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Wisconsin
**News Reporters'
Legal Handbook**

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Media-Law Relations Committee
in cooperation with the Wisconsin Broadcasters Association
and the Wisconsin Newspaper Association

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Media-Law Relations Committee

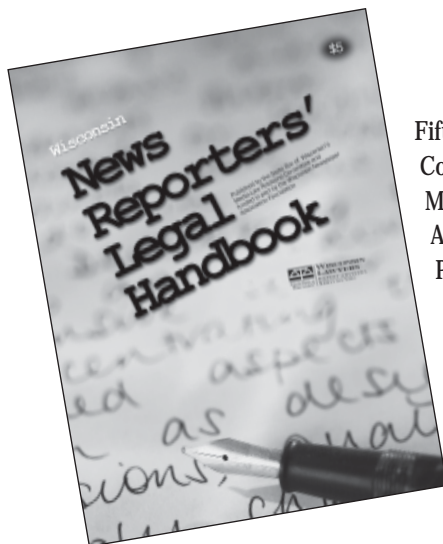
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Preface

For 25 years, Wisconsin courts have permitted cameras and recording devices in most proceedings. The court system, under the leadership of the Wisconsin Supreme Court, has a strong commitment to public access but recognizes that the rights of a free press must be balanced against an individual's right to a fair trial. The State Bar of Wisconsin's Media-Law Relations Committee also is 25 years old. Its mission is to increase understanding and cooperation among the news media, judiciary, and Wisconsin lawyers.

The committee first published this booklet in 1979 to help journalists understand the judicial process and legal terminology. This 2005 edition reflects the many changes that have occurred in the law since 1995, including truth-in-sentencing, the victim's rights law, statutory changes to the *Woznicki* notice and review procedures, and the new juvenile code. Also provided here are tips from veteran court reporters and an update on access to public records.

The committee owes a debt of gratitude to the judges and attorneys who edited and updated portions of this booklet. We thank Wisconsin Court of Appeals Judge Daniel P. Anderson, Waukesha; Circuit Court Judges Richard J. Sankovitz, Mary Kuhnmuensch, and Timothy G. Dugan, Milwaukee County, and John R. Storck, Dodge County; U.S. District Court Magistrate Patricia J. Gorence; Reserve Judges Thomas H. Barland, Eau Claire County, and Henry B. Buslee, Fond du Lac County; Attorneys James A. Friedman and Jennifer L. Peterson of LaFollette Godfrey & Kahn, Madison; and Media Coordinator Gene Purcell, La Crosse Regional Manager, Wisconsin Public Radio.

This handbook does not and cannot address all of the specific legal problems print and electronic media may encounter in reporting a news event. Because the facts of every situation greatly influence the participants' rights, this handbook is not a substitute for sound legal advice. However, the Media-Law Relations Committee hopes this handbook will serve as a reference guide for reporters covering Wisconsin courts and that the handbook will find its way into newsroom libraries, onto copy desks, and into courtrooms statewide.

The committee is grateful to the State Bar of Wisconsin, the Wisconsin Supreme Court, the Wisconsin Newspaper Association, and the Wisconsin Broadcasters Association for supporting this project. The committee is especially grateful to the Wisconsin Newspaper Association Foundation for funding publication of this Fifth Edition.

1 Wisconsin Fair Trial and Free Press Principles and Guidelines

A committee of lawyers and journalists first drafted voluntary guidelines in 1969 to balance the rights of a free press with the right of a criminal defendant to a fair trial. In 1979, the State Bar's then new Media-Law Relations Committee reviewed and amended these principles, publishing the revision as the *Wisconsin News Reporters' Handbook*.

Purpose

The right to a fair and prompt trial and the right of freedom of the press are fundamental liberties guaranteed by the state and federal constitutions. These basic rights must be vigorously preserved and responsibly practiced according to the highest professional standards.

In virtually every case, a court's exercise of its responsibility (in cooperation with the bar and law enforcement agencies) with respect to the parties seeking justice in the courtroom is entirely consistent with the news media's responsibility to inform the public of the proceedings. However, it is important that the judiciary, bar, media, and law enforcement agencies appreciate that in performing their respective duties they may jeopardize constitutional precepts of fair trial or of a free press.

To promote greater understanding of the constitutional guarantees of freedom of the press and the right to a fair trial, the following principles and guidelines, submitted for voluntary compliance, are available to Wisconsin judges, attorneys, news media, and law enforcement agencies.

These recommended principles and guidelines have been submitted to achieve understanding and cooperation among the media, the judiciary, the bar, and law enforcement agencies in Wisconsin on a voluntary basis. Therefore, they are not binding on anyone, including those who may accept, approve, or endorse them. In addition, they are not to be applied or used against anyone, or to otherwise restrict rights afforded by the state and federal constitutions and statutes.

The right to a fair and prompt trial and the right of freedom of the press are fundamental liberties guaranteed by the state and federal constitutions.



Principles to Ensure Free Press and Fair Trial

1) The judiciary, attorneys, news media, and law enforcement agencies should try to preserve the principle that a person suspected or accused of a crime is innocent until found guilty in a court on competent evidence fairly presented. Parties in civil proceedings also are entitled to have their rights adjudicated in court according to due process.

The news media should
strive for accuracy,
balance, fairness, and
objectivity.



2) Access to information involving the administration of justice in criminal or civil cases and the right of defendants and plaintiffs to a fair trial, free of prejudicial information and conduct, are both vital rights requiring careful protection. Within their canons of ethics, members of the bar, judiciary, and law enforcement agencies should cooperate with the news media in reporting about the administration of justice. Certain media properties have codes of ethics as well. Journal Communications has a written code, for example.

3) Lawyers, the judiciary, news media, and law enforcement agencies share the responsibility to assure that a trial's outcome is not influenced by publicity or by public sentiment.

4) The news media has a constitutional and statutory right, subject only to rare exceptions, to report judicial proceedings. However, all concerned should cooperate with the court to ensure jury deliberations are based only on evidence presented to the jury in court. The news media should use care in reporting portions of jury trials that take place in the jury's absence. Publicizing court rulings made or evidence rejected in the absence of a jury may cause prejudice. A finding of prejudice may result in a mistrial.

5) The news media should strive for accuracy, balance, fairness, and objectivity. Reporters and editors should remember that readers, listeners, and viewers are potential jurors. The news media should fairly report both sides of court proceedings. Reporting only one side of a case may give the public a distorted view.

6) A court of law is intended to serve as a forum in which questions of guilt and innocence, rights, and liabilities are determined under procedures for the admissibility of evidence and other established principles of law. These procedures provide fairness to the parties and permit the court or a jury to reach a just verdict. The judge is responsible for seeing that the court serves this intended purpose and to provide timely, accurate information consistent with the law, judicial and professional ethics, and these guidelines.

7) Law enforcement agencies are responsible for providing timely, accurate information consistent with the law and these guidelines.

8) Lawyers should observe their code of professional responsibility and these guidelines. Lawyers should not use publicity to promote a position in a pending case. Public prosecutors should not take unfair advantage of their position as important sources of information. However, these caveats should not be construed to limit a lawyer's obligation to make available information to which the public is entitled.

9) Journalistic, law enforcement, and legal training should include instruction in the constitutional rights to a fair trial and freedom of the press.

Guidelines for Criminal Proceedings

10) Subject to professional codes of ethics, there should be no restraint on making available to the public, during the investigation of a criminal matter, information:

- a) contained in a public record;
- b) indicating an investigation is in progress;
- c) on the general scope of the investigation, including a description of the offense and, if permitted by law, the identity of the victim;



- d) requesting assistance in apprehending a suspect, or assistance in other matters, and the information necessary for those requests; and
- e) warning the public of any dangers.

11) Subject to professional codes of ethics, there should be no restraint on making available to the public the following information concerning a criminal charge:

- a) the defendant's name, age, residence, occupation, place of employment, marital status, and other relevant nonprejudicial background information;
- b) the identity of the investigating and arresting officers or agencies and the status of the investigation;
- c) the circumstances surrounding an arrest, including time and place of arrest, existence or absence of resistance, pursuit, and possession and use of weapons, and a description of the physical evidence obtained at the time of arrest; for crimes against property, a report of the property destroyed, damaged, or stolen and a general description of the items recovered;
- d) the nature, substance, or text of the charge, such as the complaint, indictment, or information, or other matters of public record;
- e) the scheduling or result of any step in the judicial process; and
- f) a statement that the accused denies the charges.

12) The publication or broadcast of certain types of information may create dangers of prejudice to the defense or prosecution in a criminal case. Law enforcement agencies and the news media should be aware of the dangers of prejudice in pretrial disclosures concerning these matters. Lawyers should review their code of professional responsibility before releasing the following information until the start of the trial or the disposition of the case without trial:

- a) comments on the accused's character, reputation, or prior criminal record (including arrests, indictments, or other charges of crime);
- b) the possibility of a guilty plea to the offense charged or to a lesser offense;
- c) the existence or the contents of any confession, admission, or statement given by the accused, or a refusal or failure to make a statement;
- d) the performance or results of any examination or tests, or the refusal of the accused to submit to examinations or tests;
- e) the identity, testimony, or credibility of a prospective witness; and
- f) any opinion as to the guilt or innocence of the accused, the evidence, or the merits of the case.

13) Prior criminal charges and convictions or acquittals are matters of public record, available through police agencies or court clerks. Law enforcement agencies must make such information available under the public records law, but the public disclosure of it may be highly prejudicial and without significant benefit to the public's need to be informed. When there has been a disclosure of a prior arrest or charge, the news media and law enforcement agencies have a special duty to fully report the disposition or status of the arrest or prior charge.

14) Law enforcement and court personnel cannot prevent the photographing of defendants or suspects in public places outside the courtroom. However, Wisconsin Supreme Court rules for use of cameras and recorders for news coverage of judicial proceedings must be followed inside the courtroom. Law enforcement agencies should, if possible, make available a suitable, nonprejudicial photograph of a defendant or a person in custody.

15) Information about an unapprehended suspect may be released by law enforcement personnel when it serves a valid law enforcement or public safety function. Toward that end, it is proper to disclose information necessary to enlist public assistance in apprehending suspects, including photographs and records of prior offenses.

Information about an unapprehended suspect may be released by law enforcement personnel when it serves a valid law enforcement or public safety function.



Guidelines for Juvenile Proceedings

16) The public has a right to know and the news media has a right to report about crimes when children are victims and witnesses. However, the media should use restraint and prudent judgment in reporting such information.

17) When the news media attends properly closed sessions of the juvenile court, it may not disclose names or identifying information regarding the juvenile or the juvenile's family unless it has obtained such information from sources other than law enforcement or court records. The news media should make every effort to observe and fully report such sessions and the court's disposition with regard for the juvenile's rights and the public interest in juvenile rehabilitation. When a juvenile is regarded as an adult under criminal law, the guidelines for criminal proceedings apply.

18) Whenever juvenile records, maintained by the court or law enforcement agencies, are reviewed by the news media, the identity of the juvenile cannot be reported if those records are the only source of the juvenile's identity.

Guidelines for Civil and Administrative Proceedings

19) Except where prohibited by law, virtually all records in civil and administrative proceedings, including pleadings, verdicts, orders, and judgments, are public records available to the news media. Some documents, like depositions and interrogatories, may be retained by the lawyers and not filed. The media should be mindful that reporting on a deposition or written interrogatories prior to trial may prejudice one or more of the litigants. Prematurely reporting such matters may be unfair if, after the presentation of the deposition or interrogatory answer in court, portions of these documents are not admitted into evidence. Also, only one side of the issue may be presented in a deposition or answers to interrogatories.

20) Pleadings are only allegations, and one-sided publication of such allegations may prejudice one or more of the parties.

21) Adoption, mental illness, paternity, and certain family and juvenile court proceedings, by their nature and by law, deserve special treatment. Investigative reports in such proceedings usually are confidential. However, in certain circumstances, the law gives the news media direct access to such records.

22) Personal and financial data often must be revealed to the court. The public's need to know such information should be balanced against the potential negative effects on the individuals involved.

23) Lawyers should review their code of professional responsibility before releasing the following information (other than a quotation from or reference to public records):

- a) evidence regarding the occurrence or transaction involved;
- b) the character, credibility, or criminal record of a party, witness, or prospective witness;
- c) physical evidence, the performance or results of any examinations or tests, or the refusal or failure of a party to submit to examinations or tests;
- d) an opinion on the merits of the claims or defenses of a party; and
- e) any other matter reasonably likely to interfere with a fair trial.

The news media should be aware of the dangers of prejudice in pretrial disclosures concerning these matters.

Pleadings are only allegations, and one-sided publication of such allegations may prejudice one or more of the parties.



2 Rules Governing Electronic Media and Still Photography Coverage of Wisconsin Judicial Proceedings

Gene Purcell's Tips for Electronic Newsgathering in the Wisconsin Court System

• **Follow the rules.** It isn't until you find yourself covering a trial in another state that you realize just how good electronic journalists have it in Wisconsin. Our court system is incredibly open to electronic coverage, and that can lead to complacency on the part of journalists. Some journalists mistakenly believe that access to courts by electronic means and camera is without limits.

For example, I've dealt with many surprised reporters who demand to know why they can't automatically set up a camera or wire an elaborate sound system in the courtroom without telling anybody.

The reality is journalists have a lot of access to courtrooms in Wisconsin, but that access comes with rules. Those rules can, and do, change. It's your responsibility to learn what they are.

Dear Reader,

I have been a district media coordinator since 1989. Over the years, I've worked with the media and the courts on a lot of high-profile cases and I like to think I've learned a few things.

If you're a broadcast or photojournalist covering the courts in Wisconsin, I advise you to read this chapter.

If you can't bring yourself to do all of that, at least read SCR 61.01. - Authority of Trial Judge. And, if you can't find the time to read all of that, at least read the first sentence. Finally, if you can't tear your eyes away from this paragraph, here's what it says: The judge controls the courtroom.

Not the media, not the public, not the courthouse custodial staff, not the Sheriff's Department. The judge. That means it's a good idea to know the rules for media access that the judge has imposed before the trial begins.

My experience has been that judges don't work in a vacuum and most will do their best to accommodate media interest in a case. But they also are balancing the interest of the media with the interests of the public, the victims, the accused, and everybody else involved in the case.

Media coordinators should meet with the media and courthouse officials well ahead of time to find out what the needs and concerns of all parties are, and then should be prepared to resolve conflicts during the trial. Will you always get everything you want? Nope. I guarantee that won't happen because setting up access for competing media always involves compromise.

At the end of the day, it's getting the story and informing the public that matters. The Wisconsin Court System has a good system in place that will allow you to get the story, no matter what the medium. It's in your best interest as a journalist to know what's expected of you so you can do your job and fulfill your obligations to the public (and your editor).

Gene Purcell
Media Coordinator, La Crosse Regional Manager, Wisconsin Public Radio

• **Learn the basics.** Who is your media coordinator? What rights do journalists have? What power does the judge have? What can and cannot be photographed? Where can you conduct an interview in the courthouse? Can you get into a juvenile proceeding? What time does the trial start? Can you use a flash? These are just a few of the basic questions that you should answer before you step into the courthouse.

• **Be flexible.** Courtroom cases that attract a lot of media also lead to challenging situations for the electronic journalists that cover them. This can be especially true if you're going to a courthouse for the first time. Maybe there will be a mult-box and maybe there won't. Maybe there will be an easy way to plug into a sound system, or maybe you'll have to rig your own system. Or, perhaps the judge will rule only one microphone and one camera can be in the courtroom. If you're going to be in a courthouse – whether for the first or hundredth time – touch base with the local media coordinator well in advance, because a new judge or a highly visible case could force a change in how business is normally conducted.

While the judge is always in charge, that doesn't mean the judge should be the first point of contact to resolve a problem.



• **Be security conscious.** This is becoming a big deal in covering the courts. When I first began covering courts as a reporter, a smile, wave, and notebook were usually all it took to get me into a courtroom. Those days are long gone and they're not coming back, particularly in high-profile court cases. Don't get upset if a deputy wants to look at your tape deck or your camera, and don't expect to jump the line to get through security faster than the general public.

• **Be nice.** Remember, we're all professionals here. Generally, when the media is interested in a court case it's stressful for everyone involved. The DA wants a successful prosecution; the defendant wants to go free; the victims want justice; the media want access; and the judge needs to balance it all. When out-of-town media is attracted, court cases can become more stressful as reporters vie for limited seating and access to the courtroom. Before long, somebody pulls rank. (Hey, I flew here in a helicopter and I get into the courtroom! Wait a second, I work for the local paper. I get a camera into the courtroom!) Public quarrels among media during a high-profile case are a pretty good way for a courthouse official to quickly resolve the situation by denying everybody access to everything. Then you've got a real problem.

• **Never forget who can help you.** Invariably there will be a conflict among the media at the courthouse. Different deadlines, equipment, and needs can foster disagreement. While the judge is always in charge, that doesn't mean the judge should be the first point of contact to resolve a problem.

On the first day of a major trial, the presiding judge has better things to worry about than whether you've got an AC outlet for your video camera. That's when you go to the media coordinator to solve the problem. Few judges I've run into are opposed to media coverage, but a reporter barging into their chambers demanding to have their problem solved ASAP will not make them happy and they probably will not solve your problem. Media coordinators should have contacts (and a plan) already set up with the judge and other courthouse officials. Let the media coordinator handle your crisis so you can concentrate on getting the story.

Guidelines for Wisconsin Judges

These excerpts below are provided to give reporters an understanding of the guidelines Wisconsin judges are required to follow in their day-to-day dealings with the news media.

Since July 1, 1979, the Wisconsin Supreme Court has authorized cameras and recorders in all Wisconsin courtrooms under Supreme Court Rule (SCR) 61:

SCR 61.01. Authority of trial judge

1) The rules of conduct in this chapter do not limit or restrict the power, authority, or

responsibility otherwise vested in the trial judge to control the conduct of proceedings before the judge. The authority of the trial judge over the inclusion or exclusion of the press or the public at particular proceedings or during the testimony of particular witnesses is applicable to any person engaging in any activity authorized by this chapter.

2) In this chapter, "trial judge" includes any judicial officer who conducts a public proceeding.

SCR 61.02. Media coordinator

1) The Wisconsin freedom of information council shall designate for each judicial administrative district a coordinator who shall work with the chief judge of the judicial administrative district and the trial judge in a court proceeding in implementing this chapter. Geographically large judicial administrative districts shall be subdivided by agreement between the council and the chief judge, with a coordinator designated for each subdistrict.

2) If possible, the trial judge shall be given notice, at least 3 days in advance, of the intention of the media to bring cameras or recording equipment into the courtroom. In the discretion of the trial judge, this notice rule may be waived if cause for the waiver is demonstrated.

SCR 61.03. Equipment and personnel

1) Except as otherwise provided in sub. 2), 3 television cameras, each operated by one person, and 3 still photographers, each using not more than 2 cameras, are authorized in any court proceeding. Priority consideration shall be extended to one of the 3 cameras to televise an entire proceeding from beginning to end.

2) The trial judge may authorize additional cameras or persons at the request of the media coordinator or may limit the number of cameras if circumstances permit the increase or require the limitation.

3) One audio system for radio broadcast purposes is authorized in any court proceeding. Audio pickup for all media purposes shall be made through any existing audio system in the court facility, if practical. If no suitable audio system exists in the court facility, microphones and related wiring shall be as unobtrusive as possible.

4) The media coordinator shall be responsible for receiving requests to engage in the activities authorized by this chapter in a particular court proceeding and shall make the necessary allocations of authorizations among those filing the requests. In the absence of advance media agreement on disputed equipment or personnel issues, the trial judge shall exclude all audio or visual equipment from the proceeding.

SCR 61.04. Sound and light criteria

Only audio or visual equipment which does not produce distracting light or sound may be used to cover a court proceeding. Artificial lighting devices shall not be used in connection with any audio or visual equipment. Only equipment approved by the trial judge in advance of the court proceeding may be used during the proceeding.



Only audio or visual equipment which does not produce distracting light or sound may be used to cover a court proceeding.



Individual jurors shall not be photographed, except in instances in which a juror or jurors consent.



SCR 61.05. Location of equipment and personnel

1) The trial judge shall designate the location in the courtroom for the camera equipment and operators. The trial judge shall restrict camera equipment and operators to areas open to the public, but the camera equipment and operators shall not block the view of persons seated in the public area of the courtroom.

2) Camera operators shall occupy only the area authorized by the trial judge and shall not move about the courtroom for picture taking purposes during the court proceeding. Equipment authorized by these rules shall not be moved during the proceeding.

SCR 61.06. Courtroom light sources

Modifications in the lighting of a court facility may be made only with the approval of the trial judge. Approval of other authorities may also be required.

SCR 61.07. Conferences

Audio pickup, broadcast, or recording of a conference in a court facility between an attorney and client, co-counsel, or attorneys and the trial judge held at the bench is not permitted.

SCR 61.08. Recesses

Audio or visual equipment authorized by this chapter shall not be operated during a recess in a court proceeding.

SCR 61.09. Official court record

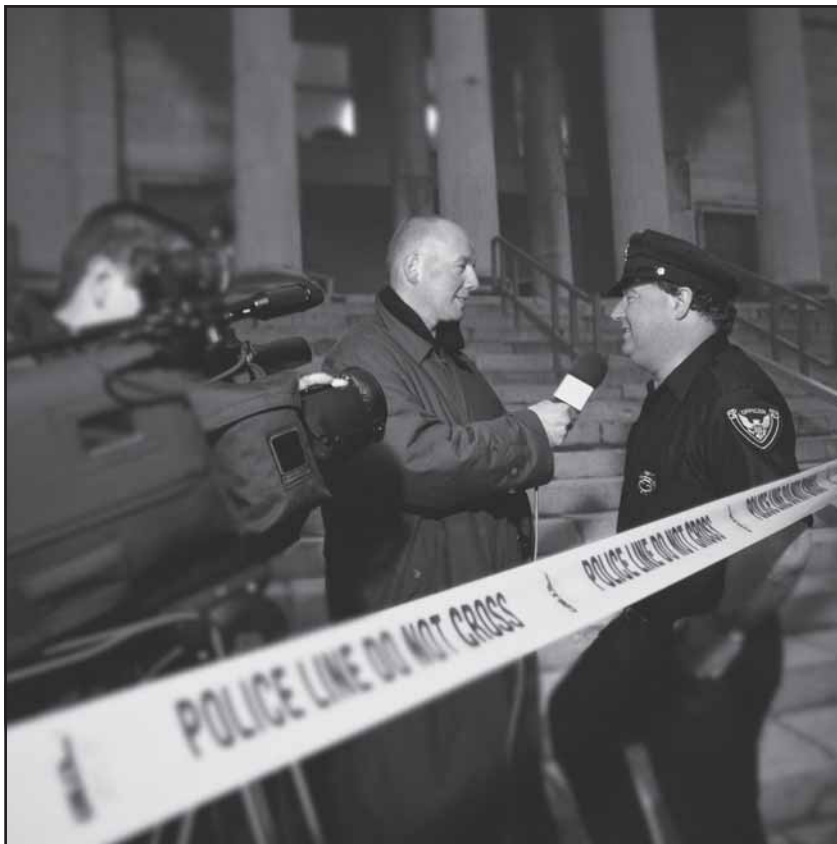
Notwithstanding any film, videotape, photography or audio reproduction made in a court proceeding as a result of this chapter, the official court record of the proceeding is the transcript of the original notes of the court reporter made in open court or pursuant to an order of the court.

SCR 61.10. Resolution of disputes

A dispute as to the application of this chapter in a court proceeding may be referred only to the chief judge of the administrative district for resolution as an administrative matter. An appellate court shall not exercise its appellate or supervisory jurisdiction to review at the request of any person or organization seeking to exercise a privilege conferred by this chapter any order or ruling of a trial judge or chief judge under this chapter.

SCR 61.11. Prohibition of photographing at request of participant

1) A trial judge may for cause prohibit the audio recording and the photographing of a participant with a film, videotape or still camera on the judge's own motion or on the request



of a participant in a court proceeding. In cases involving the victims of crimes, including sex crimes, police informants, undercover agents, relocated witnesses and juveniles, and in evidentiary suppression hearings, divorce proceedings and cases involving trade secrets, a presumption of validity attends the requests; the trial judge shall exercise a broad discretion in deciding whether there is cause for prohibition. This list of requests which enjoy the presumption is not exclusive; the judge may in his or her discretion find cause in comparable situations.

