Wisconsin News Reporters' Legal Handbook

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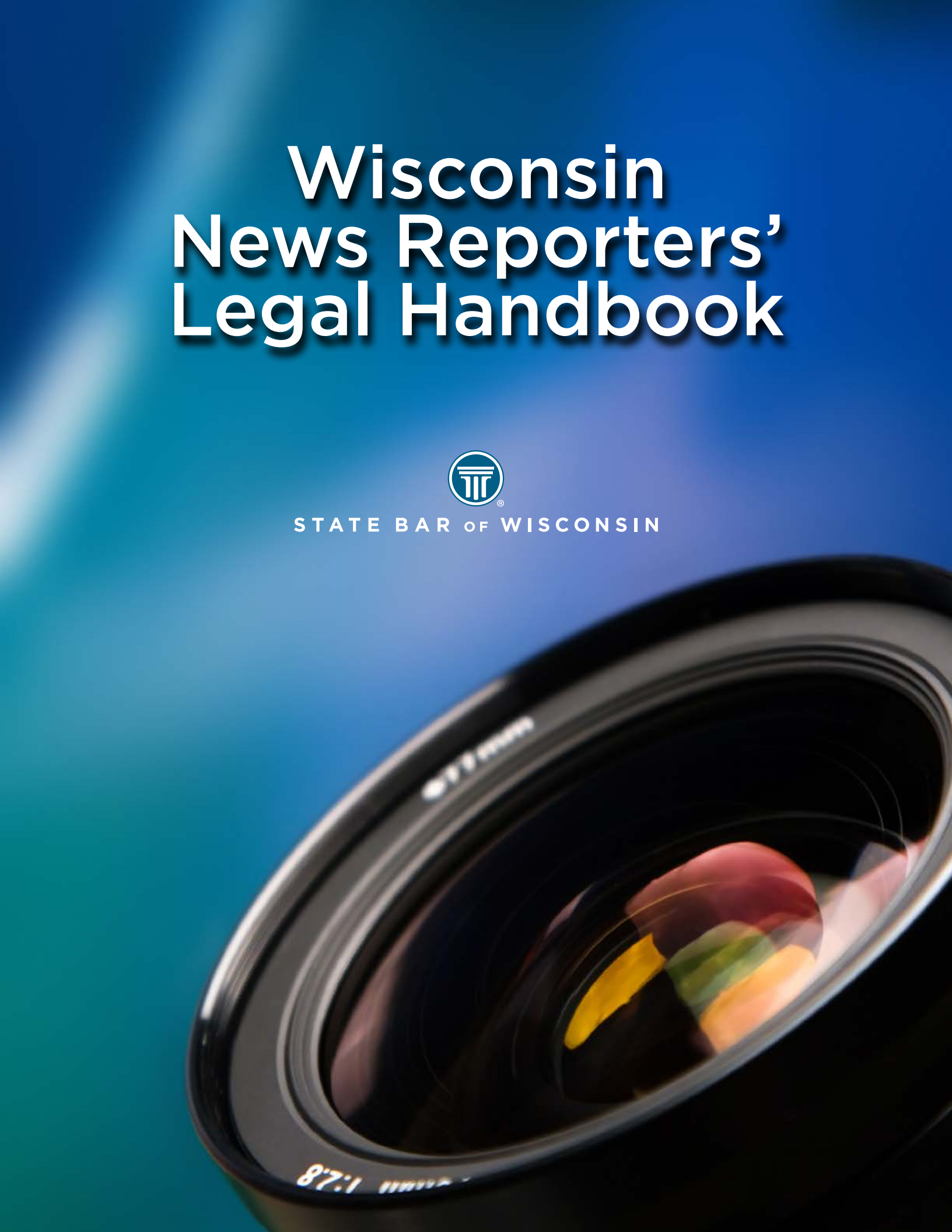

Seventh Edition

Madison, Wisconsin

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Preface

The seventh edition of the State Bar of Wisconsin *News Reporters' Legal Handbook* helps print journalists, broadcasters, photographers, and public relations practitioners better understand the judicial process and legal terminology used in the Wisconsin court system.

For more than 40 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.

Whether you are a new journalist or a seasoned veteran, we hope you find the information to be a valuable resource.

The *Wisconsin News Reporter's Legal Handbook*:

- covers the basics of working in a courtroom;
- reviews judges' considerations for working with the media;
- focuses on important judicial proceedings, considerations, definitions, and terms; and
- highlights additional internet resources for reporters.

This handbook does not, and cannot, address all of the specific legal problems electronic, broadcast, and print media may encounter in reporting a news event. Because the facts of every situation greatly influence the participants' rights, this handbook serves as a valuable reference tool but not a substitute for sound legal advice.

For more information, contact the State Bar of Wisconsin's public relations specialist at (800) 444-9404, ext. 6025, or publicrelations@wisbar.org.

About the News Reporters' Handbook

The handbook was first published in 1979 by the State Bar of Wisconsin's former Media-Law Relations Committee. The mission was to increase understanding and cooperation among the news media, the judiciary, and Wisconsin lawyers.

Acknowledgements

Special thanks to the following who made this handbook possible over the years: Beth Bennett, Hon. Brian W. Blanchard, Dustin Brown, Attorney Robert J. Dreps, Attorney Robert Dreschel, Retired Hon. William F. Eich, Attorney Richard Featherstone, Attorney James A. Friedman, Attorney Michael J. Jassak, Megan McDermott, Claire Dalle Molle, Jennifer L. Peterson, Hon. Kelly Thimm, Amanda K. Todd, Michelle Vetterkind, Wisconsin Broadcaster Association, and the Wisconsin Newspaper Association.

Chapter 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*.

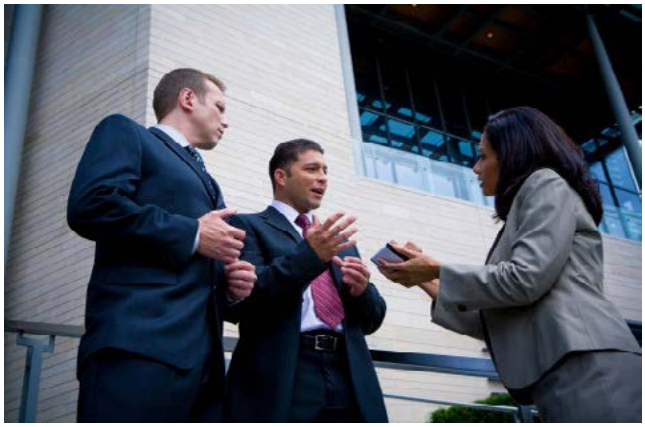
Purpose

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, the bar, media, and law enforcement agencies appreciate that in performing their respective duties, they may jeopardize constitutional precepts of fair trial or 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.



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, or as a result of the defendant's admissions and waivers of rights consistent with the law. Parties in civil proceedings also are entitled to have their rights adjudicated in court according to due process.

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 organizations have codes of ethics as well. For example, the Society of Professional Journalists and the Radio Television Digital News Association (RTDNA) have written codes of ethics.

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

4) The news media have constitutional and statutory rights (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 and applicable statutes or court orders 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 and applicable statutes or court orders, 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) In most cases, arrest records and court records are public records, available through law enforcement agencies, court clicks, or online through the Wisconsin Department of Justice's Crime Information Bureau or Wisconsin Circuit Court Access (formerly CCAP). Unless an exception applies, law enforcement agencies must make such information available under the public records law. When there has been a disclosure of a prior arrest or charge, the news media and law enforcement agencies have a 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 a suspect who has not been formally charged or arrested 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 police apprehension of suspects, including publishing photographs and records of prior offenses.

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 alleged perpetrators, victims, or witnesses. However, the media should use restraint and prudent judgment in reporting such information. The public's right to information about the operation and effectiveness of the juvenile justice system is often accomplished without publicly identifying the juveniles involved.

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 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 careful 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.

Chapter 2
Electronic Newsgathering in the Wisconsin Court System

Tips

Follow the rules. Wisconsin's court system is open to electronic coverage. Some journalists mistakenly believe that access to courts by electronic means and camera is without limits.

