

IN THE SUPREME COURT OF THE STATE OF NEVADA

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ZANE M. FLOYD,  
Defendant.

v.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA, IN  
AND FOR THE COUNTY OF CLARK; AND  
THE HONORABLE MICHAEL P. VILLANI,  
DISTRICT JUDGE,

STATE OF NEVADA

Plaintiff/Real Party in Interest.

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ZANE M. FLOYD,

Petitioner.

v.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA, IN  
AND FOR THE COUNTY OF CLARK; AND  
THE HONORABLE MICHAEL P. VILLANI,  
DISTRICT JUDGE,

WILLIAM GITTERE, Warden, Ely State  
Prison; AARON FORD; Attorney General,  
State of Nevada

Respondent/Real Parties in Interest

Supreme Court Case No. 99C159897  
District Court Case No. 99C159897  
Habeas Court Case No. A-21-832952-W  
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**PETITION FOR WRIT  
OF MANDAMUS AND  
PROHIBITION**

**VOLUME 1 OF 3**

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Agreement Between the County of Clark and The Clark County Prosecutors Association, July 1, 2020 to June 30, 2021	07/01/2020	1	111-155
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Bob Fulkerson (@bobfulkerson), Twitter, (Mar. 26, 2021)	03/26/2021	1	158
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Tabitha Mueller & Michelle Rindels, <i>Mixed signals from governor, election considerations blamed for failure of death penalty repeal effort</i> , The Nev. Independent, May 23, 2021.	05/23/2021	3	570-575

Respectfully submitted,

/s/ Brad D. Levenson  
BRAD D. LEVENSON  
Assistant Federal Public Defender

## CERTIFICATE OF SERVICE

In accordance with NRAP Rule 25(c)(1)(C) the undersigned hereby certifies that on this 24th day of June, 2021, I personally served a true and correct copy of the foregoing APPENDIX TO PETITION FOR WRIT OF MANDAMUS AND PROHIBITION by email to:

Alexander Chen  
Chief Deputy District Attorney  
motions@clarkcountyda.com  
Eileen.davis@clarkcountyda.com

Further Service on the following party was made via UPS on June 24th, 2021:

Hon. Michael Villani  
District Judge  
Department XVII  
Regional Justice Center  
200 Lewis Ave  
Las Vegas, NV 89155

/s/ Sara Jelinek  
An Employee of the  
Federal Public Defender, District of Nevada

## NOTICE OF FILING

In accordance with NRAP 21(a)(1), the undersigned hereby certifies that on this 24th day of June, 2021, I personally served a true and correct copy of the foregoing APPENDIX TO PETITION FOR WRIT OF MANDAMUS AND PROHIBITION, by email to:

Alexander Chen  
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Las Vegas, NV 89155

/s/ Sara Jelinek  
An Employee of the  
Federal Public Defender, District of Nevada



**LAW LEXICON,**  
OR  
**DICTIONARY OF JURISPRUDENCE:**  
EXPLAINING THE  
TECHNICAL WORDS AND PHRASES  
EMPLOYED IN THE  
SEVERAL DEPARTMENTS OF ENGLISH LAW;  
INCLUDING THE VARIOUS  
LEGAL TERMS USED IN COMMERCIAL TRANSACTIONS;  
TOGETHER WITH AN  
EXPLANATORY AS WELL AS LITERAL TRANSLATION  
OF THE  
**LATIN MAXIMS**  
CONTAINED IN  
THE WRITINGS OF THE ANCIENT AND MODERN COMMENTATORS.

BY  
**J. J. S. WHARTON, Esq.,**  
M. A., OXON.; BARRISTER-AT-LAW;  
AUTHOR OF "THE ARTICLED CLERK'S MANUAL," ETC.

**Second American from the Second London Edition,**  
WITH ADDITIONS,  
BY EDWARD HOPPER.

PHILADELPHIA:  
**KAY & BROTHER, 19 SOUTH SIXTH STREET,**  
LAW BOOKSELLERS, PUBLISHERS, AND IMPORTERS.  
1860.

**CHAPEL** (fr. *capella*, Lat., and *chapelle*, Fr.), a building either adjoining to a church, for performing divine service, or separate from the mother-church, where the parish is large, and then called a *chapel of ease*, for the accommodation of those parishioners who dwell at a distance from the parish church. These may be parochial, and have a right to sacraments and burials, and to a distinct minister, by custom, though subject, in some respects, to the mother-church. The *chapels in the Universities*, belonging to the different halls and colleges, though consecrated, and sacraments are administered there, yet they are not liable to the visitation of the bishop, but of the founder.—2 *Inst.* 363.

**CHAPELRY**, the precincts and limits of a chapel.

**CHAPERON**, a hood or bonnet anciently worn by the knights of the garter, as part of the habit of that noble order; also a little eschcheon fixed in the forehead of the horses that draw a hearse at a funeral.

**CHAPITRES** (fr. *capitula*, Lat., chapters of a book), a summary of such matters as are to be inquired of or presented before justices in eyre, justices of assize, or the peace, in their sessions. Also articles delivered by the justice in his charge to the inquest.—*Britton*, c. 3.

**CHAPLAIN** (fr. *capellanus*, Lat.), an ecclesiastic who performs divine service in a chapel; but it more commonly means one who attends upon a king, prince, or other person of quality, for the performance of clerical duties in a private chapel.—4 *Rep.* 90.

**CHAPMAN** (fr. *ceapman*, Sax.), a cheapener, one that offers as a purchaser.

**CHAPTER** (fr. *capitulum*, Lat.), a congregation of persons in a cathedral church, consisting of ecclesiastics, canons, or prebendaries, whereof the dean is the head, all subordinate to the bishop, to whom they act as assistants in matters relating to the church, for the better ordering and disposing of the things thereof, and the confirmation of such leases of the temporality and offices relating to the bishopric, as the bishop shall make from time to time. And they are termed *capitulum*, as a kind of head, instituted not only to assist the bishop in manner aforesaid, but also anciently to rule and govern the diocese in the time of vacation.—*Burn's Dict.*

**CHARGE**, the instructions given by a judge to a grand jury; the taking proceedings against a prisoner; an obligation imposed on property; a commission.

**CHARGE D'AFFAIRES**, or **CHARGE DES AFFAIRES**, a diplomatic representative at a foreign court, to whose care are confided the affairs of his nation.

**CHARGE and DISCHARGE**, the old mode of taking accounts in Chancery. For an explanation of it see *Dan. Ch. Pr.* 1173, 2d edition. As to the present mode see *Smi. Ch. Pr.* 569.

**CHARGER**, a person in whose favor a decree suspended is pronounced.—*Scotch Law.*

**CHARGES**, expenses, costs.

**CHARGING ORDER**, an order obtained from a court or judge, binding the stocks or funds of a judgment debtor with the judgment debt. See *Smi. Ch. Pr.* 757, and 1 *Chit. Arch. Prac. by Pren.* 510.

## CHARITABLE USES AND TRUSTS.

The 9 Geo. II. c. 36, s. 1, after reciting that gifts or alienations of lands in mortmain were prohibited by *Magna Charta* and other wholesome laws, as prejudicial to the common utility, and that such public mischief had greatly increased by many large and improvident dispositions, made by languishing or dying persons to *charitable* uses, to take place after their deaths, to the disherison of their lawful heirs, enacts that after the 24th June, 1736, no lands or other hereditaments whatsoever, nor any sums of money, or any other personal estate whatsoever, to be laid out or disposed of in the purchase of any lands or hereditaments, should be given, or any ways conveyed to any person or persons, bodies politic, or corporate, or otherwise, for any estate or interest whatsoever, or any ways charged or incumbered by any person or persons whatsoever in trust, or for the benefit of any charitable uses whatsoever; unless such gift or conveyance of any such lands or hereditaments, sums of money, or personal estate (other than stocks in the public funds), be made by deed executed in the presence of two or more credible witnesses, *twelve calendar months* before the death of such donor or grantor (including the days of the execution and death), and be enrolled in the Court of Chancery within *six calendar months* next after the execution thereof: and unless such stocks be transferred *six calendar months* before the death of such donor or grantor (including the days of the transfer and death), and unless the same be made to take effect in possession for the charitable use intended, immediately from the making thereof, and be without any power of revocation, reservation, trust, condition, limitation, or agreement whatsoever, for the benefit of the donor or grantor, or of any person or persons claiming under him.

Nothing in the act relating to the sealing and delivering of any deed *twelve calendar months* before the death of the grantor, or to the transfer of any stock *six calendar months* before the death of the grantor or person making such transfer shall extend, or be construed to extend, to any purchase of any estate or interest in lands, tenements, or hereditaments, or any transfer of any stock to be made, really and *bonâ fide*, for a full and valuable consideration, actually paid at or before the making such conveyance or transfer, without fraud or collusion. s. 2.—This section is explained by a later act to have been intended only to prevent such purchases from being avoided by reason of the death of the grantor, within *twelve calendar months* after the sealing and delivery of the deed relating thereto, and not wholly to exempt such purchases from the operation of the act.—9 *Geo. IV.* c. 85.

All gifts, grants, conveyances, appointments, transfers, and settlements, whatsoever, of any lands or other hereditaments, or of any estate or interest therein, or of any charge or incumbrance affecting any lands or hereditaments, or of any stock, money, or other personal estate or securities for money to be laid out or disposed of in the purchase of any lands or hereditaments, or of any estate or interest therein, or of any charge or incumbrance affecting the same, to or in trust for any charitable uses whatsoever, which

any disposition or direction inserted after the signature is made. (15 & 16 Vict. c. 24, s. 1; the second section gives the act a retroactive efficacy.)

No obliteration, interlineation, or other alteration made in any will after its execution, is to be valid, or have any effect, except so far as the words or effect of the will, before such alteration, may not be apparent, unless such alteration be executed in like manner as is required for the execution of the will. But the will, with such alteration or part thereof, is to be deemed to be duly executed, if the signature of the testator and the subscription of the witnesses be made in the margin, or in some other part of the will opposite or near to such alteration, or at the foot or end of, or opposite to a memorandum referring to such alteration, and written at the end or some other part of the will.—7 Wm. IV. and 1 Vict. c. 26, s. 21.

**EXECUTION, writ of.** This process, the service of which was a preliminary step to enforcing obedience to a decree or order in Chancery, is abolished.—10th Ord. 26th August, 1841, amended by Orders, 11th April, 1842.

**EXECUTIONE FACIENDA**, a writ commanding execution of a judgment.—*Obsolete.*

**EXECUTIONE FACIENDA IN WITHERNAMIUM**, a writ that lay for taking cattle of one who has conveyed the cattle of another out of the county, so that the sheriff cannot replevy them.—*Reg. Orig.* 82.

**EXECUTIONE JUDICII**, a writ directed to the judge of an inferior court to do execution upon a judgment therein, or to return some reasonable cause wherefore he delays the execution.—*F. N. B.* 20.

**EXECUTIONER**, he that inflicts capital punishment; he that puts to death according to the sentence of the law.

**EXECUTIVE**, that branch of the government which performs the functions of state. It differs from *legislative* and *judicial*, thus: the body that deliberates and enacts laws is legislative: the body that judges and applies the laws in particular cases is judicial; and the body that carries the laws into effect, or superintends the enforcement of them, is executive, which power, in all monarchies, is vested in the sovereign.

[By the Constitution of the United States, the executive power is vested in the President.—*Kent's Com.*]

**EXECUTOR** (fr. *exécuteur*, Fr.), a person appointed by the testator to carry out the directions and requests in his will, and to dispose of the property according to his testamentary provisions after his decease.

The leading duties and responsibilities of an executor may be thus classed:

(1.) He will not be allowed, as against creditors, funeral expenses exceeding 20*l.* if the testator died insolvent; and if he neglected to secure the property, and loss ensue, he will be personally liable for a devastavit.

(2.) Before probate of the will, an executor may effectually do most acts that he could enforce afterwards, because by the very appointment the testator has evinced personal confidence in his nominee, and, therefore, the interest of an executor arises not from the probate, but

from the will; and for the same reason it has been held, that he may release a debt or assign a term for years before probate. Also, he may collect and secure assets, receive debts, and give effectual receipts, assent to a legacy, present bills or notes for payment, give notices of dishonor, or take proceedings in bankruptcy; so he might issue a writ of summons at common law. He might also file a bill in equity, but he must obtain probate before the hearing, though strictly, an executor should not file a bill until he has obtained probate. He may be sued before probate, if he have acted. It is said that an expected administrator, before obtaining letters of administration, can do no act whatever; but it has been considered that he might file a bill in Chancery, although he may not be able to commence an action at law, and he may collect, secure, and ascertain the value of the property, so as to enable him to make affidavit that it does not exceed a certain value, as required by the statute.

(3.) Instead of an inventory and valuation of the testator's personal property on stamped paper, it is now usual, in order to be safe, to have an accurate inventory made by any competent person, distinguishing such debts due to the estate as are sperate or good from those which are doubtful or desperate, and then obtain the written consent of all persons interested in the assets, or at least of the legatees or residuary legatee, which saves the expenses of a valuation. It is a usual and proper precaution, in cases of the least doubt, shortly after the funeral, to publish an advertisement in the principal newspapers for debtors to pay their debts, and for claimants to send in the particulars of their claims to a named person; and this is essential before the speedy payment of simple contract creditors, and still more before the payment of legacies; for if, without such advertisement, and without suit, an executor or administrator should hastily pay a simple contract creditor, and afterwards specialty debts should appear, he may be liable to the consequences of a misapplication of assets and devastavit.

(4.) Probate should be obtained within six calendar months after death of testator, and if delayed after that time, a penalty of 100*l.*, and 10*l.* per cent. on the property would be incurred. If there be a suit or dispute relative to the will or administration, the probate or letters of administration should be obtained within two calendar months after it has been ended. 55 Geo. III. c. 184, s. 37. The probate should be obtained to the extent of the sum really expected to be received. An administrator, after obtaining letters of administration, stands in most respects in the same situation as an executor, and the cases relating to one in general equally apply to the other.

(5.) It is the duty of the executor or administrator to collect and speedily reduce into money the personal assets, when not otherwise directed, especially if they be of a perishable nature. If executors be directed by the will to carry on the testator's business or trade, they should do so under the protection of the Court of Chancery. The 3 & 4 Wm. IV. c. 42, s. 2, enables executors or administrators to recover for any

is to be reckoned.—1 *Chit. Arch. Prac. by Pren.* 145.

*Fructus augent hæreditatem.* D. A. 3, 20, 31. (Fruits enhance an inheritance.)

**FRUCTUS INDUSTRIALES** (*emblems*).

**FRUMGYLD**, the first payment made to the kindred of a person slain, towards the recompense of his murder.

**FRUMSTOL**, original or paternal dwelling.—*Anc. Inst. Eng.*

**FRUSCA TERRÆ**, waste and desert lands.

**FRUSSURA**, a breaking; plunging.

*Frustrâ est potentia quæ nunquam venit in actum.* 2 Co. 51. (The power which never comes into act is in vain.)

*Frustrâ expectatur eventus cujus effectus nullus sequitur.* 5 Co. Eccl. L. (An event is vainly expected from which no effect follows.)

*Frustrâ feruntur leges nisi subdilis et obedientibus.* 7 Co. 13. (Laws are made in vain unless to those subject and obedient.)

*Frustrâ fit per plura, quod fieri potest per pauciora.* Jenk. Cent. 68. (That is done vainly by many things, that might be done by less.)

*Frustrâ legis auxilium quærît qui in legem committit.* (Vainly does he who offends against law, seek the help of law.)

*Frustrâ petis quod statim alteri reddere cogis.* Jenk. Cent. 256. (Vainly you beg that which you will be immediately forced to restore to another.)

*Frustrâ probatur quod probatum non relevat.* (That is vainly proved which, being proved, would not aid the matter in question.)

**FRUSTRUM TERRÆ**, a small piece or parcel of land.

**FRUTECTUM**, a place where shrubs or herbs grow.

**FRYMITH, FYRMTH**, the affording harbor and entertainment to any one.—*Anc. Inst. Eng.*

**FUAGE.** See **FUMAGE**.

**FUER**, flight. It is of two kinds: (1.) *fuér in fail*, or *in facto*, where a person does apparently and corporally flee; (2.) *fuér in ley*, or *in lege*, when being called in the county-court he does not appear, which legal interpretation makes flight.

**FUERO JURGO**, a code of Spanish law, said to be the most ancient in Europe.

**FUGA CATALORUM**, a drove of cattle.

**FUGACIA**, a chase.

**FUGAM FECIT** (he has made flight), said of a person who is found by inquisition to have fled for felony, &c., upon which forfeiture of goods took place. Not now practised.—7 & 8 *Geo. IV. c. 28, s. 5.*

In Scotland, where a criminal does not obey the citation to answer, the court pronounces sentence of fugitation against him, which induces a forfeiture of goods and chattels to the Crown.

**FUGATIO**, a privilege to hunt.—*Blount.*

**FUGATORES CARRUCARUM**, wagoners, who drive oxen without beating or goading.—*Fleta. l. 2, c. 78.*

[**FUGITIVES FROM JUSTICE.** The Constitution of the United States declares that, "A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall, on demand of the

executive authority of the same State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime."—*Walker's American Law.*]

[**FUGITIVES FROM LABOR.** The Constitution of the United States provides that "No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up, on claim of the party to whom such service or labor may be due."—*Brightly's Digest Laws U. S. Walker's American Law.*]

**FULL AGE.** See **AGE**.

**FULLUM AQUÆ**, a fleam or stream of water.

**FUMAGE, FUAGE, or FOUAGE** (vulgarly called *smoke-farthings*), a tax paid to the sovereign for every house that had a chimney. It is probable that the *hearth-money*, imposed by 13 & 14 Car. II. c. 10, took its origin hence. This hearth-money was declared a great oppression, and abolished by 1 W. & M. st. 1. c. 10; but a tax was afterwards laid upon all houses, except cottages, and upon all windows, by 7 Wm. III. c. 18.

**FUNCTION** (fr. *fungor*, Lat., to perform), employment; discharge of office.

**FUNCTUS OFFICIO** (*having discharged a duty*).

*Fundatio est quasi fundi datio; et appellatione fundi ædificium et ager continentur.* 10 Co. 33. (Foundation is, as it were, a giving of revenue or fund; and under the term, "fundus," building and land are comprised.)

**FUNDI PATRIMONIALES** (*lands of inheritance*).

**FUNDITORES**, pioneers.

**FUNDS, public.** the name given to the public funded debt due by government.

The practice of borrowing money in order to defray a part of the war expenditure began, in this country, in the reign of William III. In the infancy of the practice, it was customary to borrow upon the security of some tax, or portion of a tax, set apart as a fund for discharging the principal and interest of the sum borrowed. This discharge was, however, very rarely effected. The public exigencies still continuing, the loans were, in most cases, either continued, or the taxes were again mortgaged for fresh ones. At length the practice of borrowing for a fixed period, or, as it is commonly termed, upon *terminable annuities*, was almost entirely abandoned, and most loans were made upon *interminable annuities*, or until such time as it might be convenient for government to pay off the principal.

In the beginning of the funding system, the term "*fund*" meant the taxes or funds appropriated to the discharge of the principal and interest of loans; those who held government securities, and sold them to others, selling, of course, a corresponding claim upon such fund. But after the debt began to grow large, and the practice of borrowing upon interminable annuities had been introduced, the meaning attached to the term "*fund*" was gradually changed, and instead of signifying the security upon which

to sever the jointure, or if he become the survivor or sole owner by release, prior judgments against him become available charges on the property.

The severance and destruction of this estate may be effected in several ways, as—

(1.) By a voluntary deed of partition among the tenants agreeing to hold the property in severalty, for this is a disunion of their possession, and they have then but a separate interest in the several parts of the land, and the *jus accrescendi* is gone.

(2.) By alienation without partition, as by one joint-tenant either releasing his share to the other, or conveying it away to a third person, for this is a destruction of the unity of title. A covenant to sell by a joint-tenant severs the estate in equity, provided it can be specifically performed, but not at law.

(3.) By accession of interest, either by one joint-tenant purchasing the interest of the others, or by acquiring the whole estate by survivorship, whereby the unity of interest is dissolved.

(4.) By a decree in Chancery on a bill duly filed, and a commission to divide the land, having been properly issued and regularly returned; the court then directing a compulsory partition, and ordering the execution of reciprocal transfers. See 13 & 14 Vict. c. 60, s. 30; and also 41 Geo. III. c. 109, s. 16; and 1 Wm. IV. c. 65, s. 27. [*Kent's Com.*; *Walker's Am. Law*, 303.]

**JOINTURE.** The original law of dower became among our ancestors, with the increase of alienation, highly inconvenient and obstructive of the free course of conveyances. The Legislature, by the 27 Hen. VIII. c. 10 (the Statute of Uses), set about a method of diminishing the evil by providing a *jointure* in lieu of dower. By effect of this statute no widow can claim both jointure and dower. Jointure, in its strict acceptation, meant a joint estate, limited to both husband and wife; but it is now understood to be a sole estate, limited only to the wife. To a strict legal jointure, these six things are requisite:—

(1.) The provision for the wife must take effect in possession or profit immediately after her husband's death.

(2.) It must be for her own life at least, and not *pour autre vie*, or for any terms of years, or for any smaller estate. But the widow will be bound by the acceptance of a precarious interest if she were adult at the time she agreed to the jointure.

(3.) It must be made to herself, and no other in trust for her.

(4.) It must be made in satisfaction of the whole, and not in part of her dower.

(5.) It must be either expressed or averred to be in satisfaction of dower; and

(6.) It may be made either before or after marriage; if made *after* marriage, she may waive it, and claim her dower, unless it be provided by Act of Parliament.

The Statute of Jointures, 11 Hen. VII. c. 20, is repealed by 3 & 4 Wm. IV. c. 74, s. 17, except as to lands comprised in settlements made before the passing of this act.

**JOINTRESS, or JOINTURESS,** she who has an estate settled upon her by her husband, to

hold during her life at least, provided she survive him.

**JOKELET** (fr. *yokelet*), a little farm, such as requires a small yoke of oxen to till it.

**JOURNAL**, a day-book, or diary of transactions used by merchants, mariners, tradesmen, &c., in their business.

**JOURNALS OF PARLIAMENT**, matters *quasi* of record, which are proved by examined copies from the minute books of the Houses of Lords and Commons.—*Doug.* 594.

**JOURNEY-HOPPERS**, regrators of yarn.—8 Hen. VI. c. 5.

**JOURNEYMEN** (fr. *journée*, Fr., a day's work), a workman hired by the day, or other given time.

**JOURNEY'S ACCOUNTS**, the shortest possible time between an abatement of one writ and the issuing of another.—*Obsolete.*

**JUDAISMUS**, usury; also, the dwelling-places of the Jews.

**JUDEX AD QUEM**, a judge to whom an appeal is made.

*Judex ante oculos æquitatem semper habere debet.* Jenk. Cent. 58. (A judge ought always to have equity before his eyes.)

*Judex æquitatem semper spectare debet.* Jenk. Cent. 45. (A judge ought always to regard equity.)

**JUDEX A QUO**, a judge from whom there is an appeal.

*Judex bonus nihil ex arbitrio suo faciat, nec propositione domesticæ voluntatis, sed juxta leges et jura pronunciet.* 7 Co. 27. (A good judge may do nothing from his own judgment, or from a dictate of private will; but he will pronounce according to law and justice.)

*Judex damnatur cum nocens absolvitur.* (The judge is condemned, when a guilty person escapes punishment.)

*Judex est lex loquens.* 7 Co. 4. (A judge is the law speaking.)

*Judex habere debet duos sales, salem sapientiæ, ne sit insipidus, et salem conscientie ne sit diabolus.* 3 Inst. 147. (A judge should have two salts: the salt of wisdom, lest he be insipid; and the salt of conscience, lest he be devilish.)

*Judex non potest esse testis in propria causa.* 4 Inst. 279. (A judge cannot be a witness in his own cause.)

*Judex non potest injuriam suam damare punire.* 12 Co. 113. (A judge cannot punish an injury done to himself.)

*Judex non reddit plus quam quod petens ipse requirit.* 2 Inst. 286. (A judge restores not more than that which the plaintiff himself requires.)

**JUDGE** (fr. *judge*, Fr., *judex*, Lat.), one invested with authority to determine any cause or question in a court of judicature, created by the Queen's letters-patent.

To secure the dignity and political independence of the judges of the superior courts at Westminster, it is enacted by 12 & 13 Wm. III. c. 2, that their commissions shall be made not as formerly, *durante bene placito*, but *quamdiu bene se gesserint*, and that it may be lawful to remove them on the address of both Houses of Parliament. By 1 Geo. III. c. 23, the judges are continued in their offices during good behavior,



proceeding to trial, with or without terms.—(s. 101.)

(15.) Judgment upon *nul tiel record*. The judgment for the plaintiff is interlocutory or final, just as it is upon demurrer or default; but the defendant's judgment would be final. A rule for judgment is not now necessary.

Where a defendant shall plead a plea of judgment recovered, he shall, in the margin of such plea, state the date of such judgment, and if such judgment shall be in a court of record, the number of the roll on which such proceedings are entered, if any; and in default of his so doing, the plaintiff shall be at liberty to sign judgment as for want of a plea; and in case the same be falsely stated by the defendant, the plaintiff on producing a certificate from the proper officer, or person having the custody of the records or proceedings of the court where such judgment is alleged to have been recovered, that there is no such record or entry of a judgment as therein stated, shall be at liberty to sign judgment as for want of a plea.—*H. T.* 1853, r. 10.

(16.) Judgment in *replevin*. See *REPLEVIN*.

(17.) Judgment in *scire facias*. The judgment is the same as in ordinary cases. See *REVIVOR*.

(18.) Judgment on warrant of attorney. Judgment may be entered upon a warrant of attorney, at the time therein specified for that purpose; and if the warrant were given to secure the payment of money, it is not necessary that the plaintiff should delay the signing of the judgment until default be made in the payment, unless that be expressly stipulated for in the defeazance. If the warrant specify any particular time at which the judgment is to be signed, it cannot be entered up at any other time. Within a year and a day from the date of a warrant, judgment may be entered up as of course; but leave to enter up judgment on a warrant of attorney above one and under ten years old, must be obtained by order of a judge made *ex parte*; and if ten years old or more, upon a summons to show cause. The application for such leave is founded upon an affidavit, stating the consideration for the warrant of attorney, its execution, the amount remaining due to the plaintiff, and alleging positively that the defendant was alive at a certain time therein mentioned.—*H. T.* 1853, r. 26.

(19.) In *criminal* cases, judgment, unless any matter be offered in arrest thereof, follows upon conviction; being the pronouncing of that punishment which is expressly ordained by law.—4 *Bl. Com.* c. xxix. [*Troubat & Haly's Practice*, *Wharton's Crim. Law.*]

*Judicandum est legibus non exemplis.* 4 Co. 33. (We are to judge by the laws, not by examples.)

JUDICATORES TERRARUM, persons in the county palatine of Chester, who, on a writ of error, were to consider of the judgment given there, and reform it, otherwise they forfeited 100*l.* to the Crown by custom.—*Jenk. Cent.* 71.

*Judices non tenentur exprimere causam sententia suae.* *Jenk. Cent.* 75. (Judges are not bound to explain the reason of their sentence.)

JUDICES PEDANEOS, judges chosen by the litigants.—*Civ. Law.*

JUDICIAL ACTS, numerous statutes giving summary power to justices of the peace; and that certain acts shall only be valid if done by two magistrates. If it be only a *ministerial* act, it is not requisite that the two magistrates should be together at the time of doing the act; if it be *judicial*, they must.

JUDICIAL AUTHORITY, the power of a judge.

There is a wide distinction between a special authority to act under particular circumstances, and a judicial authority to act in particular cases. So long in either case as the party acts within the limits of his authority, he is, of course, justified in what he does, and in either case, if he plainly exceed the limits of his authority, he is without justification; the material difference is this, that in the former case, *i. e.* where he has a mere authority to execute, it is open to inquiry whether facts existed which warranted his act; in the latter, where he acts judicially in a matter within his jurisdiction, his adjudication is usually conclusive upon the question, whether the particular facts warranted that judgment, and to protect him from an action of trespass.—3 *Stark. Evid.* 1150, *q.*

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, a tribunal established in its present form by 2 & 3 Wm. IV. c. 92; 3 & 4 Wm. IV. c. 41; and 6 & 7 Viet. c. 38, for the disposal of appeals and such other matters as Queen in council may refer to them.

"It is admirably adapted," said Lord Lyndhurst, "for the business it has to perform. There are various kinds of law agitated and discussed, considered and decided before the tribunal. Questions of civil and ecclesiastical law come before it. There are judges who have been brought up in practising and administering the civil and ecclesiastical laws; and when questions of this kind arise, their attendance is required, and they form part of the court for deciding these questions. Then there are questions of what in England is called equity. There are judges from the equity courts members of this tribunal; and when questions of that kind are discussed, their attendance is required and they form part of the court. Again, questions of common law are considered and decided. There are members of that court who are judges of common law; and they attend on these occasions to assist in the decision. Nay, more, there are questions of Hindoo and Mahometan law discussed before that tribunal; the result of which is of the utmost importance to the parties. The court has then the assistance of persons, who, having practised as judges in India, are familiar with such questions."—*Debates*, 12 April, 1842.

JUDICIAL DOCUMENTS, proceedings relating to litigation. They are divided into, (1.) judgments, decrees, and verdicts; (2.) depositions, examinations, and inquisitions taken in the course of a legal process; (3.) writs, warrants, pleadings, bills, and answers, &c., which are incident to judicial proceedings.—1 *Stark. Evid.* 252.

JUDICIAL SALE AND RANKING, when

LEGALLY, according to law.

LEGAMANNUS. See LAGEMAN.

LEGANTINE, or LEGATINE CONSTITUTIONS, ecclesiastical laws enacted in national synods, held under the cardinals Otho and Othobon, legates from Pope Gregory IX. and Pope Clement IV., in the reign of King Henry III., about the years 1220 and 1268.

LEGATARY (fr. *legatum*, Lat.), a legatee.

LEGATE (fr. *legare, deligare*, Lat., to send), a deputy; an ambassador, the Pope's nuncio.

There are three kinds: (1) Legates *à latere*, being such as the Pope commissions to take his place in councils, and so called, because he never gives this office to any but his favorites and confidants, who are always *à latere* at his side. (2.) Legates *de latere*, or *legati dati*, those intrusted with apostolical legation; they acted under a special commission. (3.) Legates *by office*, or *legati nati*, those that were legates by virtue of their offices, as in England, the Archbishop of Canterbury in former times.—*Encyc. Lond.*

LEGATEE, one who has a legacy left to him.

LEGATION, an embassy or mission.

LEGATOR, one who makes a will and leaves legacies.

*Legatos violare contra jus gentium est.* (It is contrary to the law of nations to injure ambassadors.)

LEGATUM, a legacy given to the church, or an accustomed mortuary.—*Cowel.*

*Legatum, morte testatoris tantum confirmatur, sicut donatio inter vivos traditione solâ.* Dyer, 143. (A legacy is confirmed by the death of a testator, in the same manner as a gift from a living person is by delivery alone.)

*Legatus, regis vice fungitur à quo destinatur et honorandus est sicut ille cujus vicem gerit.* 12 Co. 17. (An ambassador fills the place of the king by whom he is sent, and is to be honored as he is whose place he fills.)

LEGEM FACERE, to make law upon oath.

LEGEM HABERE, to be capable of giving evidence upon oath.

*Legem terræ amittentes perpetuam infamiam notam inde meritò incurrunt.* 3 Inst. 221. (Destroyers of the law of the land, thence justly incur the perpetual note of infamy.)

LEGER, LEIGER, or LEDGER (fr. *legger*, Dut., to lie), any thing that lies in a place; as, a leger-book, a book that lies in a counting-house; leger-ambassador, a resident ambassador.

LEGERGILD. See LAIRWRITE.

*Leges Angliæ sunt tripartitæ: jus commune, consuetudines, ac decreta comitorum.* (The laws of England are threefold: Common Law, Customs, and Decrees of Parliament.)

*Leges figendi et refigendi consuetudo periculosissima est.* 4 Co. ad Lect. (The custom of making and annulling laws is most dangerous.)

*Leges naturæ perfectissimæ et immutabiles: humani vero juris conditio semper in infinitum decurrit, et nihil est in eo quod perpetuo stare possit.* *Leges humanæ nascuntur, vivunt, et moriuntur.* 7 Co. 25. (The laws of nature are most firm and immutable; but the condition of human law ever tends to infinity, and there is nothing in it

which can continue perpetually. Human laws are born, live, and die.)

*Leges non verbis sed rebus sunt impositiæ.* 10 Co. 101. (Laws are imposed on things, not words.)

*Leges posteriores priores contrarias abrogant.* 2 Rol. Rep. 410. (Later laws abrogate prior contrary laws.)

LEGIOSUS, litigious, subjected to a course of law.—*Cowel.*

*Legibus sumptis desinentibus, lege naturæ utendum est.* 2 Rol. Rep. 98. (Laws imposed by the state, failing, we must act by the law of nature.)

*Legis constructio non facit injuriam.* Co. Litt. 183. (The construction of law does no injury.)

*Legis interpretatio legis vim obtinet.* Elles. Post. 55. (The interpretation of law obtains the force of law.)

*Legislatorum est viva vox, rebus et non verbis, legem imponere.* 10 Co. 101. (The voice of legislators is a living voice, to impose law on things, and not on words.)

*Legis minister non tenetur, in executione officii sui fugere aut retrocedere.* 6 Co. 68. (The minister of the law is not bound, in the execution of his office, either to avoid or flinch.)

LEGISLATION, the act of giving laws.

LEGISLATOR, a law-giver.

LEGISLATRESS, a female law giver.

LEGISLATURE, the power that makes laws. LEGITIM, the children's claim out of the free movable estate of their deceased father intestate, amounting to one-half or one-third (according to circumstances) of his movables, after paying his debts.—*Scotch Law.*

LEGITIMACY, lawful birth.

LEGITIMACY DECLARATION ACT, 1858, 21 & 22 Vict. c. 73, which provides that "any natural-born subject of the Queen, or any person whose right to be deemed a natural-born subject depends wholly or in part on his legitimacy or on the validity of a marriage, being domiciled in England or Ireland, or claiming any real or personal estate situate in England, may apply by petition to the Court for Divorce and Matrimonial Causes, praying the court for a decree declaring that the petitioner is the legitimate child of his parents, and that the marriage of his father and mother, or of his grandfather and grandmother, was a valid marriage, or for a decree declaring either of the matters aforesaid; and any such subject or person, being so domiciled or claiming as aforesaid, may in like manner apply to such court for a decree declaring that his marriage was or is a valid marriage, and such court shall have jurisdiction to hear and determine such application and to make such decree declaratory of the legitimacy or illegitimacy of such person, or of the validity or invalidity of such marriage, as the court may seem just; and such decree, except as hereinafter mentioned, shall be binding to all intents and purposes on her Majesty and on all persons whomsoever."—(s. 1.)

"Any person being so domiciled or claiming as aforesaid may apply by petition to the said court for a decree declaratory of his right to be deemed a natural-born subject of her Majesty, and the said court shall have jurisdiction to hear

regulated by 16 & 17 Vict. c. 97, amended by 18 & 19 Vict. c. 105, and 19 & 20 Vict. c. 87; other asylums are regulated by 8 & 9 Vict. c. 100, amended by 16 & 17 Vict. c. 96, and 18 & 19 Vict. c. 105.

**LUNDRESS**, a sterling silver penny, which was only coined in London.—*Lovend's Essay on Coins*, 17.

**LUPANATRIX**, a bawd or strumpet.—3 *Inst.* 206.

**LUPINUM CAPUT GERERE**, to be outlawed, and have one's head exposed, like a wolf's, with a reward to him who should take it.

**LURGULARY**, casting any corrupt or poisonous thing into the water.

**LUXURY**, excess and extravagance, which was formerly an offence against the public economy, but now not punishable.—1 *Jac. I.* c. 25. See 19 & 20 Vict. c. 64, which repealed the Statute of Nottingham, 10 Edw. III. stat. 3, *de cibariis utendis*.

**LYEF-YELD**, or **LEF-SILVER**, a small fine paid by a customary tenant to his lord, for leave to plough or sow.

**LYING IN FRANCHISE**, waifs, wrecks, estrays, and the like, which may be seized without suit or action.—3 *Step. Com.* 352.

**LYING IN GRANT**, or **IN LIVERY**. See **GRANT**.

**LYING-IN-HOSPITALS**, charities which should be supported and encouraged. They cannot, however, be established without a previous license from the Quarter Sessions; and illegitimate children born in them are not to be chargeable to the parish of their births.—13 *Geo. III.* c. 82.

**LYNCH-LAW**. See **LIDFORD LAW**.

**LYON KING OF ARMS**, the Scotch herald.

## M.

**M**, the brand or stigma of a person convicted of manslaughter, and admitted to the benefit of clergy. It was burned on the brawn of the left thumb.—*Abolished*.

**MAAL, MAHL, MEHAL**, places, districts, departments; places or sources of revenue, particularly of a territorial nature; lauds.—*Indian*.

**MAC**, a prefix to Irish and Scotch names, signifying a son.

**MACE**, a large staff, made of the precious metals, and highly ornamented. It is used as an emblem of authority, and carried before certain public functionaries by a mace-bearer.

**MACEDONIAN DECREE**, a decree of the Roman senate, which derived its name from that of a certain usurer who was the cause of its being made, in consequence of his exactions. It was intended to protect sons who lived under the paternal jurisdiction from the unconscionable contracts which they sometimes made on their expectations after their fathers' deaths; another, and perhaps the principal object, was to cast odium on the rapacious creditors. It declared such contracts void.—*Civ. Law*.

**MACE-GREFF** (fr. *macearius*, Lat.), one that buys stolen goods, particularly food, knowing it to be stolen.—*Brit. c.* 29.

**MACE-PROOF**, secure against arrest.

**MACER**, a mace-bearer; an officer attending the Court of Sessions.

**MACHINERY**, riotous destruction of. See 7 & 8 *Geo. IV.* c. 30, s. 8, and c. 31, ss. 2, 3.—4 *Step. Com.* 316.

**MACTATOR**, a murderer.

**MADHOUSE**. See **LUNATIC ASYLUMS**.

**MADMAN**. See **MENTAL ALIENATION**.

**MADRAS**, *bishopric of*, established by 3 & 4 Wm. IV. c. 85.

**MERE** (fr. *mer*, Sax.), famous, great, noted; as *Elmere*, all famous.—*Gibbs. Camd.*

**MEG-BOT**, compensation for homicide paid by the perpetrator to the kinsmen or family of the slain.—*Anc. Inst. Eng.*

**MEC-BURGH**, kindred, family.

**MAGIC**, witchcraft and sorcery.—9 *Geo. II.* c. 5; and 5 *Geo. IV.* c. 83.

**MAGISTER**, a master or ruler; a person who has attained to some eminent degree in science.

**MAGISTER AD FACULTATES**, an ecclesiastical officer who grants dispensations.

**MAGISTER NAVIS** (*the master of a ship*).

**MAGISTER SOCIETATIS** (*the manager of a partnership*).

**MAGISTRATE**, a man publicly vested with authority; a governor; an executor of the laws.

Of magistrates some are supreme, in whom the sovereign power of the state resides; others are subordinate, deriving all their authority from the supreme magistrate, accountable to him for their conduct, and acting in an inferior, secondary sphere.

The word *magistratus* contains the same element as *mag* (*ister*) and *mag* (*nus*); and it signifies both the person and the office, as we see in the phrase *se magistratu abdicare*.—*Liv.* xxiii. 23. According to Festus, a *magistratus* was one who had *judicium auspiciumque*.—*Smith's Dict. of Antiq.* See **JUSTICES**.

*Magister rerum usus; magistra rerum experientia.* Co. Litt. 69, 229. (Use is the master of things; experience is the mistress of things.)

**MAGISTRACY**, the body of officers who administer the laws; the office of a magistrate.

**MAGNA ASSISA ELIGENDA**, *writ de*. The first species of extraordinary trial is that of the grand assize, which was instituted by Henry II. in Parliament, by way of alternative offered to the choice of a tenant or defendant in a writ of right instead of the duel. The writ issued to the sheriff to return four knights, who were to elect and choose twelve others to be joined with them, and these formed the grand assize or great jury, which was to try the matter of right. Abolished by 3 & 4 Wm. IV. c. 27.

**MAGNA CENTUM**, the great hundred, or six score.

**MAGNA CHARTA**. This great Charter commences the Statute-book of the Realm, and is the Genesis of British Liberty, the fundamental assurance of our political freedom. It is based substantially upon the Saxon Common Law, which flourished in this kingdom until the Norman invasion consolidated the tyrant system of feudalism, still the great characteristic of the principles of real property. It is mainly the solemn restitution of the ancient liberties of the realm, exacted from a profligate sovereign by



374. (The power of the king is to execute justice.)

*Potestas regis juris sit, non injurie.* 3 Inst. 236. (The king's power is of right, not of injury.)

*Potestas strictè interpretatur.* Jenk. Cent. 17. (Let power be strictly interpreted.)

*Potestas suprema seipsum dissolvere potest, ligare non potest.* Bacon. (Supreme power can dissolve, but cannot bind itself.)

*Potior est conditio defendentis.* (The condition of a defendant is better.)

*Potior est conditio possidentis.* (The condition of one possessing is better.)—2 Wms. Exors. 836.

**POTWALLOPERS**, cooks of their own diet, having the franchise.

**POUND** (fr. *pund*, Sax., *parcus*, Lat.), a certain weight, consisting, in troy weight, of 12, in avoirdupois, of 16 ounces; the sum of 20s., which formerly weighed a pound; also, a penfold, an inclosure, a prison in which beasts are inclosed, for any damage or trespass done by them, until they are replevied or redeemed. It is either *overt*, i. e. open over-head; or *covert*, i. e. close. A pound-keeper is bound to receive everything offered to his custody, and is not answerable whether the thing were legally pounded or not. 1 T. R. 62. See 1 & 2 P. and M. c. 12; 11 Geo. II. c. 19; and as to feeding cattle impounded, 12 & 13 Vict. c. 92, ss. 5, 6.

**POUNDAGE**, a certain sum deducted from a pound. Sheriffs' poundage on writs of *ca. sa.* is abolished by 5 & 6 Vict. c. 98, s. 3. The amount of their poundage, upon a *fi. fa.* is 1s. for every 20s. if the sum levied does not exceed 100l., and 6d. for every 20s. over and above that sum. The penalty is 40l. if more is exacted. 28 Eliz. c. 4; 7 Wm. IV. and 1 Vict. c. 53.

**POUND-BREACH**, breaking open a pound in order to take cattle; it is an indictable offence, because the cattle is deemed to be in the possession of the law.

**POUR FAIR PROCLAIMER**, an ancient writ addressed to the mayor or bailiff of a city or town, requiring him to make proclamation concerning nuisances, &c.—F. N. B. 176.

**POURPARTY**, to divide the lands which fall to parceners.—O. N. B. 11.

**POURPRESTURE** (fr. *pourpris*, Fr., an inclosure), anything done to the nuisance or hurt of the Queen's demesnes, or the highways, &c.; by inclosure or building, endeavoring to make that private which ought to be public.

The difference between a *pourpresture* and a public nuisance is this, where the *jus privatum* of the Crown is invaded it is a *pourpresture*; but where the *jus publicum* is violated, it is a nuisance.

Skene makes three sorts of this offence: (1.) against the Crown; (2.) against the lord of the fee; (3.) against a neighbor.—2 Inst. 38.

**POUR SEISIR TERRES**, an ancient writ whereby the Crown seized the land which the wife of his tenant, who held *in capite* deceased, had for her dower, if she married without leave; it was grounded on the statute of the king's prerogative. It is abolished by 12 Car. II. c. 24.

**POURSUIVANT**, a king's messenger; those

employed in martial causes are called *Poursuivant-at-Arms*.

There are at present, in the Herald's Office, four pursuivants, distinguished by the names following:—

(1.) *Rouge Croix*, instituted at an uncertain period, but generally considered to be the most ancient. The title was doubtless derived from the cross of St. George.

(2.) *Blue Mantle*. An office instituted by Edward III. or Henry V., and named either in allusion to the color of the arms of France, or to that of the robes of the Order of the Garter.

(3.) *Rouge Dragon*. This pursuivance was founded by Henry VII. on the day before his coronation, the name being derived from the ensign of his ancestor, Cadwaladr. He also assumed a red dragon as the dexter supporter of his arms.

(4.) *Portcullis*. This office was instituted by the same monarch, from one of whose badges the title was derived.

**POURVEYANCE**, or **PURVEYANCE**, the providing necessaries for the sovereign, by buying them at an appraised valuation in preference to all others, and even without the owner's consent. Indeed it was a royal right of spoil and long since abolished.—12 Car. II. c. 24; 3 Hall. M. A. c. viii. part 3, p. 148; and 1 Hall. Cons. Hist. c. vi. p. 304.

**POURVEYOR**, or **PURVEYOR**, a buyer; one who provided for the royal household.

**POWDIKES**, destroying them in the fens of Norfolk and Ely, is felony, by 22 Hen. VIII. c. 11.

**POWER**, an authority which one gives to another to act for him, or to do some certain acts, as to make leases, raise portions, or the like; also to modify the uses of an estate, which one has to dispose of; it is an authority enabling one person to dispose of an interest which is vested in another.—2 Lill. Abr. 339.

Powers are either common-law authorities, declarations or directions, operating only on the conscience of the persons in whom the legal interest is vested, or declarations, or directions deriving their effect from the Statute of Uses. A power given by a will to A., an executor, to sell an estate, to whom no estate is devised, and a power given by an act of Parliament to sell estates, as in the instance of the Land Tax Redemption Acts, are both common-law-authorities. The estate passes by force of the will or act of Parliament, and the person who executes the power merely nominates the party to take the estate. A power of attorney is also a common-law-authority. A power to dispose of an estate or sum of money of which the legal estate is vested in another, is a power of the second sort. The legal interest is not divested by the execution of the power, but equity will compel the person seized of it to clothe the estate created with the legal right. Powers deriving their effect from the Statute of Uses are either given to a person who has an estate limited to him by the deed creating the power, or who had an estate in the land at the time of the execution of the deed, or to a stranger, to whom no estate is given, but the power is to be exercised for his own benefit, or to a mere stranger to whom no

estate is given, and the power is for the benefit of others.

Powers are either—

(1.) *Collateral*; which are given to strangers, *i. e.*, to persons who have neither a present nor future estate or interest in the land. These are also called *simply collateral*, or *powers not coupled with an interest*, or *powers not being interests*. These terms have been adopted to obviate the confusion arising from the circumstance that powers in gross have been by many called *powers collateral*.—*Savile v. Blacket*, 1 P. Wms. 777.

(2.) *Relating to the land*, which are either—

(a) *Appendant or appurtenant*, because, they strictly depend upon the estate limited to the person to whom they are given. Thus, where an estate for life is limited to a man, with a power to grant leases in possession, a lease granted under the power may operate wholly out of the life-estate of the party executing it, and must in every case have its operation out of his estate during his life. Such an estate must be created, which will attach on an interest actually vested in himself: or,

(3) *In gross*, which are given to a person who had an interest in the estate at the execution of the deed creating the power, or to whom an estate is given by the deed, but which enabled him to create such estates only as will not attach on the interest limited to him. Of necessity, therefore, where a man seised in fee settles his estate on others, reserving to himself only a particular power, the power is in gross. A power to a tenant for life to appoint the estate after his death amongst his children, a power to jointure a wife after his death, a power to raise a term of years to commence from his death, for securing younger children's portions, are all powers in gross.

A power may, with reference to the particular estates in the land over which it extends, have different aspects; it may, in regard to one, be a power appendant, in respect to the other, a power in gross. Thus where an estate is settled to A. for life, remainder to B. in tail, remainder to A. in fee, and A. has a power to jointure his wife after his death, this power is in gross as to the estate for life, but appendant or appurtenant as to the remainder in fee. It may affect the latter, but never can attach on the former.

An important distinction is established between *general* and *particular* powers. By a general power, we understand a right to appoint to whomsoever the donee pleases. By a particular power, it is meant that the donee is restricted to some objects designated in the deed creating the power, as to his own children.

A power shall be expounded strictly; therefore, if a man have power to make leases generally, this extends to make leases in possession only, and not in reversion.

Powers appendant may be destroyed by release, bargain and sale, or feoffment; powers in gross, by feoffment or release: but powers simply collateral, cannot be destroyed by the act of the person to whom they are given. As the appointor is merely an instrument, the appointee shall be in by the original deed.

Appointments by will are to be executed like

other wills, and to be valid, although other required solemnities are not observed.—7 Wm. IV. and 1 Vict. c. 26, s. 10.

A deed hereafter executed in the presence of and attested by two or more witnesses in the manner in which deeds are ordinarily executed and attested shall, so far as respects the execution and attestation thereof, be a valid execution of a power of appointment by deed or by any instrument in writing not testamentary, notwithstanding it shall have been expressly required that a deed or instrument in writing made in exercise of such power should be executed or attested with some additional or other form of execution, or attestation, or solemnity. Provided always, that this provision shall not operate to defeat any direction in the instrument creating the power that the consent of any particular person shall be necessary to a valid execution, or that any act shall be performed in order to give validity to any appointment having no relation to the mode of executing and attesting the instrument, and nothing herein contained shall prevent the donee of a power from executing it conformably to the power by writing or otherwise than by an instrument executed and attested as an ordinary deed, and to any such execution of a power this provision shall not extend.—22 & 23 Vict. c. 35, s. 12.

Where, under a power of sale, a *bona fide* sale shall be made of an estate with the timber thereon, or any other articles attached thereto, and the tenant for life or any other party to the transaction shall by mistake be allowed to receive for his own benefit a portion of the purchase-money as the value of the timber or other articles, it shall be lawful for the Court of Chancery, upon any bill or claim or application, in a summary way, as the case may require or permit, to declare that upon payment by the purchaser, or the claimant under him, of the full value of the timber and articles at the time of sale, with such interest thereon as the court shall direct, and the settlement of the said principal moneys and interests under the direction of the court upon such parties as in the opinion of the court shall be entitled thereto, the said sale ought to be established; and upon such payment and settlement being made accordingly the court may declare that the said sale is valid, and thereupon the legal estate shall vest and go in like manner as if the power had been duly executed, and the costs of the said application as between solicitor and client shall be paid by the purchaser or the claimant under him.—(s. 13.)

Where by any will which shall come into operation after the passing of this act the testator shall have charged his real estate or any specific portion thereof with the payment of his debts, or with the payment of any legacy or other specific sum of money, and shall have devised the estate so charged to any trustee or trustees for the whole of his estate or interest therein, and shall not have made any express provision for the raising of such debt, legacy, or sum of money out of such estate, it shall be lawful for the said devisee or devisees in trust, notwithstanding any trusts actually declared by the testator, to raise such debts, legacy, or

money as aforesaid, by a sale and absolute disposition by public auction or private contract of the said hereditaments or any part thereof, or by a mortgage of the same, or partly in one mode and partly in the other, and any deed or deeds of mortgage so executed may reserve such rate of interest and fix such period or periods of repayment as the person or persons executing the same shall think proper.—(s. 14.)

The powers conferred by the last section shall extend to all and every person or persons in whom the estate devised shall for the time being be vested by survivorship, descent, or devise, or to any person or persons who may be appointed under any power in the will, or by the Court of Chancery, to succeed to the trusteeship vested in such devisee or devisees in trust as aforesaid.—(s. 15.)

If any testator who shall have created such a charge as is described in the fourteenth section shall not have devised the hereditaments charged as aforesaid, in such terms as that his whole estate and interest therein shall become vested in any trustee or trustees, the executor or executors for the time being named in such will (if any), shall have the same or the like power of raising the said moneys as is hereinbefore vested in the devisee or devisees in trust of the said hereditaments, and such power shall from time to time devolve to and become vested in the person or persons (if any) in whom the executorship shall for the time being be vested; but any sale or mortgage under this act shall operate only on the estate and interest whether legal or equitable, of the testator, and shall not render it unnecessary to get in any outstanding subsisting legal estate.—(s. 16.)

Purchasers or mortgagees shall not be bound to inquire whether the powers conferred by sections fourteen, fifteen, and sixteen of this act, or either of them, shall have been duly and correctly exercised by the person or persons acting in virtue thereof.—(s. 17.)

The provisions contained in sections fourteen, fifteen, and sixteen, shall not in any way prejudice or affect any sale or mortgage already made or hereafter to be made, under or in pursuance of any will coming into operation before the passing of this act, 13th August, 1859, but the validity of any such sale or mortgage shall be ascertained and determined in all respects as if this act had not passed; and the said several sections shall not extend to a devise to any person or persons in fee or in tail, or for the testator's whole estate and interest charged with debts or legacies, nor shall they affect the power of any such devisee or devisees to sell or mortgage as he or they may by law now do.—(s. 18.)

Consult *St. Leonards on Chance on "Powers;"* and see ILLUSORY APPOINTMENT ACT; and MISTAKE.

**POWER OF ATTORNEY.** See LETTER OF ATTORNEY.

**POYNING.** See POINDING.

**POYNING'S LAW,** or STATUTE OF DROGHEDA, an act of Parliament made in Ireland in the reign of Henry VII.; 10 Hen. VII. c. 22, A. D. 1495; so called, because Sir Edward Poynning was lieutenant there when it was made, whereby all general statutes before then made in

England were declared of force in Ireland, which, before that time they were not.—12 Rq. 109; 3 Hall. Cons. Hist. c. 18, p. 361.

**PRACTICE,** the form and manner of conducting and carrying on suits, actions, or prosecutions at law or in equity, civil or criminal, through their various stages, from the commencement to final judgment and execution, according to the principles and the rules laid down by the several courts.—[*Troubat & Haly's Prac.*]

**PRACTICE COURT.** See BAIL COURT, and QUEEN'S BENCH.

**PRACTITIONER,** he who is engaged in the exercise or employment of any art.

*Præbenda dicitur a præbendo quia præberet auxilium episcopo.* 4 Co. 75. (A prebendary is called from *præbendo*, because he gives assistance to the bishop.)

**PRÆCEPTORES,** a kind of benefices, having their name from being possessed by the more eminent Templars, whom the chief master by his authority created and called *Præceptores Templi*.—*Mon. Angl.* ii. 543.

**PRÆCIPE** (*command*), a slip of paper upon which the particulars of a writ are written; it is lodged in the office out of which the required writ is to be issued.

Also, an original writ, and in the alternative, commanding the defendant to do the thing required, or show the reason why he has not done it; and the writ is drawn up in the form of a *præcipe* or command, to do something, or show cause to the contrary, giving the defendant his choice to redress the injury or stand the suit.—3 Bl. Com. 273. It is abolished. [*Troubat & Haly's Prac.*]

**PRÆCIPE IN CAPITE,** a writ out of Chancery for a tenant holding of the Crown *in capite*, viz., in chief.—*Mag. Chart.* c. 24.

**PRÆCIPE QUOD REDDAT,** the form of a writ which extended as well to a writ of right as to other writs of entry or possession, beginning "*Præcipe, A quod reddat, B unum messagium,*" &c.—O.N.B. 13. Abolished.

**PRÆCIPE QUOD TENET CONVENTIONEM,** the writ which commenced the action of covenant in fines, which are abolished by 3 & 4 Wm. IV. c. 74.

**PRÆCIPE, tenant to the,** the person to whom some freehold estate in possession was conveyed, in order to make him tenant in the action to levy a fine. See FINE. It is exploded.

**PRÆCIPITUM,** the punishment of casting headlong from some high place.

**PRÆCOGNITA,** things to be previously known in order to understand something which follows.

**PRÆDIA BELLA,** booty, property seized in war.

**PRÆDIA STIPENDARIA,** provincial lands belonging to the people.—*Civ. Law.*

**PRÆDIA TRIBUTARIA,** provincial lands belonging to the emperor.—*Civ. Law.*

**PRÆDIA VOLANTIA** (*volatile estates*), such as furniture.—2 Bl. Com. 428.

**PRÆDIAL TITHES** (*fr. prædium*, Lat., ground), such as arise merely and immediately from the ground; as grain of all sorts, hops, hay, wood, fruit, herbs.—2 Bl. Com. 23.

**PRÆDICT** (*aforesaid*).—*Hob.* 6.

trade; for the appointment of a receiver, the establishment of a charity, &c.

*Propositio indefinita æquipollet universali.* (An indefinite proposition is equal to a general one.)

**PROPOSITUS**, the person proposed; the person from whom an old descent is traced.

*Pro possessore habetur qui dolo injuriæ de sit possidere.* Office of Exec. 166. (He is counted a possessor whose possession has been disturbed by fraud or injury.)

**PROPRIETARY**, he who has a property in anything.

**PROPRIETARY CHAPELS**, those belonging to private persons who have purchased, or erected them with a view to profit or otherwise.

*Proprietas verborum est salus proprietatum.* Jenk. Cent. 16. (Propriety of words is the salvation of property.)

**PROPRIETATE PROBANDA**, *de*, a writ addressed to a sheriff to try by an inquest in whom certain property, previous to a distress, subsisted.—*Finch. L.* 316.

*Proprietates verborum observandæ sunt.* Jenk. Cent. 136. (The properties of words are to be observed.)

**PROPRIO VIGORE** (Lat.), (*by its own force.*)

*Propter jus sanguinis duplicatum, tam ex parte patris quam ex parte matris, dicitur heres propinquior soror, quam frater de aliâ uxore.* 3 Co. 41. (On account of the double right of blood, as well on the part of the father as the mother, the sister is called the next heir, rather than the brother by another wife.) But see CANONS OF INHERITANCE.

**PRO QUERENTE** (abbrev. *pro quer.*), (*for the plaintiff.*)

**PRO RATA** (*in proportion.*)

**PRO RENATA** (*for the existing occasion.*)

**PROROGATED JURISDICTION**, a power conferred by consent of the parties upon a judge who would not otherwise be competent.—*Scotch Law.*

**PROROGATION**, prolonging or putting off to another day.

A prorogation is the continuance of the Parliament from one session to another, as an adjournment is a continuation of the session from day to day.

Prorogation never extends beyond eighty days, but fresh prorogations may take place from time to time by proclamation.

**PROSECUTION**, a proceeding either by way of information or indictment, in the criminal courts, in order to put an offender upon his trial.

**PROSTERNATION** (fr. *prosterno*, Lat.), act of casting down.

**PRO TANTO** (*for so much.*)

*Protectio trahit subjectionem, et subjectio protectionem.* Co. Litt. 65. (Protection begets subjection, subjection protection.)

**PROTECTION**, defence, shelter from evil, especially from being arrested; also, an immunity granted by the Crown to a certain person to be free from suits at law for a certain time, and for some reasonable cause; it is a branch

of the royal prerogative. It is now very rarely, if ever, resorted to.

**PROTECTION ACTS**, 5 & 6 Vict. c. 116, and 7 & 8 Vict. c. 96.

**PROTECTIONIBUS**, *de*, the statute 33 Edw. I. stat. 1, allowing a challenge to be entered against a protection, &c.

**PROTECTOR OF THE SETTLEMENT**, the person appointed by the Fines and Recoveries' Act, in substitution of the old tenant to the *præcipe*, whose concurrence in barring estates-tail in remainder is required in order to preserve, under certain modifications, the control of the tenant for life over the remainder man.

The protector is thus defined: "If, at the time when there shall be a tenant-in-tail of lands under a settlement, there shall be subsisting in the same lands, or any of them under the same settlement, any estate for years determinable on the dropping of a life or lives, or any greater estate (*not being an estate for years*), prior to the estate-tail, then the owner of the prior estate, or the first of such prior estate (if more than one) then subsisting under the same settlement, or who would have been so if no absolute disposition thereof had been made (the first of such prior estates, if more than one, being, for all the purposes of this act, deemed the prior estate), shall be the *protector of the settlement*, so far as regards the lands in which such prior estate shall be subsisting, and shall for all the purposes of this act be deemed the owner of such prior estate, *although* the same may have been charged or incumbered either by the owner thereof or by the settlor, or otherwise howsoever; and *although* the whole of the rents and profits be exhausted or required for the payment of the charges and incumbrances of such prior estate, and *although* such prior estate may have been absolutely disposed of by the owner thereof, or by or in consequence of the bankruptcy or insolvency of such owner, or by any other act or default of such owner." It is to be observed, that his prior estate must continue to subsist, for if it be merged, surrendered, or determined by forfeiture, it is presumed that he would cease to be the protector. The section then goes on to enact, "that *an estate by the courtesy*, in respect to the estate-tail, or of any prior estate created by the same settlement, shall be deemed a prior estate under the same settlement within the meaning of this clause; and that *an estate by way of resulting use or trust* to or for the settlor, shall be deemed an estate under the same settlement within the meaning of this clause" (s. 22).

"Where two or more persons shall be owners of a prior estate under a settlement, the sole owner of which would, in respect thereof, have been the protector, each of such persons in respect of such undivided share as he could dispose of, shall, for all the purposes of this act, be deemed the owner of a prior estate, and shall be the sole protector to the extent of such undivided share" (s. 23). Where the estate conferring the protectorship is limited to a married woman, the husband and wife are protectors as one owner, unless the estate be settled to her separate use, when she is sole protector (s. 24.)

Where an estate shall be limited by a settle-



debt on bond, &c., that the money was paid at the day limited.—1 *Selv. N. P.* 597.

**SOLVIT ANTE DIEM**, a plea that the money was paid before the day limited.

**SOLVIT POST DIEM**, a plea that the money was paid after the day appointed.—1 *Selv. N. P.* 598.

**SOLUTIO**, a discharge; the performance of that to which a person is bound.—*Civ. Law.*

**SOLUTIONE FEODI MILITIS**, &c., or **FEODI BURGENS**, &c., old writs whereby knights of the shire and burgesses might have recovered their wages or allowance if refused.—35 *Hen. VIII. c. 11.*

*Solum rex hoc non facere potest, quod non potest injustè agere.* 11 Co. 72. (This alone the king cannot do, he cannot act unjustly.)

*Solus Deus facit hæredem, non homo.* Co. Litt. 5. (God alone makes the heir, not man.)

*Solutio pretii, emptiois loco habetur.* Jenk. Cent. 56. (The payment of the price stands in the place of the sale.)

*Sommonitiones aut citationes nullæ liceant fieri intra palatium regis.* 3 Inst. 141. (No summonses or citations are permitted to be served within the king's palace.)

**SOMNAMBULISM**, whether this condition is really anything more than a co-operation of the voluntary muscles with the thoughts which occupy the mind during sleep, is a point very far from being settled by physiologists. Not only is locomotion enjoyed, as the etymology of the term signifies, but the voluntary muscles are capable of executing motions of the most delicate kind.

There is a form of this affection called *ecstasis*, or cataleptic somnambulism, from its being conjoined with a kind of catalepsy, in which the walking and other active employments are replaced by what appears to be a deep quiet sleep, the patient conversing with fluency and spirit, and exercising the mental faculties with activity and acuteness.

Somnambulism may sometimes incapacitate a person from the proper performance of the duties and engagements of his situation, and then unquestionably it may impair the validity of contracts and other civil acts to which he is a party. By rendering him troublesome, mischievous, and even dangerous, it furnishes good grounds for annulling contracts of service, whether it existed previously and was concealed, or had made its appearance at a later date. Whether it should be considered a sufficient defence of breach of promise of marriage, or a valid reason for a dissolution of marriage when concealed from one of the parties previous to the marriage, are questions which do not properly admit of a general answer.

Hoffbauer suggests as a reason for not regarding the criminal actions of the somnambulist with too much indulgence, that they have probably originated, if not in premeditation, at least in the deep and deliberate attention which the mind has given to the subject when awake.

