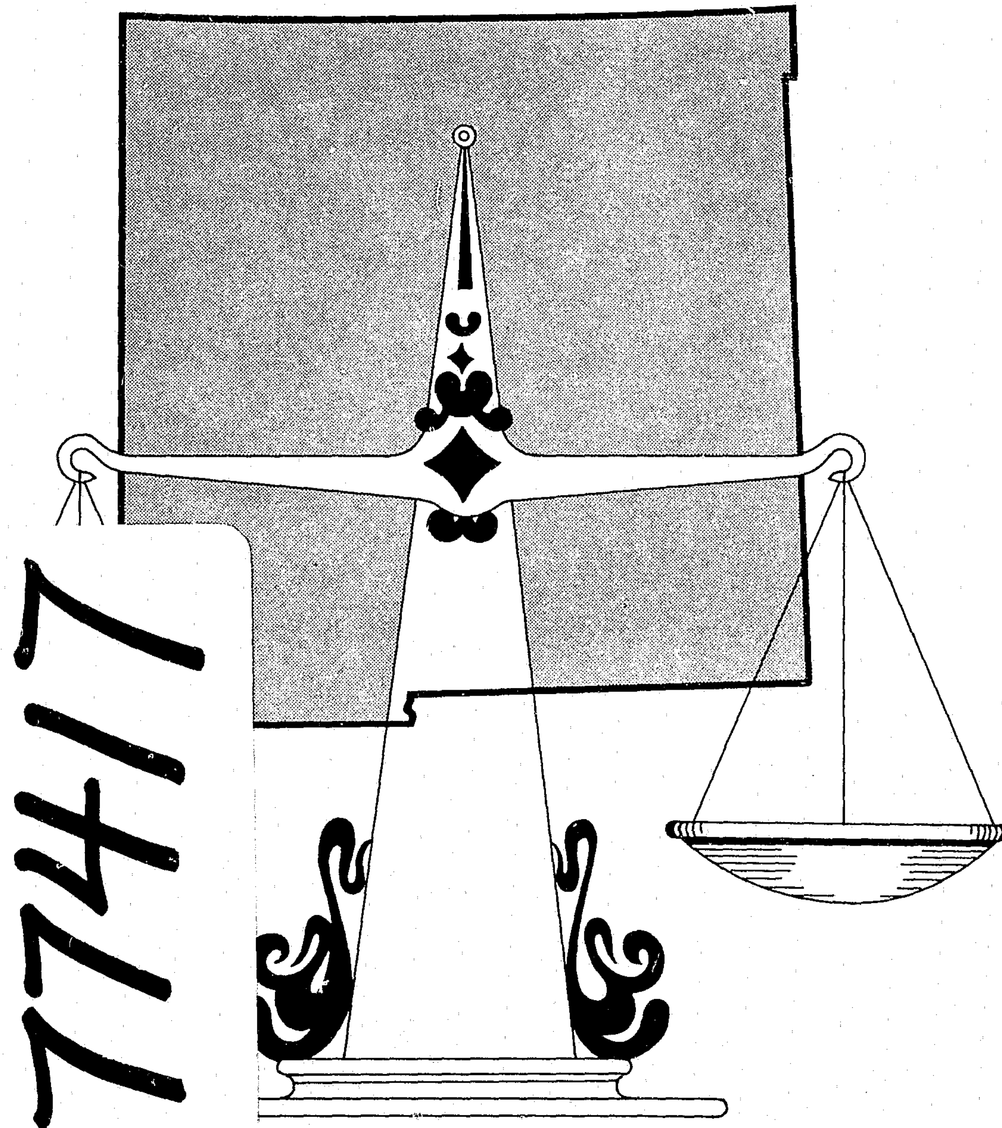
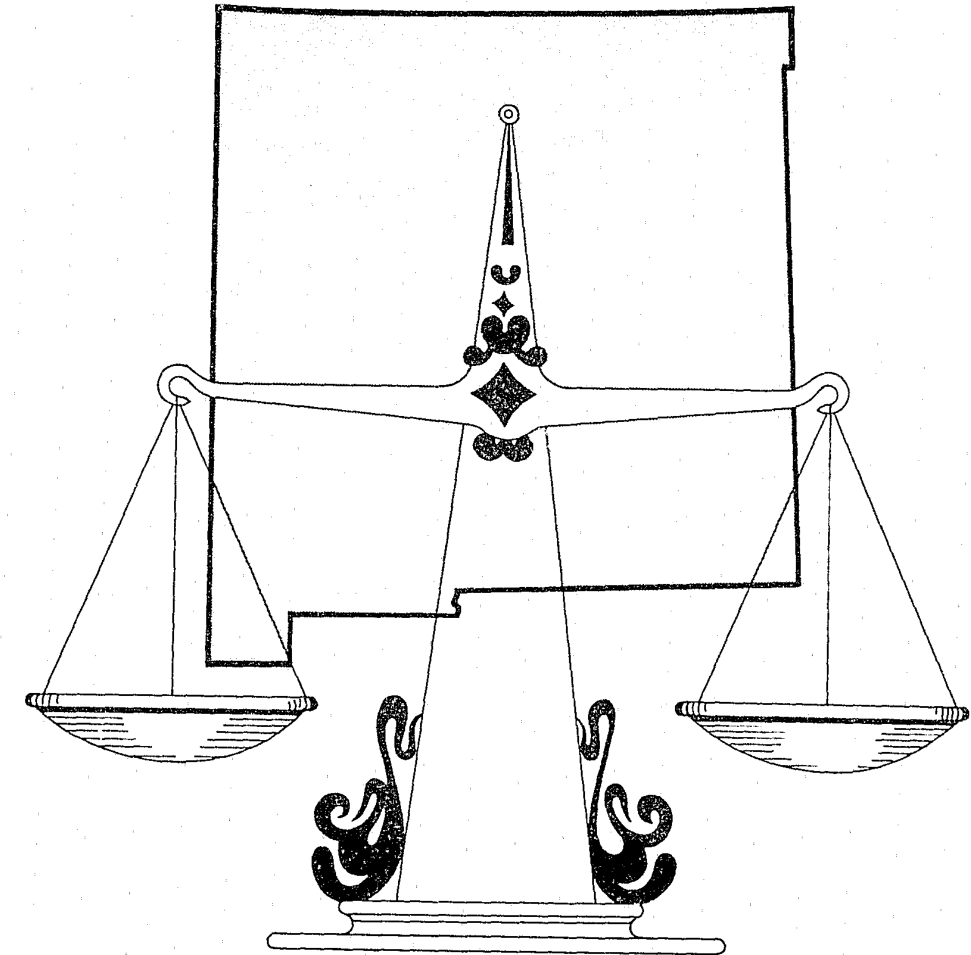
If you have issues viewing or accessing this file contact us at NCJRS.gov.

NEW MEXICO STATE COURTS



New Mexico State Courts



Compiled by Ruth J. Thomas,
Administrative Assistant to the
Chief Justice of the Supreme Court of New Mexico

Made possible in part through a grant from the
Law Enforcement Assistance Administration

NCJRS

APR 24 1981

ACQUISITIONS

Table of Contents

The New Mexico Judicial System........................ iii

Introduction.. iv

Judicial History... v

Magistrate Court... 1

District Court... 2

How a Lawsuit Begins..................................... 2

The Trial.. 6

Court of Appeals.. 13

Supreme Court... 13

Appeal.. 13

Glossary.. 17

U.S. Department of Justice
National Institute of Justice

This document has been reproduced exactly as received from the person or organization originating it. Points of view or opinions stated in this document are those of the authors and do not necessarily represent the official position or policies of the National Institute of Justice.

Permission to reproduce this ~~copyrighted~~ material has been granted by

PUBLIC DOMAIN
U.S. Dept. of Justice

to the National Criminal Justice Reference Service (NCJRS).

Further reproduction outside of the NCJRS system requires permission of the ~~copyright~~ owner.

Introduction

There are three branches of government in New Mexico and in the United States. The Legislative branch makes the laws, the Executive branch enforces the laws and the Judicial branch interprets the laws. All three branches of government work together to protect the welfare of its citizens.

The court system is designed to settle disputes which arise between people who live in a complex society. Instead of deciding arguments by brute force, where the strongest opponent wins, conflicts are resolved by an impartial party who decides what is fair or right. This system results in a far more peaceful and productive society because people are not constantly killing their neighbors or destroying property. This is the purpose of the civil laws — to make sure that a person may protect himself and his property from others. The criminal laws are rules set up by society so that a group of people may live together in peace and safety.

This booklet shows how the court system of New Mexico works to protect the rights of its citizens. It is the first in a series of publications by the Administrative Office of the Courts as part of its Public Education Awareness Program.

Diane C. Trainor
Judicial Education Coordinator

New Mexico's Judicial History

Even before it gained its right to a star in the flag, New Mexico's Judicial past was one of colorful figures and exciting facts. New Mexico's history began when most of America was still unexplored wilderness.

It was controlled by Spain from the 16th to the 19th century. Then in 1821 Mexico revolted, gaining its independence and until 1846 New Mexico was a territory of Mexico. In 1836 a new constitution was adopted providing for the departmentalization of New Mexico under central government in Mexico City. It is here we begin to see the first signs of Judicial organization.

Mexico divided the territory into districts governed by appointed *prefects,* and the districts into counties governed by *alcaldes*. An *alcalde,* untrained in the law, was the only justice actively functioning at the time. Any person with a complaint would appear before an *alcalde,* who would order the complainant to summon the defendant. The *alcalde* would hear their oral arguments and, based upon who might be the more convincing of the two, make a decision.

People had little faith in the government or its administration of justice and, when the United States finally took over, it was a long time before this faith was rekindled and the people accepted their new judicial system.

In 1846, Brigadier General Stephen Kearney marched on Santa Fe to overthrow the Mexican Government and resume military control of New Mexico. One of his first decisions was to appoint a three-man Superior Court as the highest tribunal of the territory. Chief Justice Joab Houghton opened the first term of the New Mexico Court ever held by an American judge on December 1, 1846. This court, however, was very ineffective due to the military domination. There were many clashes with the military authorities which kept the court's jurisdiction to a bare minimum. Only a year later, it was evident that the Superior Court was in need of reform. Another factor weakening the system was that a Superior Court Justice, also a trial judge, would review a case he had earlier decided at the district level. As a result, the Constitutional Convention of 1849 provided for a fourth Superior Court Justice. He was designated as the appellate judge, and the remaining three, as district judges.