For example, reporters may be surprised to find out they can't automatically set up a camera, wire a sound system, or pull out a cell phone camera in the courtroom without getting permission in advance under the Wisconsin rules. Access to courtrooms in Wisconsin comes with rules, which are subject to change. Those rules can, and do, change. It is the journalist's responsibility to learn the rules. Below is a checklist for reporters:

- ✓ **Learn the basics.** Who is the media coordinator? What rights do journalists have? How do I inform the judge of my intent to cover the proceedings with a camera or video camera? What power does the judge have? What can and cannot be photographed? Where can I conduct an interview in the courthouse? Can I get into a juvenile proceeding? What time does the trial start? Can I use a flash? These are just a few of the basic questions that you should answer before you step into the courthouse. The rules provided in this handbook and the media coordinator can answer these questions.
- ✓ **Be flexible.** Each courtroom and case can present unique circumstances. Courtroom cases that attract a lot of media also lead to challenging situations for the electronic journalists who cover them. This can be especially true if you're going to a courthouse for the first time. Maybe there will be a multi-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 the 100th 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.

- ✓ **The rules apply to all cameras, including cell phones.** The underlying purpose of the rules is to limit distractions in the courtroom, which allows a judge to control the process and ensure the parties receive a fair trial. Since the rules address use of still photography and video equipment, they apply equally to cell phones used as cameras. Accordingly, a reporter who wants to cover a trial using a cell phone camera needs to inform the media coordinator and follow the same rules.
- ✓ **Be security conscious.** This is becoming a big deal in covering the courts. 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.** Generally, when the media is interested in a court case, the situation is stressful for everyone involved. The district attorney wants a successful prosecution; the defendant wants to go free; the victims want justice; members of the media want access to the proceedings; and the judge needs to balance all interests. When out-of-town media are 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 might lead to a courthouse official quickly resolving the situation by denying everybody access to everything.

✓ **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. Although the judge is always in charge, that doesn't mean the judge should be the first person approached to resolve a 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 sub district.

2) If possible, the trial judge shall be given notice, at least three 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), three television cameras, each operated by one person, and three still photographers, each using not more than two cameras, are authorized in any court proceeding. Priority consideration shall be extended to one of the three 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.

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 three 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 News Media Inquiries

The following excerpts are from an accepted statement by a national committee of trial judges chaired by now retired 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 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:

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 that 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
  - 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 to do so 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.

Chapter 3
Courts and Court Procedures

Journalists are often sent to cover court cases with little or no formal training in courtroom practices and procedures. 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.

A veteran journalist once reported a drunk driver's sentence for two separate incidents as double its actual term when he failed to understand what the judge meant when he said that the driver would serve the 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 can become unwitting accomplices in their personal public relations campaigns. Journalists who understand the court process are better able to assess the motives of their sources.

Another journalist recalled receiving a tip that the director of the lawyer discipline system was himself under investigation for misconduct. Great story, if only it were true. But 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 – which triggered an automatic investigation – and tipped off the media. A less experienced reporter might have run with the story, damaging the director's reputation and calling the entire lawyer discipline system into question. Instead, the reporter checked out and kept tabs on the investigation – which eventually showed the complaint to be a sham.

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 quite willing to

discuss these things. Rules of conduct may limit what judges can say about specific cases, but when asked, judges and lawyers are usually more than willing to help with general information that can result in more complete and accurate stories.

Part A: Wisconsin State Courts

The Wisconsin Court System consists of (a) the circuit court, which handles most civil and criminal cases and has branches in each of Wisconsin's counties; (b) the Wisconsin Court of Appeals, to which litigants have a right to appeal when they disagree with a final decision of the circuit court; and (c) the Wisconsin 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 Wisconsin Supreme Court is the state's highest tribunal and law-developing court, and it takes about one in every 10 cases that come before it, issuing opinions that resolve approximately 100 cases written each September-June term. All state judges are elected in nonpartisan spring elections, although the governor may fill vacancies by appointment. Those appointed serve until a subsequent spring election, when they must run for a full term.

Circuit and court of appeals judges serve six-year terms. The seven Wisconsin Supreme Court judges (called justices) serve staggered 10-year terms. The chief justice is elected for a term of two years by a majority of the justices then serving on 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. Reserve 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-time 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 Feb 2014 there were 237 municipal courts operating in Wisconsin. 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 (Wis. Stat. § 757.14) 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. In addition, nearly all court records are public and available to reporters. Readers should refer to the section on juvenile proceedings for a discussion of special confidentiality rules applicable in that area.

Criminal Cases

Crimes are generally categorized either as felonies or misdemeanors. A person convicted of a felony – the most serious of crimes – may be sentenced to prison, although that is not the only sentencing option. (See "Sentencing" below.) A "misdemeanor-only" conviction carries a jail sentence of no more than one year, typically spent in the county jail.

Felony and misdemeanor crimes are further divided into "classes" depending on the severity of the offense and the maximum possible punishment. For felonies committed on or after Dec. 31, 1999, or misdemeanors committed on or after Feb. 1, 2003, there are nine classes of felonies (A through I) and three classes of misdemeanors (A through C). Penalty enhancers can increase the level of seriousness for any offense (e.g., armed burglary (enhanced felony); or battery as a repeater (enhanced misdemeanor).The "charging decision" – the decision to initiate a criminal action and to file a complaint accusing a person of a particular crime – is made by the district attorney of the county in which the crime was committed, although in limited circumstances another district attorney may be appointed to file charges in another

county as a special prosecutor. Note, in a few specific types of cases, the attorney general may initiate the proceeding.

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

What if the victim and the district attorney disagree about the charge? In Wisconsin, the decision to proceed with a criminal complaint does not depend upon an alleged victim "pressing charges" or "swearing out a complaint," but instead is made by the prosecutor. For this reason, it is not accurate to refer to an alleged victim as "the complainant" or "the accuser." In certain kinds of cases – such as domestic violence or intra-family sexual assault cases – the alleged victim may be afraid or unwilling to cooperate with the prosecutor, sometimes going so far as to recant or deny the allegations on which the charge is based. Such a turn of events does not necessarily require a prosecutor to dismiss the action, depending on all of the available evidence, but it typically poses serious difficulties for the prosecution. In some cases, charges have been proven successfully without a cooperative victim, based on the testimony of other witnesses, admissions by the defendant, or statements of the alleged victim made in the wake of the incident at issue.

Can the district attorney change the charge? The initial charging decision may change as the case progresses. Certain types of conduct can 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 by "amending the information" in a felony case or "amending the complaint" in a misdemeanor case. Negotiating strategy may also influence the charging decision. Some prosecutors routinely charge the most serious offense they think they can prove beyond a reasonable doubt to a jury and may be prepared to lower the charge if the defendant agrees to plead 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 crime if the case proceeds to trial.

Initial Appearance and Setting Bail

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

A judge or court commissioner presides over this initial appearance and usually decides whether the accused should be held in jail or released on bail 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 merely by signing 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 more serious cases, a court may require the defendant to post bail in the form of cash or property to ensure his or her reappearance. Bail cannot be used to punish the defendant, nor may it 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 persons, not possess 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 real estate or automobiles. A judge may deny bail for up to 60 days in exceptionally serious cases, but only after hearing and upon a determination that the defendant's release would pose a danger to the public. Finally, a defendant who is charged with committing a crime while on probation or parole can be held without bail pending the Department of Corrections' decision whether to revoke the probation or parole. This is commonly referred to as a "probation hold" or a "parole hold."

If the charge is a misdemeanor, the judge or commissioner will provide the defendant with a copy of the complaint and will make a determination whether the document states probable cause to believe the crime was committed by the defendant.

Arraignment, Preliminary Hearing, 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 and that the defendant probably committed the offense. The preliminary hearing sets a rather low hurdle for the State: 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). Moreover, the circuit court may make its probable cause determination "in whole or in part" based on hearsay evidence – evidence conveyed at one or more levels of remove from the person testifying – which sharply limits the ability of the defense to test the reliability of the allegations offered by the State at the preliminary hearing.