Foderé too, by a somewhat similar kind of logic, comes to the conclusion that the acts of a somnambulist, instead of resulting from mental delusion, are more independent than any others, because they are the free and unconstrained

expression of his waking thoughts and designs, and therefore that they are not altogether excusable.

He seems to have forgotten, observes Dr. Ray (*Med. Jurisp. of Insanity*), that by no human laws are men responsible for their secret thoughts, but only for their words and acts.—[*Wharton & Stillé's Med. Jurisp.*]

**SOMNER**, one who cites or summonses.

**SON ASSAULT DEMESNE**, a justification in an action of assault and battery, because the plaintiff made the first assault, and what the defendant did was in his own defence. It is a plea by confession and avoidance.—1 *Selv. N. P.* 32.

**SON-IN-LAW** (*gener*, Lat.), the husband of one's daughter.

**SONTAGE**, a tax of 40s. heretofore laid upon every knight's fee.

**SORCERY**. No prosecution shall for the future be carried on against any person for witchcraft, sorcery, enchantment, or conjuration, or for charging another with any such offences. Persons pretending to use witchcraft, tell fortunes, or discover stolen goods by skill in any occult or crafty science, are punishable by imprisonment (9 Geo. II. c. 5); persons using any subtle craft, means, or device, by palmistry or otherwise, to deceive the people, are to be deemed rogues and vagabonds, and to be punished with imprisonment and hard labor.—5 Geo. IV. c. 83, s. 4.

**SOREHON**, or **SORN**, a kind of arbitrary exaction, or servile tenure formerly in Scotland as likewise in Ireland. Whenever a chieftain had a mind to revel, he came down among the tenants with his followers, by way of contempt called *Gilveiffithe*, and lived on free quarters.

**SORORICIDE**, the murder of a sister.

**SORS**, principal, to distinguish it from interest.

**SOTHSAGA**, or **SOTHSAGE** (fr. *soth*, true, and *saga*, Sax., testimony), history.—*Cowd.*

**SOULSCOT**, a mortuary.

**SOUNDING IN DAMAGES**, an action for unascertained damages.

**SOURCAR**, a merchant or banker; a money-lender.—*Indian.*

**SOUTH SEA FUND**, the produce of the taxes appropriated to pay the interest of such part of the National Debt as was advanced by the South Sea Company and its annuitants.

**SOUTHWELL**, the collegiate church of, in Nottinghamshire, being a corporation aggregate, constituted without a head, and consisting only of canons. It is an acephalous spiritual corporation.

**SOVEREIGN**, a chief or supreme person; see **QUEEN**; also, a piece of money of the value of twenty shillings.

**SOVEREIGN POWER**, or **SOVEREIGNTY**, the power of making laws.

**SOWLEGROVE**, February, so called in South Wales.

**SOWNING** and **ROWNING**, the apportioning or placing of cattle on a common, or goods in a house, according to the respective rights of various parties interested.—*Scotch Phrase.*

**SOWNE** (fr. *souvenue*, Fr., remembered), such as is leviable.

**SPADONES**, impotents.—*Civ. Law.*

**TREASURY-BENCH**, a seat usually on the right hand of the Speaker, and supposed to be more easy and comfortable than any other in the House of Commons, from the constant desire every one has to possess it.

**TREATY**, negotiation, act of treating, a compact of accommodation relating to public affairs.

It is the sovereign's prerogative to make treaties, leagues, and alliances with foreign states and princes.

**TREATING ACT**. The 17 & 18 Vict. c. 102, s. 4, enacts that every candidate at an election, who shall corruptly by himself, or by or with any person, or by any other ways or means on his behalf, at any time, either before, during, or after any election, directly or indirectly give or provide, or cause to be given or provided, or shall be accessory to the giving or providing, or shall pay, wholly or in part, any expenses incurred for any meat, drink, entertainment, or provision, to or for any person, in order to be elected, or for being elected, or for the purpose of corruptly influencing such person, or any other person, to give or refrain from giving his vote at such election, or on account of such person having voted or refrained from voting, or being about to vote or refrain from voting at such election, shall be deemed guilty of the offence of treating, and shall forfeit the sum of fifty pounds to any person who shall sue for the same, with full costs of suit. And every voter who shall corruptly accept, or take any such meat, drink, entertainment, or provision, shall be incapable of voting at such election, and his vote, if given, shall be utterly void, and of none effect. As to the origin of treating at elections, see 3 *Hall. Const. Hist.* c. xxi. p. 302, n. g.

**TREBLE COSTS**. See **DOUBLE OR TREBLE COSTS**.

**TREBLE DAMAGES**. See **DOUBLE OR TREBLE DAMAGES**.

**TREBUCKET**, a tumbrel, castigatory, or cucking-stool. See **CASTIGATORY**.

**TREET** (fr. *triticum*, Lat.), fine wheat.—51 *Hen. III.*

**TREMAGIUM**, **TREMESIUM**, **TERMI SIUM**, the season or time of sowing summer-corn, being about March, the third month, to which the word may allude.

**TREMELLUM**, a granary.

**TRESAYLE**, an abolished writ sued on ouster by abatement on the death of the grandfather's grandfather.

**TRESPASS** (fr. *transgressio*, Lat.), any transgression of the law, less than treason, felony, or misprision of either.

The action of trespass lies where a party claims damages for trespass committed against him. A trespass is an injury committed with violence, and this violence may be either actual or implied; and the law will imply violence, though none is actually used, where the injury is of a direct and immediate kind, and committed on the person or tangible and corporeal property of the plaintiff. Of actual violence, an assault and battery is an instance; of implied, a peaceable but wrongful entry upon the plaintiff's lands.—*Step. Plead.* 16. As to trespass on

the case, see **CASE**. [Consult *Hammond's Nisi Prius*.]

**TRESPASS** *quare clausum fregit*, an entry on another's land without lawful authority, for which injury an action will lie.—2 *Selw. N. P.* 1295—1326.

**TRESPASSER**, one who commits a trespass.

**TRESTORNARE**, to turn or divert another way.—*Coael.*

**TRET**. See **TARE**.

**TRETHINGS** (fr. *trethu*, Wel., to tax), taxes, imposts.

**TREYTS**, taken out or withdrawn, as withdrawing or discharging a juror.

*Tria genera sunt executorum*: (1.) *A lege constitutus, et ideo dicitur legitimus; ut episcopus.* (2.) *A testatore constitutus, et ideo dicitur testamentarius, ut executor.* (3.) *Ab episcopo constitutus, et ideo dicitur dativus; ut administrator.* Swinb. p. 4, s. 3. (There are three sorts of executors: (1.) Such a one as the law itself constitutes, and therefore called legitimate, viz., a bishop. (2.) Such a one as is appointed by the testator, and thence called testamentary, viz., an executor. (3.) Such a one as the bishop appoints, called thence dative, viz., an administrator.) See **PROBATE COURT**.

**TRIAL**, the examination of a cause civil or criminal, before a judge who has jurisdiction over it, according to the laws of the land.—1 *Inst.* 124.

**TRIAL LIST**, a catalogue of causes for trial.

*Tria sequuntur defamatorem famosum; pravitatis incrementum; bursæ decrementum; conscientie detrimentum.* 5 Co. 126. (Three things follow a noted defamer; the increase of crime; the decrease of his purse; and the injuring of consciences.)

*Triatio ibi semper debet fieri, ubi iuratores meliorem possunt habere notitiam.* 7 Co. 1. (Trial ought to be had always there where the jury can have the best knowledge.)

**TRIBUNAL**, the seat of a judge, a court of justice.

**TRIBUTE**, payment made in acknowledgment; subjection.

**TRICESIMA**, an ancient custom in a borough in the county of Hereford, so called, because thirty burgesses paid 1*d.* rent for their houses to the bishop, who was lord of the manor.—*Lib. Nig. Heref.*

**TRIDINGMOTE**, the court held for a triding or trithing.

**TRIENS**, a third part; also, dower.

**TRIENNIAL ELECTIONS ACT**, 6 W. & M. c. 2, prolonged to seven years, by 1 Geo. I. st. 2, c. 38.

**TRINEPOS**, the male descendant in the 6th degree in a direct line.—*Civ. Law.*

**TRINITY HOUSE**, a society at Deptford Strond, incorporated by Henry VIII. in 1515, for the promotion of commerce and navigation, by licensing and regulating pilots, and ordering and erecting beacons, light-houses, buoys, &c.

The Trinity House is empowered by 17 & 18 Vict. c. 104, to appoint and license pilots for the following limits: (1.) "The London District," comprising the waters of the Thames and Medway, as high as London bridge and Rochester bridge respectively, and also the seas and chan-

DICTIONARY  
OF THE  
ENGLISH LANGUAGE.

BY  
JOSEPH E. WORCESTER, LL. D.

MULTA RENASCENTUR QUÆ JAM CECIDÈRE, CADENTQUE  
QUÆ NUNC SUNT IN HONORE VOCABULA, SI VOLET USUS;  
QUEM PENES ARBITRIUM EST, ET JUS, ET NORMA LOQUENDI.

*HORACE.*

BOSTON:  
HICKLING, SWAN, AND BREWER.

1860.

ÂN-TI-SÛN-Q-DĀ'LI-AN, *n.* [Gr. *ἀντί*, against, and *ἀντίδοτος*, an assembly.] One opposed to synodals. *N. E. Elders.*

ÂN-TI-SÛPH-I-LĪT'IC, *a.* [Gr. *ἀντί*, against, and *συphilis*, the venereal disease.] (Med.) Good for curing syphilis. *Dunghison.*

ÂN-TI-SÛPH-I-LĪT'IC, *n.* (Med.) A remedy for syphilis. *Dunghison.*

ÂN-TI-THĒ'ISM, *n.* [Gr. *ἀντί*, against, and *θεός*, God.] Opposition to theism or the belief of a God; atheism. *Chalmers.*

ÂN-TI-THĒ'IST, *n.* An opponent of theism; an atheist. *Chalmers.*

ÂN-TI-THĒ'IS'TI-CAL, *a.* Opposing the belief of a God; atheistical. *Ogilvie.*

ÂN-TI-THĒ'IS'TI-CAL-LY, *ad.* In an atheistical manner; atheistically. *Ogilvie.*

ÂN-TĪTH'E-SIS, *n.*; *pl.* AN-TĪTH'E-SĒS. [Gr. *ἀντί*, opposition; *ἀντί*, against, and *τίθημι*, to put.] (Rhet.) A figure by which contraries are opposed to contraries; opposition in words or sentiments; contrast; — as in these lines:

Though gentle, yet not dull;  
Strong, without rage; without o'erflowing, full. *Denham.*  
I see a chief who leads my chosen sons,  
All armed with points, antitheses, and puns. *Pope.*

ÂN-TI-THĒ'T'IC, } *a.* 1. Relating to, or con-  
ÂN-TI-THĒ'T'IC-CAL, } taining, antithesis; placed  
in contrast. "Parallel antithetical ex-  
pressions." *Mason.*

2. Given to antithesis; addicted to antithesis.  
Tacitus, who is one of the most antithetical, is . . . one of  
the least periodic, of all the Latin writers. *Whately.*

ÂN-TI-THĒ'T'IC-CAL-LY, *ad.* By means of antithesis; in an antithetical manner. *Byron.*

ÂN-TĪTH'E-TŌN, *n.*; *pl.* AN-TĪTH'E-TA. [Gr. *ἀντί*, against; *ἀντί*, against, and *τίθημι*, to put.] (Rhet.) Counterposition; antithesis.

ÂN-TĪTH'RA-GŪS, *n.* [Gr. *ἀντί*, opposite, and *L. tragus*. — See TRAGUS.] (Anat.) The process of the external ear, opposite to the tragus, and behind the ear-passage. *Brande.*

ÂN-TI-TRĪN-I-TĀ'RI-AN, *a.* (Theol.) Opposing the doctrine of the trinity.

ÂN-TI-TRĪN-I-TĀ'RI-AN, *n.* (Theol.) An opposer of the doctrine of the trinity. *Swift.*

ÂN-TI-TRĪN-I-TĀ'RI-AN-ISM, *n.* (Theol.) The doctrine which denies a trinity of persons in the Godhead; the denial of a triune God. *Conder.*

ÂN-TĪT'RQ-PAL, } *a.* [Gr. *ἀντί*, opposite, and  
ÂN-TĪT'RQ-POŪS, } *ἄρτι*, to turn.] (Bot.) Not-  
ing the position of the embryo when it lies  
reversed with respect to the seed, its cotyle-  
dons being turned towards the hilum. *Henslow.*

ÂN-TI-TYPE, *n.* [Gr. *ἀντίτυπος*, copied after a type or model.] (Theol.) That which is pre-figured or represented by the type, and there-fore stands correlative with it; — thus, the paschal lamb was a type, to which our Saviour, the Lamb of God, was the antitype. *Bp. Taylor.*

ÂN-TI-TÛP'I-CAL, *a.* Relating to an antitype; corresponding to the type. *Parkhurst.*

ÂN-TI-TÛP'POŪS, *a.* Antitypical. *Cudworth.*

ÂN-TI-VĀC'CI-NIST, *n.* [Gr. *ἀντί*, against, and *L. vaccina*, the cow-pox.] (Med.) One who opposes vaccination. *Ed. Rev.*

ÂN-TI-VA-RĪ'Q-LOŪS, *a.* [Gr. *ἀντί*, against, and *Eng. variolous*.] (Med.) Opposing or counteracting the small-pox. *Ogilvie.*

ÂN-TI-VĒ-NE'RE-AL, *a.* (Med.) Good against the venereal disease; antisyphilitic. *Dunghison.*

ÂN-TI-WIT, *n.* An enemy to wit. *Wycherly.*

ÂN'T'LER, *n.* [Old Fr. *entoillier*; Fr. *andouiller*.] A first branch of a stag's horn; any branch of a stag's horn.

A well-grown stag, whose antlers rise  
High o'er his front. *Dryden.*

ÂN'T'LERED (ân't'lerd), *a.* Having antlers.

A fowl with spangled plumes, a brindled steer,  
Sometimes a crested mare, or antlered deer. *Fernon.*

ÂN'T'LIKE, *a.* Resembling the habits of ants; industrious; provident. *Ogilvie.*

ÂN-TŒ'CĪ (ân-tē'sī), *n. pl.* [L., from Gr. *ἀν-τροποι*] Same as ANTECIANS. *Brande.*

ÂN-TŒ-NO-MĀ'ŠI-Ā (ân-to-no-mā'zhe-ā), *n.* [L., from Gr. *ἀντρονομία*; *ἀντί*, instead of, and *νόμος*, a name.] (Rhet.) A form of speech in which some general term is put in place of a proper name; as, "The Stagyrte," for Aristotle; — or in which a proper name is put in place of a common noun; as, "a Cicero," for an orator; "a Nero," for a tyrant; "a Cromwell," for a usurper; "a Solomon," for a wise man. *Brande.*

ÂN-TŒ-NO-MĀS'TI-CAL-LY, *ad.* In the manner of the figure antonomasia. *Ogilvie.*

ÂN'TRE (ân'ter), *n.* [L. *antrum*, a cave; Fr. *antre*.] A cave; a den. *Brande.*

ÂN-TRE (ân'tre), *n.* [L. *antrum*, a cave; Fr. *antre*.] A cave; a den. *Brande.*

ÂN-TRĪM'Q-LĪTE, *n.* [Antrim, in Ireland, near the Giant's Causeway, and Gr. *λίθος*, a stone.] (Min.) A variety of mesotite, occurring in white fibrous stalactites, about as large as the finger, in cavities of amygdaloid. *Dana.*

ÂN-Ū'BIS, *n.* (Myth.) A deity of the Egyptians, represented by a human figure with the head of a dog. *Brande.*

ÂN'ŪS, *n.* [L.] (Anat.) The excretory orifice of the alimentary canal. *Dunghison.*

ÂN'VIL, *n.* [A. S. *anvil*, an anvil.] The iron block on which iron and other metals are laid to be hammered.

I saw a smith stand, with his hammer, thus,  
The whilst his iron did on his anvil cool.  
Quick on the anvil lay the burning bar. *Shak.*

To be on the anvil, to be in a state of formation or preparation.

ÂN'VIL, *v. a.* To fashion on the anvil.  
Ere you hear it, with all care put on  
The surest armor, anvil'd in the shop  
Of passive fortitude. *Beau. & Fl.*

ÂN-X'Ē-TY (ân-x'ē-te), *n.* [L. *anxietas*; *ango*, to vex, to trouble; It. *ansietà*; Sp. *ansia*; Fr. *anxiété*.] Trouble of mind about some future event; continual uneasiness; perplexity; mental distress; concern; painful solicitude.

To be happy is not only to be freed from the pains and diseases of the body, but from anxiety and vexation of spirit. *Tillotson.*

Syn. — See CARE.

ÂN-X'IOUS (ânk'shūs, 82), *a.* [L. *anxius*.]

1. Full of anxiety; suffering from suspense or uncertainty; concerned about the future; solicitous; quiet; uneasy.

Anxious, and trembling for the birth of fate. *Pope.*

2. Attended with solicitude or uneasiness.

God hath bid dwell far off all anxious cares. *Milton.*

Syn. — See CARE.

ÂN-X'IOUS-LY (ânk'shūs-le), *ad.* In an anxious manner; solicitously; unquietly; uneasily.

ÂN-X'IOUS-NESS, *n.* The state or quality of being anxious; anxiety. *Spectator.*

ÂN'Y (ân'e), *a.* [A. S. *ænig*, any.]

1. A single one of many, whoever or whatever it may be.

And he sent him away to his house, saying, Neither go into the town, nor tell it to any in the town. *Mark viii. 26.*

There is no one book extant in any language, or in any country, which can in any degree be compared with it (the Bible) for antiquity, for authority, for the importance, the dignity, the variety, and the curiosity of the matter it contains. *Porteus.*

2. Some, however few or many, or of whatever kind; an indefinite number or quantity.

And Saul . . . went unto the high priest, and desired of him letters . . . to the synagogues, that if he found any of this way, whether they were men or women, he might bring them bound unto Jerusalem. *Acts ix. 1, 2.*

If there be any virtue, if there be any praise. *Phil. iv. 8.*

ÂN- This word was formerly written as it is pronounced, *eny*. "If ye have *eny* thing against *eny* man." *Mark xi. 25.* *Tyndale's Translation.* "If ye have aught against *eny* man." *Cramer.*

ÂN- "Any, an, a, one, seem all to be nearly equivalent words, and derived from one origin; I mean from *any*, the name of unity. Hence *a* or *an* and *any* are frequently synonymous. 'A considerate man would have acted differently'; that is, 'any considerate man.' *Crombie.*

It is used in composition; as, *anywhere*, &c.

ANY (ân'e), *ad.* At all; in any degree; somewhat; as, "Any better." *Atterbury.*

ANY-HOW (ân'e-hôu), *ad.* In any manner; in any way; in any case. *Nelson.*

ANY-WHERE (ân'e-hwâr), *ad.* In any place. "Begun *anywhere* below." *Locke.*

ÂN-Y-WHITHER (ân'e-hwĭth-er), *ad.* To any place. "Inveigle . . . men *anywhither*." *Barrow.*

ANY-WISE (ân'e-wĭz), *ad.* In any manner. "How can he be *anywise* rich?" *Barrow.*

ÂN-Ū'NĪ-AN, *a.* Relating to Aonia, a part of Bœotia, and to a fountain near Mount Helicon in Aonia, sacred to the Muses. *Pope.*

ÂN-Q-RĪST, *n.* [Gr. *ἀόριστος*, indeterminate; *a* priv. and *ρίσις*, to determine.] (Gram.) An indefinite tense in the Greek grammar. *Valpy.*

ÂN-Q-RĪST, *a.* (Gram.) Indefinite with respect to time; aoristic. *Valpy.*

ÂN-Q-RĪST'IC, } *a.* (Gram.) Relating to the  
ÂN-Q-RĪS'TI-CAL, } aorist; indefinite. *Harris.*

ÂN-Ū'RTA, *n.* [Gr. *ἀορτή*, the great artery; *ἀείρω*, to lift, to raise up. *Liddell & Scott.*]

(Anat.) The great artery or vessel which arises from the upper and back part of the left ventricle of the heart. It is the common trunk of the arteries of the body. *Dunghison.*

ÂN-Ū'TAL, } *a.* Relating to the aorta, or great  
ÂN-Ū'TIC, } arterial trunk. *Bell.*

ÂN-PĀCE'IT, } *a.* [and *pace*.] With quick pace;  
quickly; speedily; hastily. *Milton.*

Now spurs the lated traveller *apace*. *Shak.*

ÂN-P'GŌ-Q-GE, *n.* [Gr. *ἀπαγωγή*, a leading away; *ἀπό*, from, and *αἶψα*, to lead.]

(Logic.) The same as *reductio ad absurdum*; a demonstration which does not prove the thing directly, but shows the impossibility or absurdity of denying it. *Berkeley.*

ÂN-P'GŌG'IC-CAL, *a.* Proving a thing indirectly, by showing the absurdity of denying it. *Beattie.*

I demand a reason why any other *apagogical* demonstration, or demonstration *ad absurdum*, should be admitted in geometry rather than this. *Berkeley.*

ÂN-PĀG'Y-NOŪS, *a.* [Gr. *ἀπαξ*, once, and *γυνή*, a female.] (Bot.) Applied to plants that fructify once and then perish; monocarpous. *Brande.*

ÂN-PĀID', *a.* Satisfied; appayed. *Chaucer.*

He was *apaid* with the choice. *Dp. Hall.*

ÂN-PĀ-LĀ'CHI-AN, *a.* — Same as APPALACHIAN.

ÂN-P'NAGE, *n.* [Low L. *apanagium*, or *appanagium*; *panis*, bread.] (Law.) An allowance to younger branches of a sovereign house, out of the revenues of the country; generally together with a grant of public domains. *Brande.*

See APPANAGE and APPENAGE.

ÂN-PĀN'THRO-PY, *n.* [Gr. *ἀνθρῶπος*, man.] Aversion to human society. *Crabb.*

ÂN-PĀ-RĪTH'ME-SĪS, [ân-pā-rĭth'me-sīs, *Ja. Sm.* *Wb.*; ân-pā-rĭth'me-sīs, *K. Todd, Crabb*.] *n.* [Gr. *ἀπαριθμῆσις*, a counting over.] (Rhet.) Enumeration of particulars. *Walker.*

ÂN-PĀRT', *ad.* [Fr. *à* and *part*, separate; by one's self.]

1. Separately, as respects space; aside from company.

When he had sent the multitudes away, he went up into a mountain *apart*. *Matt. xiv. 23.*

Then came the disciples to Jesus *apart*. *Matt. xvii. 19.*

2. Asunder; as, "To pull *apart*."

3. Separately, as a subject of thought; distinctly; as, "It is best to consider these questions *apart*;" "This reason is sufficient, *apart* from all others."

4. Off; away.

Wherefore lay *apart* all filthiness. *James i. 21.*

ÂN-PĀRT'MENT, *n.* [Fr. *appartement*; *à* part, separate.]

1. A room in a house or other building; a part of a house separated from other parts.

2. *pl.* A suite, or suit, of rooms; lodgings.

He, pale as death, despoiled of his array,  
Into the queen's *apartment* takes his way. *Dryden.*

ÂN-PĀT'Ē-LĪTE, *n.* [Gr. *ἀπατάω*, to deceive, and *λίθος*, a stone.] (Min.) A hydrous sulphate of peroxide of iron. *Dana.*

ÂN-PĀ-THĒ'T'IC, } *a.* [Gr. *a* priv. and *πάθος*,  
ÂN-PĀ-THĒ'T'IC-CAL, } feeling.] Having no feel-  
ing; insensible; passionless. "Apathetic . . .  
like a statue." *Harris.*

MĪEN, SĪR; MŌVE, NŌR, SŌN; BŪLL, BŪR, RŪLE. — Ç, Ğ, Ğ, Ğ, soft; Ē, Ğ, Ğ, Ğ, hard; Š as z; Ț as gz. — THIS, this.



4. A pair of stirrups with stirrup-leathers attached. — See CHAPELET. *Ogilvie.*  
5. (*Arch.*) A kind of ornamental moulding, or a small ornament cut in beads. *Weale.*

CHĀP'MAN, *n.* [*A. S. ceapman*; *Ger. kaufman.* — See CHEAPEN.] One who buys and sells; a cheapener; a seller; a merchant; a market-man.

*Fair Diomedes, you do as chajmen do,  
Dispraise the thing that you intend to buy.* *Shak.*

CHĀP'PY, *a.* Having clefts or chaps; cleft; gaping; open. *Cotgrave.*

CHAPS (*chōps*), *n. pl.* of *chap*. 1. The mouth. "Open your chaps again." *Shak.*

2. (*Mech.*) The two flat parts of a vice, of a pair of tongs, or of pliers, for holding any thing fast. *Weale.*

CHĀPT, *p.* from *chap*. Chapped. "Sun-burnt cheeks and . . . chapt skins." *Dryden.*

CHĀP'TER, *n.* [*L. capitulum*, dim. of *caput*, a head; *It. capitolo*; *Sp. capítulo*; *Fr. chapitre*.] 1. A division of a book; as, "The chapters in the Bible."

2. A decretal epistle. *Ayliffe.*

3. A body consisting of the canons or prebends, and other clergymen attached to a cathedral or collegiate church, of which the dean is the head.

The dean and chapter are the council of a bishop to assist him with their advice in affairs of religion, and also in the temporal concerns of his see. *Blackstone.*

4. A meeting held by members of some societies, as of the College of Arms, and of the order of the Garter. *Ogilvie.*

5. A branch of a society or fraternity; as, "A chapter of freemasons."

*Chapter-house*, a room in a cathedral where the dean and chapter assemble.

†CHĀP'TER, *v. a.* [*Fr. chapitrer*.] To censure; to rebuke; to correct. *Dryden.*

CHĀP'TREL, *n.* (*Arch.*) An impost or support of an arch. *Moxon.*

CHĀP'WOM-AN (*chāp'wūm-ān*), *n.* A woman who buys and sells. *Massinger.*

CHĀR, *n.* ["Some derive it from *A. S. cyran*, to turn, because this fish turneth itself swiftly in the water." *Todd.*] A small delicate fish of the salmon or trout kind. *Gray.*

CHĀR, *v. a.* [*A. S. cyran*, to turn, *Tooke*; *Rus. jaryn*, or *charyn*, to roast or burn, *Webster*.] [*i.* CHARRER; *pp.* CHARRING, CHARRER.]

1. To burn wood to a black cinder; to burn partially. *Woodward.*

2. To hew, or work, as stone. *Francis.*

CHĀR, CHĀRE, or CHÖRE, *n.* [*Goth. kar*, business or concern; *A. S. cyrra*, a turn.] Work done by the day; a small job; a light task.

*As the maid that milks,  
And does the meanest chare.* *Shak.*

This colloquial word is spelled *char* in most of the English Dictionaries, and pronounced *chāre*; but in Richardson's it is printed *chare* (also *chare-woman*). Holloway, in his "Provincial Dictionary," writes *choor* and *choor-woman*; and Palmer, in his "Dialect of Devonshire," *chure*. In the United States, it is commonly pronounced *chöre*. — See CHÖRE.

"In Ireland, they seem to have retained the genuine pronunciation of this, as well as many other old English words; I mean that which is agreeable to the orthography, and rhyming with *tar*. In England, it is generally heard like *chair*, to sit on, and its compound, *char-woman*, like *chair-woman*. Skinner, I know, admits that the word may be derived from the Dutch *keeren*, to sweep; and Junius spells the word *chart*, and tells us the Saxons have the same word spelled *cyrra*, signifying business or charge; but be its derivation what it will, either the orthography or the pronunciation ought to be altered; for, as it stands at present, it is a singular and disgraceful anomaly." *Walker.*

CHĀR, or CHĀRE, *v. n.* To work by the day; to do little jobs. *Johnson.*

CHĀR, or CHĀRE, *v. a.* To perform a business. "That char is *chared*." *Ray.*

†CHĀR'ACT, or CHĀR'ECT, *n.* An inscription. *Skelton.*

CHĀR'AC-TĒR (*kār'ak-ter*), *n.* [*Gr. χαρακτήρ*, distinctive mark; *χαρασσω*, to cut in furrows; *L. character*; *It. carattere*; *Sp. carater*; *Fr. caractère*; *Ger. character*.]

1. A distinctive mark by which any thing is separated or distinguished from another.

And he shall make all, small and great, to have a character in their right hand. *Rev. xiii. 16, Wicliffe's Trans.*

2. A sign used in writing or in printing; a letter of the alphabet; an emblem; a figure.

It were much to be wished that there were throughout the world but one sort of character for each letter. *Holder.*

3. A letter as formed by a particular person; handwriting; chirography.

You know the character to be your brother's. *Shak.*

4. The assemblage of qualities which distinguish one person from another; particular constitution of the mind.

Actions, looks, words, steps, form the alphabet by which you may spell characters. *Lavater.*

Health and sickness, enjoyment and suffering, riches and poverty, knowledge and ignorance, power and subjection, liberty and bondage, civilization and barbarity, have all their offices and duties; all serve for the formation of character. *Paley.*

5. Combination of qualities considered as belonging to the incumbent of a particular post or office.

The chief honor of the magistracy consists in maintaining the dignity of his character by suitable actions. *Atterbury.*

6. A person; — particularly as represented in fiction or in history.

Homer has excelled all the heroic poets that ever wrote in the multitude and variety of his characters. *Addison.*

7. An account of any thing as good or bad.

This subterraneous passage is much mended since Seneca gave so bad a character of it. *Addison.*

8. A distinctive quality assigned to an individual by common report; reputation; repute; as, "What is his character for veracity?"

9. Good reputation; as, "A man of worth and character."

*Syn.* — Character lies in or pertains to the person, and is the mark of what he is; reputation depends upon others, and is what they think of him. A man may have a fair reputation, though his character is not really good. — An irreproachable character; a high reputation; a distinguished personage; a noted character. — A hieroglyphical character; a letter of the alphabet. — See NAME, QUALITY.

CHĀR'AC-TĒR, *v. a.* 1. To inscribe, engrave. [*R.*] Show me one scar characterized on my skin. *Shak.*

2. To describe; to characterize. *T. Fuller.*

†CHĀR'AC-TĒR-ĪSM, *n.* [*Gr. χαρακτισμός*; *L. characterismus*.] Distinction of character. "The characterism of an honest man." *Bp. Hall.*

CHĀR-AC-TĒR-ĪST'IC, *a.* [*Gr. χαρακтерιστικός*; *Fr. caractéristique*.] That distinguishes the character; indicating character; as, "Prudence is his characteristic trait."

CHĀR-AC-TĒR-ĪST'IC, *n.* [*Ger. charakteristik*.] 1. That which marks the character.

This vast invention is the great characteristic which distinguishes him [Homer] from all others. *Pope.*

2. (*Logarithms*.) That part of a logarithm which is a whole number, or which precedes the point; the index; the exponent. *Davies.*

†CHĀR'AC-TĒR-ĪST'IC-ĀL, *n.* Characteristic. "It is not the characteristic of a body to have dimensions, but to be impenetrable." *More.*

CHĀR-AC-TĒR-ĪST'IC-ĀL-LY, *ad.* In a characteristic manner.

CHĀR-AC-TĒR-ĪST'IC-ĀL-NĒSS, *n.* The quality of being characteristic. *Johnson.*

CHĀR-AC-TĒR-ĪZĀ'TION, *n.* The act of characterizing. [*R.*] *Dr. N. Drake.*

CHĀR'AC-TĒR-ĪZE, *v. a.* [*Gr. χαρακτερίζω*; *Fr. caractériser*.] [*i.* CHARACTERIZED; *pp.* CHARACTERIZING, CHARACTERIZED.]

1. To designate or distinguish by a mark.

European, Asiatic, Chinese, African, and Grecian faces are characterized. *Arbutnot.*

2. †To engrave; to imprint.

Sentiments characterized and engraven in the soul, born with it, and growing up with it. *Hale.*

3. To describe or exhibit by qualities; to express or describe the character of.

It is some commendation that we have avoided to characterize any person without long experience. *Swift.*

*Syn.* — See NAME.

CHĀR'AC-TĒR-LESS, *a.* Without a character. And mighty states, characterless, are graced To dusty nothing. *Shak.*

CHĀR'AC-TĒR-MĀ'KĒR, *n.* One who draws characters. *Warburton.*

†CHĀR'AC-TĒR-Y, *n.* 1. Mode of expression by signs or characters.

Fairies use flowers for their character. *Shak.*

2. Characterization.

A third sort . . . bestowed their time in drawing out the true lineaments of every virtue and vice so lively, that who saw the medals might know the face: which art they significantly termed character. *Bp. Hall.*

CHĀ-RĀDE' (*shā-rād'*), *n.* [*Fr.*, from the name of the inventor.] A species of riddle the subject of which is a name or a word that is enigmatically described by its several syllables and by their combination as a whole.

*Syn.* — See RIDDLE.

CHĀR-Ā-DRĪ'Ā-DĒ, *n. pl.* [*Gr. χαραδριαι*, a bird, supposed to be the lapping or the curlew.] (*Ornith.*) A family of birds of the order *Grallæ*, including the sub-families *Edicneminae*, *Cursorinae*, *Glareolinae*, *Charadrinae*, *Hematopodinae*, and *Cinclinae*; plovers. *Gray.*

CHĀR-Ā-DRĪ'NĒ, *n. pl.* [*See CHARADRIADÆ.*] (*Ornith.*) A sub-family of birds of the order *Grallæ* and family *Charadriadæ*; plovers. *Gray.*

CHĀR'AG, *n.* A tribute paid by Christians and Jews in Turkey. *Crabb.*

CHĀR'BÖN, *n.* [*Fr. (Farriery)*.] A little black spot or mark remaining after the large spot in the cavity of the corner tooth of a horse is gone. *Farm. Ency.*

CHĀR'CŌAL, *n.* [*char* and *coal*. See *CHAR*, *v.*] Coal made by charring or burning wood under turf, or with little access of air; coal from wood.

CHĀRD, *n.* [*L. carduus*, a thistle or artichoke; *Sp. cardo*; *Fr. chardon*.] A term used for the footstalks and midrib of artichokes and cardoons when they are blanched and made palatable by exclusion of the light; — a name applied also to the white beet. *Farm. Ency.*

CHĀRE, *n.* A narrow street or court. — *Chare-foot*, the end of a narrow street or court. — See *CHAR*, and *CHÖRE*. [*North of Eng.*] *Ld. Eldon.*

CHĀR'FRON, *n.* [*Fr. chanfrein*.] A plate of steel, or piece of leather, to protect the face of a horse in plate-armor. — See *CHANFRIN*. *Brande.*

CHĀRGE, *v. a.* [*Low L. carrico*, to load; *L. carrus*, a car; *It. caricare*; *Sp. cargar*; *Fr. charger*.] [*i.* CHARGED; *pp.* CHARGING, CHARGED.]

1. To overload; to burden.

What a sigh is there! the heart is sorely charged. *Shak.*

2. To prepare with powder and shot or ball; to load; as, "To charge a musket."

3. To commission for a certain purpose; to intrust.

And Pharaoh was wroth against two of his officers, . . . and he put them . . . into the prison, the place where Joseph was bound; and the captain of the guard charged Joseph with them. *Gen. xl. 2, 3, 4.*

4. To put upon as a task or a duty.

The gospel chargeth us with piety towards God. *Tillotson.*

5. To impute, or register, as a debt, or something for which another is answerable.

Perverse mankind! whose wills, created free, Charge all their woes on absolute decree. *Pope.*

6. To accuse; to impeach; to inculpate; to arraign; as, "To charge a person with a crime."

7. To command; to enjoin.

And he straitly charged them that they should not make him known. *Mark iii. 12.*

8. To fall upon; to attack.

The Grecians rally, and their powers unite, With fury charge us, and renew the fight. *Dryden.*

To charge a body, (*Elec.*) to communicate electricity to it; to develop electricity in it.

*Syn.* — See ACCUSE.

CHĀRGE, *v. n.* To make an onset.

Like your heroes of antiquity, he charges in iron. *Granville.*

Charge, Chester, charge! On, Stanley, on! *Scott.*

CHĀRGE, *n.* [*It. carico*; *Sp. carga*; *Fr. charge*.]

1. A load; a burden. "Asses of great charge." *Shak.*

2. The quantity of powder and shot, or of powder and ball, put into a gun.

MĪEN, SĪR; MŌVE, NÖR, SÖN; BŪLL, BŪR, RŪLE. — Ç, Ç, ç, soft; £, £, £, hard; § as z; X as gz. — THIS, this.

3. Trust to defend; care; custody.  
He shall give his angels *charge* over thee, to keep thee in all thy ways. *Ps. xci. 11.*
4. That which is intrusted to another.  
He sighed, abandoning his *charge* to fate. *Dryden.*
5. Commission; duty; office; employment.  
If large possessions, pompous titles, honorable *charges*, and profitable commissions could have made this proud man happy, there would have been nothing wanting. *L'Estrange.*
6. Precept; mandate; injunction.  
St. Paul giveth *charge* to beware of philosophy. *Hooker.*
7. Accusation; imputation.  
We need not lay new matter to his *charge*. *Shak.*
8. Instruction of a judge to a jury, or an exhortation of a bishop to his clergy, or of one clergyman to another.  
*Dryden.*
9. Cost; expense; — commonly in the plural.  
A man ought warily to begin *charges*, which, once begun, will continue. *Bacon.*
10. Price set on goods; sum charged; as, "To enter a *charge* in an account-book."  
11. The act of rushing on an enemy; onset; attack; assault; encounter.  
Honorable retreats are no ways inferior to brave *charges*. *Bacon.*
12. The posture of a weapon for attack.  
Their armed staves in *charge*, their beavers down. *Shak.*
13. (*Farriery*.) A kind of ointment. *Johnson.*
14. (*Elec.*) An accumulation of electricity; communicated or developed electrical force.
15. (*Her.*) The bearing or figure depicted on an escutcheon. *Peacham.*
- SYN.** — See ATTACK, CARE, COST, OFFICE.
- CHARGE-A-BIL'-TY, *n.* The quality of being chargeable; chargeableness. *Chambers.*
- CHARGE-A-BLE, *a.* 1. That may be charged; as, "A tax or duty is *chargeable* on certain kinds of property, or the property is *chargeable* with a certain duty."  
2. Expensive; burdensome; costly.  
We . . . wrought with labor and travail night and day, that we might not be *chargeable* to any of you. *2 Thess. iii. 8.*
3. Imputable, as a debt or crime.  
Some fault *chargeable* upon him. *South.*
4. Subject to accusation.  
Your papers would be *chargeable* with something worse than indecency; they would be immoral. *Spectator.*
- CHARGE-A-BLE-NĒSS, *n.* The quality of being chargeable; expensiveness; costliness.
- CHARGE-A-BLY, *ad.* Expensively. *Ascham.*
- CHARGĒD (chärjd), *p. a.* Burdened; — loaded, as a gun: — imputed, as a debt: — accused: — commanded: — exhorted.
- CHARGĒ D'AFFAIRES (shär-zhă'dăf-fär'), *n.*; pl. *CHARGES D'AFFAIRES*. [Fr.] The third or lowest class of foreign ministers, according to the regulations adopted at the Congress of Vienna, in 1815. *Brande.*
- SYN.** — See AMBASSADOR.
- † CHARGE'FUL, *a.* Expensive; costly. "The *chargeful* fashion." *Shak.*
- † CHARGE'-HÖÜSE, *n.* A free school: — a school-house.  
Do you not educate youth at the *charge-house*? *Shak.*
- CHARGE'LESS, *a.* Free from charge; cheap. "A place . . . roomy, and *chargeless*." *Bp. Hall.*
- CHARG'ER, *n.* 1. One who charges.  
2. (*Law*.) One who charges another in a lawsuit.  
3. A large dish or platter.  
This golden *charger* snatched from burning Troy. *Dryden.*
4. A war-horse. "This *charger*, till he was roused by the approaching danger, was usually led by an attendant." *Gibbon.*
- CHARG'IST, *n.* A maker of charges. *Dr. Dibdin.*
- CHÄR'-LY, or CHÄR'I-LY, *ad.* [See CHÄRY.] In a wary manner; warily; cautiously; scrupulously; frugally. *Shak.*
- CHÄR'-NĒSS, or CHÄR'I-NĒSS, *n.* Caution; nicety; scrupulousness. "The *chariness* of your honesty." *Shak.*
- CHÄR'-QT, *n.* [Gael. *carbad*; It. *carretta*; Sp. *carro*; Fr. *chariot*.]  
1. A car formerly used in war.  
*Chariot* and *charioter* lay overturned. *Milton.*
2. A wheel carriage of pleasure or of state; a half coach.  
I departed from London in a small *chariot* drawn by two horses. *Ludlow's Memoirs.*
- CHÄR'-QT, *v. a.* To convey in a chariot. [R.]  
No — let her pass, and *charioted* along.  
In guilty splendor shake the public ways. *Cowper.*
- CHÄR'-QT-EËR', *n.* One who drives a chariot. "Mounted combatants and *charioters*." *Cowper.*
- CHÄR'-QT-EËR'ING, *n.* The act of driving or managing chariots. *P. Cyc.*
- CHÄR'-QT-MÄN, *n.* The driver of a chariot; a charioteer. *2 Chron. xviii. 33.*
- CHÄR'-QT-RÄCE, *n.* A race with chariots.
- CHÄR'-QT-RÄ'ÇER, *n.* One employed in a chariot race. *Creech.*
- CHÄR'-TA-BLE, *a.* [Fr. *charitable*.]  
1. Full of good-will or tenderness; benevolent; kind; as, "A *charitable* disposition."  
2. Bountiful in giving alms; beneficent; liberal; generous.  
Now shall we wish to live our lives over again, in order to fill every moment with *charitable* offices! *Asterbury.*  
He who gives most in proportion to his circumstances, and not he who gives absolutely most, is the most *charitable* person. *Waterland.*
3. Pertaining to charity; as, "A *charitable* institution."
- CHÄR'-TA-BLE-NĒSS, *n.* The quality of being charitable. *Milton.*
- CHÄR'-TA-BLY, *ad.* In a charitable manner.
- † CHÄR'-TA-TIVE, *a.* Disposed to tenderness. "Charitative considerations." *Fell.*
- CHÄR'-TY, *n.* [Gr. *χάρις*, *χάριτος*, kindness; L. *caritas*; It. *carità*; Sp. *caridad*; Fr. *charité*.]  
1. Good affection; love; tenderness; kindness; good-will; benevolence.  
Now abideth faith, hope, and love, these three; but the greatest of these is *charity*. *2 Cor. xiii. 13.*  
Now abideth faith, hope, and love, even these three; but the chief of these is *love*. *Tyndale's Trans.*
- Relations dear, and all the *charities*  
Of father, son, and brother. *Milton.*
2. A disposition to put a favorable construction on the conduct or on the frailties of others.  
Above all things, have fervent *charity* among yourselves: for *charity* will cover the multitude of sins. *1 Pet. iv. 8.*  
The highest exercise of *charity* is *charity* towards the uncharitable. *Buckminster.*
3. Active goodness; liberality to the poor.  
The heathen poet, in commending the *charity* of Dido to the Trojans, spoke like a Christian. *Dryden.*  
It is an old saying that *charity* begins at home; but this is no reason it should not go abroad. *Cumberland.*
4. A gift or benefaction to the poor; alms.  
I never had the confidence to beg a *charity*. *Dryden.*
5. (*Law*.) A bequest for indigent persons, free schools, &c., or a bequest upon which a charitable institution is founded.  
"Love and *charity* are used in our authorized version of the New Testament promiscuously, and out of the sense of their equivalence are made to represent one and the same Greek word; but in modern use, *charity* has come almost exclusively to signify one particular manifestation of love, — the supply of the bodily needs of others, — *love* continuing to express the affections of the soul." *Trench.*
- CHÄR'-TY-SCHÖÖL, *n.* A school supported by charity. *Ld. Gower.*
- CHÄR'-RJ-VÄ-RĪ' (shä'rë-vä-rë'), *n.* [Fr.] A vile or noisy music made with tin horns, bells, kettles, pans, &c., in derision of some person or event; a mock serenade. *Boiste. Bartlett.*
- † CHÄRK, *v. n.* [Perhaps from *char. Johnson*.]  
To burn to a black cinder; to char. *Greco.*
- CHÄR'-LA-TÄN, *n.* [It. *ciarlatano*; *ciarlare*, to talk much; Fr. *charlatan*.] One who makes unwarrantable pretensions; a quack; a mountebank. *Hudibras.*
- SYN.** — See QUACK.
- CHÄR'-LA-TÄN'IC, } *a.* Resembling a char-  
CHÄR'-LA-TÄN'IC-ÄL, } latan; quackish; empir-  
ical. *Cowley.*
- CHÄR'-LA-TÄN'IC-ÄL-LY, *ad.* Like a charlatan.
- CHÄR'-LA-TÄN-ISM, *n.* Charlatanry. *Brit. Crit.*
- CHÄR'-LA-TÄN-RY, *n.* Quackery; empiricism; deceit; charlatanism. *Johnson.*
- CHÄRLES'S-WÄIN' (chärلز'ez-wän'), *n.* [Goth. *karlwagn*. Toone. — A. S. *Carles wæn*. — "So named in honor of Charlemagne." Nares. — "A
- corruption of the *charl's* or *carl's* wain, that is, the rustic's or farmer's wagon; as it is also called 'the Plough.'" *Dean Hoare.*] (*Astron.*) A name given to the constellation Ursa Major, or Greater Bear: — applied also to the constellation Ursa Minor, or Lesser Bear. *Hutton.*
- CHÄR'LOCK, *n.* [A. S. *cerlice*.] (*Bot.*) A weed, or wild species of the mustard family, with a yellow flower; *Sinapis arvensis*. *Loudon.*
- CHÄR'LOTTE-RÜSSE, *n.* [Fr. *charlotte*, a marmalade of apples covered with bits of toasted bread, and *Russe*, Russian.] (*Cookery*.) Whipped cream, or whipped cream-cheese covered with a sort of sponge-cake. *Nichols.*
- CHÄRM, *n.* [L. *carmen*, a song; It. *ciarma*; Fr. *charme*. — A. S. *cirm*.]  
1. Words, sounds, philters, or characters of occult power; enchantment; spell; incantation.  
Anteus could by magic *charms*  
Recover strength whenever he fell. *Swift.*
2. Something of power to gain the affections; attraction; allurements; fascination.  
The smiles of nature and the *charms* of art. *Addison.*
- SYN.** — See GRACE.
- CHÄRM, *v. a.* [*i.* CHARMED; *pp.* CHARMING, CHARMED.]  
1. † To sustain or fortify by enchantment.  
I bear a *charmed* life, which must not yield  
To one of woman born. *Shak.*
2. To subdue or allay by some secret power.  
Music the fiercest grief can *charm*. *Pope.*
3. To please greatly; to delight; to captivate; to fascinate; to enrapture; to transport; to enchant.  
For eloquence the soul, song *charms* the sense. *Milton.*
- SYN.** — To *charm* is not so strong as to *enchant*; to *enchant* not so strong as to *enrapture*. To *captivate* and to *fascinate* are stronger terms than to *attract*. That which *charms*, *enchants*, and *enraptures* affords pleasure for the time; that which *fascinates* and *captivates* rivets the mind to the object. — *Charmed*, *enchanted*, or *enraptured* by what is seen, heard, or learnt; *fascinated* by what is seen or heard; *captivated* by what is seen; *attracted* by persons or by manners. — *Charmed*, or *enchanted* with poetry, music, scenery, or beauty; *fascinated* or *captivated* by a person of pleasing appearance, manners, and conversation; *delighted* with the society of a friend.
- CHÄRM, *v. n.* To act as a charm.  
And all the while harmonious airs were heard  
Of chiming strings or *charming* pipes. *Milton.*
- CHÄRMED (chärmd), *p. a.* Enchanted; fascinated. "I will her *charmed* eye release." *Shak.*
- CHÄRM'ER, *n.* 1. One who charms; an enchantment; a magician.  
There shall not be found among you . . . an enchanter, or a witch, or a *charmer*, . . . or a necromancer. *Deut. xviii. 11.*
2. One who fascinates or delights; — a word of endearment.  
O, think that beauty waits on thy decree,  
And thy loved, loveliest *charmer* pleads with me. *Shenstone.*
- CHÄRM'ER-ESS, *n.* An enchantress. *Chaucer.*
- CHÄRM'FUL, *a.* Abounding with charms. [R.]  
And with him bid his *charmfül* lyre to bring. *Cowley.*
- CHÄRM'ING, *p. a.* Highly pleasing; delightful; fascinating; captivating; enchanting.  
How *charming* is divine philosophy! *Milton.*
- SYN.** — See AGREEABLE, AMIABLE, DELIGHTFUL.
- CHÄRM'ING-LY, *ad.* In a charming manner. *Shak.*
- CHÄRM'ING-NĒSS, *n.* The quality of being delightful. *Johnson.*
- CHÄRM'LESS, *a.* Destitute of charms. *Swift.*
- CHÄR'NE-CÖ, *n.* A sort of sweet wine. "Here's a cup of *charneco*." *Shak.*
- CHÄR'NEL, *a.* Containing flesh, or dead bodies. "Oft seen in *charnel* vaults." *Milton.*
- CHÄR'NEL, *n.* [L. *carnalis*, carnal; *caro*, *carnis*, flesh; Fr. *charnier*.] A repository for the bones of the dead; a charnel-house. *Young.*
- CHÄR'NEL-HÖÜSE, *n.* A place under a church, or appended to one, where the bones of the dead are repositied. *Shak.*
- CHÄR'PIË, *n.* [Fr.] (*Surg.*) Lint used in dressing wounds, making compresses, &c. *Dunglison.*
- CHÄR'RY, *a.* [See CHAR.] Burned, as charcoal; like charcoal. *Smart.*

Ä, Ê, Î, Ö, Ü, Ý, long; Ä, Ê, Î, Ö, Ü, Ý, short; Ä, Æ, I, Q, U, Y, obscure; FÄRE, FÄR, FÄST, FÄLL; HËIR, HËR;

*pp.* EXCRUCIATING, EXCRUCIATED.] To afflict with extreme pain; to torture; to torment; to agonize; to rack.

Their thoughts, like devils, them excruciate. *Drayton.*

EX-CRŪ'CI-AT-ING (eks-kra'she-at-ing), *p. a.* Exceedingly painful; tormenting; torturing. "Excruciating fits of the gout." *Cogan.*

EX-CRŪ'CI-Ā'TION (eks-kra'she-ā'shun), *n.* [L. *excruciatō*.] The act of excruciating; that which excruciates; torment; vexation. "The frettings and the excruciations of life." *Feltham.*

† EX-CŪ-BĀ'TION, *n.* [L. *excubatio*; *ex*, priv., and *cubo*, to lie down.] The act of watching all night. *Bailey.*

EX-CŪL'PA-BLE, *a.* That may be excuplated; capable of being excuplated. *Sir C. Buck.*

EX-CŪL'PĀTE, *v. a.* [L. *ex*, priv., and *culpo*, culpatus, to blame; *culpa*, blame; *It. scolpare*; *Fr. disculper*.] [*i.* EXCULPATED; *pp.* EXCULPATING, EXCULPATED.] To clear from the imputation of a fault; to free from blame; to exonerate; to absolve; to acquit; to discharge; to justify.

A good child will not seek to excuplate herself at the expense of the most revered characters. *S. Richardson.*

*Syn.* — See EXONERATE.

EX-CŪL-PĀ'TION, *n.* The act of excuplating; excuse. "Pleading in his excuplation." *Burke.*

EX-CŪL'PĀ-TŌ-RY, *a.* That excuplates; clearing from imputed fault. "He wrote an excuplatory letter." *Johnson.*

† EX-CŪR', *v. n.* [L. *excurro*, to run out; *ex*, from, and *curro*, to run.] To pass or go beyond limits. *Harvey.*

EX CŪ'RĪ-Ā. [L.] (*Law.*) Out of court.

EX-CŪR'RENT, *a.* (*Bot.*) 1. Noting the ramification of a tree or a plant which has the axis in the centre, the other parts being regularly disposed around it, as in the case of the fir-tree. *Brande.*

\* 2. Running out, as when a midrib projects beyond the apex of a leaf, or when a trunk is continued to the very top of a tree. *Gray.*

EX-CŪRSE', *v. a.* [L. *excurro*, *excursus*, to run forth.] To pass or journey through. *Hallam.*

EX-CŪR'SION (eks-kūr'shun), *n.* [L. *excursio*, a running out or forth; *It. escursione*; *Sp. & Fr. excursion*.]

1. The act of excursing; a going from any point, as in travelling; a journey; a ramble; a tour; a trip; a jaunt; an expedition; as, "To make an excursion to the lakes."

2. Progression beyond stated bounds or limits. Those great excursions of the seasons into the extremes of cold and heat. *Arbutnot.*

3. A digression; a deviation.

I am too weary to allow myself any excursion from the main design. *Atterbury.*

*Syn.* — A pleasurable excursion into the country; a ramble in the woods or among mountains; a tour through the country; a long or short journey of business or pleasure; a digression from the usual course; a trip to a neighboring watering-place; a jaunt in a carriage.

EX-CŪR'SION, *v. n.* To make an excursion; to journey; to travel. [*R.*] *C. Lamb.*

EX-CŪR'SIVE, *a.* Rambling; wandering; roving; deviating; devious.

On fancy's eagle-wing excursive soar. *Thomson.*

EX-CŪR'SIVE-LY, *ad.* In an excursive manner.

The flesh of animals which feed excursively is allowed to have a higher flavor than that of those who are cooped up. *Boncell.*

EX-CŪR'SIVE-NESS, *n.* The quality of being excursive. *Brit. Crit.*

EX-CŪR'SUS, *n.* [L. *a digression*.] A literary exercise, task, or performance; a discussion; a disquisition; a dissertation. *Qu. Rev.*

EX-CŪS'ABLE, *a.* [L. *excusabilis*; *It. scusabile*; *Sp. & Fr. excusable*.] That may be excused; pardonable; venial. *Tillotson.*

*Syn.* — See VENIAL.

EX-CŪS'ABLE-NESS, *n.* The quality of being excusable. *Boyle.*

EX-CŪS'ABLE-LY, *ad.* In an excusable manner; pardonably. *Secker.*

EX-CŪ-ŠĀ'TION, *n.* [L. *excusatio*.] The act of excusing; excuse; plea; apology. [*n.*]

Prefaces, and excusations, and other speeches of reference to the person, are great wastes of time. *Bacon.*

EX-CŪ-ŠĀ-TŌR, *n.* [L.] One who makes an excuse; an apologist.

He (Henry VIII.) despatched Sir Edward Carne and Dr. Bonner in quality of excusators, so they were called, to carry his apology. *Hume.*

EX-CŪ-ŠĀ-TŌ-RY, *a.* That excuses; pleading excuse; apologetical. "He made excusatory answers." *A. Wood.*

EX-CŪŠE' (eks-kūz'), *v. a.* [L. *excuso*; *ex*, priv., and *causo*, to blame; *It. scusare*; *Sp. excusar*; *Fr. excuser*.] [*i.* EXCUSED; *pp.* EXCUSING, EXCUSED.]

1. To extenuate by apology.

Bad men excuse their faults, good men will leave them. *B. Jonson.*

2. To disengage from an obligation; to release. I pray thee have me excused. *Luke xiv. 19.*

3. To abstain from exacting; to dispense with; to remit. "To excuse a forfeiture." *Johnson.*

4. To permit; to allow; to tolerate. Excuse some courtly strains. *Pope.*

5. To make apology for; to free from imputation. Think you that we excuse ourselves unto you? *2 Cor. xii. 13.*

6. To exculpate; to blame; to scuse; to acquit; to pardon; to justify; to vindicate. Their thoughts accusing or else excusing one another. *Rom. ii. 15.*

*Syn.* — Excuse small faults; pardon great ones. Excuse equals; pardon inferiors. Excuse a person for an unintentional offence or injury; pardon a criminal. — See FORGIVE.

EX-CŪŠE' (eks-kūs'), *n.* [L. *excusa*; *Sp. excusa*; *Fr. excuse*.]

1. The act of excusing; a reason alleged for doing or not doing a thing; plea offered in extenuation of a fault or neglect; an apology.

We find out some excuse or other for deferring good resolutions. *Addison.*

2. Cause of being excused; pretext; pretence. And I allow you rage that kind excuse. *Dryden.*

*Syn.* — See APOLOGY.

EX-CŪŠE'LESS, *a.* Being without excuse; having no excuse. *Whitlock.*

EX-CŪŠ'ER (eks-kūz'ēr), *n.* One who excuses another. *Swift.*

EX-CŪŠS', *v. a.* [L. *excutio*, *excussus*, to shake off; *ex*, from, and *quatio*, to shake.]

1. To shake off. They could not totally excuss the notion of a Deity out of their minds. *Stillington.*

2. † To decipher; to unfold; to explain. *Fr. Junius, 1654.*

3. (*Law.*) To seize and detain by law. *Ayliffe.*

EX-CŪŠ'SION (eks-kūsh'un), *n.* [L. *excussio*.] (*Law.*) Seizure by law. *Ayliffe.*

EX-DJ-RECT'OR, *n.* One who has been a director, but who is no longer one. *Clarke.*

EX'E-ĀT, *n.* [L. *he may go out*.]

1. Permission given to students in the English universities to leave their college residence for a time. *Hook.*

2. Permission given by a bishop for a priest to go out of his diocese. *Ogilvie.*

EX'E-CRA-BLE, *a.* [L. *execrabilis*; *It. execrabile*; *Sp. & Fr. execrable*.] That is to be execrated; abominable; hateful; odious; detestable; accursed.

Whence and what art thou, execrable shape? *Milton.*

*Syn.* — See ABOMINABLE.

EX'E-CRA-BLE-NESS, *n.* The state of being execrable; hatefulness; abominableness. *Scott.*

EX'E-CRA-BLY, *ad.* In an execrable manner.

EX'E-CRĀTE, *v. a.* [L. *execror*, *execratus*; *ex*, priv., and *sacro*, to set apart as sacred; *sacer*, sacred; *It. execrare*; *Sp. execrar*; *Fr. exécerer*.] [*i.* EXECRATED; *pp.* EXECRATING, EXECRATED.]

1. To render detestable; to make hateful. As if mere plebeian noise were enough to execrate any thing as devilish. *Sp. Taylor.*

2. To imprecate ill upon; to curse; to abominate; to detest; to abhor. The instruments of his affliction, how do we execrate their memories! *Barrow.*

EX'E-CRĀ'TION, *n.* [L. *execratio*; *Sp. execracion*; *Fr. execration*.]

1. The act of execrating; detestation; malediction; curse; imprecation of evil; ban. Cense, gentle queen, these execrations. *Shak.*

2. The object execrated; abomination. They shall be an execration and a reproach. *Jer. xlv. 12.*

*Syn.* — See MALEDICTION.

EX'E-CRĀ-TŌ-RY, *n.* A formulary of execration. Agreeable to the execratory which is now used by them. *L. Addison.*

† EX-ECT', *v. a.* [L. *execo*.] To cut out; to cut away. — See EXSECT. *Harvey.*

† EX-EC'TION (eks-ek'shun), *n.* The act of executing or cutting out. — See EXSECTION.

EX'E-CŪT-A-BLE, *a.* That may be executed or accomplished. *G. Canning.*

EX'E-CŪTE, *v. a.* [L. *exequor*, *executus*; *It. eseguire*; *Sp. ejecutar*; *Fr. exécuter*.] [*i.* EXECUTED; *pp.* EXECUTING, EXECUTED.]

1. To follow out to the end; to carry into effect; to accomplish; to effect; to complete; to consummate; to fulfil; to perform; as, "To execute a purpose"; "To execute an order."

2. To put to death in conformity with a judicial sentence; as, "To execute a criminal."

3. To complete, as a legal instrument, by signing, sealing, and delivering. A deed is not complete, and has no operation or effect, until executed, that is, signed, sealed, and delivered by the party making it. *Burrill.*

*Syn.* — See ACCOMPLISH.

EX'E-CŪTE, *v. n.* To perform any act or office. "The cannon executed so well." *Sir J. Haycard.*

EX'E-CŪT-ER, *n.* One who executes or carries any thing into effect; an executor. — See EXECUTOR.

EX'E-CŪ'TION, *n.* [L. *executio*; *Sp. ejecucion*; *Fr. exécution*.]

1. The act of executing; performance; operation; practice; completion; accomplishment. When things are come to the execution, there is no secrecy comparable to celerity. *Bacon.*

2. Something accomplished; effect. A word shall do execution deeper than the mightiest blow. *South.*

3. (*Law.*) The act by which possession is given of body or goods: — the writ which empowers an officer to carry out a judicial sentence: — the act by which the sentence of the law inflicting the penalty of death is carried into effect; death inflicted by forms of law; capital punishment: — act of giving effect to a legal instrument by signing, sealing, and delivering; as, "The execution of a deed." *Burrill.*

4. (*Mus.*) The mode of expressing or rendering musical notation by the voice or by an instrument; facility of the voice or the fingers in running rapid divisions, and other difficult and intricate passages. *Moore.*

5. (*Fine Arts.*) The mode of performing a work of art, and the dexterity with which it is accomplished. *Brande.*

By the term execution, I understand the right mechanical use of the means of art to produce a given end. *Ruskin.*

*Syn.* — See COMPLETE.

EX'E-CŪ'TION-ER, *n.* 1. He that executes or carries any thing into effect.

In this case, every man hath a right to punish the offender, and be the executioner of the law of nature. *Locke.*

2. One who kills; — specially, one who puts to death criminals who are condemned by law. Executioner, unsheathe thy sword. *Shak.*

3. The instrument by which any thing is done. [*R.*] *Crashaw.*

EX-EC'U-TIVE, *a.* [L. *executivo*; *Sp. ejecutivo*; *Fr. exécutif*.] That executes; having the quality of executing; not legislative, but active, or putting the laws in execution. "Executive authority." *Blackstone.*

Executive power, that part of the government, or of the powers of a state, which is employed in putting into execution the laws made by the legislative power, or the decrees of the judicial power.

EX-EC'U-TIVE, *n.* The executive power: — the person or the power that administers the government; an executive officer. *Qu. Rev.*

EX-EC'U-TIVE, *n.* This word is now sometimes so used in England, but this use of it was first introduced in this country; and it is now commonly applied to the President of the United States. The constitution of the United States has the phrase executive power, but not simply the executive.

MIEN, SĪR; MÔVE, NÖR, SÖN; BŪLL, BŪR, RŪLE. — Ç, Ç, ç, è, soft; Ć, Ć, ĉ, ħ, hard; Š as z; X as gz. — THIS, this.