Not suprisingly, by 1851 additional changes were necessary and the Legislature passed the Organic Act which provided for judicial districts, terms of office, and staggered court terms so as to provide for substitution of judges in case of illness or absence. It also allowed for the few lawyers in the state to travel from district to district.

The first Monday in January 1851, the Supreme Court met for the first time in Santa Fe. It would remain there for three weeks, each Justice finally returning to his respective district for a Spring and Fall session. Attorneys and judges alike were busy riding the circuit in those days. Obviously there were few cases appealed due to the expense and distance involved. However, from 1879 on, the increase in caseloads became greater due to the coming of the railroad, improved transportation conditions and increase in population. As the backlogs continued to grow, the need was recognized for an additional judicial district, and in 1885 Governor Edmund Ross recommended there be a 4th judicial district established. The caseload continued to grow so rapidly that by

1890 the situation was again reviewed, and the New Mexico Bar Association moved to increase the districts from four to six. They only succeeded in obtaining a fifth, however.

In 1895 Governor W.T. Thornton recommended the separation of the Supreme Court from the district court. He suggested a Court of Last Resort be established and it be comprised of three to five judges, and, in addition, there be district judges representing judicial districts. The need was obvious as the present courts were experiencing a 2-year backlog. In 1904 a sixth district was established followed by a seventh in 1909, and an eighth in 1911.

From 1846 to 1912, a total of sixty men had served, one time or another, as a Supreme Court Justice. The great turnover is explained in part by the process of political appointment. When a new administration took office in Washington, D.C., new judges were appointed, resulting in cases having to be reargued and serious delay in settling disputes. The sessions, however, brought great excitement and drama to the small New Mexico communities in those days. Spectators, lawyers, defendants and witnesses alike would come from miles around to join in the revelry.

Finally in 1912, New Mexico gained admission to the Union. And on January 10, 1912, a new three-judge State Supreme Court was sworn in. They began work on January 15, 1912, and the days of New Mexico's territorial justice were at an end.

Dan Sosa, Jr.
Chief Justice
New Mexico Supreme Court

Magistrate Court

Magistrate court is the state court of limited jurisdiction or authority. Under state law, magistrate courts have the power to decide certain types of cases. The majority of cases are handled in the magistrate courts. There is a minimum of one magistrate court in each county of the state. The judges in this court do not have to be lawyers (except in Bernalillo County), but they are required to have a high school degree and be a resident voter. The magistrate court is called the "people's court" because a citizen can present his own case, usually without using an attorney. Although the proceedings in magistrate court are similar to those in the district court, they are simplified so that everyone has a forum available to present his case.

The jurisdiction of the magistrate court is limited in civil cases to claims involving not more than $2,000, excluding interest and costs. Certain types of cases are also excluded, such as those involving real estate or domestic relations. The people's court, however, can decide both contract and tort claims within the $2,000 limit. A party also may request a jury trial of six members on appropriate matters. Such trials are generally more informal than in district court but the procedures are similar.

The magistrate court is also empowered to decide certain types of criminal cases. Violations of the state motor vehicle code (traffic citations) are handled by the magistrate court. Minor criminal offenses called misdemeanors also are decided in magistrate court. A misdemeanor is a crime which carries a penalty of imprisonment for less than one year and/or a fine of not more than $1,000. A criminal trial similar to those conducted in district court is authorized in magistrate court.

The jurisdiction of a magistrate over felony cases is much more limited than in misdemeanor cases. A defendant who is charged with a felony makes his first appearance before a magistrate. At this time the defendant is informed of the charges against him and his constitutional rights are explained. Although this appearance is sometimes referred to as an arraignment, this is not the proper term since the defendant does not enter his plea at this time. The defendant's plea is entered in district court. After the first appearance, a preliminary hearing is held and the defendant is either released or bound over to district court. (See page 6 for explanation of Preliminary Hearing.)

District Court

The district court is the state court of general jurisdiction, i.e., it is authorized to hear and determine all the civil and criminal cases which are not specifically exempted from its jurisdiction. The judges of the district court are elected for six-year terms. In order to be a district court judge, a person must be at least 30 years old, have practiced law in the state for a minimum of three years and be "learned in the law." There are 13 judicial districts in New Mexico and each county has a district court. Each district court serves the several counties contained in its judicial district.

How a Lawsuit Begins. Court actions fall into two broad categories — civil and criminal. Civil cases are those in which an individual, business or agency of government seeks damages from another individual, business or agency of government; these constitute the great bulk of the cases in the courts. The most common example is the suit for damages arising from an automobile accident. In legal terms this is a *tort* action. A criminal action is one brought by the state or federal government against an individual charged with committing a crime.

Civil Cases. This section deals with an average civil case. Civil actions generally are brought either for breach of a contract, or for a wrong (or tort).

A person who believes that he has been injured or damaged by another person or business consults his lawyer and tells him the facts and circumstances which he believes constitute a claim. The attorney takes the client's statement, interviews possible witnesses, examines those laws and court decisions on which the claim is founded, and tries to determine whether the client has a legal claim.

Jurisdiction and Venue. If the attorney decides the client does have a claim, he must select the proper county or district in which to file the case. A court has no authority to render a judgment in any case unless it has *jurisdiction* over the person or property involved. This means that the court must be able to exercise control (obtain service of summons) over the defendant, or that the property involved must be located in the county or district under the court's control.

Certain actions are said to be *local* — i.e., they may be brought only in the county where the subject matter of the litigation is located. An example of a local action would be an action to determine the ownership of a piece of land. Other actions are said to be *transitory* — i.e., they may be brought in any county in any state where the plaintiff resides or where the defendant may be found and served with summons. A suit for personal injuries is an example of a transitory action.

Venue means the county or district where the action is to be tried. Venue may be changed to another county or district upon application and a showing of good cause or by agreement. Where wide publicity has been given to a case before trail a change of venue from the county can be sought in an effort to secure jurors who have not formed an opinion as to the facts. Venue also may be changed to served the convenience of witnesses.

Bringing the Action. After selecting the proper court the attorney prepares and files a *complaint* or *petition.* His client is the *plaintiff* and the person or firm against whom the case is filed is the *defendant.* In certain types of cases the *plaintiff* is referred to as the *petitioner* since he is petitioning the court for relief, and the defendant is then referred to as the *respondent.*

The name of the court and the names of the parties constitute the *caption* or *style* of the case. The petition states the facts of the plaintiff's action against the defendant, and sets forth the amount of damages, judment or other relief sought.

The attorney for the plaintiff also requests the clerk of the court to issue a *summons.* The summons is official notice to the defendant that a case has been filed against him. A copy of the complaint is attached to the summons. The plaintiff then directs the sheriff of the county to serve a copy of the summons and complaint upon the defendant. Any person above the age of 18 who is not involved in the suit, may serve the summons. When the sheriff has served the summons, he returns the original of the summons to the court, with a notation that the defendant has been served on a certain day. After service of the summons, the defendant has a certain period of time (usually 20 to 30 days) within which to file his *pleading,* or answer, to the plaintiff's complaint.

Preparation for Trial. The plaintiff and defendant, through their respective attorneys, attempt to gather all of the pertinent facts bearing upon the case. The defendant may begin his defense by filing certain pleadings, among which may be one or more of the following:

- *Motion to Quash Service of Summons.* This place before the courts the question of whether or not the defendant has been served with summons as provided by law.
- *Motion to Strike.* This motion calls upon the court to rule whether or not the plaintiff's complaint contains irrelevant, prejudicial, or other improper matter; if so, the court may order such matter deleted.
- *Motion to Make More Definite and Certain.* Such a motion requires the plaintiff to set out the facts of his complaint more specifically, or to describe his injury or damages in greater detail, so that the defendant will have adequate notice of what injury is complained of and so that he can answer more precisely.
- *Motion to Dismiss.* This motion may be based on several grounds. If the defendant thinks that the suit was brought in the wrong court or in the wrong county, he may move to dismiss for lack of jurisdiction or for improper venue. This motion may also be made when the defendant feels that the plaintiff has no legal cause of action, even if everything the plaintiff alleges in his complaint is true. When a person who was involved in the transaction giving rise to the suit has not been included, the defendant may bring this motion for failure to join such person as an indispensable party.
- *Motion for Change of Venue.* A defendant may move to change the place in which his trial was scheduled to be heard if he believes he cannot receive a fair and impartial trial in that county.
- *Answer.* This statement by the defendant denies the allegations in the plaintiff's complaint, or admits some and denies others, or admits all and pleads an excuse. The purpose of such admissions and denials is to clarify precisely which issues are left to be tried by the court or jury.
- *Counter-Claim.* This pleading may

be filed by the defendant either separately, or as part of his answer. The counter-claim asks for relief or damages on the part of the defendant against the original plaintiff. When such a step is taken, the plaintiff may then file any of the foregoing motions to the counter-claim, except a motion to quash service of summons.

- *Reply to Counter-Claim.* The plaintiff may file a reply to the counter-claim which answers any new allegations raised by the defendant in his counter-claim.

Note: A *pleading* refers to an answer or other formal document filed in the action. The word should not be used to describe an argument made in court by a lawyer.

Pre-Trial Discovery Procedure.

- *Taking of Depositions.* A *deposition* is an out-of-court statement of a witness under oath, intended for use in court or in preparation for trial. Either of the parties in a civil action may take the deposition of the other party, or of any witness. Depositions frequently are necessary to preserve the testimony of important witnesses who cannot appear in court, or who live in another state or jurisdiction. This might be the testimony of a friendly witness, one whose evidence is considered helpful to the plaintiff or defendant. Or it might involve a witness of the opposing party whose statements are taken to discover the nature of the evidence he would give if summoned as a witness in the trial.

  A state may not compel the presence at a civil trial of a witness who is outside the state. A person who seeks to take the deposition of such witness must notify the attorney for the opposing party before he goes to the other jurisdiction to take the witness' deposition. If the witness is living in a foreign country, a commission — commonly called *letters rogatory* — is issued by the court directed to an official giving him the power to take the witness' deposition and forward it to the court. Then, if the witness is absent from the jurisdiction or unable to attend the trial in person, his deposition may be read in evidence. If a person who has given a deposition also appears as a witness at the trial, his deposition may be used to attach his credibility, if his oral testimony at the trial is different from that contained in the deposition.

  Parties to the lawsuit are required to appear for their depositions; witnesses may be subpoenaed.