2) Individual jurors shall not be photographed, except in instances in which a juror or jurors consent. In courtrooms where photography is impossible without including the jury as part of the unavoidable background, the photography is permitted, but close-ups that clearly identify jurors are prohibited. Trial judges shall enforce this subsection for the purpose of providing maximum protection for jury anonymity.

SCR 61.12. Inapplicability to individuals; use of material for advertising prohibited

The privileges granted by this chapter to photograph, televise and record court proceedings may be exercised only by persons or organizations which are part of the news media. Film, videotape, photography, and audio reproductions shall not be used for unrelated advertising purposes.

...

While the Wisconsin Supreme Court has not changed any of the original rules, some judges routinely waive SCR 61.02(2):

“(2) If possible, the trial judge shall be given notice, at least 3 days in advance, of the intention of the media to bring cameras or recording equipment into the courtroom. In the discretion of the trial judge, this notice rule may be waived if cause for the waiver is demonstrated.”

These judges regard SCR 61.02(2) as an “unnecessary” exercise and routinely permit electronic equipment in the courtroom without notice. However, other judges require at least 72 hours notice of planned coverage so that any questions or disputes may be addressed prior to a scheduled proceeding.

In any event, SCR 61.02(2) still stands, and the news media should not be presumptuous about the procedures being followed in a particular court.

Judicial Guidelines for Dealing with News Media Inquiries

The following excerpts are from an accepted statement by a national committee of trial judges chaired by Circuit Judge Thomas H. Barland, Eau Claire. Judge Barland revised this material in 2003 to reflect changes in usage and Wisconsin’s Code of Judicial Conduct.

Trial judges are subject to substantial restraints as to what they may say or do when faced with news media inquiries.

Canon 1 of the American Bar Association (ABA) Code of Judicial Conduct admonishes judges to observe high standards of conduct so the integrity and independence of the judiciary may be preserved. Implicit in the ABA canons are the requirements that judges both be and give the appearance of being impartial, and that they conduct themselves with the dignity and decorum expected of judges.

Canon 3A(6) requires a judge to abstain from public comments about a pending or impending proceeding in any court. In addition, this standard of restraint applies to court personnel under the judge’s direction and control.

State judicial codes of conduct frequently are more explicit than the ABA canons in detailing restraints upon a judge’s opportunity to give public statements and interviews to media representatives. In some instances, state judicial codes of conduct give greater

Trial judges are subject to substantial restraints as to what they may say or do when faced with news media inquiries.





latitude than does ABA canon 3A(6) as to what the judge may say by way of a public statement or comment to the media. For example, Wisconsin’s Supreme Court Rule 60.04(1)(j) states that a judge may not “while a judicial proceeding is pending or impending in any court, make any public comment that may reasonably be expected to affect the outcome or impair the fairness of the proceeding.”

Even if the only specific judicial restraint is that no public comment be made upon the merits of the case so long as it is pending or impending, there may be such uncertainty over what is meant by “a pending or impending proceeding” that the judge will not feel free to comment at any time. Judges may decline comment because of the possibility of post-conviction or post-judgment motions, and subsequent appeals with remands and directions. “Impending” is not defined by the ABA canons or the Wisconsin Supreme Court rules. “Impending” appears to include matters that are

likely to be litigated and cases completed on the trial level that may be appealed.

News media representatives do not always feel free to approach a judge for information about a pending case. The media sometimes is intimidated by the remoteness of the judge or is uncomfortable about possibly interfering in the judicial process. The judge is not always available and may not wish to, or be able to, talk with the media about the case.

Trial judges themselves are especially vulnerable to public criticism, as reported by the media. When it does occur, it is rare for the bar, including lawyers involved in the case, to come to the judge’s defense. Often there is no one, other than the judge, who is in a position to give a detailed and impartial explanation of the case to the news media. And the judge, bound by the Code of Judicial Conduct, is ethically restrained from making any comment in his or her own defense.

Unless judicial criticism can be met by an explanation, public misunderstanding and cynicism may grow. It is fundamental to our concept of a fair and public trial, as well as the freedom of the press, that the public has a right to know what is going on in the courts and why.

With these problems and restraints in mind, the following guidelines are suggested as an aid to trial judges in dealing with the news media:

Every judge has a duty to explain judicial system procedures (or practices) to the public.



Four Rules for Judges

- 1) Every judge has a duty to explain judicial system procedures (or practices) to the public.
 - Judges should seek opportunities to write articles and columns and to give talks concerning the judicial system to public groups, the news media, and to all levels of school and college classes.
 - Judges should encourage news media representatives to inquire about background information relating to the operation of the court system. While judges cannot comment on the merits of a pending case, a judge may and should explain legal terms, concepts,

procedures, and in a general way the issues involved in that case so as to permit the news representatives to cover the case more intelligently.

- Judges should readily grant interviews to news media representatives if the interview is to inform the public about the policy, goals, and procedures of the judicial system.

- Judges are encouraged to sponsor and participate in seminars that explain the court's activities to the news media and to invite the reactions and suggestions of news media representatives.

- Whenever appropriate, judges should explain to news media representatives the ethical and legal restraints prohibiting judges from giving legal opinions or discussing the merits of pending cases.

2) Formal court proceedings, including evidentiary hearings, should be held in open court on the record, except under unusual and legally warranted situations.

3) A judge may respond to professional criticism, provided confidential information is not released, the reply is made with the dignity associated with the office of judge, and the reply does not involve a comment on the merits of a pending case or proceeding.

4) Judges should maintain firm control over all courtroom proceedings in order to ensure a fair trial, permit orderly procedure, and maintain the dignity of the judicial process.

- A judge has a duty to take all necessary steps to assure the fairness of trials in highly publicized cases. These steps may include:

- granting a continuance;
- ordering a change of venue;
- selecting the jury from another county, but holding the trial in the original county;
- sequestering the jury;
- ordering the jurors not to follow media reports;
- controlling statements made to the press by counsel, parties, witnesses, court officials, and police; and
- restraining the media from invading the bar of the courtroom and from creating a distraction in court.

- A judge may, in order to contribute to a fairly reported public trial, give assistance in meeting the needs of the news media by:

- reserving a portion of the spectator section for the media at a well-attended trial;
- taking into consideration media deadlines when scheduling decision releases and trial recesses, if possible without impairing the integrity of the judicial process;
- seeking the assistance of the media coordinator to handle press problems and arrange for the pooling of radio, television, and camera coverage when the media demand for courtroom access is greater than that permitted by supreme court rules.

A judge has a duty to take all necessary steps to assure the fairness of trials in highly publicized cases.



3

Courts and Court Procedures

Journalists often are sent out to cover their first court cases with little or no formal training on the practices and procedures of the court. Eventually they learn about the court process, but those first experiences can lead to some surprises and potential missteps. Simple misunderstandings can lead to errors in reporting if journalists fail to ask questions when they are uncertain about what has occurred in court.

One veteran reporter recalled doubling a drunken driver's sentence for two separate incidents by failing to understand what the judge meant when he said that the driver would serve his two sentences concurrently rather than consecutively.

Understanding court procedures also will help reporters ask better questions, which in turn will help them not only to produce better stories but also to protect their independence. Many people - from lawyers to investigators to litigants - have a lot at stake in the court process and journalists sometimes become unwitting accomplices in their public relations campaigns. Journalists who understand the court process are able to assess the motives of their sources.

One journalist recalled receiving a tip from a litigant who said that the director of the lawyer discipline system was, himself, under investigation for misconduct. Great story, if it were true. The truth was that the tipster had an axe to grind: he had filed a complaint against his attorney and the complaint had been dismissed. In an attempt to retaliate, he then filed a complaint against the director - triggering an automatic investigation - and tipped off the media. A less experienced reporter might have run with the story, destroying the director's reputation and calling into question the entire lawyer discipline system. Instead, the reporter kept tabs on the investigation that eventually showed the director had not engaged in misconduct.

This section of the *Wisconsin News Reporter's Legal Handbook* provides a basic introduction to the operation of Wisconsin's state and federal courts. More important than any of the specifics in this chapter is this general suggestion: *reporters who are unsure about court proceedings, definitions of legal terms, or how to explain court rulings should ask questions.* Generally, judges and lawyers are willing to discuss these things. Rules of conduct may limit what judges can say about specific cases, but judges and lawyers are usually more than willing to help, when asked, with general information that can result in more complete and accurate stories.

Reporters who are unsure about court proceedings, definitions of legal terms, or how to explain court rulings should ask questions.



Part A: Wisconsin State Courts

Circuit and court of appeals judges serve staggered six-year terms.



The Wisconsin state court system consists of the circuit court, which handles most civil and criminal cases and has branches in each of Wisconsin's county courthouses; the court of appeals, to which litigants have a right to appeal when they are unhappy with the outcome in the circuit court; and the supreme court, which chooses the cases that it will hear, handling only those that raise a question of what the law is, or should be. The supreme court is the state's law-developing court, and it takes about one in every 10 cases that come before it, issuing an average of 110 written opinions each September-June term. All state judges are elected; however, the governor may fill vacancies by appointment. Those appointed serve until a subsequent spring election, when each appointee must run for the office.

Circuit and court of appeals judges serve staggered six-year terms. The seven supreme court judges (called justices) serve staggered 10-year terms. The chief justice is the most senior member of the court and can assign supreme court justices, court of appeals judges, or circuit court judges to sit temporarily on the court of appeals or circuit courts anywhere in the state when heavy caseloads require extra assistance.

In addition, the chief justice can assign reserve judges where needed in either circuit courts or the court of appeals. A reserve judge is a judge who has left the bench – not by losing an election, but by retiring from the judiciary – after serving at least four years. These judges can hear cases anywhere in the state.

State law permits circuit judges to name lawyers in their counties to serve as judicial court commissioners on a full- or part-time basis. Judicial court commissioners have statutory authority to handle many legal matters at the preliminary stages in all trial court branches.

Some communities choose to establish municipal courts to handle ordinance violations. As of May 2002, there were 224 municipal courts operating around the state.

Municipal court judges are not required to be lawyers. Only two Wisconsin communities have full-time municipal courts: Madison and Milwaukee.

No matter what level of court, Wisconsin court proceedings are almost always public. This openness stems from state law (section 757.14 of the Wisconsin Statutes) and from state and federal court rulings. To close court proceedings, a judge is required by both federal and state law to conduct a public hearing on the issue and then provide compelling reasons for closure based on specific factual findings.

Nearly all court records are public and available to reporters.

Criminal Cases

In criminal cases, the state prosecutes a person for violating a criminal law. The decision to initiate a criminal action and to accuse a person of a particular crime – the “charging decision” – is made by the district attorney of the county in which the crime was committed. (In a few types of cases, the attorney general may initiate the action.)



Crimes are generally divided between felonies and misdemeanors. A person convicted of a felony may be sentenced to prison (though prison is not the only sentencing option – see “Sentencing,” below). A misdemeanor conviction usually carries a jail sentence of no more than a year in the county jail (more on the exceptions below in “Sentencing”). Felony and misdemeanor crimes are further divided into different “classes” of crimes depending on the severity of the crime and the maximum possible punishment. For offenses committed after Feb. 1, 2003, there are nine classes of felonies (A through I) and three classes of misdemeanors (A through C).

There is one significant civil proceeding that is treated essentially like a criminal proceeding – a petition under chapter 980 of the statutes to commit a sexually violent person to the custody of the State for control, care, and treatment.

What if the victim and the DA disagree about the charge? In Wisconsin the decision to proceed with a criminal complaint does not depend on a victim “pressing charges” or “swearing out a complaint.” In certain kinds of cases, for example, domestic violence or intra-family sexual assault cases, it might appear that the victim may be afraid to or unwilling to cooperate with the prosecutor. Such a victim may go so far as to “recant,” or deny, the allegations on which the charge is based. Such a turn of events does not require a prosecutor to dismiss the action, but it raises the question whether the prosecutor can prove the case without the victim’s cooperation. In some cases charges have been proven successfully without a cooperative victim, based on the testimony of other eyewitnesses, or of statements of the victim made in the wake of the alleged crime (which may be used at trial under evidentiary rules known as the “excited utterance” and “present sense impression” exceptions to the hearsay rule).

Can the DA change the charge? The initial charging decision may change as the case progresses. Certain kinds of conduct might constitute more than one crime. For example, depending on the circumstances, a shooting might be charged as attempted homicide, first or second degree recklessly endangering safety, first or second degree reckless injury, or negligent handling of a dangerous weapon. As a case proceeds, and as more evidence comes to light, it may be necessary to change the charge (“amend the information” in the case of a felony or “amend the complaint” in the case of a misdemeanor). Further, negotiating strategy may influence the charging decision. Some prosecutors routinely charge the most serious offense they think they can prove, and may be prepared to lower the charge if the defendant pleads guilty. Other prosecutors routinely charge a less serious offense, but warn the defendant at the outset of the case (usually in a letter that is not filed with the court) that the information or complaint will be amended to charge a more serious charge if the case proceeds to trial.

In Wisconsin the decision to proceed with a criminal complaint does not depend on a victim “pressing charges” or “swearing out a complaint.”



Initial Appearance and Setting Bail

Defendants must be brought before a judge in open court within a reasonable time. This initial appearance is often the morning after an arrest, but it is seldom longer than 48 hours after an arrest. At this first appearance, the district attorney usually gives the judge and the accused a copy of the criminal complaint. The complaint, a legal document charging the accused with a crime and providing some details of the alleged offense, is a public record and may provide the first reliable description of the prosecutor’s view of the case. The complaint may summarize any statements made by the defendant to the police.

A judge or court commissioner presides over this hearing and usually decides whether the accused should be held in jail or released pending further proceedings. The principal function of bail is to ensure that the defendant attends further proceedings in the case. In less serious cases, many defendants are released with only a signature and a promise to return to court without depositing any cash or property with the court. These “personal recognizance bonds” can be misleading because they state a monetary amount.

It is not an amount that the defendant is required to post; instead it is the amount of money the defendant may be liable to pay if he or she violates the terms of the bond. (The words “bail” and “bond” often are used interchangeably in court.)

In more serious cases, a court may require the defendant to post cash or property to ensure his or her reappearance. Requiring the defendant to post bail cannot be used to punish the defendant. Nor may monetary bail be used to protect the community from the accused; the court may use nonmonetary “conditions of bail” to that end, such as ordering that the defendant not have any contact with certain places or people, not have weapons, not drive, remain sober, and so on. Sometimes defendants are required as a condition of bail to remain at home while the case is pending, where they are monitored electronically, by telephone contact, or by in-person visits. In lieu of cash, judges may allow a defendant to provide property such as land, houses, or automobiles. A judge may deny bail for up to 60 days in exceptionally serious cases in which a judge holds a hearing and finds it would be dangerous to release a person from jail. The bail decision may not necessarily mean the release of the defendant; a defendant who is alleged to have committed a crime while on probation or parole can be held without bail while the Department of Corrections decides whether to revoke his or her probation or parole.

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Preliminary Hearing, Arraignment, and Substitution

A defendant charged with a felony is entitled to a preliminary hearing to determine whether there is probable cause to believe a felony was committed within the jurisdiction of the court. (A person charged with a misdemeanor is also entitled to a probable cause determination, but it is made by a court commissioner or judge at the initial appearance based only on a reading of the complaint.) The preliminary hearing sets a rather low hurdle for the State, to ensure only that unfounded criminal charges are nipped in the bud. The State need show only that it is plausible that the defendant committed a felony in order for the court to order the defendant to stand trial (or, in the parlance, to be “bound over” for trial).

The preliminary hearing is held quite promptly after the initial appearance, unless the accused agrees to a delay. A judge or court commissioner conducts the preliminary hearing without a jury. The prosecution presents witnesses and evidence. Prosecutors rarely put before the court all the evidence or witnesses they have. Defendants may cross-examine witnesses and may (but usually do not) present evidence or testify about their version of the case. A defendant may agree to be bound over for trial without a preliminary hearing – in other words, waive the preliminary hearing.

Except for some testimony in sexual assault cases, preliminary hearings must be conducted in open court. In deciding whether to close the hearing in a sexual assault case, the court balances the defendant’s right to having the proceedings conducted in public and the news media’s right under the First Amendment to report such proceedings against evidence presented at a hearing to establish that closure is the only means available to protect a vulnerable victim or to protect the fairness of the proceedings to follow.

If the defendant is bound over for trial, he or she must be arraigned on the charges stated in a document called an “information.” This proceeding usually is a formality; the defendant typically pleads not guilty, or if he or she stands mute, the judge will enter a plea of not guilty.

A defendant has a right to ask that a different judge be assigned to the case. This right of “substitution” may be exercised only once and it must be exercised before the defendant is arraigned or makes any motions. The defendant is not required to give any reason for requesting substitution. The case may be reassigned randomly to another judge within the judicial district. In some districts, the case will be reassigned to the judge in the district with the highest number of previous reassignments (as a result of substitutions, recusals,

or other reasons), in order to keep caseloads among various branches of the court as equal as possible.

What can be inferred from a defendant’s waiver of the preliminary hearing?

Most defendants waive their preliminary hearings. This pattern is probably a reflection of tactics, though, and should not necessarily be interpreted as evidence of the defendant’s perception of the strength of the State’s evidence. Speaking tactically, a defendant has little to gain from a preliminary hearing. Because the hurdle is so low, it is unlikely that the defendant will defeat the charge at the preliminary hearing. Further, the defendant is allowed very little latitude in questioning witnesses, so the hearing cannot be used like a deposition in a civil proceeding simply to discover more about the evidence. In addition, a defendant who demands a preliminary hearing may aid the State by preserving a record of the testimony of a witness who might not appear later at trial or whose memory might not be as strong at trial. Finally, a defendant may believe that the best strategy for resolving his or her case favorably is to demonstrate conciliation from the get-go.

Motions

Judges usually do not act in a case unless someone asks. Asking the judge to act is the essence of a motion. Motions are usually, but not always, filed in writing. Sometimes they ask the judge to make a legal decision based on undisputed facts; sometimes the legal implications are clear, but the facts are disputed and the judge will need to decide the facts. Sometimes motions can be decided without hearing from the lawyers or witnesses in court; sometimes a lengthy evidentiary hearing will be needed.

Typical motions include:

- Discovery motions, by which the defense seeks to obtain information that cannot be obtained without a court order (such as psychiatric, school, or juvenile records) or information the State might decline to provide (for example, the defense might seek to subject the State’s evidence to scientific tests that the State believes would damage the evidence).
- Motions to suppress evidence, by which the defense seeks to exclude from evidence items or information that might have been obtained from the defendant in violation of constitutional or statutory rights (for example, a motion to suppress evidence seized without a warrant or a confession obtained in violation of *Miranda*).
- Pretrial motions “in limine” to obtain rulings on evidence before it is presented during the trial (for example, a request by the State to bar the defense from referring to certain conduct of a victim under the “Rape Shield” law, or a request of the State or the defense to permit the use of evidence of “other acts” – other wrongdoing by a person that might demonstrate a motive or knowledge that is at issue in the trial).
- Refusal hearings in OWI cases, in which a court decides whether a person’s refusal to submit to a test of his or her breath or blood was lawful and whether the jury can be informed of the defendant’s refusal.
- A defendant’s request that the court allow a new attorney to take over the case, or, in cases in which the defendant is indigent, appoint a different attorney to take over the case. In deciding such motions, courts have in mind the defendant’s constitutional right to an effective attorney. Courts are mindful, too, that such motions increasingly are asserted for purposes of delay.
- Change of venue motions. These motions are out of the ordinary, except in cases given more than passing attention by the news media. In such cases, it is not unusual for the defense to ask the court to order a trial moved to another county or to bring in jurors from another county to hear the case. Before moving a trial or empanelling other jurors, the court must be satisfied that pretrial publicity has permeated the county, that the

Sometimes motions can be decided without hearing from the lawyers or witnesses in court; sometimes a lengthy evidentiary hearing will be needed.



publicity has been inflammatory and adverse to the defendant, and that the court would not be able to defuse the effect of the publicity through appropriate measures in selecting and instructing the jury.

Are they just going through the motions? Motion hearings can be newsworthy to the extent they are “dispositive,” that is, if the outcome of the motion is likely to result in the disposition of the case without a trial. Suppression motions, for example, can be dispositive because, on the one hand, the suppression of the evidence may force the State to dismiss the case. On the other, if the evidence is not suppressed, the defendant might decide to plead guilty rather than face evidence at trial that would be conclusive.

Change of Plea

The vast majority of criminal cases are resolved by a defendant deciding to change his or her plea to guilty or no contest. A myriad of circumstances might provoke a change in plea: A defendant might decide at the very outset that speedy acceptance of responsibility would make the most favorable impression on the judge at sentencing. An evidentiary motion might be granted or denied, leading the parties to reevaluate the strengths of their cases and renegotiate. The strengths of the case might simply come into clearer perspective as the trial date nears, or even in the midst of trial. Sometimes a change in plea is accomplished by amending the charges so as to reduce the maximum exposure to prison or jail faced by the defendant, regardless of whether the State is recommending the maximum.

A guilty plea and a no contest plea have the same effect in criminal court – either way the defendant gives up all the same rights and, if the court accepts the plea, the defendant is convicted. One major reason for a defendant to plead no contest rather than guilty is to avoid the consequences of a conviction in a separate civil lawsuit. For example, a defendant who wishes to resolve a charge of injury by intoxicated use of a motor vehicle might plead no contest rather than guilty because a guilty plea might be conclusive of liability in a companion civil suit brought by the victim, whereas a no contest plea might leave room to contest the allegations.

In an unusual case a court might accept a plea known as an *Alford* plea. In the *Alford* case, the U.S. Supreme Court ruled that a court may accept a guilty plea even though the defendant insists he or she is innocent but is pleading guilty just to get it over with. An *Alford* plea cannot be accepted unless the court is satisfied to a high degree that the defendant committed the crime, and it results in a conviction just as an ordinary guilty plea does. An *Alford* plea enables a defendant to save face (at least in his or her own eyes), but he or she does so at the risk that a court will not award the same credit that another defendant might receive for having taken wholehearted responsibility for a crime.

A change in plea usually is accompanied by an agreement between the State and the defendant as to the recommendation the State will make to the judge about the sentence the judge should impose. This process is known as plea bargaining. By promising to plead guilty, a defendant binds the State to make the sentencing recommendation it has promised in exchange. The judge is not a party to the plea bargain process, nor is the judge required to follow any particular recommendation. Plea bargaining can, but does not always, involve a promise by the State to reduce the charges against the defendant. Opinions about plea bargaining vary; however, it is an accepted, routine practice.

Trials: Jury Trials and Court Trials

If the case cannot be resolved by dismissal or a change of plea, it must be tried. Only a small percentage of cases are tried. Given, however, the large volume of criminal cases,

The vast majority of criminal cases are resolved by a defendant deciding to change his or her plea to guilty or no contest.



even a small percentage translates into a sufficient number of trials to keep trial courts busy trying cases on a routine basis.

A defendant in a criminal case is entitled to a trial before a jury of 12 persons. Wisconsin's brief experiment with six-person juries in criminal cases ended when the Supreme Court found that practice unconstitutional.

Sometimes, although not often, a defendant decides for tactical reasons to waive his or her right to a jury trial and permit the judge to render the verdict. A trial over which the judge presides and renders the verdict is called a "court trial" or "bench trial." Among the reasons why a defendant might prefer a court trial are: The defendant has a lengthy record, and might perceive that a judge will more carefully weigh that record in judging the defendant's credibility than a jury might. Or the defendant's conduct, whether lawful or not, might seem shocking or offensive or engender less sympathy in the average juror than it would in a judge experienced in criminal casework. Or the evidence might cast the defendant or important witnesses in certain stereotypes to which a judge, again given deeper familiarity with criminal cases, may be immune. Or the defense strategy might depend on a more particularized or a novel application of the law to the facts. Or a defendant might not have to pay as much to his or her lawyer for a bench trial. There are other reasons as well.

If the case cannot be resolved by dismissal or a change of plea, it must be tried.



Trials: Jury Selection

The jury is selected from a panel of prospective jurors. The panel is selected randomly from a jury pool which, in turn, has been selected randomly from a jury list compiled from voting records, drivers license records, and similar sources. The size of the panel is determined by the judge, and usually contains just enough prospective jurors so that if any jurors are dismissed "for cause" there will still be enough jurors to choose from after "peremptory strikes" (also known as "peremptory challenges") are used.