**EX-EC-U-TIVE-LY**, *ad.* In an executive manner; by way of execution. *Barrow.*

**EX-EC-U-TOR**, *n.* (*Law.*) One who is appointed by a testator in his last will and testament, to see and take care that it is executed or carried into effect after his decease. *Burrill.*

Let's choose *executors*, and talk of wills. *Shak.*

**EX-EC-U-TÓ-RI-AL**, *a.* Relating to an executor; executory. *Blackstone.*

**EX-EC-U-TOR-SHIP**, *n.* The office of an executor. *Bacon.*

**EX-EC-U-TO-RY**, *a.* [*It. esecutorio*; *Sp. ejecutorio*; *Fr. exécutoire*.]

1. That executes; having or exercising authority; executive. "*Executory and judicial magistracy.*" *Burke.*

2. (*Law.*) That is to be executed or performed at a future period. "*Contingent and executory remainders.*" *Blackstone.*

**EX-EC-U-TRESS**, *n.* An executrix. *Shak.*

**EX-EC-U-TRIX**, *n.* (*Law.*) A woman appointed to execute a will. *Bacon.*

**EX-É-DRÁ** [*ex-é'dra*, *Cl. Maunder, P. Cyc.*; *ex-é'dra*, *Brandé*], *n.*; *pl. ex-é'dræ*. [*L.*, from *Gr. ἔξωρα*.] (*Arch.*) A small apartment or recess in a portico, or ambulatory, for retirement or conversation;—a term applied to one of the outbuildings of the early Christian churches and basilicas, such as the baptistry, the porch, the vestry, &c., and sometimes to the eastern end or apsis of a church in which the bishop's throne was placed. *Britton.*

**EX-E-GE'SIS**, *n.* [*Gr. ἔξωσις*; *ἔξωσις*, to lead, to expound; *It. esegesi*; *Fr. exégèse*.]

1. The science or the art of literary interpretation; explanation of the meaning of an author; interpretation; exposition. *Chambers.*

2. (*Math.*) † A term applied to the process of finding the roots of an equation. *Francis.*

**EX-E-GE-TE**, *n.* One who is skilled in exegesis; an interpreter; an exegetist.

Both have chosen to play the part of a critic, as well as that of exegete. *Brit. Qu. Rev.*

**EX-E-GE-TIC**, *a.* [*It. esegetico*; *Sp. exegetico*; *Fr. exegetique*.] Relating to exegesis; explanatory. *Locke.*

**EX-E-GE-TI-CAL-LY**, *ad.* By way of explanation or exposition. *Bp. Bull.*

**EX-E-GE-TICS**, *n. pl.* The science or the principles of interpretation; exegesis. *Athenæum.*

**EX-E-GE-TIST**, *n.* One versed in exegesis; an exegete. [*R.*] *Qu. Reg.*

**EX-EM-PLAR**, *n.* [*L.*] A pattern; an example to be imitated; a model to be followed; copy.

The idea and exemplar of the world was first in God. *Raleigh.*  
But if Christ is both the way and the truth, and the life, why do all our schemes of life and plans of conduct deviate so from this great exemplar? *Knox.*

† **EX-EM-PLAR**, *a.* Worthy of imitation; exemplary. "*Exemplary piety.*" *Bp. Taylor.*

|| **EX-EM-PLA-RI-LY**, *ad.* In an exemplary manner.

|| **EX-EM-PLA-RI-NÉSS**, *n.* The state of being exemplary. *Tillotson.*

**EX-EM-PLÁ-RÍ-TY**, *n.* A pattern worthy of imitation. [*R.*] *W. Mountagu. Barrow. Ec. Rev.*

|| **EX-EM-PLA-RY** [*egz'em-plá-re*, *S. W. F. Ja. Sm. R. C. Wb.*; *egz-ém'pla-re*, *P. K.*], *a.* [*L. exemplaris*; *It. esemplare*; *Sp. ejemplar*; *Fr. exemplaire*.]

1. Worthy of imitation; serving for a pattern. Their lives and doctrine ought to be exemplary. *Bacon.*

2. Serving to warn; monitor; admonishing. "*Exemplary justice.*" *King Charles.*

3. Illustrating something; explanatory. "*Exemplary is the coat of George Villiers.*" *Fuller.*

"I have given the first syllable of this word, and the substantive and adverb formed from it, the flat sound of *x*, directly contrary to analogy, because I think it agreeable to the best usage; and in this case analogy must be silent; though, I think, it ought to be a silence of compliance rather than of consent." *Walker.*

|| **EX-EM-PLA-RY**, *n.* [*Fr. exemplaire*.] A copy; a pattern. [*R.*] *Donne.*

**EX-EM-PLI-FI-ABLE**, *a.* That may be exemplified or illustrated. *Coleridge.*

**EX-EM-PLI-FI-CÁ-TION**, *n.* [*It. esemplificazione*; *Sp. ejemplificación*.]

1. The act of exemplifying; illustration. "*Exemplification of malice.*" *South.*

2. (*Law.*) A certified transcript or copy, under seal, of a record.

An ambassador of Scotland demanded an exemplification of the articles of peace. *Hayward.*

**EX-EM-PLI-FI-ER**, *n.* One who exemplifies.

**EX-EM-PLI-FY**, *v. a.* [*It. esemplificare*; *Sp. ejemplificar*.] [*L. EXEMPLIFYING, EXEMPLIFIED*; *pp. EXEMPLIFYING, EXEMPLIFIED*.]

1. † To make an example of. *Rogers.*

2. To illustrate by example.

Our author has exemplified his precepts in the very precepts themselves. *Addison.*

3. (*Law.*) To make a certified transcript or copy of, under seal.

Ambassadors commanded to exemplify the famous laws of Solon. *Holland's Livy.*

**EX-É-M'PLÍ GRÁ-TÍ-A** (-grá'shë-a), [*L.*] For the sake of example; as an example; as an instance;—usually abbreviated *e. g.* or *ex gr.*

**EX-É-MPT'** (egz-ém't), *v. a.* [*L. eximo, exemptus*; *ex*, from, and *emo*, to take; *It. esentare*; *Sp. exentar*; *Fr. exempter*.] [*i. EXEMPTED*; *pp. EXEMPTING, EXEMPTED*.] To free from; to privilege; to grant immunity from; to excuse; to dispense with; to exonerate; to relieve. "*Exempted from the common fate.*" *Waller.*

**EX-É-MPT'**, *a.* [*It. esente*; *Sp. exento*; *Fr. exempt*.]

1. Free by privilege; not liable.

No man is exempt from the chances of human life. *Atterbury.*

2. Not included; left out.

No voice exempt, no voice but well could join Melodious part; such concord is in heaven. *Milton.*

3. † Separated; parted.

Corrupted and exempt from ancient gentry. *Shak.*

**Syn.**—See CLEAR.

**EX-É-MPT'**, *n.* 1. A person exempted from the performance of certain duty or service, as from paying a tax or performing military duty. *Cyabb.*

2. A term applied to certain officers, four in number, of the Yeomen of the King's Guard. They are styled *corporals* in their commissions.

"The true origin of [the] name is doubtful; some trace it to those officers of the French Guard who are styled 'Capitaines exempts des Gardes du Corps.'" *Dodd.*

**EX-É-MPT'-I-BLE** (egz-ém't'e-bl), *a.* That may be exempted; loose; quit; free. [*R.*] *Cotgrave.*

**EX-É-MPT'ION** (egz-ém'shun), *n.* [*L. exemptio*; *It. esenzione*; *Sp. exención*; *Fr. exemption*.]

1. The state of being exempted; immunity; privilege; freedom from that to which others are liable.

The Roman laws gave particular exemptions to such as built ships or traded in corn. *Arbutnot.*

2. (*Eccl.*) A privilege given by the pope to the clergy, and sometimes to the laity, to exempt, or free, them from the jurisdiction of their respective ordinaries. *Hook.*

**Syn.**—See PRIVILEGE.

† **EX-É-MPT'-TIOUS** (egz-ém-tish'us), *a.* Separable; exemptible. *More.*

† **EX-É-N'TER-ÁTE**, *v. a.* [*L. exentero, exenteratus*.] To deprive of the bowels; to embowel; to eviscerate. *Burton.*

† **EX-É-N-TER-Á-TION**, *n.* The act of taking out the bowels. *Browne.*

**EX-E-QUÁ-TUR**, *n.* [*L.*, he may perform or execute, i. e. the duties of his office.] (*Law.*) A declaration, in writing, given by the executive authority of any government to a foreign consul, accredited to it, recognizing him as such, and authorizing him to perform the duties of his office; an official recognition of a person in the character of consul or commercial agent. *Burrill.*

**EX-É-QUI-AL**, *a.* [*L. exequialis, or exsequialis*.] Relating to funerals; funeral; funeral. "*Ex-equal games.*" *Pope.*

**EX-E-QUÍES** (ëks'e-kwíz), *n. pl.* [*L. exequie, or exsequia*, the following of a corpse beyond the walls; *exsequor*, to follow; *It. esequie*; *Sp. ex-*

*equias*.] Funeral rites; the ceremonies or the procession of burial. *Shak.*

† **EX-E-QUY**, *n.* A funeral rite. *Dr. King.*

† **EX-É-R'CENT**, *a.* [*L. exerceo, exercens*, to practise, to exercise.] One who has exercise in any occupation; following any calling. *Ayliffe.*

**EX-É-R-CÍSE**, *n.* [*L. exercitium*; *It. esercizio*; *Sp. ejercicio*; *Fr. exercice*.]

1. Labor, work, or practice, as belonging to one's occupation; as, "His time is absorbed in the exercise of his profession."

2. Application; use; as, "The exercise of a privilege or a right."

3. Labor or bodily exertion for health or amusement.

The wise for cure on exercise depend. *Dryden.*

4. Employment or effort of the mind.

Exercise is very alluring to the understanding. *Watts.*

5. Habitual action or practice, in order to acquire grace or skill; as, "The exercises of soldiers, or manual exercise."

6. A task or lesson required of a student; as, "An exercise in Greek, or in composition."

7. An act of divine worship.

Neither shall any minister not licensed hold any meetings for sermons, commonly termed prophecies or exercises. *Constitutions and Canons Ecclesiastical.*

**EX-É-R-CÍSE**, *v. a.* [*L. exerceo*; *It. esercere*; *Sp. ejercer*; *Fr. exercer*.] [*i. EXERCISED*; *pp. EXERCISING, EXERCISED*.]

1. To employ; to practise; to perform; to pursue; to carry on; to exert, as the body or the mind.

This faculty, when it is exercised about things, is called judgment. *Locke.*

2. To put to use; as, "To exercise authority."

3. To train by use; to make skilful by practice.

Reason, where it is strong and exercised, usually sees quicker and clearer without syllogism. *Locke.*

4. To task or try with something grievous; to afflict.

Sore travel hath God given to the sons of men to be exercised therewith. *Eccles. i. 13.*

**Syn.**—See EMPLOY, EXERT.

**EX-É-R-CÍSE**, *v. n.* To use exercise; to labor, as for health.

A man must often exercise, or fast, or take physic, or be sick. *Temple.*

**EX-É-R-CÍ-ER**, *n.* One who exercises. *Johnson.*

**EX-É-R-CÍ-S-BLE**, *a.* That may be exercised or employed.

An incorporeal hereditament... annexed to or exercisable within the same. *Blackstone.*

**EX-É-R-CÍ-TÁ-TION**, *n.* [*L. exercitatio*; *Sp. ejercitacion*.] Exercise; practice. [*R.*] *Fellon.*

**EX-É-R-CÍ-TOR**, *n.* [*L.*] (*Law.*) One who fits and equips a vessel at his own risk, and receives the earnings of the voyage. *Burrill.*

**EX-É-RGUE'** (egz-ërg'), *n.* [*It. esergo*; *Sp. ergo*; *Fr. erguer*; *Gr. ἔξω, out of, and ἔργον, work*.] (*Numismatics.*) The small space beneath the base line of a subject engraved on a coin or a medal;—usually containing an inscription of the date, place, &c., of the coin, or other subsidiary matter. *Fairholt.*

**EX-É-RT'**, *v. a.* [*L. exero*, to put forth; *exertus*; *ex*, from, and *sero*, to sow.] [*i. EXERTED*; *pp. EXERTING, EXERTED*.]

1. To use with effort; to put forth.

When the service of Britain requires your courage and conduct, you may exert them both. *Dryden.*

2. To urge to effort or action;—with the reflective pronoun; as, "To exert one's self."

3. † To push out; to thrust forth.

The stars, no longer overlaid with weight, Exert their heads from underneath the mass. *Dryden.*

**Syn.**—To exert is simply to put forth; to exercise is to put forth often, and involves reiterated exertion. Exert strength; exercise the voice or the body; practise virtue, a profession; perform a task or labor.

**EX-É-R'TION** (egz-ër'shun), *n.* The act of exerting; endeavor; struggle; effort. "The laborious exertions of industry." *Robertson.*

**EX-É-R'TIVE**, *a.* That exerts; making exertion; using effort. [*R.*] *Reeder.*

**EX-É-R'TMENT**, *n.* Exertion. [*R.*] *Clarke.*

**EX-É-SION** (egz-ë'shun), *n.* [*L. exedo, exesus*.] The act of eating through. [*R.*] *Browne.*

Ä, Ê, Î, Ö, Ü, Ț, long; Ä, Ê, Î, Ö, Ü, Ț, short; A, E, I, O, U, Y, obscure; FÄRE, FÄR, FÄST, FÄLL; HÊIR, HËR;

2. To make a loud noise; to explode; to detonate. *Boyle.*  
 3. To hurl ecclesiastical censures. *Burnet.*
- FŪL'MI-NĀTE, *v. a.* 1. To throw out as an object of terror; to denounce; to menace; to curse. *Warburton.*  
 Judgments . . . fulminated with the air of one who had the divine vengeance at his disposal. *Warburton.*  
 2. (Chem.) To cause to explode. *Sprat.*
- FŪL'MI-NĀTE, *n.* (Chem.) A compound of fulminic acid with a base. *Brande.*
- FŪL'MI-NĀT-ING, *p. a.* 1. Denouncing; men-acing.  
 2. Exploding with noise.  
*Fulminating powder*, (Chem.) a compound of nitre, pearlsh, and sulphur, which makes a loud explosion.
- FŪL'MI-NĀTION, *n.* [L. *fulminatio*; It. *fulminazione*; Sp. *fulminación*; Fr. *fulmination*.]  
 1. The act of fulminating; denunciation. "The fulminations from the Vatican." *Ayliffe.*  
 2. (Chem.) An explosion. *Sprat.*
- FŪL'MI-NĀ-TQ-RY, *a.* [It. *fulminatorio*; Fr. *fulminatoire*.] Thundering; striking terror or horror. *Cotgrave.*
- † FŪL'MINE, *v. a.* [See FULMINATE.] To shoot; to dart, like lightning. *Spenser.*
- † FŪL'MINE, *v. n.* To thunder; to sound like thunder. *Milton.*
- FUL-MIN'E-OŪS, *a.* [L. *fulmineus*; It. & Sp. *fulmineo*.] Pertaining to thunder. *Craig.*
- FUL-MIN'IC, *a.* (Chem.) Noting an acid contained in fulminating silver. *P. Cye.*
- FŪL'NESS, *n.* The state or quality of being full; plenitude; abundance; completeness; copiousness; repletion. "Fulness of joy." *Ps. xvii.*  
 II. "Fulness of the heart." *Bacon.*
- † FŪL-SĀM'IC, *u.* Nauseous; fulsome. *Congreve.*
- FŪL-SOME (fū'sum) [fū'sum, S. W. P. J. E. F. *Ja. K. Sm.*; fū'sum, *Web.*], *a.* [From full. *Junius.* *Trench.* — *Full* and *some.* *Wallis.*]  
 1. † Full; filled out. "His lean . . . withered corpse grew fulsome, fair, and fresh." *Goldring.*  
 2. Nauseous; offensive; disgusting. "Fulsome manner." *Swift.* "Fulsome objects." *Roscommon.* "A fulsome fellow." *Beau. & Fl.*  
 3. Tending to obscenity; coarse. *Dryden.*
- FŪL-SOME-LY, *ad.* In a fulsome manner; nauseously. *Congreve.*
- FŪL-SOME-NESS, *n.* The quality of being fulsome; nauseousness; disgusting foulness. *Price.*
- FŪL'VID, *a.* [L. *fulvus*.] Of a dull yellow color, mixed with gray; fulvous. *More.*
- FŪL'VOUS, *a.* [L. *fulvus*; It. *fulvo*.] Yellow; tawny; dull yellow with gray; fulvid. *Blount.*
- FŪ-MĀ'DQ, *n.* [L. *fumus*; Sp. *fumada*, smoke.] A smoked fish. *Carver.*
- FŪ'MAGE, *n.* [L. *fumus*, smoke.] (Law.) A tax on smoke-places; hearth-money. *Bailey.*
- FŪ'MĀ-RĀTE, *n.* (Chem.) A salt formed by the union of fumaric acid with a base.
- FŪ-MĀ'R'Ī-A, *n.* [L. *fumus*, smoke; — in allusion to the unpleasant smell which it exhales.] (Bot.) A genus of plants; fumitory. *Crabb.*
- FŪ'MĀ-RIC, *a.* (Chem.) Noting an acid existing in the common fumitory, and which may be produced artificially by the action of heat on malic acid. *Brande.*
- FŪ-MĀ'R'Ī-MIDE, *n.* (Chem.) A snow-like powder, formed by the action of ammonia on fumarate of oxide of ethule. *Craig.*
- FŪ'MĀ-RŪLE, *n.* A hole from which smoke issues in a sulphur mine or volcano. *Smart.*
- FŪ'MĀ-TQ-RY, *n.* [Fr. *fumeterre*.] A genus of strong-scented plants. — See FUMITORY. *Shak.*
- FŪM'BLE (fū'mbl), *v. n.* [Dut. *fommelen*; Dan. *fumble*; Sw. *famla*.] [i. FUMBLED; pp. FUMBLED; FUMBLED.]  
 1. To feel or grope about; to attempt or handle awkwardly; to act bunglingly.  
 It is continuing to fumble on the lute, though the music has been long over. *Warburton.*  
 2. To play childishly.

- I saw him fumble with the sheets, and play with flowers. *Shak.*
3. To falter; to hesitate; to stammer.  
 She fumbled out, Thanks, good; and so she died. *Marston.*
- FŪM'BLE, *v. u.* To manage awkwardly. *Shak.*
- FŪM'BLER, *n.* One who fumbles. *Falkland.*
- FŪM'BLING, *p. u.* Doing any thing awkwardly.
- FŪM'BLING-LY, *ad.* In an awkward manner.
- FŪME, *n.* [L. *fumus*; It. *fumo*, or *fummo*; Sp. *humo*; Fr. *fumée*.]  
 1. Smoke; vapor; reek; steam. *Dryden.*  
 2. Exhalation from the stomach, as affecting the smell or the brain.  
 As filled with fumes of undigested wine. *Dryden.*  
 3. Idle conceit; vain imagination; excitement. "A show of fumes and fancies." *Bacon.*
- FŪME, *v. n.* [i. FUMED; pp. FUMING, FUMED.]  
 1. To smoke. "Where the golden altar fumed." *Milton.*  
 2. To yield vapor; to vapor; to evaporate. "Keep his brain fuming." *Shak.*  
 3. To pass off in vapors or exhalations. Their parts are kept from fuming away by their fixity. *Chénic.*  
 4. To be in a rage; to rage.  
 He frets, he fumes, he stares, he stamps the ground. *Dryden.*
- FŪME, *v. a.* 1. To smoke; to dry in the smoke; to fumigate. *Carew.*  
 2. To perfume; to scent.  
 She fumed the temples with an odoriferous fume. *Dryden.*  
 3. To disperse in vapors; to exhale.  
 The heat will fume away most of the scent. *Mortimer.*
- FŪMET, *n.* [Fr.] 1. The dung or ordure of the deer, hare, &c. *B. Jonson.*  
 2. The scent of meat, as venison or game, when kept too long. *Smart.*
- † FŪ-MĒTTE', *n.* Fumet. — See FUMET. *Swift.*
- FŪMID, *a.* [L. *fumidus*; *fumus*, smoke.] Smoky; fuliginous; vaporous. [u.] *Brownie.*
- FŪ-MID'Ī-TY, *n.* The quality or the state of being smoky; smokiness; tendency to smoke. [u.] *Bailey.*
- FŪMID-NESS, *n.* Smokiness. *Smart.*
- FŪ-MIF'ER-OŪS, *a.* [L. *fumifer*; *fumus*, smoke, and *fero*, to bear.] Producing smoke. *Wright.*
- FŪ-MIF'U-GIST, *n.* [L. *fumus*, smoke, and *fugo*.] One who drives away smoke. [u.] *Dr. Allen.*
- FŪMIGĀTE, *v. n.* [L. *fumigo*; *fumus*, smoke; It. *fumiigare*; Sp. *fumiigar*; Fr. *fumiiger*.] [i. FUMIGATED; pp. FUMIGATING, FUMIGATED.] To smoke; to perfume, purify, medicate, or cleanse by smoke or vapor.  
 With fragrant thyme the city fumigates. *Dryden.*
- FŪMIGĀTION, *n.* [It. *fumigazione*; Sp. *fumi-gación*; Fr. *fumigation*.]  
 1. Act of fumigating; act of using fumes or vapors to purify articles of apparel, and goods or apartments supposed to be imbued with some infectious or contagious poison or fumes. *Ure.*  
 2. The vapor raised in fumigating. *Dryden.*
- FŪMIGĀTO-RY, *a.* [Sp. *fumigatorio*; Fr. *fumi-gatoire*.] Purifying by smoke. [u.] *Maunder.*
- FŪM'Ī-LY, *ad.* Smokily; with fume. *Wright.*
- FŪM'ING, *n.* 1. The act of scenting or purifying by smoke. *Mortimer.*  
 2. Idle conceit; fume. *Mir. for Mag.*
- FŪM'ING-LY, *ad.* With fume; angrily; in a rage.
- FŪM'ISH, *a.* 1. Smoky. *Cotgrave.* *Sherwood.*  
 2. Hot; choleric; fretful. [u.] *Mir. for Mag.*
- FŪM'ISH-NESS, *n.* Fretfulness. *Coverdale.*
- FŪM'Ī-TER, *n.* A plant; fumitory. *Shak.*
- FŪM'Ī-TQ-RY, *n.* (Bot.) A genus of strong-scented plants; *Fumaria officinalis*; — written also *fumatory*. *Eng. Cyc.*
- FŪM'MEL, *n.* The offspring of a stallion and a she-ass; a hinny or mule. *Booth.*
- FŪ'MOŪS, *a.* [L. *fumosus*; Fr. *fumeux*.] Profuse; emitting or filled with fumes; smoky. *Dryden.*

- FŪN, *n.* [A. S. *fagen*, glad. *Todd.* *Richardson.* — Ger. *wonne*, bliss. *Webster.*] Sport; merriment; frolic. [Colloquial.] *More.*
- FŪ-NĀM'BU-LĀTE, *v. n.* [L. *funis*, a rope, and *ambulo*, *ambulus*, to walk.] To walk or dance on a rope. *Craig.*
- FŪ-NĀM-BU-LĀTION, *n.* [See FUNAMBULUS.] Rope-dancing. *Bailey.*
- FŪ-NĀM-BU-LĀ-TQ-RY, *a.* 1. Narrow, like the rope of a rope-dancer. "This funambulatory track . . . of goodness." *Brownie.*  
 2. Performing like a rope-dancer. "Funambulatory elephants." *Chambers.*
- FŪ-NĀM-BU-LIST, *n.* One who walks or dances on a rope stretched through the air; a rope-dancer. [u.] *The Looker-on.*
- FŪ-NĀM-BU-LŪ, *u.* [Sp.] A rope-dancer; a funambulist. *Bacon.*
- FŪ-NĀM-BU-LŪS, *n.* [L. *funis*, a rope, and *ambulo*, to walk.] A funambulist. [u.] *Wotton.*
- FŪNCTION (fūnk'shun, 82), *n.* [L. *functio*; *fungor*, *functus*, to perform; It. *funzione*; Sp. *funcion*; Fr. *fonction*.]  
 1. Performance; execution. "A commoner in the function of his public calling." *Swift.*  
 2. Employment; office; occupation. "Follow your function." *Shak.*  
 3. Duty belonging to any station or office.  
 They have several offices and prayers against fire, tempests, and especially for the dead, in which functions they use sacerdotal garments. *Swillingh.*  
 4. Faculty; power.  
 In all her functions weary of herself. *Milton.*
5. (Phys.) The appropriate office of an organ in the animal or vegetable economy. *Bentley.*  
 6. (Math.) A quantity so connected with another that no change can be made in the latter without producing a corresponding change in the former. *Davies.*
- Syn. — See OFFICE.
- FŪNCTION-AL, *a.* Relating to some office or function; official. *Smart.*
- FŪNCTION-AL-IZE, *v. u.* To place in a function or office. *Laing.*
- FŪNCTION-AL-LY, *ad.* By means of the functions. *Wright.*
- FŪNCTION-A-RY (fūnk'shun-a-ry), *n.* [Fr. *fonctionnaire*.] One who holds an office; one who performs any duty or service. *Burke.*
- FŪNCTION-A-RY-IŠM, *n.* 1. The station of a functionary. *Laing.*  
 2. The body of functionaries, or public officers. *Laing.*  
 3. A system or method of governing by functionaries. *Laing.*
- FŪNCT'US OF-FĪ' CJ-Ō (-ŏf-fish'-e-a), [L.] Having discharged duty; having no longer official power. *Scudamore.*
- FŪND, *n.* [L. *funda*, a sling, also a purse; *fundus*, land; It. & Sp. *fondo*, a fund; Fr. *fond*.]  
 1. An established stock or capital; that out of which supplies are drawn. "The fund for the supplies." *Burnet.*  
 2. A debt, due by a government, on which interest is paid. "My estate fluctuating in funds." *Addison.*  
*Public funds*, the public debt, due from a government, on which interest is regularly paid. — *Sinking fund*, a fund or stock created for the reduction of a debt.
- FŪND, *v. a.* [i. FUNDED; pp. FUNDING, FUNDED.]  
 1. To invest, as money, in the funds of a company, corporation, or government. *Todd.*  
 2. To borrow, as money, for the purposes of government, and give in exchange to the lender a certificate of title to the same or a larger amount in a fund or stock bearing a fixed rate of interest.  
 If loans (during war) were funded in stocks bearing a rate of interest equivalent to the market rate when they were contracted, the charge on their account might be reduced soon after the return of peace. *Brande.*
- FŪN'DĀ-MĒNT, *n.* [L. *fundamentum*.]  
 1. † Foundation. *Chaucer.*  
 2. The seat of the body, or its aperture; the anus. *Hudibras.*

Ā, Ê, Ī, Ō, Ū, Ȳ, long; Ā, Ê, Ī, Ō, Ū, Ȳ, short; A, E, I, O, U, Y, obscure; FĀRE, FĀR, FĀST, FĀLL; HĒIR, HĒR;

3. The sentence of a judge; punishment for a crime or for sin.

Whoever shall kill shall be in danger of the judgment.

*Matt. v. 21.*

4. Justice; equity; as, "To do justice and judgment."

*Gen. xviii. 19.*

5. The weightier matters of the law, judgment, mercy, and faith.

*Matt. xxiii. 23.*

6. Righteous statutes or commandments. *Ps. xix. 9.*

My soul breaketh for the longing it hath to thy judgments.

*Ps. cxix. 20.*

7. Afflictions or chastisements of Providence.

I am afraid of thy judgments.

*Ps. cxix. 120.*

8. Deliverance of mankind from the power of evil.

Now is the judgment of this world; now shall the prince of this world be cast out.

*John xii. 31.*

9. Divine dispensations or government.

How unspeakable are his judgments!

*Rom. xi. 33.*

10. Opinion. "I give my judgment." *1 Cor. vii. 25.*

That ye be perfectly joined together in the same mind and the same judgment.

*1 Cor. i. 10.*

11. Final doom. "He hath reserved . . . unto the judgment of the great day."

*Jude 6.*

*Abb.* The following words, *abridgment*, *acknowledgment*, and *judgment*, are to be found, with the orthography here given, in the English dictionaries which preceded the publication of Mr. Todd's improved edition of Dr. Johnson's Dictionary. Todd altered Johnson's orthography of these words by the insertion of an *e*, thus, *abridgement*, *acknowledgement*, *judgement*; and he remarks, "Several authors have revived this orthography, retaining the *e* to soften, as Lowth observes on *judgment*, the preceding *g*, and as Johnson himself analogically writes *lodgement*."

The English dictionaries of Jameson and Smart, which have appeared since the publication of Todd's edition of Johnson, also retain the *e*; and Smart remarks, in relation to the three words in question, that "Todd restores the *e* in order that they may not exhibit the otherwise unexampled irregularity of *g* soft before a consonant;" and he "adopts the more correct, however less usual, spelling;" and in his Grammar he says, "It is certainly better to write *judgement*, *abridgement*, *acknowledgement*, &c., than *judgment*, &c., since, by the general laws of pronunciation, *g* is hard in terminating a syllable." Many respectable writers now insert the *e* in these words. The omission of it, however, has been hitherto, and still continues to be, the prevailing usage; but it is perhaps not very improbable that the more consistent orthography may yet be generally adopted.

*Syn.*—See DISCERNMENT.

JŪDĠMENT-DĀY, *n.* The day of final judgment for all mankind.

*Milton.*

JŪDĠMENT-HĀLL, *n.* The hall in which courts are held.

*Wright.*

JŪDĠMENT-SĒAT, *n.* The seat of judgment; the bench on which judges sit:—a tribunal. *Glyn.*

JŪ'DĠ-ĈĜ, *n.* [L. imperative of *judico*, to judge.] The fifth Sunday after Lent;—so called because the primitive church began the service on that day with the words of the 43d psalm:—

*Judica me, Domine,—"Judge me, O Lord!"*

JŪ'DĠ-ĈA-BLE, *a.* [L. *judicabilis*.] That may be judged. [R.] *Taylor.*

JŪ'DĠ-ĈA-TĪVE, *a.* That judges; having power to judge. [R.] *Hammond.*

JŪ'DĠ-ĈA-TŌ-RY, *a.* [L. *judicatorius*; It. *giudicatorio*; Fr. *judicatoire*.] Dispensing justice; judicially pronouncing; juridical. *Bp. Hall.*

JŪ'DĠ-ĈA-TŌ-RY, *n.* 1. The dispensation of justice. *Clarendon.*

2. A court of justice; judicature. *Atterbury.*

JŪ'DĠ-ĈA-TŪRE, *n.* [Fr. *judicature*.] 1. The administration of justice; the power of dispensing justice by legal trial. *Bacon.*

2. A court of justice; a tribunal. *South.*

3. Jurisdiction; the extent of jurisdiction. "The judicature is upon writs of error." *Bowyer.*

JŪ-DĠ'ĈIAL (jū-dish'ā-l), *a.* [L. *judicialis*; Sp. *judicial*; Fr. *judiciaire*.] 1. + Judicial. "Not deserving any judicial man's view." *Pierce Penilesse*, 1592.

2. Relating to, practised in, proceeding from, or issued by a court of justice; emanating from a judge; juridical; forensic.

3. Inflicted as a punishment.

The resistance of those will cause a judicial hardness. *South.*

JŪ-DĠ'ĈIAL-LY (jū-dish'ā-l-ly), *ad.* In a judicial manner; juridically. *Greiv.*

JŪ-DĠ'ĈI-A-RY (jū-dish'e-a-ry), *a.* [L. *judiciarius*; Sp. *judiciario*; Fr. *judiciaire*.] 1. Relating to courts of justice or judicature; judicial; juridical.

2. Passing judgment or sentence. *Boyle.*

JŪ-DĠ'ĈI-A-RY (jū-dish'e-a-ry), *n.* The branch of the government that interprets the laws and administers justice; the judges taken collectively; the judiciary power; judicature. *Story.*

*Abb.* This word is often used as a substantive in the United States, but not often so used in England.

JŪ-DĠ'ĈIOUS (jū-dish'us), *a.* [L. *judicium*, a judicial investigation; It. *giudizioso*; Sp. *judicioso*; Fr. *judicieux*.] 1. Acting with, or regulated by, judgment or discretion; prudent; wise; discreet; sensible; sagacious; rational.

Love refines the thoughts, and heart enlarges; hath his seat in reason, and is *judicious*. *Milton.*

2. + In regular process of judgment; judicial.

His last offence to us shall have *judicious* hearing. *Shak.*

*Syn.*—See SENSIBLE.

JŪ-DĠ'ĈIOUS-LY (jū-dish'us-ly), *ad.* In a judicious manner; discreetly; skilfully; wisely.

JŪ-DĠ'ĈIOUS-NĒSS (jū-dish'us-nēs), *n.* The state of being judicious; discretion. *Jortin.*

+JŪFF'FER, *n.* A term formerly applied by carpenters to a piece of timber four or five inches square. *Wright.*

JŪG, *n.* [L. *jugulum*, the hollow part of the neck above the collar-bone.—A. S. *ceac*, a basin.] A vessel with a small mouth and a swelling belly, for holding liquors;—a pitcher. *Smart.*

JŪG, *n.* [Most probably formed from the sound of the note uttered by the nightingale.] The note uttered by certain birds.

Her *jug*, *jug*, *jug*, in grief, had such a grace. *Gascoigne.*

JŪG, *v. n.* To emit a particular sound, as certain birds. *Parthenia Sacra*, 1633.

JŪG, *v. a.* 1. To cook by putting into a jug immersed in boiling water. *Smart.*

2. To call or bring together by imitating the sound of a bird. *Bp. Gauden.*

JŪ'GAL, *a.* [Gr. *ἄγος*, a yoke; L. *jugalis*.] 1. + Relating to a yoke, or to marriage. *Bailey.*

2. (*Anat.*) Noting the cheek-bone. *Dunglison.*

JŪ-GĀ'TA, *n.* [L. *jugo*, *jugatus*, to join.] Two heads represented on a medal, side by side, or joining each other. *Brande.*

JŪ'GĀT-ĒD, *a.* Yoked or coupled together; joined together. *Maunder.*

JŪ'GLE (jū'gl), *v. n.* [L. *jocular*, to joke; It. *giocolare*; Fr. *jongler*.—Dan. *gogle*; Dut. *goechelen*; Ger. *gaukeln*; Gael. *cealy*.] [*i. JUGLED*; pp. *JUGGLING*, *JUGGLED*.] 1. To practise jugglery; to play tricks by sleight of hand or legerdemain; to make sport by tricks or false appearances. *Milton.*

2. To practise artifice or imposture. *Shak.*

JŪ'GLE, *n.* 1. A trick by legerdemain.

2. Imposture; deception; an imposition.

A juggle of state to cozen the people. *Tillotson.*

JŪ'GLE, *v. a.* To effect by artifice or trick; to impose upon; to deceive. *Shak.*

JŪ'GLĒR, *n.* [A. S. *geogelere*.—L. *joculator*; It. *giocatore*; Sp. *jugar*; Fr. *jongleur*.] 1. One who practises jugglery or sleight of hand, or extraordinary feats.

Or do these jugglers cheat our eyes? *Swift.*

2. A deceiver; a trickish fellow; a cheat.

JŪ'GLĒR-ĒSS, *n.* A female juggler. *T. Warton.*

JŪ'GLĒR-Y, *n.* The art or the feats of a juggler; legerdemain. *Maunder.*

JŪ'GLĠNG (jū'glĠng), *n.* Deception; imposture. *Blount.*

JŪ'GLĠNG-LY, *ad.* In a deceptive manner.

JŪ'GLĀN's, *n.* [L. from *Jovis*, Jove, and *glans*, a nut-like fruit.] (*Bot.*) A genus of large trees; the walnut-tree.

*Abb.* The genus *Carya*, to which the hickory-trees

belong, was formerly included under *Juglans*, but was separated by Nuttall. *Eng. Cyc.*

JŪ'GU-LAR, *a.* [L. *jugulum*, the throat; It. *giugulare*; Sp. *yugular*; Fr. *jugulaire*.] Belonging to the throat or the neck.

*Jugular veins*, the veins by which the blood is returned from the head, face, and neck to the heart;—two on each side of the neck.

JŪ'GU-LAR, *n.* 1. (*Med.*) A jugular vein. *Wright.*

2. (*Ich.*) The name of a fish which has the ventral fins anterior to the pectorals. *Wright.*

JŪ'GU-LĀTE, *v. a.* [L. *jugulo*, *jugulatus*.] To cut the throat; to kill. [R.] *Bailey. Dr. J. Bigelow.*

JŪICE (jūs), *n.* [L. *jus*, broth or juice, from Gr. *ζῆω*, to boil; Sp. *jugo*; Fr. *jus*.—Dut. *juyts*.] 1. The sap of vegetables; the water of fruit. "Herbs of all the best juice." *Gower.*

2. The fluid part in animal bodies. *B. Jonson.*

+JŪICE (jūs), *v. u.* To moisten. *Fuller.*

JŪICE'LESS (jūs'les), *a.* Destitute of juice; without moisture; dry. *More.*

JŪ'CI-NĒSS (jū'se-nēs), *n.* The quality of being juicy; plenty of juice; succulence. *Sherwood.*

JŪ'CY (jū'se), *a.* Abounding in juice; moist; succulent; as, "Juicy fruits." *Bacon.*

+JŪISE (jūs), *n.* Judgment; justice. *Gower.*

JŪ'JUBE, *n.* [L. *zizyphum*.] The fruit of the *Rhamnus zizyphus*.

*Abb.* It resembles a small plum, sometimes used as a sweetmeat, and was formerly used in pectoral decoctions. *Dunglison.*

*Jujube paste*, a substance which is often sold for the dried jelly of jujube, but which is, in fact, a mixture of gum-arabic and sugar slightly colored. *Brande.*

+JŪKE, *v. n.* [Fr. *fucher*.] To perch upon any thing, as birds. *L'Estrange.*

JŪKE, *n.* (*Falconry*.) The neck of a bird. *Booth.*

JŪ'LEP, *n.* [Low L. *julepum*, *julapium*; It. *giulebbo*; Sp. *julepe*; Fr. *julep*.] 1. (*Med.*) A sweet drink; a demulcent, acidulous, or mucilaginous mixture. *Dunglison.*

2. A drink made of spirituous liquor, water, and sugar, with a seasoning of mint, &c.; mint julep. *Simmonds.*

JŪ'LIAN (jū'yan), *a.* Relating to Julius Cæsar:—noting the reform of the calendar introduced at Rome by Julius Cæsar, called the *Julian style*, and used in all Christian countries till it was reformed by Pope Gregory XIII., in 1582.

*Julian epoch*, the commencement of the Julian calendar, Jan. 1, 46 years B. C.—*Julian period*, a cycle of 7980 consecutive years, invented by Scaliger. It dates from 4713 B. C.—*Julian year*, the year adopted in the Julian calendar,—equal to 365¼ days, and used in England till 1752, when the Gregorian year, or new style, was adopted.

JŪ'LI'S, *n.* [L.] A genus of labroid fishes. *Brande.*

JŪ'LU'S, *n.* [Gr. *ἰούλος*, down; L. *julus*.] 1. (*Bot.*) A catkin; an inflorescence of the willow, hazel, &c.; amentum; ament. *Miller.*

2. (*Anat.*) The first down that appears on the chin. *Dunglison.*

JŪ-LY' (jū-lī'), *n.* [L. *Julius*; Fr. *Juillet*.] The seventh month in the year;—so named in honor of Caius Cæsar, the dictator, whose gentile name was *Julius*.

*Abb.* In the Latin calendar it was the fifth month, March being the first; hence it was termed *Quintilis*.

JŪ'LY-FLŌW-ĒR, *n.* See GILLYFLOWER.

JŪ'MART, *n.* [Fr.] The offspring of a bull and a mare. "Mules and *jumarts*." *Locke.*

JŪ'MBLE (jū'mbl), *v. a.* [Of uncertain etymology.—L. *cumulus*.—Chaucer writes *jombre*, perhaps from Fr. *comble*, to heap up.] [*i. JUMBLED*; pp. *JUMBLING*, *JUMBLED*.] To mix confusedly together; to put or throw together in a disorderly manner.

One may observe how apt that is to *jumble* together passages of Scripture. *Locke.*

JŪ'MBLE, *v. n.* To be agitated together. *Swift.*

JŪ'MBLE, *n.* A confused mass or mixture:—disorder; confusion. *Swift.*

JŪ'MBLE-MĒNT, *n.* The state of being jumbled; confused mixture. [Low.] *Hancock.*

Ā, Ê, Î, Ō, Ū, Ȳ, long; Ā, Ê, I, Ō, Ū, Ȳ, short; A, E, I, O, U, Y, obscure; FĀRE, FĀR, FĀST, FĀLL; HĒIR, HĒR;



APP023



to interweave.] [*i.* PERPLEXED; *pp.* PERPLEXING, PERPLEXED.]

1. To entangle; to involve; to complicate; to make intricate; to confuse.

What was thought obscure, perplexed, and too hard for our weak parts, will lie open to the understanding in a fair view. *Locke.*

2. To embarrass; to distract; to puzzle; to bewilder; to disturb; to distress. *Locke.*

We are perplexed, but not in despair. *2 Cor. iv. 8.*

3. To plague; to torment; to vex. How might such killing eyes perplex. *Granville.*

*Syn.* — See AMAZE, DISTRESS, DISTURB.

† PER-PLĒX', *a.* Intricate; perplexed. *Glanvill.*

PER-PLĒXED', *p. a.* Embarrassed; intricate; difficult.

PER-PLĒX'ĒD-LY, *ad.* Intricately. *Bp. Bull.*

PER-PLĒX'ĒD-NĒSS, *n.* Intricacy; difficulty; perplexity; embarrassment. *Locke.*

PER-PLĒX'ING, *p. a.* Intricate; embarrassing; puzzling; difficult; troublesome.

*Syn.* — See TROUBLESOME.

PER-PLĒX'ITY, *n.* [*L.* *perplexitas*; *It.* *perplexitas*; *Sp.* *perplexidad*; *Fr.* *perplexité*.]

1. Entanglement; intricacy. "The perplexity of his own thoughts." *Stillingfleet.*

2. Embarrassment or distraction of mind; disturbance; confusion; irresolution. *Sidney.*

† PER-PLĒX'IVE-NĒSS, *n.* Tendency to perplex. "The perplexiveness of imagination." *More.*

† PER-PLĒX'LY, *ad.* Perplexedly. *Milton.*

† PER-PLĒX'LY, *ad.* Perplexedly. *Gardiner.*

† PER-PO-TÁ'TION, *n.* [*L.* *perpotatio*.] The act of drinking largely. *Bailey.*

PER-QUI-SITE (pĕr'kwē-zīt), *n.* [*L.* *perquiro*, *perquisitus*, to ask for diligently; *per*, used intensively, and *quero*, to seek.]

1. Something obtained by industry or purchased with money, different from that obtained by inheritance. *Bowyer.*

2. Something obtained in addition to, or in lieu of, regular wages or salary.

To an honest mind, the best *perquisites* of a place are the advantages it gives a man of good good. *Addison.*

† PER-QUI-SIT-ED, *a.* Supplied with perquisites. "Perquisites varlets." *Savage.*

PER-QUI-SIT'ION (pĕr-kwē-zīsh'ūn), *n.* [*It.* *perquisizione*; *Fr.* *perquisition*.] A careful or diligent inquiry or search. [*R.*] *Bp. Berkeley.*

† PERRIE, *n.* [*Fr.* *pierrerie*; *pierre*, a stone.] Jewels; precious stones. *Chaucer.*

PER-RĪ-ĒR, *n.* [*Fr.* *perrier*; *pierre*, a stone.] An engine for throwing stones. [*R.*] *Hackluyt.*

PER-RON, *n.* [*Fr.*] (*Arch.*) An open or uncovered staircase outside of a building. *Wright.*

PER-RO-QUĒT (kĕt), *n.* [*Fr.*] See PAROQUET.

*Perroquet auk*, (*Ornith.*) a small species of auk; *Phalaris psittacula* of Temminck, or *Alca psittacula* of Pallas. *Eng. Cyc.*

PER-RŪ'QUI-ER (pĕr-rā'kē-er), *n.* [*Fr.* *perruque*, a peruke.] A wig-maker. *Brit. Crit.*

PER-RY, *n.* [*Fr.* *poiré*; *poire* (*L.* *pirum*), a pear.] A drink made of pears. *Mortimer.*

PER-RY, *n.* A sudden gust of wind; a whirlwind; — written also *pirry*. [*Local.*] *Hackluyt.*

PER SĀL'TUM. [*L.*] By a leap or jump.

PER-SCRU-TÁ'TION, *n.* [*L.* *perscrutatio*; *per*, to search through; *scrutator*, to search; *Fr.* *persecration*.] A thorough or diligent search. *Smart.*

PER SĒ. [*L.*] 1. By himself, herself, itself, or themselves; apart from others. *Crabb.*

PER-SE-CŪTE, *v. a.* [*L.* *persequor*, *persecutus*; *per*, used intensively, and *sequor*, to follow after; *It.* *persequitare*; *Sp.* *perseguir*; *Fr.* *persécuter*.] [*i.* PERSECUTED; *pp.* PERSECUTING, PERSECUTED.]

1. To pursue with malignity or enmity; to harass with penalties; to afflict; to distress; to oppress; — generally on account of opinions.

The wicked in his pride doth persecute the poor. *Ps. x. 2.*

Blessed are ye when men shall revile you, and persecute you, and shall say all manner of evil against you falsely, for my sake. *John. v. 10.*

2. To importune or vex much. *Johnson.*

PER-SE-CŪ'TION, *n.* [*L.* *persecutio*; *It.* *persecuzione*; *Sp.* *persecucion*; *Fr.* *persecution*.]

1. The act or the practice of persecuting. The Jews raised persecution against Paul. *Acts xlii. 20.*

2. The state of being persecuted. "Our necks are under persecution." *Lam. v. 5.*

PER-SE-CŪ-TIVE, *u.* Persecuting. [*u.*] *Scott.*

PER-SE-CŪT-OR, *n.* [*L.*] One who persecutes; one who malignantly harasses. *Milton.*

PER-SE-CŪ-TRIX, *n.* [*L.*] A female who persecutes, or malignantly harasses. *Ec. Rev.*

PER-SE-PŌL'I-TĀN, *a.* Pertaining to Persepolis. "Persepolitan architecture." *P. Cyc.*

PER-SEUS, *n.* [*L.* from *Gr.* *Περσεύς*.]

1. (*Grecian Myth.*) A son of Jupiter and Danaë, who slew Medusa. *W. Smith.*

2. (*Astron.*) A northern constellation near Taurus and Cassiopea. *P. Cyc.*

† PER-SĒV'ER, *v. n.* To persevere; — so spelt and accented frequently by Shakespeare as well as by Spenser. — See PERSEVERE.

Be lusty, free, persevere in thy service. *Chaucer.*

PER-SE-VĒR'ANCE, *n.* [*L.* *perseverantia*; *It.* *perseveranza*; *Sp.* *perseverancia*; *Fr.* *perseverance*.]

1. The act of persevering; persistence in a design or an undertaking; continuance in action; steadiness in pursuit; constancy.

Patience and perseverance overcome the greatest difficulties. *S. Richardson.*

2. † Power to distinguish; perception. *Harrington.*

3. (*Theol.*) Continuance in a state of grace; — sometimes termed *final perseverance*. *Hammond.*

*Syn.* — *Perseverance*, constancy, and steadiness are used in a good sense; *persistence* may be used in a good sense when it means steadiness. *Perseverance* in a right course; *constancy* of affection; *steadiness* in the pursuit of an object; *persistence* in a demand. — See CONTINUE, PATIENCE.

PER-SE-VĒR'ANT, *a.* [*Fr.* *persévérant*.] Persevering. [*R.*] *Whitby.*

† PER-SE-VĒR'ANT-LY, *ad.* Perseveringly; with constancy. *Spiritual Conquest.*

PER-SE-VĒRE', *v. n.* [*L.* *persevero*, *perseveratum*; *perseverus*, very strict; *per*, used intensively, and *severus*, strict; *It.* *perseverare*; *Sp.* *perseverar*; *Fr.* *persévérer*.] [*i.* PERSEVERED; *pp.* PERSEVERING, PERSEVERED.]

To persist or continue rigidly or steadily in any business or undertaking; to pursue steadfastly any design or attempt; not to give up or abandon any thing begun or undertaken; to go on; to pursue.

To persevere in any evil course makes you unhappy in this life. *Walc.*

Mr. Nares observes that this word was anciently written *persever*, and accented on the second syllable; *Say thou art mine.*

My love, as it begins, so shall persevere. *All's Well, &c., Act iv.*

Persever not, but hear me, mighty kings. *King John, Act ii.*

But in her pride she doth persevere still. *Spenser.*

But before the time of Milton, the spelling and accentuation had been changed.

"Whence heavy persecution shall arise Of all who in the worship persevere." *Par. Lost, xii. v. 532.*

As this word is written at present, there can be no doubt of its pronunciation; and that it is very properly written so, appears from other words of the same form — *declare*, *respiro*, *exploro*, *procuro*, &c., and consequently from *persevere* ought to be formed *persevere*.

Not one of our orthoepists places the accent on the second syllable; yet, such is the force of prescription, that the old pronunciation is not entirely rooted out, especially in Ireland, where this pronunciation is still prevalent. *Walker.*

PER-SE-VĒR'ING, *p. a.* Persisting; constant.

PER-SE-VĒR'ING-LY, *ad.* With perseverance.

PER'SIAN (pĕr'shān), *n.* 1. (*Geog.*) A native or an inhabitant of Persia. *Morier.*

2. (*Arch.*) A male figure used instead of a column to support an entablature. *Weale.*

PER'SIAN, *a.* Relating to Persia; Persic. *Britton.*

PER'SIAN-BĒR'RY, *n.* The berry of the plant

*Rhamnus tinctoria*, used as a yellow coloring matter in calico-printing and dyeing. *Brande.*

PER'SIAN-WHĒEL, *n.* A machine for raising water above the level of a stream, consisting of a wheel with buckets attached to its rim. It is made to revolve by the current. *Brande.*

PER'SIC, *a.* 1. Relating to Persia; Persian.

2. (*Arch.*) Noting an order of architecture in which an entablature is supported by the statues of men instead of columns. *Scott.*

PER'SIC, *n.* The Persian language. *Wright.*

PERSICOT (pĕr'sē-kōt), *n.* [*Fr.* from *L.* *persicum malum*, a peach.] A cordial made of alcohol and the meat of peach-stones. *W. Ency.*

PERSIFLAGE (pĕr'sē-flāzh'), *n.* [*Fr.*; *persifler*, to quiz; *siffler*, to hiss, to sing, from *L.* *sililo*.] Idle talk, in which all the subjects are treated with levity or banter; mockery; jeer. *Qu. Rev.*

PER-SIM'MON, *n.* (*Bot.*) A tree and its fruit, of the genus *Diospyros*, or date-plum; — particularly *Diospyros Virginiana*, a small tree, of the middle and southern parts of the United States, bearing a plum-like fruit which is sweet and edible after exposure to frost. *Eng. Cyc. Gray.*

PER'SIS, *n.* A coloring matter obtained from lichens. *Sinmonds.*

PER'SIŠM, *n.* A Persian idiom. *Clarke.*

PER-SIST', *v. n.* [*L.* *persisto*; *per*, used intensively, and *sisto*, to stand; *It.* *persistere*; *Sp.* *persistir*; *Fr.* *persister*.] [*i.* PER-SISTED; *pp.* PER-SISTING, PER-SISTED.]

1. To continue fixed; to remain; to abide.

But for thee I had persisted happy. *Milton.*

2. To continue firm, steadfast, or inflexible; to pursue steadily any design; to persevere.

If they persist in pointing their batteries against particular persons, no laws of war forbid the making reprisals. *Addison.*

*Syn.* — See CONTINUE.

PER-SIST'ENCE, } *n.* [*It.* *persistenza*; *Sp.* *per-*  
PER-SIST'EN-CY, } *sistencia*; *Fr.* *persistance*.]

1. The state of persisting; steadiness; constancy; perseverance.

The love of God better can consist with the indeliberate commission of many sins than with an allowed persistence in any one. *Gov. of Tongue.*

2. Obstinacy; contumacy; obduracy. *Shak.*

3. (*Optics.*) The duration of the impression of light on the retina after the luminous object has disappeared. *Brande.*

PER-SIST'ENT, *a.* 1. That persists; steady; constant; persevering; persistent. *Roget.*

2. (*Bot.*) Remaining beyond the period when such parts commonly fall, as the leaves of evergreens. *Gray.*

PER-SIST'ING-LY, *ad.* With persistence; perseveringly; steadily. *Wright.*

PER-SIS'TIVE, *a.* That persists; steady; firm; constant; persevering; persistent. *Shak.*

† PER-SŌLVE', *v. a.* [*L.* *persolvere*.] To pay wholly or completely. *Bale.*

PER'SON (pĕr'sn) [pĕr'sn, *W. P. J. F. Ja.*; pĕr'sun, *S. K. W.*; pĕr'sun, colloquially pĕr'sn, *Sm.*], *n.* [*L.* *persona*, a mask, a personage or character, a person; *It.* & *Sp.* *persona*; *Fr.* *personne*.]

1. † Character; personage; part. *Shak.*

He hath put on the person, not of a robber and murderer, but of a traitor to the state. *Hayward.*

2. † The parson or rector of a parish. *Hollinshead.*

3. A being possessed of personality; an intelligent being; a man, a woman, or a child.

We must consider what person stands for; which, I think, is a thinking, intelligent being. *Locke.*

4. A human being; an individual; a man; one. Be a person's attainments ever so great, he should always remember that he is God's creature. *S. Richardson.*

5. The body; bodily or corporal substance. 'Tis in her heart alone that you must reign; You'll find her person difficult to gain. *Dryden.*

6. (*Gram.*) The character which a noun or a pronoun bears, as denoting the speaker, the person spoken to, or the person spoken of.

Artificial person, (*Law.*) a corporation. *Bowyer.* — In person, not by a representative; himself or one's self with bodily presence. "The king in person visits all around." *Dryden.*

As the o in person is sunk, as in season,

MĪEN, SĪR; MŌVE, NŌR, SŌN; BŪLL, BŪR, RŪLE. — Ç, Ğ, ç, ğ, soft; Ć, Ć, ĉ, ĝ, hard; Š as z; Ț as gz. — THIS, this.



*treason*, &c., so this word, being a compound of our own, and *personage* coming to us from the French, we generally suppress the *e*; but, as *personal*, *personate*, &c., come to us from the Latin, we generally preserve the *e*. This is the best reason I can give for the slight difference we find in the pronunciation of these words; and, if any one is inclined to think we ought to preserve the *e* distinctly in all of them except *person*, and even in this on solemn occasions, I have not the least objection." *Walker*.

† PĒR'SON, *v. a.* To personate. *Milton*.

PĒR'SON-A-BLE, *a.* 1. Having a beautiful person or body; handsome; graceful. "Semiramis, who was very personable." *Raleigh*.

2. (*Old Eng. Law.*) Able to maintain a plea in court;—having the capacity to take a thing granted or given. *Whishaw*. *Burrill*.

PĒR'SON-AGE, *n.* [*It. personaggio*; *Sp. personaje*; *Fr. personnage*.]

1. Character assumed or represented.

The actors and personages of this fable. *Broomer*.

2. A great or considerable person; a man or woman of eminence or distinction. *Sidney*.

3. Exterior appearance; stature; air. "In personage stately." [*It.*] *Hayward*.

*Syn.*—See CHARACTER.

PĒR'SON-AL [*pēr'sun-al*, *S. W. P. J. F. Ja. K. Sm.*], *a.* [*L. personalis*; *It. personale*; *Sp. personal*; *Fr. personnel*.]

1. Relating or belonging to persons, or men or women, not to things.

Every man, so termed by way of personal difference only. *Hooker*.

2. Relating to, or affecting, a person; proper or peculiar to a person; individual.

I know no personal cause to spurn at him. *Shak.*

3. Pertaining to the person or body; corporal; exterior. "Personal charms." *Addison*.

4. In person; not by representative.

This immediate and personal speaking of God Almighty to Abraham, Job, and Moses. *White*.

5. (*Gram.*) Having the modifications of the three persons. "A personal verb." *Johnson*.

⚡ The personal pronouns are, *I, thou or you, he, she, and it*, and their plurals.

*Personal action*, (*Law*.) an action brought for the specific goods and chattels, or for damages, or other breach of contract, or for other injury, the specific recovery of lands, tenements, and hereditaments only excepted;—opposed to *real action*.—*Personal contract*, a contract concerning personal property;—opposed to *real contract*.—*Personal estate or property*, property consisting usually of things temporary and movable, but including all subjects of property not of a freehold nature, nor descendible to the heirs at law;—opposed to *real estate or property*. *Bouvier*. *Burrill*.

† PĒR'SON-AL, *n.* A movable. *Todd*.

PĒR'SON-AL-ISH, *n.* The quality of being personal; personality. *Qu. Rev.*

PĒR'SON-AL-ITY, *n.* [*It. personalità*; *Sp. personalidad*; *Fr. personnalité*.]

1. The state of being a person; individuality. That which can contrive, which can design, must be a person. These capacities constitute personality, for they imply consciousness of thought. *Palcy*.

2. A reflection or remark directly or offensively applied to a person. *Todd*.

There is yet another topic which he has been no less studious to avoid, which is *personality*. *Observer*.

3. (*Law*.) That quality of a law which concerns the condition, state, and capacity of persons. *Burrill*.

PĒR'SON-AL-IZE, *v. a.* To render personal; to personate. *Warburton*.

PĒR'SON-AL-LY, *ad.* In a personal manner; as to person; individually;—in person; not by representative.

PĒR'SON-AL-TY, *n.* (*Law*.) Personal property;—state of being a person. *Burrill*.

PĒR'SON-ATE, *v. a.* [*i. PERSONATED*; *pp. PERSONATING, PERSONATED*.]

1. To represent by a fictitious or assumed character; to act the part of; to imitate.

This lad was not to personate one that had been long before taken out of his cradle. *Bacon*.

2. To counterfeit; to feign. "Personated devotion." [*R.*] *Hammond*.

3. To resemble; to be like. "The lofty cedar personates thee." *Shak.*

4. † To describe the person of. "He shall find himself most feelingly personated." *Shak.*

† PĒR'SON-ATE, *v. a.* [*L. persono*; *per*, used intensively, and *sono*, to sound.] To celebrate loudly. "So personating their gods." *Milton*.

PĒR'SON-ATE, *v. n.* To play a fictitious character. "Personating with the actors." *Buck*.

PĒR'SON-ATE, *a.* [*L. personatus*; *persona*, a mark.] (*Bot.*) Noting a monopetalous, bilabiate corolla, having the orifice of the tube closed by an inflated projection of the throat. *Henslow*.

PĒR'SON-AT-ING, *n.* Personation. *Prynne*.

PĒR'SON-AT-ION, *n.* The act of personating or counterfeiting. *Bacon*.

PĒR'SON-A-TOR, *n.* One who personates. "Personators of those actions." *B. Jonson*.

PĒR'SON-Ē-TY, *n.* Personality. [*R.*] *Coleridge*.

PĒR'SON-I-FI-CAT-ION, *n.* [*It. personificazione*; *Fr. personification*.]

1. The act of personifying.

2. (*Rhet.*) A figure by which inanimate objects, or abstract ideas, are represented as endued with life and action; prosopoeia. *Brande*.

PĒR'SON-I-FY, *v. a.* [*It. personificare*; *Sp. personificar*; *Fr. personnifier*.—From *L. persona*, a person, and *facio*, to make.] [*i. PERSONIFIED*; *pp. PERSONIFYING, PERSONIFIED*.] To change from a thing to a person; to represent with the attributes of a person; to ascribe to, or invest with, the qualities of an animate being.

The poets take the liberty of personifying inanimate things. *Chesterfield*.

† PĒR'SON-IZE, *v. a.* To personify. *S. Richardson*.

PERSONNEL (*pār'sō-nēl'*), *n.* [*Fr.*] The persons belonging to the army or the navy, as distinguished from the matériel. *McCulloch*.

PERSPECTIVE [*pēr-spēk'tiv*, *S. W. P. J. F. Ja. K. Sm. R. C.*; *pēr'spēk-tiv*, *Johnson*], *n.* [*It. prospettiva*; *Sp. perspectiva*; *Fr. perspective*.—From *L. perspicio*, *perspectus*, to look through; *per*, through, and *specio*, to look.]

1. † A glass through which things are viewed; a telescope or a microscope. *Sir T. Browne*.

2. A view through; a vista; a prospect.

Lofly trees with sacred shades. *Dryden*.

3. (*Fine Arts*.) The art of representing or delineating on a plane surface near and distant objects, as they appear to the eye from any given distance or situation. *Brande*.

⚡ In the figure, H H represents the horizon. The point O, exactly opposite the eye, is the centre of the picture. To this point all the horizontal lines, E O, G O, H O, I O, J O, A O, B O, &c., tend, and are called *vanishing lines*. The line connecting the centre of the picture and the eye is called the principal visual ray; and its length is the distance of the picture. The surface upon which the objects in the picture stand is called the ground plane, and the surface on which they are delineated is called the perspective plane.

4. A representation or picture of objects in perspective. *Wright*.

*Aerial perspective*, the faintness of outlines and blending of colors produced by the thicker or thinner stratum of air which pervades the optical image viewed. *Fairholt*.—*Isometrical perspective*, a kind of orthographic projection in which but a single plane of projection is used; isometrical projection.

In this kind of perspective, the objects are represented at a particular angle, so as to show at the same time three contiguous sides, as is seen in the figures represented by isometrical perspective in the margin.—See ISOMETRICAL. *Davies*.—*Linear perspective*, the art of delineating solid bodies on a plane surface, as they appear to the eye from any point. *Fairholt*.—*Oblique perspective*, perspective in which the perspective plane is taken obliquely to the principal face of the object.—*Parallel perspective*, perspective in which the perspective plane is taken parallel to the principal face of the object. *Davies*.

⚡ "This word, as may be seen in Johnson, was generally accented by the poets on the first syllable; but the harshness of this pronunciation has prevented it from gaining any ground in prose." *Walker*.



PERSPECTIVE, *a.* 1. Relating to the science of vision; optical. *Bacon*.

2. Pertaining to, or made by, perspective. "Perspective drawings." *Nichol*.

PERSPECTIVE-LY, *ad.* Optically; through a glass; according to perspective. *Shak.*

PERSPECTO-GRAPH, *n.* [*Eng. perspective* and *Gr. γράφω*, to describe.] An instrument for taking the points and outlines of objects. *Bigelow*.

PERSPECTO-GRAPHY, *n.* The science or theory of perspective. *Wright*.

† PERSPI-CABLE, *a.* Discernible. *Herbert*.

PERSPI-CACIOUS (*pēr-spē-kā'shūs*, 66), *a.* [*L. perspicax*, *perspicacis*; *perspicio*, to look through; *It. perspicace*; *Sp. perspicaz*; *Fr. perspicace*.] Quick-sighted; sharp of sight; discerning; acute; keen. *South*.

PERSPI-CACIOUS-LY, *ad.* In a perspicacious manner; discerningly. *Johnson*.

PERSPI-CACIOUS-NESS (*pēr-spē-kā'shūs-nēs*), *n.* Sharpness of sight; perspicacity. *Johnson*.

PERSPI-CACITY, *n.* [*L. perspicacitas*; *It. & Sp. perspicacia*; *Fr. perspicacité*.] The state or the quality of being perspicacious; acuteness of sight or discernment. *Burton*.

† PERSPI-CACY, *n.* Perspicacity. *B. Jonson*.

† PERSPI-CI-ENCE (*-spish'ē-ēns*), *n.* [*L. perspicientia*.] Clear perception or discernment. *Bailey*.

† PERSPI-CIL, *n.* A telescope. *Crashaw*.

PERSPI-CUITY, *n.* [*L. perspicuitas*; *It. perspicuità*; *Sp. perspicuidad*; *Fr. perspicuité*.]

1. Transparency; translucency. [*It.*] *Brown*.

2. Quality of being perspicuous; easiness to be perceived or understood; freedom from obscurity or ambiguity; clearness. *Locke*.

The first requisite of style, not only in rhetorical but in all compositions, is *perspicuity*. *Alty*. *Whately*.

*Syn.*—*Clearness* relates to ideas or thoughts; *perspicuity*, to the mode of expressing them. *Perspicuity* of style or language; *clearness* of conception. *Perspicuous* style or language; *clear* ideas.—See CLEAR.

PERSPI-CUOUS, *a.* [*L. perspicuus*; *perspicio*, to see through; *It. & Sp. perspicuo*.]

1. That may be seen through; transparent; diaphanous. [*R.*] *Peachment*.

2. Clear to the mind or understanding; easily understood; not obscure or ambiguous.

All this is so *perspicuous*, so undeniable, that I need not be over-industrious in the proof of it. *Spratt*.