  When a deposition is taken, the attorney for each side is present along with the witness and a court reporter. Both attorneys are allowed to question the witness under oath. The court reporter records all that is said and then types the testimony so that each side has a copy of the recorded testimony.

- *Discovery.* In addition to the taking of depositions in an attempt to reveal the facts upon which another party relies, either party may submit written questions, called *interrogatories*, to the other party and require that such be answered under oath.

  Other methods of discovery are: Requiring adverse parties to produce books, records and documents for inspection, to submit to a physical examination, or to admit or deny the genuineness of documents.

Pre-trial discovery procedures greatly reduce the actual trial time because the court requires the parties to agree on the introduction of undisputed evidence and exhibits.

The Pre-Trial Conference. After all of the pleadings of both parties have been filed and the case is *at issue*, many courts then set selected cases for pre-trial hearings. At this hearing the attorneys appear, generally without their clients, and in the presence of the judge seek to agree on undisputed facts. These are called *stipulations;* they may include such matters as time and place in the case of an accident, the use of pictures, maps or sketches, and other matters, including points of law which the court believes might shorten the actual trial time without infringing upon the rights of either party. Then, if a trial date has not been set, the court assigns a specific date for the case. Pre-trial procedure, used extensively in the federal district courts, and in most state district courts, very often results in the settlement of the case without trial.

CRIMINAL CASES

Bringing the Charge. Criminal charges are instituted against an individual in one of three ways: 1) through a complaint filed in magistrate court; 2) through an *indictment*, or true bill, voted by a grand jury, or 3) through the filing of an *information* in district court by the prosecuting attorney (the district attorney or the attorney general), alleging the commission of a crime. In any case the charge must set forth the time, date and place of the alleged criminal act as well as the nature of the charge.

The Grand Jury. The grand jury is a group of 12 citizens summoned by the court to inquire into crimes committed in the county, or in the case of federal grand juries, in the federal court district. Its proceedings are not only private but secret. However, a witness before a grand jury is perfectly free to describe his testimony to anyone he pleases, after he leaves the grand jury room. To this extent such proceedings are not secret.

In New Mexico the grand jury is convened at regular intervals, or it may be called at special times by the court to consider important cases. The grand jury has broad investigative powers; it may compel the attendance of witnesses, require the taking of oaths, and compel answers to questions and the production of records. Ordinarily, however, the grand jury hears such witnesses as the prosecutor calls before it and considers only the cases presented to it by the prosecutor. Nevertheless, from time to time, a grand jury may undertake inquiries of its own, in effect taking the initiative away from the prosecutor. In common parlance this is known as a "runaway" grand jury.

The grand jury's traditional function is to determine whether information presented by the prosecutor, or discovered by its own inquiries, is enough to warrant the return of an indictment charging a person or persons with a particular crime. If it concludes that the evidence does not warrant a formal charge, it may return a *no bill.*

Arrest. When an indictment is returned by a grand jury, or a complaint or an information filed by the prosecuting attorney, the clerk of the court issues a warrant for the arrest of the person charged, if he has not already been arrested and taken into custody. The law usually requires that in a *felony* case (generally, a crime for which a person may be placed in the penitentiary — therefore more serious in nature than a *misdemeanor*) the defendant must promptly be brought before a magistrate (in federal cases, the U.S. Magistrate) and be permitted to post bond in order to be released from custody, and to appear at a *preliminary hearing.* In some cases of capital offenses the defendant may

not be eligible for release on a bail bond.

Law enforcement officials may not hold a person for an unreasonable length of time unless a criminal charge is filed. After the defendant is formally charged with a crime, he is entitled to an attorney at all times. If he is unable to pay for an attorney and if he asks for counsel, the court is required to appoint an attorney to represent him, without cost to him.

The Preliminary Hearing. An individual charged with a crime is entitled to a preliminary hearing before a magistrate or district court judge and the court will set a hearing within ten days if the defendant is in custody, or 20 days if the defendant is not in custody. At the hearing the state must show that there is probable cause for the magistrate to believe the defendant has committed the crime with which he is charged. The defendant is entitled to be present at this hearing, but he may or may not present evidence on his own behalf, as he chooses.

If the magistrate believes the evidence justifies it, he will order the defendant *bound over* for trial in the district court — i.e., placed under bond for appearance at trial, or held in jail if the charge involved is not a bailable offense, or if the defendant is unable to post bond. On the other hand, the magistrate may dismiss the charge and order the defendant released if he concludes the state has failed to produce enough evidence in the preliminary hearing to show probably cause that the defendant committed the offense.

In most instances a criminal case is placed on the court's calendar for *arraignment.* On the date fixed, the accused appears, the complaint, indictment or information is read to him, his rights are explained by the judge, and he is asked whether he pleads *guilty* or *not guilty* to the charge. If he pleads not guilty, his case will be set later for trial; if he pleads guilty, it ordinarily will be set later for sentencing. In cases of minor offenses, sentences may be imposed immediately.

Preparation for Trial. As in civil cases, very careful preparation on the part of the state and the defense is done before the trial. However, the defense may first enter a motion challenging the jurisdiction of the court over the particular offense involved, or over the particular defendant. The defense attorney also may file a motion for dismissal, as in a civil suit. In preparing for trial, attorneys for both sides will interview prospective witnesses, and if thought necessary, secure expert evidence, and gather testimony concerning ballistics, chemical tests, costs and other similar data.

THE TRIAL — CIVIL OR CRIMINAL

While in detail there are some differences in trial procedure between civil and criminal cases, the basic pattern in the district court is the same. Consequently this section treats the trial steps collectively.

The Jury List. The district court clerk randomly selects the names of persons to serve on juries from the *pollbooks* — a list of voters — and places the names on a master jury wheel. A computer may also be used to compile this list. The district court may also appoint a group of people called a *jury commission* to help select the jury list. The trial jury in either a civil or criminal case is called a *petit jury.* It is chosen by lot by the court clerk from the compiled jury list and drawn from a jury wheel. The jury wheel is a container with a transparent window from which the juror lot slips are drawn.

On occasion, the qualification of all the jurors may be challenged. This is called a *challenge to the array,* and generally is based on the ground that the officers charged with the duty to

select the jurors did so in an illegal manner.

Officers of the Court. The *Judge* is, of course, the officer who is elected to preside over the court. If the case is to be tried before a jury, the judge rules upon points of law dealing with trial procedures, presentation of the evidence and the law of the case. If the case is tried before the judge alone, he performs the function of the jury and determines the facts in addition to performing the aforementioned duties.

The *court clerk* is an officer of the court, who at the beginning of each court session of approximately three months, upon the judge's instruction, gives an oath to the entire panel of prospective jurors (*veniremen*) for all cases to be heard during the session. By this oath the venireman promises that if called he will truly answer any question touching upon his qualifications to sit as a juror in the case. Any venireman who is disqualified by law, or has a valid reason to be excused under the law, ordinarily is excused by the judge at this time. A person may be disqualified from jury duty because he is not a *resident voter,* or at the discretion of the judge because of physical or mental illness. A juror is not required to serve on a panel for an extended period of time. To replace the disqualified veniremen, the court clerk draws the names of additional veniremen from a box, and they are accepted as eligible jurors if qualified.

The *bailiff* is an officer of the court whose duties are to keep order in the courtroom, to call the witnesses, and to take charge of the jury, as instructed by the court, whenever the jury may not be in the courtroom, and particularly when, having received the case, the jury is deliberating upon its decision. It is the duty of the bailiff to see that no one talks with or attempts to influence the jurors in any manner whatsoever.

The *court reporter* has the duty of recording all of the proceedings in the courtroom, including testimony of the witnesses, objections made to evidence by the attorneys and the rulings of the court, and listing and marking for identification any exhibits offered or introduced into evidence.

The *attorneys* are officers of the court whose duties are to represent their respective clients and present the evidence on their behalf, so the jury or the judge may reach a just verdict or decision.

The role of the attorney is sometimes misunderstood, particularly in criminal proceedings. Our system of criminal jurisprudence considers every defendant has the right to be represented by legal counsel, regardless of the unpopularity of his cause and regardless of whether he is guilty. This is a constitutional safeguard. It is entirely ethical for an attorney to represent a defendant whom the community believes to be guilty. The defendant who pleads innocent is entitled to every protection which the law affords him and to a trial in accordance with well-established rules.

One of the Canons of Professional Ethics of the American Bar Association provides that: "It is the right of the lawyer to undertake the defense of persons accused of crime, regardless of his personal opinion of the guilt of the accused; otherwise innocent persons, victims only of suspicious circumstances, might be denied proper defense."

The significance of the provision is clear: Every defendant is entitled to counsel in order that he be protected from conviction on insufficient evidence.

Selecting the Jury. In most criminal cases there are 12 jurors. Most civil cases are tried without a jury, but in those where a jury is requested, there is a jury of six unless a party requests a jury of 12. Alternate jurors are sometimes selected to take the places of members of the regular

panel who become disabled during the trial. These alternate jurors hear the evidence just as do the regular jurors, but do not participate in the deliberations unless a regular juror becomes disabled.

The jury selection begins with the calling, by the court clerk, of at least 12 veniremen whose names are selected at random from a wheel or box, to take their places in the jury enclosure. The attorneys for the parties, or sometimes the judge, may then make a brief statement of the facts involved, for the purpose of acquainting the jurors with enough facts so that they may intelligently answer the questions asked by the judge and the attorneys. The questions include the name, the occupation, the place of business and residence of the prospective juror, and any personal knowledge he may have of the case. If the venireman expresses an opinion or prejudice which will affect his judgment in the case, the court may thereupon dismiss him for *cause,* and another will be called by the court clerk. This questioning of the jurors is known as the *voir dire,* a legal term meaning "to tell the truth."

There is no limit on the number of jurors who may be excused *for cause.* In addition to the challenges for cause, each party has the right to exercise a specific number of *peremptory challenges.* This challenge permits an attorney to have the judge excuse a particular juror without having to state a cause. If a peremptory challenge is exercised, another juror then is called, until attorneys on both sides have used up all of the peremptory challenges permitted by law, or they have waived further challenges. The number of peremptory challenges is limited and varies with the type of case and the number of jurors.

Thus, the jury is selected and then is sworn in by the court clerk to try the case. The remaining members of the jury panel are excused and directed to report at a later time or date when another case will be called, or are told to remain for another scheduled case.

