dispute Resolution: Settling a dispute without a full, formal trial. Methods include mediation, conciliation, arbitration, and settlement, among others.

Amicus Curiae (a-mi'kus ku'ri-e): A friend of the court. One not a party to a case who volunteers to offer information on a point of law or some other aspect of the case to assist the court in deciding a matter before it.

Answer: The defendant's response to the plaintiff's allegations as stated in a complaint. An item-by-item, paragraph-by-paragraph response to points made in a complaint; part of the pleadings.

Appeal: A request made after a trial, asking another court (usually the court of appeals) to decide whether the trial was conducted properly. To make such a request is "to appeal" or "to take an appeal." One who appeals is called the appellant.

Appearance: 1. The formal proceeding by which a defendant submits to the jurisdiction of the court. 2. A written notification to the

plaintiff by an attorney stating that he or she is representing the defendant.

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

Appellee (ap-e-le'): The party against whom an appeal is taken. Sometimes called a respondent.

Arbitration: A form of alternative dispute resolution in which the parties bring their dispute to a neutral third party and agree to abide by his or her decision. In arbitration there is a hearing at which both parties have an opportunity to be heard.

Arraignment: A proceeding in which an individual who is accused of committing a crime is brought into court, told of the charges, and asked to plead guilty or not guilty. Sometimes called a preliminary hearing or initial appearance.

Arrest: To take into custody by legal authority.

Assault: Threat to inflict injury with an apparent ability to do so. Also, any intentional display of force that would give the victim reason to fear or expect immediate bodily harm.

At Issue: The time in a lawsuit when the complaining party has stated their claim and the other side has responded with a denial and the matter is ready to be tried.

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

Attorney-at-Law: An advocate, counsel, or official agent employed in preparing, managing, and trying cases in the courts.

Attorney-in-Fact: A private person (who is not necessarily a lawyer) authorized by

another to act in his or her place, either for some particular purpose, as to do a specific act, or for the transaction of business in general, not of legal character. This authority is conferred by an instrument in writing, called a letter of attorney, or more commonly a power of attorney.

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

B

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

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

Bailiff: A court attendant who keeps order in the courtroom and has custody of the jury.

Bankruptcy: Refers to statutes and judicial proceedings involving persons or businesses that cannot pay their debts and seek the assistance of the court in getting a fresh start. Under the protection of the bankruptcy court, debtors may be released from or "discharged" from their debts, perhaps by paying a portion of each debt. Bankruptcy judges preside over these proceedings. The person with the debts is called the debtor and the people or companies to whom the debtor owes money to are called creditors.

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

Bar Examination: A state examination taken by prospective lawyers in order to be admitted and licensed to practice law.

Battery: A beating, or wrongful physical violence. The actual threat to use force is an assault; the use of it is a battery, which usually includes an assault.

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

Bench Trial: Trial without a jury in which a judge decides the facts.

Bench Warrant: An order issued by a judge for the arrest of a person.

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

Bequeath: To give a gift to someone through a will.

Bequests: Gifts made in a will.

Best Evidence: Primary evidence; the best evidence available. Evidence short of this is "secondary." That is, an original letter is "best evidence," and a photocopy is "secondary evidence."

Beyond a Reasonable Doubt: The standard in a criminal case requiring that the jury be satisfied to a moral certainty that every element of a crime has been proven by the prosecution. This standard of proof does not require that the state establish absolute certainty by eliminating all doubt, but it does require that the evidence be so conclusive that all reasonable doubts are removed from the mind of the ordinary person.

Bill of Particulars: A statement of the details of the charge made against the defendant.

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

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

Brief: A written statement prepared by one side in a lawsuit to explain to the court its view of the facts of a case and the applicable law.

Burden of Proof: In the law of evidence, the necessity or duty of affirmatively proving a fact or facts in dispute on an issue raised between the parties in a lawsuit. The responsibility of proving a point (the burden of proof) is not the same as the standard of proof. Burden of proof deals with which side must establish a point or points; standard of proof indicates the degree to which the point must be proven. For example, in a civil case the burden of proof rests with the plaintiff, who must establish his or her case by such standards of proof as a preponderance of evidence or clear and convincing evidence.

C

Capital crime: A crime punishable by death.

Calendar: List of cases scheduled for hearing in court.

Caption: The heading on a legal document listing the parties, the court, the case number, and related information.

Case Law: Law established by previous decisions of appellate courts, particularly the Supreme Court.

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

Cause of action: The facts that give rise to a lawsuit or a legal claim.

Caveat: A warning; a note of caution.

Certification: 1. Written attestation. 2. Authorized declaration verifying that an instrument is a true and correct copy of the original.

Certiorari: A means of getting an appellate court to review a lower court's decision. The loser of a case will often ask the appellate court to issue a writ of certiorari, which orders the lower court to convey the record of the case to the appellate court and to certify it as accurate and complete. If an appellate court grants a writ of certiorari, it agrees to take the appeal. This is often referred to as granting cert.

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

Challenge for Cause: Objection to the seating of a particular juror for a stated reason (usually bias or prejudice for or against one of the parties in the lawsuit). The judge has the discretion to deny the challenge. This differs from peremptory challenge.

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

Change of Venue: Moving a lawsuit or criminal trial to another place for trial.

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

Chief Judge: Presiding or Administrative Judge in a court.

Circumstantial Evidence: All evidence except eyewitness testimony. One example is

physical evidence, such as fingerprints, from which an inference can be drawn.

Citation: 1. A reference to a source of legal authority. 2. A direction to appear in court, as when a defendant is cited into court, rather than arrested.

Civil Actions: Noncriminal cases in which one private individual or business sues another to protect, enforce, or redress private or civil rights.

Civil Procedure: The rules and process by which a civil case is tried and appealed, including the preparations for trial, the rules of evidence and trial conduct, and the procedure for pursuing appeals.