PERSPI-CUOUS-LY, *ad.* In a perspicuous manner; clearly; plainly; not obscurely. *Bacon*.

PERSPI-CUOUS-NESS, *n.* The quality of being perspicuous; freedom from obscurity; clearness; perspicuity. *Bailey*.

PERSPI-RABLE-ITY, *n.* The quality of being perspirable. *Wright*.

PERSPI-RABLE [*pēr-spīr'ā-bl*, *S. W. P. Ja. K. Sm.*], *a.* [*It. perspirabile*; *Fr. perspirable*.]

1. That perspires; emitting perspiration. [*R.*] Their [children's] skins are most perspirable. *Bacon*.

2. That may be perspired or emitted by perspiration. *Arbuthnot*.

PERSPI-RATION, *n.* [*It. perspirazione*; *Fr. perspiration*.]

1. The act of perspiring; excretion by the pores of the skin; exudation.

Insensible perspiration is the last and most perfect action of animal digestion. *Arbuthnot*.

2. Matter perspired; sweat. *P. Cyc.*

According to Lavoisier and Seguin, the greatest amount of perspiration (in man) exceeds six pounds in twenty-four hours, and the smallest two pounds. *Brande*.

Sensible perspiration is called sweat. *Dunglison*.

PERSPI-RATIVE, *a.* That perspires; performing perspiration. *Johnson*.

PERSPI-RATORY, *a.* Performing, or pertaining to, perspiration. *Dunglison*.

PERSPIRE, *v. n.* [*L. perspiro*, to breathe every where; *per*, used intensively, and *spiro*, to breathe.] [*i. PERSPIRED*; *pp. PERSPIRING, PERSPIRED*.]

1. To exude by, or through, the skin; to be excreted by the pores of the skin. *Brown*.

Water, milk, whey, taken without much exercise so as to make them *perspire*. *Arbuthnot*.

À, Ê, Ì, Ò, Û, Ȳ, long; Ä, È, Î, Ö, Ȳ, short; A, E, I, O, U, Y, obscure; FÀRE, FÄR, FÄST, FÄLL; HÈIR, HËR;

|| **PÖUR** (pör), *v. n.* 1. To issue in a stream or continued current; to stream; to flow.  
It cannot rain but it *pours*. *Proverb.*

2. To rush tumultuously or in a crowd.  
If the rude throng *pours* on with furious pace. *Gay.*

|| **PÖUR'ER** (pör'er), *n.* One that pours. *Todd.*

**POÛR'LIEÛ** (pür'lä), *n.* See **PURLIEU**. *Todd.*

**PÖUR-PÄR'TY**, *n.* [Fr. *pour*, for, and *parti*, party.] (*Law*.) A division or share of lands which, before the partition, were held jointly by parceners. *Whishaw.*

**PÖUR'PÖINT**, *n.* [Fr.] The quilted doublet worn by soldiers and civilians in the fourteenth and fifteenth centuries. *Fairholt.*

**PÖUR-PRÉST'ÛRE** (pör-prést'yur), *n.* [Law Fr. *pour pris*, an enclosure.] (*Law*.) The act of wrongfully taking and appropriating to one's self any thing, whether it be jurisdiction, land, or franchise. *Brande.*

**PÖUR'SUI-VÄNT**, *n.* See **PURSUIVANT**. *Bouvier.*

**PÖUR-TRÄY'** (pör-trä'), *v. a.* See **PORTRAY**. *Todd.*

**PÖUR'VEY-ÄNCE**, *n.* See **PURVEYANCE**.

† **PÖÛSSE** (pöäs), *n.* Pulse; pease. *Spenser.*

**PÖÛT**, *n.* 1. A sullen look made by thrusting out the lips; a fit of sullenness.

A frown, a pout, a tear, a kiss. *Lloyd.*

2. (*Ich.*) A malacoptygous fish, common on the English coast, having the power of inflating a membrane which covers the eyes and other parts about the head; *Morrhua lusca*; — called also *bib-pout*, and *whiting-pout*; — a fresh-water fish of the family *Siluridae*, found in the rivers of America; catfish; horn-pout; *Pimelodus cattus*. *Yarrell. Storer.*

3. (*Ornith.*) A species of bird. *Careo.*

**PÖÛT**, *v. n.* [Skinner suggests Fr. *bouter*, to put or push forward. *Richardson.*] [*i.* POUTED; *pp.* POUTING, POUTED.]

1. To look sullen by thrusting out the lips.  
The nurse reminded *putting*, nor would she touch a bit during the whole dinner. *Arbuthnot.*

2. To hang prominent, as the lips in pouting; to project. "His *putting* cheeks." *Bp. Hall.*  
A human head, hooked nose, and *putting* lips. *Dryden.*

**PÖÛT'ER**, *n.* 1. One who pouts. *Clarke.*

2. A kind of pigeon. — See **POWTER**. *Todd.*

**PÖÛT'ING**, *n.* The act of one who pouts; a fit of sullenness. *Beau. & Fl.*

**PÖÛT'ING-LY**, *ad.* In a pouting manner.

**PÖV'ER-TY**, *n.* [L. *paupertas*; It. *poverta*; Sp. *pobreza*; Fr. *pauvreté*.]

1. The state of being poor; destitution; want of means; penury; indigence; necessity; want.  
Every man endeavors with his utmost care to hide his *poverty* from others and his idleness from himself. *Johnson.*

2. Meanness; defect; barrenness; poorness.  
There is in all excellences of composition a kind of *poverty* or a casualty or jeopardy. *Bacon.*

**Syn.** — *Poverty* implies scanty means of support, and is opposed to *riches*; *indigence* implies a nearer approach to entire destitution than *poverty*; *penury* is great scarcity or want; *pauperism* implies maintenance by public charity. A *poor* man, and even an *indigent* man, may maintain his independence of character and self-respect; but a *pauper* is degraded both in his own eyes and in the eyes of others.

**PÖW**, *interj.* An exclamation of contempt. *Shak.*

**PÖW'DER**, *n.* [L. *pulvis*; It. *polvere*; Sp. *polvo*; Old Fr. *poudre*; Fr. *poudre*.]

1. Dust of the earth or as of the earth; minute dry particles; any substance or body comminuted or pulverized.

We wipe off against you the *powder* that cleaved to us of your city. *Luke x. 11, Wickliffe's Trans.*  
He took the calf which they had made and burnt it in the fire, and ground it to *powder*. *Ex. xxxii. 20.*

2. A combination of nitre, sulphur, and charcoal granulated; gunpowder. *Ure.*

3. Perfumed dust or flour for the hair. *Pope.*

**PÖW'DER**, *v. a.* [Fr. *poudrer*.] [*i.* POWDERED; *pp.* POWDERING, POWDERED.]

1. To reduce to powder or to dust; to pound; to comminute, or to grind to particles; to pulverize. *Spenser.*

2. To sprinkle with powder, or as with powder or dust. "Powder thy radiant hair." *Donne.*  
That milky way *powdered* with stars. *Milton.*

3. To sprinkle with salt; to salt. [*n.*]

Salting of oysters, and *powdering* of meat, keepeth them from putrefaction. *Bacon.*

**PÖW'DER**, *v. n.* 1. To fall to dust.

2. † To come with violence or tumult.

Down comes a kite *powdering* upon them. *L'Estrange.*

**PÖW'DER-BÖX**, *n.* A box for keeping powder for the hair. *Gay.*

**PÖW'DER-CÄRT**, *n.* A carriage for conveying gunpowder and shot for artillery. *Simmonds.*

**PÖW'DER-CHEST**, *n.* (*Naut.*) 1. A chest on board a vessel for holding the gunpowder. *Davis.*

2. A chest or box filled with gunpowder, pebble-stones, and such like materials, set on fire when a ship is boarded by an enemy. *Wright.*

**PÖW'DER-FLÄSK**, *n.* A flask for gunpowder; a powder-horn. *Simmonds.*

**PÖW'DER-HÖRN**, *n.* A horn or a case used by sportsmen for carrying gunpowder. *Simmonds.*

**PÖW'DER-ING-TÜB**, *n.* 1. A vessel in which meat is salted. *More.*

2. The place in which a person infected with a venereal disease is cured. *Shak.*

**PÖW'DER-MÄG-A-ZINE**, *n.* A bomb-proof building, for holding gunpowder, in fortified places. *Davis.*

**PÖW'DER-MILL**, *n.* A mill in which gunpowder is made. *Arbuthnot.*

**PÖW'DER-MINE**, *n.* A cavern in which powder is placed, so as to be fired. *Rowley.*

**PÖW'DER-MÖN'KEY**, *n.* A boy who carries powder from the magazine to the gunner. *Simmonds.*

**PÖW'DER-RÖÖM**, *n.* (*Naut.*) A room in a ship in which gunpowder is kept. *Waller.*

**PÖW'DER-Y**, *a.* [Fr. *poudreux*.] Pertaining to, or resembling, powder; dusty; friable. "A brown, *powdery* spar." *Woodward.*

**PÖW'-DIKE**, *n.* A sort of dike in a marsh or fen. The *pow-dike* in the fens of Norfolk. *Blackstone.*

**PÖW'ER**, *n.* [L. *posse*, to be able; *potis*, able, and *sum*, esse, to be; It. *potere*, power; Sp. *poder*; Fr. *pouvoir*.]

1. The faculty or the ability to do something; a virtue, efficacy, or force in one thing to originate or produce another; ableness.

To every thing we call a cause we ascribe *power* to produce the effect. In intelligent causes, the *power* may be without being exerted; so I have *power* to run when I sit still or walk. But in inanimate causes we conceive no *power* but what is exerted, and therefore measure the *power* of the cause by the effect which it actually produces. The *power* of an acid to dissolve iron is measured by what it actually dissolves. *Reid.*

Active *power* is the principle of action, whether imminent or transient. Passive *power* is the principle of bearing or receiving. *Fleming.*

2. Liability of a thing to be influenced by a cause; capacity to be acted upon in some particular manner; susceptibility.

It is usual to speak of a *power* of resistance in matter, and of a *power* of endurance in mind. *Fleming.*  
Ice has the *power* of being melted. *Day.*

3. The origin of force; force; might; as, "The *power* of water, or of wind"; "The *power* of steam"; "The *power* of a machine."

4. Animal strength; muscular force.

The *power* both of hand and foot. *Gower.*

The supposed *power* of one horse is the unit. *Loomis.*

5. Mental ability or force; faculty of the mind.

The sudden surprise of my *powers*. *Shak.*

6. Command; authority; dominion; sovereignty; sway; rule; control; influence.

Armies, . . . the support and tools of absolute *power*. *Chesterfield.*

Dejected! No, it never shall be said  
That fate had *power* upon a Spartan soul. *Dryden.*

7. One invested with dominion or authority; a sovereign; a potentate.

These two *powers* have contested their title to the kingdom of Cyprus that is in the hands of the Turk. *Addison.*  
*Powers* and dominions, deities of heaven. *Milton.*

8. Military force; national strength; an army; a host. "Gazellus . . . issued forth with all his *power*, and gave him battle." *Knolles.*

9. A divinity; a superhuman being; an angel, good or bad.

With indignation thus he broke  
His awful silence, and the *powers* bespoke. *Dryden.*

10. (*Mech.*) A force which, being applied to a

machine, produces, or tends to produce, motion; — opposed to the *weight* or *load*.

11. (*Law*.) An authority which one gives to another to act for him; — an authority enabling a person to dispose, through the medium of the statutes of uses, of an interest vested either in himself or in another person. *Burrill.*

12. (*Optics*.) Capability of producing certain optical effects, as that of lenses and mirrors, simply or in combination, to magnify the apparent linear or superficial dimensions of objects, or to assist vision. *Young.*

13. (*Arith. & Algebra*.) The result obtained by taking a quantity a certain number of times as a factor; as, " $a^2$  ( $a \times a$ ) is the second *power* of  $a$ "; " $5^3$  ( $5 \times 5 \times 5$ ), or 125, is the third *power* of 5." *Davies.*

14. A great quantity or number; a good deal. [Low.] "A *power* of good things." *Johnson.*

The vessel hanging prone, a *power* of water scoops up from the sea. *Faustman.*

**Power of attorney**, (*Law*.) a written instrument under seal by which one party appoints another to be his attorney, and empowers such attorney to act for him. *Burrill.* — **Power of an hyperbola**, (*Geom.*) the rhombus described upon the abscissa and ordinate of the vertex of the curve when referred to its asymptotes. *Davies.* — **Conducting power**, power to transmit electricity or heat. — **Dispersive power**, (*Opt.*) the power of transparent substances to separate light into its component colors. — **Magnifying powers**, (*Opt.*) the number of times the apparent linear or superficial dimensions of an object are enlarged or multiplied. — **Mechanical powers**, (*Mech.*) the six simple machines called the lever, the wheel and axle, the pulley, the inclined plane, the screw, and the wedge. *Loomis.* — **Refractive power**, (*Opt.*) the power of transparent substances to cause light, transmitted through them, to deviate from its direction. — *The great powers of Europe*, (*Mod. Diplomacy*.) England, France, Austria, Russia, Prussia. *Brande.*

**Syn.** — The distinction between the *powers* and the faculties of the mind is, that *faculty* is more properly applied to what is natural and original, in opposition to what is acquired; as, the *faculty* of judging, the *power* of habit; the *capacity* of acquiring habits, knowledge, &c. *Powers* are active or passive, natural or acquired. *Powers* natural and active are called *faculties*; *powers* natural and passive are called *capacities* and *receptivities*. *Habits* are acquired *powers*. Mr. Locke says, "The *power* of thinking is called the understanding, and the *power* of volition the will, and these two *powers* or abilities of the mind are called *faculties*." — See **ABILITY**, **STRENGTH**.

† **PÖW'ER-Ä-BLE**, *a.* Capable of performing. "How *powerable* time is!" *Camden.*

**PÖW'ER-FÜL**, *a.* 1. Having power; strong; potent; forcible; mighty; efficacious; cogent; conclusive; valid. "*Powerful* opposition." *Ayliffe.*  
2. Great; much. [Low.] *Carlton. Bartlett.*

**Syn.** — *Powerful* and *potent* signify having power; *strong*, having strength; *mighty*, having might. A *powerful* prince, man, or argument; a *potent* drug or medicine; a *mighty* sovereign or genius; a *strong* man, rope, mind, argument, or attachment; *forcible* expression, reasoning; *vigorous* effort; *efficacious* remedy.

**PÖW'ER-FÜL-LY**, *ad.* In a powerful manner; potently; mightily; forcibly. *Locke.*

**PÖW'ER-FÜL-NESS**, *n.* The state of being powerful; force; potency; power; might. *Hakewell.*

**PÖW'ER-LESS**, *a.* Having no power; impotent; weak; helpless. "*Powerless* to speak." *Pope.*

**PÖW'ER-LESS-NESS**, *n.* The state of being powerless; impotence; weakness. *Chalmers.*

**PÖW'ER-LÖÖM**, *n.* A loom worked by steam, water, or other power. *McCulloch.*

**PÖW'ER-PRESS**, *n.* A printing-press worked by steam, by water, or by other power. *Ency.*

**PÖWL'DRON**, *n.* (*Her.*) That part of armor which covers the shoulders; — written also *powdron*. *Sandys.*

**PÖW'TER**, *n.* (*Ornith.*) A variety of domestic pigeon which has the power of inflating the crop; the cropper; — written also *pouter*. *Todd.*

**PÖW'WÖW**, *n.* 1. Among the American Indians, a kind of conjurer, sorcerer, or diviner: — an incantation preliminary to a grand hunt, a council, a warlike expedition, &c., accompanied with dancing and great noise and confusion. *Brainerd.*

2. A noisy meeting. [Vulgar, U. S.] *Inman.*  
**PÖW'WÖW**, *v. n.* To use magical arts; to practise sorcery; to conjure. *Boucher.*

Ä, Ê, Î, Õ, Û, Ȳ, long; Ä, Ê, Î, Õ, Ȳ, short; Ä, E, I, O, U, Y, obscure; FÄRE, FÄR, FÄST, FÄLL; HÊIR, HËR;

forward or offer for consideration or acceptance; to lay before; to bid; to tender; to proffer.

In learning any thing, there should be as little as possible first proposed to the mind at once; and, that being understood, proceed then to the next adjoining part. *Watts.*

**Syn.** — See OFFER.

† **PRO-POŖE'** (prō-pōz'), *n.* [Fr. *propos.*] Talk; discourse. "To listen our propose." *Shak.*

**PRO-POŖE'**, *v. n.* 1. † To lay schemes; to imagine; to purpose: — to converse. *Shak.*  
2. To offer one's self in marriage. *Wright.*

**PRO-POŖER**, *n.* One who proposes. *Locke.*

**PRO-POŖI'TION** (prō-pō-zh'ūn), *n.* [L. *propositio*; It. *proposizione*; Sp. *proposicion*; Fr. *proposition.*]

1. A thing proposed; an offer of something for consideration or acceptance; a proposal.

The enemy sent propositions such as, upon delivery of a strong fortified town, after a handsome defence, are usually granted. *Clarendon.*

2. (*Logic.*) A sentence in which something is affirmed or denied, particularly one of the three members of a syllogism; a thought. *White.*

A compound proposition is the combination of two or more propositions into one; and of course the union of two or more sentiments or thoughts into one compound sentiment or thought. *Gibbs.*

3. (*Math.*) Something to be proved or to be done.

§ When something is proposed to be proved, the proposition is called a theorem. When something is proposed to be done, the proposition is called a problem. In the former case, a principle is to be investigated; in the latter, a principle is to be applied. *Davies.*

**Syn.** — A proposition is something submitted to be considered; a proposal, something offered to be done. Propositions are accepted or rejected; proposals and offers are accepted or refused. "He demonstrated the proposition of Euclid, and rejected the proposal of his friend."

**PRO-POŖI'TION-AL** (prō-pō-zh'ūn-əl), *a.* Relating to, or considered as, a proposition. "Its propositional sense." *Watts.*

**PRO-POŖND'**, *v. a.* [L. *propono*; *pro*, before, and *pono*, to place; It. *proporre*; Sp. *proponer*; Fr. *proposer*. — Anciently written *propoun.*] [*i. PROPOUNDED*; *pp. PROPOUNDED*, *PROPOUNDED*.]

1. To offer to consideration; to propose.

The arguments which Christianity propounds to us are reasonable encouragements to bear sufferings patiently. *Tillotson.*

2. (*Eccl. Law.*) To present or offer.

To propound a will is to present it to the proper court for probate. *Burrill.*

**PRO-POŖND'ER**, *n.* One who propounds or proposes; a proposer. *Milton.*

**PRO-PRÆ'TOR**, *n.* [L. (*Roman Ant.*) The governor of a province, who had previously been a prætor at Rome. *W. Smith.*

**PRO-PRĖ-TA-RY**, *n.* [It. *proprietario*; Sp. *propietario*; Fr. *propriétaire.*] A possessor in his own right; one who is master of his own actions, and who has the free disposition of his property; a proprietor. *B. Franklin.*

"It is a mistake to think ourselves stewards in some of God's gifts, and proprietaries in others." *Gov. of the Tongue.*

**PRO-PRĖ-TA-RY**, *a.* Relating to a certain owner or proprietor. *Grew.*

**PRO-PRĖ-TOR**, *n.* [L. *proprius*, peculiar to a person.] A possessor in his own right; an owner; a proprietary.

The exterior of this mansion (Colonna) is indifferent; but its extent, its vast court, its gardens, and its furniture, are worthy the rank and dignity of its proprietor. *Eustace.*

**Syn.** — See POSSESSOR.

**PRO-PRĖ-TOR-IAL**, *a.* Pertaining to a proprietor; proprietary. *Athenæum.*

**PRO-PRĖ-TOR-SHIP**, *n.* The state or the right of a proprietor. *Locke.*

**PRO-PRĖ-TRĖSS**, *n.* A female proprietor; a mistress. *L'Estrange.*

**PRO-PRĖ-TY**, *n.* [L. *proprietas*; *proprius*, peculiar; It. *proprietà*; Sp. *propiedad*; Fr. *propriété.*]

1. Exclusive right of property; property.

They compounded with Sir Nicholas Crispe for his property in the fort and castle. *Clarendon.*

2. The state of being proper; fitness; suitability; justness; accuracy; appropriateness.

Common use, that is the rule of propriety, affords some aid to settle the signification of language. *Locke.*

**Syn.** — See DECENCY, JUSTNESS, MODESTY.

**PRO-PRŖC'TOR**, *n.* An assistant of a proctor in the English universities. *Hook.*

**PRŖPT**, *p.* from *prop.* Propped. *Pope.*

**PRO-PŖGN'** (prō-pān'), *v. a.* [L. *propugno*; *pro*, for, and *pugno*, to fight; It. *propugnare.*] To defend; to vindicate; to contend for; to plead for; to advocate. [*n.*] *Hammond.*

† **PRO-PŖG'NĀ-CLE**, *n.* [L. *propugnaculum.*] A fortress. *Howell.*

† **PRO-PŖG'NĀ'TION**, *n.* [L. *propugnatio.*] Defence; vindication. *Shak.*

**PRO-PŖGN'ER** (prō-pān'ēr), *n.* One who propugns; a defender. *Cudworth.*

† **PRO-PŖL-SĀ'TION**, *n.* [L. *propulsio.*] The act of repelling. *Bp. Hall.*

† **PRO-PŖLSE'**, *v. a.* [L. *propello*, *propulsus.*] To drive away; to repel; to propel. *Cotgrave.*

**PRO-PŖLSION**, *n.* [Sp. & Fr. *propulsion.*] The act of driving forward. *Bacon.*

**PRO-PŖLSIVE**, *a.* That propels; driving on; propelling. *Coleridge.*

**PRŖP-Y-LĖ'UM**, *n.*; pl. **PRŖP-Y-LĖ'A**. [L. from Gr. *προπύλαιον*; *πρό*, before, and *πύλη*, a gate.] (*Ant.*) The entrance to a temple or sacred enclosure, consisting of a gateway flanked by buildings. *W. Smith.*

**PRŖP-Y-LŖN**, *n.* [L. from Gr. *προπύλον*; *πρό*, before, and *πύλη*, a gate.] (*Ant.*) A portico, gateway, or entrance; a propylæum. *W. Smith.*

**PRŖ RĀ'TĀ**. [L., according to the rate.] (*Com.*) In proportion.

**PRŖRE**, *n.* [Gr. *πρόρα*; *πρό*, before; L., It., & Sp. *prora.*] The prow of a ship. [*n.*]

These in twelve galleys, with vermilion prores.

Beneath his conduct sought the Phrygian shores. *Pope.*

**PRŖ-RĖC'TOR**, *n.* An officer in a German university who presides in the senate or academic court. *Month. Rev.*

**PRŖ-RĖC'TOR-ATE**, *n.* The office of prorector. *Wm. Howitt.*

**PRO-RĖP'TION**, *n.* [L. *prorēpo*, to creep forth.] The act of creeping onward. *Smart.*

**PRO-RŖGĀTE**, *v. u.* To prorogue; to put off. [*n.*] *Ld. Brougham.*

**PRŖ-RŖGĀ'TION**, *n.* [L. *prorogatio*; It. *prorogazione*; Sp. *prorogacion*; Fr. *prorogation.*]

1. The act of proroguing; continuance; prolongation; postponement; adjournment.

The prorogation and future continuance of what already he possessed. *South.*

2. In England, the continuance or adjournment of Parliament from one session to another, made by the royal authority. *Brande.*

3. (*Civil Law.*) The time given to do a thing beyond the time prefixed. *Bouvier.*

**PRO-RŖGUE'** (prō-rŖg'), *v. a.* [L. *prorogo*; *pro*, forward, and *rogo*, to ask; It. *prorogare*; Sp. *prorogar*; Fr. *proroger.*] [*i. PROROGUED*; *pp. PROROGUING*, *PROROGUED.*]

1. † To lengthen; to prolong; to protract.

"Mirth prorogues life." *Burton.*

2. To put off to another time; to defer; to delay; to postpone. "Death prorogued." *Shak.*

3. To delay the further session of; to adjourn, as Parliament. *Bacon.*

**Syn.** — To prorogue is a term used especially with respect to the British Parliament. The Parliament is prorogued at the end of a session, and adjourned from day to day. Congress, courts, &c., are adjourned. Prorogation of Parliament; adjournment of Congress, or of a legislature. — See ADJOURN.

**PRO-RŖP'TION**, *n.* [L. *proruptio*; *prorumpo*, *proruptus*, to break forth.] The act of bursting forth or out; extrusion; outbreak. *Brown.*

**PRO-ŖĀ'IC**, { *a.* [L. *prosaicus*; It. & Sp. *prosaico*; Fr. *prosaïque.*] Pertaining to, consisting of, or resembling, prose: — dull; uninteresting; prosy. *Warton.*

**PRO-ŖĀ'ICĀ-LY**, *ad.* In a prosaic manner.

**PRO-ŖĀ'ICISM**, *n.* Prosaic manner. [*n.*] *Seward.*

**PRO-ŖĀ'ISM** [prō-zā'izm, *B.*; prŖ-zā'izm, *C. O. W. W. B.*], *n.* That which is in the form of prose. *Wright.*

**PRO-ŖĀ'IST** [prō-zā'ist, *K. Sm. Cl.*; prŖ-zā'ist, *C. W. W. B.*], *n.* A writer of prose. [Modern.] *J. Bell.*

† **PRO-ŖĀ'L**, *a.* Prosaic. *Sir T. Browne.*

**PRO-ŖĖ'NĖ-ŖM**, *n.* [L., from Gr. *προσκήνιον*; *πρό*, before, and *σκήνιον*, stage.]

1. (*Ant.*) The stage of a theatre. *W. Smith.*

2. The frontispiece or ornamental framework whence the curtain hangs which separates the stage from the audience. *Brande.*

**PRO-ŖRĖBE'**, *v. a.* [L. *proscribo*; *pro*, before, and *scribo*, to write; It. *proscrivere*; Sp. *proscribir*; Fr. *proscrire.*] [*i. PROSCRIBED*; *pp. PROSCRIBING*, *PROSCRIBED.*]

1. Among the ancient Romans, to offer a reward for the head of, or to sentence to some punishment which carried with it the consequences of civil death. *Bouvier.*

2. To doom to destruction; to outlaw; to banish; to exile.

Robert Vere, Earl of Oxford, through the malice of the peers, was banished the realm, and proscribed. *Spenser.*

3. To denounce, censure, or condemn.

In the year 325, as is well known, the Arian doctrines were proscribed and anathematized in the famous Council of Nice. *Huterland.*

4. To interdict; to prohibit; to shut out; to exclude. *Dryden.*

**PRO-ŖRĖBER**, *n.* One who proscribes. *Dryden.*

**PRO-ŖRĖPT**, *n.* 1. An interdict. *J. Fox.*

2. One who is proscribed. *Maunder.*

**PRO-ŖRĖP'TION**, *n.* [L. *proscriptio*; It. *proscrizione*; Sp. *proscripcion*; Fr. *proscription.*] The act of proscribing, or the state of being proscribed; doom to death, or to civil death; outlawry; condemnation; denunciation; exclusion.

The most celebrated proscription [among the Romans] was that of the triumvirs Octavius, Antony, and Lepidus, in which Cicero was slain. *Brande.*

**PRO-ŖRĖP'TIVE**, *a.* Pertaining to, or consisting in, proscription; proscribing. *Warton.*

**PRŖSE** (prŖz), *n.* [L. *prosa*; *prosus*, straight on, straightforward; It. & Sp. *prosa*; Fr. *prose.*]

1. Discourse or composition not in verse, and without metre or poetic measure.

Things unattempted yet in prose or rhyme. *Milton.*

2. pl. A part of the Roman Catholic mass in Latin verse. *Eden.*

**PRŖSE**, *v. n.* [*i. PROSED*; *pp. PROSING*, *PROSED.*]

1. To write prose. *Milton.*

2. To talk or speak tediously. *Mason.*

§ "To *prose*, as we all now know too well, is to talk or write heavily or tediously, without spirit and without animation; but to *prose* was once very different from this; it was simply the antithesis of *versify*, and a *proser* the antithesis of a *versifier* or *poet*." *Trench.*

And surely Nashe, though he a *proser* were,  
A branch of laurel yet deserves to bear. *Dryden.*

**PRŖSE**, *a.* Relating to, or consisting of, prose; prosaic; not poetic. *Addison.*

**PRŖS'E-CŖT-Ā-BLE**, *a.* That may be prosecuted; liable to prosecution. *Qu. Rev.*

**PRŖS'E-CŖTE**, *v. a.* [L. *prosequor*, *prosecutus*; *pro*, forward, and *sequor*, to follow; It. *proseguire*; Sp. *proseguir*; Fr. *poursuivre.*] [*i. PROSECUTED*; *pp. PROSECUTING*, *PROSECUTED.*]

1. To follow or pursue with a purpose to attain or accomplish; to endeavor to obtain.

That which is morally good is to be desired and prosecuted. *Wilkins.*

He prosecuted this purpose with strength of argument and close reasoning. *Locke.*

2. To continue; to carry on; to engage in; to apply to with continued purpose. *Dryden.*

The same reason which induced you to entertain this war will induce you also to prosecute the same. *Hayward.*

3. To pursue by law; to take the law of; to arraign; to proceed against by legal measures. *Bouvier.*

§ "To *prosecute* differs from *persecute*. To *prosecute* always implies some cruelty, malignity, or injustice; to *prosecute* is to proceed by legal measures, either with or without just cause." *Johnson.*

**PRŖS'E-CŖTE**, *v. n.* To carry on a legal prosecution; to go to law. *Blackstone.*

**PRŖS'E-CŖT-ING**, *p. a.* Pursuing; conducting prosecutions; as, "Prosecuting attorney."

MĖN, SĖR; MŖVE, NŖR, SŖN; BŖLL, BŖR, RŖLE. — Ç, Ğ, ç, ğ, soft; Ė, Ğ, ğ, hard; Ŗ as z; Ŗ as gz. — THIS, this.



PRŌS-Ē-CŪ'TIŌN, *n.* [L. *prosecutio*; It. *proseguimento*; Sp. *prosecucion*; Fr. *poursuite*.]

1. The act of prosecuting, or the state of being prosecuted; pursuit; undertaking. "Their prosecutions of commerce." Addison.

2. (Law.) The act of conducting a judicial proceeding: — the conducting of a judicial proceeding in behalf of a complainant, as distinguished from *defence*: — the conducting of a criminal proceeding in behalf of the government, as by indictment or information. Burrill.

PRŌS-Ē-CŪ-TŌR, *n.* [L.] 1. One who prosecutes; one who carries on, or pursues. Sandys.

2. (Law.) One who prosecutes another for a crime in behalf of the government. Blackstone.

PRŌS-Ē-CŪ-TRIX, *n.* A female who prosecutes. Collinson.

PRŌS-Ē-LŪTE, *n.* [Gr. *προσέλυτος*; *προσέλκυμαι*, *πρόσληθον*, to come to; L. *proselutus*; It. & Sp. *proselito*; Fr. *prosluite*.]

1. A person brought over to a new opinion or belief in religion; a convert. Matt. xxiii. 14.

2. One brought over to any new opinion. Men become professors... for those opinions they were never convinced of, nor *proselytes* to. Locke.

Syn. — See *CONVERT*.

PRŌS-Ē-LŪTE, *v. a.* [*i.* PROSELYTED; *pp.* PROSELYTING, PROSELYTED.] To bring over to a new opinion, as in religion; to convert. South.

PRŌS-Ē-LŪ-TĪSM, *n.* 1. The practice or the principle of making proselytes. Watson.

2. †Conversion. Hammond.

PRŌS-Ē-LŪ-TĪZE, *v. a.* [*i.* PROSELYTIZED; *pp.* PROSELYTIZING, PROSELYTIZED.] To proselyte; to convert. [R.] Burke.

PRŌS-Ē-LŪ-TĪZE, *v. n.* To make proselytes or converts. [R.] L. Addison.

†PRO-SĒM-I-NĀ'TIŌN, *n.* [L. *prosemino*, to sow.] Propagation by seed. Hale.

PROS-ĒN-Ē-Ā-HĒ'DRAL, *a.* [Gr. *πρός*, to, *ἐννία*, nine, and *ἑρμα*, a base.] Noting crystals having nine faces on each of two adjacent parts, as a variety of the tourmaline, in which the prism and ore of the summits have each nine faces. Cleveland.

PROS-ĒR, *n.* 1. †A writer of prose. Drayton.

2. One who pros; a tedious narrator. Todd.

PRO-SĒR-PI-NA, *n.* (Astron.) An asteroid discovered by Luther in 1853. Lovering.

PRO-SĪL'I-ĒN-CY, *n.* [L. *prosilio*, *prosilens*, to leap forward; *pro*, forward, and *salio*, to leap.] The act of leaping forward. [R.] Coleridge.

PRŌ-SĪ-LŪ, *ad.* In a prosy manner. Qu. Rev.

PRŌ-SĪ-MĒT'RĪ-CAL, *a.* Consisting of both prose and verse. Clarke.

PRO-SĪM'I-A, *n.* [L. *pro*, for, and *simia*, an ape.] (Zool.) A family of lemurs. Eng. Cyc.

PRŌ-SĪ-NĒSS, *n.* The quality of being prosy or dull; tediousness. Gent. Mag.

PRŌ-SĪNG, *n.* Act of one who pros; dull and tiresome discourse or writing. Qu. Rev.

PRŌ-SĪNG, *a.* Dull; tiresome; prosaic. Ec. Rev.

PRŌ-SĪLĀV'E-RY, *a.* In favor of slavery. Putnam.

PRŌS-Q-DĪ-CAL, *a.* Of, or relating to, prosody; prosodial; prosodical. Walker.

PRŌS-Q-DĪ-CAL-LŪ, *ad.* In a prosodial manner. Smart.

PRŌS-Q-DĪ-ĀL, *a.* Relating to prosody; prosodial. Browne.

PRO-SŌ'DĪ-ĀN [pro-sŏ'dē-ān, W. J. Ja. Sm. Wr. Wb.; pro-sŏ'dyan, S. E. F. K.; pro-sŏ'dē-ān, P.], *n.* One skilled in prosody; a prosodist. Browne.

PRO-SŌD'I-CAL, *a.* [Fr. *prosodique*.] Relating to prosody; prosodial. Warton.

PRŌS-Q-DĪST, *n.* One who is versed in prosody. "The exact prosodist." Johnson.

PRŌS-Q-DY, *n.* [Gr. *προσῳδία*; *πρός*, to, and *ὁδός*, a song, an ode; L. It., & Sp. *prosodia*; Fr. *prosodie*.] The science, or the part of grammar, which treats of quantity, accent, versification, and the laws of harmony in metrical composition. B. Jonson.

Prosody deals with metre, and with accent, quantity, and the articulate sounds, as subordinate to metre. Latham.

PRŌS-Q-PŌG-RA-PHY, *n.* [Gr. *πρόσωπον*, a face, a

form, and *γράφω*, to write.] (Rhet.) The description of animated objects. Brander.

PRŌS-Q-PŌ-LĒP'SY, *n.* [Gr. *προσωληψία*, respect of persons; *πρόσωπον*, the face, and *λήψις*, a receiving, an accepting; *λαμβάνω*, to take.] Prejudice from the first view of a person; personal partiality. Cudworth.

PRŌS-Q-PŌ-PĒ'IA (prŏs-q-pŏ-pē'ya), *n.* [L., from Gr. *προσωποποιία*; *πρόσωπον*, a face, a form, and *ποιέω*, to make.] (Rhet.) A figure by which inanimate objects, or abstract ideas, are personified; personification. Dryden.

PRŌS'PECT, *n.* [L. *prospectus*; *prospicio*, to look forward; *pro*, forward, and *specio*, to look, to see; It. *prospetto*.]

1. View as from a distance; survey; sight. Eden and all the coast in prospect lay. Milton.

2. Number or aggregate of objects presented to the eye at a distance; landscape. There is a very noble prospect from this place. On the one side lies a vast extent of sea, that runs abroad farther than the eye can reach; just opposite stands the green promontory of Surrentum, and on the other side the whole circuit of the Bay of Naples. Addison.

3. Place which affords an extended view. [R.] Him God beholding from his prospect high. Milton.

4. Object of view or of contemplation. Man to himself Is a large prospect. Denham.

5. View into futurity; foresight; anticipation. Who hath a prospect of the different state of perfect happiness or misery that attends all men after this life. Locke.

6. Expectation, or ground of expectation. Without any reasonable hope or prospect of enjoying them. Atterbury.

7. Regard to something future; a looking forward; prospect. Is he a prudent man, as to his temporal estate, that lays designs only for a day, without any prospect to, or provision for, the remaining part of his life? Atterbury.

Syn. — *Prospect* is that which may be seen; a view is that which may be or is actually seen; *landscape* is a species of prospect presenting a view of natural scenery. We take a *view* or *survey*; *prospects* and *landscapes* present themselves. A confined or extended prospect; an extensive view; a minute or wide survey; a beautiful or picturesque landscape.

PRŌS'PECT, *v. n.* 1. To look forward. Johnson.

2. To search for metals. [Local, U. S.] "A prospecting party." N. Y. Literary World.

PRO-SPECTIŌN, *n.* The act of looking forward, or providing for the future; foresight. Paley.

PRO-SPECTIVE, *a.* [L. *prospectivus*.]

1. That regards the future; looking forward; future; coming; — opposed to *retrospective*. Time's long and dark prospective glass. Milton.

2. That gives a prospect; relating to a prospect; viewing at a distance. Johnson.

3. Acting with foresight. Child.

PRO-SPECTIVE, *n.* 1. A distant view. Wotton.

2. A glass for viewing distant objects; a perspective. Daniel.

PRO-SPECTIVE-LY, *ad.* With reference to the future; in prospect; hereafter. Clarke.

PRO-SPECTIVE-NĒSS, *n.* The quality of being prospective. Coleridge.

PRO-SPEC'TUS, *n.*; pl. PRO-SPEC'TUS-ES. [L., a prospect, a view.] An outline or plan of a proposed undertaking, particularly of a proposed literary work or publication. Brander.

PRŌS'PER, *v. a.* [L. *prospero*; *pro*, for, and *spe-ro*, to hope; It. *prosperare*; Sp. *prosperar*.] [*i.* PROSPERED; *pp.* PROSPERING, PROSPERED.] To make prosperous or successful; to cause to succeed; to favor; to aid. All things concur to prosper our design. Dryden.

Whose frowns may disappoint the proudest strain, Whose approbation prosper even mine. Cowper.

PRŌS'PER, *v. n.* [Fr. *prosperer*.] To be prosperous or successful; to go on well; to succeed; to thrive; to flourish. He that covereth his sins shall not prosper. Prov. xxviii. 13.

Whatsoever he doeth shall prosper. Ps. i. 3.

Syn. — See *FLOURISH*.

PROS-PER-I-TY, *n.* [L. *prosperitas*; It. *prosperità*; Sp. *prosperidad*; Fr. *prosperité*.] The state of being prosperous; attainment of wishes; success; good fortune; — opposed to *adversity*. We must distinguish between felicity and prosperity; for prosperity leads often to ambition, and ambition to disappointment. Lancelot.

Prosperity is the blessing of the Old Testament; adversity is the blessing of the New, which carrieth the greater benediction and the clearer revelation of God's favor. Bacon.

Prosperity is not without many fears and distastes, and adversity is not without comfort and hopes. Prosperity doth best discover vice, but adversity doth best discover virtue. Bacon.

PRŌS'PER-OŪS, *a.* [L. *prosperus*; It. & Sp. *prospero*; Fr. *prospère*.]

1. That is prospered; successful; thriving; flourishing; fortunate; lucky; felicitous; happy.

2. That prospers; favorable; propitious; auspicious. "A prosperous wind." Denham.

Syn. — See *AUSPICIOUS*, *FORTUNATE*, *HAPPY*.

PRŌS'PER-OŪS-LY, *ad.* In a prosperous manner; successfully; fortunately. Dryden.

PRŌS'PER-OŪS-NĒSS, *n.* State of being prosperous; prosperity; success. Johnson.

PRŌS-PHY-SIS, *n.* [Gr. *πρόσφυσις*, a growing to; *πρός*, to, and *φύω*, to grow.] (Med.) A growing together of parts; — a term applied particularly to a morbid adhesion of the eyelids with themselves or with the globe of the eye. Dunglison.

†PRO-SPI'CI-ENCE (prŏ-spish'e-ens), *n.* [L. *prospicio*, *prospiciens*, to look forward.] The act of looking forward. Johnson.

PROSS, *n.* Talk; gossip. [Local, Eng.] Brockett.

PRŌS'TATE, *n.* [Gr. *πρόστατον*, to stand before.] (Anat.) A glandular cordiform body, of the size of a chestnut, situated before the neck of the bladder, surrounding the first portion of the urethra. Dunglison.

Prostate gland, the prostate; so called from its resemblance to a gland. — See *PROSTATE*. Dunglison.

PROS-TĀT'IC, *u.* (Anat.) Pertaining to the prostate. Dunglison.

PRŌS-TĀ-TĪ'TIS, *n.* (Med.) Inflammation of the prostate. Dunglison.

†PROS-TER-NĀ'TIŌN, *n.* [L. *prosterno*, to prostrate.] Dejection; depression. Feltham.

†PROS-TĒ'THIS, *n.* (Med.) Prosthesis. Bailey.

PRŌS'THĒ-SIS, *n.* [L., from Gr. *πρόσθεσις*; *πρός*, to, and *τίθημι*, to place.]

1. (Gram.) A figure by which one or more letters are prefixed to a word; as, loved, beloved. Brander.

2. (Med.) Prosthesis. Dunglison.

PROS-THĒ'TIC, *a.* Pertaining to prosthesis; — prefixed to a word, as a letter. Qu. Rev.

†PROS-TĪB'U-LOŪS, *a.* [L. *prostitulum*, a prostitute.] Meretricious. Bale.

PRŌS'TĪ-TŪTE, *v. a.* [L. *prostitutus*, *prostitutus*; *pro*, before, and *statuo*, to place; It. *prostituire*; Sp. *prostituir*; Fr. *prostituer*.] [*i.* PROSTITUTED; *pp.* PROSTITUTING, PROSTITUTED.]

1. To sell to wickedness; to put out to hire for a base purpose; to appropriate or devote to a bad use; as, "To prostitute talents."

I ply from my soul unhappy men Compelled by want to prostitute their pen; Who must, like lawyers, either starve or plead, And follow, right or wrong, where guineas lead. Roscommon.

2. To offer to a common, lewd use; to make a prostitute of; to corrupt. "Do not prostitute thy daughter." Lev. xix. 29.

PRŌS'TĪ-TŪTE, *a.* [L. *prostitutus*; It. *prostituito*; Sp. *prostituto*; Fr. *prostitué*.]

1. Sold to wickedness; devoted for hire to a bad purpose; prostituted; corrupted. "Prostitute to infamy and hate." Drayton.

2. Openly devoted to lewdness. Prior.

PRŌS'TĪ-TŪTE, *n.* [L., It., & Sp. *prostituta*; Fr. *prostitué*.]

1. A person devoted for hire to some base purpose; a hireling; a mercenary. Pope.

2. A woman devoted to common lewdness; a whore; a strumpet; courtesan; harlot. Dryden.

PRŌS'TĪ-TŪ'TIŌN, *n.* [L. *prostitutio*; It. *prostituzione*; Sp. *prostitucion*; Fr. *prostitution*.]

1. Act of selling or devoting, or state of being sold or devoted, for hire or gain, to a bad purpose. "The prostitution of justice." Bouvier.

2. The common lewdness of a woman for gain; the practice of a strumpet. Addison.

PRŌS'TĪ-TŪ-TŌR, *n.* One who prostitutes. Hurd.

PRŌS'TRĀTE, *a.* [L. *prostratus*.]

1. Lying at length; thrown down; prone; abject; prostrated; — lying as in an attitude of adoration, or as when overcome by calamity. Grovelling and prostrate on yon lake of fire. Milton.

While prostrate here in humble grief I lie. Pope.

2. (Bot.) Lying flat on the ground. Gray.

Ā, Ē, Ī, Ō, Ū, Ŷ, long; Ā, Ē, Ī, Ū, Ŷ, short; Ā, Ē, Ī, Ō, Ū, Ŷ, obscure; FĀRE, FĀR, FĀST, FĀLL; HĒIR, HĒR;

2. To plunge, as into water. "They *soused* me into the Thames." *Shak.*  
 3. To rush or fall down on violently, as a hawk on its prey. *Shak.*

**SÖUSE, v. n.** To rush, fall, or plunge with violence, as a bird on its prey.

*Jove's bird will souse upon the timorous hare.* *Dryden.*  
**SÖUSE, ad.** With a plunge. *Young.*

**SÖUS'LIK, n.** [Fr.] (*Zool.*) A name of certain marmots with cheek-pouches, belonging to the genus *Spermophilus* of Cuvier. *Eng. Cyc.*

**†SÖUT'AGE, n.** That in which any thing, as hops, is packed. *Tusser.*

**†SÖUT'ER (sö'ter), n.** [L. *sutor*; *suo*, to sew.—A. S. *suter*.] A shoemaker; a cobbler. *Chaucer.*  
*Still used in Scotland.* *Jamieson.*

**†SÖUT'ER-LY, a.** Like a cobbler; low. *Florio.*

**†SÖU-TER-RÄIN' (sö-ter-rän'), n.** [Fr., from L. *sub*, under, and *terra*, the earth.] A subterranean cavern or grotto. *Arbutnot.*

**SÖÜTH, n.** [A. S. *suth*; Dut. *zuid*, *zuiden*; Frs. *sud*; Ger. *süd*; Dan. *syd*, *sonden*; Sw. *syd*, *söder*; Icel. *sudr*.—Fr. *sud*.]

1. One of the four cardinal points of the compass, being that point of the horizon which is in the direction in which the sun always appears at noon to the inhabitants of the northern hemisphere without the tropic, or that point which is on the right hand of a person facing the east;—opposed to *north*. *Bacon.*  
 2. A region or country, or a part of a region or country, relatively nearer the south point than another. "The queen of the south." *Matt.* xii. 42. "The cities of the south." *Jer.* xxxiii. 13.  
 3. A wind blowing from the south.

*The sweet south,  
 That breathes upon a bank of violets,  
 Stealing and giving odor.* *Shak.*

**SÖÜTH, a.** Pertaining to, coming from, or being in, a direction towards the south; southern. "A south sea." *Shak.* "The south wind." *Milton.*

**SÖÜTH, ad.** 1. Towards the south. *Shak.*  
 2. From the south. "When the wind bloweth not south." *Bacon.*

**SÖÜTH, v. n.** (*Astron.*) To pass the meridian of a place; as, "The moon *souths*."

**SÖÜTH-CÖT'TI-AN, n.** One of the followers of Joanna Southcott, who, in England, towards the close of the eighteenth century, declared herself to be the woman in the wilderness, mentioned in the Apocalypse. *Buck.*

**SÖÜTH'DÖWN, a.** From the South Downs of England; as, "South Down sheep." *Clarke.*

**SÖÜTH-EÄST, n.** The point of the compass midway between the east and south. *Arbutnot.*

**SÖÜTH-EÄST, a.** 1. Being midway between the south and the east. *Ash.*  
 2. Coming from the south-east, as a wind.

**SÖÜTH-EÄST'ER-LY, a.** Pertaining to, from, or in the direction of, south-east. *Hildreth.*

**SÖÜTH-EÄST'ERN, a.** Relating to, or towards, the south-east. *Olmsted.*

**||SÖÜTH'ER-LI-NÉSS, n.** The state of being southerly, as of a place. *Ash.*

**||SÖÜTH'ER-LY (süth'er-le) [süth'er-le, S. P. Ja. K.; süth'er-le or süth'er-le, W. J. Sm.], a.**

1. Pertaining to, or lying in, a southern direction. "The easterly, westerly, and southerly parts of England." *Graunt.*

2. Coming from the south, or a point nearly south. "The wind is southerly." *Shak.*

**||SÖÜTH'ERN [süth'ern, S. P. E. K. Wb.; süth'ern or süth'ern, W. F. Ja. Sm.], a.**

1. Pertaining to, or lying in, the south; meridional. "The southern sphere." *Dryden.*

2. Coming from the south; southerly. "When southern winds blow." *Bacon.*

**||SÖÜTH'ERN, n.** A southron. *Sat. Mag.*

**SÖÜTH'ERN-CRÖSS, n.** (*Astron.*) A small, brilliant, southern constellation, the principal stars of which are so arranged as to resemble a cross. *Herschel.*

**||SÖÜTH'ERN-ER, n.** A native or an inhabitant of the south, or of the Southern States; a southern;—opposed to *Northerner*. [U. S.] *Abbot.*

**||SÖÜTH'ERN-LY, ad.** In, or from, a southern direction. *Hakewell.*

**||SÖÜTH'ERN-MÖST, a.** Farthest towards the south. "The southernmost fort." *Graves.*

**||SÖÜTH'ERN-WOOD (süth'ern-wüd), n. (Bot.)** A fragrant, evergreen, trailing plant, used in Europe in making beer; *Artemisia abrotanum*. *Lindley.*

**SÖÜTH'ING, a.** Going or tending towards the south. "The *southing* sun." *Dryden.*

**SÖÜTH'ING, n.** 1. Motion, direction, or tendency towards the south. *Dryden.*

2. (*Naut.*) The difference of latitude made in sailing southward. *Mar. Dict.*

3. (*Surveying*.) The distance advanced towards the south in running any course. *Davies.*

*Southing of the moon, the time at which the moon passes the meridian of a place.* *Mar. Dict.*

**†SÖÜTH'LY, ad.** Towards the south. *Fabian.*

**SÖÜTH'MÖST, a.** Farthest towards the south; southernmost. "Southmost Abarim." *Milton.*

**SÖÜTH'RÖN, n.** A native or an inhabitant of a southern country, or of the southern part of a country; a southerner. *Sat. Mag.*

**†SÖÜTH'SÄY, v. n.** To soothsay. *Camden.*

**SÖÜTH'-SEA-TÄA, n. (Bot.)** An evergreen, ornamental tree, the leaves of which are much used by the North American Indians for making a medicinal decoction; *Ilex vomitoria*. *Loudon.*

**||SÖÜTH'WARD (süth'ward or süth'ward) [süth'ward, S. P. J. E. R.; süth'ward or süth'ward, W. F. Sm.; süth'ward, Ja. K. Wb.], n.** The southern parts, regions, or countries. *Raleigh.*

**||SÖÜTH'WARD (süth'ward or süth'ward), ad.** Towards the south. *Thomson.*

**SÖÜTH'-WÄST, n.** The point of the compass midway between the south and the west. *Bacon.*

**SÖÜTH'-WÄST, a.** 1. Being midway between the south and the west. *Ash.*  
 2. Coming from the south-west, as a wind.

**SÖÜTH'-WÄST'ER, n.** 1. A gale or strong wind blowing from the south-west. *Sullivan.*

2. A painted canvas hat with a flap over the back of the neck, worn by sailors in rough weather. *Simmonds.*

**SÖÜTH'-WÄST'ER-LY, a.** Being in, or coming from, a south-west direction. *Holdsworth.*

**SÖÜTH'-WÄST'ERN, a.** Relating to, or towards, the south-west. *Olmsted.*

**SÖÜVE'NÄNCE (söv'näns), n.** [Old Fr.] Remembrance. *Spenser.*

**SÖÜVE'NÄR, n.** [Fr.] A remembrancer; a keepsake. *Simmonds.*

**||SÖV'ER-EIGN (süv'er-in or söv'er-in) [süv'er-in, S. W. P. J. F. K. R. Wb.; söv'er-än, Ja.; söv'er-in, Sm. Wb.], a.** [L. *supremus*, supreme; *super*, above, over; It. *sovrano*, chief; *sovrà*, above; Sp. & Port. *soberano*, chief; Fr. *soverain*.]

1. Supreme in power; having no superior. *Hooker.*

2. Supreme in efficacy; efficacious; predominant over diseases; as, "The most *sovereign* prescription in Galen." *Shak.*

3. Principal; predominant; chief. *Richardson.*

*Sovereign state, one which governs itself independently of any foreign power.* *Bouvier.*

**||SÖV'ER-EIGN (süv'er-in), n.** 1. A ruler with supreme power; one possessing sovereignty; a supreme ruler or lord; a monarch.

*The one is my sovereign, whom both my oath And duty bids defend.* *Shak.*

2. A king or other magistrate with limited powers. *Bouvier.*

3. The principal gold coin of England, equal to twenty shillings, or one pound sterling (£1.84). *Simmonds.*

**Syn.**—See **MONARCH**.

**†SÖV'ER-EIGN-IZE (süv'er-in-iz), v. n.** To exercise supreme power. *Sir T. Herbert.*

**||SÖV'ER-EIGN-LY (süv'er-in-le), ad.** Supremely. "He was *sovereignly* lovely." *Boyle.*

**||SÖV'ER-EIGN-TY (süv'er-in-te), n.** [It. *sovrantà*; Sp. *soberanía*; Fr. *soveraineté*.] The state or the power of a sovereign; supremacy; supreme power or rule.

Happy were England, would this virtuous prince Take on his grace the sovereignty thereof. *Shak.*

Let us, above all things, possess our souls with awful apprehensions of the majesty and sovereignty of God. *Rogers.*

**SÖV** In the United States the absolute sovereignty of the nation is in the people of the nation, and the residuary sovereignty of each state not granted to any of its public functionaries, is in the people of the state. *Story. Bouvier.*

**Syn.**—See **AUTHORITY**.

**SÖW (söw), n.** [A. S. *sugu*; Frs. *siugge*; Dut. *zog*, *zeug*; Ger. *sau*; Dan. *so*; Sw. *so*, *sugga*; Fin. *sica*.—Gr. *ús*; L. *sus*.—W. *hroch*.]

1. A female pig or swine. *Bacon.*

2. A large trough in a foundry for holding melted metal. *Simmonds.*

3. An ingot or mass of metal. *Simmonds.*

4. A kind of insect; a sow-bug. *Ainsworth.*

5. (*Mil.*) A kind of covered shed fixed on wheels, under which the besiegers anciently filled up and passed the ditch, sapped or mined the walls, and sometimes worked a kind of ram;—probably so called from being used for rooting up the earth, after the manner of swine. *Stoquer.*

**SÖW, v. u.** [M. Goth. *sajan*, *insajan*, to sow, to spread abroad; A. S. *sawan*; Dut. *zaaijen*; Ger. *säen*; Dan. *saa*; Sw. *sa*; Icel. *sá*.—Old L. *sao*, *seo*, to sow; L. *sero*.] [*i.* SOWED; *pp.* SOWING, SOWED or SOWN.]

1. To scatter on ground in order to growth, as seed; to propagate by seed.

*Neither shall ye build house, nor sow seed, nor plant vineyard.* *Jer.* xxi. 7.

*In the morning sow thy seed, and in the evening withhold not thine hand.* *Ecc.* xi. 6.

*He that observeth the wind shall not sow.* *Ecc.* xi. 4.

*They that sow in tears shall reap in joy.* *Ps.* cxxvi. 5.

2. To scatter seed in for growth. *Ps.* cvii. 37.

*Sow the fields, and plant vineyards, which may yield fruits of increase.* *Ps.* cix. 13.

3. To spread; to spread abroad; to disseminate; to disperse; to propagate. "Sow dissemination." *Addison.*

*He deviseth mischief continually; he soweth discord.* *Prov.* vi. 14.

4. To impregnate or stock with seed, or as with seed.

*The intellectual faculty is a goodly field. . . and it is the worst husbandry in the world to sow it with trifles or impurities.* *Hale.*

5. To scatter over; to besprinkle.

*All sowed with glistering stars more thick than grass.* *Spenser.*

*Now Morn, her rosy steps in the eastern clime Advancing, sowed the earth with orient pearl.* *Milton.*

**SÖW (sö), v. n.** To scatter seed in order to a harvest.

*They that pray do but yet sow: they that give thanks declare they have reaped.* *Hooker.*

**SÖW'ÄNS, n. pl.** See **SOWENS**. *Buchanan.*

**SÖW'BÄNE, n. (Bot.)** Nettle-leaved goosefoot; *Chenopodium murale*. *Crabb.*

**SÖW'BREÄD (söw'bräd), n. (Bot.)** The common name of plants of the genus *Cyclamen*;—so called because their tuberous roots, notwithstanding their very acrid character, are eagerly devoured by swine. *Lindley.*

**SÖW'BÜG, n.** A name of isopods of the genus *Oniscus*, found in moist places. *Gould.*

**SÖWCE (söws), v. u.** To souse.—See **SOUSE**.

**SÖW'ENS, n. pl.** [From A. S. *seawe*, paste. *Jamieson.*] A kind of porridge made of the dust of oatmeal remaining among the seeds, steeped and soured; flummery;—written also *sowins*, *sewings*, and *sowans*. [Scot.] *Jamieson.*

**SÖW'ER (sö'er), n.** 1. One who sows or scatters seed in order to a harvest.

*A sower went out to sow his seed.* *Luke* viii. 4.

2. One who scatters or spreads; a scatterer. "A sower of words." *Hakewell.*

3. An originator; a promoter; a breeder. *Bacon.*

**SÖW'ING, n.** The act of one who sows.

**SÖW'INŠ (söw'inz), n. pl.** Sowens. *Mortimer.*

**†SÖWLE (söwl), v. a.** [From *sow*, to seize, or pull by the ears, as dogs do swine. *Skinner.*] To pull by the ears. *Shak.*

**SÖWN (sön), p. from sow.**

**SÖW'-THIS-TLE (söw'this-si), n. (Bot.)** The common name of leafy-stemmed weeds of the

Ä, Ê, Î, Ö, Ü, Ý, long; Ä, Ê, Î, Ö, Ü, Ý, short; A, E, I, O, U, Y, obscure; FÄRE, FÄR, FÄST, FÄLL; HÊIR, HÊR;

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AUTHOR OF A TREATISE ON VOLUNTARY ASSIGNMENTS, A TREATISE ON CIRCUMSTANTIAL EVIDENCE AND A TREATISE ON PRACTICE, &c.

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*Vol. cum originibus rationeque [Latæ] percelluerat; eaque præcipue scientiis ad enodandas plerumque juris hæcque utebatur.*  
A. GELLII, Noct. Att. xiii. 10.

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toms upon wools, woolfells and leather, granted to Edward I. by parliament in the third year of his reign. *Vaugh.* 161, 162. See *Custumā antiqua*.

**ANTIQUARE.** Lat. [from *antiquus*, ancient, old.] In the Roman law. To restore a former law or practice; to reject or vote against a new law; to prefer the old law. Those who voted against a proposed law wrote on their ballots the letter A, the initial of *ANTIQUO*, I am for the old law. *Calv. Lex.*

**ANTIQUITAS.** Lat. [from *antiquus*, ancient.] In the civil law. Ancient or former law, or practice. *Inst.* 1. 6. 7. *Modus alius antiquitati placuit, alium novitas per usum amplexa est*; the ancient law adopted one mode, modern practice has established another. *Id.* 4. 11. pr. *Antiquitas dubitabat, &c.* *Cod.* 3. 33. 14. Literally, *antiquity*; which is the term constantly used by Lord Coke and other writers, to denote the same thing.

**ANTIQUUM DOMINICUM.** L. Lat. In old English law. Ancient demesne, (q. v.) *Fleta*, lib. 2, c. 71, § 15. Contrasted with *novum perquisitum*, (new purchase or acquiescent.) *Id. ibid.*

**ANTISTES.** Lat. In the civil law. A chief or presiding priest; a bishop, (*episcopus*.) *Inst.* 1. 20. 5. *Cod.* 1. 3. 18, 22, 25.

**ANTISTITIUM.** L. Lat. In old English law. A monastery. *Blount. Whishaw.*

**ANTI THETARIUS.** L. Lat. [from Gr. *antithesis*, opposition.] A term applied, in ancient law, to one who endeavored to discharge himself of a fact of which he was accused, by recriminating, or charging his accuser with the same fact. *Cowell. Whishaw.*

**ANTOR.** L. Fr. Around. *Kelham.* See *Entour*.

**ANTRUSTIO, Amtrustio.** L. Lat. [from Sax. *an*, one, or Germ. *ampt*, office, and *trusty*.] In early feudal law. A confidential vassal. A term applied to the followers or dependents of the ancient German chiefs, and of the kings and counts of the Franks. It occurs in the formularies of Marculfus, and imported the same with what was called in the Salic laws, *homo in truste dominica*, (a man in his lord's trust, or one who had sworn faith to his lord.) *Marculf. Form.* lib. 1, c. 18. *L. Salic.* tit. 43, § 4. *Spelman*, voc. *Amtrustio*. *Esprit des Loix*, liv. 30, c. 16. 1 *Robertson's Charles V.* Appendix, note viii.

**ANUELS LIVRES.** L. Fr. The year books. *Kelham. L. Fr. Dict.* See *Year Books*.

**ANUYTE, Anute.** L. Fr. Annuity. 2 *And.* 1, 2.

**ANY.** A common word in statutes and other writings, having sometimes the sense of "some," but more frequently that of "all" or "every." See *At any time*. Like the word "all," (q. v.) it has often been made the subject of judicial construction, and, like that word, its meaning has been restrained and limited, as in the following examples:

"Any court of record," has, in England, been confined to the four courts at Westminster. 6 *Co.* 19.

"Any person or persons," in the Act of Congress of April 30th, 1790, § 8, though admitted to be broad enough to comprehend every human being, was held to be limited to the objects to which the legislature intended to apply the words. *Marshall, C. J. 3 Wheaton's R.* 631.

"Any creditor," in a deed, has been held to be used in a limited sense. 5 *B. & Ald.* 869.

"Any other matter or thing, from the beginning of the world to the day of the date hereof," in a release, has been restrained to the subject-matter on which the parties acted. 4 *Mason's R.* 227.

**AORE.** L. Fr. Now. *L. Fr. Dict.* See *Ore*.

**AOUR.** L. Fr. Gold. *Kelham.* See *Oor*.

**APANAGE, Appanage, Apenage.** [L. Lat. *appanagium*, *appenagium*, q. v.] In old French law. A provision for the support of younger sons; an allowance made to younger branches of a sovereign house, out of the revenues of the country, generally together with a grant of public domains; the provision of lands or feudal superiorities formerly assigned by the kings of France for the maintenance of their younger sons. *Spelman*, voc. *Appenagium*. *Brande. P. Cyclopaedia*.

**APARELLE, Aparaille, Appareillie.** L. Fr. Ready. *Kelham.*

**APARES.** L. Lat. Peers; equals. See *Appares*.

**APARLUY, Aperluy.** L. Fr. By itself; separately. *Yearb. H.* 9 Hen. VI. 21.

**APARTE.** L. Fr. Open; full. *Kelham.* See *Apert*.

**APARTEMENT.** L. Fr. Openly; plainly. *Kelham.* See *Aperment*.



of some *particular* moral quality, supposed to be capable of raising a presumption conflicting with the particular offence charged, which evidence is used to establish. So far, it may be termed particular character. *Wharton's Am. Crim. Law*, 294. But it is strictly *general* in another sense, that is, habitual, derived from a course of life, and not from particular acts of conduct. 2 *Russ. Crimes*, 784. 1 *Phill. Evid.* 469, 470. In these cases, the term "general" is applied to the person whose character is made the subject of evidence. But the more common application of the term is to the persons whose opinions of such character are referred to. The *general character* of a person is the character or reputation which he *generally* bears, that is, which he is supposed or believed to possess, not by one or two individuals, but by the *community* in which he has resided, or where he has been generally known.