Separating the Witnesses. In certain cases, civil or criminal, the attorney on either side may advise the court that he is *"calling for the rule"* on witnesses, which means that except for the plaintiff or complaining witness and the defendants and certain designated witnesses, all witnesses who may testify for either party will not be allowed in the courtroom until they are called to testify. These witnesses are warned by the judge not to discuss the case or their testimony with other witnesses or persons, except the attorneys. After testifying the witnesses often remain in the courtroom. If the rule is not called for, the witnesses may stay in the courtroom if they wish.

Opening Statements. After selection of the jury, the plaintiff's attorney, or attorney for the state in a criminal case, may make a brief opening statement for the purpose of advising the jury what he intends to prove in the case. This statement must be confined to facts intended to be shown by the evidence and cannot be argumentative. The attorney for the defendant also may make an opening statement for the same purpose, or may reserve the opening statement until the end of the plaintiff's or state's case. Either party may choose not to make an opening statement.

Presentation of Evidence. The plaintiff in a civil case, or the state in a criminal case, will begin the presentation of evidence with their *witnesses.* Among these usually will be included the plaintiff in a civil case or the complaining witness in a criminal case, although they are not required to testify.

A witness may testify to a matter of fact. He can tell what he saw, heard (unless it is hearsay as

explained below), felt, smelled or touched through use of his physical senses. Generally, he cannot state his opinion or give his conclusion unless his opinion is based on his perceptions or unless it clarifies his testimony or a disputed fact. A witness who has been first qualified in a particular field as an *expert* may give his opinion based upon a set of facts and may state the reasons for that opinion. These facts are put to the expert in a question called a *hypothetical question.* The facts contained in this hypothetical question are assumed to be true, but the opposing party may challenge any of these facts.

Generally, a witness cannot testify to *hearsay,* that is, what someone else, other than a party to the suit, has told him outside of the presence of the parties to the action if the testimony is intended to prove the truth of what the other person said. Also, a witness will not be permitted to testify about matters which are too remote to have any bearing on the decision in the case, or matters that are otherwise irrelevant and immaterial.

An attorney may not ask *leading questions* of his own witness, particularly about matters which are in dispute in the lawsuit, although routine, noncontroversial matters are sometimes asked with leading questions. A leading question is one which suggests the answer desired, for instance: "Isn't it true that the defendant had been drinking for five hours prior to the accident?" A non-leading question could be worded as, "How long had the defendant been drinking prior to the accident?"

Objections will be made by the opposing counsel to leading questions, or may be made to a question that calls for an opinion or conclusion on the part of the witness, or which obviously will require an answer based on hearsay. There are many other possible reasons for objections under the rules of evidence. Objections are often made in the following form: "I object to that question on the ground that it is incompetent, irrelevant, and immaterial and for the further reason that it calls for an opinion and conclusion of the witness." The judge may thereupon sustain or deny the objection, and if sustained, another question must then be asked or the same question rephrased in proper form.

If an objection to a question is sustained on either direct or cross-examination, the attorney asking the questions may make a "tender of proof." The jury is removed from the courtroom and the attorney questions the witness on the matter ruled inadmissible. The tender forms part of the record of appeal. If the objection is overruled, the witness may then answer in the presence of the jury.

A witness also may be used to identify documents, pictures, or other physical exhibits to be offered in evidence in the trial.

Cross-Examination. When plaintiff's attorney or the state's attorney has finished his direct examination of the witness, the defendant's attorney or opposing counsel may then cross-examine the witness upon any matter about which the witness has already been questioned in direct examination. The cross-examining attorney may ask leading questions for the purpose of inducing the witness to testify about matters which he may otherwise have chosen to ignore. On cross-examination, the attorney may try to bring out any prejudice or bias of the witness, such as his relationship or friendship to the party, or other interest in the case. He is permitted to ask the witness if he has been convicted of a felony or crime involving moral turpitude, since this bears upon the credibility of the witness.

The plaintiff's attorney may object

to certain questions asked on cross-examination on the ground that they are improper questions because they deal with facts not touched upon in the direct examination, and on the grounds mentioned previously.

Re-Direct Examination. After the opposing attorney is finished with his cross-examination, the attorney who called the witness has the right to ask questions on *re-direct examination*. The re-direct examination covers new matters brought out on cross-examination and generally is an effort to re-establish the believability of a witness whose testimony on direct examination has been weakened by cross-examination. Then the opposing attorney may re-cross-examine. At the conclusion of the plaintiff's or state's evidence, the attorney will announce that the plaintiff or state *rests*.

Motion for Directed Verdit. At the conclusion of the plaintiff's or state's case, out of the presence of the jury, the defendant's counsel may make a motion to end the plaintiff's or state's case on the ground that there is not enough evidence to uphold a verdict for the plaintiff or the state. This is known as a *motion for a directed verdict* or a verdict which the judge orders the jury to return in behalf of the defence. The judge will thereupon either grant or deny the motion. If it is granted, the case is concluded, by the court's having the bailiff hand the jury foreman the proper verdict form to sign. If it is overruled, the defendant then is given the opportunity to present his evidence.

Presentation of Evidence by the Defendant. After the plaintiff has presented his case, the defendant proceeds with his side. The defense attorney may elect to present no evidence, particularly in a criminal case; or he may present certain evidence but not place the defendant upon the stand. In a criminal case the defendant need not take the stand unless he wishes to do so. The reason for this is that the state has the *burden of proof*, i.e., it must prove the defendant guilty of the crime.

In a civil case, the plaintiff must prove his case by a *preponderance of the evidence*. This merely means the greater weight of the evidence.

In a criminal case, the evidence of guilt must be *beyond a reasonable doubt*.

The defendant is presumed to be not negligent or liable in a civil case, and not guilty in a criminal case. The defense attorney may feel that the burden of proof has not been met, or that presentation of the defendant's witnesses might strengthen the plaintiff's case. If the defendant does present evidence, he does so in the same manner as the plaintiff or the state, as set out above, and the plaintiff or state will cross-examine the defendant's witnesses.

Rebuttal Evident. At the conclusion of the defendant's case, the plaintiff's or state's attorney may then present rebuttal witnesses or evidence, designed to counter the testimony and evidence presented by the defendant. The matter covered is evidence on which the plaintiff or state did not present any evidence in its *case in chief* initially; or it may be the presentation of a new witness who can contradict the defendant's witness. If there is a so-called *surprise witness,* this is often where you will find him. At the conclusion of the rebuttal evidence, the defendant may present additional evidence to contradict it.

Final Motions. At the conclusion of all the evidence, out of the presence of the jury, the defendant may again renew his motion for a directed verdict. If the motion is sustained, the case is concluded. If overruled, the trial proceeds.

Thus, the case has now been concluded on the evidence and it is ready to be submitted to the jury.

Conferences during the Trial. Occasionally during the trial the lawyers will ask permission to approach the bench and speak to the judge, or the judge may call them to the bench. A whispered conference follows, having to do with the admissibility of certain evidence, irregularities in the trial or other legal matters. The questions involved in a bench conference are outside the province of the jury since this is a matter of law for the judge to decide. If the ruling cannot be made quickly, the judge will order the jury to retire, and then will hear the arguments of the attorneys outside the presence of the jury.

Whenever the jury leaves the courtroom, the judge will admonish them not to form or express opinion or discuss the case with anyone.

Instructions to the Jury. While the giving of instructions to the jury on the legal issues is the responsibility of the judge, the attorneys for each side submit a number of instructions requested by the judge designed to apply the law to the facts in evidence. The judge will indicate which instructions he will give and which he will refuse, and the attorneys may make objections to such rulings for the purpose of the record in any appeal.

The judge reads these instructions to the jury. This is commonly referred to as the judge's *charge* to the jury. The instructions cover the law as applicable to the case. Only the judge may decide what the law is, and not the jury.

In reading aloud the instructions, the judge will state the issues in the case, define any terms or words necessary, and tell the jury what issues it must decide if it is to find for the plaintiff or state, or for the defendant. He will advise the jury that it is the sole judge of the facts and of the credibility of witnesses; and that upon leaving the courtroom to reach a verdict, it must elect a *foreman* of the jury and then reach a decision based upon the judgement of each individual juror.

In a state court, the instructions to the jury are given before the closing arguments and it is proper for the attorneys to comment on them and relate them to the evidence. In federal court, the closing arguments are made before the jury is charged and the attorneys may still refer to the instructions which will be given.

Closing Arguments. The attorney for the plaintiff or state will present the first argument in closing the case. Generally, his purpose will be to summarize and comment on the evidence in the most favorable light for his side. He cannot argue issues outside of the case or talk about evidence that was not presented. He is not allowed to comment on the defendant's failure to take the stand as a witness in a criminal case since any defendant has a constitutional right not to take the stand.

He may talk about the facts and all inferences that could properly be drawn therefrom. If he appears to talk about improper matters, the opposing attorney may object and the judge will thereupon rule upon the objection. If the offending remarks are deemed seriously prejudicial, the opposing attorney will ask that the jury be instructed to disregard them, and in some instances may move for a *mistrial,* i.e., that the present trial be terminated and the case be set for retrial at a later date.

The defendant's attorney will next present the argument on behalf of the defendant. He usually answers the statements made in the opening argument, points out defects in the plaintiff's case, and summarizes the facts favorable to his client. Thereafter, the plaintiff or state is entitled to the concluding argument in which

the attorney answers the defendant's argument and makes a final appeal to the jury.

If the defendant chooses not to make a closing argument, which sometimes occurs, then the plaintiff or state loses the right to the last argument.

In the Jury Room. At the conclusion of arguments the jury is taken to the jury room by the bailiff to begin its deliberations. The bailiff will sit outside and not permit anyone to enter or leave the jury room. Ordinarily, the court has furnished the jury with written forms of all possible verdicts which it might reach, so that when a decision is reached the jury can choose the proper verdict form. If the decision is unanimous, it will be signed by the foreman of the jury, and returned to the courtroom.

In a criminal case the decision of the jury must be unanimous. In New Mexico in civil cases, only ten out of twelve jurors or five out of six jurors need agree to reach a verdict. However, all federal courts require a unanimous verdict. No one may attempt to *tamper* with the jury in any way while it is deliberating.

If the jurors cannot agree on a verdict, the jury is called a *hung jury,* and the case may be retried before a new jury at a later date.