Class Action: A lawsuit brought by one or more persons on behalf of a larger group.

Clear and Convincing Evidence: Standard of proof commonly used in civil lawsuits and in regulatory agency cases. It governs the amount of proof that must be offered in order for the plaintiff to win the case.

Clemency or Executive Clemency: Act of grace or mercy by the president or governor to ease the consequences of a criminal act, accusation, or conviction. It may take the form of commutation or pardon.

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

Codicil (kod'i-sil): An amendment to a will.

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

Common Law: The legal system that originated in England and is now in use in the United States. It is based on judicial decisions rather than legislative action.

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

Comparative Negligence: A legal doctrine by which acts of the opposing parties are compared to determine the liability of each party to the other, making each liable only for his or her percentage of fault. See also contributory negligence.

Complainant: The party who complains or sues; one who applies to the court for legal redress. Also called the plaintiff.

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

Conciliation: A form of alternative dispute resolution in which the parties bring their dispute to a neutral third party, who helps lower tensions, improve communications, and explore possible solutions. Conciliation is similar to mediation, but it may be less formal.

Concurrent Sentences: Sentences for more than one crime that are to be served at the same time, rather than one after the other. See also cumulative sentences.

Condemnation: The legal process by which the government takes private land for public use, paying the owners a fair price.

Consecutive Sentences: Successive sentences, one beginning at the expiration of another, imposed against a person convicted of two or more violations.

Conservatorship: Legal right given to a person to manage the property and financial affairs of a person deemed incapable of doing that for himself or herself. (See also guardianship. Conservators have somewhat less responsibility than guardians.)

Contempt of Court: Willful disobedience of a judge's command or of an official court order.

Continuance: Postponement of a legal proceeding to a later date.

Contract: A legally enforceable agreement between two or more competent parties made either orally or in writing.

Contributory Negligence: A legal doctrine that says if the plaintiff in a civil action for negligence also was negligent, he or she cannot recover damages from the defendant for the defendant's negligence. Most jurisdictions have abandoned the doctrine of contributory negligence in favor of comparative negligence.

Conviction: A judgment of guilt against a criminal defendant.

Corpus Delicti: Body of the crime. The objective proof that a crime has been committed. It sometimes refers to the body of the victim of a homicide or to the charred shell of a burned house, but the term has a broader meaning. For the state to introduce a confession or to convict the accused, it must prove a corpus delicti, that is, the occurrence of a specific injury or loss and a criminal act as the source of that particular injury or loss.

Corroborating Evidence: Supplementary evidence that tends to strengthen or confirm the initial evidence.

Counsel: Legal adviser; a term used to refer to lawyers in a case.

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

Court Administrator/Clerk of Court: An officer appointed by the Court or elected to

oversee the administrative, non-judicial activities of the court.

Court: Government entity authorized to resolve legal disputes. Judges sometimes use "court" to refer to themselves in the third person, as in "the court has read the briefs."

Court Costs: The expenses of prosecuting or defending a lawsuit, other than the attorneys' fees. An amount of money may be awarded to the successful party (and may be recoverable from the losing party) as reimbursement for court costs.

Court Reporter: A person who makes a word-for-word record of what is said in court and produces a transcript of the proceedings upon request.

Cross-Claim: A claim by codefendant or co-plaintiffs against each other and not against persons on the opposite side of the lawsuit.

Cross-Examination: The questioning of a witness produced by the other side.

Cumulative Sentences: Sentences for two or more crimes to run consecutively, rather than concurrently.

Custody: Detaining of a person by lawful process or authority to assure his or her appearance to any hearing; the jailing or imprisonment of a person convicted of a crime.

D

Damages: Money awarded by a court to a person injured by the unlawful act or negligence of another person.

Decision: The judgment reached or given by a court of law.

Declaratory Judgment: A judgment of the court that explains what the existing law is or

expresses the opinion of the court without the need for enforcement.

Decree: An order of the court. A final decree is one that fully and finally disposes of the litigation. An interlocutory decree is a preliminary order that often disposes of only part of a lawsuit.

Defamation: That which tends to injure a persons reputation. Libel is published defamation, whereas slander is spoken.

Default: A failure to respond to a lawsuit within the specified time.

Default Judgment: A judgment entered against a party who fails to appear in court or respond to the charges.

Defendant: In a civil case, the person being sued. In a criminal case, the person accused of the crime.

Demurrer: A motion to dismiss a civil case because of the legal insufficiency of a complaint.

De Novo: A new. A trial de novo is a new trial of a case.

Deposition: An oral statement made before an officer authorized by law to administer oaths. Such statements are often taken to examine potential witnesses, to obtain discovery, or to be used later in trial.

Descent and Distribution Statutes: State laws that provide for the distribution of estate property of a person who dies without a will. Same as intestacy laws.

Directed Verdict: Now called Judgment as a matter of Law. An instruction by the judge to the jury to return a specific verdict.

Direct Evidence: Proof of facts by witnesses who saw acts done or heard words spoken.

Direct Examination: The first questioning of witnesses by the party on whose behalf they are called.

Disbarment: Form of discipline of a lawyer resulting in the loss (often permanently) of that lawyer's right to practice law. It differs from censure (an official reprimand or condemnation) and from suspension (a temporary loss of the right to practice law).

Disclaim: To refuse a gift made in a will.

Discovery: The pretrial process by which one party discovers the evidence that will be relied upon in the trial by the opposing party.

Dismissal: The termination of a lawsuit. A dismissal without prejudice allows a lawsuit to be brought before the court again at a later time. In contrast, a dismissal with prejudice prevents the lawsuit from being brought before a court in the future.

Dissent: To disagree. An appellate court opinion setting forth the minority view and outlining the disagreement of one or more judges with the decision of the majority.

Diversion: The process of removing some minor criminal, traffic, or juvenile cases from the full judicial process, on the condition that the accused undergo some sort of rehabilitation or make restitution for damages.