**CHARAXARÉ, Carazare.** L. Lat. In old records. To mark; to write. *Spelman. Charazator*; a writer; a notary. *Id. Charazatura*; a writing; the obliteration of a writing. *Id.*

**CHARE.** L. Fr. In old English law. A plough. *Stat. Westm.* 1, c. 1.

**CHARETTE, Charet, Charret.** L. Fr. In old English law. A cart. *Stat. Westm.* 1, c. 1, 32. *Britt.* c. 1. *Charretter*; a carter. *Kelham.*

A cart-load. 1 *And.* 60.

**CHARGE.** [Lat. *onus*; Span. *carga*.] A burden; an incumbrance or lien upon land; a duty or liability attached to, or obligation imposed upon a person.\* 3 *Co.* 14, *Harbert's case.* 1 *Steph. Com.* 348. 3 *Id.* 637.

To **CHARGE.** [Lat. *onerare*.] To bind; to make or hold liable; to subject to, or burthen. Thus, land is said to be *charged* with a covenant of warranty, a debt, execution, (3 *Co.* 12, 14,) or trust. 4 *Kent's Com.* 540. So a person is said to be *charged* with a duty or liability. 3 *Co. ub. sup.* "If two be bound in an obligation, there the *charge* shall survive: so it appears that when land shall be *charged* by any lien, the *charge* ought to be equal, and one alone shall not bear all the burthen, and the law on this point is grounded on great equity: but in all the cases at the common law, if the party who should be *charged* had aliened the land *bona fide*, before any action brought, the land in the hands of the purchaser was not subject to any *charge* or execution." *Id.* 14.

In practice. To subject land or person to execution. 3 *Co. ub. sup.* To charge a person in execution, is to take or arrest him by virtue of a writ of execution. 1 *Tidd's Pr.* 365, 367. 4 *Term R.* 367.

**CHARGE.** In practice. An address to a jury impanelled in a cause, by the presiding judge, after the case has been closed on both sides, recapitulating and commenting upon the testimony adduced by the respective parties, and instructing the jury in any matter of law arising upon it.\* 3 *Steph. Com.* 617. Story, J. 10 *Peters' R.* 657, 660. In English practice, this is called the *summing up*, (q. v.) 2 *Tidd's Pr.* 867. 1 *Archb. Pr.* 195.

An address to the grand jury or inquest of a county, by the presiding judge of the Court of Oyer and Terminer, or other principal criminal court, instructing them in their duty.\* 4 *Bl. Com.* 303.

To *charge.* To deliver such an address.

To **CHARGE.** In equity pleading. To make a distinct and formal allegation in a bill, usually for the purpose of anticipating and meeting some allegation or defence on the part of the defendant.\* If the plaintiffs are aware of any defence which may be made, and have any matter to allege which may avoid it, the general charge of confederacy is usually followed by an *allegation* that the defendants pretend or set up the matter of their defence, and by a *charge* of the matter which may be used to avoid it. This is commonly called the *charging part* of the bill. *Mitford's Ch. Pl.* 43. *Story's Eq. Pl.* § 31.

**CHARGE.** In equity practice. A statement in writing made by a party to a suit in equity, before a master of the court, of the items with which the opposite party should be debited or should account for, or of the claim of the party making it. It is more comprehensive than a *claim*, which implies only the amount due to the person producing it, while a *charge* may embrace the whole liabilities of the accounting party. *Hoffman's Master in Chanc.* 36.

**CHARGE.** In Scotch law. The command of the king's letters to perform some act; as a *charge* to enter heir. *Bell's Dict.*

A messenger's execution, requiring a person to obey the order of the king's letters; as a *charge* on letters of horning, or a *charge* against a superior. *Id.*

**CHARGE AND DISCHARGE.** In equity practice. The mode or form of accounting before a master. Where a decree

or order of the court directs an account to be taken and examined before a master, in such case the plaintiff delivers in an account before the master, in the form of a charge, (q. v.) against the defendant; which being examined and gone through, the defendant or adverse party must bring in his discharge, (q. v.) against such charge; which being likewise examined and gone through, the master will exercise his judgment upon the evidence, and allow or disallow the charge, or any part of it, as he thinks proper, and so, *e contra*, as to the discharge, after which the report is made. *Cunningham. Whiskaw. 2 Daniell's Chanc. Pr. 1420—1422. Hoffman's Mast. in Chanc. 36—39.*

**CHARGE D'AFFAIRES.** Fr. In international law. A person entrusted with the affairs of his nation. The title of a diplomatic representative, or minister of the fourth grade. 1 *Kent's Com.* 39, note. *Wheaton's Elem. Intern. Law, 277.*

**CHARGEANT, Chargaunt.** L. Fr. [from charger, q. v.] Weighty; heavy; forcible; penal; expensive. *Kelham.*

**CHARGER.** L. Fr. To load. *Ont charge certain vessels ove lour bienz*; have loaded certain vessels with their goods. *Yearb. T. 11 Hen. VI. 3. Chargeez*; loaded; laden. *Kelham.*

**CHARGES.** In practice. Expenses incurred in a suit at law or in equity, or other judicial proceeding; including such as do not come under the technical denomination of costs. The expression "costs and charges" is of frequent occurrence in practice. See 2 *Wils.* 267, 268.

**CHARITABLE.** This word, in the expressions "charitable uses," "charitable trusts," is understood in a very large sense, comprising not only gifts for the benefit of the poor, but endowments for the advancement of learning, or institutions for the encouragement of science and art, and for any other useful and public purpose, as well as donations for pious or religious objects. 3 *Steph. Com.* 229. See 1 *Id.* 428, and note (b). 2 *Chitt. Bl. Com.* 273, 274, and notes. 2 *Kent's Com.* 285—288, and notes. 2 *Story's Eq. Jur.* §§ 1160—1164. *Duke on Charit. Us.* 105, 113, cited *ibid.* *U. S. Digest, Charities and Charitable Uses.*

**CHARITY.** A charitable gift or bequest; a gift or bequest to charitable uses or purposes. See *Charitable.* Described by Lord Camden as a "gift to a general public use, which extends to the rich as

well as to the poor." *Ambl.* 651. See 2 *Story's Eq. Jur.* ch. 32. *U. S. Digest, Charities and Charitable Uses.*

**CHARRE, Char.** [L. Lat. *charrus.*] An old weight of lead in England. *Cowell.* See *Charrus.*

**CHARRETE.** L. Fr. A cart. *Yearb.* (Additions) H. 2 Edw. III. 3.

**CHARRUS.** L. Lat. In old English law. A char, or charre. A weight of lead consisting of thirty pigs (*fofmelli*), each pig containing six stone wanting two pounds, and each stone twelve pounds. *Fleta*, lib. 2, c. 12, §§ 1, 2. It seems to have been sometimes written *carectata*. See *Cowell*, voc. *Fotmel*.

**CHARNEL.** L. Fr. [L. Lat. *carnalis.*] Of the same flesh, (or blood). *Charnels amys*; relations by blood. *Britt.* c. 52.

**CHARTA.** Lat. [Gr. *χάρτης.*] In the civil law. Paper; the material on which instruments, books, &c. were written. *Dig.* 32. 52. *Nov.* 44, c. 2. Distinguished from *papyrus*. *Dig.* 32. 52. 6. *Charta pura*; blank paper. *Id.* 32. 52. 4. What passed by a bequest of *chartæ*, and *chartæ pura*, see *Id.* 32. 52. 4, 6. *Id.* 32. 76.

An instrument or writing. See *Nov.* 44, c. 2, instructing the *tabelliones* (notaries) in the preparation of their instruments.

**CHARTA, Carta.** L. Lat. [Lat. *symbolum, tabulæ*; L. Fr. *chartre*; Fr. *charte*; Span. *carta*.] In old English law. A charter, or deed; a writing under seal, by which conveyances of lands, contracts, covenants and the like were evidenced and ratified; (*scriptum obsignatum, quo prædiorum cessiones, contractus, conventiones et hujusmodi ratæ fiunt.*) *Spelman. Bract.* fol. 33 b—38. *Id.* fol. 40. So called from the material (*charta*, paper,) upon which it was written. 2 *Bl. Com.* 295. See *Charter, Deed. Charta de feoffamento*; a charter of feoffment. *Bract.* fol. 33 b. *Charta de quiete clamantia*; a charter of quit claim. *Id. ibid.* *Charta de confirmatione*; a charter of confirmation. *Id. ibid.* *Fleta*, lib. 3, c. 14, § 1. See *Carta. Charta* [carta] *de non ente non valet.* A deed of a thing not in existence is void. *Co. Litt.* 36 a.

Any signal or token by which an estate was held; as a horn, &c. *Willelmus, filius Nigelli, tenuit custodiam forestæ de Bernwode de domino rege, per unum cornu, quod est charta prædictæ forestæ*; William, son of Nigel, held the ward of the forest of Bernwode of the king, by one horn, which

This word combines both the ideas presented by its Greek and Latin equivalents,—release for cause, (*ex causa*), and such release prayed for. The Greek is literally a requesting to be let off, (*επαφ*, off, and *δωρεαν*, to request.)

**EXCUSSIO.** Lat. [from *excutere*, to shake out, to search.] In the civil law. A diligent prosecution of a remedy against a debtor; the exhausting of a remedy against a principal debtor, before resorting to his sureties. Translated *discussion*, (q. v.)

In old English law. Rescue or rescous. *Spelman*.

**EXCUTERE.** Lat. In the civil law. To search thoroughly; to prosecute a remedy against one to the uttermost, especially against a principal debtor; to search *ad peram et sacculum*, to the last farthing. *Calv. Lex*.

**EXECUCYON.** L. Lat. Execution. *Britt. fol. 1 b.*

**EXECUTE.** [Lat. *exequi*, *exsequi*, from *ex*, from, and *sequi*, to follow.] To complete, finish, or perfect; to follow out or carry out; to make effectual or operative.\* A deed is not complete, and has no operation or effect, until *executed*, that is, signed, sealed and delivered by the party making it. See *Execution*.

To perform or fulfil; to comply with, as a contract.

To carry into effect; to make effectual; as by complying with, or acting under a legal order or authority; to obey the writ or mandate of a court. See *Execution*.

To carry into effect a sentence of death; to inflict the punishment of death. See *Id.*

A statute is said to *execute* a use, where it transmutes the equitable interest of *cestuy que use* into a legal estate of the same nature, and makes him tenant of the land accordingly, in lieu of the feoffee to uses or trustee, whose estate, on the other hand, is at the same moment annihilated. 1 *Steph. Com.* 339.

**EXECUTED.** Completed; made; done; carried into full effect; performed; complied with; obeyed; taking effect immediately; now in existence or in possession; conveying an immediate right or possession. The opposite of *executory*. "Things executed and done" are distinguished by Finch, from things "executory and to do." *Law*, b. 1, c. 3, num. 39. See *infra*, and see *Executory*.

**EXECUTED CONSIDERATION.** A consideration performed prior to the pro-

mise upon which it is founded, and which, to be valid, must have been at the precedent request of the promiser.\* As if I bail a man's servant, at the master's request, and the latter afterwards promises to indemnify me; this is an executed consideration.\* 2 *Steph. Com.* 113.

**EXECUTED CONTRACT.** A contract which transfers the possession of a thing, together with the right; a contract which conveys a chose in possession, as distinguished from a chose in action. 2 *Bl. Com.* 443. 2 *Steph. Com.* 112.—A contract where nothing remains to be done by either party, and where the transaction is completed at the moment that the agreement is made; as where an article is sold and delivered, and payment therefor is made on the spot. *Story on Contracts*, § 18.

**EXECUTED ESTATE.** An estate in possession, by which a present interest passes to, and resides in the tenant, not depending on any subsequent circumstance or contingency. 2 *Bl. Com.* 162.

**EXECUTED REMAINDER.** A remainder by which a present interest passes to the party, though to be enjoyed in futuro. 2 *Bl. Com.* 168. See *Vested remainder*.

**EXECUTED TRUST.** A trust is so called in respect to its creation, when the transaction by which it is created is complete, and in respect to its execution, when no further act is necessary to be done by the trustee to give effect to it.\* 2 *Crabb's Real Prop.* 577, 578, §§ 1806, 1807. See 1 *White's Lead. Eq. Cases*, 1—31, and *Am. ed. note*.

**EXECUTED USE.** A use to which the legal possession or estate is transferred or annexed by statute; a use transferred into possession.\* 2 *Crabb's Real Prop.* 478, § 1654. 1 *Steph. Com.* 339.

**EXECUTED WRIT.** In practice. A writ carried into effect by the officer to whom it is directed. The term *executed*, applied to a writ, has been held to mean *used*. Lord Hardwicke, *Ambl.* 61.

**EXECUTIO.** Lat. [from *exequi*, or *exsequi*, to follow up.] The doing or following up of a thing; the doing a thing completely or thoroughly; management or administration. See *Executio bonorum*.

**EXECUTIO.** L. Lat. In old practice. Execution; the final process in an action. See *Execution*.

*Executio est finis et fructus legis.* *Exe-*

cution is the end and fruit of the law. *Co. Litt.* 289. An execution is the end of the law. It gives the successful party the fruits of his judgment. *Marshall, C. J. 9 Peters' R.* 28. It is the *end* in both of the English senses of the word; being not only the *final* proceeding in an action, but the *object* also for which the action is prosecuted, putting the party into actual possession of the lands, goods, or money to which he is entitled.\*

**Executio juris non habet injuriam.** The execution of the law does not work a wrong. *2 Inst.* 482. The law will not, in its executive capacity, work a wrong. *Broom's Max.* 57, [95]. The imprisonment of a party in the execution, and by virtue of lawful process, is not such an act as can be pleaded in avoidance of a contract entered into while under its coercion.\* *Id.*

**EXECUTIO BONORUM.** *L. Lat.* In old English law. Management or administration of goods. *Ad ecclesiam et ad amicos pertinebit executio bonorum*; the execution of the goods shall belong to the church and to the friends of the deceased. *Bract.* fol. 60 b.

**EXECUTION.** [*Lat. executio*; *L. Fr. excecucion.*] The completion of an act or proceeding, by which it is rendered operative or effectual; a following out or carrying into effect; an enforcement. See *infra*.

**EXECUTION.** In practice. The act or mode of putting the sentence of the law in force, or of carrying into effect the judgment or decree of a court.\* *3 Bl. Com.* 412. A judicial writ, (otherwise termed *final process*), founded on a judgment obtained in a civil court, and issued in behalf of the party recovering such judgment, for the purpose of obtaining the satisfaction or full benefit of it.\* Called by Lord Coke "the life of the law," and "the fruit and life of every suit." *5 Co.* 89, 91. There are various kinds of this process, but the two most usual in practice are the *feri facias*, and the *capias ad satisfaciendum*. See *Fieri facias*, *Capias ad satisfaciendum*, *Levari facias*, *Extendi facias*, *Elegit*, *Habere facias possessionem*, *De retorno habendo*.

**EXECUTION.** In criminal law. The carrying into effect the sentence of the law, by the infliction of capital punishment. *4 Bl. Com.* 403. *4 Steph. Com.* 470.

**EXECUTION.** In conveyancing. The formality of signing, sealing and delivery by the party making a deed, or of signing

and publication by the party making a will, in the presence of witnesses; by which it is rendered complete and operative.\* *4 Kent's Com.* 450. *Id.* 513—516, and notes. *2 Bl. Com.* 378.

**EXECUTOR.** *L. Lat.* [from *exsequi*, or *exsequi*, to follow up, execute or perform.] In old English law. A person appointed or authorized to execute or perform a duty or trust; especially to manage and dispose of the property or estate of a deceased person; an executor.\*

*Executor à lege constitutus*; an executor appointed by law; the ordinary of the diocese. *1 Williams on Exec.* 185.

*Executor ab episcopo constitutus*, or *executor dativus*; an executor appointed by the bishop; an administrator to an intestate. *Id. ibid.*

*Executor à testatore constitutus*; an executor appointed by a testator. *Id. ibid.* Otherwise termed *executor testamentarius*; a testamentary executor. *Id. ibid.* This is the modern sense of the word, commonly expressed in the old books by the single word, *executor*. *Glanv. lib. 7, c. 6. Bract.* fol. 20, 61. *Et residuum relinquatur executoribus ad faciendum testamentum defuncti*; and the residue shall be left to the executors, to do the will of the deceased. *Mag. Chart. Joh. c. 26. Id. 9 Hen. III. c. 18.*

*Executor testamenti*; executor of a will. *Fleta*, lib. 2, c. 70, § 5.

**EXECUTOR.** [*L. Lat. executor*; *L. Fr. excecuteur.*] A person appointed by a testator, in his last will and testament, to carry it into effect or execution after his decease, and to dispose of his property according to the tenor of the will.\* *Wood's Inst.* 310. *Cowell. Blount. Whishaw.*—A person appointed by a testator, and whose appointment is confirmed by the proper court, to execute his will, and to represent him in his personal rights and liabilities. *Brande.* He to whom another man commits by will the execution of his last will and testament. *2 Bl. Com.* 503. See *1 Williams on Exec.* 185, *et seq.*

This word has been adopted, without change, from the Latin of the earliest writers on English law. *Glanv. lib. 7, c. 6. Bract.* fol. 20, 61. *Mag. Chart. Joh. c. 26. Mem. in Scacc. H. 5 Edw. I. Stat. Westm. 2, c. 19.* See *supra*. Lord Hardwicke, in *Androvin v. Poilblanc*, calls it a "barbarous term," unknown to the civil law, the proper term in that law, as

July 20

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A  
**LAW DICTIONARY**<sup>ct</sup>

AND  
**GLOSSARY:**

CONTAINING FULL DEFINITIONS OF THE PRINCIPAL TERMS OF THE COMMON  
AND CIVIL LAW, TOGETHER WITH TRANSLATIONS AND EXPLANATIONS  
OF THE VARIOUS TECHNICAL PHRASES IN DIFFERENT LANGUAGES,  
OCCURRING IN THE ANCIENT AND MODERN REPORTS, AND  
STANDARD TREATISES; EMBRACING, ALSO, ALL  
THE PRINCIPAL COMMON AND CIVIL  
LAW MAXIMS.

COMPILED ON THE BASIS OF SPELMAN'S GLOSSARY,  
AND ADAPTED TO THE  
**JURISPRUDENCE OF THE UNITED STATES;**

WITH COPIOUS ILLUSTRATIONS, CRITICAL AND HISTORICAL.  
By **ALEXANDER M. BURRILL,**  
COUNSELLOR AT LAW.

Author of a Treatise on Voluntary Assignments, a Treatise on Circumstantial Evidence, and a Treatise on Practice, &c.

Vixit origines rationemque [Latine] perscrutatus; necesse precipue selectis ad mandantes phrasibus juris legumque uti soluit.  
A. GRADUS, Noci. Att. Att. 16.

SECOND EDITION.

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In a more general sense,—the act, process or business of judging, that is, of *hearing* as well as determining a cause. This was one of the senses of the Lat. *judicium*, (q. v.)

**JUDGMENT PAPER.** In English practice. A sheet of paper containing an *incipitur* of the pleadings in an action at law, upon which final judgment is signed by the master. 2 *Tidd's Pr.* 930.

**JUDGMENT RECORD.** In practice. A record of the proceedings in an action at law, from the commencement of the pleadings to the giving of judgment inclusive, composed of what are technically called *entries*, made according to a prescribed order, and drawn in strict conformity with established precedents. See *Record*. This record, when properly signed, filed and docketed, constitutes the legal evidence of the judgment, and entitles the party obtaining it to issue execution. It is sometimes called a *judgment roll*, (q. v.)

**JUDGMENT ROLL.** In English practice. A roll of parchment containing the entries of the proceedings in an action at law to the entry of judgment inclusive, and which is filed in the treasury of the court. 1 *Arch. Pr.* 227, 228. 2 *Tidd's Pr.* 931. See *Roll*.

**JUDICARE.** Lat. [from *judex*, a judge.] In civil and old English law. To judge; to decide or determine judicially; to give judgment or sentence.

**Judicandum est legibus non exemplis.** Judgment is to be given according to the laws, not according to examples or precedents. 4 Co. 33 b, *Milton's case*. 4 *Bl. Com.* 405.

**JUDICARE.** L. Lat. In feudal law. To give by will. *Feud. Lib.* 2, tit. 9, § 3. *Calv. Lex.*

**JUDICATIO.** Lat. [from *judicare*, q. v.] In the civil law. Judging; the pronouncing of sentence, after hearing a cause. *Hallifax. Anal.* b. 3, c. 8, num. 7.

**JUDICATUS, Judicatus, Judicatum.** Lat. [from *judicare*, q. v.] In civil and old English law. Adjudged; determined; decided. *Res judicata*; a thing adjudged or determined; a judicial sentence or determination. See *Res judicata*. *Judicatum solvere*; to pay what was adjudged to a party in a suit. 3 *Bl. Com.* 291. In the civil law, security (*satisfactio*) *judicatum solvi*, was security that the judgment of the court should be complied with. *Inst.* 4. 11. See *Dig.* 46. 7.

**JUDICES.** Lat. [pl. of *judex*, q. v.]

Judges. *Judices non tenentur exprimere causam sententiae suae*; judges are not bound to express the reason of their sentence or judgment. *Jenk. Cent.* 75, case 43. An old rule relating to the form of the judgment as entered on record.

**JUDICES ORDINARI.** Lat. In the civil law. Ordinary judges; the common judges appointed to try causes, and who, according to Blackstone, determined only questions of fact. 3 *Bl. Com.* 315.

**JUDICES PEDANEL.** Lat. In the Roman law. The ordinary judges appointed by the praetor or by the governors of provinces to try causes. See *Cod.* 3. 3. So called from *pēs*, foot, denoting the low seat they occupied, or, according to some, the humble character of their office; (Gr. *ὑποθίσκωνται*.) *Calv. Lex.* See *Cod.* 7. 51. 5. 2. They are defined in the Code, as those *qui negotia humiliora disceptant*, (who should have charge of the more humble matters.) *Cod.* 3. 3. 5. In the Novels they are required to sit continually at the royal porch, in the little houses where they now judge, (*ut sit eis una sacrorum locatio*), and to hear causes from early in the morning to sunset. *Nov.* 82, c. 3.

**JUDICES SELECTI.** Lat. In the civil law. Select or selected judges or judges; those which were used in criminal causes, and between whom and modern jurors many points of resemblance have been noticed. 3 *Bl. Com.* 366.

**JUDICIA.** Lat. In the Roman law. Judicial proceedings; trials. *Judicia publica*; criminal trials. *Dig.* 48. 1.

**JUDICIA.** L. Lat. [pl. of *judicium*, q. v.] In old English law. Judgments. *Judicia sunt tanquam juris dicta, et pro veritate accipiuntur.* Judgments are, as it were, the sayings of the law, and are received as truth. 2 *Inst.* 537.

*Judicia in deliberationibus crebro maturerunt, in accelerato processu nunquam.* Judgments frequently become matured by deliberations; never by hurried process or precipitation. 3 *Inst.* 210.

*Judicia posteriora sunt in lege fortiora.* The later judgments are the stronger in law. 8 Co. 97 a, *Manning's case*. *Judicis posterioribus fides est adhibenda.* Faith or credit is to be given to the later judgments. 13 Co. 14, *The case of Modus Decimandi*.

**JUDICIAL.** [Lat. *judicialis*, from *judex*, a judge, or *judicium*, judgment.] Belonging to the office of a judge; as *judicial authority*.



Relating to, or connected with the administration of justice; as a judicial officer.

Having the character of judgment or formal legal procedure; as a judicial act.

Proceeding from a court of justice; as a judicial writ, a judicial determination.

Constituting the basis of a judgment; as a judicial opinion.

**JUDICIAL CONFESSION.** In the law of evidence. A confession of guilt, made by a prisoner before a magistrate, or in court, in the due course of legal proceedings. 1 *Greenl. Evid.* § 216.

**JUDICIAL SALE.** In practice. A sale under the judgment or decree of a court; a sale under judicial authority, by an officer legally authorized for the purpose, such as a sheriff's sale, an administrator's sale, &c.

**JUDICIAL WRIT.** In English practice. A writ issuing under the private seal of a court, and tested in the name of the chief or senior justice; as distinguished from an original writ which issues out of Chancery under the great seal, and is tested in the king's name. 3 *Bl. Com.* 282. See *Fleta*, lib. 2, c. 13, § 3.

**JUDICIUM.** Lat. [pl. *judicia*; from *judex*, q. v.] In the civil law. The investigation and decision of a cause by a *judex*, constituting the second of the two stages or divisions of the proceedings in an action; a trial. See *Judex*, *Actio*.

A judicial procedure; a proceeding before a *judex*, or judge. *Inst.* 4, 5, 8.

An action. *Bona fidei judicium*; an action of good faith. *Id.* 4, 6, 29, 30. *Id.* 4, 6, 20. See *Dig.* 5, 1, 13. *Cod.* 3, 1.

A court, or judicial tribunal. *Quod in judicio permanet usque ad terminum litis*; that he will remain in court until the end of the suit. *Inst.* 4, 11, 2. *Præsens in judicio*; present in court. *Id.* 4, 11, 3. *In judicium venire*; to come into court. *Sive in judicio, sive extra judicium*; whether in court or out of court. *Id.* 4, 11, 4.

The intention of a testator. *Id.* 2, 11, 1.

**JUDICIUM.** L. Lat. In old English law. A court, or judicial tribunal. *Partibus in judicio comparantibus*; the parties appearing in court. *Bract.* fol. 183 b. *Id.* fol. 296 b. *Præsentis in judicio*; being present in court. *Id.* fol. 257 b, 281 b, 288 a. *Postquam diem in judicio recepit*; after he had a day in court. *Id.* fol. 344 a. *Si nullum sit tibi placitum nec judicium*; if there be there no plea nor court. *Id.*

*ibid.* *Cujus judicium et forum actor adire debeat*; whose court and forum the plaintiff ought to apply to. *Id.* fol. 401.

A proceeding in court; judicial hearing and investigation. *Judicium est in qualibet actione trinus actus trium personarum; judicis, viz. actoris, et rei:—a. quod dua sint personæ ad minus inter quas vertatur contentio, et tertia persona, ad minus, qui judicet*; judicial procedure in an action is the threefold act of three persons, namely, the judge, the plaintiff, and the defendant; so that there be two persons at least between whom the controversy is carried on, and a third person at least who shall judge. *Bract.* fol. 106 a. *Id.* fol. 360 b, 431 a. See *Fleta*, lib. 1, c. 17, § 1.

Judicial authority. *Imprimis videtur tenens an sit ibi judicium*; the tenant should first consider whether there be there a competent judicial tribunal. *Bract.* fol. 376 a. *Id.* fol. 405 b.

Due process of law. *Sine judicio*; without process of law; as when one ejected another by force without resorting to law. *Bract.* fol. 205 a.

An action. *Judicium novæ disseisinæ*; an action of novel disseisin. *Id.* fol. 161 b.

Trial by jury; (*duodecimvirale judicium*, q. v.)

The verdict of a jury. *Iustum judicium juratorum*; the just verdict of the jurors. *Bract.* fol. 289 a. *Potest jurator falsum facere judicium*; a juror may give a false verdict. *Id.* *ibid.* *Per legale judicium parium suorum*; by the lawful judgment of his peers. *Mag. Chart.* c. 29. 2 *Inst.* 48.

Judgment. *Judicium executioni demandare*; to enforce a judgment by execution. *Bract.* fol. 107 a, 175 a. *Cum perfectum sit judicium licet non executum*; since the judgment is perfected though not executed. *Id.* fol. 311 b. *Judicium pro querente*; judgment for the plaintiff. 1 *Stra.* 33, 34. *Judicium est quasi juris dictum*; judgment is, as it were, the speech of the law; the very voice of law and right. *Co. Litt.* 39 a, 168 a. 10 *Co.* 42 a.

*Judicium a non suo iudice datum nullius est momenti.* A judgment given by one who is not a proper judge, (or, not judge of the cause,) is of no weight. 10 *Co.* 76 b. Expressed in other words by Bracton: *Sententia a non suo iudice lata non tenet*; a sentence pronounced by one who is not a proper judge is not binding. *Bract.* fol. 401 a.

**Perquisitor.** A purchaser; one who first acquired an estate to his family; one who acquired an estate by sale, by gift, or by any other method, except only that of descent. 2 *Bl. Com.* 220.

**Perquisitum.** Purchase. *Bract.* fol. 65. *Co. Litt.* 3 b, 18 b. An estate acquired by purchase, that is, by one's own act, and not by descent; (*prædium quod quis non à patre vel majoribus possidet, sed quo sua industria vel pecuniis comparato gaudet.*) *Spelman.*

**PERSECUTIO.** Lat. [from *persequi*, q. v.] In the civil law. A following after; a pursuing at law; a suit or prosecution.

Properly, that kind of judicial proceeding before the praetor which was called *extraordinary*. *Cate. Lex.*

In a general sense, any judicial proceeding, including not only actions (*actiones*) properly so called, but other proceedings also. *Id.*

**PERSEQUI.** Lat. In the civil law. To follow after; to pursue or claim in form of law. An action is called a *jus persequendi*. See *Actio*.

**PERSEWAR.** O. Sc. In old Scotch law. Pursuer; plaintiff or prosecutor. See *Pursuer*.

**PERSON.** [from Lat. *persona*, q. v.] A human being, considered as the subject of rights, as distinguished from a *thing*, (*res*), whether animate or inanimate. See *Persona*.

**PERSONA.** Lat. In civil and old English law. A person. *Persona est homo, cum statu quodam consideratus*; a person is a human being, considered with reference to a certain *status*, condition or quality. *Heinecc. Elem. Jur. Civ.* lib. 1, tit. 3, § 75. *Homo vocabulum est naturæ*; *persona, juris civilis*; man is a term of nature; person, a term of law. *Cate. Lex.* *Omnia persona est homo, sed non vicissim*; every person is a man, (human being,) but not vice versa. *Id.* *Persona* is a character or capacity, *homo cum statu*, a man under particular circumstances, conditions and relations. *Tytl. Civ. Law*, 247.

**Persona conjuncta æquiparatur interesse propria.** A personal connection [literally, a united person, union with a person.] is equivalent to one's own interest; nearness of blood is as good a consideration as one's own interest. *Bacon's Max.* 72, reg. 18. "The law hath that respect of nature and conjunction of blood, as in divers cases it

compareth and matcheth nearness of blood with consideration of profit and interest, yea, and in some cases alloweth of it more strongly." *Id. ibid.* 13 *Max. & W.* 253, 254, arg. The interest of a personal connection is sometimes regarded in law as that of the individual himself. *Broom's Max.* [407.]

**PERSONA.** Lat. In civil and old English law. Character; capacity. See *Persona standi in judicio*.

**PERSONA.** L. Lat. In old English law. A parson. *Gloss. lib.* 4, c. 1. *Spelman.* 1 *Bl. Com.* 384. *Fleta*, lib. 2, c. 60, § 29.

**PERSONA STANDI IN JUDICIO.** L. Lat. Capacity of standing in court or in judgment; capacity to be a party to an action; capacity or ability to sue. See *Personable*. A phrase frequently used in Bracton, and derived probably from that source. *Habent enim servi personam standi in judicio contra omnes de injuriis sibi factis*; for slaves have a capacity of prosecuting against all persons for injuries done to themselves. *Bract.* fol. 155 b. A slave might in certain cases bring an assise against his own lord; much more shall he have a right of suit against one who had no right in him; (*multo fortius personam habebit standi in judicio versus eum qui nihil juris habet in eo.*) *Id.* fol. 196. The phrase is of common occurrence in the modern books. 1 *Rob. Adm. R.* 198, 201. Spencer, J. 15 *Johns. R.* 83. 1 *Ken's Com.* 68.

**PERSONABLE.** [L. Lat. *personabilis*, from *persona*, capacity.] In old English law. Able to maintain a plea in court; having capacity to sue. *Correll*. Derived probably from the phrase *persona standi in judicio*, (q. v.)

Of capacity to take a thing granted or given. *Plowd.* 27 a, arg. But in the case here cited, it is used as two words, *person able*. "There is a maxim that when a remainder is appointed to one, he to whom it is appointed ought at that time to be a *person able*, and to have capacity to take the remainder, or else it shall be void." *Id.*

**PERSONAL.** [Lat. *personalis*, from *persona*, q. v.] Of the person; belonging to, or following the person; as a *personal* chattel, (q. v.)

Relating to, or affecting the person; against the person; as a *personal* action, (q. v.)

**PERSONAL ACTION.** [Lat. *actio personalis*.] In practice. An action against the person, (*actio in personam*;) an action founded on personal obligation. An action by which a person claims a debt, or personal duty, or damages in lieu thereof, or by which a person claims a satisfaction in damages for some injury done to his person or property.\* 3 *Bl. Com.* 117.

**PERSONAL ASSETS.** Personal property in the hands of an executor or administrator, chargeable with the debts or legacies of the testator or intestate, and applicable to that purpose.\* 2 *Williams on Exec.* 1408. See *Assets*.

**PERSONAL CHATTELS.** Things moveable which may be annexed to, or attendant on the person of the owner, and carried about with him from one part of the world to another. 2 *Bl. Com.* 387.

**PERSONAL CONTRACT.** A contract respecting personal property, as a lease of a stock of cattle, or other goods, for years, rendering rent; as distinguished from a lease for years, which is a real contract. 3 *Co.* 22 a. *Walker's case*.

**PERSONAL ESTATE.** Personal property, (q. v.) "Personal estates," in a will, may pass real property. 11 *East*, 240.

**PERSONAL LIBERTY.** The right or power of locomotion, of changing situation, or moving one's person to whatsoever place one's own inclination may direct, without imprisonment or restraint, unless by due course of law. 1 *Bl. Com.* 134.

**PERSONAL PROPERTY.** That kind of property which usually consists of things temporary and moveable, but includes all subjects of property not of a freehold nature, nor descendible to the heirs at law. 2 *Kent's Com.* 340. See definitions of this term in 1 *N. Y. Rev. St.* [388,] 379, § 3. 2 *Id.* [702, § 33,] 587, § 34.

"PERSONAL REPRESENTATIVES" has sometimes been construed to mean, "administrators or executors," and sometimes to mean the "next of kin." 2 *Story's Eq. Jur.* § 1065 b, and note. See 2 *Williams on Exec.* 966. The term "legal representatives" is, in its ordinary sense, synonymous with "executors or administrators." *Id.* *ibid.*

**PERSONAL RIGHTS.** See *Rights of person*.

**PERSONAL SECURITY.** A person's legal and uninterrupted enjoyment of his

life, his limbs, his body, his health, and his reputation. 1 *Bl. Com.* 129.

**PERSONAL STATUTES.** In English law. Statutes which respect personal transitory contracts, as common loans or insurances. So defined by Lord Mansfield, who distinguishes between local and personal statutes. 2 *W. Bl.* 234, 246.

In foreign and modern civil law. These statutes (laws) which have principally for their object the person, and treat only of property incidentally. *Story's Conf. of Laws*, § 13.—A personal statute, in this sense of the term, is a law, ordinance, regulation or custom, the disposition of which affects the person, and clothes him with a capacity or incapacity, which he does not change with every change of abode; but which, upon principles of justice and policy, he is assumed to carry with him wherever he goes. 2 *Kent's Com.* 456. Chancellor Kent considers this application of the word statute a perversion, and protests against its introduction into American jurisprudence. *Id.* note.

**PERSONAL THINGS,** in the old books, include personal rights and duties. *Personal things cannot be done by another.* *Finch's Law*, b. 1, ch. 3, num. 14. Suit of court could not be done by another. *Id.* *ibid.* A man cannot excuse himself of a contempt by attorney, but in proper person. *Id.* *ibid.*

*Personal things cannot be granted over,* as matters of pleasure, ease, trust and authority. *Id.* *ibid.* num. 15. A license to hunt in my park, to go to church over my ground, to come into my house, to eat and drink with me, cannot be granted over. *Id.* *ibid.* A licenseth B. to do an act; B. cannot grant this license to another. *Id.* *ibid.*

*Personal things die with the person.* *Id.* *ibid.* num. 16. When a corporal hurt or damage is done to a man, as to beat him, &c. if he or the party beaten die, the action is gone. *Id.* *ibid.*

**PERSONALIS ACTIO.** Lat. In the civil law. A personal action; an action against the person, (*in personam*.) *Dig.* 50. 16. 178. 2.

**PERSONALIS ACTIO.** Lat. In old English law. A personal action. A term of the civil law, employed by Bracton, and the literal translation of which has been adopted in the common law, as the title of one of the leading divisions of civil actions. *Bract.* fol. 159 b, 284 b.

**PERSONALITER.** Lat. In old Eng-

lish law. Personally; in person. *Si debitor personaliter inceniat*; if the debtor be personally found. *Fleta*, lib. 2, c. 60, § 33. See *Id.* lib. 3, c. 15, § 5. *Personaliter comparat*; shall personally appear. 3 *Hov. St. Trials*, 111.

**PERSONALITY.** In foreign and modern civil law. That quality of a law which concerns the condition, state and capacity of persons.\* By the personality of laws, foreign jurists generally mean all laws which concern the condition, state and capacity of persons. *Story's Conf. of Laws*, § 16.

**PERSONALTY.** Personal property; including every thing moveable, whether animate or inanimate, when the law considers them to be the subject of property, and sometimes things *quasi* moveable, as tenant's fixtures; and whether tangible or not, such as choses in action, or things which cannot be beneficially obtained without suit; and also some descriptions of interests connected with and issuing out of realty, such as leases for years. 1 *Chitt. Gen. Pr.* 4. Personality is principally distinguished from realty by its actual or supposed mobility, and the want of that durability which accompanies all real property, and all permanent rights issuing out of it. *Id.* 84.

An abstract of *personal*. In old practice, an action was said to be in the *personality* where it was brought against the right person, or the person against whom in law it lay. *O. N. B.* 92. *Cowell*.

**PERSONATION.** [Lat. *personatio*, from *persona*, a person.] The acting as a person, or for a person; the representation of a person; an acting in the character of another. See *False personation*.

**PERSONE.** L. Fr. A parson. *En mesme la manere est de persone de un esglise*; in the same manner is it with the person of a church. *Britt.* c. 48.

**PERSONERO.** Span. In Spanish law. An attorney. So called, because he represents the *person* of another, either in or out of court. *Las Partidas*, part 3, tit. 5, l. 1.

**PERSONNE.** Fr. A person. This term is declared by the civil code of Louisiana to be applicable to men and women, or to either. Art. 3522, num. 25.

*Perspicua vera non sunt probanda.* Plain truths are not to be proved. *Co. Litt.* 16 b. Quoted by Lord Coke as the reason why Littleton never cited authority, except where the case was rare or doubtful.

**PERTE.** L. Fr. Part. *Jugement de perte par perte*; judgment of part for part, (member for member.) *Britt.* c. 25.

**PERTICA.** L. Lat. In old records. A perch; a measure of land. *Spelman*.

**PERTICATA, Particata.** L. Lat. [from *pertica*.] In old Scotch law. A perch. *Skene de Verb. Signif.*

**PERTINENS.** Lat. [from *pertinere*, to belong.] In old English law. Pertaining; belonging; appurtenant; appendant. 4 *Co.* 38 a, *Tyringham's case*.

Used in the laws of Canute, in the sense of a relative, (*cognatus*). *Spelman*.

**PERTINENTIAE.** L. Lat. [from *pertinere*, to belong.] In old English law. Appurtenances, or, as anciently written, *appurtinances*; in Scotch law, *pertinents*; things belonging, or incident to another (principal) thing. *Reg. Orig.* 1. *Fleta*, lib. 3, c. 14, § 11. Appurtenances had sometimes their own appurtenances, called *pertinentia pertinentiarum*. Thus, to the right of feeding and pasture, themselves appurtenant to a tenement, were appurtenant the right of way, and free ingress and egress; (*habent hujusmodi pertinentie suas pertinentias, sicut ad jus pascendi et ad pasturam pertinet via et liber ingressus et egressus*). *Bract.* fol. 232. See *Fleta*, lib. 4, c. 18, § 3.

**PERTINENTS.** In Scotch law. Appurtenances. "Parts and pertinents," "parts, pendicles and pertinents," are formal words in old deeds and charters. 1 *Forbes' Inst.* part 2, p. 112, 118. *Bell's Dict.* *Cum omnibus partibus, pendiculis, aliisque pertinentiis*; with all the parts, pendicles and other pertinents. 26 *Eng. Law & Eq. R.* 20.

**PERTURBATION.** In ecclesiastical law. Disturbance; the disturbance of pews or seats in a church. 1 *Phillim. R.* 323.

**PERTURBIA.** L. Lat. In old Scotch law. Disturbance; Scottish, *distroublance*. 1 *Pite. Crim. Trials*, part 2, p. 72. Called also *perturbacio*.

**PERVISE, Parrise.** [L. Lat. *pervisus*, *parvisia*.] A church porch; the outer court of a palace; the palace yard at Westminster. A place where clients and their counsel used to meet for the purpose of consultation. *Fortescue de L. Anglia* c. 51. *Spelman*. Dugdale, speaking of the "Pervise of Pawles," observes that "formerly each lawyer and serjeant, at his pillar in St. Paul's Church, heard his cli-

land which the wife of a tenant in *capite*, deceased, had for her dower, if she married without his leave. *Cowell*.

**POURCHASE.** L. Fr. A purchase. *Cowell*. See *Purchase*.

**FOURPARTY.** L. Fr. [L. Lat. *pro pars, proparts, propartia*.] In old English law. Division; a divided share. Literally, for, or as divided, (*pour parti*;) a close translation of the Lat. phrase *pro divisio*. To make *fourparty*, is to divide and sever the lands that fall to parceners, which, before partition, they held jointly and *pro indiviso*. *Cowell*.

**POURPRESTURE, (or PURPRESTURE.** [from L. Fr. *pourpris*, an enclosure.] The wrongful enclosing of another's property, or the encroaching or taking to one's self that which ought to be in common. *Holthouse*. A species of nuisance by erecting a house, or making an enclosure upon any part of a highway, or common street, or public water, or such like public things. *Co. Litt.* 277. 4 *Bl. Com.* 167. See *Angell on Tide-waters*, ch. 7, p. 198.

Glanville defines *pourprestura* to be "properly, when any occupation is wrongfully made upon the king, (*quando aliquod super dominium regem injuste occupatur*;) as in the king's demesnes, or in public roads, by obstructing them, (*vel in viis publicis obstructis*;) or in public waters, by turning them out of their proper channel, (*vel in aquis publicis transversa a recto cursu*;) or when any one in a city occupies the king's highway by erecting some building upon it, (*vel quando aliquis, in civitate, super regiam plateam, aliquid adificando occupaverit*;) and generally, whenever any thing is done to the nuisance of the king's tenement, or of the king's way or city. *Glanv.* lib. 9, c. 11.

Crompton defines *pourpresture* to be "properly, when a man taketh unto himself or encroacheth any thing that he ought not, whether it be in any jurisdiction, land or franchise; and generally when any thing is done to the nuisance of the king's tenants." *Crompt. Jurist.* fol. 152.

**POURVEYANCE.** L. Fr. and Eng. [from Fr. *pourvoir*, to provide.] In old English law. The providing corn, (grain,) fuel, victual and other necessities for the king's house. *Cowell*. See *Purveyance*.

**POURVEYOR.** [from Fr. *pourvoir*, to provide.] In old English law. An officer of the king or queen, or other great personage, that provided corn (grain) and

other victual for their house. *Cowell*. See *Purveyor*.

**POUSTIE, Poistie.** Sc. In Scotch law. Power. 1 *Pitt. Crim. Trials*, part 1, p. 162. See *Liege poustie*. A word formed from the Lat. *potestas*.

**POVERS.** L. Fr. In old English law. Poor persons. *En primes, voit le roy que common droiture voit fait à tous, auxy bien as povers come as riches, sans regard de nulluy*; in the first place the king wills that common justice be done to all, as well to the poor as to the rich, without regard to any (without respect of persons.) *Stat. Westm.* 1, c. 1.

**POWER.** [Lat. *potestas*, q. v.] An authority which one gives to another, either to act for him generally, or to do some specific act in his behalf; as to execute a deed, to make a contract, &c. See *Power of attorney*. An authority which enables one person to do an act for another. 2 *Crab's Real Prop.* 678.

An authority, as distinguishing from an estate. 1 *Steph. Com.* 505.

In a technical sense. An authority enabling a person to dispose, through the medium of the statute of uses, of an interest, vested either in himself, or in another person. *Syden on Powers*, 82. 6 *Co.* 17 b.—An authority expressly reserved to a grantor, or expressly given to another, to be exercised over lands, &c. granted or conveyed at the time of the creation of such power. *Watkins on Com.* 157.—A proviso, in a conveyance under the statute of uses, giving to the grantor or grantee, or a stranger, authority to revoke or alter by a subsequent act the estate first granted. 1 *Steph. Com.* 505.—A right to limit a use. 4 *Kent's Com.* 316.—An authority to revoke a use first limited, or to declare a new one. 1 *Steph. Com.* *ib.* *sup.*

Powers are either mere *powers of revocation*, enabling the grantor simply to recall what he has bestowed, or *powers of revocation and new appointment*, authorizing the grantor, or some other person, to alter or make a new disposition of the estate conveyed. *Id.* *ibid.* All powers are, in fact, powers of revocation and appointment. Every power of appointment is strictly a power of revocation; for it always postpones, abridges or defeats, in a greater or less degree, the previous uses and estates, and appoints new ones in their stead. 4 *Kent's Com.* 315, 316. See 2 *Hilliard's Real Prop.* 557, et seq.



**POWER OF ATTORNEY.** An instrument in writing, under seal, by which the party executing it appoints another to be his *attorney*, and *empowers* such attorney to act for him, either generally in all matters or business, or specially, to do some specified act or acts in his name and behalf. Formerly, and still occasionally, called a *letter of attorney*, (q. v.)

**POY, Poi.** L. Fr. Little; a little. *Tout à poy*; all but little; very nearly the same; almost the whole of. *Kelham*. *Par poy et par poy*; by little and little. *Britt.* c. 51. *Un poy denk*; a little ink. *Kelham*.

**POYN, Poin, Poin, Poigne.** L. Fr. [from Lat. *pugnus*, fist.] In old English law. Hand. *Le ryband perde son poyn dount il trespassa*; the ruffian shall lose his hand, wherewith he has trespassed. *Britt.* c. 25.

**POYND, Poid.** Sc. In Scotch law. A distress; goods taken for a debt. *Scene de Verb. Sign. voc. Namare*.

To take goods as a distress; to distrain. *Id. ibid.*

**POYNINGS' LAWS.** A set of statutes enacted in the tenth year of Henry VII. (so called from Sir Edward Poyning being then lord deputy,) regulating the method of passing statutes in Ireland. 1 *Bl. Com.* 102. By another of these laws it was enacted that all acts of parliament, before made in England, should be of force within the realm of Ireland. *Id.* 103. 4 *Inst.* 351, 353.

**P'PM.** A contraction of *perpetuum*. 1 *Inst. Cler.* 11.

**PRACTICA.** L. Lat. Practice; the practice of a court. *Clerke's Praz. Cur. Adm.* tit. 42.

**PRACTICE.** [L. Lat. *practica, praxis, cursus curiar.*] The course of procedure in courts. The form and manner of conducting or carrying on, in the way either of prosecution or defence, of suits, actions and other judicial proceedings, at law or in equity, civil or criminal, through their various stages, according to the principles and regulations prescribed by law, or by the rules and decisions of the several courts.

In a general sense, *practice* includes *pleading*, though it is usually distinguished from it.

**PRACTICE COURT.** A court attached to the Court of Queen's Bench, and presided over by one of the judges of that

court, in which points of practice and pleadings are discussed and decided. *Holt-house*. It originated from the *Bail Court*, formerly held by one of the judges, and is still most commonly called by that name. *Id.*

**PRACTICKS.** In Scotch law. The decisions of the Court of Session, as evidence of the *practice* or custom of the country. *Bell's Diet.*

**PRÆBENDA.** L. Lat. In old English law. A prebend. *Bract. fol.* 442 b. *Fleta*, lib. 2, c. 54, § 10; c. 69, § 3.

An allowance of fodder for horses and cattle. *Fleta*, lib. 2, c. 76, § 8.

**PRÆCEPTORES.** L. Lat. Masters. The chief clerks in chancery were formerly so called, because they had the direction of making out remedial writs. *Crabb's Hist. Eng. Law*, 184, 547. 2 *Reeves' Hist.* 251. *Fleta*, lib. 2, c. 13, § 12.

**PRÆCEPTUM.** L. Lat. [from *præcipere*, to command.] In old criminal law. Command. The act of an accessory who commands another to commit a crime. *Fleta*, lib. 1, c. 31, § 8.

**PRÆCIPE.** Lat. (Command.) In practice. An original writ, drawn up in the alternative, *commanding* the defendant to do the thing required, or show the reason why he had not done it. 3 *Bl. Com.* 274. So called from its initial word in the old Latin forms: *Rez vicecomiti salutem: PRÆCIPE A. quod juste et sine dilatione reddat B. &c.* The king to the sheriff, greeting. *Command* A. that justly and without delay he render to B. &c. *Reg. Orig.* 4. *Fleta*, lib. 2, c. 62, § 6, et seq.

A paper containing the particulars of a writ, filed in the office out of which it is to be issued, and intended as the clerk's instructions for making it out.

**PRÆCIPE IN CAPIT.** L. Lat. In old practice. A *præcipe* or writ of right, which lay for a tenant in *capite*. *Reg. Orig.* 4 b. Called a writ of right close. *Fleta*, lib. 6, c. 10, § 2.

**PRÆCIPE QUOD REDDAT.** L. Lat. (Command—that he render.) In practice. Formal words in a *præcipe*, or original writ. See *Præcipe*.

**PRÆCIPE QUOD TENEAT CONVENTIONEM.** L. Lat. (Command—that he keep the covenant.) In conveyancing. A writ of covenant upon which fines were usually levied at common law. 2 *Bl. Com.* 350. 3 *Id.* 156.

**PRÆCIPERE.** Lat. To command.

2 *Powell on Devises*, 167. 3 *East*, 516.  
1 *Id.* 33. *Cas. temp. Hardwicke*, 113.

**PROPRIUS**, *Proprium*. Lat. Peculiar; private; proper; exclusive; one's own. *Proprius servus*; one's own slave. *Inst.* 2. 14, pr. *Proprius iudex*; a proper judge; one that properly had jurisdiction. Sometimes called *suis iudex*; one's own judge. *Bract.* fol. 401. *De proprio vivat*; should live on his own means. *Fleta*, lib. 2, c. 71, § 3.

**PROPTER**. Lat. On account of; for. *Propter affectum*; on account of bias or favorable inclination. *Co. Litt.* 156 b.

*Propter defectum*; on account of defect, deficiency, or incompetency. *Id. ibid.*

*Propter delictum*; on account of crime. *Id. ibid.*

*Propter honoris respectum*; on account of respect of honor or rank. *Id. ibid.* 3 *Bl. Com.* 362, 363.

*Propter defectum sanguinis*; on account of failure or deficiency of blood; as by dying without heirs. 2 *Bl. Com.* 245.

*Propter delictum tenentis*; on account of the crime of the tenant, as if his blood were attained. *Id. ibid.*

*Propter maiorem securitatem*; for greater security. *Yearb. M. 8 Hen. VI.* 16.

*Propter servitium aut adulterium*; on account of cruelty or adultery. 2 *Kent's Com.* 125.

**PROPUGNACULUM**. Lat. A bulwark; a defence. *Propugnaculum hereditatis*; the fortress or defence of an inheritance. *Bacon's Arg. Case of Impeachment of Waste*; *Works*, iv. 217.

**PROROGATION**. In English law. The continuance of parliament from one session to another. 1 *Bl. Com.* 186, 187.

**PROSECUTE**. [Lat. *prosequi*, q. v.] To follow up; to carry on an action or other judicial proceeding.

To proceed against a person judicially; to proceed against a person criminally. See *Prosecution*.

**PROSECUTIO**. Lat. In old English law. A following up; pursuit. *Fleta*, lib. 3, c. 2, § 2.

**PROSECUTION**. [Lat. *prosecutio*, from *prosequi*, to follow up.] In practice. The following up, or carrying on of a judicial proceeding.

In a stricter sense,—the carrying on of a judicial proceeding in behalf of a complaining party; as distinguished from defence. See *Prosecui*.

In the strictest sense,—the carrying on

of a criminal proceeding in behalf of the state or government, as by indictment or information. 4 *Bl. Com.* 301. The state or government, as carrying on such a proceeding.

**PROSECUTOR**. In criminal law. One who prosecutes another for a crime in the name of the government.

**PROSECUTRIX**. In criminal law. A female prosecutor.

**PROSEQUI**. Lat. In old English law. To follow after; to pursue or prosecute. An action is called by Bracton *jus prosequendi*, a right of prosecuting; and this, he observes, is to distinguish it from an exception, (*exceptio*, or plea,) by which we do not follow after another, but are rather followed by another, (*qua non persequimur aliam, sed magis ab alio prosequiti sumus*.) *Bract.* fol. 98 b. The word in the civil law definition (which Bracton obviously borrowed) is *persequendi*. See *Actio*. What induced this change does not appear, but the substituted word has always maintained its footing in English law, and the common terms *prosecute* and *prosecution*, (qq. v.) are clearly framed from it.

**PROSOCER**. Lat. In the civil law. A father-in-law's father. *Cule. Lex.*

**PROSOCRUS**. Lat. In the civil law. A wife's grandmother. *Dig.* 38. 10. 4. 6. *necnon, Hypocritae*. Gr. In the civil

law. Person; a person. *Dig.* 26. 3. 1.

**PROSPECTUS**. Lat. [from *prospicere*, to view; to look before.] In the civil law. Prospect; the view of external objects. *Dig.* 8. 2. 3. 15. It was distinguished from *lumen*. *Id. ibid.* 16.

**PROSTERNERE**. Lat. In old English law. To throw down; to break or pull down; to abate. *Prostratus*, thrown down. *Fleta*, lib. 4, c. 1, § 19.

**PRUTA**, *Πούτα*. Gr. The name given to the first part of the Digests or Pandects, comprising the first four books. *Dig. Proem. (De Conf. Dig.)* § 2. *Cod.* 1. 17. 2, § 2.

**PROTECTIO**. Lat. [from *protegere*, to cover or shelter.] Protection; defence; shelter from wrong; support of right.

*Protectio trahit subjectionem, et subjertio protectionem*. Protection draws with it subjection, and subjection protection. 7 *Co.* 5 a, *Calvin's case*. The protection of an individual by government is on condition of his submission to the laws; and such submission, on the other hand, entitles

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§ 14. **Office coupled with an Interest.**—An office to which a salary or fees are attached is often said to be an office “coupled with an interest.”<sup>1</sup>

§ 15. **Honorary Office.**—So an office to which no compensation attaches is frequently called a naked or honorary office, and is supposed to be accepted merely for the public good.<sup>2</sup>

§ 16. **Office of Trust**—An office whose duties and functions require the exercise of discretion, judgment, experience and skill is an office of trust, and it is not necessary that the officer should have the handling of public money or property, or the care and oversight of some pecuniary interest of the government.<sup>3</sup>

§ 17. **Place of Trust or Profit.**—The term place of trust or profit is frequently used to designate positions which approximate to, but are not strictly offices, and yet occupy the same general level in dignity and importance.<sup>4</sup>

§ 18. **Executive Officers.**—“Executive officers are those whose duties are mainly to cause the laws to be executed.”<sup>5</sup>

§ 19. **Legislative Officers.**—“Legislative officers are those whose duties relate mainly to the enactment of laws, such as members of Congress and of the several state Legislatures.”<sup>6</sup>

§ 20. **Judicial Officers.**—“Judicial officers are those whose duties are to decide controversies between individuals and accusations made in the name of the public against persons charged with a violation of the law.”<sup>7</sup>

test for determining a ‘lucrative office’ within the memory of the constitution. The lucrativeness of an office—its net profits—does not depend upon the amount of compensation affixed to it. The expenses incident to an office with a high salary may render it less lucrative, in this latter sense, than other offices having a much lower rate of compensation.”

<sup>1</sup> *State v. Stanley*, 66 N. C. 59, 8 Am. Rep. 488.

<sup>2</sup> *State v. Stanley*, 66 N. C. 59, 8 Am. Rep. 488.

<sup>3</sup> *In re Corliss*, 11 R. I. 638, 23 Am. Rep. 538. See *Doyle v. Raleigh*, 89 N. C. 133, 45 Am. Rep. 677.

<sup>4</sup> See *Doyle v. Aldermen of Raleigh*, 89 N. C. 133, 45 Am. Rep. 677.

<sup>5</sup> *Bouvier's Law Dictionary*, title “Officer.”

<sup>6</sup> *Bouvier's Law Dictionary*, title “Officer.”

<sup>7</sup> *Bouvier's Law Dictionary*, title “Officer.”

are public officers.<sup>1</sup> So a deputy marshal is an officer of the United States,<sup>2</sup> and deputy sheriffs are recognized by the statutes of most States as independent public officers.<sup>3</sup>

But where the deputy is appointed merely at the will and pleasure of his principal to serve some purpose of the latter, he is not a public officer but a mere servant or agent.<sup>4</sup> So a special deputy employed only in a particular case is not a public officer.<sup>5</sup>

§ 39. **Health Officers.**—The health officer of a port does not become an officer of the United States by virtue of the surrender to him, by the United States naval authorities, of an infected vessel.<sup>6</sup>

§ 40. **Judges and Justices.**—Judges of courts<sup>7</sup> and justices of the peace<sup>8</sup> are public officers.

§ 41. **Mail Carrier.**—A mail carrier is not a public officer but the private agent of the contractor for carrying the mail.<sup>9</sup>

§ 42. **Medical Superintendent.**—The medical superintendent of an asylum for the insane, holding a position whose powers and duties are provided for by statute is a public officer.<sup>10</sup>

§ 43. **Members of Municipal Boards and Bodies.**—The members of municipal boards, like a board of public works, are public officers.<sup>11</sup> So are members of a common council.<sup>12</sup>

<sup>1</sup> *Lane v. Cotton*, 1 Ld. Raym. 646; *Schroyer v. Lynch*, 8 Watts (Penn.) 453; *Wiggins v. Hathaway*, 6 Barb. (N. Y.) 632; *Dunlop v. Monroe*, 7 Cranch (U. S.) 242; *Bolan v. Williamson*, 1 Brev. (S. C.) 181; *Maxwell v. McIlvoy*, 2 Bibb. (Ky.) 211; See *Conwell v. Voorhees*, 13 Ohio 523, 42 Am. Dec. 206.

<sup>2</sup> *United States v. Martin*, 17 Fed. Rep. 150; *United States v. Tinkler*, 3 Blatch. (U. S. C. C.) 450.

<sup>3</sup> *Eastman v. Curtis*, 4 Vt. 616; *Dayton v. Lynes*, 30 Conn. 351; *Towns v. Harris*, 13 Tex. 507.

<sup>4</sup> *Kavanaugh v. State*, 41 Ala. 399; *Sawyer v. Corse*, 17 Gratt. (Va.) 243, 94 Am. Dec. 445. Deputy clerkship

is not an office. *Jeffries v. Harrington*, — Colo. — 17 Pac. Rep. 505.

<sup>5</sup> *Kavanaugh v. State*, 41 Ala. 399.

<sup>6</sup> *Delano v. Goodwin*, 48 N. H. 203. But see *Cox v. United States*, 14 Ct. of Cl. 512.

<sup>7</sup> *Commonwealth v. Gamble*, 62 Penn. St. 343. 1 Am. Rep. 422.

<sup>8</sup> *People v. Ransom*, 58 Cal. 558.

<sup>9</sup> *Sawyer v. Corse*, 17 Gratt. (Va.) 230, 94 Am. Dec. 445.

<sup>10</sup> *State v. Wilson*, 29 Ohio St. 247. See also *Dullam v. Willson*, 53 Mich. 392, 51 Am. Rep. 128.

<sup>11</sup> *People v. Hurlburt*, 24 Mich. 59, 9 Am. Rep. 103.

<sup>12</sup> *State v. Anderson*, — Ohio St. —, 12 N. E. Rep. 656.

liquidation of insolvent banks;<sup>1</sup> nor are commissioners appointed to determine upon the purchase by the State of interesting relics.<sup>2</sup> The office of commissioner of loans of a county is a county office;<sup>3</sup> but commissioners appointed by the State to sign city treasury warrants which were to circulate as money, were held to be State and not city officers;<sup>4</sup> and commissioners appointed by the legislature to lay city pavements are not officers of the city;<sup>5</sup> nor are special commissioners appointed by the legislature to act for counties in aiding railroads, county officers.<sup>6</sup> The office of county commissioner is a "lucrative" one;<sup>7</sup> and the office of a commissioner of the United States Centennial Commission is an "office of trust."<sup>8</sup>

§ 36. **Contractors.**—As has been seen,<sup>9</sup> persons whose powers and duties are conferred and created by contract, are not public officers. A contractor for carrying the mail is, therefore, not a public officer.<sup>10</sup>

§ 37. **Court Crier.**—A court crier appointed by the court under statutory authority, his salary being payable by the board of supervisors, is a public officer.<sup>11</sup>

§ 38. **Deputies.**—Whether deputies appointed by public officers are to be regarded as public officers themselves, depends upon the circumstances and method of their appointment. Where such appointment is provided for by law, and *a fortiori* where it is required by law, which fixes the powers and duties of such deputies, and where such deputies are required to take the oath of office and to give bonds for the performance of their duties, the deputies are usually regarded as public officers. Thus deputy postmasters appointed and qualified according to law,

<sup>1</sup> Conrey v. Copland, 4 La. Ann. 807.

<sup>2</sup> People v. Nichols, 52 N. Y. 478, 11 Am. Rep. 734.

<sup>3</sup> Matter of Carpenter, 7 Barb. (N. Y.) 30.

<sup>4</sup> Garnier v. St. Louis, 37 Mo. 554.

<sup>5</sup> Groaton v. Griffin, 4 Abb. Pr. N. S. (N. Y.) 310.

<sup>6</sup> Sheboygan County v. Parker, 3 Wall. (U. S.) 93. See also, Walker v.

Cincinnati, 21 Ohio St. 14, 8 Am. Rep. 24.

<sup>7</sup> Dailey v. State, 8 Blackf. (Ind.) 329.

<sup>8</sup> *In re* Corliss, 11 R. I. 638, 23 Am. Rep. 538.

<sup>9</sup> See *ante*, § 5.

<sup>10</sup> Sawyer v. Corse, 17 Gratt. (Va.) 220, 94 Am. Dec. 445.

<sup>11</sup> Ricketts v. New York, 67 How. Pr. (N. Y.) 320.



A notary public cannot act by deputy, nor can protest of negotiable paper, except where authorized by statute or sanctioned by usage,<sup>1</sup> be made by the notary's deputy, clerk<sup>2</sup> or partner<sup>3</sup> though the latter be himself a notary.

§ 570. **Authority of Deputies.**—Where a public officer is authorized to appoint a deputy, the authority of that deputy, unless otherwise limited, is commensurate with that of the officer himself, and, in the absence of any showing to the contrary, it will be so presumed.<sup>4</sup>

Such a deputy is himself a public officer, known and recognized as such by law. Any act, therefore, which the officer himself might do, his general deputy may do also.<sup>5</sup>

<sup>2</sup> Doug. (Mich.) 1. See also to like effect the exhaustive discussion in *Meyer v. Bishop*, 27 N. J. Eq. 141, affirmed in *Meyer v. Patterson*, 28 N. J. Eq. 239.

<sup>1</sup> Usage may sanction protest by clerk or deputy: *Munroe v. Woodruff*, 17 Md. 159; *Miltenberger v. Spaulding*, 33 Mo. 421; *Commercial Bank v. Varnum*, 49 N. Y. 269; *McClane v. Fitch*, 4 B. Mon. (Ky.) 599; *Carter v. Union Bank*, 7 Humph. (Tenn.) 518, 46 Am. Dec. 89; *Locke v. Huling*, 24 Tex. 311; *Chenoweth v. Chamberlain*, 6 B. Mon. (Ky.) 60, 43 Am. Dec. 145.