During jury selection, the judge and the lawyers question prospective jurors to determine if any should be excused because they cannot be open-minded and fair-minded about the case, for example, because they may know persons involved in the case or have opinions or experiences that would make them less than impartial. Such persons may be dismissed "for cause." After any jurors have been dismissed "for cause," the parties are allowed to take turns, using peremptory strikes, removing a predetermined number of names from the jury panel. The number of strikes depends on the offense, the number of parties, and the number of alternate jurors on the panel. The parties alternate striking jurors until the required number of jurors remain - at least 12, plus any alternates a judge might require (alternates are a precaution against having too few jurors to complete the case in the event a juror might become ill or unavailable during the trial). The lawyers need not give a reason for their peremptory strikes. (However, if a party suspects that the



other party has used its preemptory strikes solely on the basis of race, gender, or age, the party may be required, under the *Batson* case, to offer a reason independent of such considerations for its strikes.)

Sometimes judges and lawyers question potential jurors individually in the judge's chambers, to afford a juror privacy about a sensitive matter, or to prevent other prospective jurors from hearing what a particular juror has to say. Reporters have the right to be present during this questioning and to report on potential jurors' answers.

In some cases, a judge might decide that the safety of the jurors or the independence of their deliberations might be compromised if their identities were made public.

In some cases, a judge might decide that the safety of the jurors or the independence of their deliberations might be compromised if their identities were made public. Ordering anonymous juries is a way to reassure jurors of their safety and to inoculate their deliberations and their verdict from the distraction and undue influence that might occur in a high profile case. Anonymous juries have been approved in certain cases in Wisconsin; however, the practice remains controversial and it is currently being reviewed by the U.S. Supreme Court.

What if the jurors know too much? A common myth about jury selection is that lawyers and judges seek to rid juries of jurors who are too smart or know anything at all about the law, the parties, or the place where the crime is alleged to have occurred. In fact, knowledge of such things does not automatically disqualify a juror as long as the judge is satisfied that the juror is sincerely impartial about the case and will decide the case strictly on the evidence and not on uncommon knowledge that the juror may possess. It is only when a reasonable person in the juror's position could not set aside an opinion despite the best of intentions to do so that the court must excuse the juror for cause. As a result, it is not unheard of for judges, prosecutors, defense lawyers, police officers, and others with similar experience to have served as jurors in criminal cases.



Trials

A trial in a criminal case proceeds along a routine path: After the jury has been selected, the judge gives preliminary instructions outlining the things the State must prove before the defendant may be found guilty (the "elements of the offense"), reminding the jurors of the defendant's presumption of innocence, and defining legal terms such as "reasonable doubt." Then the lawyers make opening statements to the jury, giving a preview of their positions and what they expect the evidence to show. (The defendant may choose to delay his or her statement until the prosecution has finished offering evidence.) Then the prosecutor puts the State's witnesses and evidence before the jury. The judge will make a determination in each case about whether jurors are entitled to take notes or ask questions.

At the close of the State's case, the defense routinely moves to have the case dismissed; the motion may appear formalistic, but it is necessary to preserve certain appellate rights, and in some cases it may prove successful if the State has not provided evidence of all the elements of the charge. When the judge decides such a motion, the judge is not usurping the jury's duty to decide the case. The judge may dismiss the case only if, considering the evidence in a light most favorable to the State, there is no credible evidence upon which a reasonable jury could rely to find the defendant guilty. This is another low hurdle to weed out the rare case that does not justify a jury trial. (A similar motion and ruling must be made after the close of all the evidence.)

Unless the case is dismissed, the defense then presents witnesses and evidence. Because the defendant is presumed innocent and constitutionally entitled to remain silent, the defendant is not required to provide any evidence, nor is the defendant required to testify. The defendant is entitled to be present in the courtroom for all parts of the trial, although disruptive defendants may be removed from the courtroom after being warned.

Some courtrooms may be equipped to permit the defendant to view the proceedings from a remote and secure location.

From time to time during the trial, the judge may conduct hearings “at sidebar.” These hearings are intended to be brief, usually involve legal questions about what evidence may be provided to the jury, and entail information that might compromise the fairness of the trial if discussed in the jury’s presence. Usually these conferences are summarized at a later point in the trial on the record. (Some judges will have a court reporter join them at sidebar, which obviates the need to summarize the sidebar conference later. Although such conferences will be outside the earshot of the news media as well as the jury, a transcript of the comments at sidebar can be obtained from the court reporter.)

The trial concludes with final instructions from the judge and closing arguments from the attorneys. The prosecutor is permitted to speak first and last during closing arguments, because the prosecution has the burden of proving the defendant guilty. The judge and the parties may ask the jury to consider whether, if the defendant is not found guilty of the offense charged by the State, he or she is guilty of a “lesser included offense” – a different crime with all of the same elements but one (for example, robbery is a lesser included offense of armed robbery).

The jury then meets to reach a verdict (“deliberates”). The jury is “sequestered,” in the sense that the jury meets privately and no one other than the bailiff or clerk sworn to manage the jury is permitted to speak to the jury until a verdict is reached. But, unlike in the past, jurors are permitted to go home in the evening and may or may not be provided meals by the court while they deliberate. Rarely are juries fed and sequestered in motels during the trial or during deliberations. From time to time the jury may have a question about the evidence or the law. The judge usually consults with the parties before answering and, unless the parties agree to the answer, may convene a hearing before submitting an answer. In Wisconsin, the jury’s verdict in a criminal case, whether guilty or not guilty, must be unanimous. If the jury returns a guilty verdict, the judge usually “polls the jury” to make sure that each juror individually agrees with the verdict.

What does a “not guilty” verdict mean? “Not guilty” is not necessarily the same as “innocent.” The focus of a criminal trial is always on whether the State can prove the defendant guilty – the defendant is not required to prove his or her innocence, nor is the State required to prove the defendant is not innocent. This distinction is significant because it helps explain the different defense theories that may be pursued at trial. Some defendants may pursue a theory that they are innocent – they have an alibi, it was impossible to commit the crime, another person committed the crime, and so on. Other defendants simply focus on whether the State can prove what it alleges. They contend that the State’s evidence is doubtful and attack the credibility, reliability, or accuracy of the State’s witnesses and evidence. Of course, a defendant might pursue both courses. Thus, an acquittal might reflect the jury’s view that the defendant is innocent, or just that the State failed to prove the defendant guilty.

“Not guilty” is not necessarily the same as “innocent.”



Sentencing: The Sentencing Hearing

A person who is convicted of a crime, either by pleading guilty or by a guilty verdict after a trial, must be sentenced by a judge. Sentencing hearings can take place immediately upon conviction or after a few days or weeks. In some cases, even in felony cases, the judge may decide that the case is ready for sentencing immediately. In other cases, the parties may need time to prepare. One consideration that may affect the timing of sentencing is the need to notify the victim, who has a right to be present and speak at sentencing. The sentencing hearing also may be delayed in a felony case if the judge

orders a presentence investigation (PSI). This investigation, conducted by a State probation and parole agent, reports the offender's version of events, the victim's thoughts, the defendant's record, and information about the defendant's personal and family background that may help the judge decide what sentence to impose. Some PSIs recommend a particular sentence. The presentence report is confidential (not a public record) although comments about it by the lawyers and judge can be quoted. Sometimes defendants will retain an investigator or consultant or attorney to perform an independent presentence report and submit it to the court. If the court accepts the report for filing, it is not confidential.

Persons interested in the sentencing may submit letters which, if reviewed by the judge, should be made part of the court file.



At the time of sentencing the judge will hear from the prosecutor, victim (if there is a victim), defense lawyer, defendant, and others related to the parties. Persons interested in the sentencing may submit letters which, if reviewed by the judge, should be made part of the court file. The defendant may submit a letter in lieu of speaking at sentencing, or might decide not to speak at all.

Typically the judge will impose the sentence and make remarks explaining the sentence immediately after the parties make their presentations. In remarking on the sentence, the judge is required to justify the sentence imposed by evaluating the severity of the crime, the character of the offender, and how the sentence serves the need to protect the community. In addition, for the 11 felony offenses of which the great majority of our current prison population have been convicted (burglary, forgery, theft of more than \$10,000, robbery, armed robbery, 1st and 2nd degree sexual assault, 1st and 2nd degree sexual assault of a child, and possession of cocaine or marijuana with intent to deliver), the judge must consider specific sentencing guidelines promulgated by the State Sentencing Commission and its predecessor. (As time goes on, it is expected that the sentencing commission will promulgate guidelines for other offenses, too.) There also are sentencing guidelines in place for certain OWI offenses and for operating a motor vehicle after the revocation of a license. These guidelines are promulgated by individual judicial districts. All of these guidelines are available in a variety of places on the Internet.



Sentencing: Sentencing Options

Generally speaking, judges have these options at sentencing: incarcerate the defendant (in jail for misdemeanors, or in jail or in prison for felonies), fine the defendant, place the defendant on probation subject to certain conditions, or a combination of these (for example, a judge might impose a prison sentence, then “stay” (that is, suspend or hold) the sentence and place the defendant on probation for a specified time and also order the defendant to serve time in the county jail as a condition of probation). For a few offenses, probation is not permitted, such as certain homicide and OWI offenses. When a defendant is being sentenced for more than one crime, or is already serving a sentence, the judge must decide whether the sentence he or she imposes will be served “concurrently” (at the same time as the other sentence) or “consecutively” (after the other sentence).

The first option the judge considers is probation, and a judge should order probation unless confinement is necessary. In placing a person on probation, the judge may impose and stay a jail or prison sentence, which sentence would then be served if probation were revoked. The judge's other option is to "withhold" sentence, allowing the length of the sentence to be determined at such time as the defendant's probation is revoked. The judge also spells out the rules the defendant must follow while on probation ("conditions"). Typical conditions might involve: absolute sobriety, AODA treatment, no weapons, no contact with the victim or with certain places or groups of people, employment, schooling (including requiring the defendant to obtain a GED or a literacy certificate), counseling, batterer or sex offender treatment, mental health evaluations, monitoring of medication, letters of apology, community service, and restitution to the victim.

The length of time that a person may be jailed, imprisoned, or placed on probation depends generally on the maximum penalty for the offense plus any "penalty enhancers" that might apply. Thus, the maximum confinement under a jail or prison sentence might be increased if, for example, the person is deemed a "habitual" criminal (convicted of a certain number of misdemeanor or felony crimes within a defined period leading up to the offense in question), is armed or masked while committing the crime, commits the crime near a school, park, or similar location, or is deemed to have committed a "hate crime." A person convicted of a misdemeanor as a habitual offender can be ordered to serve up to two or three years in prison depending on the date of the offense.

How long a defendant actually serves in prison for a felony (or if convicted of a misdemeanor as a habitual criminal) depends on the defendant's behavior in prison and when the crime occurred. For a crime committed before 2000, the court imposes an "indeterminate" sentence. The sentence is indeterminate because the judge states the overall length of the sentence but the parole commission determines at a later time when the person should be released. Generally speaking, persons serving indeterminate sentences must serve at least one-quarter of the sentence and must be released, except for certain serious felonies, after serving two-thirds of the sentence. Certain life sentences may be imposed without parole.

For crimes committed in 2000 and beyond, the court imposes a "bifurcated," "determinate" sentence under the truth-in-sentencing laws. The sentence is determinate because the judge decides how much of the sentence will be spent in "confinement" as well as how much of the sentence will be spent after the defendant is released from confinement under "extended supervision," and the defendant must serve each of those terms day for day. Under truth-in-sentencing, a defendant is not entitled to "good time" (or "time off for good behavior"); instead, defendants who misbehave in prison are required to spend even more time in confinement before being released. Extended supervision was intended to entail significantly enhanced supervision and rehabilitation services, but due to budget constraints extended supervision currently looks much like parole. Certain life sentences may be imposed without extended supervision. A judge imposing a determinate sentence also is required to determine whether the defendant is eligible for "boot camp," a small prison facility for young offenders with drug or alcohol problems who might benefit from a military-style experience.

Reporting sentences becomes a bit more challenging in the new world of truth-in-sentencing. In the old days, a headline might declare the overall length of the indeterminate sentence the court imposed - "Judge Sentences Smith to 20 Years" - even though the judge, the journalist, and the reader knew full well that Smith would not serve 20 years. When the media reports determinate sentences, a decision must be made whether to report only the total length of the bifurcated sentence, only the confinement portion of the sentence, or both the confinement and extended supervision portions of the bifurcated sentence.

When the media reports determinate sentences, a decision must be made whether to report only the total length of the bifurcated sentence, only the confinement portion of the sentence, or both the confinement and extended supervision portions of the bifurcated sentence.



When sentencing a person to jail, the judge has the option of requiring that the time be spent with release privileges (under the “Huber law”) or without (“straight”). With the judge’s approval, Huber privileges enable a defendant to serve his or her sentence and at the same time keep a job, attend school or job training, care for children, care for other family members, seek medical, psychological, or substance abuse treatment, or attend certain day reporting centers that operate in some counties. A judge might permit a person to serve the jail sentence at home while electronically monitored from the county jail or Huber facility.

If at any time during the proceedings the court or an attorney suspects that the defendant lacks the mental ability to understand what is happening in court or to assist in his or her defense, the court can order the person to be examined for “competency.”



At the time of sentencing, depending on the offense, the judge may be required to address other items. In all cases involving victims, the judge must decide whether the defendant should pay “restitution” to the victim for losses caused by the crime. The judge also must determine, in all cases in which jail or prison time is imposed, whether the defendant is entitled to credit for days spent in jail before sentencing. In felony cases, judges must order the defendant to submit a DNA sample to the state crime lab (the sample is not collected in the courtroom) and must warn the defendant that a felony conviction bars certain kinds of conduct, such as possessing a firearm. Certain other offenders may be required to register as sex offenders or be barred from activities that bring them into contact with children. For certain traffic and drug offenses, the judge must order a suspension or revocation of the defendant’s driver’s license, an AODA evaluation, and/or the seizure or immobilization of a vehicle used by the defendant. Courts also are authorized to require the defendant to contribute to a crime prevention organization. A defendant may request that a judge order a conviction “expunged,” or removed from the record. Judges have limited statutory authority to do this, and may only do it when the defendant is under age 21 when the crime was committed.

Competency and Mental Disease or Defect

If at any time during the proceedings the court or an attorney suspects that the defendant lacks the mental ability to understand what is happening in court or to assist in his or her defense, the court can order the person to be examined for “competency.” This examination may occur locally or at one of the state’s mental health facilities. If a doctor concludes that the defendant is competent or if the defendant is not competent but regains competency, the proceedings resume. The court may commit the defendant to a mental health facility for up to a year (in most cases) if the court believes the defendant will regain competency. In many cases, restoring the defendant to a regime of appropriate medication and abstinence from drugs and alcohol will enable the defendant to regain competency. If the defendant is not competent and not likely to become competent, the criminal proceedings are terminated (the defendant is “discharged”) and the defendant is released or turned over to county authorities who may begin a separate civil commitment proceeding.

Even if a defendant is competent to understand the proceedings and assist in his or her defense, he or she may assert that *at the time the crime was committed* he or she was suffering from a mental disease or defect that rendered him or her unable to appreciate the wrongfulness of his or her conduct or to conform his or her conduct to the law. If a person makes this “special plea,” the trial is held in two parts (“phases”). First, a jury or judge determines whether the defendant is guilty of the alleged crime. If the defendant is found guilty of the crime, a second trial occurs to determine if the defendant was legally responsible when the crime was committed. If a person is found both guilty and legally responsible, the judge will impose a sentence. If a person is found guilty but then found not legally responsible, the judge may commit the defendant for mental treatment.

Postconviction Proceedings

After a defendant has been convicted and sentenced, there are a variety of procedures for reviewing the court's decision. Sometimes a defendant may ask the judge who sentenced him or her to undo the conviction or the sentence. Sometimes the defendant may ask the judge merely to modify the sentence in some way (for example, shorten the sentence, or change a condition of probation). Sometimes the defendant takes the case to a higher court to undo the conviction



or the sentence. The standard the defendant must meet to obtain “postconviction relief” depends in part on the claim the defendant makes. For example, if the defendant claims after a jury trial that the evidence was not sufficient to support a guilty verdict, the defendant must show that there is no credible evidence at all that would support the guilty verdict.

One of the most common postconviction claims made by defendants is that they received “ineffective assistance” from their lawyers. To prevail on such a claim, the defendant must show both that the lawyer’s performance fell below the standard of performance expected of the attorney *and* that the deficient performance actually “prejudiced” the defendant – that is, that there is a reasonable probability that the outcome of the proceedings would have been different if the attorney had performed as expected.

Under a law enacted in 2001, a court is required to order DNA testing of certain evidence still in the hands of the State if the defendant can establish that this evidence was not previously DNA-tested and that it is reasonably probable that the defendant would not have been charged or convicted if the evidence had been so tested.

John Doe Investigations

A procedure that may lead to criminal charges in state court is the “John Doe” investigation, which begins with a complaint filed with a judge alleging that there is reason to believe a crime has been committed. The identity of the suspects may or may not be known, but they often are not named publicly, so the proceeding is called a “John Doe.”

Often a John Doe investigation is held at the request of a district attorney who has some information about alleged crime and wishes to question people about it under oath. This is the only way for a district attorney to obtain testimony from a witness who refuses to give evidence without first receiving a grant of immunity from a judge. When a witness in the John Doe declines to answer a question based on his or her right against self-incrimination, the district attorney can request an order from the judge requiring that the witness give the testimony or face a possible jail sentence. Such compelled testimony may not be used in a later proceeding against that witness, though it is available for use

A procedure that may lead to criminal charges in state court is the “John Doe” investigation, which begins with a complaint filed with a judge alleging that there is reason to believe a crime has been committed.



in any later proceedings against others. The judge overseeing the John Doe may issue subpoenas ordering people to appear in court to testify about the events being investigated and to produce evidence. If merited, a criminal complaint is issued at the end of a John Doe investigation, although the proceedings can be continued if other persons or crimes are still under investigation.

John Doe hearings usually are ordered closed upon a finding of the judge that secrecy is needed, but they are to be held in public if the judge finds insufficient need for secrecy.

A John Doe proceeding is in some ways similar to a federal grand jury proceeding, but differs in the following ways:

- the John Doe judge is present for witness testimony;
- an attorney for the witness is allowed to be present during the witness’s testimony; and
- any felony charges stemming from a John Doe proceeding still must be tested at a preliminary hearing before the person is bound over for trial.

In contrast, no judge or witness attorneys are present for federal grand jury testimony, and the return of a federal indictment by a grand jury is deemed to be based on probable cause sufficient to take the case to trial.

To understand juvenile procedure in Wisconsin one must understand that different types of juvenile cases have different procedures.



Juvenile Matters

To understand juvenile procedure in Wisconsin one must understand that different types of juvenile cases have different procedures. Juvenile cases involving children who are in need of protection or services through no fault of their own – such as abused, neglected, or abandoned children – are covered by chapter 48 of the Wisconsin Statutes. Juvenile cases involving inappropriate acts by juveniles, such as juvenile delinquencies, are covered by chapter 938. The purpose of chapter 48 is to protect the child, provide services to the child, and strengthen the family. Although those same purposes exist in chapter 938, it also attempts to make the juvenile offender accountable for his or her acts and to protect the public. Procedures in chapter 938 also are different than the procedures in chapter 48.

Chapter 48 involves children who are in need of protection and services (CHIPS). CHIPS are children under age 18 who qualify for court-ordered protection or services because of abandonment, abuse, inability of a parent to adequately care for the child, neglect, absence of a parent, inability of a parent to provide adequate treatment, failure to immunize, and a variety of other reasons. The focus in a CHIPS case is the best interest of the child.

Chapter 938 concerns juveniles who have misbehaved. These juveniles are classified as juvenile delinquents, juveniles in need of protection or services, and juveniles who commit a civil violation and receive a citation. Juvenile delinquencies are crimes committed by 10-to 16-year-olds. (Seventeen-year-olds are charged in the adult criminal system.) Juveniles in need of protection or services (JIPS) are youth under 18 who are habitually truant from home or school, who cannot be controlled by their parents, or who run away, or who are under 10 and commit a criminal act. Citations may be issued to youth under 18 for violations of civil laws or municipal ordinances. Examples include citations for traffic matters, underage drinking, underage tobacco use, and disorderly conduct.

The procedures and available dispositions vary with each type of juvenile case.

When a juvenile commits an offense, law enforcement may decide it is appropriate to issue a citation. In response to the citation the juvenile and the juvenile’s parents can be required to appear before a municipal court or a juvenile court. The juvenile has the right to a trial. If the juvenile pleads to or is found guilty on the citation, the available dispositions include a forfeiture, counseling, referral to a teen court program, community service, suspension of licenses, or loss of a work permit.

When a juvenile commits an offense or appears to be in need of protection or services the juvenile also may be referred to the county department of human services. If upon receiving the referral the department believes the child is in danger, a danger to others, or may run away, the department may place the child in temporary custody outside of the home. A prompt hearing on the temporary physical custody request is then required before the juvenile court.

Human services may decide to resolve the case with an informal disposition called a consent decree, which is an agreement between the department and the juvenile and the parents. The agreement could include restitution, school attendance, counseling, community service, treatment, and other requirements. If the agreement is complied with, the case is ended. If not, it is referred to the prosecuting attorney. If human services decides that a consent decree is not appropriate, the case is referred to the prosecuting attorney for the preparation of a petition to have the case brought into juvenile court. The prosecuting attorney for juvenile cases may be the district attorney, the corporation counsel, or the municipal attorney, depending on the type of proceeding and the court in which the action will be heard.

There are several hearings in delinquency, CHIPS, and JIPS cases. The first hearing is a plea hearing at which it is determined whether the interested parties admit or deny the allegations of the petition. In a CHIPS case an attorney referred to as a guardian ad litem (GAL) is appointed to represent the best interest of the child. The juvenile has the right to an attorney in delinquency and JIPS cases.

If the allegations of the petition are denied, the parties in a CHIPS proceeding have the right to a jury trial. There is no jury trial held in delinquencies and JIPS cases. In those cases the fact-finding hearing is to the court.

If the petition is admitted or proven at trial, the court then holds a dispositional hearing. Available dispositions vary with the type of case. Available dispositions in CHIPS, JIPS, and delinquencies include: supervision by the human services department; treatment, counseling, and services for the child and the family; required attendance at school; and out of home placement in a variety of settings including foster homes. In delinquencies some additional dispositional options include restitution, community service, placement in a secure detention facility for juveniles, and, for selected serious offenses, placement in a correctional setting or the serious juvenile offender program. If the juvenile violates the dispositional order, he or she may be brought back to court and sanctioned. Typical sanctions include home detention with or without electronic monitoring, community service, and placement at a shelter facility or at a secure detention facility. A dispositional order is usually for one year, but may be extended after one year if there is cause for an extension.

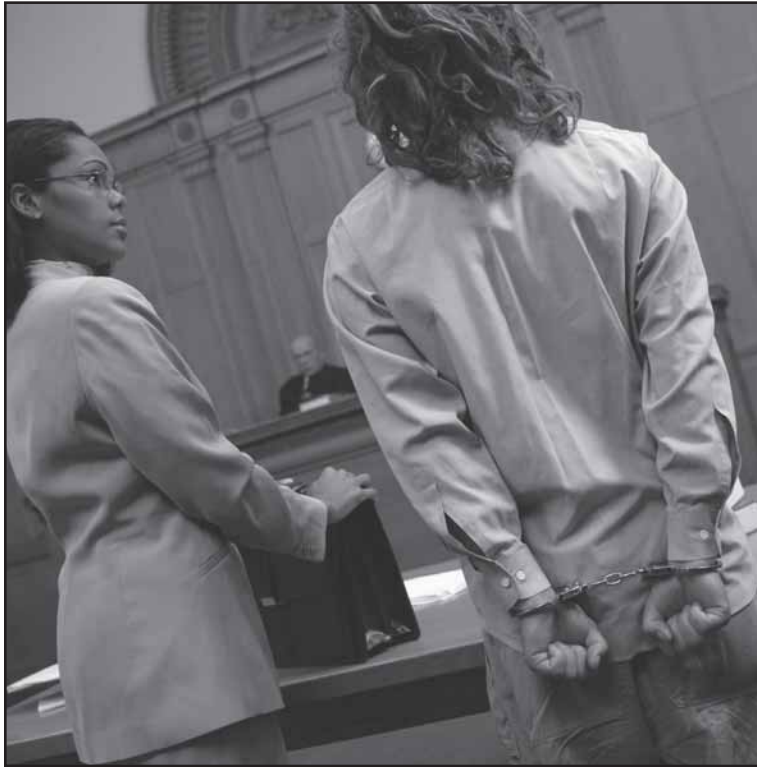
Juvenile cases are designed to move quickly through the court. The statutes have numerous time deadlines for proceedings to take place.