Docket: A list of cases to be heard by a court or a log containing brief entries of court proceedings.

Domicile: The place where a person has his or her permanent legal home. A person may have several residences, but only one domicile.

Double Jeopardy: Putting a person on trial more than once for the same crime. It is forbidden by the Fifth Amendment to the U.S. Constitution.

Due Process of Law: The right of all persons to receive the guarantees and safeguards of the law and the judicial process. It includes such constitutional requirements as adequate notice, assistance of counsel, and the rights to remain silent, to a speedy and public trial, to an impartial jury, and to confront and secure witnesses.

E

Elements of a Crime: Specific factors that define a crime which the prosecution must prove beyond a reasonable doubt in order to obtain a conviction. The elements that must be proven are (1) that a crime has actually occurred, (2) that the accused intended the crime to happen, and (3) a timely relationship between the first two factors.

Eminent Domain: The power of the government to take private property for public use through condemnation.

En Banc: All the judges of a court sitting together. Appellate courts can consist of a dozen or more judges, but often they hear cases in panels of three judges. If a case is heard or reheard by the full court, it is heard en banc.

Enjoining: An order by the court telling a person to stop performing a specific act.

Entrapment: A defense to criminal charges alleging that agents of the government induced a person to commit a crime he or she otherwise would not have committed.

Equal Protection of the Law: The guarantee in the Fourteenth Amendment to the U.S. Constitution that all persons be treated equally by the law. Court decisions have established that this guarantee requires that courts be open to all persons on the same conditions, with like rules of evidence and modes of procedure; that persons be subject to no restrictions in the acquisition of

property, the enjoyment of personal liberty, and the pursuit of happiness, which do not generally affect others; that persons are liable to no other or greater burdens than such as are laid upon others, and that no different or greater punishment is enforced against them for a violation of the laws.

Equity: Generally, justice or fairness. Historically, equity refers to a separate body of law developed in England in reaction to the inability of the common-law courts, in their strict adherence to rigid writs and forms of action, to consider or provide a remedy for every injury. The king therefore established the court of chancery, to do justice between parties in cases where the common law would give inadequate redress. The principle of this system of law is that equity will find a way to achieve a lawful result when legal procedure is inadequate. Equity and law courts are now merged in most jurisdictions.

Escheat (es-chet): The process by which a deceased person's property goes to the state if no heir can be found.

Escrow: Money or a written instrument such as a deed that, by agreement between two parties, is held by a neutral third party (held in escrow) until all conditions of the agreement are met.

Estate: An estate consists of personal property (car, household items, and other tangible items), real property, and intangible property, such as stock certificates and bank accounts, owned in the individual name of a person at the time of the person's death. It does not include life insurance proceeds unless the estate was made the beneficiary) or other assets that pass outside the estate (like joint tenancy asset).

Estate Tax: Generally, a tax on the privilege of transferring property to others after a person's death. In addition to federal estate taxes, many states have their own estate taxes.

Estoppel: A person's own act, or acceptance of facts, which preclude his or her later making claims to the contrary.

Et al: And others.

Evidence: Information presented in testimony or in documents that is used to persuade the fact finder (judge or jury) to decide the case for one side or the other.

Exempt Property: In bankruptcy proceedings, this refers to certain property protected by law from the reach of creditors.

Exceptions: Declarations by either side in a civil or criminal case reserving the right to appeal a judge's ruling upon a motion. Also, in regulatory cases, objections by either side to points made by the other side or to rulings by the agency or one of its hearing officers.

Exclusionary Rule: The rule preventing illegally obtained evidence to be used in any trial.

Execute: To complete the legal requirements (such as signing before witnesses) that make a will valid. Also, to execute a judgment or decree means to put the final judgment of the court into effect.

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

Exhibit: A document or other item introduced as evidence during a trial or hearing.

Exonerate: Removal of a charge, responsibility or duty.

Ex Parte: On behalf of only one party, without notice to any other party. For example, a request for a search warrant is an ex parte proceeding, since the person subject to the search is not notified of the proceeding and is not present at the hearing.

Ex Parte Proceeding: The legal procedure in which only one side is represented. It differs from adversary system or adversary proceeding.

Ex Post Facto: After the fact. The Constitution prohibits the enactment of ex post facto laws. These are laws that permit conviction and punishment for a lawful act performed before the law was changed and the act made illegal.

Extenuating Circumstances: Circumstances which render a crime less aggravated, heinous, or reprehensible than it would otherwise be.

Expungement: Official and formal erasure of a record or partial contents of a record.

Extradition: The process by which one state or country surrenders to another state, a person accused or convicted of a crime in the other state.

F

Family Allowance: A small amount of money set aside from the estate of the deceased. Its purpose is to provide for the surviving family members during the administration of the estate.

Felony: A crime of a graver nature than a misdemeanor, usually punishable by imprisonment in a penitentiary for more than a year and/or substantial fines.

Fiduciary: A person having a legal relationship of trust and confidence to another and having a duty to act primarily for the others benefit, e.g., a guardian, trustee, or executor.

File: To place a paper in the official custody of the clerk of court/court administrator to enter into the files or records of a case.

Finding: Formal conclusion by a judge or regulatory agency on issues of fact. Also, a conclusion by a jury regarding a fact.

First Appearance: The initial appearance of an arrested person before a judge to determine whether or not there is probable cause for his or her arrest. Generally the person comes before a judge within hours of the arrest. Also called initial appearance.

Fraud: Intentional deception to deprive another person of property or to injure that person in some other way.

G

Garnishment: A legal proceeding in which a debtor's money, in the possession of another (called the garnishee), is applied to the debts of the debtor, such as when an employer garnishes a debtor's wages.

General Jurisdiction: Refers to courts that have no limit on the types of criminal and civil cases they may hear.