<sup>2</sup> In the absence of such an usage, the notary must act in person and not by his deputy or clerk: *Ellis v. Commercial Bank*, 7 How. (Miss.) 294, 40 Am. Dec. 63; *Carmichel v. Bank*, 4 How. (Miss.) 567, 35 Am. Dec. 408; *Donegan v. Wood*, 49 Ala. 242, 20 Am. Rep. 275; *Onondaga County Bank v. Bates*, 3 Hill (N. Y.) 59; *Sacridier v. Brown*, 3 McLean (U. S. C. C.) 481; *Ocean Nat. Bank v. Williams*, 102 Mass. 143; *Cribbs v. Adams*, 13 Gray (Mass.) 597; *Commercial Bank v. Barksdale*, 36 Mo. 565.

<sup>3</sup> *Commercial Bank v. Barksdale*, 36 Mo. 565.

<sup>4</sup> "When the law gives him power to appoint a deputy, such deputy, when created, may do any act that the principal might do. He can not have less power than the principal." *Abrams v. Ervin*, 9 Iowa 87; *Parker v. Kett*, 1 Ld. Raym. 658; *Ellison v. Stevenson*, 6 T. B. Mon. (Ky.) 275; *Triplett v. Gill*, 7 J. J. Marsh. (Ky.) 444; *Commonwealth v. Arnold*, 3 Littell (Ky.) 316; *Hope v. Sawyer*, 14 Ill. 254.

<sup>5</sup> *Abrams v. Ervin*, 9 Iowa 87. Deputy county clerk may issue summons in his own name: *Calender v. Olcott*, 1 Mich. 344. Deputy sheriff may make return in his own name: *Wheeler v. Wilkins*, 19 Mich. 78. Deputy auditor general may sign deed in his own name: *Westbrook v. Miller*, 56 Mich. 148; *Drennan v. Herzog*, 56 Mich. 467; *Fells v. Barbour*, 58 Mich. 49. Deputy sheriff may conduct drawing to settle a tie vote: *Evans v. Sutherland*, 41 Mich. 177, or make sale on mortgage foreclosure. *Heinmiller v. Hatheway*, 60 Mich. 391; *Hoffman v. Harrington*, 33 Mich. 392. Deputy clerk may administer oaths: *Torrans v. Hicks*, 32 Mich. 307; *State v. Barrett*, — Minn. —, 41 N. W. Rep. 459. Court will take judicial notice

Where, however, the deputy is a special one, authorized to perform a specific act, his authority will be limited to the doing of that act only, and his powers cannot exceed those expressly conferred upon him and such as are necessarily implied.

A special deputy, it is said, is in no sense a public officer, but is merely the private agent or servant of the principal, and neither his appointment nor his relation to his principal can be presumed from his acts.<sup>1</sup>

## II.

### OF THE EXECUTION OF A JOINT AUTHORITY.

§ 571. **Private Trust or Agency must be executed by all.**—Where authority is conferred upon two or more agents to represent their principal in the transaction of business of a private nature, the rule is well settled that the agency will be presumed to be joint, and that it can only be performed by them all jointly when no intent appears that it may be otherwise executed.\*

This rule is well illustrated in the case of arbitrators chosen to settle a private controversy, all of whom must concur in the award unless the parties have otherwise stipulated.<sup>2</sup> Numerous other cases are also given in the notes.

of deputy county clerks: *State v. Barrett*, *supra*. Deputy county clerk may take acknowledgments: *Touchard v. Crow*, 20 Cal. 150, 81 Am. Dec. 104; *Rose v. Newman*, 26 Tex. 131, 80 Am. Dec. 636, overruling on this point *Miller v. Thatcher*, 9 Tex. 482, 60 Am. Dec. 172.

Deputy auditor of state may make sale of lands: *Ban-emer v. Mace*, 18 Ind. 27, 81 Am. Dec. 344.

<sup>1</sup> *Meyer v. Bishop*, 27 N. J. Eq. 141, affirmed in *Meyer v. Patterson*, 28 N. J. Eq. 239.

<sup>2</sup> See this subject fully discussed in *Mechem on Agency*, § 76-78. See *Cedar Rapids, &c. R. R. Co. v. Stewart*, 25 Iowa 115; *Kupfer v. Augusta*, 12 Mass. 185; *Caldwell v. Harrison*, 11 Ala. 755; *Soens v. Racine*, 10 Wis.

271; *White v. Davidson*, 8 Md. 169 63 Am. Dec. 699; *Rogers v. Cruger*, 7 Johns. (N. Y.) 557; *Damon v. Granby*, 2 Pick. (Mass.) 345; *Sutton v. Cole*, 3 Pick. 232; *Woolsey v. Tompkins*, 23 Wend. (N. Y.) 324; *Hartford F. Ins. Co. v. Wilcox*, 57 Ill. 180; *Scott v. Detroit, &c. Society*, 1 Doug. (Mich.) 119; *Low v. Perkins*, 10 Vt. 532, 33 Am. Dec. 217; *Towne v. Jaquith*, 6 Mass. 46, 4 Am. Dec. 84; *Hcard v. March*, 12 Cush. (Mass.) 580; *Hawley v. Keeler*, 53 N. Y. 114; *Johnston v. Bingham*, 9 W. & S. (Penn.) 56.

<sup>3</sup> *Moore v. Ewing*, *Coxe* (N. J.) 144, 1 Am. Dec. 195; *Blin v. Hay*, 2 Tyler (Vt.) 304, 4 Am. Dec. 738; *Green v. Miller*, 6 Johns. (N. Y.) 39, 5 Am. Dec. 184; *Patterson v. Leavitt*, 4 Conn. 50, 10 Am. Dec. 98; *Wilder v. Ran-*

BTAW

THE PRINCIPLES  
OF THE  
ADMINISTRATIVE LAW  
GOVERNING THE RELATIONS OF  
PUBLIC OFFICERS

BY

BRUCE WYMAN  
OF THE FACULTY OF LAW IN HARVARD UNIVERSITY

24930/27

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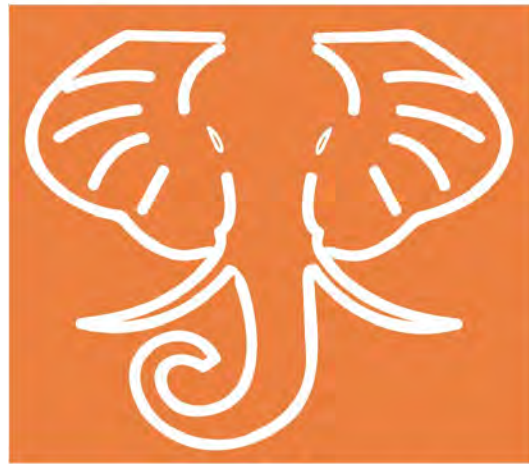
**The principles of the administrative law governing the relations of public officers, by Bruce Wyman.**

Wyman, Bruce, 1876-1926.

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## § 44. Officer.

A public office, then, is the right, authority and duty conferred by law by which for a given period, either fixed by law or through the pleasure of the creating power of government, an individual is invested with some portion of the sovereign functions of the government to be exercised by him for the benefit of the public. The warrant to exercise powers is conferred, not by a contract, but by the law. It finds its source and limitation in some act of expression of governmental power. Oath, salary, operation, scope of duties, are signs of the official status; but no one is essential. The essential thing is that in some way or other the officer is identified with the government.

The position of the officer is well set forth in *Byers v. United States*, 22 Ct. of Cl. 59 (1887). The Consul-General at Rome was paid at the rate of \$2,000 a year; he claimed that the salary was \$3,000; and this suit is brought for the difference. For the year during which he held office the Diplomatic Appropriation Act appropriated \$2,000, of which the Secretary of State notified him when his appointment was made. His predecessor in office had, indeed, been paid at the rate of \$3,000 per annum by disposition of the executive, but in the

*v. Duvall*, 54 Md. 350; *Brown v. Russell*, 166 Mass. 14; *People v. Langdon*, 40 Mich. 673; *County Com'rs v. Jones*, 18 Minn. 199; *State v. Bus*, 135 Mo. 325; *Shelby v. Alcorn*, 36 Miss. 273; *State v. Moores*, 52 Neb. 770; *State v. Broome*, 61 N. J. L. 115; *Whitehouse v. Langdon*, 10 N. H. 331; *People v. Vilas*, 36 N. Y. 459; *Eliason v. Coleman*, 86 N. C. 237; *State v. Jennings*, 57 Oh. St. 415; *Hamlin v. Kassafer*, 15 Ore. 456; *Commonwealth v. Evans*, 74 Pa. St. 124; *Gray v. Granger*, 17 R. I. 201; *Alexander v. McKenzie*, 2 S. C. 81; *Beard v. Decatur*, 64 Tex. 11; *McCornick v. Thatcher*, 8 Utah, 294; *Leigh's Case*, 1 Munf. 468; *Matter of Mosness*, 39 Wis. 509.

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present case it was plain that the present appointment was upon the \$2,000 basis.

The case is of interest for the analysis of the situation. RICHARDSON, the Chief Justice, said in one part: It has been claimed by the executive that by the constitution to the executive alone is granted the power to appoint diplomatic agents of any rank or title at any time and at any place; and upon the exercise of this power Congress can place no extension or limitation by undertaking either to create, abolish or change the character, title or rank of officers. On the other hand, to the legislative branch of the government alone is granted the power to provide for the compensation of those as well as all other public servants. During part of the terms of the early presidents, Congress annually appropriated a sum in gross for the expenses of intercourse with foreign nations, leaving it to the executive to fix the salaries of its several appointees. In some cases appropriations have been made for particular officers, not to exceed the sums named, still leaving the executive all discretion to determine the amount to be paid. When Congress, by inadvertence or otherwise, has used language in legislative enactments which appear to encroach upon the constitutional prerogative claimed by the executive in the establishment of diplomatic agents abroad, it has been met with dignified expressions of exception.

This distinction between an officer and an agent is seen again in *Ogden v. Raymond*, 22 Conn. 379 (1853). This was an action of assumpsit to recover for services for teaching school by the plaintiff. The defense of the defendant was that the services in question were

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rendered to a school district in consequence of a contract made by the defendant as trustee of the school district. Is a school trustee an officer or an agent then? That is the issue.

ELLSWORTH held on that point in substance: The defendant was a public agent and is therefore to be presumed to have acted in a public capacity. We apprehend that the defendant, deriving his power from a general law in an election by the people, is a public agent as much as an officer of the state, county, town or district is. Wherein is the difference? All derive their power from the same source. All such are officers, not agents. The determining thing is that the person is constituted a representative of the government.<sup>33</sup>

#### § 45. Employee.

An elementary case upon this distinction between office and employment is *Daily v. Freeholders of Essex*, 58 N. J. L. 319 (1895). An act to reorganize the boards of chosen freeholders, etc., passed in 1894, provided in one clause that the terms of office of all officers now holding office shall expire and all such offices shall become vacant. Did that law apply to the plain-

<sup>33</sup> OFFICER.—United States v. Hartwell, 6 Wall. 393; *Comer v. Bankhead*, 70 Ala. 493; *Humphry v. Sadler*, 40 Ark. 100; *People v. Woodbury*, 14 Cal. 43; *Castle v. Lawlor*, 47 Conn. 340; *Kennedy v. School Dist.*, 48 Ia. 189; *State v. Cobb*, 2 Kan. 33; *Snapp v. Commonwealth*, 82 Ky. 173; *McManus v. Weston*, 164 Mass. 263; *People v. Langdon*, 40 Mich. 675; *State v. May*, 106 Mo. 488; *People v. Pinckney*, 32 N. Y. 377; *Kenny v. Hudspeth*, 30 Vroom. 320; *Doyle v. Alderman of Raleigh*, 89 N. C. 133; *State v. Jennings*, 57 Oh. St. 415; *In re Newport Charter*, 14 R. I. 655; *Alexander v. McKenzie*, 2 S. C. 81; *United States v. Hatch*, 1 Pin. 182.

**CLARK COUNTY  
MERIT PERSONNEL SYSTEM**

**PERSONNEL POLICIES**

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**PERSONNEL POLICY I  
MERIT PERSONNEL SYSTEM  
POLICY OBJECTIVES & PROGRAMS**

EFFECTIVE: 02/17/04

**I. POLICY OBJECTIVES**

A. The objectives of the Personnel Policies manual are to:

1. Provide County management and employees with a Merit Personnel System (MPS) containing uniform personnel policies that support and are consistent with federal and state laws and principles and practices established by professional human resource organizations;
2. Support opportunities for Countywide and departmental quality improvement initiatives; and
3. Recruit and retain qualified employees.

B. The County Manager or designee, through the Office of Human Resources, will direct and promote personnel policies as revised and adopted by the Clark County Board of Commissioners. Department Heads will enforce these policies in their respective departments.

C. These policies will apply to all departments and positions of employment in the competitive and non-competitive services of Clark County. The competitive and non-competitive services are defined in County Code 2.40.030.

**II. RESPONSIBILITIES**

A. The County Manager or designee will administer the Merit Personnel System provided in Clark County Code Chapter 2.40, in the policies and procedures under the authority of the Board, and by other applicable law.

B. A Department Head may request the County Manager to review any decision of the Office of Human Resources which involves the interpretation and/or administration of Personnel Policies or Personnel Procedures.

**III. PROGRAMS**

A. Position Classification & Compensation

1. The Position Classification Program, administered by the Office of Human Resources, will:
  - a. Develop specifications describing all positions in the County service, which will include:

- (1) The official title of the classification to be used by the Office of Human Resources in all official records, payrolls, and communications. The title will indicate the general nature of the work performed by employees in that classification.
    - (2) A general definition of the type of work performed by employees in the classification, the level of supervision provided, and extent of supervision exercised over other employees, when applicable.
    - (3) Specific examples of work performed by employees in the classification as a whole. Other duties not included in the examples may be assigned, provided such duties and/or special projects and programs are similar in nature to those in the specifications.
    - (4) Minimum education, training and experience qualifications an applicant must possess to be considered for the classification. These qualifications will serve as a guide for qualifying or disqualifying applicants.
  - b. Perform job evaluations and make recommendations regarding the classification and/or reclassification of new and existing positions in accordance with Personnel Procedure No. 02.
  - c. Conduct job evaluations and determine if salary schedule adjustments or reclassifications are warranted.
2. The Position Compensation Program, administered by the Office of Human Resources, will be adjusted when necessary to comply with provisions of applicable collective bargaining agreements and external market conditions. The Position Compensation Program will:
- a. Maintain designated salary schedules for all of the classifications in the County service.
  - b. Adjust salary schedules as necessary to comply with provisions of applicable collective bargaining agreements and external market conditions. An employee's salary will be adjusted as follows:
    - (1) If the salary of an employee is lower than the minimum of the designated schedule for the employee's position classification, it will be increased to at least the minimum of that schedule; or
    - (2) If the salary of an employee is higher than the maximum of the designated schedule for the employee's position classification, as long as the employee retains the same classification the salary will not increase until the

maximum of the schedule exceeds the salary of the employee.

B. Recruitment and Selection

The Office of Human Resources will administer a Recruitment and Selection Program for the recruitment of applicants for employment with the County in accordance with all applicable federal and state laws and regulations, and affirmative action programs, as outlined in Policy No. III.

C. Employee and Labor Relations

The Office of Human Resources will administer an Employee and Labor Relations Program to strengthen employer–employee relations between Clark County and its employees, to enhance the cooperative relationship, to promote communications between the County and its employees, and to achieve mutual understanding by providing policy on matters of mutual interest that affect employer–employee relations.

D. Staff Development and Training

1. The County will administer a Development and Training Program, including:
  - a. A mandatory new employee orientation program, which all employees must attend within 90 days of their date of hire. This program will include an overview of health benefit plans and supplemental life insurance, the affirmative action plan, policies and state and federal laws applicable to harassment and discrimination, and any other subject matter deemed appropriate and/or necessary to reflect ongoing organizational development.
  - b. A variety of general employee training courses designed to develop the specific skills necessary for the efficient and effective function of all County employees.
  - c. Instruction and/or training deemed necessary to implement Countywide initiatives and programs.
2. The Office of Human Resources will administer a tuition reimbursement program to assist County employees in obtaining job-related educational opportunities at accredited institutions or approved adult education programs. The program is not intended to finance degree programs. Tuition will be reimbursed to employees pursuant to Personnel Procedure No. 09 and the following policies:

- a. The County may reimburse an employee for tuition, new student application fee, and lab fee only. If the employee receives a grant, aid, scholarship, etc. to assist in the payment of tuition, the County will be responsible for reimbursement of only the portion paid by the employee.
- b. Reimbursement of costs for courses taken at any institution will be limited to the cost of comparable courses offered at the University of Nevada, Las Vegas (UNLV) or at Community College of Southern Nevada (CCSN), unless otherwise approved by the County Manager.
- c. If an employee separates from the County for any reason during the 12-month period following completion of a course for which the County has reimbursed the employee's tuition, the amount of the tuition reimbursement will be withheld from the employee's final payroll check. Employees will sign an agreement authorizing such withholding before receiving any reimbursement.

E. Employee Assistance and Wellness

- 1. The Employee Assistance Program (EAP) will serve all County employees through consultation, counseling, and training.
  - a. The EAP staff will be trained and will perform in the capacity of substance abuse professionals as defined and regulated by the U.S. Department of Transportation, Office of Drug and Alcohol Policy and Compliance.
  - b. The EAP will provide confidential counseling services on a voluntary basis through the EAP or by referral to an appropriate community resource to employees who are experiencing problems that can affect job performance. Employees will be responsible for any expenses incurred from services received from outside agencies.
- 2. The Wellness Program will provide educational information and programming on work/life/health management.

F. Employee Records

The Records Division of the Finance Department will ensure the proper maintenance, retention, and accessibility of employee records, and records compliance with all federal, state or local requirements and collective bargaining agreements. The Deputy Director of the Office of Human Resources will serve as the "custodian of records."



1. Records Maintenance

- a. Work history information will be maintained on each employee, including position titles, rates of pay, changes in employment status, benefit level and eligibility, employee identification, and other pertinent data.
- b. Employment eligibility verification forms (Form I-9) will be maintained in a separate file and will not be considered part of the employee file.
- c. Medical records, Family Medical Leave Act and catastrophic leave paperwork will be maintained in a separate file and will not be considered part of the employee file. "Protected Health Information" will be treated confidentially in accordance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the County's HIPAA Privacy Policies (available from the Clark County Audit Department). "Protected Health Information" is defined in the County's HIPAA Privacy Policies.
- d. Certificates of achievement, letters of commendation, and training notices will not be maintained in the employee file.

2. Records Retention

- a. Employee records will be retained indefinitely for employees in an active status.
- b. Employee hard-copy records will be retained for two calendar years following the employee's separation from employment. After two years from the separation date, employee records will be stored on microfilm, compact disk or other paperless form.

3. Records Access

- a. Access to employee records will be provided in accordance with the following and will be restricted to:
  - (1) Employees examining their own files;
  - (2) Persons authorized in writing by the employee whose file is to be examined;
  - (3) Direct line management of the employee's current department;
  - (4) Prospective supervisors of employees being considered for promotion or transfer;
  - (5) Employees as authorized by the County Manager; and
  - (6) Others as authorized by law.

- b. Proper identification (picture I.D.) will be required of a current employee wishing to view his/her personnel file.
- c. Authorization by an employee for an individual (other than the employee) to view his/her personnel file must be in writing naming the party to be given access and must include the signature and social security number of the employee whose file is to be viewed. Exceptions to this requirement include Subsections a(3), (4), (5), and (6) of this Subsection (above).
- d. Removal of and/or copies made of documents in a personnel file will be restricted to authorized staff of the Office of Human Resources and Records Division.
- e. Unless authorized to release information pursuant to this Section, release of employee information to outside agencies and individuals will be restricted to public information only and as defined by Nevada Revised Statute. Job title, current salary, date of hire, salary history, promotional history, date of separation, employment status, department, and duties will be the only information provided. Personal information, such as an employee's home address, home telephone number, family status, etc., will not be released in whole or in part without prior written approval from the employee, authorization from an approved collective bargaining agreement, or the issuance of a subpoena or court order compelling the release of this information. Employee performance related information, medical information or disciplinary information will not be released.

#### 4. Employment Verifications

- a. Requests for employment verifications of current or prior County employees will be forwarded to the Office of Human Resources for processing.
- b. Release of employee records will be restricted to the information outlined in the Records Access Section 3.e above.
- c. Some employees who, by virtue of their ongoing inclusion or reference in various forms of public media, are considered public figures may be afforded little protection under the law with respect to withholding information that otherwise may have been considered protected.
- d. Employees who require verification of their County employment on County letterhead may obtain such verification from their departmental payroll clerk.

5. Records Copying

- a. An employee may receive one copy of his/her personnel file documents free of charge at the Office of Human Resources by scheduling an appointment and providing proof of identification.
- b. If an employee requests additional copies of his/her personnel file documents within one year after receiving the first copy, only copies of documents placed in the file after the last request date will be provided free of charge.
- c. Release of personnel file documents to a person other than the employee will require proper authorization, such as a court-ordered subpoena or an employee-authorized release of information. A fee for the copies and any mailing costs will be charged.
- d. Authorized copies of files requested by an employee or other persons will be held for pickup at the Office of Human Resources or mailed via certified mail, return receipt requested.

6. HRMS Action Form Processing

Changes affecting an employee's employment status should be submitted on applicable Action Forms prior to the ending of the pay period in which the change is to be effective.

G. Employee Incentive And Rewards Programs

Under the direction of the County Manager and with the approval of the Board of County Commissioners, the Department of Administrative Services will implement and coordinate employee incentive, employee suggestion, and management performance bonus programs.

**PERSONNEL POLICY II**  
**POSITION TYPES**

EFFECTIVE: 02/17/04

REVISED: 07/20/04

**I. EXEMPT STATUS (NRS 245.216)**

- A. A Department Head may designate a specific number of permanent employees as exempt in his/her department in the non-competitive service, in accordance with NRS 245.216.
- B. An employee being considered for exempt status must meet the minimum requirements of the position into which he/she will be placed, unless otherwise approved by the County Manager.
- C. An employee removed from exempt status and placed in permanent status must compete or have competed for a position in a Countywide or open recruitment under the Merit Personnel System in effect at the time of the status change. Exempt status employees will not be permitted to apply for a position of the same classification in the competitive service within the employee's department.
- D. An exempt employee may be permitted to return to his/her previously held position in the competitive service, or any equal or lower position for which the employee meets the minimum requirements, provided the position is available, subject to approval of the County Manager.
- E. An exempt employee who changes classifications will not lose his/her exempt status unless specifically removed from that status under the provisions of this Section.

**II. PERMANENT POSITIONS**

A permanent position is an authorized, budgeted position in the competitive service in which the employee normally works a regular schedule of 80 hours in a biweekly pay period and receives the benefits as approved by the Board of County Commissioners.

**III. PERMANENT-INTERMITTENT POSITIONS**

- A. A permanent-intermittent position is an authorized, budgeted position in the competitive service in which the employee works a regular schedule of more than 20 hours and less than 40 hours in a workweek. Schedules should not be adjusted to avoid using sick or vacation leave.
- B. Compensation and Benefits:
  - 1. Permanent-intermittent employees will be paid at their approved hourly rate for actual hours worked.

2. Sick leave and vacation leave benefits will accrue on a prorated basis based on hours worked in a pay period. Eligibility for increased rates of accrual for sick leave and vacation leave, as well as longevity benefits, will be based on total hours of creditable service.
  3. In compliance with the Public Employees Retirement System, permanent-intermittent employees will receive one year of retirement credit for every 2,080 hours worked.
  4. The employee's contribution to group health insurance costs will be assessed based on hours worked as a percentage of an 80-hour pay period.
- C. Employees covered under the Management Compensation Plan will not be eligible to hold Permanent-Intermittent positions.

#### IV. LIMITED PERMANENT POSITIONS (TERM/GRANT)

- A. A limited permanent position is a position authorized in the competitive service and announced with a defined length of employment or funding source, for a special project or duties of a limited duration, including grant positions that are more than 50 percent funded by grant monies which are received from sources other than the County's general fund or enterprise funds. Long-term fund contributions or alternate funding sources mandated by law or interlocal agreement for the operation and administration of programs are not considered grant funds.
- B. Employees in limited permanent positions normally work a regular schedule of 80 hours in a biweekly pay period and receive the benefits as approved by the Board of County Commissioners.
- C. An employee hired into a limited permanent position will be required to sign a term of employment letter specifying conditions of employment and will be terminated without right of appeal when the position is no longer needed or funded.

#### V. JOB SHARE POSITIONS

- A. At the Department Head's request, a job share position will be considered for approval by the Office of Human Resources. A Job share position may be authorized for two employees performing in permanent positions of the same classification who propose to share one specific job. Permanent employees may request job sharing status from their Department Head; however, the Department Head will retain authority to approve or reject a job sharing request based upon the operational requirements of his/her department. As necessary, a job share position may require recruitment in the competitive service for participants.

- B. Job share employees will work the hours indicated and approved by their Department Head. Time worked will be equal for both job share employees (50 percent time split) and the combined hours worked should not exceed 42 hours in any week, but must be more than 20 hours per week for each job share employee. Schedules should not be adjusted to avoid using sick or vacation leave.
- C. Compensation and benefits:
  - 1. Job share employees will be paid at their hourly rate for actual hours worked.
  - 2. Sick leave and vacation leave benefits will accrue on a prorated basis based on hours worked in a pay period. Eligibility for increased rates of accrual for sick leave and vacation leave, as well as longevity benefits, will be based on total hours of creditable service.
  - 3. In compliance with the Public Employees Retirement System, job share employees will receive one year of retirement credit for every 2,080 hours worked.
  - 4. Insurance costs will be charged on a percentage basis in the same manner as for a permanent-intermittent employee.
- D. Reversibility
  - 1. Voluntary: Job share employees may voluntarily request to return to non-job share, full-time employment as such opportunities become available within the department or elsewhere in the County. A return to full-time permanent employment is subject to approval of the Department Head. Job share employees wishing to return to full-time employment will be given preference for full-time job opportunities in like classifications within the department if qualified to perform the duties required and if their job performance fully meets expectations.
  - 2. Involuntary: If the County returns the job being shared to full-time permanent status, the most qualified job share employee whose performance fully meets expectations, as determined by the Department Head, will have first preference to fill the shared job being returned to full-time status.
- E. The procedures to request and utilize job share status are outlined in the County's Personnel Procedure No. 01.
- F. Employees covered under the Management Compensation Plan will not be eligible to hold Job Share positions.



VI. PART-TIME POSITIONS

- A. Employees in part-time hourly positions are hired in the non-competitive service, are paid an hourly rate for actual hours worked in a pay period and are not entitled to employee benefits other than pay for time worked.
- B. Part-time employees will work no more than 1,039 hours in any fiscal year. This hour limit applies to combined hours worked in multiple positions, including temporary.
- C. Part-time hourly employees are eligible for salary increases at the request of the Department Head based on a salary increase plan approved by the County Manager or an Assistant County Manager.
- D. No person will achieve permanent status as a result of an appointment to a part-time hourly position.

VII. TEMPORARY POSITIONS

- A. Temporary positions are budgeted positions in the non-competitive service and are not to exceed six months.
- B. Temporary employees are not entitled to benefits other than pay for time worked. Any changes to salary must be approved by the County Manager.
- C. No person will achieve permanent status as a result of an appointment to a temporary position.

VIII. 700-HOUR APPOINTMENTS

700-hour position appointments are temporary, limited appointments of certified persons with disabilities as defined by NRS 245.185.

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**PERSONNEL POLICY III**  
**EMPLOYEE RECRUITMENT AND SELECTION**

EFFECTIVE: 02/17/04

**I. COMPETITIVE & NON-COMPETITIVE APPOINTMENTS**

**A. Non-competitive Appointments:**

1. An appointing authority may hire temporary, part-time hourly, and exempt employees without going through the competitive process.
2. In an emergency situation, if a certification procedure could delay or impair efficiency of County government operations, or could cause stoppage of public business, or in order to meet any emergency, the appointing authority, with prior approval from the County Manager, may make emergency appointments for the duration of the emergency and for a time thereafter sufficient to permit an orderly return to the normal conduct of public business. When an emergency appointment is made, the appointing authority will immediately notify the Office of Human Resources, naming the appointee, date of appointment, classification into which employee was hired, duties of the position, and the nature of the emergency. No person will achieve permanent status or accrue benefits as a result of an emergency appointment.
3. Any employee assumed into County employment from another public entity by virtue of an interlocal agreement with the other public entity will be afforded the rights and benefits specified in that agreement.

**B. Competitive Appointments: Permanent, Permanent-Intermittent, Limited Permanent and Job-Share positions will be filled through the competitive process in accordance with the following applicable provisions of this Policy.**

**II. RECRUITMENT**

- A. The Office of Human Resources will determine the methods to be used in recruitment and may postpone, cancel, extend, or otherwise modify a recruitment effort as circumstances indicate.**
- B. The Office of Human Resources may limit recruitments for open competitive examinations as specified in Section II.C.3 of this Policy III. The Office of Human Resources, with recommendations by the hiring department head, will determine the type of recruitment to be utilized:**
1. Open promotional recruitments will be posted for a minimum of 14 calendar days. Any person who meets the minimum qualifications for the job classification may compete by applying during the 14-day posting period.

2. County promotional recruitments will be posted for a minimum of 14 calendar days. Only employees who occupy a position in the competitive service and have successfully completed their probationary period prior to the final date to file an application are eligible to compete by applying during the 14-day posting period.
  3. Departmental promotional recruitments will be posted for a minimum of seven calendar days. Only employees of the specific department in which a promotional opportunity exists who occupy a budgeted position in the competitive service and have successfully completed their probationary period prior to the final date to file an application are eligible to compete by applying during the seven-day posting period.
- C. Competitive recruitments will be in one of the following categories:
1. Regular recruitment: The job announcement for a regular recruitment will specify a minimum filing period of 14 calendar days and will clearly state an opening date and a final filing deadline date (closing date).
  2. Continuous recruitment: In instances where the need for employees in a specific class is frequent or continuing, or there is a labor market scarcity, the Office of Human Resources may recruit with no closing date and for sufficient duration to ensure the County's needs are met. When a continuous recruitment is to be closed, at least three calendar days' notice will be given prior to the final filing date. An applicant in a continuous recruitment may re-apply 90 calendar days following the date of the previous examination/application.
  3. Limited recruitment: When it is anticipated that the applicant group will greatly exceed the anticipated vacancies, the Office of Human Resources may restrict recruitment to limit the number of applicants by:
    - a. establishing a shorter filing period; and/or
    - b. specifying a maximum number of applications that will be accepted and closing the recruitment when that number is reached; or
    - c. using other means which are appropriate to the circumstances.
- D. Job announcements for competitive positions will be posted in the Office of Human Resources and all County departments, or only in the hiring department when it is a departmental promotion, for the duration of the filing period. Announcements will be given such other publicity as deemed warranted to attract a sufficient number of qualified candidates to compete. Copies of all announcements will be given to the applicable bargaining unit.
- E. Job announcements will describe the duties of the position, minimum qualifications, salary schedule, closing date for accepting applications (when applicable), testing or other selection procedures, and other relevant information.

- F. The Office of Human Resources will establish uniform employment guidelines to standardize the recruitment and selection process and assist departments in the design and administration of examinations and other selection procedures.

### III. APPLICATION

- A. An official application form must be filled out completely and signed by the applicant, whether an applicant is seeking employment in the competitive service or non-competitive service. Applications become the property of the County and will not be returned. A separate and complete application is required for each examination, unless otherwise specified in the job announcement.
- B. Applications must be received by the Office of Human Resources no later than the office closing time on the published closing date. The terms and conditions under which applications will be accepted for limited recruitments will be specified on the job announcement. The Office of Human Resources will not accept late applications.
- C. All applicants, including applicants in the non-competitive service, must meet the minimum requirements stated in the classification specification to be eligible for the position. Applicants may be required to submit evidence of education, training, licensure, or required special qualifications.
- D. Veterans Preference: In accordance with state law, preference in employment will be given to applicants who have been honorably discharged from the military service of the United States and who are citizens of the State of Nevada, if the qualifications are equal. Veterans will be given preference points in the following manner:
  - 1. Honorably discharged veterans will receive five additional points added to their final total examination score.
  - 2. Honorably discharged disabled veterans will receive ten additional points added to their final total examination score.

A copy of a DD-214 form documenting an honorable discharge must be included with the application. Disabled veterans must include a letter from the Veterans Administration verifying disabled status. Veteran's preference may be used only for initial employment with Clark County.

- E. The Office of Human Resources may disqualify an applicant, refuse to examine an applicant, or, after examination, refuse to certify an applicant, or remove an applicant from the eligibility list who:
  - 1. Is found to lack any of the qualifications that were required in the job announcement.

2. Is physically or mentally unable to perform the duties of the classification with a reasonable accommodation.
3. Once an offer of employment has been made, fails to timely appear for, or fails to pass, any required medical examination, drug test, criminal background check, educational verification, or employment verification.
4. Is guilty of conduct not compatible with County employment.
5. Has made false or misleading statements of material fact on the application or any other required document.
6. Has used, or attempted to use, any unfair method to obtain an advantage in an examination or appointment. Any applicant who receives or gives assistance resulting in an unfair advantage designed to aid an applicant in obtaining a job will be disqualified from the examination and may be barred from future examinations. County employees receiving such assistance or providing such assistance to an applicant may be disciplined up to and including termination.
7. Has directly or indirectly obtained confidential information about the content of an examination, or has taken part in compiling, administering, or scoring an examination.
8. Has failed to submit a complete and accurate application within the prescribed time limits.
9. Has been dismissed for cause from a position in public or private employment highly similar to the position applied for in the County.
10. Has been convicted of a crime which is substantially related to the qualifications, functions, or duties of the position for which application is made.
11. Has verbally or physically threatened staff.

#### IV. EXAMINATIONS

- A. Examinations may consist of one or a combination of any of the following: a screening of application, written test, performance test, oral examination (exclusive of hiring interviews), assessment of education and experience, physical agility or fitness test, assessment center evaluation, skills rating sheet, or other non-selection examinations employed in compliance with federal and state laws and guidelines.



- B. One or more examinations will be used to determine the eligibility of applicants for employment in the competitive service and their relative positions on eligibility lists. Examinations will be prepared in compliance with federal and state laws or guidelines and will be based on job requirements and supported by a job analysis.
- C. When a specific position within a classification requires a unique or specialized background, the Office of Human Resources may restrict examination to those individuals possessing the unique or specialized background.
- D. The content and combinations of examinations to be used, and the weights assigned to each examination, will be determined by the Office of Human Resources after consulting with the hiring department. Passing points or minimum qualifying score for examinations will be determined by the Office of Human Resources.
- E. Written examination materials may be reviewed by an applicant by arranging an appointment with the Office of Human Resources within three working days immediately following the examination. If a keyed test booklet and score sheet were used in the examination, they may be reviewed by the applicant. The taking of notes or any other means of reproduction of the test booklet in whole or in part is prohibited and will subject an applicant to disqualification.
- F. Make-up examinations will be prohibited except when the Deputy Director of the Office of Human Resources finds that the applicant's failure to take or complete an examination was the result of a material error for which the Office of Human Resources was responsible. Any claim for a make-up examination must be received by the Office of Human Resources within three calendar days from the date of the examination. Unless the Deputy Director of the Office of Human Resources makes a finding that a substantial injustice to the applicant would otherwise result, failure of an applicant to receive notice of an examination when properly mailed or failure of an examinee to follow written or oral instructions of monitors or examiners will not be regarded as proper grounds for a make-up examination.
- G. An applicant who is determined ineligible for a position will be promptly notified in writing of the ineligibility.
- H. Examination appeal process:
  - 1. Applicants may appeal the results of an examination or their qualification status by submitting a written request, together with a copy of the notification postmark, to the Office of Human Resources. Appeals must be received by the Office of Human Resources within seven calendar days from the postmark date on the notification of examination results or qualification score. The appeal must contain a statement of the facts upon which the appeal is based.

2. Upon receipt of a timely appeal, the Office of Human Resources will immediately notify the Department Head of the appeal, and review the process for the examination being appealed for evidence supporting the applicant's allegations. The purpose of the review is to determine whether or not any alleged irregularity or fraud occurred in the process and is not intended to circumvent the process. The Deputy Director will return a written decision to the applicant within a reasonable time. If the Deputy Director finds that there is reasonable cause to uphold the applicant's appeal, the Deputy Director will provide appropriate administrative relief to the applicant.
3. Any allegations of discrimination or bias will be referred to the Office of Diversity for review.

V. ELIGIBILITY LISTS

- A. The names of applicants for employment who qualify in an examination will be placed on the appropriate eligibility list. Eligibility lists will be established as soon as possible after examinations have been scored, and applicants will be notified in writing of the results of their examination. Eligibility lists for permanent positions will be established in the following manner:
  1. Re-employment list: With approval from the Office of Human Resources, an applicant who was previously medically separated from the County pursuant to Policy VIII, Section III, Certification of Medical Condition, and who has subsequently obtained a certificate of fitness and has been released by the attending physician to return to work will be placed on an eligibility list for a position in which the employee held permanent status. Regardless of the date of the request for placement on the list, the entire re-employment eligibility period will be one year from the date of separation.
  2. Departmental recall list: A departmental recall eligibility list for each classification will consist of employees and former employees having permanent status and who were laid off or who were reduced in schedule as a result of layoff. Such lists will take precedence over all other eligibility lists in making certifications to the department in which the employee worked. Departmental Recall eligibility will be effective for a period of two years from date of layoff or reduction in schedule.
  3. Recall list: A general recall eligibility list for each classification will consist of the names of employees and former employees having permanent status and who were laid off or who were reduced in schedule as a result of layoff. Such lists will take precedence over all other eligibility lists, except departmental recall lists, in making certifications on

a Countywide basis. Recall eligibility will be effective for a period of two years from date of layoff or reduction in schedule.

4. Departmental promotional list: The names of applicants successful in departmental promotional examinations will be placed on departmental eligibility lists for the classification examined. Departmental promotional eligibility lists will be established for a minimum period of three months.
  5. County promotional list: The names of applicants successful in County promotional examinations will be placed on County eligibility lists for the classification examined. County promotional eligibility lists will be established for a minimum period of six months.
  6. Open list: The names of applicants successful in open examinations will be placed on open eligibility lists for the classification examined. Open promotional eligibility lists will be established for a minimum period of six months.
  7. Rehire list: A permanent employee who has resigned in good standing or who has accepted a voluntary demotion may, within one year, request that his/her name be placed on the rehire list for any classification in which he/she held permanent status. Regardless of the date of the request for placement on the list, the entire rehire eligibility period will be one year from the date of separation or voluntary demotion.
  8. Transfer list: With approval of the Office of Human Resources, a permanent employee may place his/her name on a list for transfer to the same classification in a different department, or a different classification in the same salary schedule in which the employee meets the minimum qualifications. Transfer eligibility will expire one year from the date of employee's application for transfer.
- B. Eligibility lists will be in effect from the date of approval by the Office of Human Resources and may be extended by the Office of Human Resources. Addition or deletion of names because of errors or ratings will not change the effective date of an eligibility list.
- C. When an eligibility list does not meet the needs of the County, the Office of Human Resources may order a new recruitment to increase the number of qualified applicants.
- D. Applicants placed on an eligibility list are responsible for updating with the Office of Human Resources changes of name, address and/or telephone number.
- E. The Office of Human Resources may remove from eligibility lists any applicant who:

1. Declines three offers of employment.
  2. Requests to have his/her name removed from an eligibility list or state that he/she is not interested in employment in that classification.
  3. Declines three interviews.
  4. Fails to respond to an invitation for the pre-employment interview within seven calendar days from the date contacted.
  5. Cannot be located by the U.S. Postal Service.
  6. Has been appointed to a permanent position in a classification higher than the eligibility lists in question. This does not apply to eligible applicants who have been appointed to temporary positions.
  7. May be disqualified for any of the reasons listed in Section III.E of this Policy III.
- F. For positions opened on a continuous recruitment, the names of all applicants who took the same or comparable examinations for the same classification on different dates will be placed on one eligibility list for the purpose of certification.
- G. Applicants having their names on eligibility lists may request in writing that their names be placed on inactive status, during which time they will not be certified to vacancies. They may request reactivation any time before the list expires.

## VI. CERTIFICATION

- A. When a department has received authorization to fill a vacant position in the competitive service, other than for demotion, emergency appointments or managerial reassignment, the Office of Human Resources will determine which eligibility list(s) to use to generate a certification list.
- B. If a recall list is used, the Office of Human Resources will certify the name of the person with the highest seniority on the list who is available for re-employment.
- C. If a list other than a recall list is to be used, the Office of Human Resources will certify the names of the candidates with the highest scores or special skill requirements from the respective eligibility list, as provided in Section V of this Policy III.
- D. If more than one vacant position is to be filled, the base number of candidates to be certified will be determined by the Office of Human Resources in consultation with the hiring Department Head.

- E. The Office of Human Resources may remove from a recall list the name of any person who waives employment after certification.
- F. An appointing authority may request that certifications to that department be restricted to:
  - 1. Employees within the department who are on the appropriate eligibility list.
  - 2. County employees who are on the appropriate eligibility list.
  - 3. Part-time hourly and temporary employees who were certified and appointed from an applicable eligibility list and have completed at least 520 hours of service in the department in the same classification.
  - 4. Qualified applicants who have special skill requirements considered necessary in the position that are not likely to be possessed by all applicants on an eligibility list.
  - 5. Applicants who meet bona fide occupational qualifications.
- G. When an applicant has been passed over three times for employment or with appropriate justification by the same appointing authority, the Office of Human Resources may remove the name of that applicant from a certification list to that appointing authority.
- H. The Office of Human Resources will submit the certification list to the hiring department and notify certified applicants of the person in the hiring department to contact to schedule interviews.
- I. If there is no eligibility list for the classification of a position to be filled, or if it is in the best interest of the County, the Office of Human Resources may certify applicants from an eligibility list for a related classification in the same or higher schedule, provided that the required qualifications for the related classification are at least equivalent to those of the classification in which the vacancy exists.
- J. A written request for an additional certification list must be submitted to and approved by the Deputy Director of the Office of Human Resources. A written justification to the Deputy Director of the Office of Human Resources will be required for a position to be re-posted.
- K. At the Department Head's request, the Office of Human Resources may refer qualified persons from whatever sources are deemed appropriate to fill temporary, part-time hourly and seasonal positions or other positions in the non-competitive service.

## VII. INTERVIEWS

- A. Prior to receipt of a certification list, the hiring department will submit proposed interview questions to the Office of Human Resources for review and approval.
- B. An appointing authority will notify and interview, or provide a reasonable opportunity for an interview to, each applicant whose name appears on a certification list provided by the Office of Human Resources prior to making a selection. Eligible applicants who have been notified of certification will have seven calendar days from date of notification to respond to notice of certification.
- C. All interview notes, questions, rating guides, responses, score sheets and related materials generated during the interview process will be submitted to the Office of Human Resources to be kept on file.
- D. No testing/examinations will be administered by the hiring department without involvement and approval of the Office of Human Resources.
- E. The appointing authority will notify each applicant interviewed of the results after a selection is made.

## VIII. PRE-EMPLOYMENT INVESTIGATIONS AND EXAMINATIONS

Whether in the competitive or non-competitive service, a candidate who has received an offer of employment will be required to pass a background investigation prior to occupying the position. If a medical examination and/or a drug screening is required as part of the selection process for the position, the candidate will be required to take and pass a medical examination and/or a drug screening prior to occupying the position. Medical Examinations and drug screenings will be conducted in accordance with Policy VIII, Miscellaneous Employment Requirements.

## IX. STARTING SALARIES

Beginning salaries for newly hired employees will be at the minimum of the range of the applicable salary schedule. Any exception will require a written justification from the Department Head and approval by the County Manager or designee.

## X. EMPLOYMENT ELIGIBILITY VERIFICATION FORM I-9

The Records Division will coordinate the employment eligibility verification program to verify each new employee's eligibility for employment in the United States in accordance with the Immigration Reform and Control Act (IRCA) of 1986.



**PERSONNEL POLICY IV  
EMPLOYMENT ACTIONS**

EFFECTIVE: 02/17/04

REVISED: 07/20/04

**I. PROBATION & QUALIFYING PERIODS**

- A. Any new employee appointed to a budgeted permanent position, except management employees, will serve a probationary period, as determined by the Department Head, of not less than 520 hours worked nor more than 2,080 hours worked.
- B. The appointing authority may initiate action to end an employee's probation at any time after the employee has worked 520 hours by submitting an evaluation of the employee's performance indicating successful completion of probation and the date of removal from probation. Employees failing their probationary period will be terminated without right of appeal.
- C. An employee in the competitive service who completes 2,080 hours worked as the probationary period will acquire permanent status.
- D. An employee rehired to a budgeted permanent position may not be required by the appointing authority to serve a probationary period if all of the following criteria are met:
  - 1. The employee left County service in good standing;
  - 2. The employee is being rehired within six months of the date he/she separated from the County; and
  - 3. The employee is returning to the same classification, department and supervisor that he/she left.
- E. An employee who is laid off or otherwise separated, and subsequently appointed from an open employment eligibility list to a position in a different classification than that from which laid off, will serve the probationary period prescribed for the new classification.
- F. Except for employees hired into the Management Compensation Plan, employees required to serve a qualifying period will serve not less than 520 hours worked nor more than 2,080 hours worked.
- G. When an employee serves a qualifying period, the Department Head must submit an evaluation of the employee's performance prior to the completion of the qualifying period. The evaluation will convey that:
  - 1. The employee has successfully completed the qualifying period and will be removed from qualifying and retained as a permanent employee in the position; or

2. The employee will continue on qualifying period for a specific time period (not to exceed 2,080 total hours worked when combined with the first qualifying period), in which case an explanation of the extension and performance expectations during the extension will be provided; or
3. If an employee fails his/her qualifying period, he/she:
  - a. will be reinstated to the employee's previous position; or
  - b. will be demoted to an available position for which he/she is qualified; or
  - c. will be terminated if reinstatement to the former position or demotion is not possible after every effort has been made to place the employee in his/her previous position or an equal or lower pay schedule for which he/she qualifies.

A Department Head will consult with the Deputy Director of the Office of Human Resources prior to recommending reinstatement to a previous position in the department, demotion or termination of an employee.

- H. Employees demoted because of failure to pass a qualifying period will have their salary and benefits reduced to the amount at which they were compensated prior to being placed on the qualifying period in the higher classification.
- I. A qualifying period will not affect the employee's permanent status, benefits, or the right to appeal under established grievance procedures when applicable.

## II. PROMOTIONS

- A. When an employee is promoted, he/she will receive a four percent salary increase or the minimum salary of the new classification schedule, whichever is greater, provided that the employee's salary will not exceed the maximum amount of the salary schedule for the employee's new classification. Any exception will require written justification from the Department Head and approval by the County Manager or designee.
- B. Except for employees non-competitively promoted from a training underfill classification, employees promoted to a higher classification will be required to serve a qualifying period.
- C. Promotions may occur through the reclassification process as follows:
  1. Promotional opportunities will require a competitive recruitment in accordance with established competitive recruitment actions, except for non-competitive promotions as delineated in Subsections 2 and 3 below.

2. A non-competitive promotion may be granted to an employee whose position has been reclassified to a higher schedule under the following conditions:
    - a. There must be no other employees in the department in the same classification.
    - b. The employee must continue to perform the same basic function(s) as were in the former position and the duties of the former position must be administratively absorbed into the new position.
    - c. The addition of the duties and responsibilities must not have resulted in an adverse impact on another incumbent position.
    - d. The Department Head must request that the position be filled non-competitively.
  3. A non-competitive promotion may be granted to a group of employees of the same position classification whose positions have been approved by the County Manager for reclassification to a higher schedule based on a demonstration that the positions have been assigned and are performing additional duties justifying reclassification to the higher schedule. The employees must continue to perform the same basic function(s) as were in the former position and the duties of the former position must be administratively absorbed into the new position.
- D. When an employee is promoted, his/her anniversary date will change to the effective date of such action.

### III. DEMOTIONS

- A. Demotions may be made by appointing authority: 1) as part of a reorganization or reduction in force; or 2) at the request of the employee; or 3) as the result of a position reclassification; or 4) for cause.
- B. Upon written request from an employee, an appointing authority may voluntarily demote the employee from a permanent position to any class of positions for which the employee is qualified. A copy of an employee's request for demotion and the appointing authority's approval of the request will be sent to the Office of Human Resources. An employee demoted during his/her qualifying period will have his/her salary reduced to the hourly rate last held by the employee in his/her previous position.
- C. When an employee is voluntarily or involuntarily demoted, his/her salary will not exceed the maximum amount of the new salary schedule unless the demotion was a result of a reclassification.
- D. Employees who are voluntarily or involuntarily demoted to a different classification series, unless the demotion is a result of a position reclassification, may be required to serve a qualifying period. If a new qualifying period is a

condition for demotion, the employee must sign a statement acknowledging his/her understanding of that fact prior to the effective date of the demotion.

- E. An employee whose position is reclassified to a lower salary schedule will be demoted to the appropriate title, job code, and schedule. An employee whose pay rate is at or exceeds the maximum salary of the new schedule will not be eligible to receive a salary increase until his/her actual pay falls below the maximum salary of the new salary schedule. No change in the anniversary date will occur.
- F. When an employee is demoted for reasons other than reclassification of his/her position, his/her anniversary date will change to the effective date of such action.

#### IV. RECLASSIFICATIONS

A reclassification is made when it has been determined that the duties and responsibilities assigned to the position have significantly changed from the parameters of the current job classification. A reclassification to a higher salary schedule will result in a promotion as outlined in Section II above. A reclassification to a lower salary schedule will result in a demotion as outlined in Section III above.

#### V. TRANSFERS

- A. An employee occupying a budgeted permanent position, except for exempt status employees, may request a transfer to a position in another County department by submitting a transfer request form to the Office of Human Resources, subject to the following provisions:
  - 1. The employee's current position and the position being requested must have the same salary schedule;
  - 2. The employee must meet the minimum qualifications for the classification into which he/she is being transferred;
  - 3. The employee must have successfully completed probation in his/her current position. An examination to demonstrate fitness may be required as a condition of transfer; and
  - 4. Transfer eligibility will expire one year from submittal of the transfer request form. Reinstatement on a transfer list will require resubmittal of a transfer request form.
- B. When the County Manager determines it to be in the best interest of the County or due to reorganizations or changes in workload, any employee, including employees on probation, may be transferred to another position in the same classification without examination or certification.

- C. When an employee transfers to another position, he/she will continue to be compensated at the rate earned prior to the transfer. The County Manager or his/her designee may approve a higher rate of pay upon written justification from the Department Head. If the transfer results in a change of bargaining agreements, the employee's benefits will be defined by the bargaining agreement that covers the classification into which the employee transfers. If the transferring employee is placed into a position not eligible to earn overtime and/or compensatory time, the employee will be compensated for any accumulated compensatory time balances at the pay rate earned prior to the transfer.
- D. An employee accepting a voluntary transfer to a position in another department may be required to serve a qualifying period.
- E. If a qualifying period is a condition for transfer, the employee must sign a statement acknowledging the qualifying period for the transfer, and the department must submit this statement to the Office of Human Resources with the transfer paperwork.
- F. An employee's anniversary date will not change when transferred to the same classification or a new classification within the same salary schedule, unless the employee is required to serve a qualifying period.
- G. Employees interested in transferring to another department must complete a "request for placement on voluntary transfer list" form available from the Office of Human Resources.

## VI. REASSIGNMENTS

- A. An appointing authority may reassign a permanent employee from one position to another position within the department, provided the positions are at the same salary schedule and the employee meets the minimum requirements of the position. A reassignment may also take the form of moving an employee and his/her position within the department. The appointing authority also may change the duties and assignments of an employee within the classification without a change in position or title.
- B. An employee who is assigned modified duties and assignments within the same position classification will not serve a qualifying period.
- C. An employee who competes for and accepts a different position classification in the same salary schedule within the same department may serve a qualifying period at the election of his/her department head.
- D. An employee's anniversary date will not change when reassigned.

## VII. TITLE CHANGES

- A. A position title may be changed when it has been determined that a different title is more descriptive of the nature of the work being performed by an employee. The appropriate title(s) for the classification(s) will be determined by the Office of Human Resources. No change in schedule, compensation or in the anniversary date will occur when an employee's position title and job code are changed in this manner.
- B. An appointing authority may change the position title of a permanent employee, provided:
  - 1. The positions have the same salary schedule; and
  - 2. The Office of Human Resources has determined that the employee meets the minimum qualifications for the classification under consideration.
- C. An employee who has a position title change will not serve a qualifying period.

## VIII. SALARY SCHEDULE ADJUSTMENTS

A salary schedule adjustment is made when it has been determined that a classification is either under- or over-compensated in relation to comparable positions in the job market. The County Manager will have the final approval of whether such a change is appropriate in the context of the overall County compensation program. Salary schedule adjustments will result in the assigned employee's salary schedule being changed. No employee will receive an immediate increase or decrease in salary, nor will the anniversary date change as a result of a schedule adjustment. Employees affected by an adjustment may be eligible for a merit increase on their next anniversary date. An employee whose pay rate is at or exceeds the maximum salary of the new schedule will not receive a salary adjustment until his/her actual pay falls below the maximum salary of the new salary schedule.

## IX. BUDGET & TRAINING UNDERFILLS

- A. Positions may be underfilled as either budget or training underfills.
- B. Budget underfills must conform to the following requirements:
  - 1. A lower classification title and salary schedule must be utilized.
  - 2. The duties and responsibilities assigned to the position must be consistent with the underfill classification.
  - 3. The position may be filled at the higher classification at a later date with the approval of the County Manager or Assistant County Managers. The

incumbent cannot fill the position at the higher classification unless he/she was on an approved certification list for the higher classification.

- C. Training underfills provide alternate staffing patterns that allow for entry-level career opportunities. Training underfill classification series generally are designated as level I and level II classifications. The Office of Human Resources may designate certain other classification series in the training underfill program.
- D. Training underfill positions will be subject to the following requirements:
  - 1. The underfill classification should be established one salary schedule below the higher level classification.
  - 2. The position must be recruited as a training underfill. The announcement must clearly indicate that the position is an underfill. The higher level classification requirements also must be included on the announcement.
  - 3. A newly hired employee in a training underfill position will serve a training period in the underfill classification of no less than one year and no more than two years. Except for specified classifications as determined by the Office of Human Resources, the training underfill period for a current employee placed in an underfill classification may not exceed one year.
  - 4. An employee promoted from an underfill classification to a higher level classification in a training underfill series will not serve a qualifying period on promotion.



**PERSONNEL POLICY V**  
**EMPLOYEE PERFORMANCE EVALUATION**

EFFECTIVE: 02/17/04

- I. The Office of Human Resources will administer a performance evaluation program to determine acceptable performance factors and standards, appraise performance based on these factors and standards, set developmental objectives to improve performance, and reward meritorious performance.
- II. A department will forward a completed performance evaluation report to the Records Division of Finance at the completion of an employee's probationary or qualifying period, anniversary date, or when requesting salary adjustments in accordance with County policy and applicable collective bargaining agreements. The performance evaluation report will indicate whether a salary adjustment is to be awarded, deferred, or denied and, if denied, the justification for the denial.
- III. Employees who complete probationary and/or qualifying periods will be eligible for a salary adjustment. All salary adjustments will be accompanied by a performance evaluation report justifying the increase based upon the employee's performance.

**PERSONNEL POLICY VI  
EMPLOYEE COMPENSATION**

EFFECTIVE: 02/17/04

**I. BENEFITS PROVISION**

Except as otherwise restricted in these policies and procedures, permanent non-management employees not covered by a collective bargaining agreement who have successfully completed a probationary period will be granted, at a minimum, those benefits provided for in the current Service Employees International Union (SEIU) agreement which do not relate to employee discipline, discharge, or grievance procedures.

Management employees will receive those benefits as defined in the Management Compensation Plan and/or any amendments thereto as approved by the Board of County Commissioners. Management employees are not eligible to receive a salary of more than 80 hours per pay period, and will not be permitted to bank holiday leave.

**II. SALARY ADJUSTMENTS**

- A. Except for those employees in classifications designated in the Management Compensation Plan, employees may be eligible for consideration for salary adjustments within the designated salary schedule upon:
  - 1. Successful completion of a probationary period for a probationary employee, or successful completion of a qualifying period for a permanent employee; and/or
  - 2. The anniversary date of his/her employment in such class, and annually thereafter until the maximum is reached in that schedule. The anniversary date is normally the date an employee commenced work in the classification to which he/she was most recently appointed. An employee may be eligible for an early salary adjustment at the recommendation of the Department Head and approval of the County Manager. The Department Head must submit written justification for the early salary adjustment. In the event of an early salary adjustment, the employee's anniversary date will be changed to the effective date of the salary adjustment.
- B. Management Compensation Plan employees may be eligible for salary increases in accordance with the provisions of the Management Compensation Plan.
- C. Eligibility for salary adjustments will be determined by standards established by the Office of Human Resources in accordance with applicable collective bargaining agreements.

### III. ACTING PAY

When a permanent status employee, except those in classifications designated in the Management Compensation Plan, is temporarily assigned by written order of the appointing authority or designee to an authorized, budgeted and/or vacant position in a higher salary schedule in excess of five consecutive eight-hour shifts or four consecutive 10-hour shifts worked, he/she will be paid at a rate of four percent above his/her regular hourly rate or the minimum rate of the classification in which the employee is temporarily working, whichever is greater. An action form and special earnings form must be submitted to the Records Division of Finance, accompanied by written justification and indication of the approximate length of the assignment. Written justification to the County Manager is required for assignments exceeding 30 calendar days in duration. Non-management employees may only be placed in and receive compensation for acting in a position outside of their collective bargaining unit or covered under the Management Compensation Plan with the County Manager's prior written approval.

### IV. OVERTIME AND COMPENSATORY TIME

- A. The appointing authority or designee must pre-approve all overtime prior to the overtime being worked by an employee.
- B. Overtime compensation may be paid through cash payment or compensatory time. Compensatory time off should be used within the following 90 calendar days after it was earned, and usage should be requested by the employee and approved by the Department Head or designee 24 hours in advance of its use.
- C. Except as otherwise provided for in a collective bargaining agreement, employees exempt under the Fair Labor Standards Act will not be eligible for overtime cash payment, compensatory time, callback, standby or shift differential compensation pay.
- D. Eligible employees will be compensated for overtime worked in accordance with applicable federal and state laws and collective bargaining agreements.

### V. SERVICE CONNECTED DISABILITY COMPENSATION

- A. The County will supplement an employee's benefits received through a qualified claim under NRS Chapter 616 or 617, Industrial Insurance and Occupational Disease respectively, in accordance with the provisions of this Section, provided the employee turns over to the County all compensation payments received from the Workers' Compensation claim.
- B. During the first 340 work hours of a qualified Workers' Compensation claim, or other amount of time as provided for in the applicable collective bargaining unit agreement, whether the employee works or is on approved leave during that time period, compensation will be paid as follows:

1. For an employee who is unable to work, in addition to the Workers' Compensation payment, the County will supplement the employee's compensation up to the amount of the employee's full-time County salary.
  2. For an employee who is released to regular or full-time duty on a temporary work assignment, requiring therapy/medical appointments during work hours, the County will compensate the employee for work hours spent in therapy/medical appointments without requiring the employee to use his/her accumulated leave.
  3. For an employee who is released to work part-time on a temporary work assignment, the County will supplement the difference between the employee's regular full-time salary and the employee's part-time salary combined with any Workers' Compensation payment.
- C. After the first 340 work hours of a qualified Workers' Compensation claim, or other amount of time as provided for in the applicable collective bargaining unit agreement, compensation will be paid as follows:
1. For an employee who is unable to work, the portion of the employee's salary not paid by Workers' Compensation may be applied toward the employee's accumulated leave, if any, unless otherwise requested in writing by the employee. Accumulated leave will be used in the order specified in applicable collective bargaining agreements. If all or the portion of leave requested by the employee has been exhausted and the employee is still unable to return to work, the employee will be placed in Workers' Compensation leave without pay status. Workers' Compensation leave without pay status places the employee in a status of non-creditable service, and the SEIU agreement provisions of leave without pay and non-creditable service will apply. An employee may request in writing to not use any or a portion of his/her accumulated leave and to be placed in Workers' Compensation leave without pay status prior to exhausting all leave balances.
  2. For an employee who is released to regular or full-time duty on a temporary work assignment, requiring therapy/medical appointments during work time, the employee may request to use accumulated leave or leave without pay for time spent at therapy/medical appointments.
  3. For an employee who is released to work part-time on a temporary work assignment, the employee may request to use accumulated leave or leave without pay for time not compensated through working or Workers' Compensation benefits.
- D. Paid time allowed by the County for each therapy/medical appointment will be limited to two hours (one hour for travel to and from the appointment and one

hour for the actual appointment/therapy) unless otherwise noted on the County Physician Disability Slip form by the physical therapist or the authorized treating physician.

- E. Failure to comply with this Policy, applicable Nevada Revised Statutes, and/or guidelines set through the applicable collective bargaining agreement and the County Workers' Compensation Program may cause delay in the receipt of pay and/or suspension of benefits, including the pay supplemented by the County, and may result in disciplinary actions.

**PERSONNEL POLICY VII  
EMPLOYEE LEAVE**

EFFECTIVE: 02/17/04

**I. FAMILY AND MEDICAL LEAVE ACT (FMLA)**

A. In accordance with the Family and Medical Leave Act, Clark County will grant job-protected family and medical leave to eligible employees for up to 12 weeks per 12-month period for any one or more of the following reasons:

1. The birth and care of a child of the employee, or the placement and care of a child with the employee for adoption or foster care (leave must be taken within 12 months of the birth or placement for adoption or foster care;
2. The care of an immediate family member (spouse, child, or parent) of the employee if such immediate family member has a serious health condition; or
3. The employee's own serious health condition that makes the employee unable to perform the functions of his/her position.

B. Coverage and Eligibility

1. To be eligible for family and medical leave, an employee must have:
  - a. Worked for Clark County for at least 12 months as of the date leave begins; and
  - b. Worked at least 1,250 hours over the previous 12-month period as of the date leave begins.
2. An employee may request family and medical leave in accordance with the procedures, conditions and time lines outlined in Personnel Procedure No. 10. Unless otherwise authorized by the County Manager, Department Heads will submit applications for family and medical leave directly to the Risk Management and Safety Division of the Finance Department for approval.

C. Use of Leave

1. An employee may take leave continuously or intermittently over a 12-month period for a combined maximum of 12 weeks.
2. An employee requesting continuous leave for up to a 12-week period will be authorized for such leave once his/her application has been approved.
3. An employee requesting intermittent leave for regularly scheduled health provider visits, treatments or other authorized purpose will submit to his/her Department Head and Risk Management and Safety Division of

the Finance Department a written schedule of such appointments prior to beginning the appointments.

4. Unless otherwise approved by the Department Head, and subject to the applicable collective bargaining agreements, an employee will be required to use accrued paid leave prior to requesting unpaid leave during the 12-week period. Accrued sick leave should be used prior to use of other accrued leave.