The preliminary hearing must be held within 10 days after the initial appearance if the defendant has remained in custody or within 20 days if he or she is released on bail - unless the accused agrees to a delay. A judge or court commissioner conducts the preliminary hearing without a jury, and the prosecution presents the evidence, although as already mentioned it can be mere hearsay. Prosecutors rarely put before the court all the evidence or witnesses they have. Defendants may cross-examine the State's witnesses and may (but usually do not) present evidence or testify. 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. And a sexual assault case may be closed only if, after considering the defendant's right to having the proceedings conducted in public (and the news media's right under the First Amendment to report those proceedings), the court finds, from the evidence presented, that closure is the only means available to protect a vulnerable victim or to ensure the fairness of the proceedings to follow.

If, after the preliminary hearing, the defendant is bound over for trial, the district attorney prepares an "information" – the principal charging document in felony cases – and the defendant is again brought before the court for an arraignment, where he or she enters a plea to the charge. This proceeding usually is a formality; the defendant typically pleads not guilty, or if he or she elects to "stand mute," the judge will enter a plea of not guilty on the defendant's behalf.

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.

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 and should not necessarily be interpreted as evidence of the defendant's perception of the strength of the State's evidence, particularly because the State now has the ability to make a probable-cause showing with mere hearsay 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 to discover more about the State's 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 might waive the preliminary hearing in the belief that a favorable resolution of his or her case favorably is more likely if he or she demonstrates conciliation from the outset.

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 hear evidence and decide the facts. Sometimes motions can be decided without a hearing, and sometimes a lengthy evidentiary hearing will be necessary.

Typical motions include:

- Discovery motions, in 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 could damage the evidence.*
- Motions to suppress evidence, in which the defense asks the court to exclude from evidence items or information claimed to have been obtained from the defendant in violation of constitutional or statutory rights. *For example, the defense might make a motion to suppress evidence seized without a warrant or a confession obtained in violation of Miranda.*
- Pretrial motions "in limine," which seek to obtain rulings on the admissibility or inadmissibility of certain evidence before it is presented at trial *For example, the State might ask that the defense be barred from referring to certain conduct of a victim under the "Rape Shield" law, or the State or the defense might ask for permission to use evidence of "other acts" – wrongdoing by a party or witness not charged in the case that might, for example, demonstrate a motive or knowledge that will be at issue in the trial.*

- 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, to appoint a different attorney. In deciding such motions, courts have in mind the defendant's constitutional right to an effective attorney. Judges are mindful, too, that delay could be an underlying purpose in asserting such motions.
- Change-of-venue motions. These motions are out of the ordinary, except in cases to which local news media are giving extensive coverage. 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 empaneling out-of-county jurors, the court must be satisfied that pretrial publicity has permeated the county, that the 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 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 might appear to be conclusive.

Change of Plea

The vast majority of criminal cases are resolved by a defendant deciding to change his or her plea from the not guilty entered at initial appearance (misdemeanor) or arraignment (felony) 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 and weaknesses 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 incarceration faced by the defendant.

Guilty or No Contest: Pleas of guilty and no contest have the same effect in criminal court. In each instance, the defendant gives up the same set of constitutional and statutory 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 the belief that a no contest plea may avoid some of the consequences a conviction might bring 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 based on the belief that a guilty plea might be considered as conclusive of liability in a companion civil suit brought by the victim, whereas a no contest plea might leave room to contest some or all of the allegations.

Alford Plea: Quick Resolution: In an unusual case, a defendant might enter 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 because the State has evidence pointing toward guilt and the defendant wants to get the case over with. An Alford plea cannot be accepted unless the court is satisfied to a high degree that the defendant appears to have 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, at sentencing, might not view the defendant in the same light as another who has taken wholehearted responsibility for a crime by pleading guilty.

Change in Plea: A change in plea often is accompanied by an agreement between the State and the defendant as to the recommendation that the State will make to the judge at sentencing or at least limiting the range of recommendations that the State may make and sometimes naming or limiting requests that the defendant will make. For example, in some counties, there are "agreed recommendations," with both sides asking the court to impose a particular sentence. In general, this process is known as plea bargaining. By promising to plead guilty or no contest, a defendant binds the State to make the sentencing recommendation it has promised in exchange. The judge is not a party to the plea-bargaining process and is not 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 the fairness and effects of plea bargaining vary; however, it has become an accepted, very widespread practice. Somewhat less common is the "blind plea," in which a defendant enters a change of plea without any agreement with the prosecution.

Trials: Jury Trials and Court Trials

If the case is not resolved by dismissal or a change of plea, it must be tried under the U.S. and Wisconsin Constitutions. Although a large number of criminal cases are filed in federal and state courts, only a small percentage actually go to trial. Given, however, the large volume of criminal cases, even a small percentage translates into a sufficient number of trials to keep Wisconsin criminal courts busy.

A defendant in a criminal case is entitled to a trial before a jury of 12 persons.

Sometimes, although not often, a defendant decides for tactical reasons to waive his or her right to a jury trial and permit the judge alone to hear the evidence and render a verdict, so long as the prosecutor also consents. A trial over which the judge presides and renders the verdict is called a "bench trial" or a "trial to the court." There are several reasons why a defendant might prefer a trial to the court:

- A defendant with a lengthy criminal record might think that a judge will more carefully weigh that record in judging his or her credibility than a jury will.
- 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 cases.
- The evidence might cast the defendant or important witnesses in certain stereotypes to which a judge, with close familiarity with criminal cases, may be immune.
- The defense strategy might depend on a more particularized or novel application of the law to the facts.

As for the prosecutor, it might be considered impolitic for the State to decline a bench trial and instead take its chances with 12 members of the public.

Trials: Jury Selection

The jury is selected from a panel of prospective jurors. The panel is selected randomly from a jury list, or "pool," which is based on 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 comprises just enough prospective jurors so that if any jurors are dismissed "for cause" (explained briefly below) there will still be enough jurors to choose from after the use of "peremptory strikes" or "peremptory challenges," also explained briefly below.

During jury selection, the judge and the lawyers question prospective jurors to determine whether any of them should be excused because they cannot be open-minded and fair-minded about the case – for example, if they might know one of the parties or witnesses or have opinions or experiences that would make them less than impartial. Such persons may be dismissed by the court "for cause." After any jurors have been dismissed for cause, the parties then are permitted to use their "peremptory strikes," alternately removing ("striking") jurors until a predetermined number remain – at least 12, plus any alternates a judge might require. Alternate jurors are a precaution against having too few jurors to complete the case in the event a juror becomes ill or otherwise unavailable during the trial. They sit with the jury throughout the trial and are dismissed by the court at the trial's conclusion before the jury retires to begin its deliberations.

The lawyers need not give any reason for their peremptory strikes. However, if a party suspects that the other party has used one or more peremptory strikes solely on the basis of race, gender, or age, the party may be required, under the Batson case, to offer a legitimate, nondiscriminatory reason for the challenged strikes.

What if the jurors know too much? A common myth about jury selection is that lawyers are able to use "for cause" strikes to rid juries of jurors who are highly intelligent or know something about the law, the parties, or the place where the crime is alleged to have occurred. In fact, none of these things will 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 he or she may possess. It is only when the court determines that

a reasonable person in the juror's position could not set aside an opinion, despite the best of intentions to do so, that the juror will be excused 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 criminal trial 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 rested its case. The prosecutor then calls witnesses, who present evidence to the jury. In each case, the judge will determine whether jurors may take notes or ask questions of witnesses.

At the close of the State's case, the defense routinely moves to have the charge or charges 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 adequate evidence of all the elements of the charge. By deciding 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, the judge concludes that there is no credible evidence upon which a reasonable jury could rely to find the defendant guilty beyond a reasonable doubt. This is another relatively low hurdle to weed out the rare case that does not justify going to verdict. A similar motion and ruling is usually made after the close of all the evidence.