Although crimes committed by juveniles 10 through 16 are usually in the juvenile court, the case may be transferred or waived into adult court. Any crime committed after the juvenile turned 15 may be the basis for a waiver. For those under 15, certain serious crimes may be the basis for a waiver. A judge decides whether to transfer the case to adult court based on the type and seriousness of the offense, the personality and prior record of the juvenile, and the adequacy of treatment and facilities in the juvenile system. Finally, for certain serious crimes, such as first-degree intentional homicide, the adult court has original jurisdiction and the juvenile may request to be transferred back to the juvenile court. Once the juvenile is waived into adult court, all future cases concerning that juvenile would be in adult court.

Except for those waived into adult court, rules of confidentiality apply to juvenile

Although crimes committed by juveniles 10 through 16 are usually in the juvenile court, the case may be transferred or waived into adult court.





proceedings. Attendance at hearings is restricted. A representative of the media who wishes to attend a hearing for the purpose of reporting news without revealing the identity of the juvenile involved may be present. Inappropriately revealing the identity of the juvenile or family may constitute contempt of court. However, anyone may attend and may report on any case in juvenile court if the juvenile was previously adjudicated delinquent and the juvenile is now charged with a violation that would be a felony if committed by an adult. The proceeding also is open if the juvenile is being charged with a violation that would be classified as a "Serious Juvenile Offender" offense under Wis. Stat. section 938.34(4h)(a). Examples include armed robbery, kidnapping, first degree sexual assault, and burglary while armed.

Civil Cases

The term "civil matter" covers a broad range of noncriminal cases including actions relating to marriage, real estate, contracts, torts (legal

wrongs such as personal injuries), and various other suits and special proceedings.

A party commences a civil action by filing a summons and complaint with the circuit court. The party bringing the cause of action is called the plaintiff. The party being sued is called the defendant. In the complaint the plaintiff often asks that the defendant be required to pay money as damages to compensate for some type of injury. The amount of damages is often an important issue in the lawsuit.

Typically, a defendant must respond to a civil complaint within 45 days. If a defendant does not respond, the judge may enter a default judgment for the plaintiff. In most cases, however, the defendant does respond and the case proceeds through a pretrial process, and if need be, a trial. The pretrial process may include depositions, in which lawyers for each side question witnesses under oath, and other procedures in which the lawyers exchange evidence about the case. These procedures are called "discovery" and this process may lead to settlement before trial. Details of settlements can remain confidential by agreement of the parties and do not have to be approved by the judge. However, a judge must approve a settlement for minors. The details and hearing generally are public.

Civil cases may be decided by a judge or by a judge and jury. The party requesting a jury trial must pay a jury fee to the clerk of courts. The jury selection process is much the same as in a criminal case. Civil juries in state courts may be of six or 12 persons. With or without a jury, the plaintiff has the burden of proof and has the first opportunity to offer evidence and argue to the jury. The burden of proof in a civil case requires the plaintiff to prove his or her case by a preponderance of the evidence or by one of several other burdens, depending upon the type of case. The burden of proof in a civil case is less than in a criminal case, in which the prosecutor is required to prove the charge against the defendant "beyond a reasonable doubt."

The civil trial sequence is similar to the trial phase of a criminal case. The plaintiff makes an opening statement, followed by the defendant. (The defendant may choose to delay his or her statement until the plaintiff has finished offering evidence.) The plaintiff then offers evidence supporting the plaintiff's position. The defendant may follow with

The burden of proof in a civil case requires the plaintiff to prove his or her case by a preponderance of the evidence or by one of several other burdens, depending upon the type of case.



evidence supporting the defendant's position, but is not required to do so.

Finally, the plaintiff may wish to introduce rebuttal evidence in response to whatever evidence the defendant has offered. When all of the evidence has been presented and the parties have rested, the judge instructs the jury about the law. The parties then each have an opportunity to address the jury with their closing arguments. The plaintiff goes first, followed by the defendant, and because the plaintiff has the burden of proof, the plaintiff gets the final word before the jury. After the closing arguments, the judge may have one or two final instructions for the jury. Then the jury is sent out to begin its deliberations.

Unlike criminal cases, a jury verdict in civil cases need not be unanimous but can be decided by agreement of five members of a six-person jury or by 10 members of a 12-person jury.

At the close of the case, the judge in a nonjury (bench) trial must render a decision, findings of fact, and conclusions of law within 90 days.

Virtually all civil case files are open to the public. Judges may seal documents or depositions in some commercial (business) cases, especially if the parties argue they involve important business secrets. With rare exceptions, civil trials also are open to the public.

Virtually all civil case files are open to the public.



If a plaintiff wins the case and is awarded damages by a judge or jury, a judgment will be entered and filed at the courthouse. This does not mean the successful plaintiff will automatically be paid. A plaintiff may need to return to court seeking a further order to collect on a judgment. A judgment against a person or corporation with few assets and no insurance may be of little value to a plaintiff. In addition, the amount of damages awarded by a jury may be changed or even eliminated by the judge. Judgments also may be reduced because a plaintiff shared fault for his or her injuries.

Probate

Probate matters are handled in circuit courts. They involve estates of deceased persons; guardianships of minors, incompetents, and spendthrifts; conservatorships; commitments to institutions; and a few other matters. Probate system functions are to collect assets, pay debts and taxes, determine heirs and beneficiaries, and distribute the remaining assets.

Often probate matters are uncontested, and a lawyer simply must prove that the facts alleged in a petition are true. Contests most frequently develop in connection with wills. Such issues may necessitate a trial before a judge. Hearings involving estates of deceased persons and guardianships are public, as are the records concerning these hearings.

Hearings for commitment of mentally ill persons are public unless a court issues an order closing them. As a practical matter, however, mental commitment hearings often are closed. Usually records of such cases are not public unless authorized by the individual.

Municipal Courts

Many Wisconsin cities have established municipal courts to hear cases involving alleged city ordinance violations. Although the procedures are similar to those of criminal cases, ordinance violations actually are civil actions in which forfeitures or fines are collected. The plaintiff is the municipality or county whose ordinance the defendant allegedly has violated. Traffic offenses are the most common violations. Judges in municipal courts need not be lawyers.

Procedures also are similar to those followed in circuit courts, though they often are less formal. Many defendants appear without a lawyer. If a person charged with an ordinance violation requests a jury trial, the case is transferred to circuit court.

Part B: Federal Courts in Wisconsin

The State of Wisconsin is divided into two federal judicial districts: the Eastern District and the Western District. The U.S. District Court for the Eastern District of Wisconsin has two divisions – one based in Milwaukee and the other based in Green Bay. The U.S. District Court for the Western District of Wisconsin is based in Madison. There are six federal district judges in the Eastern District, including one senior judge, and two federal district judges in the Western District. There are three full-time magistrate judges and one part-time magistrate judge in the Eastern District and one full-time magistrate judge in the Western District.

United States district courts have jurisdiction over federal crimes and civil matters prescribed under federal law. Appeals from the U.S. district courts in Wisconsin go to the U.S. Court of Appeals for the Seventh Circuit, which is based in Chicago. The U.S. Supreme Court can be asked to hear appeals from the various federal appellate courts, including the Court of Appeals for the Seventh Circuit.

United States district judges are appointed for life by the President. Appointments must be confirmed by the U.S. Senate. Magistrate judges are appointed by the district judges pursuant to a merit selection process. Magistrate judges serve a term of eight years and may be reappointed. Duties of the magistrate judge vary with the specific needs of each judicial district. Generally, magistrate judges handle criminal pretrial matters and hear civil pretrial matters and conduct civil trials and misdemeanor criminal trials upon consent of the parties.

The chief federal prosecutor in each district is the U.S. Attorney, who is appointed by the President. The appointment requires Senate confirmation. The U.S. Attorney serves at the pleasure of the President and when a new President takes office, most U.S. Attorneys are replaced. Assistant U.S. Attorneys generally are not replaced with a change in administration.

Criminal Cases

Criminal cases in the federal trial courts, formally known as United States district courts, are prosecuted by the Offices of the United States Attorneys in the 94 federal judicial districts throughout the nation and its protectorates. The Assistant U.S. Attorneys responsible for those prosecutions typically work closely with federal, state, and local investigative agencies; principal among these are the Federal Bureau of Investigation (FBI), the Drug Enforcement Administration (DEA), the Bureau of Alcohol, Tobacco, & Firearms (ATF), the Internal Revenue Service (IRS), the Immigration & Naturalization Service (INS), the United States Customs Service (USCS), and the United States Postal Service (USPS), among many others.

Typically, felony charges in federal court are set forth in an indictment returned by a federal grand jury. The federal grand jury is a group of 16 to 23 citizens selected at large that meets on a regular basis and is responsible for two related functions: to conduct investigations of crime and to render decisions about charging offenses. Proceedings before the grand jury are not public. Members of the public (including counsel for witnesses or targets of criminal investigations) or representatives of the media may not attend the grand jury sessions. Assistant U.S. Attorneys routinely manage and assist in the investigative work of the grand jury, typically by ensuring the appearances of witnesses and the production of evidence. In addition, Assistant U.S. Attorneys will make recommendations to the grand jury about charging decisions, including the identity of proposed defendants and the kinds of crimes with which they may be charged.

When the grand jury determines that the evidence before it establishes probable cause to believe that a crime or crimes have been committed, its members publicly issue a grand

United States district courts have jurisdiction over federal crimes and civil matters prescribed under federal law.



jury indictment – that is, the document by which individuals and companies are charged officially with violations of the federal criminal code. A defendant previously may have been charged with a felony by a criminal complaint issued by a federal judge or magistrate judge. When a defendant is charged in a criminal complaint, he or she is entitled to a preliminary hearing at which the government must establish probable cause to believe that a crime has been committed and that the defendant committed that offense. Following the issuance of such a criminal complaint, however, the federal grand jury must determine whether a formal indictment should issue consistent with the Fifth Amendment to the U.S. Constitution.

After a grand jury indictment is issued, a federal magistrate judge will conduct an arraignment, at which the defendant is advised of the nature of the charges, the maximum penalty, the dates for filing pretrial motions, and the trial date. The court also will address whether the defendant should be released with special conditions, such as the posting of bond, or be detained pending the trial. At that time and throughout the criminal proceedings, the defendant is entitled to representation by an attorney; if the defendant is determined to be indigent and therefore unable to hire counsel, either the Federal Defender will represent the defendant or the court will appoint a private attorney to do so.

At or shortly after the arraignment, the Office of the U.S. Attorney routinely furnishes the defendant with written and sometimes electronic discovery – that is, reports, documents, recordings, and other items of evidence gathered during the investigation that support the allegations in the indictment. Generally, the Assistant U.S. Attorney will follow what is referred to as an “open file” policy. Under this policy, the prosecutor discloses to the defendant and his or her attorney all of the evidence assembled to that time without the need for a formal defense request for such information. Pretrial discovery generally is not made available to the public or to the media, unless it is made a part of the record in pretrial proceedings.

Between the arraignment and the trial, the defendant, through his or her attorney, is afforded the opportunity to file written motions with the court challenging various aspects of the charges against him or her. These may include motions to dismiss the indictment, to limit or suppress various kinds of evidence, or to sever counts in the indictment or codefendants for trial. The Assistant U.S. Attorney has an opportunity to respond in writing to these motions. The magistrate judge assigned to the case may conduct an evidentiary hearing in which testimony is taken before resolving the motions. After the magistrate judge issues a decision on the pretrial motions, the parties may file objections to the decision with the district judge assigned to the case. After any objections are resolved, the matter is ready for trial. A specific federal criminal statute provides that, with some regularly-invoked exceptions based principally on the interests of justice, the defendant is entitled to trial within 70 days of the issuance of the indictment or of his or her initial appearance, whichever is later.

A defendant may elect to plead guilty to some or all of the charges in the indictment. Typically, this occurs with the consent of all parties. Among the many issues that may be agreed upon by the parties are those relating to the application of the Federal Sentencing Guidelines and the resulting period of probation or incarceration, the amount of any fine or restitution, and the preservation of issues for appellate review. Matters about which the parties agree are not binding upon the sentencing judge, who may accept them in part or in whole and reject them in part or in whole – including any recommendations of the parties about the appropriate sentence to be imposed.

Under some circumstances, a defendant may be charged by “information” – that is, a document issued by the U.S. Attorney, not the grand jury, alleging a federal criminal offense. Most often, an information is submitted to the court accompanied by a plea

When the grand jury determines that the evidence before it establishes probable cause to believe that a crime or crimes have been committed, its members publicly issue a grand jury indictment



agreement that disposes of the charges in the information and incorporates an understanding that the defendant will consent to waive his or her constitutional right to be charged by the grand jury. The filing of an information generally is the result of negotiations between the parties during or near the conclusion of the investigative stage before the matter is presented to the grand jury. It is also used when the defendant has agreed to cooperate with the government in its further investigation of the crime or other criminal activity.

Those defendants who do not plead guilty in the pretrial stage are entitled to a public trial by jury, conducted by a federal district judge. At trial, the burden is on the government at all times to present credible, admissible evidence that supports the charges in the indictment beyond a reasonable doubt. The defendant has no obligation whatsoever to present evidence in defense of those allegations, although he or she may choose to do so. In order to reach a verdict of guilty or not guilty to the charges in the indictment, the 12-person jury must be unanimous in its decision; a jury that cannot reach such an agreement is described as “deadlocked” or “hung,” and, when that occurs, the presiding judge usually declares a mistrial and schedules the case for a new trial.

If the defendant is acquitted of the charges in their entirety, he or she is discharged from the court’s jurisdiction and is freed from any custodial status. If the defendant is adjudged guilty of one or more charges, the presiding judge typically schedules a separate, post-trial sentencing hearing. In advance of that proceeding, the U.S. Probation Office prepares a document called a Presentence Report that incorporates information about the defendant’s familial, educational, employment, and prior criminal history and provides the sentencing judge with recommendations about the proper invocation of relevant sections of the Federal Sentencing Guidelines. By assigning numeric values to various aggravating and mitigating factors related to the criminal conduct for which the defendant stands convicted – and categorizing the defendant within a Criminal History Category based upon past criminal behavior – the court determines an appropriate range of months within which the defendant may be sentenced.

In this public proceeding, the defendant, his or her attorney, any victims of the offense conduct, and the Assistant U.S. Attorney prosecuting the case are all routinely afforded the opportunity to address the court on the appropriate sentence to be imposed. The sentencing judge then announces the sentence, including the term of imprisonment or probation, the amounts of any fine and restitution payments, and any other conditions.

A defendant (and the United States in certain limited circumstances) may appeal judgments to the appellate court. Appeals from federal criminal convictions in Wisconsin are to the Court of Appeals for the Seventh Circuit in Chicago, Ill. The defendant may raise virtually any factual and/or legal issues disposed of at any time in the criminal proceedings, including the resolution of pretrial motions, the evidentiary decisions of the trial judge, the sufficiency of the evidence at trial, and any rulings made by the court at sentencing, including issues resolved under the Federal Sentencing Guidelines. Following notice by the defendant of an intention to appeal, the court of appeals then directs the parties to submit written legal briefs on the issues raised in the appeal.

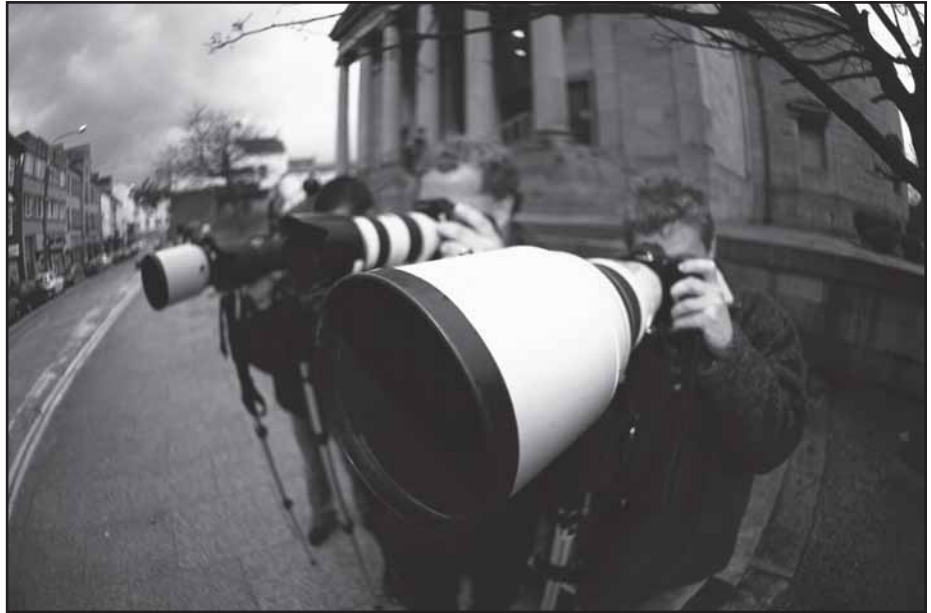
In the U.S. Court of Appeals for the Seventh Circuit, appellate judges routinely entertain oral argument from the parties on the issues raised by them in their written briefs. Some time after that in-court proceeding, the appeals court issues its decision on the case. A defendant may seek further appellate review by filing a petition for a writ of certiorari with the U.S. Supreme Court. However, that court typically reviews only the most significant decisions of the lower appellate courts, including those raising important questions of statutory or constitutional interpretation.

If the defendant is acquitted of the charges in their entirety, he or she is discharged from the court’s jurisdiction and is freed from any custodial status.



Civil Cases

Civil cases may be initiated in federal court by private parties, including individuals and companies, and by the United States. The federal courts in civil cases are courts of limited jurisdiction. The courts have original jurisdiction over all civil actions arising under the U.S. Constitution, laws or treaties of the United States, and in civil actions when the parties have diverse citizenship and the matter in controversy exceeds \$75,000. This latter concept is called diversity jurisdiction. In addition, a case may be heard in federal court whenever the United States is a party as either a plaintiff or a defendant.



Beyond this jurisdictional threshold, the nature and scope of the kinds of civil actions that may be brought in the federal trial courts are broad, including contract disputes, real property claims, civil rights violations, prisoner complaints, habeas corpus petitions, labor actions, environmental challenges, employment-based grievances, and allegations of tortious injury; the latter may be in the nature of products liability, medical malpractice, vehicular collisions, and other types of personal harm and property damage.

Most such civil cases are initiated directly in federal court. However, certain claims filed in the state court may, upon the identification of an appropriate jurisdictional basis, be “removed” to the federal trial court at an early stage in their litigation.

While the concept of sovereign immunity precludes private parties from suing the United States on a variety of grounds, Congress has passed some laws that permit such lawsuits under specifically-tailored theories of recovery. Among those most frequently filed in the federal district courts are complaints alleging that the United States acted tortiously – that is, wrongly – in causing some type of personal injury or property damage; that its managers or supervisors engaged in some variety of employment discrimination based upon race, gender, national origin, religion, or another protected characteristic or class; that it failed to abide by certain administrative processes and procedures in declining to grant monetary benefits or other entitlements under the law; or that it improperly withheld personal or corporate taxes for which the litigant seeks recovery. The United States itself may initiate civil lawsuits to recover program funds improperly obtained by individuals and companies; to remedy various kinds of civil rights violations in the housing, employment, and voting arenas; and to recover monies on debts owed to federal agencies under business and student loan programs, among other causes of action.¹

To start a civil lawsuit in federal court, a party must file with the court clerk a formal, written complaint, describing the jurisdictional basis for its action, the identity of the parties, the specific nature of the claims or allegations, and the particular type of relief sought by the litigation. Most often, civil litigants seek monetary recovery in their lawsuits, although they also may request some form of remedial or injunctive relief from the court.

After that, the plaintiff is obliged to ensure that the identified defendant is properly “served” with a copy of the complaint, along with a summons directing that the defendant

Civil cases may be initiated in federal court by private parties, including individuals and companies, and by the United States.



respond in some fashion to the allegations in the complaint. With some exceptions, nongovernmental parties served as defendants must submit their responses within 20 days of service of the complaint; the United States is routinely afforded 60 days in which to do so.

A defendant effectively served with the complaint usually files with the court and serves upon the plaintiff an “answer,” challenging any jurisdictional or other preliminary statements in the complaint, denying those substantive charges with which the defendant disagrees, and admitting those allegations with which the defendant concurs. Alternatively, a defendant opposing the litigation may elect to file a motion to dismiss the complaint in whole or in part based on identified jurisdictional, pleading, or other substantive infirmities in the complaint. The plaintiff is provided an opportunity to respond in writing to any motions filed by the defendant. The presiding district judge or magistrate judge then reviews the parties’ submissions and issues a decision on the motion. If the complaint “survives” (in whole or in part) the defendant’s motion to dismiss, the defendant is then obliged to file a formal answer to the allegations in the complaint.

Thereafter, the presiding judge or magistrate judge to whom the case is assigned² routinely conducts an initial scheduling conference with counsel for the parties, if they are represented by counsel. During that conference, the parties will discuss with the court the nature and scope of their claims and defenses, and their expectations for the conduct of pretrial and trial-related proceedings. The assigned judge then establishes a schedule for the completion of discovery, the filing of any pretrial motions (in addition to those that may have been submitted at the outset), or other pretrial matters. The court also may schedule a trial at that time.

Most often during the preliminary stages of federal civil litigation, the parties (through counsel) will conduct discovery to learn more facts about the relevant claims and defenses and to acquire substantive insight into the strengths and weaknesses of the parties’ positions. Civil procedural rules and statutes afford the litigants the options of conducting depositions (oral interviews of fact and expert witnesses recorded stenographically), propounding interrogatories (written questions soliciting written answers by the opposing party about relevant facts), requesting documents (including reports of significant events, business records, and other materials that reveal case-related information), and compelling written admissions and denials (also about relevant facts that define and narrow the disputes between the parties).

The discovery process is, for the most part, conducted by the parties absent significant court intervention or supervision.

A litigant, however, may file a motion with the court seeking a ruling by the judge when the parties are unable to resolve their discovery disputes. In these relatively rare instances, the court issues a ruling on the discovery motion. Materials generated by the litigants during this discovery period generally are not public and not made available to the media, except when they are included among the pretrial pleadings submitted to the presiding judge in support of a procedural or substantive motion.

At or near the conclusion of the discovery period, the parties typically are afforded a final opportunity to

The discovery process is, for the most part, conducted by the parties absent significant court intervention or supervision.

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petition the court for some case-dispositive action in the form of dismissal or summary judgment. If the judge's rulings do not resolve the case entirely, the matter is then set for trial if it has not already been scheduled. Depending upon the nature of the plaintiff's claims – and any so-called cross-claims or counter-claims of the defendant – the evidence may be presented to the court or to a jury. The jury typically is composed of six citizens chosen from among the residents of the district in which the court is located. Civil trials generally are open to the public and to the media with very rare exceptions.

In a civil trial, the burden is on the plaintiff to demonstrate by a preponderance of the evidence that the plaintiff is entitled to the entry of judgment against the defendant. Although the defendant is not required to present evidence in defense, the defendant usually will do so in an attempt to show to the presiding judge or to the jury that the plaintiff's claims are without merit and that judgment should be entered in favor of the defendant. Because federal civil trials frequently involve related but discrete issues of causation, intent, liability, responsibility, and harm, the so-called "trier of fact" typically will be asked to answer a series of questions in a special verdict form; the answers to those questions determine which party is the successful litigant.

A litigant dissatisfied with some aspect of the case result may appeal the final judgment to the Court of Appeals for the Seventh Circuit. As in criminal cases, the appellate court routinely directs the parties to prepare and submit written briefs identifying specific issues of fact or law critical to the disposition of the case at the trial court level and setting forth their position in support of or in opposition to a reversal of the judgment or verdict. The appeals court frequently will conduct oral argument on those issues before rendering its written decision. Further appeal to the U.S. Supreme Court is thereafter possible, but highly unlikely, given the relatively limited scope of issues that the Supreme Court typically accepts for review.

