

Course Learning Outcomes for Unit I

Upon completion of this unit, students should be able to:

1. Explain criminal court terminology.
 - 1.1 Define court terminology, including Latin words and phrases.
2. Discuss the history of criminal courts.
 - 2.1 Examine one historical aspect of the United States criminal court that influenced the current process for the better.
5. Explain the various roles of court personnel.
 - 5.1 Explain the ways a historical aspect affected the court personnel.

Course/Unit Learning Outcomes	Learning Activity
1.1	Unit Lesson Chapter 1 Chapter 4 Unit I Assignment
2.1	Unit Lesson Chapter 1 Chapter 4 Unit I Assignment
5.1	Unit Lesson Chapter 4 Unit I Assignment

Reading Assignment

Chapter 1: Introduction: Law and the Judicial Function, pp. 3-17

Chapter 4: Court Organization and Structure

Unit Lesson

History of Criminal Courts

Criminal courts derive their power from the people in their jurisdictions; power must be given freely, and the populous must submit to the power of the court. If the power of the court is not granted by willing citizens, then it is nothing more than an enforcement branch of the granting entity. For example, in China, the court system exists only because the Chinese Communist Party (CPC) allows it. The CPC has remained in power for decades and, since then, has had to balance its criminal justice system between achieving it political power over China while still providing some semblance of not preempting the capacity of courts to regulate social and economic activities of no interest to the CPC. For criminal courts that are not supported by the citizens in their jurisdictions, the goal is to support their founding entities, whether it be a government, political party, or dictator.

Understanding the legitimacy of our federal and state criminal justice courts requires a basic knowledge of how humans developed socialization by allowing enforcement powers to be transferred to chosen individuals

of the social order. Jean-Jacques Rousseau (as cited in Simpson, 2007) provides a possible foundation for this transfer of power in his *Discourse on the Origin of Inequality*. Rousseau's premise of human development was as described below.

- Humans are born into a pure state of nature, uncorrupted by civilization and the socialization process.
- A natural human is isolated, timid, peaceful, and mute and does not have the foresight to worry about what the future will bring (at birth).
- The next stage is self-preservation; self-interest is now referred to as a will to live and followed by an innate repugnance to see his fellow man suffer.
- Humans are free agents.
- Humans are the only living things that use reason and logic to make significant advances and are aware of a certain future death.
- Humans advance when given sufficient reason.
- Small groups were formed to aid in hunting larger animals with the groups disbanding when the initial goal was achieved.
- Groups banded together when conjugal and family concepts developed.
- The concept of property ownership, pride, and competition developed next.
- Finally, Rousseau describes the development of tasks requiring division of labor and the creation of social classes (as cited in Simpson, 2007).

At this point in Rousseau's *Discourse on the Origin of Inequality*, the social group needs of humans caused separation; one group became warriors, and battles developed between the haves and have-nots and religious groups. There was another group created—one that formed a criminal justice system, which is our topic for this unit. The great philosophers who came before and after Rousseau provided the basis for the U.S. Constitution. When read, notice that it is a prohibitive document that prevents government from usurping the natural desires of all humans. There is a direct correlation between the U.S. Constitution and human nature. Once the concepts of property ownership, pride, and competition developed and were joined by a division of labor and creation of social classes, the next logical progression was the creation of a protective organization designed to guarantee the continued enjoyment of society's basic human needs—a criminal justice system. This system included, but was not limited to, the court personnel who will be discussed in the following section.

Court Personnel – Federal and State

A federation of states formed to protect the tenets of the U.S. Constitution; by necessity, it required a federal criminal justice system to be separated from each state system. Each state and territory of the federation has its own criminal justice system. There are similarities, but you should do independent research on the structure of the criminal justice system and its jurisdictions.

Judge – associate justice: Judges are either elected or appointed depending on jurisdictions and positional hierarchy. Article III of the U.S. Constitution allows for the appointment of federal judges to the Supreme Court of the United States; 13 federal courts of appeal (circuit courts), with appellate jurisdictions over regions in the United States; and 94 U.S. district courts. Judges of the Court of International Trade also exercise power pursuant to Article III of the U.S. Constitution. All of these judges are nominated by the president and confirmed by the U.S. Senate. Magistrates and bankruptcy, immigration, and administrative law judges are referred to as *federal judges* but are not appointed by the president nor confirmed by the U.S. Senate (U.S. Const. art. III).



Court Room
(Philcold, n.d.)