Unless the case is dismissed at this stage of the proceedings, the defense proceeds to present its witnesses and evidence, if any. Because the defendant is presumed innocent and constitutionally entitled to remain silent, he or she is not required to put on 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 the rare disruptive defendant may be removed from the courtroom after being warned. Some courtrooms may be equipped to permit such a defendant to view the proceedings from a remote and secure location.

The court can allow the prosecution to present rebuttal evidence following the defendant's case, limited to evidence that purportedly directly rebuts evidence offered by the defense.

From time to time during the trial, the judge may conduct "sidebar" discussions, where the attorneys approach the bench to confer with the judge outside the earshot of the jurors, either because the jurors are excused from the courtroom or because of steps taken to prevent them from hearing the sidebar discussion. These discussions are intended to be brief, usually involve legal questions about what evidence may be provided to the jury or what arguments or questions may be posed by the attorneys, and entail information that might compromise the fairness of the trial if discussed in the jury's presence. Depending on the available technology in the courtroom and the preferences of the judge, some judges will have a court reporter join them at sidebar or listen through a headset, and a transcript of the discussions can be obtained from the court reporter. Otherwise, the judge will put a summary on the record of what was said at the sidebar conference the next time the jury is out of the courtroom.

The trial concludes with the attorneys' closing arguments and final instructions from the judge. The prosecutor, who has the burden of proving the defendant's guilt beyond a reasonable doubt, argues first and last. In appropriate cases, the jury may be asked 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 elements that falls within a subset of the elements of the charged offense. Robbery, for example, is a lesser included offense of armed robbery.

The jury then meets to "deliberate" and reach a verdict. The jury meets privately and no one other than the bailiff or clerk sworn to manage the jury is permitted to speak to them about the case until a verdict is reached. But, unlike in times past, jurors are typically permitted to go home in the evening; rarely are they sequestered in alternative lodging, such as a hotel, 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 responding and, unless the parties agree to the answer, may hear counsels' arguments 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 routinely "polls the jury" to make sure that each juror individually agrees with the verdict.

Sentencing: The Sentencing Hearing

A person who is convicted of a crime, either by pleading guilty or by a guilty verdict after 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 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. The investigation is conducted by a State probation and parole agent, employed by the Department of Corrections, who prepares and files a presentence report discussing 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. Many presentence reports recommend a particular sentence. The report is confidential, although in-court comments about the report by the

lawyers and judge can be quoted in the media. Sometimes defendants will retain their own investigator or consultant to perform an independent presentence report and submit it to the court. If the court accepts such a report for filing, it is not confidential.

At the time of sentencing, the judge will hear from the prosecutor, the victim(s), the defense attorney, and the defendant. The judge may also hear from other persons 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 immediately after the parties conclude their presentations. In explaining the sentence, the judge is required to justify the punishment imposed by evaluating the severity of the crime, the character of the offender, and how the sentence serves the need to protect the community. For a limited number of offenses there are mandatory minimum sentences, which limit the sentencing discretion of the court, but for most offenses courts have very broad discretion in deciding on an appropriate sentence. There are sentencing guidelines promulgated by individual judicial districts for certain operating while intoxicated (OWI) offenses and for operating a motor vehicle after the revocation of a license. All sentencing guidelines are available on the internet.

Sentencing: Sentencing Options

Generally speaking, judges have several options at sentencing: incarcerating the defendant (in jail for misdemeanors; in jail or in prison for felonies), fining the defendant, placing the defendant on probation subject to certain conditions, or a combination of these. 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 being imposed will be served "concurrently" (at the same time as another sentence) or "consecutively" (after completion of one or more other sentences).

The first option the sentencing judge considers is probation, which, under the law, should be ordered unless confinement is deemed necessary. In placing a person on probation, the judge may impose and stay a jail or prison sentence, which means that the sentence would be served automatically if the defendant's probation were to be 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 or conditions the defendant must follow while on probation. Typical conditions might include achieving and maintaining sobriety; alcohol and other substance use treatment; firearms prohibition; restraint or no contact with the victim or with certain places or groups of people; employment; education (including requiring the defendant to obtain a GED or a literacy certificate); counseling; violent- or sex-offender treatment; mental health evaluations; medication monitoring; apology letters; community service; and payment of restitution to the victim. A specified period of county jail confinement is often ordered as a condition of probation.

The length of time 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 sentenced to up to 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 when the crime occurred, as a result of the "truth-in-sentencing" laws. For a crime committed before 2000, the court imposes an "indeterminate" sentence – usually framed in terms of "not more than X years in prison." 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 defendant, based on his or her behavior in prison, 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 – not an independent commission – decides how much of the sentence will be spent in "confinement," as well as how much of the sentence will be spent on "extended supervision" 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 while confined"); instead, defendants who misbehave in prison are required to spend even more time in confinement before being released. 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, or both, who might benefit from a military-style experience.

Reporting sentences is a bit more challenging in the era of truth-in-sentencing. In the past, 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 sentencing a person to county jail, the judge has the option of requiring that the time be spent with or without release privileges under the "Huber law." 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 or other family members, or seek medical, psychological, or substance use treatment. A judge may also permit a defendant to serve the jail sentence at home with electronic monitoring from the county jail or Huber facility.

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 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 suspension or revocation of the defendant's driver's license, an AODA evaluation, and/or the seizure or immobilization of the defendant's vehicle. Courts also are authorized to require the defendant to contribute to a crime prevention organization. In some cases a defendant may, at a later time, 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 if the defendant was 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 one 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 and the defendant is either released or turned over to county authorities, who may begin a separate civil commitment proceeding.

Even defendants who are competent to understand the proceedings and assist in their defense may assert that at the time the crime was committed they were suffering from a mental disease or defect that rendered them unable to appreciate the wrongfulness of their conduct or to conform their conduct to the law. This is referred to as an NGI plea. If a person makes

this "special plea," the trial is held in two 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 is convened to determine whether the defendant was legally responsible at the time the crime was committed. If a person is found both guilty and legally responsible, he or she will be convicted and 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. A defendant may ask the sentencing judge to overturn the conviction or the sentence. A defendant may also ask the judge to modify the sentence in some way (to shorten it or to modify a condition of probation). A defendant may also appeal to the court of appeals to overturn the conviction or the sentence. The standard a defendant must meet to obtain such postconviction relief depends in part on the claim being made. For example, if the defendant claims after a jury trial that the evidence was not sufficient to support a guilty verdict, he or she must show that there is no credible evidence in the record to support the jury's verdict.

One of the most common postconviction claims is that a defendant received "ineffective assistance" from his or her lawyer, which would violate the constitutional rights of the defendant. 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.

Finally, 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 he or she would not have been charged or convicted if the evidence had been so tested.

John Doe Investigations

Another procedure that may lead to criminal charges in Wisconsin is a "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 usually are not named publicly – hence the name "John Doe."

Often a John Doe investigation is held at the request of a district attorney who has some information about a suspected 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 against others. The judge overseeing the John Doe may issue subpoenas ordering people to appear in court to testify about the events being investigated. If merited, a complaint is issued at the end of a John Doe investigation and the criminal process begins.

John Doe hearings 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.
- 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.

Juvenile Matters

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 governed by Wis. Stat. chapter 48. Juvenile cases involving inappropriate acts by juveniles, such as juvenile delinquencies, are governed by Wis. Stat. chapter 938. The purpose of chapter 48 is to protect and provide needed services to the child and to strengthen the family. Although the same purposes may be found in chapter 938, that chapter also attempts to hold the juvenile offender accountable for his or her acts and to protect the public.

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

Chapter 938 applies to juveniles who have misbehaved, and the statute classifies them as (1) juvenile delinquents, (2) juveniles in need of protection or services, and (3) juveniles who commit a civil violation and receive a citation. Juvenile delinquencies are crimes committed by children from the ages of 10–16. (Seventeen year olds are charged in the adult criminal system.) Juveniles in need of protection or services (JIPS) are persons under 18 who are habitually truant from home or school, who cannot be controlled by their parents or run away, or who are under 10 and commit a criminal act. Citations may be issued to persons 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 that it is appropriate to issue a citation. In response to the citation, the juvenile and the juvenile's parents may 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 of the offense, 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, presents a danger to others, or may run away, the department may place the child in temporary custody outside the home. A prompt hearing on the temporary physical custody request is then held before the juvenile court.