Bankruptcy and Reorganization

Bankruptcy matters are handled in the U.S. Bankruptcy Court, a unit of the U.S. District Court. Bankruptcy judges decide any disputes concerning how liabilities are treated, which assets are exempt from recovery by creditors, how the assets of individuals and businesses that have filed bankruptcy cases are distributed, and other matters related to a bankruptcy case. A bankruptcy case may involve a straight liquidation or may allow for reorganization or a payment plan for all or part of a debtor's debts. The person who files a bankruptcy case is a "debtor," not a "bankrupt."

Liquidation of a business or an individual's financial affairs may take place under the jurisdiction of the state court, but this is not a bankruptcy and should not be referred to as such.

Some cases are commenced by creditors when a debtor is not paying undisputed debts as they become due, but these involuntary cases are a small minority. Most bankruptcy cases are filed voluntarily by the debtor seeking the bankruptcy court's protection. The filing of a case results in an automatic stay of actions to collect claims against the debtor or to recover property of the debtor. Court action frequently takes place soon after filing, usually concerning whether there should be relief from the automatic stay, valuation of assets, validity and amount of claims, priority of payment, validity of exemptions, validity or enforcement of liens, dischargeability of debts, and other matters. These are tried to a bankruptcy judge without a jury.

Cases may be filed under several chapters of the Bankruptcy Code: Chapter 7 is a liquidation, and assets are distributed by a trustee appointed by the United States Trustee, a division of the Department of Justice; Chapter 11 may involve a liquidation or reorganization and usually is reserved for large, complicated cases; Chapter 12 is limited to family farmers and involves a plan for repayment through the Chapter 12 trustee over

A bankruptcy case may involve a straight liquidation or may allow for reorganization or a payment plan for all or part of a debtor's debts.





three to five years; Chapter 13 is for individuals with a regular income and involves a plan for repayment through the Chapter 13 trustee over three to five years. Individuals who complete the process, and corporations that have a plan confirmed, are entitled to a discharge of dischargeable debts not paid by the trustee or plan. Some debts are not subject to discharge, such as support for dependents, certain taxes, student loans under most circumstances, drunk driving damages, fines, penalties, and other specific types of debts. Some debts, such as for fraud, intentional damage to property, or a property division at divorce, may be determined by the

bankruptcy court to be an exception to the discharge if an action is timely brought by the creditor. The Chapter 13 discharge is slightly broader.

Hearings and bankruptcy case records are open to the public. These may be found at the offices of the Clerk of Bankruptcy Court. Bankruptcy judges in Wisconsin are appointed by the Seventh Circuit for 14-year terms. Appeals from bankruptcy court decisions are decided by the U.S. District Court, the Seventh Circuit Court of Appeals, and the U.S. Supreme Court, in that order.

Endnotes

¹In addition, federal and state prisoners frequently petition the federal courts for various kinds of relief by filing complaints seeking to overturn their criminal convictions, typically on the basis of an alleged constitutional violation, or asking for some court-ordered change in the terms and conditions of their incarceration; the latter often focus on jail conditions, health-related issues, library access, and various other privileges guaranteed to prisoners under the U.S. Constitution or federal and state law. These kinds of claims most often are litigated by the plaintiffs without counsel or pro se – meaning “on one’s own behalf.”

²In the federal courts, United States magistrate judges may handle all aspects of civil cases – from initial conferences through trials – upon the affirmative, written consent of all parties to the litigation. Appeals in these cases are to the Court of Appeals for the Seventh Circuit. All civil cases, whether subject to consent or not, are assigned randomly among the federal judiciary in the district in which they are filed.

4 Issues of Access: Privilege, Open Records, Open Meetings, Rights of Privacy, and Defamation

The Journalist's Privilege

Journalists in Wisconsin enjoy a strong qualified privilege against testifying in both civil and criminal proceedings. This court-recognized privilege, based on the state and federal constitutions, applies to information gathered from both confidential and nonconfidential sources.

Source of the journalist's privilege. Wisconsin courts have found a journalist's privilege in both the Wisconsin Constitution and the First Amendment to the U.S. Constitution. Specifically, state courts have read a qualified journalist's privilege into article I, section 3 of the Wisconsin Constitution: "no laws shall be passed to restrain or abridge the liberty of speech or of the press."¹ Wisconsin courts also have relied on the First Amendment to the U.S. Constitution as the source of the journalist's privilege.²

Scope of the privilege. To determine whether the qualified privilege applies, a court must balance the need to insulate journalists from undue intrusion into their news-gathering activities with the litigant's need for evidence.³ Wisconsin courts have established a three-prong test to determine if the subpoenaed information is protected by the privilege. The journalist's privilege will apply unless the following circumstances exist:

- 1) the party issuing the subpoena has exhausted all alternative sources for the information;
- 2) the information sought from the journalist is noncumulative; and,
- 3) the information sought from the journalist is relevant to an important issue in the case.⁴

The party seeking the information has the burden of proving these elements by a preponderance of the evidence.

The journalist's privilege in Wisconsin protects the identity of the source, as well as unpublished information gathered by a reporter. The privilege applies only to information gathered in the course of one's work as a journalist, but both confidential and nonconfidential information is protected. That is, regardless of whether the journalist obtained the information under a promise of confidentiality, the journalist's privilege against testifying is the same.⁵

When a journalist receives a subpoena that seeks information protected under the journalist's privilege, the proper procedure is to move to quash the subpoena. The

The journalist's privilege in Wisconsin protects the identity of the source, as well as unpublished information gathered by a reporter.



motion to quash should set forth the basis for the motion, addressing the three-part privilege test in *Kurzynski*. A copy of *Kurzynski* should be attached to the motion to quash for ease of reference. After reviewing the motion and responsive pleadings, the court will determine whether the subpoenaing party has proven the necessary elements to overcome the journalist’s privilege.

Open Records

Wisconsin has a broad presumption of complete access to public records, which is reflected in both the statutes and the case law.⁶ Reporters can use the open records law to gather information, but it is important to understand the procedure for requesting records, including the *Woznicki* procedures, and the types of records available.

Procedure for obtaining records. Under the Wisconsin open records law, a person may request a public record from an authority who created or has custody of the record.⁷ The open records law applies only to public records, not the records of private entities, unless the record pertains to a contract between the private entity and the government.⁸ Open records requests only can be served on governmental entities as defined in Wis. Stat. section 19.32(1), which includes state and local offices.

An open records request may be made orally or in writing.⁹ A written request requires a written response from the custodian, and a written request is required before an enforcement action may be commenced. The requester need not reveal his or her identity, nor state the purpose of the request.¹⁰ The request is sufficient if it “reasonably describes the requested records or the information requested.”¹¹

A custodian must respond to an open records request promptly, using specific and well-established procedural standards to determine whether disclosure of the requested public records is proper.¹² Moreover, if the request is made in writing, the response must be in writing and include specific reasons for any complete or partial denial.

Although the open records law does not require a custodian to create a new record if one does not exist, the custodian has an affirmative duty to separate confidential information from information that is subject to disclosure and release the redacted record.¹³

Finally, the custodian may charge the requester the “actual, necessary and direct cost of reproduction and transcription of the record, unless a fee is otherwise specifically established or authorized to be established by law.”¹⁴

Types of records available. The presumption of complete public access can only be overcome when: 1) there is an explicit statutory exemption; 2) there is an explicit common law exemption; or 3) the public’s interest in secrecy outweighs the public’s interest in access. Wis. Stat. section 19.36 lists certain statutory exemptions including, but not limited to, computer programs, trade secrets, identities of law enforcement informants, and personally identifiable information in specific records. In addition, Wisconsin appellate court decisions have established certain common law exemptions, including district attorney’s investigative files.¹⁵

If none of the specific exemptions apply, the custodian (or court, if the matter is before a court) applies the balancing test. The custodian (or court) must “weigh the competing interests involved and determine whether permitting inspection would result in harm to the public interest which outweighs the legislative policy recognizing the public interest in allowing inspection.”¹⁶ Access to court records is subject to the open records law, including the balancing test.¹⁷

Woznicki notice and review procedures. In 2003, the legislature amended Wis. Stat. chapter 19, narrowing and clarifying the notice and review procedures created by *Woznicki v. Erickson*.¹⁸ In that case, the Wisconsin Supreme Court added procedural steps that custodians must take before releasing certain public records implicating the privacy or reputational interests of an individual. The *Woznicki* court held that before a district

Wisconsin has a broad presumption of complete access to public records, which is reflected in both the statutes and the case law.



attorney may release a record implicating such interests, the district attorney must notify the subject of the record and give the subject a reasonable opportunity to seek court review of the district attorney's decision to release the record. Now, under the revisions to chapter 19, the statutes explicitly confine *Woznicki* to limited categories of records. Unless a record falls within those defined categories, the subject of the record is not entitled to *Woznicki* notice and review rights.

Records subject to *Woznicki* notice. In general, only employees are entitled to *Woznicki* notice with respect to any records. The definition of employee in Wis. Stat. section 19.32(1bg) includes both public employees and employees of an employer operating under a government contract. This means that private employees working under a government contract, such as school bus drivers, nursing home workers, and government contract lawyers, have *Woznicki* rights to the extent their records are subject to request under the open records law.

The statute carves out high-ranking state and local public officials and does not provide them with *Woznicki* rights. Under Wis. Stat. section 19.32(1dm), officials holding local public office include those already defined in Wis. Stat. section 19.42(7w) as well as other individuals serving as the head of a department, agency, or division of the local government unit.

An authority is not required to notify a record subject before releasing a record unless notification is mandated by Wis. Stat. section 19.356(2). Subsection (2) lists the types of records that require the authority to provide *Woznicki* notice to the record subject before releasing the record. For public employees (excluding those holding high office as defined above), the list is confined to disciplinary records. Private employees working under government contracts are entitled to *Woznicki* notice before any records containing personally identifiable information may be released. Finally, any person is entitled to *Woznicki* notice before a record may be released that identifies the person and that the authority obtained using a subpoena or search warrant. No other records are subject to the *Woznicki* procedure.

Time limits on the *Woznicki* procedure. To limit the delay resulting from the *Woznicki* process, the new statutes establish strict time limits for notice and judicial review. First, if a *Woznicki* notice is required, under Wis. Stat. section 19.356(2)(a) the authority shall give notice to the record subject within three days after making the decision to release the record. Within five days of receiving the notice, the record subject must provide written notice to the authority of his or her intent to seek judicial review of the authority's decision to release the record. Within 10 days of receiving the notice, the record subject must actually commence an action in state circuit court. Then, under Wis. Stat. section 19.356(7), the court must issue a decision within 10 days after the filing

In *Woznicki v. Erickson*,¹⁸ the Wisconsin Supreme Court added procedural steps that custodians must take before releasing public records implicating the privacy or reputational interests of an individual.





The Wisconsin open meetings law permits reporters to attend and report on all meetings of governmental bodies, unless a specific statutory exemption permits the government body to close the meeting to the public.



of the complaint. The process can be delayed only if a party demonstrates cause for an extension and, even then, the court must issue its decision within 30 days. The circuit court’s decision may be appealed, within 20 days, under Wis. Stat. section 808.04(1m). Section 19.356(8) requires the court of appeals to grant precedence to the appeal.

Other statutory requirements. Under Wis. Stat. section 19.34(1), in addition to prominently displaying the method whereby the public may obtain access to records, an authority shall identify each position employed by the authority that in its opinion constitutes a local or state public office. This provides the public advance notice of which employees the authority believes are entitled to *Woznicki* notice under the proposal.

- Under Wis. Stat. section 19.356(4), if a record subject commences an action in court, the requester may intervene in the action as a matter of right.

- Under Wis. Stat. section 19.356(9), if an authority decides to permit access to an employment record of an individual holding local or state public office, the authority shall provide written notice to that individual within three days after making the decision. Although the local or state public official may not commence an action for review of the authority’s decision, within five days after receiving the notice the local or state public official may augment the record to be released with written

comments and documentation. This reflects every employee’s right under existing law to review and insert written rebuttal concerning anything in the employee’s personnel file.

- Wis. Stat. section 19.36(10) creates a list of information that is not to be released, including, among others, home addresses and telephone numbers, Social Security numbers, and information relating to a current investigation of a possible criminal offense or misconduct.

Enforcement. If an authority denies access to a record or a part of a record, or delays granting access to a record following a written request, the requester may either bring an action for mandamus in circuit court or request that the local district attorney or the attorney general bring a mandamus action asking the court to order the authority to release the record.¹⁹ The requester need not file a notice of claim before bringing the action.²⁰ “[I]f the requestor prevails in whole or in substantial part” in the mandamus action, “the court shall award reasonable attorney fees, damages of not less than \$100.00, and other actual costs to the requestor”²¹ Even if the authority grants access before a final court ruling, the requester has a right to recover damages, attorney fees, and costs if the court determines that there was a “causal nexus” between the mandamus action and the surrender of the record.²² If the court determines that the authority denied or delayed access arbitrarily or capriciously, the court also may award the requester punitive damages.²³

Open Meetings

The Wisconsin open meetings law permits reporters to attend and report on all meetings of governmental bodies, unless a specific statutory exemption permits the government body to

close the meeting to the public. Every meeting of a governmental body must be preceded by a public notice.

Scope of the open meetings law. The law applies only to meetings of governmental bodies. "Governmental body" includes any state or local agency, board, commission, committee, council, department, or public body corporate and politic created by constitution, statute, ordinance, rule, or order, a governmental or quasi-governmental corporation, or a formally constituted subunit of any of these.²⁴ "Meeting" means the convening of members of a governmental body to exercise the responsibilities, authority, powers, or duties delegated to or vested in the body.²⁵ If one-half or more of the members of a governmental body are present, the meeting is presumed to be for exercising the responsibilities, authority, power, or duties delegated to or vested in the body.²⁶ The term "meeting," however, does not include any social or chance gathering or conference that is not intended to avoid the law.²⁷ A telephone conference or email discussion among the relevant number of members may be a meeting subject to the open meetings law.

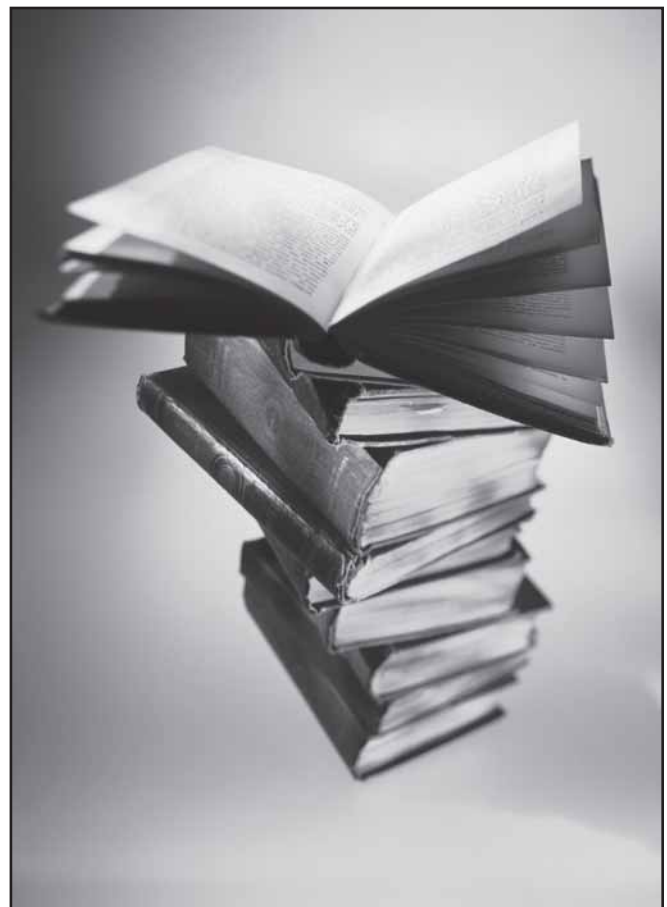
Unless there is a specific statutory provision to the contrary, a secret ballot may not be used to make any decisions or to determine any election, except the election of the officers of the public body.²⁸ The motions and roll call votes of each meeting must be recorded, preserved, and open to public inspection consistent with the open records statute - even if the meeting at which the vote was taken was properly closed.²⁹

A reporter may record, film, or photograph a meeting held in open session as long as it does not interfere with the conduct of the meeting or the rights of the participants.³⁰

Procedure to close a meeting. A governmental body may close its meeting to the public only upon a motion made and passed in public by a majority vote of the body.³¹ In connection with that vote, the chief presiding officer must announce to those present the nature of the business to be considered in closed session and the specific exemption relied on for the closed session.³² Closed sessions may be held for any of the specific purposes listed in Wis. Stat. section 19.85:

- 1) to deliberate after any judicial or quasi-judicial trial or hearing;
- 2) to consider certain specified personnel matters;
- 3) to consider specific applications of probation or parole;
- 4) to consider a strategy for crime detection or prevention;
- 5) to deliberate or negotiate the purchase of public properties, the investing of public funds, or to conduct other specified public business whenever competitive or bargaining reasons require a closed session;
- 6) to deliberate unemployment insurance or worker's compensation;
- 7) to deliberate the location of a burial site if discussing the location in public would likely result in disturbance of the burial site;
- 8) to consider financial, medical, social, or personal histories or disciplinary data of specific persons which, if discussed in public, would be likely to have a substantial adverse effect upon the reputation of any such person;
- 9) to confer with legal counsel for a governmental body that is rendering oral or written advice concerning strategy with respect to litigation;

Enforcement of the Wisconsin Open Meetings Law is the responsibility of the attorney general or the district attorney of any county in which a violation may occur.



10) to consider requests for confidential written advice from the State Ethics Board or from any local government ethics board;

11) to consider any and all matters related to acts by businesses which, if discussed in public, could adversely affect the business, its employees, or former employees; and,

12) to consider financial information relating to the support of certain nonprofit corporations.

Enforcement. Enforcement of the Wisconsin Open Meetings Law is the responsibility of the attorney general or the district attorney of any county in which a violation may occur.³³ Penalties range from \$25 to \$300 for each violation, and actions taken during a meeting held in violation of the law may be voidable.³⁴ A private party may enforce the law, but only after filing a complaint with the local district attorney and only if the district attorney declines to act after 20 days.³⁵

Access to Courtrooms

The public has a right to attend court proceedings in Wisconsin. The presumption of openness includes access for reporters and their cameras in the courtroom. Access to juvenile court proceedings and records, however, is limited.

Access to courtrooms. The public's right to attend court proceedings in Wisconsin is protected by the state and federal constitutions and a Wisconsin statute. Wis. Stat. section 757.14 states:

"The sittings of every court shall be public and every citizen may freely attend the same, except if otherwise expressly provided by law on the examination of persons charged with crime; provided, that when in any court a cause of a scandalous or obscene nature is on trial the presiding judge or justice may exclude from the room where the court is sitting all minors not necessarily present as parties or witnesses."

A court may exercise its discretion to close a proceeding in only the rarest of circumstances, and its decision must be based on compelling reasons.³⁶ The court must conclude that failure to close the hearing would jeopardize the very nature of the proceeding and that "the quest for justice will be better served by secrecy than by public disclosure."³⁷ Moreover, the court must hold a public hearing and state its reasons before it can close a court proceeding.

Cameras in the courtroom. Chapter 61 of the Wisconsin Supreme Court Rules governs the use of still and video photography in Wisconsin courtrooms. (Please see the discussion in Chapter 2.)

Access to juvenile court proceedings. Wisconsin's Juvenile Justice Code, Wis. Stat. chapter 938, addresses the news media's right to attend juvenile proceedings and identify persons under age 17 who are accused of criminal conduct or delinquency.

Under some circumstances, juvenile court files and proceedings are open to the general public, including the news media, and public identification of the juveniles involved in the proceedings is permitted. The news media may identify people under age 17 who are charged with crimes in adult court or charged with delinquency in juvenile court under two circumstances. First, a person under age 17 may be identified whenever the case is prosecuted in adult court because the juvenile court has waived its jurisdiction. Second, a person under age 17 may be identified whenever the juvenile has previously been adjudicated delinquent and is charged with a violation that would be a felony if committed by an adult, and when the juvenile is charged with a violation that would be one of a list of specified serious felonies if committed by an adult.³⁸

Other juvenile court proceedings are closed to the general public, but the news media may attend the proceedings on condition of maintaining the juvenile's confidentiality.³⁹ The news media may attend hearings only on the condition that news reports not identify the child or the child's family.

Certain newsgathering techniques, including recording a telephone conversation and accessing private property, may raise legal questions.



Newsgathering Techniques

Certain newsgathering techniques, including recording a telephone conversation and accessing private property, may raise legal questions.

Recording a telephone conversation. In Wisconsin, a person may record a telephone conversation under two circumstances: 1) when the person recording is a party to the communication; or 2) when one of the parties to the communication has given prior consent to recording.⁴⁰ Significantly, this provision is an *exception* to the statute that penalizes recording or intercepting any wire, electronic, or oral communication through the use of an electronic, mechanical, or other device.⁴¹ A violation of the statute is punishable by a fine of not more than \$10,000 or imprisonment up to seven and a half years, or both.⁴² Furthermore, the exception allowing recording of the communication does not apply if the communication is intercepted or recorded for the commission of any criminal act or for the commission of any other injurious act.⁴³

In *Bartnicki v. Vopper*,⁴⁴ the U.S. Supreme Court addressed whether a news reporter is protected by the First Amendment when he or she lawfully obtains and uses a recorded conversation that was unlawfully recorded. Because the reporter played no role in illegally recording the conversation and the conversation dealt with a matter of public concern, the court concluded that the reporter was protected by the First Amendment.

FCC rules also govern the recording of a telephone conversation for future broadcasting, or for broadcasting a telephone conversation simultaneously.⁴⁵ Before recording or broadcasting the conversation, the reporter must inform the nonconsenting party to the call that it will or may be broadcast.

Access to private property. Wisconsin follows the general rule that reporters have no special right of access to private property for gathering news when the general public is excluded. When the public has been admitted to the property, on the other hand, a reporter may not be barred. Although it may be customary in Wisconsin for reporters to be permitted access by authorities to the site of newsworthy events this may not, by itself, protect a reporter from a trespass claim.

In *Branzburg v. Hayes*,⁴⁶ the U.S. Supreme Court held that reporters “have no constitutional rights of access to scenes of crime or disaster when the general public is excluded,” pointing out the right to speak and publish does not carry with it the unrestrained right to gather information. More recently, in *Wilson v. Layne*, the Supreme Court addressed the validity of the execution of a search warrant when the police officers permitted a reporter and a photographer to “ride-along.”⁴⁷ The Court held that the presence of the third parties violated the Fourth Amendment, because the reporter and photographer were not aiding in the execution of the warrant.

Wisconsin has followed the majority rule by generally refusing to recognize a legal right of reporters to trespass. In *Prahl v. Brosamle*,⁴⁸ the Wisconsin Court of Appeals refused to find that reporters have a legal right to enter private property to cover newsworthy events. The court held that in addition to any property damage caused by the trespass, a person could recover from the news media any damages caused by the publication of information acquired as a result of the unlawful trespass.

In *City of Oak Creek v. Ah King*,⁴⁹ the Wisconsin Supreme Court held that the news



Wisconsin has followed the majority rule by generally refusing to recognize a legal right of reporters to trespass.



Public officials may sue for defamation, according to the U.S. Supreme Court, but to prevail they must establish that the defamatory statement was made with actual malice.



media has no right of access to emergency scenes where the general public has been excluded. The case arose from the 1985 crash of an airliner at Milwaukee’s Mitchell Field. A television photographer who had approached within 200 yards of the crash site was convicted of disorderly conduct after he refused a police officer’s order to leave the scene. In a 4 to 3 decision, the court affirmed the conviction. It concluded that the photographer did not have a First Amendment “right of access, solely because he is a newsgatherer, to the scene of this airplane crash when the general public has been reasonably excluded.”⁵⁰

Right of Privacy

Wisconsin recognizes a statutory right of privacy. Wis. Stat. section 895.50 allows lawsuits seeking damages and attorney fees for three types of invasion of privacy: 1) intrusion upon the privacy of another in a highly offensive manner; 2) misappropriation of a name, picture, or portrait for trade purposes; and 3) publication of private matters in a highly offensive manner. The statute also specifically provides that there can be no invasion of privacy for publication of information available as a matter of public record.⁵¹ News reporters should be aware that, unlike defamation, truth is not a defense to an action for invasion of privacy. Wisconsin courts have concluded, however, that a claim under the third prong of the statute is not valid when a matter of legitimate public interest is concerned.⁵²

Defamation

Reporters certainly are aware of the potential for a defamation claim. Wisconsin has adopted the elements of the common law tort of defamation.