If the jury is out overnight the members will sometimes be housed in a hotel and secluded from all contacts with other persons. This is commonly called *sequestering the jury.* The jury may take the judge's instructions to the jury room, and on rare occasions, the jury may return to the courtroom in the presence of counsel and parties for both sides to ask a question of the judge having to do with his instructions or the evidence. In such instances the judge may reread all or certain of the instructions previously given, or supplement or clarify them by further instructions or answer limited questions regarding other matters. In most cases, the jury will be excused to go home at night, especially if there is no objection by either party.

Verdict. Upon reaching a verdict, the jury returns to the courtroom with the bailiff and in the presence of the judge, the parties and their respective attorneys, the verdict is read aloud in open court by the court clerk. Attorneys for either party, but usually the losing party, may ask that the jury be *polled,* in which case each individual juror will be asked if the verdict is his verdict. It is rare for a juror to say that it is not his verdict. When the verdict is read and accepted by the court, the jury is dismissed, and the trial is concluded.

Motions after Verdict. Some motions are permitted after the verdict is rendered. A *motion for judgment non obstante verdicto* (a motion for judgment n.o.v.) may be made after verdict and before judgment. This motion requests the judge to enter a judgment for one party notwithstanding the verdict of the jury. Ordinarily this motion raises the same questions as could be raised by a motion for directed verdict. A *motion for a new trial* sets out alleged errors committed in the trial and asks the judge to grant a new trial because of those errors.

Judgment. The verdict of the jury is ineffective until the judge enters the written *judgment* upon the verdict. In a civil damage action this judgment might read:

"It is therefore, ordered, adjudged and decreed that the plaintiff do have and recover the sum of $1,000 of and from the defendant."

At the request of the plaintiff's lawyer in a civil suit, the clerk of the court will deliver a paper called an *execution* to the sheriff, commanding him to take and sell the property of the defendant and apply the proceeds of the sale to the amount of

the judgment.

Sentencing. In a criminal case, if the defendant is convicted, the judge will set a date for sentencing or may rule at that time. In the meantime, the judge may order a pre-sentence report and may consider matters to reduce the severity of the sentence.

Rights of Appeal. If a party thinks that the decision of the lower court was incorrect, he may appeal to a higher court for review. Appeals in either civil or criminal cases may be on such grounds as: Errors in trial procedure and errors in *substantive law,* i.e., in interpretation of law by the trial judge. These are the most common grounds for appeals to higher courts although there are others.

The state's right of appeal in a criminal case is very limited. It may appeal a decision of the trial court on matters such as the dismissal of a criminal complaint or an order excluding evidence; however, it cannot appeal when new evidence of guilt is found after the defendant has been acquitted. Moreover, the state is powerless to bring the defendant to trial again on the same charge. The Constitutions of the United States and of New Mexico prevent retrial under provisions known as *double jeopardy* clauses.

Criminal defendants have a further appellate safeguard. Those convicted in state courts may seek relief by appeal to the United States Supreme Court on ground of violation of constitutional rights or by asking for a writ of habeas corpus in the federal court. This privilege serves to impose the powerful check of the federal judicial system upon any abuses that may occur in state criminal procedures.

The record on appeal consists of the papers filed in the trial court and the court reporter's transcript of the evidence. The latter is called a *transcript on appeal* and must be certified by the reporter and clerk to be true and correct. Only so much of the record need be included as will properly present the questions to be raised on appeal.

COURT OF APPEALS

The Court of Appeals consists of seven judges. These judges are elected for eight-year terms and must all be attorneys. The Court of Appeals is a court of limited appellate jurisdiction. It may only decide those types of cases that the legislature authorizes. This Court handles most of the criminal appeals (except where life imprisonment has been imposed), appeals from some state agency decisions, tort claims, workmen's compensation appeals, and appeals of probate matters.

SUPREME COURT

The Supreme Court consists of five justices who are elected for eight-year terms. The justices must be attorneys. This is the highest appellate court in the state and it has general appellate jurisdiction over those types of cases not specifically assigned to the Court of Appeals. This Court is the final authority on questions of law and may review decisions of the Court of Appeals as well as the decisions of the district court. The Supreme Court also makes the rules of procedures for all of the inferior courts and it exercises supervisory control over the other courts. It is also constitutionally authorized to issue certain remedies by writ which are not available to the Court of Appeals.

Appeal. Statutes or rules of court provide for procedure on appeals. Ordinarily, the party appealing is called the *appellant,* and the other party, the *appellee.* In certain types of cases the party asking for a review

is called the *petitioner* and the other party is called the *respondent.*

The appeal is started by filing the notice of appeal in the proper appellate court within the time prescribed. Then the transcript of the record is filed. This filing begins the running of the time within which the appellant must file his *brief,* which is a memorandum setting forth the reasons and the law upon which he relies in seeking a reversal of the trial court.

The appellee then has a specified time within which to file his answer brief. Following this, the appellant may file a second brief, or brief in reply to the appellee's brief.

When the appeal has been fully briefed, the case may be set for hearing on *oral argument* before the appellate court. Either party may petition the court for oral argument. Appeals may be submitted *on the briefs* without oral argument. Courts of appeal do not hear new evidence, and indeed it is unusual for any of the parties to the case to attend the hearing of the oral argument.

Supreme Court cases are assigned to a panel of three judges by the clerk of the court on a rotation basis. The judges do not know in advance which cases they may be assigned. After the transcript and briefs have been filed, most cases are set for oral argument. The judges on the panel hear the oral arguments and confer on the issues presented. Then the judge who is assigned to author the case writes an opinion. After the opinion is written, the other judges on the panel review it and either agree or disagree. If anyone of them disagrees, then the case is submitted to the remaining members of the court for participation. Three judges must concur as a majority before a case is final. Those who do not agree with the majority may dissent.

In the Court of Appeals, the appeals also are assigned to a panel of three judges. Not all cases are scheduled for oral argument. Unlike the Supreme Court, a majority of the judges on the Court of Appeals do not have to agree on an opinion; only a majority of the panel of three need concur. If the panel cannot agree on the disposition of a certain case, a single judge may dissent and the opinion is final with a two-to-one majority.

An appellate court will not weigh evidence and generally will reverse a trial court only for errors of law. Not every error of law will warrant a reversal. Some are *harmless errors,* i.e., the rights of a party to a fair trial were not prejudiced by them. However, an error of law, such as the admission of improper and persuasive evidence on a material issue, may constitute a *prejudicial* and *reversible error.*

Appellate Opinion. The decision of the appellate court may be returned either by an order or by an opinion. The court affirms a case by an order when the law is clear and the trial court correctly applied the law. On rare occasions, a suit is summarily reversed by order. This generally happens when there is an obvious legal precedent which the lower court did not follow.

The courts render a full written opinion when the law is unsettled or when the lower court misapplied the law to a given set of facts. Since New Mexico is a fairly young state, its case law (or previous opinions written by the Supreme Court or Court of Appeals) is limited. Many problems arise which the legislature has not considered and which have not been previously decided by the courts. The court then considers all the state laws on the subject, the rulings of courts in other states and how the problem affects the people in this state. The court then makes a ruling and its decision becomes the law.

An opinion generally sets out the important facts and the ruling made by the lower court which is being

challenged. The court will then proceed to discuss the various issues that the parties raised and the current status of the law on those issues. The court's decision on the legal issue constitutes its *holding* and becomes the law of the case and the ruling which the lower court must follow. It also sets a precedent for similar situations in which the same problem arises. After all such issues are decided, the court either affirms or reverses the decision of the lower court and directs that court to change the judgment to conform to the opinion, or the court sends the case back to the lower court so that it can take some additional action, such as hold a new trial or listen to more evidence on a given point.

Extraordinary Writs. In the early days of common law, when a citizen wished to bring an action against another he would go to the court and purchase a writ. This was an order addressed to the defendant by the king commanding the defendant to appear in the royal court and answer the complaint. As the court system developed, the writs were issued by the courts and not the king, but the writ system became very complex and technical. If a plaintiff purchased the wrong writ, such as a writ of replevin (to gain possession of his personal property which was unlawfully taken) instead of a writ of trover (to collect damages for his personal property which the defendant found and kept), the plaintiff would be out of court with no remedy. Later a court of equity was created which could fashion a proper remedy without being bound to an established writ.

When this country was settled, the pioneers adopted the English legal system because it was the one with which they were most familiar. Since they had few law books and lawyers, the common-law system was simplified and gradually developed independently. In modern pleading and practice a complaint need not follow the formula of an ancient writ, but need merely set out facts showing the plaintiff is entitled to relief. Consequently, the writ system of pleading is no longer used except in unusual cases.

The New Mexico Constitution specifically authorizes the Supreme Court and the district courts to use certain types of writs such as *habeas corpus, certiorari, mandamus, prohibition, quo warranto* and *injunction.* These are "extraordinary" remedies which are only available in limited circumstances where there is no adequate relief through regular procedures. The Court of Appeals is not authorized to issue such writs.

The most commonly known writ is the writ of *habeas corpus,* literally meaning, "you have the body." This process directs a person detaining another to bring the detained person before the court so that the court may determine whether he is being legally held. Habeas corpus is used to obtain immediate relief from an illegal confinement or detainment, or to liberate those who are imprisoned without sufficient cause. This writ does not require that a court determine the innocence or guilt of a defendant, but merely whether a person, has been deprived of his liberty by due process of law.

Another commonly used writ is the writ of *certiorari.* A reviewing court on its own motion, or by petition of a party to an appeal may review the decision of a lower tribunal where no further appeal is specifically authorized by statute or rule. The decision to grant certiorari is always discretionary. The Supreme Court wil review a decision of the Court of Appeals where the legal question at issue has not been previously considered by the Court, where there are conflicting decisions in New Mexico case law, or where the matter is of great public concern. The Supreme Court may affirm or reverse the Court of Appeals, therefore insuring uniformity in state law. Occasionally, the higher court will grant a writ and

then decide that a review would not be proper; the Court will then *quash* or dismiss the writ.

Although a plaintiff generally does not ask for a *"writ of injunction,"* injunction is an extraordinary remedy which developed through a writ. This writ was initiated much later than some other writs by the equity court because the remedies of paying damages or returning property were inadequate. An injunction is issued to the defendant forbidding him to do some act which he is threatening to do or restraining him from continuing to do something which causes the plaintiff irreparable harm such as destroying an heirloom or continuing a nuisance or injury. In order to obtain an injunction the plaintiff must prove that there is no other adequate remedy at law and that irreparable harm will be done if the injunction isn't given.