Good Time: A reduction in sentenced time in prison as a reward for good behavior. It usually is one third to one half off the maximum sentence.

Grand Jury: A body of persons sworn to inquire into crime and if appropriate, bring accusations (indictments) against the suspected criminals.

Grantor or Settlor: The person who sets up a trust.

Guardian: A person appointed by will or by law to assume responsibility for incompetent adults or minor children. If a parent dies, this will usually be the other parent. If both die, it probably will be a close relative.

Guardianship: Legal right given to a person to be responsible for the food, housing, health

care, and other necessities of a person deemed incapable of providing these necessities for himself or herself. A guardian also may be given responsibility for the person's financial affairs, and thus perform additionally as a conservator. (See also conservatorship.)

H

Habeas Corpus: A writ commanding that a person be brought before a judge. Most commonly, a writ of habeas corpus is a legal document that forces law enforcement authorities to produce a prisoner they are holding and to legally justify his or her confinement.

Harmless Error: An error committed during a trial that was corrected or was not serious enough to affect the outcome of a trial and therefore was not sufficiently harmful (prejudicial) to be reversed on appeal.

Hearsay: Statements by a witness who did not see or hear the incident in question but heard about it from someone else. Hearsay is usually not admissible as evidence in court.

Hostile Witness: A witness whose testimony is not favorable to the party who calls him or her as a witness. A hostile witness may be asked leading questions and may be cross-examined by the party who calls him or her to the stand.

Hung Jury: A jury whose members cannot agree upon a verdict.

I

Incarcerate: To confine in jail.

Immunity: Grant by the court, which assures someone will not face prosecution in return for providing criminal evidence.

Impeachment of a Witness: An attack on the credibility (believability) of a witness,

through evidence introduced for that purpose.

Inadmissible: That which, under the rules of evidence, cannot be admitted or received as evidence.

In Camera: In chambers, or in private. A hearing in camera takes place in the judge's office outside of the presence of the jury and the public.

Independent Executor: A special kind of executor, permitted by the laws of certain states, who performs the duties of an executor without intervention by the court.

Indeterminate Sentence: A sentence of imprisonment to a specified minimum and maximum period of time, specifically authorized by statute, subject to termination by a parole board or other authorized agency after the prisoner has served the minimum term.

Indictment: A written accusation by a grand jury charging a person with a crime.

Indigent: Needy or impoverished. A defendant who can demonstrate his or her indigence to the court may be assigned a court-appointed attorney at public expense.

Information: Accusatory document, filed by the prosecutor, detailing the charges against the defendant. An alternative to an indictment, it serves to bring a defendant to trial.

In Forma Pauperis: In the manner of a pauper. Permission given to a person to sue without payment of court fees on claim of indigence or poverty.

Infraction: A violation of law not punishable by imprisonment. Minor traffic offenses generally are considered infractions.

Inheritance Tax: A state tax on property that an heir or beneficiary under a will

receives from a deceased person's estate. The heir or beneficiary pays this tax.

Initial Appearance: In criminal law, the hearing at which a judge determines whether there is sufficient evidence against a person charged with a crime to hold him or her for trial. The Constitution bans secret accusations, so initial appearances are public unless the defendant asks otherwise; the accused must be present, though he or she usually does not offer evidence. Also called first appearance.

Injunction: Writ or order by a court prohibiting a specific action from being carried out by a person or group. A preliminary injunction is granted provisionally, until a full hearing can be held to determine if it should be made permanent.

In Propria Persona: In court's it refers to persons who present their own case without lawyers. See Pro Se.

Instructions: Judge's explanation to the jury before it begins deliberations of the questions it must answer and the applicable law governing the case. Also called charge.

Intangible Assets: Nonphysical items such as stock certificates, bonds, bank accounts, and pension benefits that have value and must be taken into account in estate planning.

Interlocutory: Provisional; not final. An interlocutory order or an interlocutory appeal concerns only a part of the issues raised in a lawsuit.

Interrogatories: Written questions asked by one party in a lawsuit for which the opposing party must provide written answers.

Intervention: An action by which a third person who may be affected by a lawsuit is permitted to become a party to the suit. Differs from the process of becoming an amicus curiae.

Inter Vivos Gift: A gift made during the giver's life.

Inter Vivos Trust: Another name for a living trust.

Intestacy Laws: See descent and distribution statutes.

Intestate: Dying without a will.

Intestate Succession: The process by which the property of a person who has died without a will passes on to others according to the state's descent and distribution statutes. If someone dies without a will, and the court uses the state's interstate succession laws, an heir who receives some of the deceased's property is an intestate heir.

Irrevocable Trust: A trust that, once set up, the grantor may not revoke.

Issue: (1) The disputed point in a disagreement between parties in a lawsuit. (2) To send out officially, as in to issue an order.

J

Joint and Several Liability: A legal doctrine that makes each of the parties who are responsible for an injury, liable for all the damages awarded in a lawsuit if the other parties responsible cannot pay.

Joint Tenancy: A form of legal co-ownership of property (also known as survivorship). At the death of one co-owner, the surviving co-owner becomes sole owner of the property. Tenancy by the entirety is a special form of joint tenancy between a husband and wife.

Judge: An elected or appointed public official with authority to hear and decide cases in a court of law. A Judge Pro Tem is a temporary judge.

Judgment: The final disposition of a lawsuit. Default judgment is a judgment rendered because of the defendant's failure to answer or appear. Summary judgment is a judgment given on the basis of pleadings, affidavits, and exhibits presented for the record without any need for a trial. It is used when there is no dispute as to the facts of the case and one party is entitled to a judgment as a matter of law. Consent judgment occurs when the provisions and terms of the judgment are agreed on by the parties and submitted to the court for its sanction and approval.

Judicial Review: The authority of a court to review the official actions of other branches of government. Also, the authority to declare unconstitutional the actions of other branches.