Elements of defamation. In general, a statement is defamatory if it is false and tends to harm the reputation of a person as to lower the person in the estimation of the community or to deter third persons from associating or dealing with the person.⁵³ There are three elements to the claim:

- 1) a false and defamatory statement concerning another;
- 2) made in an unprivileged publication or broadcast to a third party; and
- 3) with fault amounting at least to negligence on the part of the speaker or publisher.⁵⁴

Pursuant to the First Amendment, pure statements of opinion generally do not constitute defamation.

Who may sue for defamation. Although a person need not specifically be named in the publication or broadcast to bring a defamation claim, certainty as to the person’s identity must appear from the words themselves.⁵⁵ A corporation can sue for defamation, but to prevail it must prove that the publication tends to prejudice the corporation in the conduct of its business or deters others from dealing with it.

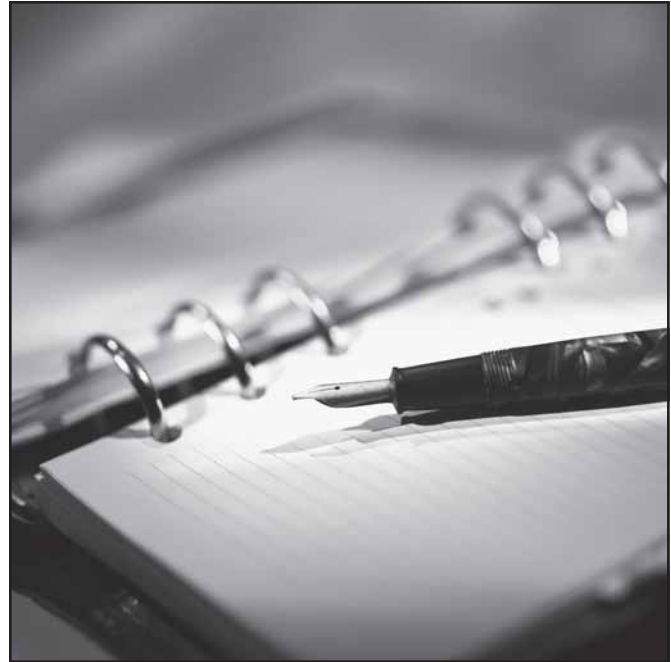
Public officials may sue for defamation, according to the U.S. Supreme Court, but to prevail they must establish that the defamatory statement was made with actual malice.⁵⁶ That is, the public official must prove by clear and convincing evidence that the defendant made the alleged defamatory statement with actual malice – either with knowledge that the statement was false or with reckless disregard as to the truth of the statement.

The actual malice standard has been extended to public figures, or persons who “although not government officials, are nonetheless intimately involved in the resolution of important public questions.”⁵⁷ A person may become a public figure in two ways. First, “[h]e or she may be a public figure for all purposes due to general fame or notoriety.”⁵⁸ Second, a person assumes public figure status by “involvement in a particular public controversy,” but only for a limited range of issues.⁵⁹

Defenses. Truth is an absolute defense to any claim of defamation.⁶⁰ As long as the statement is substantially true, this defense applies. Wisconsin courts also recognize an absolute privilege for participants in certain official proceedings, as long as the statements

have some relation to the proceedings. Wis. Stat. section 895.05(1) provides newspapers an absolute privilege to publish “a true and fair report of any judicial, legislative or other public official proceeding authorized by law or of any public statement, speech, argument or debate in the course of such proceeding.” This privilege, however, does not apply to headlines or added commentary. Although the statute only addresses newspapers, the common law provides the same true and fair reporting privilege to broadcasters.

Damages. Wis. Stat. section 895.05(2) requires that before commencing a civil action arising out of publication in a newspaper, magazine, or periodical, the plaintiff must give the alleged defamer a reasonable opportunity to correct the defamatory material. Publishing a correction, moreover, eliminates any claim for punitive or presumed damages and may be evidence of mitigation of actual damages.



Endnotes

¹See *Zelenka v. State*, 83 Wis. 2d 601, 617, 266 N.W.2d 279 (1978); *State ex rel. Green Bay Newspaper Co. v. Circuit Court*, 113 Wis. 2d 411, 419, 335 N.W.2d 367 (1983); *Kurzynski v. Spaeth*, 196 Wis. 2d 182, 191, 538 N.W.2d 554 (Ct. App. 1995).

²See *State v. Knops*, 49 Wis. 2d 647, 652, 183 N.W.2d 93 (1971); *Zelenka*, 83 Wis. 2d at 617; *Kurzynski*, 196 Wis. 2d at 195.

³See *Kurzynski*, 196 Wis. 2d at 196.

⁴*Id.* at 196-97.

⁵*Id.* at 196.

⁶See, e.g., Wis. Stat. § 19.31.

⁷See Wis. Stat. § 19.32(3).

⁸See Wis. Stat. § 19.36(3).

⁹Wis. Stat. § 19.35(1)(h).

¹⁰*Id.*

¹¹*Id.*

¹²See *Osborn v. Board of Regents*, 2002 WI 83, ¶15, 254 Wis. 2d 266, 647 N.W.2d 158.

¹³See Wis. Stat. § 19.36(6).

¹⁴Wis. Stat. § 19.35(3).

¹⁵See *State ex rel. Richards v. Foust*, 165 Wis. 2d 429, 436, 477 N.W.2d 608 (1991).

¹⁶See *Osborn*, 2002 WI 83, ¶15; see also *Linzmeier v. Forcey*, 2002 WI 84, 254 Wis. 2d 306, 646 N.W.2d 811 (applying the balancing test to police records).

¹⁷See *C.L. v. Edson*, 140 Wis. 2d 168, 181, 409 N.W.2d 417 (Ct. App. 1987).

¹⁸202 Wis. 2d 178, 549 N.W.2d 699 (1996).

¹⁹Wis. Stat. § 19.37(1).

²⁰Wis. Stat. § 19.37(1n).

²¹Wis. Stat. § 19.37(2).

²²See *State ex rel. Vaughan v. Faust*, 143 Wis. 2d 868, 422 N.W.2d 898 (Ct. App. 1988).

²³Wis. Stat. § 19.37(3).

²⁴Wis. Stat. § 19.82(1).

²⁵Wis. Stat. § 19.82(2).

²⁶*Id.*

²⁷*Id.*

²⁸Wis. Stat. § 19.88(1).

²⁹Wis. Stat. § 19.88(3).

³⁰Wis. Stat. § 19.90.

³¹Wis. Stat. § 19.85(1).

³²*Id.*

³³See Wis. Stat. § 19.97(1).

³⁴Wis. Stat. § 19.97.

³⁵See Wis. Stat. § 19.97(4).

³⁶See *LaCrosse Tribune v. Circuit Court*, 115 Wis. 2d 220, 233, 340 N.W.2d 460 (1983).

³⁷*Id.* at 242.

³⁸See Wis. Stat. § 938.396(2m).

Truth is an absolute
defense to any claim of
defamation.



³⁹Wis. Stat. § 938.396(1).

⁴⁰Wis. Stat. § 968.31(2)(c).

⁴¹See Wis. Stat. § 968.31(1).

⁴²*Id.*

⁴³See Wis. Stat. § 968.31(2)(c).

⁴⁴532 U.S. 514 (2001).

⁴⁵See 47 C.F.R. § 73.1206.

⁴⁶408 U.S. 665, 684-85 (1972).

⁴⁷526 U.S. 603 (1999).

⁴⁸98 Wis. 2d 130, 295 N.W.2d 768 (Ct. App. 1980).

⁴⁹148 Wis. 2d 532, 436 N.W.2d 285 (1989).

⁵⁰*Id.* at 552.

⁵¹Wis. Stat. § 895.50(2)(c).

⁵²See *Van Straten v. Milwaukee Journal Newspaper-Publisher*, 151 Wis. 2d 905, 921, 447 N.W.2d 105 (Ct. App. 1989).

⁵³See *Tatur v. Solsrud*, 174 Wis. 2d 735, 741, 498 N.W.2d 232 (1993) (quoting Restatement (2d) of Torts §559).

⁵⁴*Bay View Packing Co. v. Taff*, 198 Wis. 2d 653, 673, 543 N.W.2d 522 (Ct. App. 1995).

⁵⁵See *DeWitte v. Kearney & Trecker Corp.*, 265 Wis. 132, 137, 60 N.W.2d 748 (1953).

⁵⁶See *Bay View Packing*, 198 Wis. 2d at 674 (citing *New York Times v. Sullivan*, 376 U.S. 254 (1964)).

⁵⁷See *Wiegel v. Capital Times Co.*, 145 Wis. 2d 71, 81, 426 N.W.2d 43 (Ct. App. 1988).

⁵⁸*Id.* at 82.

⁵⁹*Id.*

⁶⁰See *Schaefer v. State Bar*, 77 Wis. 2d 120, 125, 252 N.W.2d 343 (1977).

5 Internet Resources for Reporters

Archives

American Memory

lcweb2.loc.gov/ammem/ammemhome.html

American Memory is an online resource compiled by the Library of Congress National Digital Library Program. The program provides a gateway to more than one million primary source materials relating to the history and culture of the United States.

The Avalon Project at Yale

www.yale.edu/lawweb/avalon/avalon.htm

The site provides access to documents relevant to the fields of law, history, economics, politics, diplomacy, and government from the 18th and 19th centuries.

Constitutional Rights Foundation

www.crf.usa.org/foundation_docs/foundation_home.html

Under “Foundations of our Constitution,” CRF links to the full text of “great documents,” including The Magna Carta and The Federalist Papers. This site includes links to teaching resources and to other sites related to civic education and civic society.

Internet Scout Project

scout.cs.wisc.edu

The project combs the Internet each week in search of quality online resources for the education community. Visitors may subscribe to a weekly email newsletter of newly available Internet resources or search the archive.

Library of Congress

www.loc.gov

The Library of Congress site offers a searchable, digital collection of resources from the Library of Congress’s American historical collections as well as its catalog, text and images from major exhibitions, the THOMAS database of current and historical information on the U.S. Congress, and a “Learning Page” for K-12 students and teachers. One of the most visited Web sites is the Library of Congress list of official government sites ([/global/executive/fed.html](http://global/executive/fed.html)).

Making of America

moa.umdl.umich.edu

Making of America is a digital library of primary sources in American social history from the antebellum period through reconstruction.

National Archives and Records Administration (NARA)

www.nara.gov

This site includes multiple links to NARA's nationwide holdings, including "Records Management," "Federal Register," "Online Exhibit Hall," "Digital Classroom," and more.

Civics Education Organizations

Ackerman Resource Links to Civic, Social Studies, and History Education

www.soe.purdue.edu/ackerman/resources.html

This site provides links focused on providing programs, institutes, activities, and resources for educators to implement more powerful citizenship programs and opportunities that result in active student involvement in schools and communities.

Center for Civic Education

www.civiced.org

This site provides instructional and professional development resources for civics teachers. It is maintained by the Center for Civic Education, a nonprofit, nonpartisan educational corporation dedicated to fostering the development of informed, responsible participation in civic life by citizens.

Constitutional Rights Foundation

www.crf-usa.org

The site provides programs, publications, and online lessons that instill a deeper understanding of citizenship through values expressed in our Constitution and its Bill of Rights and educate citizens to become active and responsible participants in our society.

National Council for the Social Studies

www.socialstudies.org

This site offers an information service for educators from the National Council for the Social Studies.

Civics Education Standards and Reports

Educating for Citizenship by Kathleen Cotton

www.nwrel.org/scpd/sirs/10/c019.html

National Standards for Civics and Government

www.civiced.org/stds.html

National Standards for Social Studies Teachers

www.socialstudies.org/standards/teachers

No Child Left Behind, President Bush's Education Plan (2001)

www.nochildleftbehind.gov

The Role of Civics Education

www.civiced.org/whpaper.html

A 1995 report by the Center for Civic Education.

**Wisconsin Civics Action Task Force:
Recommendations for Democratic Citizen-
ship Education**

www.dpi.state.wi.us/dlsis/cal/pdf/civics.pdf

**Wisconsin Model Academic Standards for
Social Studies**

www.dpi.state.wi.us/standards/ssintro.html

**Contemporary Court and
Criminal Justice Issues**

**Center for Judicial Independence
(American Judicature Society)**

www.ajs.org/cji/index.html

The site includes current news and resources on the importance of, and threats to, judicial independence.

**Independence of the Judiciary (American Bar
Association)**

[www.abanet.org/publiced/lawday/talking/
judicial_main.html](http://www.abanet.org/publiced/lawday/talking/judicial_main.html)

The section includes a plain-English overview of the origins, purpose, and benefits of judicial independence, with discussion questions and talking points.

Justice for Sale: Judicial Selection

www.pbs.org/wgbh/pages/frontline/shows/justice

This PBS Frontline site is a companion to the special entitled *Justice for Sale*, which aired in November 1999. The site contains information on judicial selection, with links to key studies and recommendations on judicial selection from national organizations such as the American Bar Association and the American Judicature Society. Also found here is information on reform efforts in various states, a state-by-state listing of issues and controversies affecting judicial independence, and links to various studies and reports on who usually wins judicial races, the amount of money involved and its sources, and the public's perception of judges.

National Public Radio's Prison Diaries

www.npr.org/programs/atc/prisondiaries and

360degrees: Perspectives on the U.S. Criminal Justice System

www.360degrees.org

National Public Radio (NPR) and Picture Projects collaborated on this radio diary and online documentary project focusing on the U.S. criminal justice system. The project is based on audio journals kept by five inmates, four correctional officers, and a judge. The project takes visitors to the Polk Youth Institution in Butner, N.C., where John Mills, 22,



is serving seven to nine years. Mills had wanted to become a police officer, but at age 15 he held up his first store. Over the next two years, he committed more than 75 armed robberies. Visitors will find more detailed information at the online documentary, 360degrees. The site offers additional photos, audio commentary, transcripts, and background information. Other resources include a timeline of criminal justice systems and policies, an online discussion forum, a list of classroom ideas, and more.

National Youth Court Center

www.youthcourt.net

The site presents an overview of the national teen court movement and provides resources and information on training and technical assistance.

Continuing Education for Teachers

The National Endowment for the Humanities: Seminars and Institutes

www.neh.gov/projects/si-school.html

The page offers information on professional development programs for teachers.

U.S. Supreme Court Institute

www.streetlaw.org/scipage.html

The institute brings high school teachers to Washington, D.C., for six days to learn about the U.S. Supreme Court and demonstrates innovative ways to share this information with students.

Courts

Cornell University's Supreme Court Collection

supct.law.cornell.edu/supct/index.html

Sponsored by the Legal Information Institute, this resource offers nearly all U.S. Supreme Court opinions issued since May 1990. In addition, the collection includes more than 600 of the most important historical decisions of the Court available on CD-ROM and over the Internet.

Federal Judiciary

www.uscourts.gov

This site provides information on the structure and function of the federal courts.

U.S. Supreme Court

www.supremecourtus.gov

The site provides current information on oral arguments and decisions, as well as information on arranging visits to the U.S. Supreme Court.

Wisconsin Court System

www.courts.state.wi.us

The site provides information on Wisconsin courts, including biographies and photographs of the Wisconsin Supreme Court justices, synopses of cases to be heard, released opinions of the Wisconsin Supreme Court and Court of Appeals, explanations of the work of the different levels of court, Wisconsin court and legal history, and more. Visitors also can request arrangements for a judge to speak to their group about a variety of law-related topics through the Judicial Speakers Bureau.

Government

State of Wisconsin E-Government Portal

www.wisconsin.gov

U.S. Department of Education

www.ed.gov

The site provides news and reports from the Department of Education.

U.S. House of Representatives

www.house.gov

The official site of the U.S. House of Representatives includes resources on House rules, proceedings, votes, and committees. The site also includes "Educational Links" at www.house.gov/house/Educat.html.

U.S. Senate

www.senate.gov

The official site of the U.S. Senate includes information about Senate activities, committees, and bills; highlights paintings from the Senate art collection; and offers "This Week in Senate History," featuring a different person or event each week and providing access to a variety of Senate history materials.

White House

www.whitehouse.gov

The official site of the U.S. White House provides information on the president and vice president and the federal government, histories of the White House and its inhabitants, and real-audio and text versions of presidential speeches.

Wisconsin State Legislature

www.legis.state.wi.us

Law- and Government-related References

Carroll's GovSearch

www.carrollpub.com/govsearch.asp

The site provides contact information (including email and URL when applicable) for more than 385,000 politicians and staff members at the federal, state, and local levels, as well as federal and state organizational charts. The site also promises to add biographies of all executive and key level members of government in the near future.

Current Wisconsin Legislative Activity

www.legis.state.wi.us or <http://folio.legis.state.wi.us>

This Wisconsin State Legislature site provides links to information about the State Assembly and Senate, including current legislation.

Dumb Laws

www.dumblaws.com

The site is a repository for obscure, out-of-date, and unusual laws, for example: In La Crosse, it is illegal to play checkers in public. And in St. Croix, women are not allowed to wear red in public.

FindLaw

www.findlaw.com

The site is an excellent source for case law, information on various legal topics, federal and state law, and more.

FirstGov

firstgov.gov

The site offers one-stop access to all online U.S. federal government resources.

A Guide to the U.S. Federal Legal System: Web-based Publicly Accessible Sources

www.llrx.com/features/us_fed2.htm

The guide provides an introduction to the federal legal system and offers links that allow visitors to do legal research through publicly accessible Web-based databases.

Local Ordinances – Wisconsin only

wsll.state.wi.us/ordinances.html

This Wisconsin State Law Library site offers Wisconsin municipal codes and ordinances.

Local Ordinances – by state

www.municode.com

This site provides links to online ordinance codes for selected municipalities in all states.

Nolo's Dictionary

www.nolo.com/dictionary/wordindex.cfm

Plain-English definitions for more than 1,000 legal terms.

Nolo's Legal Encyclopedia

www.nolo.com/encyclopedia/index.html

Plain-English articles on everything from caring for children to wills and estate planning.

Resource Guide to State and Federal Legislation

www.llrx.com/resources7.htm

Links to state and federal resources on legislation and legislative issues, as well as to nongovernment political information sources and government reports.

State Bar of Wisconsin

www.wisbar.org

This site provides information about State Bar of Wisconsin activities, a collection of legal history articles, links to the Wisconsin Constitution and Statutes, and information on the organization's law-related education programs and services. The site's legal resources area (/legalres/) includes links to case law, judicial homepages, Wisconsin government sites, and more. Its consumer Web site, www.legalexplorer.com, answers frequently asked questions about the law.

Thomas: Legislative Information on the Internet

thomas.loc.gov

This Library of Congress site offers complete access to congressional legislation. It can be searched by specific House and Senate bill numbers or by a word or a phrase. This site also includes a series of related links under the headings "Legislation," "Congressional Records," and "Committee Reports."

U.S. Constitution

www.legis.state.wi.us/statutes/usconst.pdf

U.S. Government Agencies Directory

www.lib.lsu.edu/gov/fedgov.html

Maintained by Louisiana State University, this site indexes U.S. federal government agencies by executive, judicial, and legislative branches of government.

The Wheeler Report

www.thewheelerreport.com

The site provides links to Wisconsin legislative reports and to current government-related articles in newspapers throughout the state.

Wisconsin Constitution, Statutes, and Acts

www.legis.state.wi.us/rsb

Wisconsin Law Journal

www.wislawjournal.com

This is the Web site of the statewide law news weekly, the *Wisconsin Law Journal*. The *Law Journal* offers digests and analyses of the latest state court decisions from Wisconsin appellate and federal courts, along with news and features about the law and lawyers in Wisconsin.

Wisconsin State Law Library

wsll.state.wi.us

Law-related Education

American Bar Association, Division for Public Education

www.abanet.org/publiced/youth

This site provides law-related education resources, including the National Online Youth Summit, which supplies case backgrounds and lessons and classroom activities on various topics.

American Memory Lesson Ideas for Using Primary Sources

memory.loc.gov/ammem/ndlpedu/index.html

This section of a larger site offers strategies and lesson plans on using primary sources in the classroom.

Ben's Guide to US Government for Kids

bensguide.gpo.gov

A service of the U.S. Government Printing Office, this site provides electronic access to information about U.S. history and government.

Case of the Month Project

www.wicourts.gov/about/resources/casemonth/index.htm

Each month during the Wisconsin Supreme Court's session a new case is profiled. The project provides plain-English summaries of the cases and links to the briefs, Wisconsin Court of Appeals decisions (if applicable), and the audio recording of the Wisconsin Supreme Court's oral arguments. Teachers also can request email notification when the supreme court issues its opinion in a particular case. The project also provides several teaching resources, including diagrams of a case's path to the Wisconsin Supreme Court and of the people who participate in an oral argument, a moot court how-to, a publication on Wisconsin legal history, and links to reference and law-related education sites.

Civics Online: [Re]envisioning the Democratic Community

www.civics-online.org

The site provides ideas and resources to incorporate multimedia primary sources in the classroom, as well as other learning tools and professional development resources.

Famous American Trials

www.umkc.edu/famoustrials

The site offers summaries of 21 famous trials, from Salem Witchcraft trials to the O.J. Simpson trial, and also includes links to several other well-known trials. Each feature case includes primary sources like "wanted" posters, newspaper accounts, cartoons, chronologies, transcript excerpts, and more. The site is sponsored by the University of Missouri - Kansas City Law School faculty.

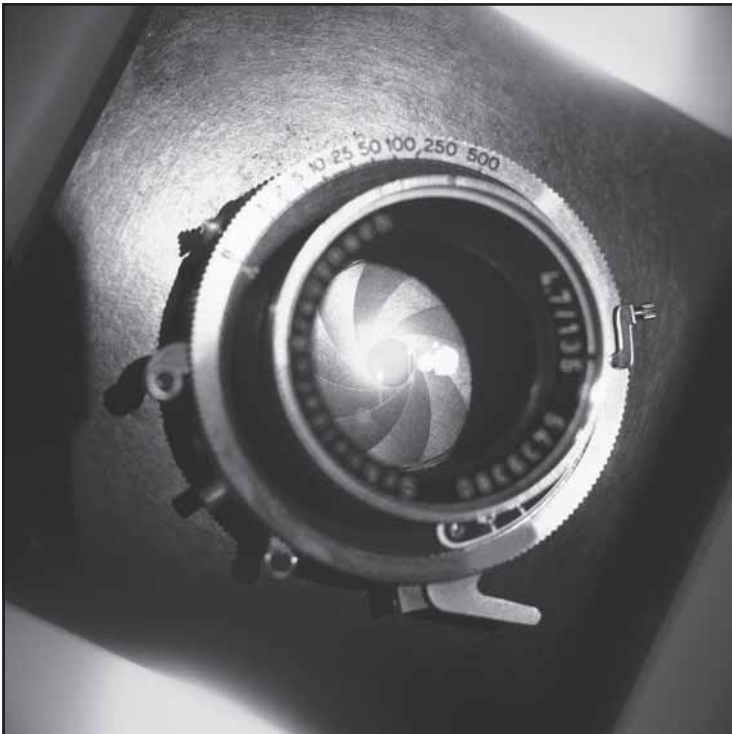
Federal Courts' Educational Outreach Program

www.uscourts.gov/outreach

This site promotes public understanding of the federal courts.

From the Courtroom to the Classroom

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



This site provides both Internet- and classroom-based resources on the law and the courts. The site supplements the Justice Teaching Institute, sponsored by the State Bar of Wisconsin, the U.W.-Madison Department of Curriculum and Instruction, and the Wisconsin Supreme Court.

The Great Chief Justice at Home by the National Park Service

www.cr.nps.gov/nr/twhp/wwwlps/lessons/49marshall/49marshall.htm

This site offers photos of John Marshall's residence in Richmond, Virginia. This Web site also describes how Marshall, who wrote 519 opinions in his 34 years as chief justice (1801-1835), transformed the U.S. Supreme Court from obscurity into a prominent, powerful institution. This "Teaching with Historic Places" site, www.cr.nps.gov/nr/twhp, is sponsored by the National Park Service - National Register of Historic Places.