The human services department may decide to resolve the case with an informal disposition called a consent decree, which is an agreement between the department, the juvenile, and the juvenile's parents. The agreement could provide for restitution, school attendance, counseling, community service, treatment, and other conditions. If the agreement is complied with, the case ends. If not, it is referred to the prosecuting attorney. If the human services department decides that a consent decree is not appropriate, the case is referred to the prosecuting attorney for 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 is a plea hearing to ascertain 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 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 in delinquency and JIPS cases. In those cases, the fact-finding hearing is to the court.

If the petition is admitted or proved at trial, the court holds a dispositional hearing. Available dispositions vary with the type of case. In CHIPS, JIPS, and delin-

quencies, disposition may 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 delinquency proceedings, 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 a secure detention facility. A dispositional order is usually for one year but may be extended for cause shown.

Juvenile cases are designed to move quickly through the court, and the statutes set numerous time deadlines for various hearings and proceedings.

Although crimes committed by juveniles age 10–16 are usually tried in juvenile court, the case may be transferred or "waived into" adult court. Any crime committed after the juvenile turns 15 may be the basis for a waiver. For those under 15, certain serious crimes may form the basis for waiver of the juvenile court's jurisdiction. 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 available 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 will be in adult court.

Except for those waived into adult court, rules of confidentiality apply to juvenile proceedings, and 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 is also open if the juvenile is being charged with a violation that would be classified as a "serious juvenile offender" offense under Wis. Stat. § 938.34(4h)(a). Examples include armed robbery, kidnapping, first-degree sexual assault, and burglary while armed.

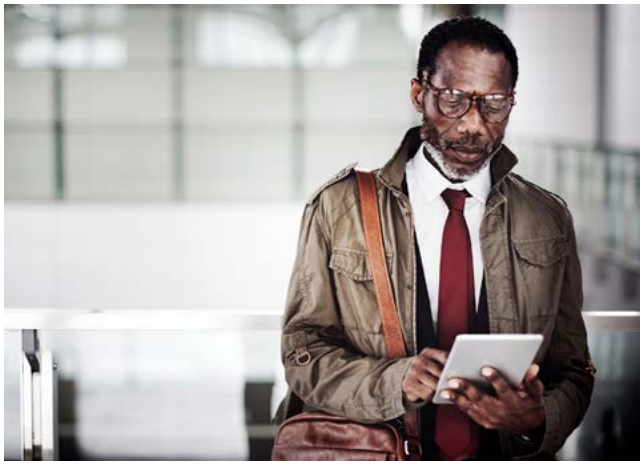
Civil Cases

The term "civil matter" covers a broad range of noncriminal cases including actions relating to marriage, real estate, contracts, torts (civil legal wrongs such as negligence, defamation, battery, and other wrongful acts causing damage), 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 case is the plaintiff, and the party being sued is 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 parties exchange information and evidence about the case. This process is called "discovery," and the information thus "discovered" frequently leads to settlement before trial. Details of settlements are generally public but can remain confidential by an agreement of the parties, which does not have to be approved by the judge. However, a judge must approve settlements for minors.

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 made up of six or 12 persons. With or without a jury, the plaintiff has the burden of proof with respect to his or her case. The burden of proof in a civil case generally requires the plaintiff to prove his or her case by a preponderance of the evidence, although a somewhat higher standard, such as "by clear or convincing evidence," applies in some specific actions. In all instances, however, 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's attorney makes an opening statement, followed by the defendant's attorney. (As in criminal trials, the defendant may choose to delay his or her opening statement until the plaintiff has finished offering evidence.) The plaintiff then offers evidence supporting his or her position. When all of the plaintiff's evidence is in, the defendant may put on evidence supporting his or her position but is not required to do so.

Finally, the plaintiff may wish to introduce additional evidence in rebuttal to evidence offered by the defendant. When all of the evidence has been presented, the judge instructs the jury on the principles of law applicable to the case, and the lawyers then make their closing arguments to the jury – again in turn, with the plaintiff arguing first and the defendant responding. As in criminal cases, because plaintiffs have the burden of proving their case, they are given the opportunity to "close" – to have the last word before the jury. After the closing arguments, the judge may have one or two final instructions for the jury. The jury is then sent to the jury room to begin its deliberations.

Unlike criminal cases, jury verdicts 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 – usually including specific 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 cases to protect against disclosure of "trade secrets." With rare exceptions, civil trials 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 an individual or a 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. Finally, there is an appeal process similar to that in criminal cases.

Probate

Probate matters are handled in circuit court. They may involve estates of deceased persons; guardianships of minors, incompetent individuals, and spendthrift individuals; conservatorships; commitments to institutions; and other matters. With regard to estates, the probate court collects assets, pays debts and taxes, determines heirs and beneficiaries, and distributes the remaining assets of the deceased's estate.

Probate matters are often uncontested, although contests often 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. Generally, 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 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. As of October 2019, there are four federal district judges in the Eastern District, and three 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 U.S. district courts, are prosecuted by the Offices of the U.S. 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 U.S. Customs Service (USCS), and the U.S. 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 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 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 U.S. 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. 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.

Civil Cases

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

[1] In 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."

[2] In the federal courts, U.S. 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.

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

The Journalist's Privilege

On June 1, 2010, Wisconsin enacted a shield law protecting journalists against compelled testimony in both civil and criminal proceedings. The statute, Wis. Stat. § 885.14, establishes an absolute privilege for confidential sources or information and a qualified privilege for other information and sources. It also erects a significant hurdle for the issuance of a subpoena to news organizations by requiring a hearing and setting a rigorous standard. The statute provides journalists significantly stronger protection against subpoenas in state courts than the qualified privilege previously recognized under the state and federal constitutions.[1] This statutory protection does not apply, however, to federal grand jury subpoenas.

Scope of the privilege. Wisconsin's shield law protects any "news person," which is defined as a "business or organization" that disseminates information to the public on a regular basis, or an individual engaged in newsgathering for such an entity.[2] The law covers information reported through any medium, including the internet, but journalists who are not incorporated or affiliated with a news organization are not protected.

The statute forbids issuance of a subpoena to a "news person" seeking the identity of a confidential source, information that would tend to identify a confidential source, or information prepared in confidence. For nonconfidential sources and information, only a court may issue a subpoena, after hearing, and only if all of the following conditions are met:

1. The news, information, or identity of the source is highly relevant to the criminal prosecution or civil action.
2. The news, information, or identity of the source is necessary to the maintenance of a party's claim or defense.
3. The news, information, or identity of the source is not obtainable from any alternative source.
4. There is overriding public interest in the disclosure of the news, information, or identity of the source.

The shield law provides that any news, information, or identity of a source obtained in violation of its terms is not admissible in any judicial, legislative, or administrative action, proceeding, or hearing.

Public Records

Wisconsin has a broad presumption of complete access to public records, which is reflected in both the statutes and the case law.[4] Reporters frequently use the public records law to gather information. Following the proper procedure for requesting records is important as it helps preserve the ability to challenge a custodian's denial.

Procedure for obtaining records. Under the Wisconsin public records law, a person may request a public record from any governmental authority that created or has custody of the record.[5] The public 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.[6] Public records requests only can be served on governmental entities as defined in Wis. Stat. § 19.32(1), which includes state and local offices and quasi-governmental corporations.