D. Insurance Benefits

1. An employee on family and medical leave will not be required to make any additional health insurance premium payments beyond his/her monthly employee contribution rate for health insurance. Life insurance and long-term disability insurance premiums will be paid by the County until the employee has exhausted his/her paid leave and has been on unpaid leave in excess of 30 days, at which time he/she will be required to pay the entire life insurance and long-term disability insurance premiums in order to continue coverage in those plans. The employee must contact Risk Management and Safety Division of the Finance Department to determine when the payment of such premiums is required.
2. If an employee fails to pay insurance premiums within 30 days from the due date, Risk Management and Safety Division of the Finance Department may terminate the employee's insurance coverage.
3. Any employee whose insurance premiums were paid by the County during a leave will reimburse the County for the total amount of insurance premiums that the employee was obligated to pay pursuant to this Section.

E. Conclusion of Family and Medical Leave

1. To provide for the continued operations of the County, upon return to work at the conclusion of family and medical leave an employee may be returned to his/her former position or transferred or reassigned to a position with equivalent pay and benefits. The employee will resume his/her employment status in effect at the time the leave began.
2. An employee who fails to return to work within five days following the conclusion of his/her authorized leave may be regarded as having abandoned his/her position in the County service.

II. CATASTROPHIC LEAVE

- A. Employees holding permanent status may donate leave into a Countywide catastrophic leave bank under the following conditions:



1. Leave donations may be made in a lump sum or on a periodic leave deduction basis.
  2. Donations may be made from vacation leave, sick leave and/or compensatory time balances.
  3. The minimum donation is one hour.
  4. A maximum of 40 hours of unused sick leave per incident may be donated, provided the donating employee retains a minimum balance of 120 sick leave hours after the donation.
  5. Unused vacation leave may be donated, provided the donating employee retains a minimum balance of at least 40 vacation leave hours after the donation.
  6. Leave may be donated to a specific employee identified by the donor.
  7. Unused portions of donated leave will not be returned to the donor but will remain in the catastrophic leave bank.
- B. Donated leave time will be converted to dollars at the hourly rate of the donor. When a recipient is identified, an appropriate amount of dollars will be converted to sick leave at the hourly rate of the recipient. An employee may be granted up to 320 hours of employee catastrophic sick leave for any one incident. If an employee needs additional hours to get through the elimination period for long term disability, then and only then, under such extraordinary circumstances, the employee may be granted additional hours of employee catastrophic sick leave. An employee may not be granted more than 80 hours of family catastrophic leave.
- C. Eligibility for use of employee catastrophic sick leave:
1. An employee must have successfully completed six months of employment with the County and his/her probationary period;
  2. An employee must have exhausted all of his/her leave balances;
  3. An employee's condition must meet the definitions and conditions set forth in Subsection E below; and
  4. An employee absent due to an approved service connected disability is not eligible to participate in the catastrophic leave program.
- D. Eligibility for use of family catastrophic sick leave:
1. An employee must have successfully completed six months of employment with the County and his/her probationary period;

2. An employee must have exhausted all of his/her leave balances;
  3. The condition of the employee's immediate family member must meet the definitions and conditions set forth in Subsection E below; and
  4. Requests for family catastrophic leave from two or more County employees to care for a person who is an immediate family member of both employees will be combined for the purpose of granting leave hours.
  5. The employee must use the catastrophic sick leave within 20 working days of approval.
- E. For the purposes of this Section the following definitions and conditions will apply: "Catastrophic illness/injury" is defined as an illness or injury that requires inpatient care at a medical facility or that renders an employee, spouse, child, or parent bedridden at home. "Bedridden" is defined as limiting an individual's ambulatory status to home, allowing attention to in-home personal care needs, attend physicians' appointments, and receive necessary medical treatment related to their catastrophic illness. The illness or injury cannot be a result of an illegal act, nor can it be self-inflicted.
- F. Eligible employees must request catastrophic leave in accordance with the County's Personnel Procedure No. 11.

### III. LEAVE OF ABSENCE WITHOUT PAY

- A. At the County's sole discretion, a permanent status employee may be granted a leave of absence without pay for a period not to exceed 90 calendar days. Any additional leave must be recommended by the Department Head and approved by the County Manager or his/her designee.
- B. Leave of absence without pay may not be granted until all accumulated vacation leave is used unless approved by the Department Head and the Deputy Director of the Office of Human Resources.
- C. An employee on a leave of absence without pay will not accrue vacation, sick leave, or retirement credits during any such leave period.
- D. Except as provided for in Section I of this Policy VII, an employee on a leave of absence without pay for over 30 consecutive calendar days will be required to pay the entire medical insurance, life insurance and long-term disability insurance premiums in order to continue coverage in those plans.
- E. Any period during which an employee is on leave of absence without pay over a period of 21 consecutive calendar days in a calendar year will be deducted from the employee's creditable service for longevity pay.

- F. A leave of absence without pay granted to an employee must be taken continuously and will not be approved intermittently with other forms of leave.
- G. An employee absent without authorized leave for more than five days may be regarded as having abandoned his/her position in the County service. A termination under these conditions will render the employee ineligible for placement on a rehire list.

**PERSONNEL POLICY VIII**  
**MISCELLANEOUS EMPLOYMENT REQUIREMENTS**

EFFECTIVE: 02/17/04

**I. VALID NEVADA DRIVER'S LICENSE REQUIREMENTS**

- A. Employees required by their position duties to have a valid Nevada driver's license, including specific class requirements, will maintain the license. Such employees who fail to notify their supervisors of a suspended, restricted, or revoked driver's license may be suspended pending termination.
- B. If an employee who is required to maintain a valid driver's license has the license suspended, revoked or restricted, the Department Head may, with the approval of the Office of Human Resources:
  - 1. Assign the employee duties within the same classification description that do not require the driving or operating of County vehicles.
  - 2. Temporarily demote the employee into a classification for which the employee qualifies. An employee temporarily demoted will not be compensated at a level exceeding the new classification's salary schedule.
  - 3. Place the employee on leave without pay in accordance with Policy VII, Section III, Leave of Absence Without Pay, if temporary work that does not require driving is unavailable.
- C. No accommodation for an employee with a suspended, revoked, or restricted driver's license will exceed six months. If the suspension, revocation, or restriction of the license exceeds six months, the employee may be permanently reassigned to a vacant position not requiring a valid driver's license, permanently demoted into a vacant position for which he/she qualifies, or suspended pending termination.

**II. MEDICAL EXAMINATIONS**

- A. The Office of Human Resources will administer a medical examination program to:
  - 1. Provide the County with employees who are physically able to perform applicable job duties.
  - 2. Protect the health and safety of County employees and the public.
- B. Candidates who have received an offer to be hired to specific positions which have a medical examination as part of the selection process will be required to take and pass a medical examination prior to occupying the position. Candidates who have received an offer to be hired to a position in a specific job classification that includes a drug screen as a requirement of employment will be required to

take and pass a drug screening. A drug screening must have been completed by the candidate within 24 hours of receipt of the drug screen paperwork from the Office of Human Resources.

Current County employees who are being considered for placement into a classification that requires a medical examination (routine physical or CDL/DOT) must pass the required examination prior to being placed in the classification. Employees who have passed the Commercial Driver's License (CDL) examination within the prior 24 months will not be required to take a new examination.

- C. Medical records of employees are confidential and will be maintained as such. Such records will be used only as permitted by law.
- D. Medical examinations required as a condition of employment will be at no cost to the candidate. The County will not be responsible for any additional testing or treatment that may be recommended. Any expense beyond the standard medical examination will be the responsibility of the candidate.
- E. The County's examining physician will be furnished with medical examination standards approved by the Office of Human Resources.
- F. The Office of Human Resources may:
  - 1. Request and accept additional medical information regarding a candidate, at his/her expense, prior to making a final employment decision.
  - 2. Waive any disability disclosed by the examination if, upon recommendation of the physician and after consultation with the affected appointing authority, the Office of Diversity and the Office of Human Resources are satisfied that the disability will not impair the candidate in performing all of the essential duties of the position.
- G. After receiving an offer of employment, candidates will be removed from consideration for employment and from the certification and eligibility lists under the following circumstances:
  - 1. Failure to report for the medical examination at the time and place designated.
  - 2. Failure to pass the medical examination when the examining physician indicates that the disability is permanent that it will prevent the person from performing any of the essential duties of the position and that the disability cannot be reasonably accommodated in accordance with the Americans With Disabilities Act.

3. Failure to take or report for a drug screen within 24 hours of receipt of drug screen paperwork from the Office of Human Resources.
- H. In an emergency, the appointing authority may request permission from the Office of Human Resources to allow a candidate to begin work in a temporary status pending a medical examination. The examination will be taken no later than two weeks from the date of appointment. If the employee does not pass the medical examination for the position, he/she will be immediately terminated from County service.
- I. The County may require an employee to submit to a medical or psychological examination, at County expense, when it is believed that the employee is incapable of performing his/her essential duties due to illness, injury, or use of alcohol, controlled substances or over-the-counter or prescription medication.
- J. Employees in safety-sensitive positions as defined by the U.S. Department of Transportation (DOT) will be required to pass a physical that complies with DOT guidelines.

### III. CERTIFICATION OF MEDICAL CONDITION

- A. A Department Head, with just cause, may require that an employee submit to the following process to obtain a certificate of fitness from a state licensed health care provider indicating whether or not the employee is medically capable of performing the essential functions and duties of his/her position without restriction or limitation.
- B. The Department Head or designee will contact the Office of Human Resources for documents needed to schedule the certificate of fitness evaluation.
- C. Risk Management and Safety Division of the Finance Department will select a state licensed medical provider and schedule an appointment for the employee. The County will pay for the evaluation; the employee will attend the appointment on his/her own time.
- D. If the state licensed health care provider concludes that:
  1. The employee is medically able to perform the duties of his/her regular position, the employee will be required to return to full duty immediately without restrictions.
  2. The employee is temporarily restricted from performing certain functions of his/her classification, the department may offer temporary work assignments in accordance with Personnel Procedure No. 08, Structured Return-To-Work (SRTW) Program. In no case will temporary work assignments under the SRTW Program exceed 90 days.

3. The employee is permanently disabled and unable to perform the duties of his/her regular position, an assessment will be made as to whether the employee is eligible for a workplace accommodation pursuant to the Americans With Disabilities Act.
  4. The employee will not be able to return to full duty in his/her position for 12 months or more from the first day of disability, the County may initiate medical separation procedures.
- E. The medical separation process applicable to this Section will consist of:
1. The County assisting the employee in identifying any vacant posted positions for which he or she qualifies and is medically capable of performing, and for which the employee may then apply; or
  2. If such a position is not available, separating the employee from employment with the County.
- F. An employee who has been medically separated from the County and subsequently obtains a certificate of fitness may be reemployed in accordance with the provisions of Policy III, Employee Recruitment and Selection, Subsection V. The former employee at his/her own expense must take the applicable job classification description to a State licensed health care provider and obtain a certificate of fitness attesting that the individual is capable of performing the essential functions of the job.

#### IV. ACQUIRED IMMUNE DEFICIENCY SYNDROME (AIDS) POLICY

- A. The County will not conduct routine serological testing of current or prospective employees for human immunodeficiency virus (HIV).
- B. The County will not refuse employment to, terminate, or treat disparately people who are otherwise qualified and able to perform their jobs solely because they are HIV positive.
- C. Reasonable accommodations will be made to keep employees working who have HIV/AIDS and are able to perform all the essential duties of their positions. The Office of Diversity will determine what constitutes a reasonable accommodation.
- D. If the County has a reasonable basis to believe that an employee with HIV/AIDS is unable to perform all the essential duties of his/her position, the employee may be required to produce a certificate of fitness by the employee's physician or a physician selected by the County pursuant to the provisions of Section III of this Policy VIII.
- E. The Surgeon General has stated that HIV/AIDS is not transmitted through casual contact in the workplace. If an employee refuses to work with a coworker who



has or is believed to have HIV/AIDS, the employee refusing the work assignment may be subject to disciplinary action.

V. INVESTIGATION OF THREATS OR ACTS OF VIOLENCE IN THE WORKPLACE

- A. All employees are prohibited from committing acts or threats of violence at or in conjunction with the workplace. Employees found in violation of this Policy will be subject to disciplinary action up to and including termination.
- B. All perceived threats or acts of violence involving employees in the workplace should be reported immediately to the employee's supervisor and subsequently to the Office of Human Resources Division of Employee Relations, who will:
  - 1. Perform an initial review to determine if the complaint warrants further investigation;
  - 2. Coordinate a fact-finding investigation; and/or
  - 3. Recommend action to the applicable Department Head or elected official as appropriate.
- C. Any employee wishing to file a complaint regarding violence in the workplace must complete a form available from the Office of Human Resources and submit it to that Office.

**PERSONNEL POLICY IX**  
**EMPLOYEE WORK SCHEDULES**

EFFECTIVE: 07/20/04

REVISED: 07/20/04

**I. STANDARD WORK SCHEDULE**

The County's standard work schedule will consist of a 40-hour workweek and eight-hour workdays, generally but not limited to Monday through Friday, from 8 a.m. to 5 p.m. (except holidays), with a one-hour non-paid lunch.

**II. ALTERNATIVE WORK SCHEDULE**

Employees may be eligible for participation in the County's alternative work schedule program in accordance with applicable collective bargaining agreements. Employees who are covered under the County's Management Compensation Plan will be required to work a minimum of 80 hours a pay period.

**III. EMPLOYEE TELECOMMUTING**

The County Manager will develop and implement an employee telecommuting program (ETP) whose goals are to increase workplace productivity and contribute to air quality improvement and decreased traffic congestion. Under the ETP, selected employees who meet specific work standards may be permitted to work from their homes in accordance with the procedures outlined in Personnel Procedure No. 05. The minimum standards to be maintained in considering suitability for participation in the ETP will be: (i) satisfying customer needs; (ii) meeting program requirements; and (iii) maintaining public services and functions during business hours. Employees who are covered under the County's Management Compensation Plan will not be eligible for participation in the employee telecommuting program.

**PERSONNEL POLICY X  
EMPLOYEE DISCIPLINE**

EFFECTIVE: 02/17/04

**I. DISCIPLINARY ACTION**

- A. Employees in the competitive service may be reprimanded, suspended, demoted or terminated with just cause. Just cause may include, but is not limited to: inefficiency, incompetence, insubordination, moral misconduct, mental or physical disability as shown by competent medical evidence, excessive absenteeism, habitual tardiness or absenteeism, abuse of sick leave, withholding services, falsifying and/or destroying records or reports, intentionally deleting or altering information, or violation of established County or departmental work rules or procedures.
- B. Appropriate and reasonable corrective action will be taken against an employee for just cause based on the severity of the incident and previous discipline issued. Progressive discipline may include an oral warning, a written reprimand or suspension, and may culminate in either a demotion or termination. The need for more severe and immediate disciplinary action may be necessary in the event of a major violation of established rules, regulations or policies of the County or the department.

**II. INVOLUNTARY TERMINATION HEARINGS**

- A. A non-bargaining unit employee in the competitive service who is recommended for termination from County service may request, in writing to his/her Department Head, a pre-termination hearing to respond to the charges before a final decision is reached. Failure to request a pre-termination hearing within specified time limits will constitute a waiver of the right to a pre-termination hearing.
- B. Once the decision is made to recommend termination, the employee will be suspended without pay pending the pre-termination hearing.
- C. An employee in the competitive service who has been involuntarily terminated will have the right to appeal the decision through a post-termination hearing.
- D. No prejudicial, discriminatory, or otherwise unfavorable action will be taken against any witnesses in a hearing for his/her participation in the hearing.
- E. Employees in the competitive service not covered by a collective bargaining agreement will be covered by the pre- and post-termination hearing procedures outlined in Personnel Procedures No. 14.

**III. GRIEVANCE PROCEDURES**

Employees eligible for membership in a collective bargaining unit will be covered under the grievance procedures in the applicable collective bargaining agreement.

**PERSONNEL POLICY XI  
EMPLOYEE SEPARATION**

EFFECTIVE: 02/17/04

**I. RESIGNATION**

An employee resigning from employment with the County will submit a written resignation to his/her appointing authority.

**II. EXIT INTERVIEWS**

- A. The Office of Human Resources will administer an exit interview program to inform departing employees on such matters as retirement, benefits, insurance, and reemployment rights. The program will also focus on the employee's comprehensive employment experience.
- B. All permanent status employees separating from the County will be given the opportunity for an exit interview, regardless of his/her length of service, department, or the circumstances surrounding his/her separation.

**III. LAYOFFS**

- A. When the County determines a reduction in force is necessary, employees covered under a collective bargaining agreement will be laid off and recalled in accordance with the requirements of the collective bargaining agreement.
- B. When a reduction in force is necessary, employees not covered under a collective bargaining agreement will be laid off and recalled in the following manner:
  - 1. Employees' seniority, capabilities, and qualifications will be taken into consideration in making layoff decisions.
  - 2. In conducting a recall of employees following a layoff, employees and former employees having permanent status and who were laid off or reduced in schedule as a result of the layoff will take precedence over all others.

**PERSONNEL POLICY XII**  
**ETHICAL STANDARDS**

EFFECTIVE: 02/17/04

**I. PREFERENTIAL TREATMENT**

Employees will not use or attempt to use their official County positions to secure or grant privileges, exemptions, advantages, contracts, or preferential treatment for themselves or others.

**II. CONFLICTS OF INTEREST AND ACCEPTANCE OF GIFTS**

- A. Employees will not directly or indirectly solicit, accept, or receive any gift whether in the form of money, services, loan, travel, entertainment, hospitality, promise, or in any other form, except as provided herein. Unsolicited gifts must be returned, shared with other employees, or given to charity. Gifts which may influence a reasonable employee in the performance of his/her duties, or which appear to be intended as a reward for any official action on the employee's part, or which potentially create the perception of impropriety, as determined by the Department Head or Assistant County Manager, shall be refused.

Unsolicited payment of meals with a value less than \$50 may be accepted provided the acceptance of a meal is not intended to influence the employee's performance; or is not intended as a reward for official action; or does not create a potential for a perception of impropriety; or does not occur on a regular basis. The acceptance of a meal with a value of less than \$50 must be disclosed to the employee's Department Head, or in the case of Department Heads to the applicable Assistant County Manager.

Tickets to community events (e.g., not-for-profit banquets, charitable events, openings of commercial properties, etc.), which may provide an opportunity to build working relationships within the community, must be disclosed by the employee to his/her Department Head prior to being accepted. In the case of a Department Head, the disclosure must be to the applicable Assistant County Manager. Tickets which have the potential to influence a reasonable employee in the performance of his/her duties, or which appear to be intended as a reward for any official action on the employee's part, or which creates a potential for a perception of impropriety, as determined by the Department Head or Assistant County Manager, shall be refused.

Any violation of this policy is subject to discipline up to and including termination.

- B. An employee's involvement in any activity that is a conflict of interest is prohibited. A conflict of interest is any interest of the employee (financial, personal, collaborative or otherwise) that could impair the independence of judgment or the ability of a reasonable employee to act in the County's or public's best interests in any matter. A conflict of interest may arise from outside

employment, donor/donee or debtor/creditor relationships, consulting arrangements, family or personal relationships, legal or fiduciary arrangements and financial investments, or any other matter that could be construed by a reasonable third party as conflicting with the employee's duties.

C. The following guidelines are minimum standards:

1. No employee will accept from any person a loan, cash, credit, gift, or other benefit in connection with his/her County employment.
2. No employee will accept complimentary benefits or offerings of any kind from any person with whom that employee is currently dealing in an official County business capacity.
3. No employee will use public property, funds, or discretionary decisions toward personal or political gain.
4. No employee will publicly endorse any particular product or service.
5. Any violation of this Policy or the ethical standards of NRS 281.481 may be cause for discipline up to and including termination.

D. Department Heads, in cooperation with the Office of Human Resources, will prepare guidelines for their respective department's employees further defining employment activities that are potentially a conflict of interest and other conflict of interest situations in that department, including:

1. Examples of activities indigenous to that department that could be construed to be a conflict of interest;
2. Examples of activities indigenous to that department that would not be construed to be a conflict of interest; and
3. A list of any additional departmental requirements necessary to ensure compliance with this Policy.

III. FULL DISCLOSURE

- A. Employees will disclose to their Department Heads any potential conflicts of interest that may affect any matter or aspect of their County duties. Employees will not participate as agents or representatives of a County department or take any action or make recommendations on any matter in which they have a conflict of interest as determined by the Department Head.
- B. The following minimum standards for full disclosure by employees may be further delineated by individual departments or directives of the County Manager.

1. It is the responsibility of each employee to inform his/her Department Head of any potential conflict of interest and the full nature of that interest which may affect an assigned duty.
  2. The Department Head will determine whether a conflict exists and if the employee must recuse himself/herself from taking any action in a matter that may be affected by his or her interest.
  3. Department Heads may make individual policies to reassign duties where a conflict exists and when an employee has a conflict of interest.
- C. Employees in position classifications that exercise significant discretionary authority in the provision of service within a department will submit Financial Disclosure Statements to the Deputy Director of the Office of Human Resources and the County Clerk's Office, Commission Division, no later than March 31<sup>st</sup> of every year. The County Manager will determine the position classifications in each department that exercise significant discretionary authority. At a minimum, this provision will apply to Department Heads and Staff Directors. Financial Disclosure Statement forms will be designed by the County Manager and, once completed, made available for public inspection in the County Clerk's Office.

#### IV. CONFIDENTIAL INFORMATION

- A. Employees will respect and protect confidential information to which they have access in the course of official County duties; avoid any interest or activity that lies in conflict with the conduct of official County duties; and seek no favor for personal economic interest or the interest of others secured by confidential information.
1. No employee who acquires information in the course of his/her duties, which information by law or policy is not available at the time to the general public, will use such information to further his/her own economic interest or that of others.
  2. No employee may use work hours or County resources to secure information intended to be used to further his/her economic interest or that of others.

#### V. ADDITIONAL COMPENSATION/NOTICE OF ADDITIONAL EMPLOYMENT

- A. An employee will not accept any salary, retainer, augmentation, expense allowance, or other compensation from any private source for the performance of his/her duties as a public employee. An employee will inform the County of any outside employment unrelated to official duties. Prior to beginning any employment activity in addition to County service, the employee must complete a "Notice of Additional Employment" form and submit it to the Department Head



for approval. If it is determined that a conflict exists, the employee will be informed that he/she may not hold both positions simultaneously.

B. To ensure no conflict of interest exists, no employee may:

1. Seek or accept additional employment, ownership, or partnership in a business outside County service which is determined to be in conflict with his/her duties as an employee or in conflict with the functions and responsibilities of the department;
2. Hold two County positions of any type simultaneously; or
3. Hold a County position and contract employment with the County simultaneously.

#### VI. USE OF COUNTY PROPERTY

- A. Employees will not directly or indirectly use or permit others to use County property of any kind for personal use. Employees will protect and conserve all County property, including equipment and supplies entrusted or issued to them. Employees will be required to replace or reimburse the County for any property lost or damaged due to the employee's negligence. Administrative Guideline No. 16 provides further details concerning appropriate use of County property.
- B. The following are minimum standards for the use, security, and care of County property and equipment. Additional guidelines for the use of property may be established by directive of the County Manager or by individual departments.
1. County equipment and vehicles are for employee use in the performance of assigned duties; and
  2. Any equipment or supplies entrusted or issued to an employee should be cared for properly.

#### VII. POLITICAL ACTIVITIES

- A. Employees will not perform or participate in improper political activities in the workplace, including, without limitation, any act which detracts from or impairs the effectiveness of an employee in his/her work, or involves obligations or considerations inconsistent with his/her work, or involves obligations or considerations inconsistent with his/her status as a County employee.
- B. The following standards are established to further delineate the conduct of employees with respect to political activities during business hours:

1. Each employee is encouraged to exercise his/her rights as a citizen to vote and become involved in political campaigns of his/her choice outside work hours;
2. An employee must exercise extreme diligence in separating personal political views from his/her official duties and position as an employee, especially on the job;
3. An employee must not engage in any political activities at the workplace; and
4. An employee must not wear campaign buttons, hats, or other paraphernalia during the workday, or display political items in the work area, including but not limited to in restrooms and other building common areas.

**PERSONNEL POLICY XIII**  
**SUBSTANCE ABUSE POLICY**

EFFECTIVE: 02/17/04

- I. It is the policy of Clark County to foster and provide a drug- and alcohol-free workplace for all employees. A drug- and alcohol-free workplace protects the safety of the public as well as the County's valuable workforce. While the County will be supportive of those who seek help voluntarily, the County will be equally firm in identifying and disciplining those who continue to be substance abusers and do not seek help.
- II. The County may perform pre-employment, post-accident and/or reasonable cause substance abuse testing on employees or prospective employees. Substance abuse testing that discloses abuse may result in disciplinary action, mandatory attendance in substance abuse treatment and education programs, and/or referral to the Employee Assistance program. Employees not covered by a collective bargaining agreement will follow the policy established in the SEIU, Local 1107, collective bargaining agreement.
- III. Employees working in, and applicants for, safety-sensitive positions as defined by the U.S. Department of Transportation (DOT), including those employees who are drivers and mechanics of the County's Commercial Motor Vehicles and who are required to hold Commercial Driver's Licenses, are required to comply with all DOT regulations, adhere to specific consequences for violations, and undergo pre-employment, pre-duty, post-accident, reasonable-suspicion and random substance abuse testing in accordance with DOT regulations and the Drug and Alcohol Policy for DOT-Covered Employees of Clark County, available from the Office of Human Resources.

**AGREEMENT**  
**BETWEEN**  
**THE COUNTY OF CLARK**  
**AND**  
**THE CLARK COUNTY**  
**PROSECUTORS ASSOCIATION**

**JULY 1, 2020**

**TO**

**JUNE 30, 2021**

## **BOARD OF COUNTY COMMISSIONERS**

MARILYN KIRKPATRICK, Chair  
LAWRENCE WEEKLEY, Vice Chair  
LARRY BROWN  
JAMES B. GIBSON  
JUSTIN JONES  
MICHAEL NAFT  
TICK SEGERBLOM

## **COUNTY MANAGER**

YOLANDA T. KING

## **CHIEF FINANCIAL OFFICER**

JESSICA COLVIN

## **ASSISTANT COUNTY MANAGERS**

KEVIN SCHILLER  
RANDALL J. TARR  
JEFFREY M. WELLS

## **HUMAN RESOURCES**

SANDY JEANTETE, Director

## **CLARK COUNTY PROSECUTORS ASSOCIATION**

PAMELA WECKERLY, President  
CHRISTOPHER HAMNER, Vice President  
DANIELLE PIEPER, Secretary  
JAMES SWEETIN, Treasurer

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## **ARTICLE 1**

### **Agreement**

This Agreement is made and entered into this 1st day of July, 2020 by and between the Clark County Prosecutors Association, hereinafter referred to as the "Association" and the County of Clark, a government entity of the State of Nevada, hereinafter referred to as the "County".

## **ARTICLE 2**

### **Intent**

It is the purpose of this Agreement to promote and provide a responsible labor relations policy between the County and the employees covered herein; to secure an orderly and equitable disposition of grievances which may arise under the Agreement; and to set forth the full and entire understanding of the parties reached as a result of good faith negotiations regarding the wages, benefits, hours and other specified conditions of employment of the employees covered hereby. Further, we acknowledge that each employee of the Association is responsible for quality service to the citizens of Clark County by working with courtesy, efficiency, confidentiality, and integrity. It is intended by the provisions of this Agreement that there be no abrogation of the duties, obligations, or responsibilities of the County expressly provided for by federal laws, state statutes, and/or local ordinances, except as expressly limited herein.

## **ARTICLE 3**

### **Recognition**

1. The County recognizes the Clark County Prosecutors Association (CCPA) as the sole and exclusive bargaining agent for the classifications listed in Appendix A of this Agreement. The terms and conditions of this Agreement shall apply to those classifications listed in Appendix A of this Agreement, regardless of membership in the Association. The terms and conditions of this Agreement shall not apply to part-time or temporary employees.
2. The County shall provide the Association, no later than the fifteenth (15<sup>th</sup>) of the month, the following:
  - a. A separate report identifying new hires, temporary employees, terminated employees and transfers.
  - b. Each report shall be submitted in alphabetical order.
  - c. Each report shall list the following information: Employee's name, home address, classification (job title), employment status (full time, part time or per diem), division name, date of hire, benefit accrual date, number of hours paid in that month, and wage rate.

- d. All information is furnished for the exclusive use of the Association and shall not be used for any other purpose or be given to any other person or organization without the express written approval of the employee involved.
3. On a quarterly basis, the County shall provide to the Association a complete list of County employees eligible for inclusion in the unit, and shall include the following information: employee's name, home address, classification (job title), employment status (full time, part time, or per diem), division name, date of hire, benefit accrual date, number of hours paid in that month, and wage rate. All information is furnished for the exclusive use of the Association and shall not be used for any other purpose or be given to any other person or organization without the express written approval of the employee involved.

#### **ARTICLE 4**

##### **Discrimination Clause**

The County, the Association, and any other party bound by this Agreement shall each apply the provisions of this Agreement equally to all employees in the Association without discrimination as to race, color, religion, gender, sexual orientation, gender identity/expression, age, physical or visual handicap, national origin, or because of political or personal reasons or affiliations.

#### **ARTICLE 5**

##### **Association Rights**

1. The County recognizes and agrees to meet directly with the elected or appointed representative of the Association on all matters covered by the Collective Bargaining Agreement.
2. The selection of representatives, officers, and the negotiating team members is the sole responsibility of the Association.
3. The Association shall have up to five (5) representatives of their choosing.
4. The County shall allow the representatives time to conduct Association business. The representative must work in his/her jurisdictional area which includes representing employees at meetings scheduled and held with the department head or his/her designee, grievance hearings or arbitrations, and discipline or termination hearings.
5. To conduct all Association business, representatives shall access the bank hours available to the Association for each fiscal year.



- a. A total of 200 hours may be used to investigate grievances and meet with grievants, attend conferences, conventions, attend to legislative matters or other Association business.
  - b. In addition, for each year when the Legislature is in session, the Association shall be allotted a total of 100 hours to attend to Legislative matters.
6. Representatives of the Association shall notify the Association President or designee each time there is a need to conduct appropriate business.
7. Representatives of the Association may communicate with individual employees at the worksite with supervisor notification at least two (2) hours in advance.
8. The number of members of the Association's negotiating team shall be determined in the ground rules. The members of the negotiating team shall be granted leave from duty with full pay for all meetings held with management for the purpose of negotiating the terms of this and future Collective Bargaining Agreements. No negotiating team member shall receive overtime pay should the sessions go beyond his/her normal work hours. Further guidelines for this process shall be determined during negotiation rule making meetings.
9. The County shall allow ten (10) Association bulletin boards no larger than 2' x 3' in approved locations. The Association may post notices on these bulletin boards that relate to Association business and activities or information that is of importance to its members.
10. The Association shall be allowed to hold Association meetings at County facilities with the prior approval of the District Attorney.
11. The County shall allow the Association thirty (30) minutes to present information during the Office of the District Attorney's new hire training and orientation program.
12. The Office of Human Resources shall furnish to the Association a copy of all job announcements for positions to be filled in the Department. If the position is covered by this bargaining unit then Human Resources shall provide the name of the person filling the vacancy. In addition, the Association shall be informed if the Department intends to either eliminate, change a position, or not fill a position covered by this bargaining unit.
13. Upon completion and ratification of this Agreement the County shall provide all management personnel with training regarding the terms of this

Agreement. The Association President or a representative shall be allowed to be present and participate at all such training sessions.

## **ARTICLE 6**

### **Employee Rights**

1. The County and the Association agree that employees eligible for membership in the Association shall have and shall be protected in the exercise of their right to join or refrain from joining the Association freely and without fear of penalty and reprisal. The freedom of such employees to assist the Association shall be allowed and recognized as extending to the participation in the management of the Association in the capacity of an Association officer or representative, including presentation of the Association views to the officials of the County.
2. No prejudicial, discriminatory or retaliatory action may be taken, at any time, by the Association or the County against any person for his/her participation in or statements made in the investigation or settlement of a grievance.
3. An employee's official personnel files shall be maintained in a confidential manner and shall only be viewed by authorized County employees as indicated in the Merit Personnel System.
4. The County agrees that each employee shall have the right to review and photocopy materials contained in his/her personnel file. An employee's Association representative may review and photocopy any and all documents contained in the personnel file, if he/she has provided Human Resources with a written release signed by the employee. There shall be only one (1) official personnel file. It is understood that the personnel file shall be made available to the employee during normal business hours.

## **ARTICLE 7**

### **Management Rights**

The Management Rights of the County are indicated in NRS 288.150, Paragraphs 3, 4, and 5.

## **ARTICLE 8**

### **Dues Check Off**

1. The County shall deduct from the wages of those employees who are members of the Association and pay over to the proper officers of the Association any monies which the Association advises may be due it from such members, provided that the employee who is a member of the

Association has individually and voluntarily authorized such deductions to be made.

2. The Association agrees to indemnify, defend and hold the County harmless against any and all claims or suits that may arise out of or by reason of action taken by the County in reliance upon any authorization cards submitted by the Association to the County. The Association agrees to refund to the County any amounts paid to it in error on account of the payroll deduction provision upon presentation of proper evidence of error or mistake.
3. The Association shall certify to Clark County Human Resources, in writing, the current rate of membership dues. The County shall be notified of any change in the rate of membership dues 30 days prior to the effective date of such change. Dues shall be remitted per pay period to the Association by the County.
4. If the County is notified of a 75% or more increase in Association dues, it may require that each member re-sign dues authorization cards, reflecting the amount of increase.
5. The County shall not be required to honor for any month's deduction any authorizations that are delivered to it later than seven (7) days prior to the second payday of the month.

#### **ARTICLE 9**

##### **Automatic Payroll Deposit**

All employees covered by this Agreement may participate in the County's automatic payroll deposit program as developed and implemented by the County.

#### **ARTICLE 10**

##### **Bar & Association Dues & CLE**

The County recognizes and acknowledges that it is necessary for every attorney, in order to practice law in the State of Nevada, to maintain his/her standing in the State Bar of Nevada and to obtain, on an annual basis, Continuing Legal Education (CLE) credits. The County shall pay for professional dues/fees that are either mandated by law or deemed necessary by the District Attorney. Such professional dues and fees shall include, at least, membership in the State Bar of Nevada, CLE credits and fees.

Continuing Legal Education credits shall be scheduled as far in advance as is practical and must have the advance approval of the District Attorney or the Assistant District Attorney designated by the District Attorney. Any travel and lodging expenses, if applicable, as determined by the District Attorney shall be

processed in accordance with the County's related fiscal directives. Employees shall be provided up to \$500.00 per fiscal year for CLE. Alternatively, the District Attorney may choose to provide a sufficient number of in-house CLE courses (both general credits and ethics credits) to enable the employee to maintain his/her standing in the State Bar of Nevada. The in-house CLE's that may be provided by the District Attorney may also be video and audio taped so that those employees who could not attend the live presentation may view the video and audio taped CLE.

The parties agree that this term of the contract runs through fiscal year 2012 and continued payment is subject to further negotiations pursuant to NRS 288.

## **ARTICLE 11**

### **Copy of Agreement**

The County shall provide each employee with a copy of this Agreement within sixty (60) days of the ratification and approval of this Agreement. New employees shall be provided copies of this Agreement at the time of hire. The cost of reproducing this Agreement shall be equally borne by the Association and County.

## **ARTICLE 12**

### **Dispute Resolution Procedure**

#### **Section 1 - Discipline Procedure**

1. The District Attorney has the right to discipline or terminate deputies in the District Attorney's Office for just cause. Discipline shall be defined to include documented oral warnings, written reprimands, suspensions, demotions, administrative leave without pay, and terminations.
2. An employee may be placed on administrative leave with pay pending an investigation into alleged misconduct. This shall not be deemed to be discipline, nor shall it be grievable. The principles of progressive discipline shall be utilized. Progressive discipline normally includes a documented oral warning, one (1) or more written reprimand(s) and thereafter more severe disciplinary action. The Association recognizes the need for more severe initial disciplinary action in the event of major violation of established rules, regulations or policies of the County or the District Attorney's Office, or misconduct.
3. All disciplinary actions shall be clearly identified as such in writing. The employee shall be requested to sign the disciplinary action. The employee's signature thereon shall not be construed as admission of guilt or concurrence with the discipline, but rather shall be requested as an indication that he/she has seen and comprehends the gravity of the

disciplinary action. Employees shall have the right to review and comment on disciplinary actions. A copy of all disciplinary action documents shall be provided to the employee before such material is placed in his/her personnel file. An employee who receives discipline as defined above, may within thirty (30) working days submit a rebuttal in writing to Clark County Human Resources which shall be attached to and accompany the discipline. If, as a result of the grievance procedure utilization, just cause is not shown, the disciplinary action shall be removed from their personnel file and returned to the employee. The only personnel file to be maintained shall be the employee's official personnel file at the office of Human Resources. Copies of disciplinary actions shall only be included in this file and no other place. Once a disciplinary action document is removed, the basis for the discipline may not be used in any future disciplinary proceeding.

4. The County recognizes the right of an employee who reasonably believes that an investigatory interview may result in discipline to request the presence of an Association representative at such an interview. Upon request he/she shall be afforded an Association representative. The investigator shall delay the interview for a period not to exceed two (2) working days in order to allow an Association representative an opportunity to attend. If an Association representative is not available or delay is not reasonable, the employee may request the presence of a bargaining unit witness. (Weingarten rights).

Employees shall also have the right to a notice prior to any disciplinary action, and to a determination meeting prior to any disciplinary action except for documented oral warnings and written reprimands. The District Attorney or the Assistant District Attorney designated by the District Attorney must provide a notice and statement in writing to the employee identifying the just cause violations, a finding of fact and the reasons for the proposed action. The employee shall be given an opportunity to respond to the charges in a meeting with the District Attorney or the Assistant District Attorney designated by the District Attorney, and shall have the right to Association representation during that meeting, upon request. (Loudermill rights)

5. No employee who has satisfactorily completed probation may be disciplined without just cause. Just cause may include, but not be limited to:
  - a. Violation of the criminal laws, or ordinances, of the cities, counties or the State of Nevada or of any other state, or the United States, the violation of which is considered a crime. Conclusion of a criminal proceeding is not a prerequisite to action under this

section. Nor is the result of a criminal proceeding a bar to disciplinary action.

- b. Violation of written County or Departmental Procedures, Policies, Rules and Regulations that do not conflict with the terms of this Agreement and have been properly approved.
  - c. Solicitation of the public for money, goods or services which has not been approved in accordance with established procedures.
  - d. Acceptance of any reward, gift or other form of remuneration in addition to regular compensation for work related duties, which has not been approved in accordance with established procedures.
  - e. Incompetence, insubordination, neglect of duties, unexplained or unexcused absence from duty, withholding services as a result of an intentional work slowdown, malfeasance, misfeasance, or misconduct.
  - f. The entry of an order holding an employee in contempt for the employee's noncompliance with a child support order, child visitation order, or a subpoena or order relating to a paternity or child support proceeding will result in immediate suspension without pay and may result in termination.
6. Upon written request by the employee to Clark County Human Resources, the record of a documented oral warning shall be removed from their personnel file after six (6) months from the date of issuance if no further discipline ensues. A record of a written reprimand shall be removed from their personnel file after eighteen (18) months from the date of issuance if no further discipline ensues. All documents shall be returned to the employee.

## **Section 2 – Grievance Procedure**

7. Grievance Definition. A grievance shall be defined as a dispute regarding the interpretation or application of the provision(s) of this Agreement, which adversely affect an employee's wages, hours or conditions of employment, and is contrary to the terms of this Agreement, or a disciplinary matter. The grievance procedure is the exclusive remedy for claims that the Agreement has been violated. An aggrieved employee may personally, or with the assistance of the Association, seek relief through this grievance procedure. Employees shall be safe from restraint, interference, discrimination or reprisal in the grievance process. This Grievance Procedure does not preclude and, in fact, encourages the employee to attempt to discuss or resolve a dispute or complaint prior to

the filing of a formal grievance. Further, in instances where a grievance is filed, it is the intent of both parties that grievances shall be settled and remedied at the lowest possible step and that all procedures set forth herein shall be complied with as expeditiously as possible.

8. Grievance Procedure. Grievances and appeals must be filed within the time limits specified below. However, should the parties agree in writing to informally attempt to settle the grievance, all time periods are tolled. If a grievance is not presented or if an appeal of a decision rendered regarding the grievance/appeal is not filed by the employee or the Association within the time limits, the grievance will be considered abandoned. If the County or the District Attorney fails to abide by the time periods reference in this Section, the discipline shall be overturned.

9. Step 1

- a. Documented oral warnings are not subject to the grievance and arbitration procedures as outlined in this Article.
- b. Discipline subject to the grievance procedure is defined as an employee's written reprimand, suspension, demotion, or involuntary termination from County service and shall not include matters over which the Nevada Equal Rights Commission has jurisdiction. The grievance shall be filed by the employee or Association representative with the District Attorney within ten (10) working days of the occurrence which gave rise to the grievance or when the employee should have reasonably first had knowledge of the grievance. Such grievance shall set forth the specific disputed facts or issues and include the grievant's proposed remedy. Within five (5) working days of receipt of the written grievance, the District Attorney or the Assistant District Attorney designated by the District Attorney for a matter related to work performance or the District Attorney or his designee for a matter unrelated to work performance shall meet with the employee. Within five (5) working days thereafter, a written decision shall be given to the employee and the Association.
- c. A grievance concerning the interpretation or application of the provision(s) of this Agreement concerning a non-disciplinary matter shall be filed by an employee or the Association with the County Manager or his or her designee within ten (10) working days of the occurrence which gave rise to the grievance or when the employee or Association should have reasonable first-hand knowledge of the grievance. Such grievance shall set forth the specific contract provisions alleged to have been violated and include the proposed remedy. Within five (5) working days of receipt of the written

grievance, the County Manager or her designee shall meet with the employee. Within five (5) working days thereafter, a written decision shall be given to the employee and the Association.

10. Step 2

If the grievance is not resolved at Step 1, an arbitration request may be submitted by the Association representative. Only Association Officers, the District Attorney or the Assistant District Attorney designated by the District Attorney for a disciplinary matter or the County Manager for a non-disciplinary matter may advance a grievance to arbitration. A request for arbitration shall be presented in writing to the County Manager for a Non-Disciplinary Matter or the District Attorney or his designee for a disciplinary matter within five (5) working days from the date the decision was rendered at Step 1. As soon as practicable thereafter or as otherwise agreed to by the parties, an arbitrator shall hear the grievance. In the event the parties cannot agree on the selection of an arbitrator within ten (10) working days from the receipt of the request for arbitration, the parties shall request a list from the American Arbitration Association (AAA). If the matter is covered under Title 7 or the United States Code, then in addition to satisfying the standard requirements and qualifications for an arbitrator, the arbitrator shall also have training and/or expertise in the application and interpretation of civil rights laws. The American Arbitration Association shall submit a list of five (5) arbitrators from which a selection shall be made by alternately striking one (1) name from the list until only one (1) name shall remain. The selection shall be accomplished by the County striking first, and the Association next, each striking one (1) name from the list in turn until only one (1) name remains.

11. For the purposes of resolving grievances at the earliest possible point in the process, both parties agree to make a full disclosure of the facts and evidence which are material to the grievance, including but not limited to furnishing copies of all evidence, documents, reports, photographs, written statements, and a complete identification of witnesses relied upon to support their position. Both parties agree to disclose such facts, evidence and witness lists at least one (1) working day prior to Step 1 meetings and at least three (3) working days prior to a Step 2 arbitration hearing. An arbitrator will not consider any evidence or witness testimony from a party who failed to disclose such evidence or witness list.
12. The arbitrator shall conduct the grievance proceeding according to the AAA Guidelines, which may be amended by mutual written agreement of the parties. The decision of the arbitrator shall be rendered as expeditiously as possible (but no later than thirty (30) days from the close of record) and shall be final and binding upon both parties.



13. The decision to uphold disciplinary actions shall be based on the reasonableness of the discipline imposed in response to the actions taken or not taken by the employee. In the event a termination is overturned by an arbitrator, the arbitrator shall have the ability to impose a less severe form of discipline.
14. Any decision rendered shall be within the scope of the Agreement and shall not modify, amend, alter, add to or subtract from any of the terms of this Agreement. The arbitrator shall confine himself/herself to the precise issue(s) submitted for arbitration and shall have no authority to determine other issues not so submitted. The arbitrator is without power to issue an award inconsistent with the governing statutes and/or ordinances of the County. The arbitrator, in the absence of an expressed written agreement of the parties to this Agreement, shall have no authority to rule on any dispute between the parties which is not within the definition of a grievance set forth in this Article. The arbitrator's decision and award shall be based solely on his/her interpretation of the application of the express terms of this Agreement. Any and all settlements or awards issued by the arbitrator shall be limited in retroactivity to the date of the alleged precipitating event or date of the filing of the grievance as decided by the arbitrator.
15. Only one (1) grievance may be decided by the arbitrator at any hearing.
16. Each party shall be responsible for compensating its own witnesses and representatives. The losing party shall pay the arbitrator's fees.
17. The time limits set forth above may be extended by mutual written agreement of the County and the Association.
18. The grievance procedures provided for herein shall constitute the sole and exclusive method of adjusting all complaints or disputes arising from this Agreement which the Association or employees may have, and which relate to or concern the employees and the County. Nothing in this Agreement shall prevent the parties from mutually agreeing to resolve any grievance.

### **ARTICLE 13**

#### **Anti-Strike Clause**

The Association agrees not to strike, nor to endorse, support, assist or encourage in any way any individual employee or group of employees to participate in any strike against the County.

## **ARTICLE 14**

### **Evaluations/Salary Increases**

The three (3) – five (5) percent annual salary adjustment provisions set forth in paragraph 1 of this article, shall be suspended beginning January 1, 2021 through December 31, 2021.

1. Employee performance evaluations shall occur yearly. The annual evaluation cycle shall be based on a calendar year (January 1 to December 31). Salary increases shall be effective the pay period of January 1, with the exception of the first annual increase which will occur on the first anniversary of the employee's hire date. The annual increase occurring on the January 1<sup>st</sup> immediately following the first anniversary of the employee's hire date shall be prorated from the date the employee completes probation. Employees shall receive a salary increase of zero or between three (3) to five (5) percent. Employees shall be eligible for yearly salary increases until the top of the salary range is reached.
2. In the event a salary increase is denied, the employee shall be notified in writing of the reasons within 45 calendar days.
3. Evaluations will be based upon a form giving a uniform set of standards which shall be negotiated with the District Attorney or the Assistant District Attorney designated by the District Attorney.

## **ARTICLE 15**

### **Work Week Schedule**

The parties expressly understand that Deputy District Attorneys are professionals and are expected to work for such periods of time as are necessary to adequately and professionally handle assigned duties. Deputy District Attorneys are exempt from the overtime provisions of the Fair Labor Standards Act. Deputies shall generally have a work week which normally shall consist of a minimum of forty (40) hours per week over five (5) consecutive days. However, Deputy District Attorneys may be permitted, at the sole discretion of the District Attorney, to work a four-ten (4-10) schedule.

## **ARTICLE 16**

### **Initial Appointment, Promotion, or Transfer**

1. After initial appointment of a new employee as a Deputy District Attorney, the employee shall complete a probationary period of twelve (12) months. During the probationary period, the employee is an employee at will. After the initial probationary period, the employee may only be discharged for just cause. The District Attorney, with County Manager Approval, shall retain the ability to initially hire an employee as a Deputy District Attorney

with a base salary above the entrance rate for a Deputy District Attorney. Such an employee would still be subject to the probationary period and salary adjustment.

2. When an employee completes the probationary period, he/she shall receive a four percent (4 %) salary increase. A salary increase for successful completion of probation does not in any way affect the eligibility of the employee to receive his/her annual salary increase on the same date.
3. When an employee completes five (5) years of service as a Deputy District Attorney and the employee has demonstrated a mature competence in the management of a variety of hearings and trials, as demonstrated in a performance evaluation or other process, based upon uniform standards, as determined by the District Attorney, the employee will, at the discretion of the District Attorney, be eligible for promotion to the position of Chief Deputy District Attorney. When an employee promotes to a Chief Deputy District Attorney, his/her salary shall be adjusted by an increase of four percent (4%) or he/she shall receive the minimum salary for a Chief Deputy District Attorney, whichever salary is higher.
4. In the event an employee is not promoted when eligible, the employee shall be notified in writing of the reasons within 45 days. The District Attorney shall retain the ability, with the approval of the County Manager, to promote an employee to Chief Deputy District Attorney, prior to the completion of the five (5) years. If not promoted at five (5) years, the District Attorney, in his sole discretion, shall retain the ability to promote an employee to Chief Deputy District Attorney at any time. Employees may only grieve the withholding of a promotion if the uniform standards for promotions, set forth by the District Attorney, are not followed. In addition, employees shall not receive a promotion if they have not received at least one 4% meritorious rating on one of their three evaluations prior to any promotion.
5. When an employee promotes to a Chief Deputy District Attorney, he/she shall serve a qualifying period of twelve (12) months. There shall be no salary increase associated with the completion of the qualifying period. During the qualifying period, an employee may be demoted to Deputy District Attorney for just cause shown. The demotion of an employee from Chief Deputy District Attorney to Deputy District Attorney is subject to the grievance procedures outlined in this agreement. Demotion of an employee shall not occur after successful completion of the qualifying period. If an employee is demoted, he/she does not have to serve a qualifying period for the lower classification again.

6. The District Attorney, with County Manager approval, shall retain the ability to initially appoint an employee as a Chief Deputy District Attorney with any salary within the range for a Chief Deputy District Attorney. Such an employee would still be subject to the probationary period and salary adjustment; however would not be subject to the qualifying period.
7. The District Attorney, with County Manager approval, shall retain the ability to appoint a non-probationary attorney serving in a comparable classification within another department to a position covered in Appendix A of this agreement. Such an employee may serve a qualifying period of twelve (12) months; however, there shall be no salary increase associated with the completion of the qualifying period. While on a qualifying period, the employee shall remain eligible for consideration for an annual merit salary adjustment.
8. Should an employee separate from service with the County, the District Attorney, in his or her sole discretion, shall retain the ability to re-hire that employee to the employee's previously held position, at the same salary, so long as the rehire occurs within one (1) year from the date of separation, and without serving a new probation/qualifying period.

#### **ARTICLE 17**

##### **Bridging Services**

Law Clerks, for the Eighth Judicial District Court, Office of the Clark County District Attorney, or Office of the Clark County Public Defender who accept an offer of an appointment as a Deputy District Attorney or Chief Deputy District Attorney, with no break in service shall serve a probationary period for twelve (12) months with no grievance or appeal rights. The time served as a Law Clerk shall be credited for the purpose of benefit calculation under this Agreement.

#### **ARTICLE 18**

##### **Establishment of New Position Classifications**

The Association shall be notified in writing in the event that the County establishes a new position classification requiring a license to practice law in the State of Nevada, including the proposed classification and salary grade. The Association shall determine its interest in representing these proposed classifications as part of its bargaining unit. If these new classifications are added to the bargaining unit the Association and the County shall enter into negotiations to determine the pay schedule. All new position classifications shall be entitled to all the benefits of the other classifications covered by this Collective Bargaining Agreement.

## **ARTICLE 19**

### **Personnel Layoff and Recall**

Layoff is defined as an involuntary separation wherein management eliminates a position without prejudice to the incumbent because of lack of work or funds.

The determination of the number of positions and classifications to be affected by a layoff is a management right. The County and the Association agree that layoff and recall of personnel and appeals of these actions as it pertains to employees covered under this Agreement shall be accomplished as follows:

#### **Section 1 – Layoff**

1. Temporary and probationary employees in the department shall be laid off first.
2. If additional layoffs are necessary, employees shall be laid off based on the following criteria, in the following order:
  - a. The seniority of the employees
  - b. In the event that seniority is equal, relative ability and qualifications shall prevail.
3. Separation due to layoff shall require the giving of at least two (2) weeks notice to the employee, or payment in lieu of notice, of an equivalent amount of the employee's base salary by the county.
4. The County reserves the right to exempt 8% of the association members from the seniority provisions of this article due to the special skill requirements that those individuals may possess.

#### **Section 2 – Recall**

1. Any permanent status employee laid off under this Article shall, based on seniority, have his/her name placed on an appropriate County recall list/lists for a period of two (2) years. Previous employees shall be notified by certified mail, return receipt requested, at their last known address and shall, within ten (10) calendar days of receipt, respond affirmatively, by certified mail or in person, that they are accepting the offer of recall. Failure to respond in a timely manner shall mean that the person has refused the offer of recall and the person shall be removed from the recall list/lists. An employee must be available for work within two (2) weeks of acceptance of the offer.

2. When positions become available in a classification in the department, employees who have been laid off or reduced in grade in that classification from that department shall be recalled at the District Attorney's determination in inverse order of layoff. The order of recall shall be:
  - a. Former laid off employees who held a position in the same class.
  - b. Former employees who held a position in the same series as long as the position is at the same or lower level than the position they have previously held.

In the event that a classification has only had a change in title, employees on the old recall list/lists shall be placed on the new respective list/lists.

## **ARTICLE 20**

### **Miscellaneous Leaves**

1. Court Leave: Employees required by legal process or required by the County to appear in any court or before the Grand Jury as a juror or witness in a criminal or civil case during his/her work day shall be granted leave with pay. He/she shall claim any jury, witness, or other fee to which he/she may be entitled by reason of such appearance and pay such fees, except mileage and per diem, to the County Treasurer within three (3) working days of receipt, to be deposited in the applicable fund of the County. Employees appearing in court for the stated reasons on scheduled 24 hour periods off shall retain any and all remuneration as may be authorized for such appearances.

No civil case shall be covered by this Article in which the employee has an interest.

2. Military Leave: Any permanent employee who is a member of the organized U.S. Army, Navy, Air Force, Coast Guard, Nevada National Guard or Marine Reserves shall continue to receive their regular pay from the County as prescribed by NRS 281.145, and any benefits as provided in the Uniformed Services Employment and Reemployment Rights Act of 1994.
3. Leave Without Pay: Upon written application to the department head, a permanent status employee may, in the District Attorney's sole discretion, be granted a leave of absence without pay for a period not to exceed 90 calendar days, without prejudice to his/her status, but no vacation or sick leave credits shall accrue during any such leave period. Without approval of the District Attorney and the Clark County Human Resources Director, leave without pay may not be granted until all accumulated annual leave is

used. Disciplinary leave without pay may be imposed when annual leave is still available. Any additional leave must be recommended by the District Attorney and approved by the County Manager.

4. Parental Leave: Upon written application to the department head, an employee shall be granted a leave of absence of up to three (3) months for the purpose of caring for newborn children up to six (6) months old or legally adopting a child(ren). No vacation or sick leave credits shall accrue during the duration of any period of leave without pay. Employees are not required to use up annual leave and sick leave benefits before taking parental leave without pay. Any unpaid leave shall be taken as one (1) continuous leave period. Employees, at their discretion, may use none, any or all of their sick leave and/or annual leave in the 3-month parental leave period. Parental leave of more than three (3) months is at the discretion of the department head, and if approved, the employee may use annual leave, sick leave, or leave without pay under the provisions of Articles 20, 21, and 22 of this Agreement.
5. Blood Donor Leave: Employees will be granted the necessary time off for the purpose of donating blood when participating in a County authorized and/or sponsored blood donation drive.
6. Education Leave: Upon written application to the District Attorney, an employee may, in the County's sole discretion, be granted educational leave without pay for a period not to exceed 90 calendar days, without prejudice to his/her status, but no vacation or sick leave credits shall accrue during any such leave period.

## **ARTICLE 21**

### **Vacation**

1. Accrual of Vacation Leave:
  - a. Eligible employees hired or rehired and working on a full-time permanent basis shall earn vacation leave based on months of service at the following rates for each pay period:

<u>MONTHS SERVICE</u>	<u>HOURS PER PAY PERIOD ACCRUED</u>
0-24	3.08
25-96	4.62
97-180	5.54
181 and over	6.15

- b. Vacation leave may not be accumulated to exceed 240 hours at the beginning of any calendar year. Prior to the end of the calendar

year, employees with more than 240 hours of leave will be given the option of placing the hours above 240 in the catastrophic leave bank in accordance with Article 22, Sick Leave, Catastrophic Leave Program, sell - back vacation leave subject to the conditions outlined in Section 4 (b) herein, or lose the leave. If an employee selects none of the options, then the excess hours will automatically be placed in the catastrophic leave bank.

2. **Vacation Eligibility:** An employee is not entitled to take accumulated vacation leave or payment until he/she has successfully completed his/her probationary period.
3. **Vacation Leave Use:** The purpose of vacation benefits is to allow each employee time away from his/her job for rest, recreation, and the pursuit of non-employment objectives. The time when vacation leave shall be taken will be determined by the District Attorney. Vacation leave requests must be approved at least 24 hours in advance except in cases of emergency as determined by the District Attorney or designee. An emergency shall not include absences for which sick leave is to be used as defined in Article 22, unless all sick leave has been exhausted. Vacation requests for one (1) shift or less may be granted without the 24-hour notification requirement referred to in this Section.
4. **Payment for Vacation Leave:**
  - a. Except as provided in Article 21, Section 2, upon separation from service for any cause, an employee shall be paid a lump sum payment for any unused or accumulated vacation earned through the last day worked. If this is earlier than the last day of the pay period, the vacation shall be prorated. Payment for unused vacation leave will be at the employee's biweekly salary divided by 80.
  - b. In December of each year, employees shall be eligible to submit a request to be paid for up to a range of twenty (20) hours to a maximum of eighty (80) hours of vacation leave from December 1<sup>st</sup> through November 30<sup>th</sup>. The County Manager shall establish the maximum vacation leave sellback for the employee each year prior to December 1<sup>st</sup>, consistent with Category III employees of the M-Plan.
5. **Death of an Employee:** Upon the death of a person in the employ of the County a lump sum payment for vacation time accrued to his/her credit will be made to the employee's beneficiaries or estate.



## **ARTICLE 22**

### **Sick Leave**

#### **Section 1 - Use of Sick Leave**

1. Paid sick leave may be used by employees who:
  - a. Are incapacitated to perform job duties because of illness or injury.
  - b. Are prevented by public health requirements from being at work.
  - c. Need to absent themselves from work for bereavement and to attend the funeral of a member of the employee's immediate family. Immediate family shall be defined as the employee's spouse, mother, father, brother, sister, child, foster child, stepchild, grandchild, and grandparent, or any in-law of the employee's bearing any of the previously specified relationships.
  - d. Are required to absent themselves from work upon incapacitating illness or injury in the immediate family to personally care for that family member.
  - e. Need to be absent from work when receiving medical or dental treatment or examination.
  - f. Need to be absent when incapacitated to perform job duties because of pregnancy or childbirth.
  - g. Need to be absent to care for newborn children.
2. No employee shall be entitled to sick leave while absent from duty because of disability arising from an injury purposely self-inflicted or caused by willful or grossly negligent misconduct.
3. Employees shall be subject to the following requirements for the use and payment of sick leave:
  - a. Employees who become ill shall call in prior to the start of the workday.
  - b. Employees shall fill out and sign a sick leave form stating the reason for the use of sick leave immediately upon their return to work or stating the need to schedule sick leave for purposes of a medical or dental appointment.
  - c. Sick leave forms shall be turned in to the District Attorney or other designated authority for approval.

- d. Any employee who reports absent at the start of a work day because of illness or injury who recovers sufficiently during the course of the shift to report to work is required to do so. In such a situation, the employee involved shall only be charged for actual sick leave used to the nearest one-fourth (1/4) of an hour.
- e. Upon written request from the District Attorney or County Manager, a certificate of illness from a state licensed health care provider in an appropriate discipline may be required when there is one (1) absence in excess of three (3) consecutive scheduled workdays.
- f. If an employee's fitness for duty is questioned by the District Attorney or County Manager, the employee may be required to submit a fitness for duty from the employees' health care provider.

## **Section 2 - Sick Leave Accrual and Payment**

- 1. Eligible permanent employees working on a full-time basis shall earn sick leave at the rate of 3.7 hours for each pay period. Employees who have been employed by the County for ten (10) cumulative years of service or longer will receive an additional 0.92 hours of sick leave per pay period. There will be no limit on sick leave accumulation.
- 2. Employees shall be paid their current hourly rate for each hour of sick leave used.
- 3. If a permanent employee separates from the service of the County after three (3) consecutive years of employment, the employee shall receive payment for one-half (½) of his/her sick leave accumulation. An employee's sick leave payoff upon separation shall increase above 50% at the rate of one and one-half percent (1 ½%) for each additional year of consecutive service above ten (10) through 20 years of service. An employee's sick leave payoff upon separation shall increase above 65% at the rate of three and one-half percent (3 ½%) for each additional year of consecutive service above 20 up to a maximum of 100% at 30 years of service. Payment for unused sick leave will be at the employee's biweekly salary divided by 80.

## **Section 3 - Catastrophic Leave Program**

Employees covered under this contract holding permanent status may participate in the County's catastrophic leave program. Catastrophic leave benefits will not be available to any employee currently receiving disability income benefits from the County's long-term disability insurance carrier.

## **Section 4 – Bonus Leave**

Employees who use forty (40) hours or less of sick leave during the year (based on their employment date), excluding up to three (3) consecutive days of sick leave used as bereavement leave, and excluding sellback of sick leave, shall be granted 24 hours of bonus leave. Bonus leave shall be forfeited if not used in the year it is accrued.

## **Section 5 – Sellback**

Each December, employees may submit a request to sell back up to ten (10) days of accrued sick leave. Payment shall be made based on an employee's percentage entitlement as determined by the sick leave buyout provision set forth above. In order to be eligible for payment, employees must maintain a minimum sick leave balance of one hundred, twenty (120) days.

## **ARTICLE 23 Holidays**

1. All employees shall receive the following 12 paid holidays per year:  
  
January 1 (New Years Day)\*  
Third Monday in January (Martin Luther King Day)  
Third Monday in February (Presidents Day)  
Last Monday in May (Memorial Day)  
July 4 (Independence Day)\*  
First Monday in September (Labor Day)  
Last Friday in October (Nevada Day)  
November 11 (Veterans Day)\*  
Fourth Thursday in November (Thanksgiving Day)  
Friday after Thanksgiving Day (Family Day)  
December 25 (Christmas Day)\*  
Employee's Birthday
2. The Birthday Holiday is accrued on the employee's birthday, and is only available for use within the following 12-months. The Birthday Holiday is to be used by the employee in the same manner as a vacation day, and shall not be carried over from year to year.
3. A marked (\*) holiday falling on a Saturday shall be observed on the Friday before and when it falls on a Sunday it shall be observed the Monday following. For employees working a schedule other than Monday through Friday, holidays shall be observed on the day specified in this Section.
4. The pay for each holiday shall be equal to the number of hours in the assigned shift at the employee's regular hourly rate.

5. All employees shall also receive any other holiday declared by the County, State, or Federal Government.

#### **ARTICLE 24**

##### **Longevity**

Employees appointed to a full time position within the attorney classification series prior to July 1, 2002 shall upon completion of five (5) years of creditable service receive an annual lump sum payment equal to 0.57 of one percent (.57%) for each year of service. Employees hired into the attorney classification series subsequent to June 30, 2002 shall not be eligible for longevity pay.

#### **ARTICLE 25**

##### **Deferred Compensation**

All employees covered by this Agreement shall be eligible to participate in the County's Deferred Compensation Program as developed and implemented by the county. A Deferred Compensation Program permits an employee, on a voluntary basis, to have a portion of his/her salary withheld and invested on a tax-deferred basis.