As an example of the influence that a sitting president can have on the federal criminal justice system, former President Obama nominated and the U.S. Senate confirmed 329 Article III judges: two justices of the Supreme Court, 268 judges to district courts, 55 to the U.S. Courts of Appeals; and four to the U.S. Court of International Trade.

Each state and territory of the United States has its own system for either appointing or hiring judges. For example, justices of the Supreme Court of California are nominated by the governor, vetted by the Commission of Judicial Appointments (nonbinding on a governor's choice) and then confirmed by the electorate at the next scheduled election.

Presiding judge – chief justice: Presiding judges for state courts and chief justices for federal courts are chosen using different methods. For the majority of states and territorial courts, presiding judges are chosen by secret ballot. In Missouri, for example, a presiding judge of the circuit court is chosen by a secret ballot of all sitting judges. The elected judge will sit for a 2-year term (Missouri Revised Statutes, 2016).

The chief justice for the U.S. Supreme Court is chosen by the sitting president; if the justice is already on the court, the justice is elevated to the position. Duties of both state, territorial, and federal presiding judges and chief justices are the same. They hold administrative positions and manage news media, court calendars, and their judges/justices.

Transcription personnel: Transcriptions of all verbal testimony must be converted to an accurate written record. There are three methods currently in use: multiple letter mechanical documentation, audio recordings, and visual/audio recordings. A majority of courts now use multiple letter mechanical documentation, which has the added capability of producing a rough draft of the input to written form. The transcriptionists must still verify that each word is accurate when the computer transcription feature is used.

Small claims courts generally use only audio or video/audio transcriptions. This is because appeals from small claims decisions can only be filed by the defendant; there will be a completely new trial, and transcripts of previous hearings are not admissible.

Clerk of the court: The duties for the clerk of the court vary between jurisdictions and court levels. The key elements of the clerk's duties include, but are not limited to, the following duties:

- preparing dockets/calendars of cases to be called;
- officially recording court documents, such as case dispositions, court orders, and arrangements made for payment of court fees;
- issuing orders of the court, including probation orders, release documentation, sentencing information, summonses, and warrants; and
- contacting necessary parties for hearings and appearances.

An easy way to understand the duties of the clerk is to associate this position as an extension of the judge or the judge's chief of staff.

Bailiffs: Court bailiffs are also referred to as *marshals* in some jurisdictions; be sure you are familiar with your jurisdiction. A bailiff's main duties consist of protecting court personnel and escorting prisoners.

Prosecuting attorney: Prosecuting attorneys represent the citizens in their jurisdiction by and through the government for which they serve. The most difficult aspect of a prosecutor's duties is balancing the budget with his or her caseload. Think of criminality as a sliding scale with the most heinous crimes at the top of the chart and the least offensive felony at the bottom. The prosecutor's budget determines how far down the staff can select cases for prosecution. Budget restrictions force compromises such as increasing the number of cases that are pled out or reduced to misdemeanors due to a lack of funds.

Defense attorney: Defense attorneys come in three varieties—those retained by the defendant, those appointed by the government of the relevant jurisdiction, and those defendants represented by organizations that have a political stake in the outcome of the adjudication. Criminal justice professionals need to understand and be familiar with what support is available for indigent defendants in their jurisdiction.

Court Terminology

When reading transcripts, or being present at court hearings for the first time, it is difficult to adjust to the format and use of sources. For example, a defendant may plead guilty in California pursuant to *People v. West*. That is all that will be recorded; the words are easy to read, but the true meaning escapes the reader. Dave West was charged with a violation of California's Health and Safety Code §11530. This crime was classified as a felony with imprisonment from 1 to 10 years. In place of pleading guilty to Code §11530, West entered a plea bargain in which he pled guilty to a violation of California's Health and Safety Code §11557, which states that a person cannot create or maintain a place that deals narcotics. Since West had no prior conviction under this code section, it was treated as a misdemeanor. To avoid being found guilty and being sentenced under the felony section, West pled "no contest" to the charge; however, he did not admit that there was any factual basis for the charge. He did not want to admit that he operated a marijuana dispensary as the charge (code section) implied. The significance of this case is that the judge allowed this omission to facilitate plea bargaining and encouraged plea bargains to avoid court congestion with trials. This practice was, for the first time, supported on appeal. All of this means that, pursuant to *People v. West*, when a defendant pleads guilty in California, it translates to mean that the plea does not require admission of guilt to the charges (*People v. West*, 1970).

The aforementioned provides an example of the use of *jargon* in the U.S. criminal justice system. The other terminology issue is the use of Latin words and phrases.