Justice for Kids & Youth by the U.S. Department of Justice

www.usdoj.gov/kidspage

This site provides information on the justice system for students, teachers, and parents.

LegalExplorer

www.legalexplorer.com

LegalExplorer, the State Bar of Wisconsin's consumer site, provides information on its law-related education programs and services, how to find a lawyer, answers to frequently asked legal questions, and more.

Library of Congress Learning Page

lcweb2.loc.gov/ammem/ndlpedu

This site provides resources to help teachers use the American Memory digital collections from the Library of Congress. The site provides guidance for finding and using items within these primary source collections.

Pioneers in the Law: The First 150 Women

www.wisbar.org/pioneers

This 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 also are available.

Street Law

www.streetlaw.com

The site provides information about law, democracy, and human rights, as well as a "Cases and Resources" section that contains hundreds of links to sites that coordinate with the contents of the *Street Law* text, many with activities. Also visit www.streetlaw.org for additional law-related education resources.

The Wisconsin Humanities Council

www.wisconsinhumanities.org/speak/index.html

This site offers teaching resources and information on the Council's speakers' bureau.

Glossary of Common Legal Terms

A

ab initio - From the beginning.

abet - To encourage or incite another to commit a crime.

abstract of record - A complete history of a case in abbreviated form as found in the court record.

acknowledgement - The signature of a clerk or attorney certifying that the person filing the document has sworn that the contents are true, and/or that the document is signed by his or her free act and deed.

acquittal - In criminal law the finding of "not guilty." It is a finding by the jury that the State failed to prove the defendant's guilt beyond a reasonable doubt; it is not the equivalent of a finding of "innocent."

action - Also called a case or lawsuit. A civil judicial proceeding where one party sues another for a wrong done, or to protect a right or to prevent a wrong.

action in personam - A suit or proceeding against, or relating to, a specific person, founded on a personal liability.

action in rem - A suit or proceeding relating to a thing; an action for the recovery of a thing possessed by another.

actual damages - An amount awarded to a complainant to compensate for a proven injury or loss. (Also called compensatory damages.)

ad damnum - The technical name of the clause in a complaint, usually at the end, containing a statement of the plaintiff's money loss or damages claimed.

additur - The power of the court to increase the monetary amount of an inadequate jury award.

admiralty - A court that exercises jurisdiction over all maritime contracts, torts, injuries, or offenses.

affidavit - A written, sworn statement of facts, made voluntarily, usually in support of a motion or at the request of the court.

adjournment - Postponement of a court session until another time or place.

Alford plea - A plea in a criminal case in which the defendant does not admit guilt, but agrees that the State has enough evidence against him or her to get a conviction. Allows the defendant to enter into a plea bargain with the State. If the judge accepts the *Alford* plea, a guilty finding is made on the record.

allegation – Saying that something is true. The assertion, declaration, or statement of a party in a case, made in a pleading.

Allen charge – An instruction to deadlocked jurors, urging the jurors to be open-minded to the views of others and to make an honest effort to reach a unanimous verdict.

alternate juror – A juror selected as a substitute in case another juror must leave the jury panel.

alternative dispute resolution – Also called ADR. Any method used to resolve disputes other than traditional trial proceedings. For example, arbitration or mediation. ADR programs speed up the disposition of civil cases.

amicus curiae – A friend of the court; one who is not a party but who submits argument or information to the court.

answer – A legal pleading by which the defendant responds to the plaintiff's allegations of fact and law by denying or admitting them, or by asserting other facts and law.

appeal – A request made after a trial by a party that has lost on one or more issues that an appellate court review the trial court's decision to determine if it was correct. To seek review by a higher court of a lower court's decision.

appearance – Submitting to the trial court's jurisdiction. Can also refer to a party or attorney's physical appearance in court.

appellant – The party appealing a decision or judgment to a higher court.

appellate court – An appellate court has the power to review the judgment of a lower court (trial court) or tribunal.

arraignment – In a criminal case, the proceeding in a felony case at which an accused is brought to the court to hear charges read and to enter a plea of "guilty" or "not guilty."

arrearages – Money for alimony and/or child support that is overdue and unpaid.

arrest – To take into custody; to deprive a person of liberty by legal authority.

attachment – A remedy by which a party may acquire custody or possession of the property or effects of another party for satisfaction of judgment.

attainder – Extinction of civil rights; a "bill of attainder" is a legislative act directed against a specific person pronouncing him or her guilty of an alleged crime without trial or conviction. Such bills are prohibited by Article I, Section 9 of the U.S. Constitution and Article I, Section 12 of the Wisconsin Constitution.

attorney of record – The attorney who has appeared in court and/or signed pleadings or other court documents on behalf of a client. The lawyer remains the attorney of record until some other attorney or the client substitutes for the lawyer, the lawyer is allowed by the court to withdraw, or after the case is closed.

B

bail – Security given for the release of a criminal defendant or witness from legal custody to secure his or her appearance on the day and time set by the court.

bailiff – A court attendant whose duties are to keep order in the courtroom.

banc – Bench; the place where a court permanently or regularly sits. A decision given "en banc" signifies a decision by the full court of all the appeals judges in jurisdictions where there is more than one three-judge panel. The larger number sit in judgment when the court feels there is a particularly significant issue at stake or when requested by one or both parties to the case and agreed to by the court. The Wisconsin Court of Appeals is not authorized to sit "en banc," but the federal 7th Circuit Court is authorized to sit en banc.

bar – Historically, the partition separating the general public from the space occupied by the judges, attorneys, jury, and others during a trial. More commonly, the whole body of lawyers qualified to practice in any jurisdiction. A "case at bar" is a case now under the court's consideration.

bench - The place occupied by the judge; more broadly, the court itself.

bench trial - Trial without a jury in which a judge decides which party prevails.

bench warrant - Legal papers issued by the court itself, or "from the bench," for the attachment or arrest of a person.

bind over - To order a criminal defendant to stand trial, usually following a preliminary hearing or the waiver of a preliminary hearing.

binding instruction - An instruction in which the jury is told that if it finds certain conditions to be true, it must find for the plaintiff or defendant, as the case might be.

bond - Synonymous with bail and can be in form of cash, property, or signature as required by the judge.

brief - A written document prepared by counsel or a pro se party to file in court, setting forth the facts and law in support of a party's position.

burden of proof - The obligation of a party to prove a fact or facts in issue in the trial of a case to a particular standard of certainty.

C

calendar - A list of court cases scheduled for a specific court, date, and time.

caption - The first section of any written legal pleading (papers) to be filed, which contains the name, address, telephone number of the attorney, the person or persons the attorney represents, the court name, the title of the case, the number of the case, and the title of the documents (complaint, accusation, answer, motion, and so on).

cause - A suit, litigation, or action - civil or criminal.

certiorari - An original writ or court order commanding judges or officers of lower courts to certify or return records of proceedings in a cause for judicial review. Also used for a court's review of a decision of an administrative agency or a municipal body.

challenge for cause - A party's challenge supported by a specified reason, such as bias or prejudice, that would disqualify that potential juror.

challenge to the array - Questioning the qualifications of an entire jury panel; usually on the grounds of partiality or some fault in the process of summoning the panel.

chambers - The private office or room of a judge.

change of venue - The removal of a suit begun in one county to another county. Can also mean jury selected from another county and brought to the original court for trial.

chief judge - The judge who has primary responsibility for the administration of the courts in a judicial administrative district. The Wisconsin Supreme Court appoints the chief judge of each judicial administrative district, who can serve up to three two-year terms.

CHIPS - (Child in need of protection and/or services.) A proceeding in juvenile court for any person under the age of 18 for noncriminal reasons including abuse, neglect, and abandonment. The resolution of a CHIPS proceeding is nonpunitive in nature.

circuit courts - In Wisconsin, the trial courts. Originally, a circuit court's jurisdiction extended over several counties. Since court reorganization in 1978, courts with trial duties whose jurisdiction usually extends to only one county; however, in several instances, the court's jurisdiction may extend to several counties.

circumstantial evidence - Evidence of an indirect nature; the process of decision by which a court or jury may reason from circumstances known or proven, to establish by inference the principal fact.

civil action - A lawsuit between or among private parties for declaration, enforcement, or protection of a right or for redress or prevention of a wrong.

codicil - A supplement or an addition to a will.

common law - Law that derives its authority solely from usages and customs or from the judgments and decrees of courts. Also called "case law" as distinguished from "statutory law."

commutation - The change of a punishment from a greater degree to a lesser degree by the executive branch, usually the governor or the president, as from death to life imprisonment.

comparative negligence - The doctrine, followed in Wisconsin, by which acts of the opposing parties are compared in degrees of negligence to determine liability one to the other.

competency - A criminal defendant's ability to stand trial, measured by the capacity to understand the proceedings, to consult meaningfully with counsel, and to assist in the defense.

complainant - The party who brings a legal complaint against another; synonymous with the "plaintiff" in a civil case and with an "alleged victim" in a criminal case.

complaint - The initial pleading or legal document filed on the part of the complainant in a civil action or by a prosecutor in a criminal action.

conclusion of law - A judge's final decision on a question of law that has been raised in a trial or a court hearing, particularly those issues that are vital to reaching a statement.

concurrence - A separate opinion from an appellate judge agreeing with the majority opinion, but not necessarily on the legal grounds given in the majority opinion.

concurrent sentences - Sentences for more than one crime, the time of each to be served simultaneously rather than successively.

condemnation - The legal process by which real estate of a private owner is taken for public use without his or her consent, but upon the award and payment of just compensation.

condition precedent - Something that must happen or be performed prior to something else occurring.

condition subsequent - Something that must happen after another thing.

consecutive sentences - Sentences for more than one crime, to be served in succession rather than simultaneously.

conservator - A person appointed or qualified by a court by voluntary proceedings to manage the estate of an individual who is otherwise competent to manage his or her own affairs. The voluntary proceedings are initiated by an individual seeking the assistance of a conservator.

contempt of court - An act calculated to embarrass, hinder, or obstruct a court in the administration of justice, or calculated to lessen its authority or dignity, such as refusal to obey a court's order or disrupting court by being disrespectful or loud.

continuance - Adjournment of the proceedings in a case from one day to another.

contributory negligence - The rule of law under which an act or omission of the plaintiff is a contributing cause of injury and is compared to the negligence of the defendant(s) to calculate the amount, if any, of the plaintiff's recovery.

conviction - A judgment of guilt against a criminal defendant.

corroborating evidence - Evidence supplementary to that already given and tending to strengthen or confirm it.

counterclaim - A claim presented by a defendant against the plaintiff in a civil action.

court commissioner - A person appointed by the chief judge of a judicial administrative district to perform limited judicial and quasi-judicial functions under the direction of the chief judge and the judges in the county in which the person is appointed. Court commissioners typically preside over initial appearances in all criminal proceedings, preliminary examinations, small claim actions, and temporary hearings in family law cases.

court costs - An allowance for expenses in prosecuting or defending a suit; ordinarily does not include attorney fees.

court reporter - A person who makes a word-for-word record of what is said in court, generally by using a stenographic machine, shorthand, or audio recording, and then produces a transcript of the proceedings upon request.

courts of record - Those courts whose proceedings are permanently recorded and that have the power to fine or imprison for contempt; for example, circuit courts and courts of appeals.

cross-examination - The questioning of a witness in a trial, or in the taking of a deposition, by the party opposed to the one who produced the witness.

D

damages - Financial compensation recovered in the courts by a person who has suffered loss, detriment, and/or injury to his person, property, or rights through the unlawful act or negligence of another.

de facto - (Latin for "in fact.") Often used in place of "actual" to show that the court will treat as a fact authority being exercised or an entity acting as if it had authority, even though the legal requirements have not been met.

de novo - (Latin for "Anew.") A trial de novo is a completely new trial held as if the original trial had never taken place.

decision - The result, disposition, or mandate reached by an appellate court. A written "opinion" explains the reasons that lead to the decision.

declaratory judgment - A court's judgment that declares the rights of the parties or expresses the opinion of the court on a question of law. A declaratory judgment does not award damages to any party.

decree - A decision or order of the court; a "final decree" is one that fully and finally disposes of the litigation; an "interlocutory decree" is a provisional or preliminary decree that is not final.

default judgment - In civil lawsuits a judgment rendered in favor of the plaintiff because of the defendant's failure to answer or appear to contest the plaintiff's claim.

demonstrative evidence - Actual objects, pictures, models, and other devices that are intended to clarify the facts for the judge and jury.

deposition - The testimony of a witness, not taken in open court, but pursuant to authority given by law or order of court to take testimony elsewhere; used for discovery of facts in preparation for trial.

derivative action - A lawsuit brought by a corporation shareholder against the directors, management, and/or other shareholders of the corporation, for a failure by management.

detainer - A writ authorizing a prison official to continue holding a prisoner in custody.

dictum - (Latin for "remark.") A comment by a judge in a decision or ruling that is not required to reach the decision, but may state a related legal principle as the judge understands it. While it may be cited in legal argument, it does not have the full force of a precedent (previous court decisions or interpretations), since the comment was not part of the legal basis for judgment. (Plural, "dicta"; formally "obiter dictum.")

direct evidence - Proof of facts by testimony of witnesses who saw acts done or heard words spoken relating to a matter directly in issue, as distinguished from circumstantial evidence.

direct examination - The first questioning of a witness by the party who called the witness.

directed verdict - An instruction by the judge to the jury to return a specific verdict mandated by the evidence.

director of state courts - The chief nonjudicial officer of the Wisconsin Court System who is hired by and serves at the pleasure of the Wisconsin Supreme Court under the direction of the chief justice. The director has the authority and responsibility for the overall management of the unified judicial system.

discovery - The pre-trial efforts of a party to a lawsuit and his or her or its attorney(s) to obtain information known by the other parties or witnesses. Discovery in a civil case is more extensive than discovery in a criminal case, which is strictly controlled by statutory rules.

discretion – The power of a judge to make decisions on various matters based on his or her opinion within general legal guidelines. A judge properly exercises discretion when he or she considers the facts of record under the proper legal standard and reasons his or her way to a rational conclusion.

dissent – The explicit disagreement of one or more judges of an appellate court with the decision of the majority.

district court administrator – A person who is a state employee, hired by the director of state courts, and qualified to provide administrative and technical assistance to the chief judge of each judicial administrative district.

diversity jurisdiction – A federal court's exercise of authority over a case involving parties from different states and an amount in controversy greater than a statutory minimum (now \$75,000).

documentary evidence – Any document that is presented and allowed as evidence in a trial or hearing, as distinguished from oral testimony.

domicile – The place where a person has his or her true and permanent home; a person may have several residences, but only one domicile.

double jeopardy – More than one prosecution for the same crime, transaction, or omission.

due process – A fundamental principle of fairness in all legal matters, both civil and criminal. The conduct of legal proceedings according to established rules and principles for the protection and enforcement of private rights, including notice and the right to a fair hearing before a tribunal with the power to decide the case.

E

elements of the crime – Specific factors that define a crime that the prosecution must prove beyond a reasonable doubt in order to obtain a conviction: (1) that a crime has actually occurred; (2) that the accused intended the crime to happen; and (3) a timely relationship between the first two factors.

eminent domain – The lawful power to take private property for public use by the process of condemnation.

en banc – With all judges present and participating; in full court.

enjoin – To require a person, by order of the court, to perform or to abstain or desist from some act.

entrapment – The act of officers or agents of a government in inducing a person to commit a crime not contemplated by the person for the purpose of instituting a criminal prosecution against the person.

equal protection of the law – The right of all persons to have the same access to the law and courts and to be treated equally by the law and courts, both in procedures and in the substance of the law. It is akin to the right to due process of law, but in particular applies to equal treatment as an element of fundamental fairness.

equity – The body of principles constituting what is fair and right.

error – A mistake by a judge in procedure or in substantive law, during a hearing, during a trial, on approving or denying jury instructions, on a judgment not supported by facts or applicable law, or any other step in the judicial process. If a majority of an appellate court finds an error or errors that affect the result, or a denial of fundamental rights such as due process, the appellate court will reverse the lower court's error in whole or in part, and remand (send it back) with instructions to the lower court. Appeals courts often find errors that have no prejudicial effect on the rights of a party and are thus harmless error.

escheat – The reversion of property to the state when no one is able to make a valid claim to it.

escrow – The delivery, often of money, into the hand of a third person until the happening of a contingency or performance of an agreed condition.

estoppel – The preclusion from alleging or denying facts because a previous action, inaction, allegation, or denial indicated that the contrary was true.

evidence – Every type of proof legally presented at trial and allowed by the judge that is intended to convince the judge and/or jury of alleged facts material to the case. It includes the sworn testimony of witnesses, both on direct and cross-examination, regardless of who called the witness; the exhibits the court has received, whether or not an exhibit goes to the jury room; and any facts to which the lawyers have agreed or stipulated or which the court has directed the jury to find.

ex parte proceeding - A proceeding in which not all parties are present or given the opportunity to be heard.

ex post facto - (Latin for "after the fact.") Refers to laws adopted after an act is committed, making it illegal, although it was legal when done, or increasing the penalty for a crime after it is committed.

exclusionary rule - The rule that evidence secured by illegal means and in bad faith cannot be introduced in a criminal trial.

executor - A person appointed to carry out the directions and requests and to dispose of the property according to a will.

exhibit - A paper, document, or other article produced and exhibited to a court during a trial or hearing.

expert evidence - Testimony regarding some scientific, technical, or professional matter given by experts, that is, by persons qualified to speak authoritatively by reason of their special training, skill, or familiarity with the subject.

expungement - The process by which the record of criminal conviction is destroyed or sealed.

extenuating circumstances - Circumstances that render a crime less aggravated, heinous, or reprehensible than it otherwise would be. Such circumstances ordinarily may be shown to reduce the punishment or damages.

extradition - The surrender by one state to another of an individual accused or convicted of an offense outside its own territory and within the territorial jurisdiction of the other.

F

fact finder - In a trial of a lawsuit or criminal prosecution, the jury or judge, if there is no jury, who decides if facts have been proven.

false arrest - Any unlawful physical restraint of another's liberty, whether in prison or elsewhere.

false imprisonment - Depriving someone of freedom of movement by holding a person in a confined space or by physical restraint, including being locked in a car, driven about without opportunity to get out, being tied to a chair, or locked in a closet.

false pretenses - Misrepresentation of existing fact or condition whereby a person obtains another's money or goods.

federal question jurisdiction - The exercise of federal court power over claims arising under the U.S. Constitution, an act of Congress, or a treaty.

felony - A crime of a graver nature than a misdemeanor; in Wisconsin, generally an offense punishable by imprisonment for more than one year.

felony murder - A rule of criminal statutes that any death that occurs during the commission of a felony is murder, and all participants in that felony or attempted felony can be charged with and found guilty of murder.

fiduciary - A person holding the character of a trustee, in respect to the trust and confidence placed in the trustee and the scrupulous good faith and candor that the position requires.

final judgment - The written determination of a lawsuit by the judge who presided over the lawsuit that makes rulings on all issues and completes the case. A final judgment may be appealed to the court of appeals by the losing party.

finding or finding of fact - The determination of a factual question contributing to a decision in a case by the finder of fact after a trial of a lawsuit. If a judge has served as the sole finder of fact, the judge is required to state on the record all facts that are relevant to his or her decision.

first impression - Refers to a legal issue that has never been decided by an appeals court within the state and, therefore, there is no precedent for the court to follow.

foreseeability - The reasonable anticipation of the possible results of an action, such as what may happen if one is negligent, or consequential damages resulting from breach of a contract.

forfeiture - The loss of property, usually money, due to a violation of civil law, for example, a traffic regulation or municipal ordinance violation.

frivolous claim - When a proponent can present no rational argument based upon the evidence or law in support of that claim or defense.

fruit of the poisonous tree - In criminal law, the doctrine that evidence discovered due to information found through illegal search or other unconstitutional means may not be introduced by a prosecutor.

G

gag order - A judge's order prohibiting the attorneys and the parties to a pending lawsuit or criminal prosecution from talking to the media or the public about the case.

garnishment - A proceeding whereby a court may order the property, money, or credits of a debtor in the possession of a third party (garnishee) applied to the debts of the debtor.

general appearance - An attorney's representation of a client in court for all purposes connected with a pending lawsuit or prosecution.

general damages - Monetary recovery in a lawsuit for injuries suffered, for example, pain, suffering, inability to perform certain functions.

general jurisdiction - Refers to courts that have no limit on the types of criminal and civil cases they may hear; all circuit courts in Wisconsin are courts of general jurisdiction.

grand jury - A body of (often 23) people, who are chosen to sit permanently for at least a month - and sometimes a year - and who, in ex parte proceedings, decide whether to issue indictments.

gross negligence - Carelessness that is in reckless disregard for the safety or lives of others and is so great it appears to be a conscious violation of other people's rights to safety. It is more than simple inadvertence, but it is just shy of being intentionally evil.

guardian - A person who has been appointed by a judge to take care of a minor child or incompetent adult (both called "ward") personally - a "guardian of the person" who is responsible for all life decisions of the ward - and/or to manage that ward's financial affairs - a "guardian of the estate."

guardian ad litem - An attorney appointed by the court to take legal action on behalf of a minor or an adult not able to handle his or her own affairs. Duties may include filing a lawsuit for an injured child, defending a lawsuit, or filing a claim against an estate.

H

habeas corpus - (Latin for "that you have the body.") In most common usage, a court order directed to the official or person detaining another, commanding the person to produce the prisoner or person detained so the court may determine if such person has been denied liberty without due process of law. A writ employed to bring a person before a court, most frequently to ensure that the party's imprisonment or detention is not illegal.

harmless error - An error by a judge in the conduct of a trial that an appellate court finds is not sufficient for it to reverse or modify the lower court's judgment at trial.

hearsay - Statements by a witness who did not see or hear the incident in question but heard about it from someone else. Hearsay usually is not admissible as evidence in court.

holographic will - A testamentary instrument or will entirely written, dated, and signed by the testator in his or her own handwriting.

hornbook law - Lawyer jargon for a fundamental and well-accepted legal principle that does not require any further explanation, since a hornbook is a primer of basics.

hostile witness - A witness who is subject to cross-examination by the party who called him or her to testify, because of his or her evident antagonism toward that party as exhibited during direct examination.

hypothetical question - A combination of facts and circumstances, assumed or proved, stated in such a form as to constitute a coherent state of facts upon which the opinion of an expert can be asked in a trial.

immaterial - A commonly heard objection to introducing evidence in a trial on the ground that it had nothing substantial to do with the case or any issue in the case. It also can apply to any matter (such as an argument or complaint) in a lawsuit that has no bearing on the issues to be decided in a trial.

impaneling - The act of selecting a jury from the list of potential jurors, called the "panel" or "venire."

impeachment of witness - The process of calling a witness's testimony into doubt through discrediting a witness by showing that the witness is not telling the truth or does not have the knowledge to testify as he or she did.

implied contract - A contract in which the promise made by one party is not expressly stated, but may be inferred from conduct or implied in law.

in camera - In chambers; in private. Usually refers to a judge privately reviewing sensitive evidence, for example, mental health records or trade secrets.

in camera inspection - A trial judge's private consideration of evidence.

in camera proceeding - A proceeding held in a judge's chambers or other private place.

in forma pauperis - (Latin for "in the form of a pauper.") Permission given by the court to a person to file a case without payment of the required court fees because the person cannot pay them.

in propria persona - (Latin "for one's self.") Acting on one's own behalf, generally used to identify a person who is acting as his or her own attorney in a lawsuit. The popular abbreviation is "in pro per."

inadmissible evidence - Evidence that, under the established rules of evidence, cannot be admitted or received in evidence.

incompetent - (1) Refers to a person who is not able to manage his or her affairs due to mental deficiency or sometimes physical disability. Being incompetent can be the basis for appointment of a guardian or conservator to handle his or her person and/or affairs. (2) In criminal law, the inability to understand the nature of a trial. In these cases, the defendant usually is institutionalized until such time as the defendant regains sanity and can be tried.

incontrovertible evidence - Evidence introduced to prove a fact in a trial that is so conclusive, that by no stretch of the imagination can there be any other truth as to that matter.

indeterminate sentence - An indefinite sentence of "not less than" and "not more than" so many years, the exact term to be served being afterward determined by parole authorities within the minimum and maximum limits set by the court or by statute. Indeterminate sentences have been replaced by "truth-in-sentencing."

indigent - An individual without sufficient income to afford a lawyer for defense in a criminal case. If the court finds a person is an indigent, the court must appoint a public defender or other attorney to represent the person.

inferior court - Any court subordinate to the appellate tribunal in a particular judicial system.

information - A written accusation of one or more felony offenses brought by a district attorney after a preliminary examination or after the defendant has waived a preliminary examination.

initial appearance - A criminal defendant's first appearance in court to hear the charges read, to be advised of his or her rights, and to have bail determined. The initial appearance is usually required by statute to occur without undue delay. In a misdemeanor case, the initial appearance may be combined with the arraignment.

injunction - A mandatory or prohibitive order issued by a court.

inquest - An investigation and/or a hearing held by the county coroner when there is a violent death either by accident or homicide, the cause of death is not immediately clear, or mysterious circumstances surround the death.

instruction - A direction given by the judge to the jury concerning the law to be applied to the case in hearing.

inter alia - Among other things or matters.

interlocutory appeal - An appeal that occurs before the trial court's final ruling on the entire case.

interrogatories - Written questions from one party and served on an adversary, who must provide written answers under oath; discovery procedure in preparation for trial.

intervention - A proceeding in a suit or action by which a third person is permitted by the court to make himself or herself a party to the suit or action.

intestate (adverb) - Without leaving a will (for example, to die intestate).

intestate (noun) - One who dies without leaving a will.

irrelevant evidence - Evidence not relating or applicable to the matter in issue; not supporting the issue.