Jurisdiction: (1) The legal authority of a court to hear and decide a case. Concurrent jurisdiction exists when two courts have simultaneous responsibility for the same case. (2) The geographic area over which the court has authority to decide cases.

Jurisprudence: The study of law and the structure of the legal system.

Jury: Persons selected according to law and sworn to inquire into and declare a verdict on matters of fact. A petit jury is an ordinary or trial jury, composed of six to 12 persons, which hears either civil or criminal cases.

Jury Commissioner: The court officer responsible for choosing the panel of persons to serve as potential jurors for a particular court term.

Justiciable: Issues and claims capable of being properly examined in court.

L

Lapsed Gift: A gift made in a will to a person who has died prior to the will-makers death.

Larceny: Obtaining property by fraud or deceit.

Law: The combination of those rules and principles of conduct promulgated by legislative authority, derived from court decisions and established by local custom.

Law Clerks: Persons trained in the law who assist judges in researching legal opinions.

Leading Question: A question that suggests the answer desired of the witness. A party generally may not ask one's own witness leading questions. Leading questions may be asked only of hostile witnesses and on cross-examination.

Legal Aid: Professional legal services available usually to persons or organizations unable to afford such services.

Leniency: Recommendation for a sentence less than the maximum allowed.

Letters of Administration: Legal document issued by a court that shows an administrator's legal right to take control of assets in the deceased person's name.

Letters Testamentary: Legal document issued by a court that shows an executor's legal right to take control of assets in the deceased person's name.

Liable: Legally responsible.

Libel: Published words or pictures that falsely and maliciously defame a person. Libel is published defamation; slander is spoken.

Lien: A legal claim against another person's property as security for a debt. A lien does not convey ownership of the property, but gives the lien holder a right to have his or her debt satisfied out of the proceeds of the property if the debt is not otherwise paid.

Limine: A motion requesting that the court not allow certain evidence that might prejudice the jury.

Limited Jurisdiction: Refers to courts that are limited in the types of criminal and civil cases they may hear. For example, traffic violations generally are heard by limited jurisdiction courts.

Litigant: A party to a lawsuit. Litigation refers to a case, controversy, or lawsuit.

Living Trust: A trust set up and in effect during the lifetime of the grantor. Also called inter vivos trust.

M

Magistrate: Judicial officer exercising some of the functions of a judge. It also refers in a general way to a judge.

Malfeasance: Evil doing, ill conduct; the commission of some act which is positively prohibited by law.

Malicious Prosecution: An action instituted with intention of injuring the defendant and without probable cause, and which terminates in favor of the person prosecuted.

Mandamus: A writ issued by a court ordering a public official to perform an act.

Manslaughter: The unlawful killing of another without intent to kill; either voluntary (upon a sudden impulse); or involuntary (during the commission of an unlawful act not ordinarily expected to result in great bodily harm). See also murder.

Mediation: A form of alternative dispute resolution in which the parties bring their dispute to a neutral third party, who helps them agree on a settlement.

Memorialized: In writing.

Mens Rea: The “guilty mind” necessary to establish criminal responsibility.

Miranda Warning: Requirement that police tell a suspect in their custody of his or her constitutional rights before they question him or her. So named as a result of the *Miranda v. Arizona* ruling by the U.S. Supreme Court.

Misdemeanor: A criminal offense considered less serious than a felony. Misdemeanors generally are punishable by a fine or a limited local jail term, but not by imprisonment in a state penitentiary.

Mistrial: An invalid trial, caused by fundamental error. When a mistrial is declared, the trial must start again from the selection of the jury.

Mitigating Circumstances: Those which do not constitute a justification or excuse for an offense but which may be considered as reasons for reducing the degree of blame.

Mittimus: The name of an order in writing, issuing from a court and directing the sheriff or other officer to convey a person to a prison, asylum, or reformatory, and directing the jailer or other appropriate official to receive and safely keep the person until his or her fate shall be determined by due course of law.

Moot: A moot case or a moot point is one not subject to a judicial determination because it involves an abstract question or a pretended controversy that has not yet actually arisen or has already passed. Mootness usually refers to a court’s refusal to consider a case because the issue involved has been resolved prior to the court’s decision, leaving nothing that

would be affected by the court’s decision.

Motion: Oral or written request made by a party to an action before, during, or after a trial, upon which a court issues a ruling or order.

Murder: The unlawful killing of a human being with deliberate intent to kill. Murder in the first degree is characterized by premeditation; murder in the second degree is characterized by a sudden and instantaneous intent to kill or to cause injury without caring whether the injury kills or not. (See also manslaughter.)

N

Negligence: Failure to exercise the degree of care that a reasonable person would exercise under the same circumstances.

Next Friend: One acting without formal appointment as guardian for the benefit of an infant, a person of unsound mind not judicially declared incompetent, or other person under some disability.

No Bill: This phrase, endorsed by a grand jury on the written indictment submitted to it for its approval, means that the evidence was found insufficient to indict.

No-Contest Clause: Language in a will that provides that a person who makes a legal challenge to the will’s validity will be disinherited.

No-Fault Proceedings: A civil case in which parties may resolve their dispute without a formal finding of error or fault.

Nolle Prosequi: Decision by a prosecutor not to go forward with charging a crime. It translates “I do not choose to prosecute.” Also loosely called *nolle pros*.

Nolo Contendere: A plea of no contest. In many jurisdictions, it is an expression that the

matter will not be contested, but without an admission of guilt. In other jurisdictions, it is an admission of the charges and is equivalent to a guilty plea.

Notice: Formal notification to the party that has been sued in a civil case of the fact that the lawsuit has been filed. Also, any form of notification of a legal proceeding.

Nunc Pro Tunc: A legal phrase applied to acts which are allowed after the time when they should be done, with a retroactive effect.

Nuncupative Will: An oral (unwritten) will.

O

Oath: Written or oral pledge by a person to keep a promise or speak the truth.