A public records request may be made orally or in writing.[7] A written request requires the custodian to provide a written response, which must include specific reasons for any complete or partial denial. The request must be made in writing before an enforcement action may be commenced. The requester need

not reveal his or her identity or state the purpose of the request, although the Wisconsin Supreme Court has considered a requester's purpose in upholding a public records denial.[8] The request is sufficient if it "reasonably describes the requested records or the information requested," but journalists should be careful to articulate requests with clarity.[9]

A custodian must respond to a public records request promptly, using specific and well-established procedural standards to determine whether disclosure of the requested public records is proper.[10]

The public records law does not require a custodian to create a new record if one does not exist or even to inform a requester that no responsive records exist.[10a] For that reason, it is advisable for requesters to explicitly ask the custodian to state if it has no responsive records. The custodian has an affirmative duty to separate confidential information from information that is subject to disclosure and release the redacted record.[11]

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, as well as the "actual, necessary and direct cost of" locating a record, if the cost exceeds $50."[12] The custodian may not charge to redact records.[12a]

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) under the "balancing" test, the public's interest in secrecy is found to outweigh the public's interest in access. Wis. Stat. § 19.36 lists certain statutory exemptions including, but not limited to, trade secrets, identities of law enforcement informants, applicants for public positions (other than "final candidates"), certain kinds of employee personnel records, and personally identifiable information in specific records. Not all applicable statutory exceptions are explicitly listed in the public records law, which incorporates any "state or federal law" that specifically exempts "any record …from disclosure."[12b] For example, pupil records,[13] health care records,[14] or trade secrets[15] held by governmental authorities are not open to public inspection. In addition, Wisconsin courts have established certain common-law exemptions, including district attorneys' investigative files.[16]

If none of the specific exemptions apply, the custodian (or court, if the matter is before a court for review) 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."[17] Access to court records also is subject to the public records law, including the balancing test.[18]

Record subject notice and review procedures. In 2003, the Wisconsin Legislature amended Wis. Stat. chapter 19, narrowing and clarifying the notice and review procedures created by *Woznicki v. Erickson*.[19] 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 attorney may release criminal investigation records 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. The courts later extended that notice requirement to all public records that pertain to an individual. Now, under the revisions to Wis. Stat. chapter 19, the statutes explicitly confine the right to notice and review to limited categories of records.[20] Unless a record falls within those defined categories, the subject of the record is not entitled to notice and review rights.[21]

Record subject notice and review categories. The statute distinguishes between public employees and those who hold state or local public office. The statute defines state or local public office to include appointed individuals who serve at the pleasure of the appointing authority, except a clerical position, as well as those serving as the head of a department, agency, or division of the governmental authority.[22] Public office holders are entitled to notice before any record relating to them is disclosed and are given five days to augment the record to be released with written

comments or documentation.[23] Public office holders have no right to judicial review of the custodian's decision to disclose the record.

All other public employees have the right to notice, and to obtain judicial review, before disciplinary investigation records relating to them are disclosed.[24] A private sector employee working on a government contract also is entitled to notice and judicial review before an authority discloses any record relating to the private employee that was prepared by his or her employer.[25] Finally, any person who is the subject of a record a government authority obtained through a subpoena or search warrant is entitled to notice and to seek judicial review before that record is disclosed.[26] Beyond these narrow categories, no record subject is entitled to notice or to seek judicial review of a governmental authority's decision to disclose a public record.

Under Wis. Stat. § 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 the notice and review process under Wis. Stat. § 19.356.

Time limits on the judicial review procedure. To limit the delay resulting from the notice and review process, the statutes establish strict time limits. First, if notice is required under Wis. Stat. § 19.356(2)(a), the authority must give written notice to the record subject, personally or by certified mail, within three days after making the decision to release the record. Within five days after 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 after receiving the notice, the record subject must actually commence an action in state circuit court. Then, under Wis. Stat. § 19.356(7), the court must issue a decision within 10 days after the filing 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 after the action was commenced. The circuit court's decision may be appealed, within 20 days, under Wis. Stat. § 808.04(1m). Wis. Stat. § 19.356(8) requires the court of appeals to grant precedence to the appeal.

Intervention by requester. Under Wis. Stat. § 19.356(4), if a record subject commences an action against the authority, the requester may intervene in the action as a matter of right. It is often advisable for the requester to intervene to argue in favor of disclosure. Although such actions are brought only if the custodian has already concluded that the records should be released, the requester is likely to advocate more aggressively in support of that position.

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.[27] The requester need not file a notice of claim before bringing the action.[28] "[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...."[29] Even if the authority voluntarily 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.[30] If the court determines that the authority denied or delayed access arbitrarily or capriciously, the court also may award the requester punitive damages.31

Open Meetings

The Wisconsin Open Meetings Law permits reporters to attend and report on all meetings of governmental bodies, unless a specific statutory exemption authorizes the governmental body to close the meeting to the public. Every meeting of a governmental body must be preceded by a public notice setting forth the time, date, place, and subject matter of the meeting, including that intended for consideration in closed session.[32]

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.[33] "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.[34] 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.[35] The term "meeting," however, does not include any social or chance gathering or conference that is not intended to avoid the law.[36] 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.[37] The motions and roll call votes of each meeting must be recorded, preserved, and open to public inspection consistent with the public records statute – even if the meeting at which the vote was taken was properly closed.[38]

Any person 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.[39]

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.40 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.41 Closed sessions may be held for any of the specific purposes listed in Wis. Stat. § 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, parole, or extended supervision;
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;
10) to consider requests for confidential written advice from the elections commission, the ethics commission or from any county or municipal 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; or
12) to consider financial information relating to the support of certain nonprofit corporations.

Enforcement. Enforcement of the Wisconsin Open Meetings Law is primarily the responsibility of the attorney general or the district attorney of any county in which a violation may occur.[42] Penalties range from $25 to $300 for each violation, and actions taken during a meeting held in violation of the law may be voidable.[43] A private party may enforce the law, and recover attorney fees if he or she prevails, but only after filing a complaint with the local district attorney and only if the district attorney declines to act after 20 days.[44]

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 U.S. and Wisconsin Constitutions and a Wisconsin statute. Wis. Stat. § 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.[45] 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."[46] 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 delinquency proceedings and when persons under age 17 who are accused of criminal conduct or delinquency may be identified.

Under some circumstances, juvenile court 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 of the seriousness of the charged offense. Second, a person under age 17 appearing in juvenile court 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, or when the juvenile is charged with a violation that would be one of the specified serious felonies if committed by an adult.[47]

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.[48] The news media may attend hearings only on the condition that news reports not identify by name or factual circumstances the child or the child's family.

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.[49] 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.[50] A violation of the statute is punishable by a fine of not more than $10,000 or imprisonment up to seven and one-half years, or both.[51] 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.[52]

In *Bartnicki v. Vopper*,[53] 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 conversa-

tion 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.[54] Before recording or broadcasting the conversation, the reporter must inform the nonconsenting party to the call that it will or may be broadcast. FCC rules also require a speaker's permission to broadcast a voice message.

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 cannot 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*,[55] 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."[56] 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*,[57] 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*,[58] the Wisconsin Supreme Court held that the news 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 breached the perimeter established by law enforcement and 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 4–3 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."[59]

Right of Privacy

Wisconsin recognizes a statutory right of privacy. Wis. Stat. § 995.50 authorizes claims for damages and attorney fees for three types of invasion of privacy: 1) intrusion upon the privacy of another of a nature highly offensive to a reasonable person; 2) misappropriation of a name, picture, or portrait of any living person, without written consent, for trade purposes; and 3) publication of private matters of a kind highly offensive to a reasonable person. The statute also specifically provides that there can be no invasion of privacy for publication of information available as a matter of public record.[60] 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.[61]

Defamation

Reporters certainly are aware of the potential for a defamation claim. Wisconsin has adopted the traditional 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 so as to lower the person in the estimation of the community or to deter third persons from associating or dealing with the person.[62] There are three elements to the claim:

1) a false and defamatory statement concerning another,

2) made in an unprivileged communication to a third party, and

3) with fault amounting at least to negligence on the part of the speaker or publisher.[63]

Pursuant to the First Amendment and common law, pure statements of opinion based on disclosed facts generally do not constitute defamation.