J

JIPS - (Juvenile in need of protection and services.) Court proceedings involving a juvenile under the age of 18 (1) whose parent signs a petition requesting the court to take jurisdiction and is unable to control the juvenile; (2) who is habitually truant from school or home; (3) who is a school dropout; (4) who is under the age of 10 and has committed a delinquent (criminal) act; or (5) who has been determined to be not responsible for a delinquent act by reason of mental disease or defect or who has been determined to be not competent to proceed.

John Doe - (1) A fictitious name used in law to designate a person unknown. (2) In Wisconsin, a secret investigative proceeding conducted before a judge regarding alleged criminal conduct.

joint and several liability - A judgment for negligence, in which each judgment defendant (one who has a judgment against him or her) is responsible for the entire amount of the judgment but only if he or she was 51 percent or more causally negligent.

judgment - The official decision or decree of the court upon the rights and claims of the parties. A court's final determination of the rights and obligations of the parties in a case. Usually but not always synonymous with "final judgment."

judgment notwithstanding the verdict - (J.N.O.V.) Reversal of a jury's verdict by the trial judge when the judge believes there was no factual basis for the verdict or the verdict was contrary to law.

judicial administrative district - The geographical divisions of the circuit courts within the State for the purpose of administering the court system.

judicial lien - A lien obtained by judgment or other judicial process against a debtor.

judicial notice - The authority of a judge to accept as facts certain matters that are of common knowledge from sources that guarantee accuracy or are a matter of official record, without the need for evidence establishing the facts.

jurisdiction - A court's power to decide a case or issue a decree. A government's general power to exercise authority over all persons and things within its territory.

jurisprudence - The philosophy of law; the science of the principles of law and legal relations.

jury - A certain number of persons selected according to law, sworn to inquire of certain matters of fact and declare the truth upon evidence before them.

L

law-of-the-case doctrine - A decision on a legal issue by an appellate court establishes the law of the case, which must be followed in all subsequent proceedings in the trial court or on later appeal.

leading question - A question asked of a witness by an attorney during a trial, suggesting an answer or putting words in the mouth of the witness. Leading questions are permitted during the examination of a hostile witness or cross-examination.

lesser-included offense – A crime that does not require proof of any fact in addition to those that must be proved for the crime charged and is usually considered a less serious form of the crime originally charged.

letters of administration – A document issued either by the circuit court or the register in probate stating the authority of the individual named to manage the estate of a decedent.

levy – A seizure; the obtaining of money by legal process through seizure and sale of property.

lien – An encumbrance upon property, usually as security for a debt or obligation.

limitation – A certain time allowed by statute in which a lawsuit must be brought (“statute of limitation”).

lis pendens – (Latin for “a suit pending.”) A written notice that a lawsuit has been filed that concerns the title to real property or some interest in that real property.

litigation – A judicial controversy. The process of carrying on a lawsuit; a lawsuit.

litigious – A person who constantly brings or prolongs legal actions, particularly when the legal maneuvers are unnecessary or unfounded.

long-arm statute – A law that gives a local state court jurisdiction over an out-of-state company or individual whose actions caused damage locally or to a local resident. The legal test is whether the out-of-state defendant has contacts within the state that are “sufficiently substantial.”

M

magistrate – A term referring to a court commissioner or a circuit judge when he or she presides over a preliminary examination or John Doe hearing.

malfeasance – The commission of some act that is prohibited by law (compare “misfeasance”).

malicious prosecution – A lawsuit instituted with intention of injuring the defendant and without good cause, and that terminates in favor of the person sued.

mandamus – (Latin for “we order.”) A writ that orders an elected official, public agency, governmental body, or lower court to perform an act required by law when it has neglected or refused to do so.

mandate – A judicial order from an appellate court directing the lower court to enforce a judgment, sentence, or decree.

mandatory release – Release from prison after two-thirds of an indeterminate sentence has been served if all other conditions have been met.

material evidence – Proof that is relevant and goes to the substantial issues in dispute.

misdemeanor – An offense less serious than a felony, generally punishable by fine or imprisonment of less than one year.

misfeasance – A misdeed or trespass; the improper performance of some act that a person may lawfully do (compare “malfeasance”).

mistrial – An erroneous or invalid trial; a trial whose result cannot stand because of lack of jurisdiction, improper drawing of jurors, or disregard of some other fundamental requisite. A trial that the judge brings to an end without a determination on the merits because of a procedural error or serious misconduct during the proceedings; a trial that ends inconclusively because the jury cannot agree on a verdict.

mitigating circumstances – A fact that does not constitute a justification or excuse for an offense but that may be considered as reducing the degree or moral culpability.

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 before the court’s decision, leaving nothing that would be affected by the court’s decision.

motion in limine - (Latin for "at the threshold.") Refers to a motion brought before a trial begins to resolve issues that do not require the attention of the finder of fact.

municipal courts - In Wisconsin, courts with territorial authority confined to the city or community and whose jurisdiction is limited to municipal ordinance violations.

N

ne exeat - A court order that forbids the person to whom it is addressed to leave the country, the state, or the jurisdiction of the court.

negligence - The failure to do something that a reasonable person guided by ordinary considerations would do; or the doing of something that a reasonable and prudent person would not do.

negligence per se - Negligence due to the violation of a public duty found in a statute, administrative rule, or regulation.

nolle prosequi - Motion by prosecutor to dismiss a criminal complaint after it is filed; contains reasons for dismissal. Often shortened to "nolle."

nolo contendere - A plea sometimes used by defendants in criminal cases, meaning literally "I will not contest it," but having the same effect as a guilty plea; the plea cannot, however, be used as an admission in other proceedings.

nominal damages - A small amount of money awarded to a plaintiff in a lawsuit to show he or she was right but suffered no substantial harm.

nominal party - One who is included as a party or defendant in a lawsuit merely because the technical rules of pleading require his or her presence in the record.

notary public - A person authorized by law and specially designated to administer oaths, certify and authenticate specific documents, and perform other prescribed acts.

nunc pro tunc - (Latin for "now for then.") Refers to acts done after the time they should have been done, but given retroactive effect.

O

objection - The act of taking exception to some statement or procedure in trial; used to call the court's attention to improper evidence or procedure.

of counsel - A phrase commonly applied to an attorney employed to assist in the preparation or management of the case, or its presentation on appeal, but who is not the principal attorney of record. A lawyer who is affiliated with a law firm, though not as a member, partner, or associate.

offer of proof - A presentation made by an attorney to a judge, outside the presence of the jury, to show why evidence offered by the attorney is material or relevant and will lead to evidence of value to the lawyer's client.

official reports - The publication of cumulated court decisions of state or federal courts in advance sheets and bound volumes as provided by statutory authority.

opinion - A judge's written explanation of the decision of the court.

opinion evidence - Evidence of what the witness thinks, believes, or infers in regard to a fact in dispute, as distinguished from his or her personal knowledge of the fact.

P

panel - (1) A list of jurors to serve in a particular court or for the trial of a particular action; denotes either the whole body of persons summoned as jurors for a particular term of court or those selected by the clerk by lot. (2) In the Wisconsin Court of Appeals, a group of three judges assigned to decide a case.

paralegal - A nonlawyer who performs routine tasks requiring some knowledge of the law and procedures and who is employed by a law office or works freelance as an independent for various lawyers.

parole - The conditional release of a convict from prison before the indeterminate sentence expires. If conditions are observed, the parolee need not serve the remainder of the sentence. With the implementation of truth-in-sentencing, the Wisconsin Parole Commission was abolished for all sentences imposed for crimes committed after Dec. 31, 1999.

parol evidence rule - If there is evidence in writing (such as a signed contract) the terms of the contract cannot be altered by evidence of oral (parol) agreements purporting to change, explain, or contradict the written document.

parties - The persons named as plaintiffs and defendants in a lawsuit; or their counterparts in other legal proceedings.

party to a crime - A person involved in any manner in the commission of a crime may be charged with and convicted of the crime, although the person did not directly commit the crime, and the person who did directly commit the crime has not been convicted or has been convicted of some other degree of the crime or of some other crime based on the same act.

per curiam - (Latin for "by the court.") A decision of an appeals court as a whole in which no judge is identified as the specific author.

peremptory challenge - The challenge that the prosecution or defense may use to reject a specified number of prospective jurors without assigning any cause. One of a party's limited number of challenges that need not be supported by any reason, although a party may not use such a challenge in a way that discriminates against a protected minority.

persistent offender - An individual who has been convicted of three or more serious felony offenses. If an individual is a persistent offender, he or she faces a mandatory sentence of life imprisonment without the possibility of parole or extended supervision.

personal recognizance - Release of a person from custody without the payment of any bail or posting of bond, upon the promise to return to court.

petition for review - A written request to the Wisconsin Supreme Court to accept for review a decision of the intermediate court of appeals. Under the constitution, the supreme court has complete discretion on whether to accept a case for review.

petit jury - The ordinary jury of 12 (or fewer) persons for the trial of a civil or criminal case; so called to distinguish it from a grand jury.

petty offense - A minor crime.

plain error - A mistake by the trial court found by an appeals court to be very obvious and sufficient to require reversal of the trial decision.

plaintiff - The person who brings an action; the party who complains or sues and is so named on the record.

plea bargain - In criminal procedure, a negotiation between the defendant and his or her attorney on one side and the prosecutor on the other, in which the defendant agrees to plead "guilty" or "no contest" to some crimes, in return for reduction of the severity of the charges, dismissal of some of the charges, the prosecutor's willingness to recommend a particular sentence, or some other benefit to the defendant. A judge is not bound to impose the sentence agreed upon in the plea bargain or suggested by any person.

pleadings - The documents in which the parties in a suit alternately present written statements of their contentions, each responsive to that which precedes it and each serving to narrow the field of controversy.

polling the jury - A practice in which the jurors are asked individually whether they assented, and still assent, to the verdict.

power of attorney - An instrument authorizing another to act as one's agent or attorney.

precedent - An adjudged case or court decision furnishing an example or authority for an identical or similar later case on a similar question. Judges will generally “follow precedent” - meaning that they use the principles established in earlier cases to decide new cases that have similar facts and raise similar legal issues. A judge will disregard precedent if a party can show that the earlier case was wrongly decided or that it differed in some significant way from the current case.

prejudicial error - Synonymous with “reversible error”; an error that warrants the appellate court to reverse the judgment before it.

preliminary hearing - Synonymous with “preliminary examination”; the hearing given a person charged with a crime by a magistrate or judge to determine whether there is “probable cause” that the person committed the crime and should be held for trial. In federal court, an indictment removes the right to a preliminary examination.

preliminary injunction - A court order made in the early stages of a lawsuit that prohibits the parties from doing an act that is in dispute, thereby maintaining the status quo until there is a final judgment after trial.

preponderance of evidence - Greater weight of evidence, or evidence that is more credible and convincing to the mind, not necessarily the greater number of witnesses; the standard of proof usually required in civil actions.

presentence investigation report - A probation officer’s detailed account of a convicted defendant’s educational, criminal, family, and social background conducted at the court’s request as an aid in passing sentence.

presiding judge - In circuits with two or more circuit judges and in each district of the court of appeals, the judge, selected by the chief judge, responsible for supervising the business of the courts.

pretrial conference - A meeting of the judge and lawyers to plan the trial, to discuss which matters should be presented to the jury, to review proposed evidence and witnesses, and to set a trial schedule. Typically, the judge and the parties also discuss the possibility of settlement of the case.

privity - Direct, mutual, or successive legal relationship of one person to another.

pro bono - (Latin for “for the public good.”) Legal work performed by attorneys without pay to help people with legal problems and limited or no funds, or provide legal assistance to organizations involved in social causes such as environmental, consumer, minority, youth, battered women, and education organizations and charities.

pro hac vice - (Latin for “this time only.”) The phrase refers to the application of an out-of-state lawyer to appear in court for a particular trial, even though the lawyer is not licensed to practice in the state in which the trial is being held. The application is usually granted, but the court usually requires association with a local attorney.

pro se - (Latin for “oneself,” on one’s own behalf.) Representing oneself in a court proceeding without the assistance of a lawyer.

probable cause - A constitutionally prescribed standard of proof; a reasonable ground for belief in the existence of certain facts.

probate - Specifically, the act or process of proving the validity of a will in court; generally, all matters handled by a probate court.

probation - In modern criminal administration, allowing a person convicted of an offense to retain his or her liberty under a suspension of sentence, during good behavior, and generally under specified conditions including the supervision or guardianship of a probation officer.

procedural law - The rules for conducting a lawsuit; there are rules of civil procedure, criminal procedure, evidence, bankruptcy, and appellate procedure.

punitive damages - Damages awarded in addition to actual damages when the defendant acted with recklessness, malice, or deceit.

Q

quash – To overthrow; vacate; to annul or void (for example, to quash a summons or indictment).

quasi judicial – Of a judicial nature; used to describe the actions of public administrative officers who are required to investigate facts and draw conclusions from them as a basis for their official actions.

question of fact – In a lawsuit or criminal prosecution, an issue of fact in which the truth or falsity (or a mix of the two) must be determined by the “finder of fact” (the jury or the judge in a nonjury trial) in order to reach a decision in the case.

question of law – In a lawsuit or criminal prosecution an issue that only relates to determination of what the law is, how it is applied to the facts in the case, and other purely legal points in contention. All “questions of law” arising before, during, and sometimes after a trial are to be determined solely by the judge.

qui tam action – (Latin for “who as well.”) A lawsuit brought by a private citizen against a person or company who is believed to have violated the law in the performance of a contract with the government or in violation of a government regulation, when there is a statute that provides for a penalty for such violations. Qui tam suits are brought for “the government as well as the plaintiff.” In a qui tam action the plaintiff acts as a private attorney general and will be entitled to a percentage of the recovery of the penalty (which may include large amounts for breach of contract) as a reward for exposing the wrongdoing and recovering funds for the government.

quid pro quo – What for what; a fair return or consideration.

quo warranto – A writ or order issuable by the State, through which it demands an individual to show by what right he or she exercises an authority that can only be exercised through grant or franchise emanating from the State.

R

reasonable doubt – An accused person is entitled to acquittal if, in the minds of the jury, 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.

rebuttal – The introduction of contrary evidence; the showing that statements of witnesses as to what occurred is not true; the stage of a trial at which such evidence may be introduced. In court, contradiction of an adverse party’s evidence; the prosecutor’s final closing argument presented after the defense counsel’s closing argument.

recognizance – A recorded obligation entered before a court, to do some act such as to appear in court at a particular time or pay a specified sum in penalty for default.

record – All the documents and evidence plus transcripts of oral proceedings in a case.

recuse – The process by which a judge voluntarily disqualifies himself or herself from hearing a case because of a conflict of interest or other good reason.

redirect examination – Examination of a witness that follows cross-examination and is exercised by the party who first examined the witness.

referee – A person to whom a cause pending in a court is referred by the court to take testimony, hear the parties, and report to the court; an officer exercising judicial powers for a specific purpose.

remand – An appeals court may return a case to the trial court for further action if it reverses the judgment of the lower court.

remittitur – (1) In a civil lawsuit, a judge’s order reducing a judgment awarded by a jury. (2) In appellate practice, an appeals court’s transmittal of a case back to the trial court so that the case can be retried or an order entered consistent with the appeals court’s decision.

removal, order of – An order by a court directing the transfer of a cause to another court. The transfer of a person arrested in one federal district to the district in which the charges are pending; the transfer of an action from state to federal court.

replevin – An action for the recovery of a possession that has been wrongfully taken.

reply – When a case is tried or argued in court, the argument of the plaintiff in answer to that of the defendant; a pleading in response to an answer.

res ipsa loquitur – (Latin for “the thing speaks for itself.”) A doctrine of law that one is presumed to be negligent if he or she or it had exclusive control of whatever caused the injury even though there is no specific evidence of an act of negligence, and without negligence the accident would not have happened.

respondent – The party against whom an appeal is taken, usually the prevailing party in the lower court.

rest – A party is said to “rest” or “rest the case” when the party has presented all the evidence he or she intends to offer.

reverse – The act of an appellate court setting aside the decision of a trial court.

reversible error – A legal mistake at the trial court level that is so significant that the judgment must be reversed by the appellate court.

S

search warrant – A judge’s written order authorizing a law enforcement officer to conduct a search of a specified place and to seize evidence.

sentencing guidelines – A set of standards for determining the punishment that a convicted criminal should receive based on the nature of the crime and the offender’s criminal history.

sequester – To separate. Sometimes juries are separated from outside influences during their deliberations.

sharp practices – Actions by an attorney using misleading statements to opposing counsel or the court, denial of oral stipulations previously made, threats, improper use of process, or tricky and/or dishonorable means barely within the law.

show cause order – An order of the court, also called an order to show cause or OSC, directing a party to a lawsuit to appear on a certain date to show cause why the judge should not issue a specific order or make a certain finding.

sidebar – A conference between the judge and lawyers, usually in the courtroom, out of earshot of the jury and spectators.

special damages – Damages that were out-of-pocket costs directly as the result of the breach of contract, negligence, or other wrongful act by the defendant. Special damages can include medical bills, repairs and replacement of property, loss of wages, and other damages that are not speculative or subjective. They are distinguished from general damages, in which there is no evidence of a specific dollar figure.

special master – A master appointed to assist the court with a particular matter or case.

special verdict – A series of questions on the issues of fact in a lawsuit that require the jury’s deliberation and answer in accordance with the court’s instructions on the application of the law to those facts. After receipt of the special verdict, the judge will then render the judgment.

standing – The legal right to bring a lawsuit. Only a person with something at stake has standing to bring a lawsuit.

stare decisis – (Latin for “to stand by a decision.”) The doctrine that a trial court is bound by appellate court decisions on a legal question that is raised in the lower court. Reliance on such precedents is required of trial courts until such time as an appellate court changes the rule, because the trial court cannot ignore the precedent (even when the trial judge believes it is “bad law”).

state’s evidence – Testimony given by an accomplice or participant in a crime, tending to convict others.

status conference – A pre-trial meeting of attorneys before a judge to inform the court as to how the case is proceeding, what discovery has been conducted, any settlement negotiations, probable length of trial, and other matters relevant to moving the case toward trial.

statute - The written law; legislatively enacted law.

statutory construction - Process by which a court seeks to interpret the meaning and scope of legislation.

stay - A stopping or arresting of a judicial proceeding by order of the court.

stipulation - An agreement by attorneys on opposite sides of a case as to any matter pertaining to the proceedings or trial. Before a stipulation is binding, it must be in writing and signed by the parties and/or attorneys or it must be placed on the record.

subpoena - A writ commanding a person to appear before a court or other tribunal subject to a penalty for failing to comply.

subpoena duces tecum - A subpoena ordering a witness to appear and to bring specific documents or records.

substantive law - The law that establishes principles and creates and defines rights and limitations under which society is governed, as differentiated from "procedural law," which sets the rules and methods employed to obtain one's rights and, in particular, how the courts are conducted.

summary judgment - A decision made on the basis of statements and evidence presented for the record without a trial. It is used when it is not necessary to resolve any factual disputes in the case. Summary judgment is granted when - on the undisputed facts in the record - one party is entitled to judgment as a matter of law.

summons - A court order directing the sheriff or other officer to notify the named person that an action has been commenced against the person in court and that he or she is required to appear, on the day named, and answer the complaint in such action.

supersedeas - A court order containing a command to halt legal proceedings, such as the enforcement of a judgment pending an appeal.

T

talesman - A bystander in a court summoned to act as a juror.

temporary restraining order - A provisional order of a court to keep conditions as they are until there can be a hearing in which both parties are present.

testator - One who makes or has made a will.

testimony - Evidence given by a witness under oath; as distinguished from evidence derived from writings and other sources.

tort - An injury or wrong committed, either with or without force, to the person or property of another.

tortfeasor - A person who commits a tort (civil wrong) either intentionally or through negligence.

transcript - The official written record of all testimony in a trial or hearing.

truth-in-sentencing - A sentencing system under which individuals who are convicted of felonies after Dec. 31, 1999, are subject to a determinate sentence consisting of a period of confinement followed by a period of extended supervision under conditions established by the court and a probation and parole agent. Under truth-in-sentencing, the parole commission is abolished and inmates are not credited "good time." The truth-in-sentencing system replaces the indeterminate sentencing system.

U

ultra vires - Acts beyond lawful authority.

United States Attorney - A lawyer appointed by the President to represent, under the direction of the Attorney General, the federal government in civil and criminal cases in federal court.

United States District Court - A federal trial court having jurisdiction within its judicial district.

United States Magistrate Judge - A federal judicial officer appointed by the district court who hears civil and criminal pretrial matters and conducts civil trials and criminal misdemeanor trials upon consent of the parties. Duties may vary with the specific needs of each judicial district.

unlawful detainer - The unjustified possession of real estate without the consent of the owner or other proper person.

usury - The charging of more interest for the use of money than the law allows.

V

vacate - For a judge to set aside or annul an order or judgment that the judge finds was improper.

venire - Technically, a writ summoning persons to court to act as jurors; popularly used as meaning the body of names thus summoned.

veniremen - Members of a panel of jurors.

venue - The particular district, city, or geographical area in which a court with jurisdiction may hear and determine a case.

verdict - A conclusion, as to fact or law, that forms the basis for the court's judgment.

voir dire - (French for "to see to speak.") The questioning of prospective jurors by a judge and attorneys in court. Voir dire is used to determine if any juror is biased and/or cannot deal with the issues fairly, or if there is cause not to allow a juror to serve.

W

waiver of immunity - A means authorized by statutes by which a witness, in advance of giving testimony or producing evidence, may renounce the fundamental right guaranteed by the Constitution that no person shall be compelled to be a witness against himself or herself.

weight of evidence - The inclination of the greater amount of credible evidence offered in a trial to support one side of the issue rather than the other.

willful - A willful act is one done intentionally as distinguished from an act done carelessly or inadvertently.

wiretap - Electronic or mechanical eavesdropping to listen to private conversations done by law enforcement officers under court order. Wiretapping is regulated by federal and state law.

with prejudice - The term, as applied to an order dismissing a case, is as conclusive of the rights of the parties as if the action had been prosecuted to a final adjudication.

without prejudice - A dismissal without prejudice allows a new suit to be brought on the same facts giving rise to the first case.

witness - One who testifies to what he or she has seen, heard, or otherwise observed.

writ - An order issuing from a court of justice and requiring the performance of a specified act, or giving authority and commission to have it done.

writ of attachment - A court order directing a sheriff to seize property of a defendant that would satisfy a judgment against that defendant.

writ of coram nobis - (Latin for "in our presence.") An order by a court of appeals to a court that rendered judgment requiring the trial court to consider facts not on the trial record that might have resulted in a different judgment if known at the time of trial.