Objection: The process by which one party takes exception to some statement or procedure. An objection is either sustained (allowed) or overruled by the judge.

On a Person's Own Recognizance: Release of a person from custody without the payment of any bail or posting of bond, upon the promise to return to court.

Opening Statement: The initial statement made by attorneys for each side, outlining the facts each intends to establish during the trial.

Opinion: A judge's written explanation of a decision of the court or of a majority of judges. A dissenting opinion disagrees with the majority opinion because of the reasoning and/or the principles of law on which the decision is based. A concurring opinion agrees with the decision of the court but offers further comment. A per curiam opinion is an unsigned opinion "of the court."

Oral Argument: An opportunity for lawyers to summarize their position before the court and also to answer the judges' questions.

Order: A written or oral command from a court directing or forbidding an action.

Overrule: A judge's decision not to allow an objection. Also, a decision by a higher court finding that a lower court decision was in error.

P

Pardon: A form of executive clemency preventing criminal prosecution or removing or extinguishing a criminal conviction.

Parens Patriae: The doctrine under which the court protects the interests of a juvenile.

Parole: The supervised conditional release of a prisoner before the expiration of his or her sentence. If the parolee observes the conditions, he or she need not serve the rest of his or her term.

Party: A person, business, or government agency actively involved in the prosecution or defense of a legal proceeding.

Patent: A government grant giving an inventor the exclusive right to make or sell his or her invention for a term of years.

Peremptory Challenge: A challenge that may be used to reject a certain number of prospective jurors without giving a reason.

Perjury: The criminal offense of making a false statement under oath.

Permanent Injunction: A court order requiring that some action be taken, or that some party refrain from taking action. It differs from forms of temporary relief, such as a temporary restraining order or preliminary injunction.

Personal Property: Tangible physical property (such as cars, clothing, furniture, and jewelry) and intangible personal property. This does not include real property such as

land or rights in land.

Personal Recognizance: In criminal proceedings, the pretrial release of a defendant without bail upon his or her promise to return to court. See also own recognizance.

Personal Representative: The person who administers an estate. If named in a will, that person's title is an executor. If there is no valid will, that person's title is an administrator.

Person in Need of Supervision: Juvenile found to have committed a status offense rather than a crime that would provide a basis for a finding of delinquency. Typical status offenses are habitual truancy, violating a curfew, or running away from home. These are not crimes, but they might be enough to place a child under supervision. In different states, status offenders might be called children in need of supervision or minors in need of supervision.

Petitioner: The person filing an action in a court of original jurisdiction. Also, the person who appeals the judgment of a lower court. The opposing party is called the respondent.

Plaintiff: The person who files the complaint in a civil lawsuit. Also called the complainant.

Plea: In a criminal proceeding, it is the defendant's declaration in open court that he or she is guilty or not guilty. The defendant's answer to the charges made in the indictment or information.

Plea Bargaining or Plea Negotiating: The process through which an accused person and a prosecutor negotiate a mutually satisfactory disposition of a case. Usually it is a legal transaction in which a defendant pleads guilty in exchange for some form of leniency. It often involves a guilty plea to lesser charges or a guilty plea to some of the charges if other charges are dropped. Such bargains are not binding on the court.

Pleadings: The written statements of fact and law filed by the parties to a lawsuit.

Polling the Jury: The act, after a jury verdict has been announced, of asking jurors individually whether they agree with the verdict.

Pour-Over Will: A will that leaves some or all estate assets to a trust established before the will-maker's death.

Power of Attorney: Formal authorization of a person to act in the interests of another person.

Precedent: A previously decided case that guides the decision of future cases.

Preliminary Hearing: Another term for arraignment.

Pre-Injunction: Court order requiring action or forbidding action until a decision can be made whether to issue a permanent injunction. It differs from a temporary restraining order.

Preponderance of the Evidence: Greater weight of the evidence, the common standard of proof in civil cases.

Pre-Sentence Report: A report to the sentencing judge containing background information about the crime and the defendant to assist the judge in making his or her sentencing decision.

Presentment: Declaration or document issued by a grand jury that either makes a neutral report or notes misdeeds by officials charged with specified public duties. It ordinarily does not include a formal charge of crime. A presentment differs from an indictment.

Pretermitted Child: A child borne after a will is executed, who is not provided for by

the will. Most states have laws that provide for a share of estate property to go to such children.

Pre-Trial Conference: A meeting between the judge and the lawyers involved in a lawsuit to narrow the issues in the suit, agree on what will be presented at the trial, and make a final effort to settle the case without a trial.

Prima Facie Case: A case that is sufficient and has the minimum amount of evidence necessary to allow it to continue in the judicial process.

Probable Cause: A reasonable belief that a crime has or is being committed; the basis for all lawful searches, seizures, and arrests.

Probate: The court-supervised process by which a will is determined to be the will-maker's final statement regarding how the will-maker wants his or her property distributed. It also confirms the appointment of the personal representative of the estate. Probate also means the process by which assets are gathered; applied to pay debts, taxes, and expenses of administration; and distributed to those designated as beneficiaries in the will.

Probate Court: The court with authority to supervise estate administration.

Probate Estate: Estate property that may be disposed of by a will.

Probation: An alternative to imprisonment allowing a person found guilty of an offense to stay in the community, usually under conditions and under the supervision of a probation officer. A violation of probation can lead to its revocation and to imprisonment.

Pro Bono Publico: For the public good. Lawyers representing clients without a fee are said to be working pro bono publico.

Pro Se: A Latin term meaning "on one's own behalf"; in courts, it refers to persons who present their own cases without lawyers.

Prosecutor: A trial lawyer representing the government in a criminal case and the interests of the state in civil matters. In criminal cases, the prosecutor has the responsibility of deciding who and when to prosecute.

Proximate cause: The act that caused an event to occur. A person generally is liable only if an injury was proximately caused by his or her action or by his or her failure to act when he or she had a duty to act.