Who may sue for defamation? Although a person need not specifically be named in the communication to bring a defamation claim, certainty as to the person's identity must appear from the words themselves.[64] A corporation can sue for defamation, but to prevail it must prove that the communication 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."[65] That is, the public official must prove by clear and convincing evidence that the defendant made the alleged defamatory statement 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."[66] 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."[67] Second, a person assumes public-figure status by "involvement in a particular public controversy," but only for comments about that public controversy.[68]

Defenses. Truth is an absolute defense to any claim of defamation.[69] As long as the statement is substantially true, this defense applies. The First Amendment requires a defamation plaintiff to prove falsity in a case against a news media defendant.[70] 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. § 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.

Retraction notice. Wis. Stat. § 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. The remedy for noncompliance is dismissal.[71] Publishing a correction, moreover, eliminates any claim for punitive or presumed damages and may be evidence of mitigation of actual damages. The notice statute does not apply to broadcasters or internet publications because it was enacted before those media existed and has not been amended to include them.

Footnotes

1 *See 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).

2 Wis. Stat. § 885.14(1).

3 Wis. Stat. § 885.14(5).

4 *See, e.g.*, Wis. Stat. § 19.31.

5 *See* Wis. Stat. § 19.32(2), (3).

6 *See* Wis. Stat. § 19.36(3).

7 Wis. Stat. § 19.35(1)(h).

8 *Id.*; *Democratic Party of Wis. v. Wisconsin Dep't of Justice*, 2016 WI 100, ¶ 23, 372 Wis. 2d 460, 888 N.W.2d 584 (remarking on the apparent "partisan purpose underlying the request" in applying the balancing test to favor nondisclosure).

9 Wis. Stat. § 19.35(1)(h); *Journal Times v. Police & Fire Comm'rs Bd.*, 2015 WI 56, ¶ 54, 362 Wis. 2d 577, 866 N.W.2d 563 ("While a records request need not be made with exacting precision to be deemed a valid public records request, the Newspaper is a requester and wordsmith with experience and sophistication. Here, the requests could reasonably be perceived as seeking information, rather than a record.").

10 *See* Wis. Stat. § 19.35(4)(a)*; Osborn v. Board of Regents*, 2002 WI 83, ¶ 15, 254 Wis. 2d 266, 647 N.W.2d 158.

10a *See Journal Times v. Police & Fire Comm'rs Bd.*, 2015 WI 56, ¶ 102, 362 Wis. 2d 577, 866 N.W.2d 563 ("While it might be a better course to inform a requester that no record exists, the language of the public records law does not specifically require such a response.").

11 *See* Wis. Stat. § 19.36(6).

12 Wis. Stat. § 19.35(3)(a), (c).

12a *Milwaukee Journal Sentinel v. City of Milwaukee*, 2012 WI 65, ¶¶ 1 & n.4, 6, 58, 341 Wis. 2d 607, 815 N.W.2d 367 (Abrahamson, C.J., lead opinion); *id.* ¶ 76 (Roggensack, J., concurring).

12b Wis. Stat. § 19.36(1).

13 Wis. Stat. § 118.125.

14 Wis. Stat. § 146.82.

15 Wis. Stat. § 19.36(5).

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

17 *See Osborn*, 2002 WI 83, ¶ 15, 254 Wis. 2d 266; *see also Linzmeyer v. Forcey*, 2002 WI 84, 254 Wis. 2d 306, 646 N.W.2d 811 (applying the balancing test to police records).

18 *See C.L. v. Edson*, 140 Wis. 2d 168, 181, 409 N.W.2d 417 (Ct. App. 1987); *see also* Wis. Stat. § 19.32(1) (listing "any court of law" among authorities subject to public records law).

19 202 Wis. 2d 178, 549 N.W.2d 699 (1996).

[20] Wis. Stat. § 19.356(2)(a)1–3.

[21] Wis. Stat. § 19.356(1).

[22] Wis. Stat. § 19.32(1dm), (4).

[23] Wis. Stat. § 19.356(9).

[24] Wis. Stat. § 19.356(2)(a1).

[25] Wis. Stat. § 19.356(2)(a)3.

[26] Wis. Stat. § 19.356(2)(a)2.

[27] Wis. Stat. § 19.37(1).

[28] Wis. Stat. § 19.37(1n).

[29] Wis. Stat. § 19.37(2)(a).

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

[31] Wis. Stat. § 19.37(3).

[32] Wis. Stat. § 19.84(1); *see Buswell v. Tomah Area Sch. Dist.*, 2007 WI 71, 301 Wis. 2d 178, 732 N.W.2d 804.

[33] Wis. Stat. § 19.82(1); *see also State ex rel. Krueger v. Appleton Area Sch. Dist. Bd. of Educ.*, 2017 WI 70, ¶ 2, 376 Wis. 2d 239, 898 N.W.2d 35.

[34] Wis. Stat. § 19.82(2).

[35] *Id.*

[36] *Id.*

[37] Wis. Stat. § 19.88(1).

[38] Wis. Stat. § 19.88(3).

[39] Wis. Stat. § 19.90.

[40] Wis. Stat. § 19.85(1).

[41] *Id.*

[42] *See* Wis. Stat. § 19.97(1).

[43] Wis. Stat. § 19.97.

[44] *See* Wis. Stat. § 19.97(4).

[45] *See La Crosse Tribune v. Circuit Court*, 115 Wis. 2d 220, 233, 340 N.W.2d 460 (1983).

[46] *Id.* at 242.

[47] *See* Wis. Stat. § 938.396(2m).

[48] Wis. Stat. § 938.396(1).

[49] Wis. Stat. § 968.31(2)(c).

[50] *See* Wis. Stat. § 968.31(1).

[51] *Id.*

[52] *See* Wis. Stat. § 968.31(2)(c).

[53] 532 U.S. 514 (2001).

[54] *See* 47 C.F.R. § 73.1206.

[55] 408 U.S. 665, 684-85 (1972).

[56] 526 U.S. 603 (1999).

[57] 98 Wis. 2d 130, 295 N.W.2d 768 (Ct. App. 1980).

[58] 148 Wis. 2d 532, 436 N.W.2d 285 (1989).

[59] *Id.* at 552.

[60] Wis. Stat. § 995.50(2)(c).

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

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

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

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

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

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

[67] *Id.* at 82.

[68] *Id.*

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

[70] *See Philadelphia Newspapers, Inc. v. Hepps*, 475 U.S. 767, 777 (1986).

[71] *See DeBraska v. Quad Graphics, Inc., 2009 WI App 23, ¶ 23, 316 Wis. 2d 386, 763 N.W.2d 219.*

Chapter 5
Internet Resources for Reporters

Archives

American Memory
http://memory.loc.gov/ammem/index.html

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

The Avalon Project at Yale
http://avalon.law.yale.edu/default.asp

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

Constitutional Rights Foundation
http://www.crf-usa.org/foundations-of-our-constitution/foundations-of-our-constitution.html

Read great documents like the Magna Carta and the Federalist Papers. Includes links to teaching resources and to other sites related to civic education and civic society.

Internet Scout Project
https://scout.wisc.edu/

Find 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

Search 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.

Making of America
http://quod.lib.umich.edu/m/moagrp/

Find primary sources in American social history from the antebellum period through reconstruction.

National Archives and Records Administration (NARA)
https://www.archives.gov

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

Civics Education Organizations

Center for Civic Education
www.civiced.org

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

Provides programs, publications, and online lessons that instill a deeper understanding of citizenship through values expressed in the U.S. 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

Information for educators from the National Council for the Social Studies.

Civics Education Standards and Reports

Education Northwest
http://educationnorthwest.org/

Center for Civic Education - National Standards for Civics and Government
www.civiced.org/stds.html

National Council for the Social Studies - National Standards for Social Studies Teachers
http://www.socialstudies.org/standards/teacherstandards

No Child Left Behind and Elementary and Secondary Education Act
http://www2.ed.gov/nclb/landing.jhtml

Wisconsin Civics Action Task Force:

Recommendations for Democratic Citizenship Education
http://dpi.wi.gov/cal/pdf/civics.pdf

Contemporary Court and Criminal Justice Issues

Bureau of Justice Statistics
http://bjs.ojp.usdoj.gov/

Find information on crimes, criminal offenders, victims of crime, and the operation of justice systems at all levels of government. Information is arranged by topic, and includes methodology, names of experts, and links to compilations and publications.