Mandamus is used to compel a public official to do an act which the official is required by law to perform by virtue of his office. The court commands that the officer fulfill his duties. The writ may not be used when the public official is required to exercise his discretion or use his judgment in the performance of his duties.

A writ of *prohibition,* like certiorari, can only be directed to an inferior court or quasi-judicial tribunal. Whereas, certiorari may be used to challenge the decision of a lower court, prohibition is limited to the question of whether the lower court has exceeded its jurisdiction. If the inferior court did not have jurisdiction its judgment or order is unenforceable.

Quo Warranto is a writ which is rarely invoked. Quo Warranto is an inquiry directed to a person holding a public office or a private office of a corporation and requiring him to show the authority under which he acts. This writ is generally used when a person is elected to a public office and his opponent challenges the election process claiming that the election was unfair or the result incorrect. Only the Attorney General or local district attorney may bring the quo warranto action even though it is a civil action.

Mandamus, prohibition and quo warranto are the most unusual writs. Even today there are special rules of pleading used specifically for these writs and a plaintiff may only obtain one at the discretion of the court (in other words, he is not entitled to one for the asking). When a party petitions for one of these writs, the court will decide whether the petition has any merit. If so, the court will issue an alternative writ which commands that the defendant do what the plaintiff asks or, in the alternative, come before the court and prove why the writ should not issue. If the court decides (after a hearing usually) that the plaintiff should get the relief requested, it will issue a permanent or peremptory writ and the defendant must comply. If it finds that the plaintiff is not entitled to relief it will dismiss the petition or quash the alternate writ.

Glossary Of Legal Terms

A

abstract of record — A complete history in short, abbreviated form of the case as found in the record.

action in personam — An action against the person, founded on a personal liability.

action in rem — An action for a thing; an action for the recovery of a thing possessed by another.

adjudication — Giving or pronouncing a judgment or decree; also the judgment given.

administrator — Person who has been granted authority by a court to administer the estate of a deceased person.

adversary system — The system of trial practice in the U.S. and some other countries in which each of the opposing, or adversary parties, has full opportunity to present and establish their opposing contentions before the court.

advisement — The act of deliberating or consulting by a court, after the arguments have been heard, before delivering an opinion.

affidavit — A written or printed declaration or statement of facts, made voluntarily, and confirmed by the oath or affirmation of the person making it, taken before an officer having authority to administer such an oath.

alias subpoena — A second or subsequent subpoena issued if the first subpoena was in error and did not accomplish its purpose.

alias summons — A summons issued when original has not produced its effect because it was defective in form or manner of service; when issued, an alias summons supersedes the first summons.

allegation — The assertion, declaration, or statement of a party to an action, made in a pleading, setting out what he expects to prove.

alleged — Stated; claimed; asserted; charged.

amicus curiae — A friend of the court; one who interposes and volunteers information upon some matter of law.

ancillary bill or suit — One growing out of and auxiliary to another action or suit, such as a proceeding for the enforcement of a judgment, or to set aside fraudulent transfers of property.

answer — A pleading by which defendant endeavors to resist the plaintiff's allegation of facts.

appeal — (verb) To take to a higher court.

(noun) A new trial in the district court.

appearance — The formal proceeding by which a defendant submits himself to the jurisdiction of the court.

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

appellate court — A court having jurisdiction of appeal and review; not a "trial court."

appellee — The party against whom an appeal is taken.

arraignment — In criminal practice, to bring a prisoner before the court to answer to a criminal charge.

arrest — To take a person into custody in a manner authorized by law.

arrest of judgment — The act of staying the effect of a judgment already entered.

assignment — Transfer of property, including transfer of rights of ownership in the property.

at issue — Whenever the parties to a suit come to a point in the pleadings which is affirmed on one side and denied on the other, they are said to be "at issue."

attachment — A remedy by which plaintiff is enabled to acquire a lien upon property or effects of defendant for satisfaction of judgment which plaintiff may obtain in the future.

attorney of record — Attorney whose name appears in the permanent records or files of a case.

B

bail — (verb) To obtain release of a person under arrest on condition that he or she will appear at a certain place and time.

(noun) Conditions of release, including but not requiring the posting of bond.

bail bond — An obligation signed by the accused, with sureties, to secure his presence in court.

bailiff — A court attendant whose duties are to keep order in the courtroom and to have custody of the jury.

banc — Bench; the place where a court permanently or regularly sits. A "sitting en banc" is a meeting of all the judges of a court, as distinguished from the sitting of a single judge, or a panel of less than the full court.

bench warrant — Process issued by the court itself, or "from the bench" for the attachment or arrest of a person.

best evidence — Primary evidence, as distinguished from secondary; the best and highest evidence of which the nature of the case is susceptible.

binding instruction — One in which jury is told if they find certain conditions to be true they must find for plaintiff, or defendant, as case might be.

bind over — To hold on bail for trial.

bond — An instrument with a sum of money fixed as a penalty and with a clause binding the person to pay the penalty, conditioned that payment of the penalty may be avoided by the performance of certain acts, i.e., appearing for a hearing.

breach — The breaking or violating of a law, right or duty; either by commission or omission.

brief — A written or printed document prepared by counsel to file in court, usually setting forth both facts and law in support of his case.

burden of proof — In the law of evidence, the necessity or duty of affirmatively proving a fact or facts in dispute.

C

caption — The caption of a pleading, or other papers connected with a case in court, is the heading or introductory clause which shows the names of the parties, name of the court, number of the case, etc. Also called "style."

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

certified copy — Copy of a document or record, signed and certified as a true copy by the officer who has custody of the original.

certiorari — An original writ commanding judges or officers of inferior courts to certify or to return records of proceedings in a cause for judicial review.

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

chambers — Private office or room of a judge.

change of venue — The removal of a suit begun in one county or district, to another, for trial, or from one court to another in the same county or district.

children's court — A division of the district court handling juvenile cases.

circuit courts — Originally, courts whose jurisdiction extended over several counties or districts, and whose sessions were held in such counties or districts alternately; today, a circuit court may hold all its sessions in one county.

circumstantial evidence — All evidence of indirect nature; the process of decision by which court or jury may reason from circumstances known or proved to establish by inference the principal fact.

citation — A notice to appear and answer a stated charge.

codicil — A supplement or an addition to a will.

commit — To send a person to prison, to an asylum, workhouse or reformatory by lawful authority.

common law — Law which derives its authority solely from usages and customs of immemorial antiquity, or from the judgments and decrees of courts. The English legal system.

community property — (See property, community.)

commutation — The change of a punishment from a greater degree to a lesser degree, as from death to life imprisonment.

competency — In the law of evidence, the presence of those characteristics which render a witness legally fit and qualified to give testimony.

complainant — Synonymous with "plaintiff."

complaint — In criminal cases, a sworn written statement of probable cause charging a violation of an offense; in civil cases, a written statement of the cause of action and claim for relief being sought by one party from another.

concurrent sentence — Sentences for more than one crime in which the time of each is to be served concurrently, rather than successively.

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

conditions of release — Conditions upon which an arrested person is released pending trial.

contempt of court — Any act calculated to embarrass, hinder, or obstruct a court in the administration of justice, or calculated to lesson its authority or dignity. Contempts are of two kinds: direct and indirect. Direct contempts are those committed in the immediate presence of the court; indirect is the term chiefly used with reference to the failure or refusal to obey a lawful order.

contraband — Articles, the possession of which is prohibited by law.

conversion of property — An authorized assumption and exercise of the rights of ownership over personal property of another, to the alteration of the condition of the property or to the exclusion of the owner's rights.

conviction — The result of a criminal trial which ends in a judgment or sentence that the defendant is guilty as charged.

corpus delicti — The body (material substance) upon which a crime has been committed, e.g., the corpse of a murdered man, the charred remains of a burned house.

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

court reporter — A person who transcribes by shorthand or steno-

graphically takes down testimony during court proceedings.

costs — An allowance for expenses in prosecuting or defending a suit. Ordinarily does not include attorney's fees.

counterclaim — A claim presented by a defendant in opposition to the claim of a plaintiff.

courts of record — Those whose proceedings are permanently recorded. Courts not of record are those of lesser authority whose proceedings are not permanently recorded, e.g., magistrate court.

criminal insanity — Lack of mental capacity to do or abstain from doing a particular act; inability to distinguish right from wrong.

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.

cumulative sentence — Separate sentences (each additional to the others) imposed against a person convicted upon an indictment containing several counts, each charging a different offense.

D

damages — Monetary compensation which may be recovered in the courts by a person who has suffered loss, detriment or injury to his or her person, property or rights, through the unlawful act or omission or negligence of another.

de novo — Anew, afresh. A "trial de novo" is the retrial of a case.

declaratory judgment — One which declares the rights of the parties or expresses the opinion of the court on a question of law, without ordering anything to be done.

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

default — Omission of that which ought to be done; omission or failure to perform a legal duty; neglect or failure of any party to take a step required of him or her in progress of a cause.

defendant — The person defending or denying; the party against whom relief or recovery is sought in a civil action; the party put on his or her defense or summoned to answer a charge or complaint.

deferred sentence — Postponed sentence; imposition of sentence is suspended, postponed, or stayed, for a period and on conditions set by the judge. If a violation of probation occurs, the judge may impose any sentence which could have been imposed at the time sentence was deferred.

deposition — The testimony of a witness not taken in open court, but in pursuance of authority given by statute or rule of court to take testimony elsewhere.

designee — A person appointed by the magistrate to act for the court and set conditions of release for any person arrested at a time when the magistrate is not available.

direct evidence — Proof of facts by witnesses who saw acts done or heard words spoken as distinguished from circumstantial evidence, which is called indirect.

direct examination — The first interrogation of a witness by the party on whose behalf he is called.

directed verdict — An instruction by the judge to the jury to return a specific verdict.

discovery — A proceeding whereby one party to an action may be informed as to facts known by other parties or witnesses.

dismissal without prejudice — Permits the complainant to sue again on the same cause of action, while dismissal "with prejudice" bars the right to bring or maintain an action on the same claim or cause.

dissent — A term commonly used to denote the disagreement of one or more judges of a court with the decision of the majority.

district court — A court of general jurisdiction which decides both civil and criminal cases and functions as an appellate court for appeals from inferior courts and selected state agencies.

docket — A book containing an entry in brief of all the important acts done in court in the conduct of the case from beginning to end.

domicile — That place where a person has his true and permanent home. A person may have several residences, but only one domicile.

double jeopardy — Common-law and constitutional prohibition against more than one prosecution for the same crime, transaction or omission.

due process — Law in its regular course of administration through the courts of justice. The guarantee of due process requires that every man have the protection of a fair trial.