Public Defender: Government lawyer who provides free legal defense services to a poor person accused of a crime.

Q

Quash: To vacate or void a summons, subpoena, etc.

R

Real Property: Land, buildings, and other improvements affixed to the land.

Reasonable Doubt: An accused person is entitled to acquittal if, in the minds of the jury, his or her guilt has not been proved beyond a "reasonable doubt"; that state of minds of jurors in which they cannot say they feel an abiding conviction as to the truth of the charge.

Reasonable Person: A phrase used to denote a hypothetical person who exercises qualities of attention, knowledge, intelligence, and judgment that society requires of its members for the protection of their own interest and the interests of others. Thus, the test of negligence is based on either a failure to do something that a reasonable person, guided by considerations that ordinarily

regulate conduct, would do, or on the doing of something that a reasonable and prudent (wise) person would not do.

Rebut: Evidence disproving other evidence previously given or reestablishing the credibility of challenged evidence.

Record: All the documents and evidence plus transcripts of oral proceedings in a case.

Recuse: The process by which a judge is disqualified from hearing a case, on his or her own motion or upon the objection of either party.

Re-Direct Examination: Opportunity to present rebuttal evidence after one's evidence has been subjected to cross-examination.

Redress: To set right; to remedy; to compensate; to remove the causes of a grievance.

Referee: A person to whom the court refers a pending case to take testimony, hear the parties, and report back to the court. A referee is an officer with judicial powers who serves as an arm of the court.

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

Rejoinder: Opportunity for the side that opened the case to offer limited response to evidence presented during the rebuttal by the opposing side.

Remand: To send a dispute back to the court where it was originally heard. Usually it is an appellate court that remands a case for proceedings in the trial court consistent with the appellate court's ruling.

Remedy: Legal or judicial means by which a right or privilege is enforced or the violation of a right or privilege is prevented, redressed, or compensated.

Remittitur: The reduction by a judge of the damages awarded by a jury.

Removal: The transfer of a state case to federal court for trial; in civil cases, because the parties are from different states; in criminal and some civil cases, because there is a significant possibility that there could not be a fair trial in state court.

Replevin: An action for the recovery of a possession that has been wrongfully taken.

Reply: The response by a party to charges raised in a pleading by the other party.

Respondent: The person against whom an appeal is taken. See petitioner.

Rest: A party is said to rest or rest its case when it has presented all the evidence it intends to offer.

Restitution: Act of giving the equivalent for any loss, damage or injury.

Retainer: Act of the client in employing the attorney or counsel, and also denotes the fee which the client pays when he or she retains the attorney to act for them.

Return: A report to a judge by police on the implementation of an arrest or search warrant. Also, a report to a judge in reply to a subpoena, civil or criminal.

Reverse: An action of a higher court in setting aside or revoking a lower court decision.

Reversible Error: A procedural error during a trial or hearing sufficiently harmful to justify reversing the judgment of a lower court.

Revocable Trust: A trust that the grantor may change or revoke.

Revoke: To cancel or nullify a legal document.

Robbery: Felonious taking of another's property, from his or her person or immediate presence and against his or her will, by means of force or fear. It differs from larceny.

Rules of Evidence: Standards governing whether evidence in a civil or criminal case is admissible.

S

Search Warrant: A written order issued by a judge that directs a law enforcement officer to search a specific area for a particular piece of evidence.

Secured Debt: In bankruptcy proceedings, a debt is secured if the debtor gave the creditor a right to repossess the property or goods used as collateral.

Self-Defense: Claim that an act otherwise criminal was legally justifiable because it was necessary to protect a person or property from the threat or action of another.

Self-Incrimination, Privilege Against: The constitutional right of people to refuse to give testimony against themselves that could subject them to criminal prosecution. The right is guaranteed in the Fifth Amendment to the U.S. Constitution. Asserting the right is often referred to as taking the Fifth.

Self-Proving Will: A will whose validity does not have to be testified to in court by the witnesses to it, since the witnesses executed an affidavit reflecting proper execution of the will prior to the maker's death.

Sentence: The punishment ordered by a court for a defendant convicted of a crime. A

concurrent sentence means that two or more sentences would run at the same time. A consecutive sentence means that two or more sentences would run one after another.

Sentence Report: A document containing background material on a convicted person. It is prepared to guide the judge in the imposition of a sentence. Sometimes called a presentence report.

Sequester: To separate. Sometimes juries are separated from outside influences during their deliberations. For example, this may occur during a highly publicized trial.

Sequestration of Witnesses: Keeping all witnesses (except plaintiff and defendant) out of the courtroom except for their time on the stand, and cautioning them not to discuss their testimony with other witnesses. Also called separation of witnesses. This prevents a witness from being influenced by the testimony of a prior witness.

Service: The delivery of a legal document, such as a complaint, summons, or subpoena, notifying a person of a lawsuit or other legal action taken against him or her. Service, which constitutes formal legal notice, must be made by an officially authorized person in accordance with the formal requirements of the applicable laws.

Settlement: An agreement between the parties disposing of a lawsuit.

Settlor: The person who sets up a trust. Also called the grantor.

Sidebar: A conference between the judge and lawyers, usually in the courtroom, out of earshot of the jury and spectators.

Slander: False and defamatory spoken words tending to harm another's reputation, business, or means of livelihood. Slander is spoken defamation; libel is published.

Small Claims Court: A court that handles civil claims for small amounts of money. People often represent themselves rather than hire an attorney.

Sovereign Immunity: The doctrine that the government, state or federal, is immune to lawsuit unless it gives its consent.

Specific Performance: A remedy requiring a person who has breached a contract to perform specifically what he or she has agreed to do. Specific performance is ordered when damages would be inadequate compensation.

Spendthrift Trust: A trust set up for the benefit of someone who the grantor believes would be incapable of managing his or her own financial affairs.