Center for Judicial Independence
(American Judicature Society)
http://www.ajs.org/

Current news and resources on the importance of, and threats to, judicial independence.

Standing Committee on Judicial Independence (American Bar Association)
http://www.americanbar.org/groups/justice_center/judicial_independence.html

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 committed a robbery at a 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

An overview of the national teen court movement; provides resources and information on training and technical assistance.

Wisconsin Offender Locator
http://offender.doc.state.wi.us/lop/home.do

Database of offenders incarcerated or supervised by the Wisconsin Department of Corrections. Provides status, photos, addresses, and links to court dockets.

Continuing Education for Teachers

The National Endowment for the Humanities: Seminars and Institutes
https://www.neh.gov/divisions/education/summer-programs

Information on professional development programs for teachers.

U.S. Supreme Court Institute
https://www.streetlaw.org/programs/scsi

The institute brings high school teachers to Washington, D.C., 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
http://www.law.cornell.edu/supct/

Find 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.

Federal Judiciary
www.uscourts.gov

Information on the structure and function of the federal courts.

U.S. Supreme Court
https://www.supremecourt.gov/

Current information on oral arguments and decisions, as well as information on arranging visits to the U.S. Supreme Court.

Seventh Circuit Court of Appeals
http://www.ca7.uscourts.gov/

Provides access to court rules, opinions and dockets. Includes links to oral arguments, jury instructions, and court calendars.

PACER (Public Access to Court Electronic Records)
http://www.pacer.gov/psco/cgi-bin/links.pl

Allows users to obtain case and docket information from federal appellate, district, and bankruptcy courts, and the PACER Case Locator via the internet (subscription required).

Wisconsin Court System
https://www.wicourts.gov/

Information on Wisconsin courts, including links to docket searches on CCAP (Consolidated Court Automation Program) and WSCCA (Supreme Court and Court of Appeals Case Access), 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 may request arrangements for a judge to speak to their group about a variety of law-related topics through the Judicial Speakers Bureau.

City of Milwaukee Municipal Court
https://query.municourt.milwaukee.gov/

Case information from municipal court cases in Milwaukee.

Wisconsin Attorneys' Professional Discipline Compendium
https://compendium.wicourts.gov/app/search

Research public and private attorney disciplinary proceedings by name, practice area, or rule.

Government

State of Wisconsin E-Government Portal
www.wisconsin.gov

U.S. Department of Education
www.ed.gov

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 resources for educators and students at https://www.house.gov/educators-and-students .

U.S. Senate
www.senate.gov

The official site of the U.S. Senate includes information about Senate activities, committees, and bills.

White House
www.whitehouse.gov

The official site of the U.S. White House provides information on the president, the vice president, and the federal government.

Wisconsin State Legislature
http://legis.wisconsin.gov/Pages/default.aspx

Wisconsin Eye
https://www.wiseye.org/

Multimedia public affairs network covering a wide range of Wisconsin's civic life. Provides nonpartisan coverage of the Wisconsin Legislature (gavel to gavel), the Wisconsin Supreme Court (oral arguments and administrative conferences), and a broad range of civic activities around the state.

Law- and Government-Related References

Current Wisconsin Legislative Activity
http://docs.legis.wisconsin.gov/

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

Dumb Laws
http://www.dumblaws.com

A repository for obscure, out-of-date, and unusual laws.

FindLaw
www.findlaw.com

A source for case law, information on various legal topics, federal and state law, and more.

USA.gov
http://www.usa.gov/

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

An introduction to the federal legal system. Offers links for legal research through publicly accessible web-based databases.

Local Ordinances – Wisconsin only
http://wilawlibrary.gov/topics/ordinances.php

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

Local Ordinances – by state
www.municode.com

Links to online ordinance codes for selected municipalities in all states.

Nolo's Dictionary
https://www.nolo.com/dictionary

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

Nolo's Legal Encyclopedia
https://www.nolo.com/legal-encyclopedia

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

State Bar of Wisconsin
www.wisbar.org

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

Thomas: Legislative Information on the Internet
http://thomas.loc.gov/home/thomas.php

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
http://legis.wisconsin.gov/rsb/internet_uscon.pdf

U.S. Government Agencies Directory
http://www.lib.lsu.edu/gov/

U.S. federal government agencies indexed by executive, judicial, and legislative branches of government.

The Wheeler Report
www.thewheelerreport.com

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

Wisconsin Constitution, Statutes, and Acts
http://legis.wisconsin.gov/rsb/wislawsources.html

Wisconsin Law Journal
www.wislawjournal.com

The *Wisconsin Law Journal*, a statewide law news weekly, 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
https://wilawlibrary.gov/

Law-related Education

American Bar Association, Division for Public Education
http://www.americanbar.org/groups/public_education.html

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
http://www.loc.gov/teachers/usingprimarysources/

Offers strategies and lesson plans on using primary sources in the classroom.

Ben's Guide to US Government for Kids
https://bensguide.gpo.gov/

Information about U.S. history and government.

Case of the Month Project
https://www.wicourts.gov/courts/resources/teacher/casemonth/index.htm

Features a new monthly case profile while the Wisconsin Supreme Court is in session. Find plain-English summaries of the cases and links to the briefs, Wisconsin Court of Appeals decisions, and the audio recording of the Wisconsin Supreme Court's oral arguments. Receive email notification when the Wisconsin Supreme Court issues its opinion in a particular case. Teaching resources include case diagrams, 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

Ideas and resources to incorporate multimedia primary sources in the classroom, as well as other learning tools and professional development resources.

Famous American Trials
http://law2.umkc.edu/faculty/projects/ftrials/ftrials.htm

Features summaries of 21 famous trials, from the Salem Witchcraft trials to the O.J. Simpson trial. Each feature case includes primary sources such as "wanted" posters, newspaper accounts, cartoons, chronologies, transcript excerpts, and more.

Federal Courts' Educational Outreach Program
http://www.uscourts.gov/EducationalResources.aspx

Promotes public understanding of the federal courts.

The Great Chief Justice at Home by the National Park Service
www.cr.nps.gov/nr/twhp/wwwlps/lessons/49marshall/49marshall.htm

Learn how U.S. Supreme Court Chief Justice John Marshall (1801–1835) transformed the U.S. Supreme Court from obscurity into a prominent, powerful institution during his 34 years on the bench 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
https://youth.gov/federal-departments/department-justice

Information on the justice system for students, teachers, and parents.**Library of Congress Learning Page**
http://lcweb2.loc.gov/ammem/ndlpedu/

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
https://www.wisbar.org/aboutus/legalhistory/Documents/Pioneers-in-the-Law-The-First-150-Women.pdf

Biographies and articles on the first 150 women to practice law in Wisconsin. Listen to audio interviews with legal professionals.

Street Law
http://www.streetlaw.com/

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
http://www.wisconsinhumanities.org/

Teaching resources and information on the Wisconsin Humanities Council's speakers' bureau.

Chapter 6
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 in which one party sues another for a wrong done, 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 or dispute resolution. 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 circuit or 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 circuit 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 (circuit or 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 maintenance, child support, or both 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 Seventh 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 for the 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 self-represented 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 a potential juror.

challenge to the array – Questioning the qualifications of an entire jury panel; usually done 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 a jury is 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 before 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 or her 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 the 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 pretrial efforts of a party to a lawsuit and his, 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 the 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, as a result of 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 one month – and sometimes one 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.

I

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 disability 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 – 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 not withstanding 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 term referring to 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 Wisconsin 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 circuit or trial court found by an appeals court to be very obvious and sufficient to require reversal of the circuit or trial court's 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 to provide legal assistance to organizations involved in social causes such as environmental, consumer, minority, youth, domestic violence, and educational 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; to 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 mind 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, 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 – Out-of-pocket costs incurred 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 pretrial 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 replaced 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 U.S. 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.

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