E

embezzlement — The fraudulent appropriation by a person to his own use or benefit of property or money intrusted to him by another.

eminent domain — The power to take private property for public use by condemnation.

empanel — To finalize the list of the jurors who have been selected for the trail of a particular cause.

en banc — In the bench, a term used when the entire court participates in deciding a case.

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

entry of judgment or order — The preparing, dating, signing and filing of the written judgment or order.

equity — Justice applied in circumstances not covered by a particular law. A system of jurisprudence supplementing common law.

equitable action — An action which may be brought for the purpose of restraining the threatened infliction of wrongs or injuries, and the prevention of threatened illegal action. (Remedies not available at common law.)

escheat — In American law, the preferable right of the state to an estate to which no one is able to make a valid claim.

escrow — A writing, or deed, delivered by the grantor into the hands of a third person, to be held by the latter until the happening of a contingency or performance of a condition.

estoppel — A person's own act, or acceptance of facts, which preclude his later making claims to the contrary.

et al — An abbreviation of *et alii,* meaning "and others."

et seq — An abbreviation for *et sequentes*, or *et sequentia,* "and the following."

ex contractu — In both civil and common law, rights and causes of action are divided into two classes: Those arising ex contractu (from a contract) and ex delicto (from a wrong or tort).

ex parte — By or for one party; done for, in behalf of, or on the application of, one party only; as in ex parte motion or ex parte hearing.

ex post facto — After the fact; an act or fact occurring after some previous act or fact, and relating thereto.

executor — A person appointed by one who makes a will to carry out the directions and requests in the will and to dispose of the property according to the provisions of the will.

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

expert evidence — Testimony given in relation to some scientific, technical, or professional matter by experts, i.e., persons qualified to speak authoratively by reason of their special training, skill, or familiarity with the subject.

extenuating circumstances — Circumstances which render a crime less aggravated, heinous, or reprehensible than it would otherwise be.

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

fair comment — A term used in the law of libel, applying to statements made by a writer in an honest belief of their truth, relating to official act, even though the statements are not true in fact.

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

false pretenses — Designed misrepresentation of existing fact or condition whereby a person obtains another's money or goods.

felony — A crime of a graver nature than a misdemeanor. Generally, an offense punishable by death or imprisonment in a penitentiary.

fiduciary — A person having a duty to act primarily for another's benefit in matters connected with a particular undertaking; a "fiduciary capacity" has to do with the transaction of business or handling of money which does not belong to the person and is not for the person's own benefit, but for the benefit of another person.

forgery — The false making or material altering, with intent to defraud, of any writing which, if genuine, might be the foundation of a legal liability.

fraud — An intentional perversion of truth; deceitful practice or device resorted to with intent to deprive another of property or other right, or in some manner to do him injury.

free process — Where, after a finding of indigency, a party may be excused from paying court costs.

G

garnishment — A proceeding whereby property, money or credits of a debtor, in possession of another (the garnishee) are applied to the debts of the debtor.

garnishee — (verb) To institute garnishment proceedings.

(noun) The person upon whom a garnishment is served, usually a debtor of the defendant in the action.

guardian — Person lawfully invested with the power and charged with the duty of taking care of the person and managing the property and rights of another person who, for some reason, is considered incapable of administering his or her own affairs.

guardian ad litem — A person appointed by a court to look after the interests of an infant whose property is involved in litigation.

H

habeas corpus — The name given to a variety of writs to bring a party before a court or judge in order to release the person from unlawful imprisonment.

harmless error — In appellate practice, an error committed by a lower court during a trial, but not prejudicial to the rights of the party and for which the court will not reverse the judgment.

hearing — A proceeding, generally public, at which an issue of fact or law is discussed and either party has the right to be heard.

hearsay — Evidence not proceeding from the personal knowledge of the witness.

hostile witness — A witness who is subject to cross-examination by the party who called him to testify, because of his evident antagonism toward that party as exhibited in his 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 by way of evidence in a trial.

I

impeachment of witness — An attack on the credibility of a witness by the testimony of other witnesses.

implied contract — A contract in which the promise made by the obligor is not express, but inferred by his conduct or implied in law.

imputed negligence — Negligence which is not directly attributable to the person himself, but which is the negligence of a person who is in privity with him, and with whose fault he is chargeable.

inadmissable — That which, under the established rules of evidence, cannot be admitted or received.

in camera — In chambers; in private.

incapacitated person — An incapacitated person is any person who is impaired by reason of mental illness or disability; advanced age, chronic use of drugs, chronic intoxication, or other cause, except minority, to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person or management of his affairs.

incompetent evidence — Evidence which is not admissible under the established rules of evidence.

indeterminate sentence — An indefinite sentence of "not less than" and "not more than" so many years, the exact term to be served being afterwards determined by parole authorities within the minimum and maximum limits set by the court or by statute.

indictment — An accusation in writing found and presented by a grand jury charging the person named in the indictment with the violation of a law.

indigency — Financial inability to hire a lawyer.

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

information — An accusation against a person for a criminal offense, without an indictment; presented by the prosecution instead of a grand jury.

injunction — A mandatory or prohibitive writ issued by a court.

instruction — A direction given by the judge to the jury concerning the law of the case.

inter alia — Among other things or matters.

interlocutory — Provisional; temporary; not final. Refers to orders and decrees of court.

interrogatories — Written questions propounded by one party and served on adversary, who must provide written answers thereto under oath.

intervention — A proceeding in a suit or action by which a third person

is permitted by the court to make himself a party.

intestate — One who dies without leaving a will.

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

J

judgment — The official and authentic decision of a court of justice upon the respective rights and claims of the parties to an action or suit therein litigated and submitted to its determination.

jurisdiction — The power of the court to hear and decide.

jurisprudence — The philosophy of law, or the science which treats of the principles of positive law and legal relations.

jury — Body of persons temporarily selected from the citizens of a particular district and invested with the power to try a question of fact.

grand jury — A jury of inquiry whose duty is to receive complaints and accusations in criminal cases, hear the evidence and find bills of indictment in cases where they are satisfied a trial ought to be had.

petit jury — The ordinary jury of twelve (or fewer) persons for the trial of a civil or criminal case. So called to distinguish it from the grand jury.

jury commissioner — An officer charged with the duty of selecting the names to be put into a jury wheel, or of drawing the panel of jurors for a particular term of court.

jury list — A list containing the names of jurors empaneled to try a cause or containing the names of all the jurors summoned to attend court.

justice of peace court — A judicial body of inferior rank having (usually) civil jurisdiction limited to that prescribed by statute in civil cases and in criminal proceedings, prosecutions and commitments of offenders. (No longer used in New Mexico, having been supplanted by magistrate court.)

L

leading question — One which instructs a witness how to answer or puts into his mouth words to be echoed back; one which suggests to the witness the answer desired. Prohibited on direct examination.

lesser included offense — (See necessarily included offense).

letters rogatory — A request by one court of another court in an independent jurisdiction, that a witness be examined upon interrogatories sent with the request.

levy — A seizure; the obtaining of money by legal process through seizure and sale of property. The raising of the money for which an execution has been issued.

libel — A method of defamation expressed by print, writing, pictures, or signs. In its most general sense any publication that is injurious to the reputation of another.

limitation — A certain time allowed by statute in which litigation must be brought.

lis pendens — A pending suit.

locus delicti — The place of the offense.

M

magistrate court — The people's court; a court of limited jurisdiction authorized to decide certain types of civil cases, criminal misdemeanors and first appearances and preliminary hearings in felony cases.

malfeasance — Evil doing; ill conduct; the commission of some act which is postively prohibited by law.

malicious prosecution — An action instituted with intention of injuring defendant and without probable cause, and which terminates in favor of the person prosecuted.

mandamus — The name of a writ which issues from a court of superior jurisdiction, directed to an inferior court, commanding the performance of a particular act by a public official.

mandate — A judicial command or precept proceeding from a court or judicial officer, directing the proper officer to enforce a judgment, sentence, or decree.

manslaughter — The unlawful killing of another without malice; may be either voluntary, upon a sudden impulse, or involuntary, in the commission of some unlawful act.

material evidence — Such as is relevant and goes to the substantial issues in dispute.

merits — Strict legal rights of parties; a substantial ground of defense in law.

minor — Person under 21 years of age.

misdemeanor — Offenses less than felonies; generally those punishable by fine or imprisonment otherwise than in penitentiaries.

misfeasance — A misdeed or trespass. The improper performance of some act which a person may lawfully do.

mistrial — An erroneous or invalid trial; a trial which cannot stand in law because of lack of jurisdiction, wrong drawing of jurors, or disregard of some other fundamental requisite.

mitigating circumstance — One which does not constitute a justification or excuse of an offense, but which may be considered as reducing the degree of moral culpability.

moot — Unsettled; undecided. A moot point is one not settled by judicial decisions.

moral turpitude — Conduct contrary to honesty, modesty, or good morals.

motion — Application by a party for a rule or order of the court; motions are either written or oral.

multiplicity of actions — Numerous and unnecessary attempts to litigate the same right.

municipal courts — In the judicial organization of some states, courts whose territorial authority is confined to the city or community.

murder — The unlawful killing of a human being by another with malice aforethought, either express or implied.

N

necessarily included offense — Where an offense cannot be committed without necessarily committing another offense, the latter is a nessarily included offense; sometimes referred to as lesser included offense.

negligence — The omission to do something which a reasonable man would do; the doing of something which a reasonable and prudent man would not do.

next friend — One acting for the benefit of an infant, or other person without being regularly appointed as guardian.

no bill — This phrase, indorsed by a grand jury on an indictment, is equivalent to "not found" or "not a true bill." It means that, in the opinion of the jury, evidence was insufficient to warrant the return of a formal charge.

nolle prosequi — A formal entry upon the record by the plaintiff in a civil suit, or the prosecuting officer in a criminal case, by which he declares that he "will no further prosecute" the case.

nolo contendere — (No contest) A plea, having the same effect as a plea of guilty in the case, inadmissible as an admission in a civil action.

non compos mentis — Not sound of mind; insane.

non obstante veredicto — Notwithstanding the verdict. A judgment entered by order of court for one party, although there has been a jury verdict against him.

notice to produce — In practice, a notice in writing requiring the opposite party to produce a certain described paper or document at the trial.

nulla bona — The name of the return made by the sheriff to a writ of execution, when he has not found any goods of the defendant within his jurisdiction on which he could levy.