Standing: The legal right to bring a lawsuit. Only a person with something at stake has standing to bring a lawsuit.

Stare Decisis: The doctrine that courts will follow principles of law laid down in previous cases. Similar to precedent.

Status Offenders: Youths charged with the status of being beyond the control of their legal guardian or are habitually disobedient, truant from school, or having committed other acts that would not be a crime if committed by an adult. They are not delinquents (in that they have committed no crime), but rather are persons in need of supervision, minors in need of supervision, or children in need of supervision, depending on the state in which they live. Status offenders are placed under the supervision of the juvenile court.

Statute of Limitations: The time within which a plaintiff must begin a lawsuit (in civil cases) or a prosecutor must bring charges (in criminal cases). There are different statutes of limitations at both the federal and state levels for different kinds of lawsuits or crimes.

Statutory Construction: Process by which a court seeks to interpret the meaning and scope of legislation.

Statutory Law: Law enacted by the legislative branch of government, as distinguished from case law or common law.

Stay: A court order halting a judicial proceeding.

Stipulation: An agreement by attorneys on both sides of a civil or criminal case about some aspect of the case; e.g., to extend the time to answer, to adjourn the trial date, or to admit certain facts at the trial.

Strike: Highlighting in the record of a case, evidence that has been improperly offered and will not be relied upon.

Sua Sponte: A Latin phrase which means on one's own behalf. Voluntary, without prompting or suggestion.

Subpoena: A court order compelling a witness to appear and testify.

Subpoena Duces Tecum: A court order commanding a witness to bring certain documents or records to court.

Summary Judgment: A decision made on the basis of statements and evidence presented for the record without a trial. It is used when there is no dispute as to the facts of the case, and one party is entitled to judgment as a matter of law.

Summons: A notice to a defendant that he or she has been sued or charged with a crime and is required to appear in court. A jury summons requires the person receiving it to report for possible jury duty

Support Trust: A trust that instructs the trustee to spend only as much income and principal (the assets held in the trust) as needed for the beneficiary's support.

Suppress: To forbid the use of evidence at a trial because it is improper or was improperly obtained. See also exclusionary rule.

Surety Bond: A bond purchased at the expense of the estate to insure the executor's proper performance. Often called a fidelity bond.

Survivorship: Another name for joint tenancy.

Sustain: A court ruling upholding an objection or a motion.

T

Tangible Personal Property

Memorandum (TPPM): A legal document that is referred to in a will and used to guide the distribution of tangible personal property.

Temporary Relief: Any form of action by a court granting one of the parties an order to protect its interest pending further action by the court.

Temporary Restraining Order: A judge's order forbidding certain actions until a full hearing can be held. Usually of short duration. Often referred to as a TRO.

Testamentary Capacity: The legal ability to make a will.

Testamentary Trust: A trust set up by a will.

Testator: Person who makes a will (female: testatrix).

Testimony: The evidence given by a witness under oath. It does not include evidence from documents and other physical evidence.

Third Party: A person, business, or government agency not actively involved in a legal proceeding, agreement, or transaction.

Third-Party Claim: An action by the defendant that brings a third party into a lawsuit.

Title: Legal ownership of property, usually real property or automobiles.

Tort: An injury or wrong committed on the person or property of another. A tort is an infringement on the rights of an individual, but not founded on a contract. The most common tort action is a suit for damages sustained in an automobile accident.

Transcript: A written, word-for-word record of what was said, either in a proceeding such as a trial or during some other conversation, as in a transcript of a hearing or oral deposition.

Trust: A legal device used to manage real or personal property, established by one person (the grantor or settlor) for the benefit of another (the beneficiary). A third person (the trustee) or the grantor manages the trust.

Trust Agreement or Declaration: The legal document that sets up a living trust. Testamentary trusts are set up in a will.

Trustee: The person or institution that manages the property put in trust.

U

Unlawful Detainer: A detention of real estate without the consent of the owner or other person entitled to its possession.

Unsecured: In bankruptcy proceedings, for the purposes of filing a claim, a claim is unsecured if there is no collateral, or to the extent the value of collateral is less than the amount of the debt.

Usury: Charging a higher interest rate or higher fees than the law allows.

V

Vacate: To set aside. To vacate a judgment is to set aside that judgment.

Venire: A writ summoning persons to court to act as jurors, Also refers to the people summoned for jury duty.

Venue: The proper geographical area (county, city, or district) in which a court with jurisdiction over the subject matter may hear a case.

Verdict: A conclusion, as to fact or law, that forms the basis for the court's judgment. A general verdict is a jury's finding for or against a plaintiff after determining the facts and weighing them according to the judge's instructions regarding the law.

Voir Dire: Process of questioning potential jurors so that each side may decide whether to accept or oppose individuals for jury service.

W

Waiver: Intentionally giving up a right.

Waiver of Immunity: A means authorized by statute by which a witness, before testifying or producing evidence, may relinquish the right to refuse to testify against himself or herself, thereby making it possible for his or her testimony to be used against him or her in future proceedings.

Warrant: Most commonly, a court order authorizing law enforcement officers to make an arrest or conduct a search. An affidavit seeking a warrant must establish probable cause by detailing the facts upon which the request is based.

Will: A legal declaration that disposes of a person's property when that person dies.

Without Prejudice: A claim or cause dismissed without prejudice may be the subject of a new lawsuit.

With Prejudice: Applied to orders of judgment dismissing a case, meaning that the plaintiff is forever barred from bringing a lawsuit on the same claim or cause.

Witness: A person who testifies to what he or she has seen, heard, or otherwise experienced. Also, a person who observes the signing of a will and is competent to testify that it is the will-maker's intended last will and testament.

Writ: A judicial order directing a person to do something.

Writ of Certiorari: An order issued by the Supreme Court directing the lower court to transmit records for a case for which it will hear on appeal.

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