Use of Latin words and phrases: Some examples of commonly used Latin phrases are listed below.

- *Alibi*: elsewhere; at another place
- *Per se*: by itself; as such
- *Bona fide*: sincere; genuine; good faith
- *Ex officio* (*Imperator erat ex officio quoque dux exercitus*): a member of a party who also holds another position (e.g., The leader of the business is *ex officio* because he is also a member of the Board of Directors.)
- *Res ipsa loquitur*: an indispensable condition; a prerequisite (e.g., An airplane falls out of the sky; this phrase applies because without something breaking, the plane would stay airborne.)

There is no need to memorize Latin phrases, but just be aware that they are used by criminal justice professionals as terms of the trade (i.e., as linguistic shortcuts).

Ethics and Customs

Lawyers and judges take oaths to uphold the law; this act can be equated to taking an oath to be ethical. Most criminal justice practitioners equate a violation of law as tantamount to being unethical. In our criminal justice system, this concept may be the easiest to use when deciding if an act is ethical.

Customs, on the other hand, are varied by jurisdiction. In federal court, for example, attorneys are required to stand behind a podium in the center between the people's table and the defendant's table. With the exception of raising spoken objections, attorneys never speak from their positions at their tables. In federal courts and in the majority of state courts, one attorney interrupting another attorney is a serious offense, and judges will sanction offending counsels who interrupt more than once.

There are too many laws and customs to cite them all, and no one knows if they are all listed in one location. For the purposes of being a non-lawyer criminal justice professional, it is important to be aware of customs for respective jurisdictions while in court (e.g., while testifying).

Juvenile Courts

Juvenile court procedures and personnel are generally the same as listed above. There are three major differences of which criminal justice professionals must be jurisdictionally aware: the age of majority, strict court adjudication privacy, and the inaccessibility of juvenile court records for adult court hearings.

References

California Health and Safety Code, § 11557 (1968).

Missouri Revised Statutes, § 487.240.1 (2016).

People v. West, 3 Cal.3d 595 (1970).

Philcold. (n.d.). *ID 24941704* [Photograph]. Retrieved from <https://www.dreamstime.com/stock-images-court-room-image24941704>

Simpson, M. (2007). *Rousseau: A guide for the perplexed* [Ebrary version]. Retrieved from <http://site.ebrary.com/lib/columbiasu/reader.action?ppg=10&docID=10495228&tm=1497365518265>

U.S. Const. art. III

Suggested Reading

The following resources will help you to prepare for the writing assignments in this course. You are encouraged to view them to get a head start on the assignments and to brush up on the skills you will need in this course.

First, log in to the myCSU Student Portal. Click [here](#) to access an APA paper example. After reviewing this example, open a Word document, and set up a research paper template based on this example. Be sure to add a title page with a running head, and include headings throughout the essay. The example will give you a template to use for the writing assignments in this course.

Also, click [here](#) to access the tutorial on legal citations, which was created by the CSU Writing Center. This short presentation (15 minutes) will help you to master the legal citations that you will be using in this course.

Click [here](#) to access a PDF version of the tutorial on legal citations.

Learning Activities (Nongraded)

Nongraded Learning Activities are provided to aid students in their course of study. You do not have to submit them. If you have questions, contact your instructor for further guidance and information.

The following is an exercise in learning how to read complex legal cases so that they may be used as sources for your research. The example case is a sample of the complexity with which the opinions are written. All criminal justice practitioners (non-lawyers) need to do is read these cases without getting bogged down in the legal jargon. First, find the case:

From the myCSU Student Portal, navigate to the CSU Online Library, and then complete the steps below.

- Click on "Databases."
- Click on "Nexis Uni."
- Under "Cases," enter "Federal Cases" and search for "132 S.Ct. 2455."

You will be taken directly to the case of *Miller v. Alabama*. When you peruse the entire case, you will find that the majority of Justice Kagan's opinion is the legal basis for the court's conclusion. Just glance over this area of his opinion, and investigate the majority opinion of the court.

Next, read the concurring opinion of Justice Breyer, and, finally, read the dissenting opinion of Chief Justice Roberts.

After completing the aforementioned, you should be able to discern and understand the following elements of any legal case:

- what issue is being decided,
- what analysis and arguments favor the majority,
- what analysis and arguments favor the dissent, and
- what value the case has in its use of *stare decisis* (precedent).

Reading legal cases can be burdensome and is generally not necessary. By mastering the aforementioned skill, a researcher can take advantage of the "last work" on a legal issue and do so with a minimum investment of time.