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 counsel 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.

offense — A violation of a criminal law.

open account — An account which has not been finally settled or closed, but is still running or open to future adjustments or liquidation. Indebtedness subject to future adjustments and which may be reduced or modified by proof.

opinion evidence — Evidence of what the witness thinks, believes, or infers in regard to facts in dispute, as distinguished from his personal knowledge of the facts; not admissible except (under certain limitations) in the case of experts.

order — A direction of a judge made or entered in writing and not included in a judgment.

out of court — One who has no legal status in court is said to be "out of court," i.e., he is not before the court. For example, when a plaintiff, by some act of omission or commission shows that he is unable to maintain his action he is frequently said to have put himself "out of court."

P

panel — 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.

parties — The plaintiff and the defendant in a civil action; the prosecution (State) and the defendant in a criminal action.

peremptory challenge — The challenge which the prosecution, or defense, may use to reject a certain number of prospective jurors without assigning any cause.

personal property — Everything which is the subject of ownership except for real property; generally, property of a personal or movable nature, as opposed to property of a local or immovable character, such as land or houses.

petitioner — In legal proceedings begun by petition, the person for whom action or relief is prayed.

plaintiff — A person who brings a civil action and who is so named on the record.

plea — The answer which the defendant makes to the prosecution's charges.

pleading — The process by which the parties in a suit or action, alternately present written statements of their contentions, each responsive to that which precedes, and each serving to narrow the field of controversy, until there evolves a single point, affirmed on one side and denied on the other, called the "issue" upon which they then go to trial.

polling the jury — A practice whereby 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.

praecipe — An original writ commanding the defendant to do the thing required; also, an order addressed to the clerk of a court, requesting him to issue a particular writ.

prejudice — A bias; a preconceived opinion; an act or event which prejudices a party (usually the defendant) and substantially affects the legal rights and obligations of the party.

prejudical error — Synonymous with "reversible error;" an error which warrants the appellate court in reversing 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 he sould be held for trial.

preponderance of evidence — Greater weight of evidence, or evidence which is more credible and convincing to the mind, not necessarily the greater number of witnesses.

presentment — An informal statement in writing by a grand jury to the court that a public offense has been committed, from their own knowledge or observation, without any bill of indictment laid before them.

presumption of fact — An inference as to the truth or falsity of any proposition of fact, drawn by a process of reasoning in the absence of actual certainty of its truth or falsity, or until such certainty can be ascertained.

presumption of law — A rule of law that courts and judges shall draw a particular inference from a particular fact, or from particular evidence.

prevailing party — The party in whose favor judgment is rendered whether or not the party prevails in all aspects of the action.

probate — The act or process of proving a will.

probation — In modern criminal administration, allowing a person convicted of some minor offense (particularly juvenile offenders) to go at large under a suspension of sentence, during good behavior, and generally under the supervision of guardianship of a probation officer.

prohibition — The name of a writ issued by a superior court, directed to the judge and parties of a suit in an inferior court, commanding them to cease from the prosecution of the same, upon a suggestion that the cause originally, or some collateral matter arising therein, does not belong to the jurisdiction, but to the cognizance of some other court. (Or which arrests the proceedings of any court when such proceedings are without or in excess of the jurisdiction of such court.)

promissory note — A written promise to pay a certain sum of money, at a future time, unconditionally.

property, community — Property acquired by husband and wife, or either, during marriage, when not acquired as the separate property of either; includes both personal and real property.

property, personal — Everything which is the subject of ownership except for real property; generally, property of a personal or movable nature, as opposed to property of a local or immovable character, such as land or houses.

property, real — Land, and generally whatever is erected or growing upon or affixed to land.

property, separate — Separate property is property of a spouse ac-

quired before marriage or during marriage as a result of a gift or bequest, or property designated separate by a court order or written agreement.

prosecutor — One who instigates the prosecution upon which an accused is arrested or who prefers an accusation against the party whom he suspects to be guilty; also one who takes charge of a case and performs function of trial lawyer for the people.

prosecutrix — A female prosecutor.

Q

quash — To overthrow; vacate; to annul or void a summons or indictment.

quasi judicial — Authority or discretion vested in an officer wherein his acts partake of a judicial character.

quid pro quo — What for what, a fair return or consideration.

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

R

real property — (See property, real.)

reasonable doubt — An accused person is entitled to acquittal if, in the minds of the jury, his guilt has not been proved beyond a "reasonable doubt;" that state of the minds of jurors in which they cannot say they feel an abiding conviction as to the truth of the charge.

rebuttal — The introduction of rebutting 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.

recusal — The act of declining to hear a case.

redirect examination — Follows cross-examination, and is had 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 thereon to the court. He is an officer exercising judicial powers and is an arm of the court for a specific purpose.

release — Discharge from confinement or custody.

removal, order of — An order by a court directing the transfer of a cause to another court.

replevin — An action taken to recover personal property unlawfully taken; the writ or procedure by which the property is recovered.

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.

respondent — In legal proceedings begun by petition, the person against whom action or relief is prayed, or who opposes the prayer of the petition.

rest — A party is said to "rest" or "rest his case" when he has presented all the evidence he intends to offer.

retainer — Act of the client in employing his attorney or counsel, and also denotes the fee which the client pays when he retains the attorney to act for him.

rule of court — An order made by a court having competent jurisdiction. Rules of court are either general or special; the former are the regulations by which the practice of the court is governed; the latter are special orders made in particular cases.

rule nisi, or rule to show cause — A court order obtained on motion by either party to show cause why the particular relief sought should not be granted.

S

sale — A transfer for value.

search and seizure, unreasonable — In general, an examination without authority of law of one's premises or person with a view to discovering stolen contraband or illicit property or some evidence of guilt to be used in prosecuting a crime.

search warrant — An order in writing, issued by a judge or magistrate, in the name of the state, directing an officer to search a specified house or other premises for stolen property. Usually required as a condition precedent to a legal search and seizure.

security — An obligation, pledge, mortgage, deposit, lien, etc., given by a debtor in order to assure the payment or performance of the debt, by furnishing the creditor with a resource to be used in case of failure in the principal obligation.

self-defense — The protection of one's person or property against some injury attempted by another. The law of "self defense" justified an act done in the reasonable belief of immediate danger. When acting in justifiable self-defense, a person may not be punished criminally nor held responsibile for civil damages.

separate maintenance — Allowance granted to a wife for support of herself and children while she is living apart from her husband but not divorced from him.

separate property — (See property, separate.)

separation of witnesses — An order of the court requiring all witnesses to remain outside the courtroom until each is called to testify, except the plaintiff or defendant.

sheriff — An officer of a county, chosen by popular election, whose principal duties are aid of criminal and civil courts; chief preserver of the peace. He serves processes, summons juries, executes judgments and holds judicial sales.

sine qua non — An indispensable requisite.

slander — Base and defamatory spoken words tending to prejudice another in his reputation, business or means of livelihood. "Libel" and "slander" both are methods of defamation, the former being expressed by print, writings, pictures or signs, the latter, orally.

specific performance — A mandatory order in equity. Where damages would be inadequate compensation for the breach of a contract, the contractor will be compelled to perform specifically what he has agreed to do.

stare decisis — The doctrine that, when a court has once laid down a principle of law as applicable to a certain set of facts, it will adhere to that principle and apply it to future cases where the facts are substantially the same.

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

statute — The written law in contradistinction to the unwritten law.

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. It is not binding unless assented to by the parties, and most stipulations must be in writing.

style — (See caption.)

subpoena — A process directing a witness to appear and give testimony.

subpoena duces tecum — A process by which the court commands a witness to produce certain documents or records in a trial.

substantive law — The law dealing with rights, duties and liabilities, as distinguished from adjective law, which is the law regulating procedure.

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

supersedeas — A writ containing a command to stay proceedings at law, such as the enforcement of a judgment pending an appeal.

surety — One who signs a bond and guarantees to pay money if the defendant fails to appear.

suspended sentence — Postponed execution of sentence; sentence is imposed, and execution of sentence is suspended, postponed, or stayed, for a period and on conditions set by the judge. If a violation of conditions of suspended sentence (probation) occurs, the judge may invoke, or cause to be executed, the sentence as imposed.

T

tender — To offer money or the performance of an action.

testimony — Evidence given by a competent 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.

transcript — The official record of proceedings in a trial or hearing.

transitory — Actions are "transitory" when they might have taken place anywhere, and are "local" when they could occur only in some particular place.

trial — Examination of any issue of fact or law before a competent court to determine the rights of the parties.

trial de novo — A new trial or retrial had in an appellate court in which the whole case is gone into as if no trial had been had in a lower court.

trover — A common-law action to recover damages for personal property illegally withheld or converted to use by another.

true bill — In criminal practice, the indorsement made by a grand jury upon a bill of indictment when they find it sufficient evidence to warrant a criminal charge.

U

undue influence — Whatever destroys free will and causes a person to do something he would not do if left to himself.

unlawful detainer — A detention of real estate without the consent of the owner or other person entitled to its possession.

usury — The taking of more for the use of money than the law allows.

V

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 county, city or geographical area in which a court with jurisdiction may hear and determine a case.

verdict — Decision or finding of a jury.

voir dire — To speak the truth. The phrase denotes the preliminary examination which the court may make of one presented as a witness or juror, as to his qualifications.

W

waive — To voluntarily give up a known right.

warrant — A writ issued by a judge, addressed to a law enforcement officer, directing the doing of an act, such as an arrest or a search.

warrant of arrest — A writ issued by a magistrate, judge, or other competent authority, to a sheriff, or other officer requiring him to arrest the body of a person therein named and bring him before the magistrate or court to answer to a specified charge.

weight of evidence — The balance of preponderance 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, without justifiable cause, as distinguished from an act done carelessly or inadvertently.

with prejudice — The term, as applied to judgment of dismissal, is as conclusive of rights of parties as if action had been prosecuted to final adjudication in favor of the defendant.

without prejudice — A dismissal "without prejudice" allows a new suit to be brought on the same cause of action.

witness — One who testifies to what he 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 error coram nobis — A common-law writ, the purpose of which is to correct a judgment in the same court in which it was rendered, on the ground of error of fact.

END