#### **ARTICLE 26**

##### **Benefit Eligibility**

1. Eligibility for increased entitlements to sick leave, vacation and longevity shall be determined by the total amount of service commencing with appointment to a permanent budgeted position.
2. Should an employee who left County service in permanent status, worked three (3) consecutive years, and gave, when applicable, two (2) weeks termination notice be rehired, that employee may regain all previously unused sick leave, provided the employee reimburses the County for whatever unused sick leave was paid the employee at the time of separation. Such reimbursement shall be paid before an employee is entitled to use such sick leave. The County must give the employee notice of this option upon rehire and the employee must either accept or decline this option within sixty (60) days following the successful completion of his/her probationary period. If the employee accepts the repayment option, the repayment must be completed within six (6) months following the successful completion of his/her probationary period.
3. Increased entitlements will include all previous employment that ceased under honorable conditions or as a result of an involuntary layoff as provided in Article 19.

## **ARTICLE 27**

### **Maintenance of Benefits**

The parties agree that this Agreement is not meant to change any benefit, which is a mandatory subject of bargaining under NRS 288, currently provided an employee unless expressly referring to that benefit. Therefore, any such benefit currently being received by an employee will continue to be received by the employee absent the express agreement of the parties to change the benefit.

## **ARTICLE 28**

### **Workers Compensation**

All eligible members shall be covered by a Workers Compensation Program of the County's choice that conforms with the provisions of the Nevada Industrial Insurance Act (NRS Chapter 616) and the Nevada Occupational Diseases Act (NRS Chapter 617) and that provides for payment of industrial accident benefits and compensation for partial and total disability arising from industrial injuries and occupational diseases.

1. In the event an employee is absent from work due to a service-connected disability, approved pursuant to NRS Chapter 616 or 617, he/she may receive, in addition to the compensation as provided by NRS Chapter 616 or 617, a supplemental amount from the County which would cause the total amount received by the employee from the service-connected disability and the County to equal his/her salary at the time of his/her disability. The supplemental compensation will start from the first day of absence or illness, but shall not exceed 340 work hours for the same incident. During this period, the employee shall not forfeit any accrued sick leave. Successful completion of the probationary period is required in order to qualify for the supplemental compensation from the County.
2. It is the intent of the County to pay the on-the-job injured employee (as outlined in this Section) the difference between full biweekly salary and that provided pursuant to NRS Chapter 616 or 617 as salary continuance. Therefore, the employee shall return to the County all temporary total disability payments received which were made under NRS Chapter 616 or 617 covering the period enumerated in Section 1 of this Article. No supplemental benefit shall be paid until after the employee's lost-time benefit check has been deposited with the County Treasurer.
3. If an employee entitled to disability compensation has not completed his/her probationary period, or if an employee who has received supplemental compensation for the maximum 340 work hours is unable to return to work, he/she may elect to utilize accrued sick leave, during which period the employee shall receive compensation from the County as provided in NRS Chapter 281.390. If the employee is receiving no

compensation for time missed from work through the Worker's Compensation Program, the employee must use leave benefits to fully account for any absence.

4. When accrued sick leave has expired, if the employee is still unable to work and the employee is receiving compensation for time missed from work through the Worker's Compensation Program, he/she will be permitted to use his/her accrued vacation leave as sick leave. Subsequent to the expiration of both the employee's sick and vacation leave, provided that the employee has so elected to use his/her vacation leave as sick leave, the employee's compensation will be limited to that provided by NRS Chapter 616 or 617 and the employee will be placed in a leave without pay status. However, through written justification to the Clark County Human Resources Director, exceptions to this Article may be approved by the County Manager.
5. If, as a result of a licensed physician's evaluation and prognosis, it appears that the employee will not return to his/her regular County job within a 12-month period, the County may require a medical separation. Medical separation appeals of employees covered by this Agreement shall be handled in accordance with the procedure set forth in the Dispute Resolution Procedures within Article 12.

## **ARTICLE 29**

### **Substance Abuse Policy**

#### **POLICY ON A WORKPLACE FREE FROM SUBSTANCE ABUSE**

It is the policy of Clark County and the Association to foster and provide a workplace free from substance abuse for all employees. A workplace free from substance abuse protects the safety of the public as well as the County's valuable workforce.

While the County will be supportive of those who seek help voluntarily, the County will be equally firm in identifying and disciplining those who continue to be substance abusers and do not seek help.

#### **1. Guiding Principles:**

There are four (4) guiding principles underlying the adoption of this policy.

They are:

- a. Education - The County and the Association believe that education and training of all employees in the effects and treatment of substance abuse will contribute to a safer and more efficient

workplace for everyone.

- b. Deterrence - The County and Association are committed to eliminating the effects of substance abuse in the workplace. All employees are prohibited from using, possessing, buying or selling illegal drugs in the workplace, and are prohibited from reporting to work with prohibited drugs active in their systems or while under the influence of alcohol. Prescribed drugs must be obtained legally and must be used for the purpose for which they were prescribed.
- c. Enforcement - The substance abuse policy will be strictly enforced. Violations of the policy or procedures will be cause for discipline, up to and including termination of employment.
- d. Treatment - The County and Association are committed to helping employees with admitted substance abuse problems overcome those problems, and encourage voluntary rehabilitation options.

2. Policy Purposes:

The purposes of the substance abuse policy are:

- a. To implement a fair and balanced approach to eliminating substance abuse and its effects on the job;
- b. To protect the public and employees; and
- c. To provide a strong incentive for voluntary rehabilitation and return to work.

3. Rules:

The County and Association have formulated clear rules and penalties to ensure compliance with the substance abuse policy.

The primary rules are:

ALCOHOL

- a. The consumption of an alcoholic beverage by an employee on duty or being under the influence of alcohol while at work is grounds for discipline, up to and including termination.
- b. An employee may be placed on a Last Chance Agreement.
- c. If an employee who is required to drive as part of his/her assigned duties has his/her driver's license suspended, revoked, temporarily or permanently, due to a substance related offense, the employee must notify his/her supervisor of these circumstances when next

reporting to duty. Failure to do so shall be cause for disciplinary action up to and including termination.

- d. The felony conviction of an employee as a result of alcohol while off County premises and not on duty shall result in termination.

## DRUGS

- a. The unlawful manufacture, distribution, dispensation, possession, or use of an illegal drug or controlled substance by an employee in the work place or during work hours is prohibited. Employees in violation of this policy will be terminated with no Last Chance Agreement.
- b. The use of any drug which negatively affects performance or the ability of an employee to work in a safe manner may be cause for discipline where the employee knew or should have known that the drug would adversely diminish his/her capabilities to perform the job. For the purpose of this policy, the term "drug" shall include but not be limited to sedatives (i.e. valium, downers), stimulants (i.e. speed, uppers), hallucinogens (i.e. LSD), cocaine, crack, cannabinoids (i.e. marijuana), opiates, phencyclidine (PCP), and volatile solvents (inhalants).
- c. Whenever an employee is prescribed a drug by a licensed health care provider or uses an over-the-counter medication, which may negatively affect his/her performance or ability to perform in a safe manner, the employee shall notify his/her supervisor. An employee who fails to notify his/her supervisor may be subject to disciplinary action up to and including termination and may be placed on a Last Chance Agreement when the use of drugs by that employee contributes to an accident or incident that results in property damage or injury to a person. Supervisors shall ensure that employees are not placed in capacities that may jeopardize the safety of others.
- d. The possession or use of illegal drugs while off County premises shall result in termination.
- e. If an employee who is required to drive as part of his/her assigned duties has his/her driver's license suspended, revoked temporarily or permanently, due to a substance related offense, the employee must notify his/her supervisor of these circumstances when next reporting to duty. Failure to do so shall result in termination.
- f. The felony conviction for the possession or being under the



influence of illegal drugs shall result in termination.

- g. The conviction of an employee for the sale or possession with intent to sell illegal drugs is cause for immediate termination with no Last Chance Agreement.
- h. Employees must notify their immediate supervisor of any personal criminal drug statute conviction for a violation occurring in the work place no later than five (5) days after such conviction. Failure to notify the immediate supervisor shall result in disciplinary action.

## DRUG AND ALCOHOL TESTING

1. Probable Cause:  
An employee will be required to undergo immediate drug and alcohol testing in accordance with the following procedures if there is probable cause that the employee is under the influence of a drug and/or alcohol.
2. Post-Accident:  
An employee involved in an accident while on duty will be required to undergo a drug and alcohol test.
3. Testing Procedures for Probable Cause and Post-Accident:
  - a. Any supervisor evaluating an employee for probable cause shall complete the Clark County "Observation/Incident Report". The Observation/Incident Report shall be sent to the District Attorney and the Employee Relations Division of Clark County Human Resources.
  - b. The suspected employee shall be afforded the right, if he/she so desires, to request that, in addition to the first supervisor, another on-duty supervisor provides a second opinion as to probable cause. If another supervisor is not able to report to observe the suspected employee within 30 minutes due to the distance a second supervisor would have to travel to observe the employee, the employee's request for a second opinion will not be granted.
  - c. If the employee is an eligible member of a bargaining unit, the first supervisor advises him/her of his/her right to have a Union representative prior to testing and allow the same 30 minutes for a Union representative to appear. If mitigating circumstances warrant, the supervisor may wait up to a maximum of one (1) hour for a Union representative.

- d. If it is determined that probable cause exists, the employee shall be relieved of duty and transported to a drug testing specimen collection site for a drug and alcohol screening. Once the test sample is collected, arrangements will be made to have the employee transported home. The sample will be tested and confirmed and chain of custody maintained by a Substance Abuse Mental Health Services Administration (SAMHSA) certified laboratory facility. A sufficient amount of a sample will be taken so that, at an employee's request and expense, an alternative SAMHSA testing facility may be used to test the same sample; chain of custody will be maintained between testing facilities. An employee who is incapacitated to the point that he/she cannot provide a sample at the time of the incident shall later provide the necessary authorization for releasing hospital or medical reports that would indicate whether or not the employee was under the influence of a drug and/or alcohol.
- e. Advise the employee that he/she will remain on paid status until the test sample is collected. After the sample is collected the employee will be placed on leave in the following order as leave benefits are exhausted (sick leave, compensatory time, vacation leave, leave without pay) until the County receives the test results. If the test is negative, the County will make the employee whole.
- f. The results will be delivered by mail or carrier to the Employee Relations Division of Clark County Human Resources, who will then immediately notify and make a copy of the report available to the employee. The District Attorney or designee will be notified whether the test results are positive or negative. A drug test will be considered positive if the confirmation cutoff levels established by the SAMHSA are exceeded. An alcohol test will be considered positive if the blood alcohol content is .08 percent or greater, or the limit specified in NRS 484.0135 or other applicable law if less than .08 percent.
- g. Refusal to submit to a drug and alcohol test will result in immediate termination.

#### DISCIPLINARY PROCEDURES FOR A POSITIVE DRUG AND/OR ALCOHOL TEST

- 1. A positive drug and/or alcohol test requested as a result of an accident will be cause for disciplinary action in accordance with Section 3 below.
- 2. A test resulting in a positive outcome for a legal drug will result in the following actions:

- a. The employee may be disciplined or counseled for the performance or behavior that established probable cause to test the employee.
  - b. Before the employee may return to work, the employee must provide the department head with a certificate of fitness/return-to-duty form from the prescribing physician/state certified health care provider. The certificate of fitness must be a signed statement indicating whether or not an employee is medically able to perform regularly assigned job duties without restriction or limitation. If the employee is restricted from performing regularly assigned duties, the certificate must also identify the employee's restrictions.
- 3. A test resulting in a positive screen for an illegal substance or the abuse of a legal drug or controlled substance will result in the following action:
  - a. First offense: Unless previously specified as an infraction resulting in immediate termination, the employee will receive a suspension without pay for a period of time based on the severity of the infraction and shall be required to sign and successfully complete the conditions of a Last Chance Agreement which includes rehabilitation and aftercare.
  - b. Before the employee may return to work, the employee must provide the department head with a certificate of fitness/return-to-duty form from the prescribing physician/state certified rehabilitation and treatment program provider releasing the employee to return to work. The certificate of fitness must be a signed statement indicating whether or not an employee is medically able to perform regularly assigned job duties without restriction or limitation. If the employee is restricted from performing regularly assigned duties, the certificate must also identify the employee's restrictions. This must occur within 60 days of the drug test date. Failure to provide a return-to-duty form with respect to their substance abuse problem within 60 days will result in disciplinary action up to and including termination.
  - c. Second offense: The employee will be suspended without pay pending termination.
- 4. A test resulting in a positive screening for alcohol will result in the following action:
  - a. First Offense: Unless previously specified as an infraction resulting in immediate termination, the employee will receive a suspension without pay for a period of time based on the severity of the infraction and will be required to sign and successfully complete the

conditions of a Last Chance Agreement which includes a rehabilitation and aftercare program.

- b. Second offense: The employee will be suspended pending termination.

## LAST CHANCE AGREEMENT

Refusal to sign a Last Chance Agreement shall be considered just cause for termination. The Last Chance Agreement shall be the final step before termination in the disciplinary process. The treatment and aftercare portion of the Last Chance Agreement will be monitored for compliance by the Employee Assistance Program. The Last Chance Agreement shall require at least the following:

1. The employee to contact the Employee Assistance Program within five (5) working days of employee notification of a positive drug or alcohol test.
2. Compliance with and satisfactory completion of treatment by a Substance Abuse Prevention and Treatment Agency certified rehabilitation/program or provider. The Employee Assistance Program will assess, determine and recommend the appropriate level of treatment and provider options. The program/provider may be selected by the employee.
3. Enrollment and continued attendance in an aftercare program, as necessary.
4. Certificate of fitness/return-to-duty form signed by the prescribing physician/state certified rehabilitation and treatment program provider releasing the employee to return to work. This must occur within 60 days of the drug test date. Failure to provide a return-to-duty form with respect to their substance abuse problem within 60 days will result in disciplinary action up to and including termination.
5. A minimum of four (4) random tests over a period of one (1) year from the date of returning to duty. An employee's department head or immediate supervisor, as approved by the department head, may require testing at any time the employee is on duty.

At that time an employee signs a Last Chance Agreement, or otherwise voluntarily seeks assistance, they shall be advised that EAP counseling is available through the off-site Clark county EAP. Alternative EAP is available through the university medical center EAP and the Clark County Fire Department EAP upon request. The availability of this alternative is predicated upon the employee having a bona fide conflict with Clark County's EAP and the alternative

employee assistance program has the ability to accept the employee based on their availability of resources.

## CONFIDENTIALITY

With the exception of the laboratory testing facility, the Employee Relations and Employee Assistance Division of Clark County Human Resources, the tested individual, and the Risk Management Division for workers' compensation incidents, the medical record shall not be released to anyone without express written authorization of the tested individual unless ordered by means of proper legal procedure and appropriate legal authority, such as court ordered subpoena, or in connection with a disciplinary proceeding.

To ensure the confidentiality of employees' medical records, laboratory reports, test results, and Observation/Incident Reports shall not appear in an employee's personnel file. Information of this nature will be contained in a separate confidential medical record that will be securely kept under the control of Clark County Human Resources.

## TRAINING

Training is an essential element in assuring the effectiveness of the workplace free from substance abuse program. Employees must be kept informed of not only the policy and procedures of this drug and alcohol program but of the programs available to them, which promote wellness and safety. Individual consultation by the Employee Assistance staff will be available upon request.

### 1. Employee Awareness Training:

Topics include:

- a. The substance abuse policy and drug testing procedures.
- b. Impact of drugs and alcohol in workplace.
- c. Available resources for assistance including the Employee Assistance Program.
- d. Effects, signs and symptoms of alcohol and the drugs tested for.
- e. The Last Chance Agreement.
- f. Confidentiality and its application in the drug and alcohol policy.

## OTHER LAWS, STATUTES OR REGULATIONS

Clark County is committed to providing reasonable accommodation to those

employees whose drug and/or alcohol problem qualifies them under the Americans with Disabilities Act.

The provisions of any applicable law, statute, regulation or ordinance (i.e. The Omnibus Transportation and Employee Testing Act of 1991 and the Federal Highway Administration and Department of Transportation rules of February, 1994) shall control in the event of any conflict with the provisions of this policy.

#### DEFINITIONS

**DRUG AND ALCOHOL TEST:** For the purposes of this policy, drug and alcohol test means a test for the detection of at least the following: alcohol, amphetamines, barbiturates, cocaine, propoxyphene, benzodiazepines, marijuana, methadone, methaqualone, opiates, and phencyclidine (PCP).

**FIRST SUPERVISOR:** A supervisor from the District Attorney's Office, who has been through the Supervisor Training Program specified in this policy, who first observes different or abnormal behavior of an employee.

**ILLEGAL DRUGS:** Any drug (a) which is not legally obtainable; or (b) which is legally obtainable but has not been legally obtained. The term includes prescribed drugs not legally obtained and prescribed drugs not being used for prescribed purposes.

**LEGAL DRUG:** Prescribed drugs and over-the-counter drugs which have been legally obtained and are being used for the purpose for which they were prescribed or manufactured.

**ON DUTY:** Assigned work hours excluding paid and unpaid leaves.

**SECOND SUPERVISOR:** A supervisor from the District Attorney's Office who has been through the Supervisor Training Program specified in this policy, who is called in to assist in the assessment of the different or abnormal behavior of an employee.

**SAMHSA:** Substance Abuse Mental Health Services Administration.

**SUBSTANCE ABUSE:** The misuse or illicit use of alcohol and/or drugs including controlled substances.

### **ARTICLE 30 Severance Pay**

All employees covered by this Agreement, hired before July 1, 2002, upon separation from County employment, shall receive payment for one (1) week of base salary for each consecutive year of employment up to a maximum of six (6) weeks.

All employees covered by this Agreement, hired after July 1, 2002 but prior to September 20, 2011, upon separation from County employment, may receive payment for one (1) week of base salary for each consecutive year of employment. The County Manager shall decide in his discretion the number of weeks of severance, up to a maximum of six (6) weeks. Unless the employee was discharged for just cause, the County Manager shall not refuse to give a severance benefit.

All employees covered by this Agreement hired after September 20, 2011, upon separation from County employment, are not entitled to a severance benefit unless the employee's separation is the result of a reduction in force. An employee covered by the Agreement hired on or after September 20, 2011, who is laid off shall be entitled to a lump sum payment of two (2) weeks of his/her base salary.

### **ARTICLE 31**

#### **Group Insurance**

1. Group Insurance - Members of the Association will be covered under the County's Group Health and Medical Insurance Program.
  - a. To be eligible for group insurance, an employee must occupy a permanent budgeted position, work at least 20 hours per week, and meet the necessary qualifying periods associated with the insurance program. The County's contribution for employees who work less than 40 hours shall be prorated. Any employee who is on an authorized leave without pay status for over 30 consecutive calendar days will be responsible for reimbursing the County for the employee's insurance premium, the total dependent coverage insurance premium, and long term disability insurance premium from that day forward. If the leave without pay status does not coincide with the premium payments, then any such premiums shall be prorated.
  - b. Employees who elect to have group insurance shall pay the following percentage of the total health and dental insurance premium per month:

#### Percentage

Employee Only	5.5%
Employee & Spouse	10.0%
Employee & Children	7.0%
Employee & Family	10.5%

All employees hired after the date this Agreement is approved by the Board of County Commissioners (BCC) (September 20, 2011) will pay 10.0% of the total health and dental insurance premium per month.

2. The Association shall be furnished a copy of the official agenda of the Clark County Group Health Insurance Plan's executive board at least ten calendar days in advance of a scheduled executive board meeting and a copy of the official Clark County Group Health Insurance minutes.
3. Long Term Disability Insurance - The County will provide long term disability insurance to employees who occupy a permanent budgeted position. Employees must meet the qualifying requirements associated with the plan.

The County will pay a maximum premium of \$18.75 per month for each eligible employee toward the LTD plan. The initial benefits of the plan will be determined based on the maximum premium. Effective July 1, 2010, the County will increase the premium by three percent (3%) in order to provide the same benefit level that all full-time non- management employees covered by the Clark County's long term disability (LTD) plan receive. This contribution in no way guarantees a specific level of benefits, nor once a plan is adopted, for those benefit levels to continue if the premium exceeds the maximum monthly contribution.

4. Life Insurance - The County shall pay 100% of the premium cost of a group life insurance policy providing to each employee an amount of coverage of \$20,000. The Association, at its discretion, may offer additional supplemental insurance benefits to members of the bargaining unit, the cost of which shall be borne by the member. Neither the Association nor its authorized agent shall have the right to solicit enrollment during normal working hours. The Association agrees to comply with all accounting and payroll deduction procedures as established by the Clark County Human Resources Director and the County Comptroller.

## **ARTICLE 32**

### **Travel Compensation/Use of Private Vehicles**

Employees who are required to use their personal vehicle for County business shall be reimbursed for each mile driven on County business. The reimbursement shall be at the amount per mile as established by NRS.



**ARTICLE 33**  
**Retirement Contribution**

1. The County shall pay the employee's portion of the retirement contribution under the employer-pay contribution plan in the manner provided for by NRS Chapter 286. Any increase in the percentage rate of the retirement contribution above the rate set forth in NRS Chapter 286 on May 19, 1975, shall be borne equally by the County and the employee and shall be paid in the manner provided by NRS Chapter 286. Any decrease in the percentage rate of the retirement contribution shall result in a corresponding increase to each employee's base pay equal to one-half (1/2) of the decrease. Any such increase in pay shall be effective from the date the decrease in the percentage rate of the retirement contribution becomes effective.
2. The term "retirement contribution" does not include any payment for the purchase of previous credit service on behalf of any employee.

**ARTICLE 34**  
**Section 125**

All employees covered by this Agreement shall be eligible to participate in the County's Section 125 Plan, commonly referred to as a "Cafeteria Plan" or a "Flexible Benefits Plan," as developed and implemented by the County.

**ARTICLE 35**  
**Financial Counseling**

All employees covered by this Agreement may avail themselves of any County-sponsored financial planning program.

**ARTICLE 36**  
**Compensation**

Effective July 1, 2020 all employees covered under this agreement shall receive a one percent (1.0%) salary decrease. The salary schedules as of June 30, 2020 will remain in effect for the duration of this agreement. Appendix A reflects those schedules.

**ARTICLE 37**  
**Indemnification/Court Sanctions**

The County shall indemnify and hold harmless any employee from an action arising out of an act or omission within the scope of the employee's official duties or employment as a Deputy District Attorney.

The County shall pay court sanctions or fines levied by any court against employees for acts or omissions committed by such employees, if the acts or omissions were committed while performing within the scope of their official duties.

### **ARTICLE 38**

#### **Savings Clause**

1. If any provision of this document or any application of the document to any person or persons covered by this Agreement shall be found contrary to law, then this provision or application shall be deemed invalid except to the extent permitted by law, but all other provisions thereof shall continue in full force and effect. If there is any change in the law that would invalidate or supplement any provision of this Agreement, excluding changes in NRS, Chapter 288, the parties shall meet to negotiate any change in the Agreement relative to the affected provisions only.
2. In the event NRS, Chapter 288 is amended, the County and Association negotiating teams shall meet within 30 days of such passage to informally discuss its ramifications on the current negotiated Agreement.

### **ARTICLE 39**

#### **Conflicting Agreements**

This Agreement supersedes all personnel rules heretofore in effect by the County relating to those subjects addressed by the provisions of this Agreement to the extent such rules are in conflict with the terms of this Agreement. This Agreement does not preclude the County or District Attorney from formulating new or additional rules and guidelines which do not conflict with the terms of this Agreement or the provisions of the NRS.

### **ARTICLE 40**

#### **Entire Agreement**

It is intended that this Agreement sets forth the full and entire understanding of the parties regarding the matters set forth herein. Except for those benefits expressly provided for in this Agreement, the Association acknowledges that when this Collective Bargaining Agreement is ratified and approved by the Board of County Commissioners that all employees eligible to participate, regardless of membership in the Association, shall no longer have the rights, benefits and privileges contained in the Management Compensation Plan dated July 2002 or any subsequent Management Compensation Plan with the exception of those specifically referenced in this Agreement.

**ARTICLE 41**  
**Term of Agreement**

1. This Agreement shall be effective from July 1, 2020, or upon the date approved by the Clark County Board of Commissioners, whichever is later. It shall continue in full force and effect through June 30, 2021.
2. This agreement shall be automatically renewed from year to year thereafter unless either party provides written notice pursuant to provisions of NRS Chapter 288, of its desire to negotiate a new or modified agreement. In the event of such notice, the terms and conditions of this agreement shall remain in full force and effect during the entire period of negotiations and any statutory impasse provisions until a new or modified agreement is approved by both parties, the effective date of termination notwithstanding.

## **APPENDIX A**

### **Clark County Prosecutors Association Salary Schedules & Ranges July 1, 2020 – June 30, 2021**

#### **SALARY RANGES**

Deputy District Attorney:

Minimum Base Salary = \$73,944.00

Maximum Base Salary = \$144,248.00

Chief Deputy District Attorney:

Minimum Base Salary = \$108,596.80

Maximum Base Salary = \$168,272.00

**APPENDIX B  
CLARK COUNTY'S SUBSTANCE ABUSE PROGRAM  
OBSERVATION/INCIDENT REPORT**

Probable Cause \_\_\_\_\_ Post-Accident \_\_\_\_\_ (check one)

Date of Report: \_\_\_\_\_ Time of Day: \_\_\_\_\_

Name of Observed Employee: \_\_\_\_\_

Location of Observation: \_\_\_\_\_

Observer: \_\_\_\_\_  
Name Signature

Position: \_\_\_\_\_

Probable Cause Testing:

An observing supervisor shall describe and document the following:

- Specific observations concerning the appearance, behavior, speech, or performance of the employee;
- Violation of safety rule or other unsafe work incident which, after investigation, leads the supervisor(s) to believe that drug and/or alcohol use may be a contributing factor; and/or
- Other physical, circumstantial or immediate indicators of drug and/or alcohol use.

Post Accident Testing:

An employee involved in an accident while on duty will be required to undergo a drug and alcohol test. An observing supervisor shall describe and document the following:

- Description of accident;
- Resulting personal injury; and/or
- Resulting property damage.

PROBABLE CAUSE INDICATORS OR ACCIDENT SUMMARY:

\_\_\_\_\_

\_\_\_\_\_  
(Continue on side 2 and/or attach additional sheets if necessary)

Associated with probable cause indicators and/or accidents are a variety of “warning signs” which usually appear on the job. Check the symptom or symptoms you have observed in the employee.

<input type="checkbox"/> Drowsiness	<input type="checkbox"/> Watery, glassy, red eyes
<input type="checkbox"/> Constricted/dilated pupils	<input type="checkbox"/> Hallucinations
<input type="checkbox"/> Euphoria (elevated mood)	<input type="checkbox"/> Inhibitions
<input type="checkbox"/> Extreme mood changes	<input type="checkbox"/> Disoriented behavior
<input type="checkbox"/> Poor time/distance perception	<input type="checkbox"/> Slurred speech
<input type="checkbox"/> Exaggerated sense of ability	<input type="checkbox"/> Excessively talkative
<input type="checkbox"/> Poor hand/eye coordination	<input type="checkbox"/> Wanders aimlessly
<input type="checkbox"/> Excessive irritability	<input type="checkbox"/> Depression
<input type="checkbox"/> Rapid or slow breathing	<input type="checkbox"/> Rapid speech
<input type="checkbox"/> Stares off into space	<input type="checkbox"/> Staggering walk
<input type="checkbox"/> Drunken behavior with	<input type="checkbox"/> Violent behavior
or without odor of alcohol	<input type="checkbox"/> Other _____

Actions taken: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Comments by employee: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(Please ensure confidentiality of report in distribution)

cc: Department Head  
Employee Relations Division of Clark County Human Resources

#### TESTING PROCEDURES CHECKLIST:

- \_\_\_\_ Complete and send Observation/Incident Report
- \_\_\_\_ Advise employee of right to Association representation
- \_\_\_\_ Advise employee of leave procedures
- \_\_\_\_ Advise employee of refusal to test policy
- \_\_\_\_ Transport employee to collection site and make arrangements for transporting the employee home

**MEMORANDUM OF UNDERSTANDING**  
**Insurance Committee**

The County agrees to meet with the Association on a semi-annual basis in order to receive input relative to the County's insurance program. The Association will appoint two (2) members and the County will appoint two (2) members. The purpose of the meetings is for discussion and recommendations only and there is no intent or ability to adjust, modify or change the existing group health insurance program. The results of the meetings shall be committed to writing and forwarded to the Group Insurance Executive Board for discussion.



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<blockquote class="twitter-tweet"><p lang="en" dir="ltr">Doesn't seem lik
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[Copy Code](#)

**Jared Busker**  
@JaredBusker



Doesn't seem like a coincidence with the attached statement.



**Michelle Rindels** @MichelleRindels

DA Wolfson said it's coincidence that this is proceeding as there are 2 abolition bills in #nvleg but "I want our lawmakers to have their eyes wide open, because ...They need to be aware that there are these kinds of people out there where the jury has spoken loudly and clearly."  
[twitter.com/riolacanlale/s...](https://twitter.com/riolacanlale/s...)

6:50 AM · Mar 27, 2021



2



1



Share this Tweet

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<blockquote class="twitter-tweet"><p lang="en" dir="ltr">Nevada hasn't
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[Copy Code](#)**Dayvid Figler** @OyVegas · Mar 26, 2021

Replying to @OyVegas

...or the immense waste of resources in retrying cases his office has caused to be reversed because they got caught (again and again) illegally removing people of color from juries or withholding evidence?

Just done with this.

Cannizzaro and Scheible need to recuse!

**Dayvid Figler**

@OyVegas

Nevada hasn't executed anyone in 15 years

Nevada hasn't executed an inmate who was still fighting for a different outcome in 25 years.

But it's purely a coincidence they're moving against Zane Floyd just as a law that can eliminate the death chamber has been proposed?

Wow.

9:04 PM · Mar 26, 2021



4



1

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**Bob Fulkerson**

@bobfulkerson



Wolfson has pulled some cynical moves before, but using a human life to whip up base instincts for blood revenge to prevent the death penalty abolition bill from moving forward takes the cake.

**Michelle Rindels** @MichelleRindels

DA Wolfson said it's coincidence that this is proceeding as there are 2 abolition bills in #nvleg but "I want our lawmakers to have their eyes wide open, because ...They need to be aware that there are these kinds of people out there where the jury has spoken loudly and clearly."  
[twitter.com/riolacanlale/s...](https://twitter.com/riolacanlale/s...)

8:46 PM · Mar 26, 2021



4



2



Share this Tweet

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<blockquote class="twitter-tweet"><p lang="en" dir="ltr">Abolish the death
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[Copy Code](#)

**Michael Kagan**  
@MichaelGKagan



Abolish the death penalty.

And abolish political stunts involving killing people while we are at it.



**Michelle Rindels** @MichelleRindels

DA Wolfson said it's coincidence that this is proceeding as there are 2 abolition bills in #nvleg but "I want our lawmakers to have their eyes wide open, because ...They need to be aware that there are these kinds of people out there where the jury has spoken loudly and clearly."  
[twitter.com/riolacanlale/s...](https://twitter.com/riolacanlale/status/1375673238500470790)

9:57 PM · Mar 26, 2021



18



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<blockquote class="twitter-tweet"><p lang="en" dir="ltr">Actively using a
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[Copy Code](#)

**Rae Lathrop**  
@raelathrop



Actively using a human life to fight a political battle....there are no words for this stunt.



**Michelle Rindels** @MichelleRindels

DA Wolfson said it's coincidence that this is proceeding as there are 2 abolition bills in #nvleg but "I want our lawmakers to have their eyes wide open, because ...They need to be aware that there are these kinds of people out there where the jury has spoken loudly and clearly."  
[twitter.com/riolacanlale/s...](https://twitter.com/riolacanlale/s...)

8:37 PM · Mar 26, 2021



6



Share this Tweet

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<blockquote class="twitter-tweet"><p lang="en" dir="ltr">"Coincidence" <
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&lt;blockquote class="twitter-tweet"&gt;&lt;p lang="en" dir="ltr"&gt;DA Wolfson said

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**Michelle Rindels**

@MichelleRindels



DA Wolfson said it's coincidence that this is proceeding as there are 2 abolition bills in [#nvleg](#) but "I want our lawmakers to have their eyes wide open, because ...They need to be aware that there are these kinds of people out there where the jury has spoken loudly and clearly."

**Rio Lacanlale**  @riolacanlale

Clark County prosecutors plan to seek a warrant of execution for death row inmate Zane Floyd as Nevada legislators weigh the future of capital punishment in the state, @randompoker reports: [reviewjournal.com/crime/courts/d...](https://www.reviewjournal.com/crime/courts/d...)

7:58 PM · Mar 26, 2021



6



1



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## DA to proceed with death penalty against gunman in 1999 store killings



DA proceeds with death penalty for gunman in store killings (Las Vegas Review-Journal)

By **David Ferrara** Las Vegas Review-Journal

March 26, 2021 - 2:21 pm



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Like 284K

Updated March 30, 2021 - 8:25 am

Clark County prosecutors plan to seek a warrant of execution for death row inmate Zane Floyd as Nevada legislators weigh the future of capital punishment in the state.

District Attorney Steve Wolfson said deputies from his appellate division could ask a judge to sign the paperwork in the coming weeks.

Floyd, now 45, was convicted of killing four people and wounding another inside a Las Vegas Albertsons nearly 22 years ago. His killings, which occurred less than two months after the Columbine High School massacre, were eerily similar to those carried out at a supermarket in Boulder, Colorado, on Monday, [when 10 people were killed by a gunman](#).

“We believe that Mr. Floyd should be executed,” Wolfson said.



Floyd's federal appeals exhausted on Nov. 2 after the U.S. Supreme Court denied his request for a review of a 9th U.S. Circuit Court of Appeals decision that upheld his conviction and sentence.

Under Nevada law, the Department of Corrections must carry out Floyd's lethal injection no fewer than 60 days and no more than 90 days after a judge signs a death warrant.

But a [bill introduced in the state Assembly this week would eliminate the death penalty](#) and commute the sentences of 70 men to life without parole. That would make Nevada the 24th state to abolish the death penalty. Should prosecutors obtain the judge's signature around April 1, Floyd's execution could take place as lawmakers wrap up their 2021 session, barring any further legal hurdles.

Prison officials did not respond to emails or phone messages for this story.

## **'A landmark case'**

Wolfson called his pursuit of an imminent execution during the legislative session "coincidental," saying his office took steps before two abolishment bills dropped in Carson City.

"I think the timing is good," Wolfson said. "Our legislative leaders should recognize that there are some people who commit such heinous acts, whether it be the particular type of murder or the number of people killed, that this community has long felt should receive the death penalty."

He added: "We would be moving forward with the Zane Floyd efforts at obtaining the order and warrant of execution notwithstanding the Legislature. ... I'm not purposefully moving forward with Floyd because of the Legislature. But because they're occurring at the same time, I want our lawmakers to have their eyes wide open because this is a landmark case. They need to be aware that there are these kinds of people out there where the jury has spoken loudly and clearly."

Two prosecutors, including Senate Majority Leader Nicole Cannizzaro, serve in the Nevada Legislature.

Before dawn on June 3, 1999, a 23-year-old Floyd walked into an Albertsons on West Sahara Avenue, dressed in military fatigues and armed with a 12-gauge shotgun hidden under a robe, and shot everyone he encountered.

Four employees — Lucy Tarantino, 60, Thomas Darnell, 40, Chuck Leos, 40, and Dennis "Troy" Sargent, 31 — died that morning.

Zachar Emenegger, 21, was shot twice and survived after playing dead in the produce section.

Jurors convicted Floyd about a year later, also finding him guilty of repeatedly raping a woman in a guesthouse at his parent's home before the massacre.

## **Executions 'politicized'**

Floyd's execution would be the first carried out in Nevada since 2006, though several men were sent to death row years before him.

A January poll cited by the Death Penalty Information Center found that Nevadans favored replacing the death penalty with a sentence of life without parole by a margin of 49 percent to 46 percent.

Gov. Steve Sisolak has said that he opposes the death penalty, except in extreme cases, but recently has declined to take questions regarding his position on capital punishment.

Public Defender Scott Coffee, a board member on the Nevada Coalition Against the Death Penalty, expected Floyd's death warrant to have little effect on how lawmakers decide, adding that an execution could be further delayed by litigation at the state level.

"These things are always politicized to some extent," Coffee said. "The death penalty is the harbinger of social injustice at the highest level. In some ways, it's the height of politics, and that's problematic."

Meanwhile, he urged the state's legislators to "do the right thing, which is to get rid of the death penalty."

Last year, Wolfson's office filed a notice of intent to seek the death penalty in two cases. This year, the office has announced plans to seek capital punishment in at least three cases.

More than 62 defendants in Clark County are awaiting trial in cases where prosecutors want the ultimate punishment.

"The fact that the district attorney's office would like to point to outlier type cases to support the death penalty doesn't mean we need the death penalty," Coffee said. "I don't believe the death penalty is any sort of deterrent in that sort of situation."

## **Lethal injection challenges**

In Floyd's case, courts have denied his argument that he received ineffective assistance of counsel or that trial prosecutors swayed the jury's verdict by calling his crime "the worst massacre in the history of Las Vegas."

Floyd has also tried and failed to challenge Nevada's lethal injection protocol, which recently faced drawn-out legal scrutiny after another death row inmate, Scott Dozier, asked to be

executed.

Two of the drugs proposed for that killing have since expired, and the state's supply of a third drug, fentanyl, is expected to expire in June.

Under Nevada law, the prison director must "select the drug or combination of drugs to be used for the execution after consulting with the Chief Medical Officer."

Dozier hanged himself in an Ely State Prison cell in 2019 as his case lingered in the court system.

All but one of the 12 inmates executed in Nevada since capital punishment was reinstated in 1977 had voluntarily given up their appeals.

Former Federal Public Defender Franny Forsman, who represented Floyd for a portion of his decadeslong appeals, pointed out that he would be among those to have his sentence commuted under one of the bills in the Legislature.

"Moving forward on it now just seems like this is the wrong time," she said. "Let people think about this. Let the legislators think about this. (Prosecutors) are trying to put this case front and center with the Legislature. Doing that with someone's life is inappropriate."

Contact David Ferrara at [dferrara@reviewjournal.com](mailto:dferrara@reviewjournal.com) or 702-380-1039. Follow [@randompoker](https://twitter.com/randompoker) on Twitter.

## NEVADA LAWMAKERS DISCUSS ABOLISHING DEATH PENALTY FOR FIRST TIME SINCE ILL-FATED 2017 EFFORT



MICHELLE RINDELS

MARCH 31ST, 2021 - 5:07PM

Four years after [a proposal to abolish the death penalty](#) in Nevada had its first and last hearing in the Assembly Judiciary Committee, a similar bill — with similarly uncertain prospects — came before the same committee Wednesday for a lengthy and emotional discussion.

Assemblyman Steve Yeager (D-Las Vegas) presented [AB395](#), which would abolish the death penalty in Nevada and convert all existing death sentences to life in prison without parole. Before speakers gave at-times graphic accounts of crimes committed by people sentenced to death, he urged lawmakers to weigh the drier aspects of the debate: [how much the process costs](#), the likelihood of errors, and whether the law is applied unevenly across regions.

“This is going to be an emotional, difficult hearing. You may be brought to tears by some of the testimony,” Yeager said. “But even in the midst of sharing that pain, we need to come together as Nevadans to evaluate whether the death penalty is working, and whether it should remain as part of Nevada's justice system.”

### New dynamics

Nevada is one of 24 states that have the death penalty — 23 states have abolished it and another three have governor-imposed moratoriums, [according to the Death Penalty Information Center](#). Last week, [Virginia became the latest state](#) to end the practice.

Two major variables for the bill's future are whether a death penalty ban can survive in the Senate, where two prosecutors hold key leadership positions at the head of the entire Senate and the Senate Judiciary Committee and have the power to kill the bill, and whether Gov. Steve Sisolak would sign such a bill if it makes it to his desk.

“There are a lot of differing opinions on that. Personally, it's something that I'm open [to] hearing and having a discussion,” Senate Majority Leader Nicole Cannizzaro (D-Las Vegas), who is a prosecutor, recently [told The Associated Press](#).

Sisolak has previously [expressed opposition to the death penalty](#), but during his 2018 campaign, [clarified that he would support it for extreme cases](#). Sisolak spokeswoman Meghan Delaney was noncommittal when asked about his position on the issue in early February.

“As is the case with all other bills or bill drafts going through the legislative process, the governor will review and evaluate any legislation that may come before him,” she said.

Since Nevada last had an open hearing on the issue in 2017 and that bill died in committee, the state came close to putting to death an inmate — Scott Dozier — but the [execution was called off](#) amid a legal battle over whether the state could use certain execution drugs. Dozier died by suicide in early 2019.

Although [a 2017 poll](#) showed most Nevadans firmly oppose the death penalty, [a new poll released this year](#) by anti-death penalty activists, which phrased its questions differently, showed Nevadans narrowly oppose the death penalty by a split within the margin of error.

Another death row inmate is now heading toward a possible execution. The [Las Vegas Review-Journal reported](#) last week that Clark County prosecutors are planning to seek a warrant of execution in coming weeks for Zane Floyd, who was convicted of killing four people and injuring a fifth in a Las Vegas grocery store in 1999.

While Clark County District Attorney [Steve Wolfson](#) said the development, just as lawmakers are mulling the issue, is “coincidental,” he added that “I think the timing is good.”

“Our legislative leaders should recognize that there are some people who commit such heinous acts, whether it be the particular type of murder or the number of people killed, that this community has long felt should receive the death penalty,” he said, according to the newspaper.

Some critics have said the timing suggests prosecutors are using Floyd's life as part of a political play. Yeager said he doesn't think the case playing out in the background will change the discussion in a meaningful way.

“It doesn't affect, sort of, my perspective on things ... it's a policy decision, apart from any cases that might be out there, apart from any ongoing litigation,” he said. “Can't really control what else is going on.”

### **The death penalty debate**

One of proponents' main arguments is that in spite of the costs of pursuing the death penalty and following through with appeals that can span decades, the state rarely enacts the punishment. The most recent execution was 15 years ago, in 2006.

There have been 161 people sentenced to death in Nevada since the death penalty was reinstated in 1976, and only 12 executions — 11 of which were “volunteers” who chose to forego appeal rights.

“The point is, we don't execute anybody, even when a death sentence is imposed,” said Scott Coffee, a public defender. “But the money is spent.”

Tom Vilorio, a Reno criminal defense attorney who was formerly a prosecutor, testified that he switched from supporting to opposing capital punishment after seeing how much knowledge of a case and decision-making power is concentrated in an individual lead prosecutor. He said decisions to seek the death penalty can be arbitrary and motivated by a prosecutor's desire for “notoriety, or just a general reputation of being a hard-nosed, bulldog prosecutor as they advanced through their career.”

Family members affected by capital punishment also weighed in to support abolition, including Cynthia Portaro, whose son [Brandon Hill was killed in 2011 in Las Vegas](#). She argued that the drawn-on proceedings of a death penalty case is “just too much on a family to have to handle,” and that families experience the same void and lack of closure whether the penalty is execution or life imprisonment.

But prosecutors held the line on keeping the death penalty an option. Wolfson said his stance has been reinforced by mass shootings, including the October 1 shooting in Las Vegas, in which the shooter killed himself shortly after firing on a concert and left 60 people dead.

"If the appropriate punishment for a single murder is life without parole, how do you punish a person who commits multiple murders?" he said. "Should we punish someone who kills one person the same as someone who kills two, 10, or 60? I say no."

Lawmakers also heard from Jennifer Otremba, who described the murder of her 15-year-old daughter Alyssa in 2011 near her Las Vegas home. Javier Righetti, who was 19 at the time of the killing, [was given a death sentence in 2017](#).

"He did not consider Alyssa's life. Why should his life be considered?" Jennifer Otremba said. "I waited five and a half years for justice for my daughter, and if I have to continue to fight politicians for the rest of my life to ensure that justice is served, then I will do that."

Another death penalty abolition bill, Democratic Sen. [James Ohrenschall's SB228](#), takes a more moderate approach by banning capital punishment for crimes committed in the future, but letting previous death sentences stand. It has not yet had a hearing.

Above all, proponents are urging lawmakers to do away with an "eye for an eye" mentality. Jodi Hocking, founder of a group called Return Strong for families of people who are incarcerated, said she's been more convinced that executions need to end because of conversations she has each Sunday with inmates who are waiting to be put to death. She quoted Sister Helen Prejean, and anti-death penalty advocate, in her testimony.

"If we believe that murder is wrong and not admissible in our society, then it has to be wrong for everyone, not just for individuals, but for governments as well," she said.

Wednesday's was the first hearing for the bill. The committee did not vote on the measure.

*The Nevada Independent is a 501(c)3 nonprofit news organization. We are committed to transparency and disclose all our donors. The following people or entities mentioned in this article are financial supporters of our work:*

- James Ohrenschall - \$1,000.00
- Meghan Delaney - \$180.00
- Steve Sisolak - \$3,200.00
- Steve Wolfson - \$1,000.00
- Steve Wolfson for District Attorney - \$500.00
- Steven Yeager - \$1,350.00

**Michelle Rindels**

## NEVADA ASSEMBLY VOTES TO ABOLISH DEATH PENALTY IN HISTORIC MOVE; BILL'S FUTURE UNCERTAIN IN SENATE



MICHELLE RINDELS



TABITHA MUELLER

APRIL 13TH, 2021 - 2:11PM

Members of the Assembly voted on party lines Tuesday to advance a bill abolishing the death penalty, pushing the concept further than ever in the state even though its prospects are in question in the Senate.

[AB395](#) was approved on a 26-16 vote, with all Republicans opposed. While abolition bills have been introduced in 2001, 2003, 2017, 2019, 2021, they never passed a policy committee until Friday and never made it to a vote on the floor, according to the Nevada Coalition on the Death Penalty.

"Now is the right time to end our costly ineffective and inhumane death penalty," Assemblyman [Steve Yeager](#) (D-Las Vegas) said in a speech on the Assembly floor where he argued Black Nevadans are disproportionately sent to death row. "Nevada should join two thirds of the world's countries who have already banned the death penalty, many of whom have determined that it violates fundamental human rights."

The bill would turn all existing death sentences into sentences of life in prison without parole. Another death penalty abolition bill in the Senate that is more modest — abolishing capital punishment for crimes committed after the law takes effect — failed to get a hearing before a legislative deadline.

Nevada is [one of 24 states](#) that still has the death penalty, although nobody has been executed in Nevada since 2006. The most recent state to end the practice is Virginia, which outlawed capital punishment last month.

Since the U.S. Supreme Court reinstated the death penalty in 1976, Nevada has carried out 12 executions.

Assemblywoman [Annie Black](#) (R-Mesquite) went into detail during a floor speech about murders that landed people on death row.

"Only the worst of the worst are sentenced to death," she said. "That is as it should be, and we should not abolish the death penalty."



The bill faces a more uncertain climate in the Senate, where Senate Majority Leader Nicole Cannizzaro (D-Las Vegas), who is a prosecutor, would not commit on Tuesday to giving the bill a hearing. Both Cannizzaro and Melanie Scheible (D-Las Vegas), who chairs the Senate Judiciary Committee, have day jobs at the Clark County District Attorney's Office; District Attorney Steve Wolfson testified in opposition to the bill.

"Right now we've got a lot of Assembly bills coming over," Cannizzaro said in a brief interview. "We're looking at our schedules, and we'll go through the legislative process, but obviously haven't had time to sit down, make any commitments on anything."

Asked at a press conference on Tuesday if he would sign the bill, Gov. Steve Sisolak said he was anticipating the question and read from a prepared statement that expressed openness to keeping the death penalty as an option but also openness to the legislation that would arrive at his desk:

"What I've said on the record in the past has not changed. Under most circumstances. I'm opposed to capital punishment. I know there have been wrongful convictions. I know there are significant costs associated with capital punishment, and more. But as also said on the record the past, there are incredibly severe situations that may warrant consideration of capital punishment. But I believe, overall, it should be sought and used less often. I was on the ground, the night, and the morning after 1 October. I was there. I talked to families whose loved ones were victims. The experiences of victims' family members are always on my mind. Just like the majority of Nevadans, they consider this issue that weighs heavily on me, which is why I have a hard time with the idea of a complete abolishment of the death penalty. I'll continue watching this bill. As Governor, I have responsibility to be considerate of all these factors, while I weigh any legislation that could get to my desk."

*Updated at 5:20 p.m. on 4/13/21 to add information about senators' employment and at 5:35 p.m. to add statement from governor.*

*The Nevada Independent is a 501(c)3 nonprofit news organization. We are committed to transparency and disclose all our donors. The following people or entities mentioned in this article are financial supporters of our work:*

- Steve Sisolak - \$3,200.00
- Steven Yeager - \$1,350.00

**Tabitha Mueller**



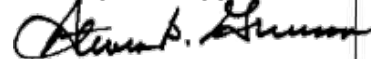
Tabitha Mueller is a freelance reporter at *The Nevada Independent* covering the Nevada Legislature.



### **Michelle Rindels**

Michelle Rindels is a staff writer and assistant editor whose coverage areas include the economic repercussions of the pandemic, the cannabis industry, criminal justice and the Legislature.

She also oversees the Indy's internship program and contributes to the Indy's Spanish-language coverage.



1 **MOT**

2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 ALEXANDER CHEN  
6 Chief Deputy District Attorney  
7 Nevada Bar #0010539  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 State of Nevada

8 DISTRICT COURT  
9 CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,

11 Plaintiff,

12 -vs-

13 ZANE MICHAEL FLOYD,  
14 #1619135

15 Defendant.

Case No. 99C159897  
Dept No. XVII

16  
17 MOTION AND NOTICE OF MOTION FOR THE COURT TO ISSUE  
18 SECOND SUPPLEMENTAL ORDER OF EXECUTION AND  
19 SECOND SUPPLEMENTAL WARRANT OF EXECUTION

20 DATE OF HEARING:  
21 TIME OF HEARING:

22 COMES NOW the State of Nevada, by STEVEN B. WOLFSON, Clark County District  
23 Attorney, through ALEXANDER CHEN, Chief Deputy District Attorney, and moves this  
24 Honorable Court, pursuant to NRS 176.495 and NRS 176.505, to make and enter a Second  
25 Supplemental Order of Execution and to issue a Second Supplemental Warrant of Execution  
26 inasmuch as the Defendant Floyd's initial Judgment of Conviction was affirmed by the 9<sup>th</sup>  
27 Circuit Court of Appeals, so that his death sentence may be carried out. See Exhibit 1.  
28 Subsequently, Defendant Floyd's Petition for a Writ of Certiorari to the United States Supreme  
Court was denied on November 2, 2020.

I:\appellate\WPDOCS\Floyd, Zane Michael, 99C159897, 2nd death pprwrk 2021\Floyd Zane Michael 99C159897 Mtn.for Crt. Issue 2nd.

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1 WHEREAS, a Mandate has been issued from the Ninth Circuit Court of Appeals  
2 showing the affirmation of the aforementioned habeas corpus dismissal and the said Judgment  
3 having been filed with the United States District Court Clerk on or about the 5th day of  
4 November, 2020, See Exhibit 2. Additionally, an Order on Mandate was filed in the United  
5 States District Court District of Nevada on or about November 6, 2020. See Exhibit 3. Based  
6 on the Mandate, there is no longer any legal reason or good cause why the judgment of death  
7 should not be executed.

8 This Motion is based upon the entire record of these proceedings, the Points and  
9 Authorities attached hereto, and argument of counsel to be made at the time of the hearing on  
10 this Motion.

11 **NOTICE OF HEARING**

12 TO: ZANE MICHAEL FLOYD, Defendant; and  
13 TO: BRAD LEVENSON and DAVID ANTHONY, Attorney for the Defendant  
14 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned  
15 will bring the foregoing MOTION FOR THE COURT TO ISSUE SECOND  
16 SUPPLEMENTAL ORDER OF EXECUTION AND SECOND SUPPLEMENTAL  
17 WARRANT OF EXECUTION on for setting before the above entitled Court, in Department  
18 XVII thereof, on \_\_\_\_\_, the \_\_\_\_ day of April, 2021, at the hour of 9:00 o'clock a.m., or  
19 as soon thereafter as counsel may be heard.

20 DATED this \_\_\_\_\_ day of April, 2021.

21 Respectfully submitted,  
22 STEVEN B. WOLFSON  
23 Clark County District Attorney  
24 Nevada Bar #001565

25 BY /s/ Alexander Chen  
26 ALEXANDER CHEN  
27 Chief Deputy District Attorney  
28 Nevada Bar #010539

1 POINTS AND AUTHORITIES

2 This motion is being filed pursuant to NRS 176.495 and NRS 176.505 seeking this  
3 Court's issuance of a Second Supplemental Order of Execution and a Second Supplemental  
4 Warrant of Execution regarding the upheld murder convictions of the defendant, Zane Michael  
5 Floyd. The defendant has now exhausted his appellate and post-conviction remedies. The  
6 Nevada Supreme Court has upheld the lawfulness of his convictions. Moreover, the Ninth  
7 Circuit United States Court of Appeals has also affirmed his convictions. The United States  
8 Supreme Court has declined to grant certiorari to any petitions that defendant has filed seeking  
9 its intervention. As such, the defendant has exhausted his legal remedies and a supplemental  
10 order of execution pursuant to NRS 176.505 shall be issued. Following the issuance of the  
11 order of execution, a new warrant of execution pursuant to NRS 176.495 must also issue.

12 In their entirety, the relevant statutes for the purpose of this request are listed below.

13 NRS 176.495. New warrant generally.

14 "1. If for any reason a judgment of death has not been executed,  
15 and it remains in force, the court in which the conviction was had  
16 must, upon the application of the attorney general or the district  
17 attorney of the county in which the conviction was had, cause  
another warrant to be drawn, signed by the judge and attested by the  
clerk under the seal of the court, and delivered to the director of the  
department of prisons.

18 2. The warrant must state the conviction and judgment and appoint  
19 a week, the first day being Monday and the last day being Sunday,  
20 within which the judgment is to be executed. The first day of that  
21 week must be not less than 15 days nor more than 30 days after the  
22 date of the warrant. The director shall execute a sentence of death  
within the week the judgment is to be executed, as designated by  
the district court. The director may execute the judgment at any  
time during that week if a stay of execution is not entered by a court  
of appropriate jurisdiction.

23 3. Where sentence was imposed by a district court composed of  
24 three judges, the district judge before whom the confession or plea  
25 was made, or his successor in office, shall designate the week of  
execution, the first day being Monday and the last day being  
Sunday, and sign the warrant."

26 NRS 176.505. Order following appeal.

27 "1. When a remittitur showing the affirmation of a judgment of  
28 death has been filed with the clerk of the court from which the  
appeal has been taken, the court in which the conviction was

1 obtained shall inquire into the facts, and, if no legal reasons exist  
2 prohibiting the execution of the judgment, shall make and enter an  
3 order requiring the director of the department of prisons to execute  
the judgment at a specified time. The presence of the defendant in  
the court at the time the order of execution is made and entered, or  
the warrant is issued, is not required.

4 2. When an opinion, order dismissing appeal or other order  
5 upholding a sentence of death is issued by the supreme court  
6 pursuant to chapter 34 or 177 of NRS, the court in which the  
7 sentence of death was obtained shall inquire into the facts and, if no  
8 legal reason exists prohibiting the execution of the judgment, shall  
make and enter an order requiring the director of the department of  
prisons to execute the judgment during a specified week. The  
presence of the defendant in the court when the order of execution  
is made and entered, or the warrant is issued, is not required.

9 3. Notwithstanding the entry of a stay of issuance of a remittitur in  
10 the supreme court following denial of appellate relief in a  
11 proceeding brought pursuant to chapter 34 or 177 of NRS, the court  
12 in which the conviction was obtained shall, upon application of the  
13 attorney general or the district attorney of the county in which the  
conviction was obtained, cause another warrant to be drawn, signed  
by the judge and attested by the clerk under the seal of the court,  
and delivered to the director of the department of prisons.

14 Accordingly, the State is requesting that this Court review and sign the proposed  
15 Second Order of Execution pursuant to NRS 176.505. Based upon the extensive procedural  
16 history of this case, both in State and Federal court, the Defendant has exhausted his legal  
17 remedies thereby leaving no valid legal reasons against the issuance of an order to carry out  
18 the jury's sentence of a judgment of death. Pursuant NRS 176.505(2), requiring the district  
19 court to set the judgment for a specified week, the week of June 7, 2021 is being proposed as  
20 a date for the Director of the Department of Corrections to execute the judgment.

21 Once the Second Supplemental Order of Execution is signed, the State would propose  
22 a future court date for the signing and filing of the Second Supplemental Warrant of Execution,  
23 pursuant to NRS 176.495. Due the timing required by statute, that the judgment be carried out  
24 no less than 15 days but no more than 30 days following the issuance of the warrant of  
25 execution, the State would request that this Court issues the Second Supplemental Warrant of  
26 Execution on or about May 21, 2021.

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DATED this 14th day of April, 2021.

Respectfully submitted,

STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar # 001565

BY /s/ Alexander Chen  
ALEXANDER CHEN  
Chief Deputy District Attorney  
Nevada Bar #010539

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**CERTIFICATE OF FACSIMILE TRANSMISSION**

I hereby certify that service of the above and foregoing MOTION FOR THE COURT TO ISSUE A SECOND SUPPLEMENTAL ORDER OF EXECUTION AND A SECOND SUPPLEMENTAL WARRANT OF EXECUTION, Points and Authorities, and Notice of Motion was made this 14th day of April, 2021, by facsimile transmission to:

BRAD LEVENSON  
Email: [brad\\_levenson@fd.org](mailto:brad_levenson@fd.org)  
DAVID ANTHONY  
Email: [david\\_anthony@fd.org](mailto:david_anthony@fd.org)  
[Ecf\\_nvchu@fd.org](mailto:Ecf_nvchu@fd.org)

BY /s/ E.Davis  
Employee for the District Attorney's Office

AC/ed



1 **WARR**  
2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 ALEXANDER CHEN  
6 Chief Deputy District Attorney  
7 Nevada Bar #010539  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 State of Nevada

12  
13 DISTRICT COURT  
14 CLARK COUNTY, NEVADA

15 THE STATE OF NEVADA, )

16 Plaintiff, )

17 -vs- )

18 ZANE MICHAEL FLOYD,  
19 #1619135 )

20 Defendant. )

21 Case No. 99C159897  
22 Dept No. XVII

23  
24 SECOND SUPPLEMENTAL WARRANT OF EXECUTION

25 TO: THE SHERIFF OF CLARK COUNTY, NEVADA, and  
26 THE DIRECTOR OF THE DEPARTMENT OF PRISONS,  
27 OF THE STATE OF NEVADA:

28 WHEREAS, on the 19<sup>th</sup> day of July, 2000, ZANE MICHAEL FLOYD was found  
guilty of Counts II, III, IV & V, Murder of the First Degree With Use of a Deadly Weapon,  
along with six (7) other Counts, by a duly and legally impaneled jury of twelve persons; and

WHEREAS, on the 21<sup>st</sup> day of July, 2000, that same jury returned a verdict of death  
against ZANE MICHAEL FLOYD; and

WHEREAS, on the 11<sup>th</sup> day of September, 2000, filed an appeal with the Supreme  
Court of the State of Nevada; and

WHEREAS, on the 13<sup>th</sup> day of March, 2002, the Supreme Court of the State of Nevada

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1 affirmed ZANE MICHAEL FLOYD'S convictions for all counts as well as the Jury's  
2 imposition of the death penalty; and

3 WHEREAS, on the 24<sup>th</sup> of February, 2003, the United States Supreme Court denied  
4 ZANE MICHAEL FLOYD's Petition for a Writ of Certiorari; and

5 WHEREAS, on the 26<sup>th</sup> day of March, 2003, the Supreme Court of the State of  
6 Nevada filed a Remittitur with the Clerk of this Court showing the denial of rehearing; and

7 WHEREAS, on the 19<sup>th</sup> day of June, 2003, ZANE MICHAEL FLOYD filed a  
8 Petition for a Writ of Habeas Corpus (Post-Conviction) and on the 6<sup>th</sup> day of October, 2003,  
9 a Supplemental Petition for a Writ of Habeas Corpus (Post-Conviction) was filed on behalf  
10 of ZANE MICHAEL FLOYD; and

11 WHEREAS, on the 4<sup>th</sup> day of February, 2005, the District Court issued a Findings of  
12 Fact, Conclusions of Law, and Order denying ZANE MICHAEL FLOYD's Petition for a  
13 Writ of Habeas Corpus (Post-Conviction);

14 WHEREAS, on the 9<sup>th</sup> day of March, 2005, ZANE MICHAEL FLOYD filed a Notice  
15 of Appeal to the Supreme Court of the State of Nevada; and

16 WHEREAS, on the 16<sup>th</sup> of February, 2006, the Supreme Court of the State of Nevada  
17 denied ZANE MICHAEL FLOYD's appeal from the denial of his Petition for a Writ of  
18 Habeas Corpus (Post-Conviction);

19 WHEREAS, on the 17<sup>th</sup> day of March, 2006, the Supreme Court of the State of  
20 Nevada filed a Remittitur with the Clerk of this Court; and

21 WHEREAS, on the 14<sup>th</sup> of April, 2006, MICHAEL ZANE FLOYD filed a Petition  
22 for Writ of Habeas Corpus in United States District Court;

23 WHEREAS, on the 8<sup>th</sup> June, 2007, MICHAEL ZANE FLOYD filed his second  
24 Petition for a Writ of Habeas Corpus (Post-Conviction) in the State of Nevada District Court;

25 WHEREAS, on the 2<sup>nd</sup> day of April, 2008, the District Court issued a Findings of  
26 Fact, Conclusions of Law, and Order denying ZANE MICHAEL FLOYD's Second Petition  
27 for a Writ of Habeas Corpus; and

28 WHEREAS, on the 7<sup>th</sup> day of April, 2008, ZANE MICHAEL FLOYD filed a Notice

1 of Appeal from the denial of his Second Petition for a Writ of Habeas Corpus (Post-  
2 Conviction); and

3 WHEREAS, on the 18<sup>th</sup> day of February, 2011, the Supreme Court of the State of  
4 Nevada affirmed the District Court's denial of ZANE MICHAEL FLOYD's Second Petition  
5 for a Writ of Habeas Corpus (Post-Conviction); and

6 WHEREAS, on the 22<sup>nd</sup> of September, 2014, the United States District Court denied  
7 ZANE MICHAEL FLOYD's Petition for Writ of Habeas Corpus (Post-Conviction); and

8 WHEREAS, on the 22<sup>nd</sup> of October, 2014, a Notice of Appeal was filed to the US  
9 Court of Appeals, Ninth Circuit; and

10 WHEREAS, on the 11<sup>th</sup> day of October, 2019, The United States Court of Appeals for  
11 the Ninth Circuit issued an Order affirming the United States District Court's denial of  
12 ZANE MICHAEL FLOYD's Petition for a Writ of Habeas Corpus; and

13 WHEREAS, on November 2, 2020, the United States Supreme Court denied a  
14 Petition for a Writ of Certiorari; and

15 WHEREAS, on November 5, 2020, Mandate was filed giving the judgment of the  
16 United States Court of Appeals for the Ninth Circuit full effect.

17 WHEREAS, the Court, in which the conviction was had and pursuant to NRS 176.505,  
18 has inquired into the facts and determined that no legal reasons exist against the execution of  
19 the judgment of death, and has entered a SECOND supplemental order to execute the judgment  
20 and sentence of death,

21 NOW THEREFORE, it is hereby

22 ORDERED that the County Clerk of the County of Clark, State of Nevada, shall  
23 forthwith, execute, in triplicate, under the Seal of the Court, certified copies of the SECOND  
24 Supplemental Warrant of Execution, the Judgment of Conviction, and of the entry thereof in  
25 the Minutes of the Court. The original of the triplicate copies of the Judgment of Conviction,  
26 SECOND Supplemental Warrant of Execution, and entry thereof in the Minutes of the Court,  
27 shall be filed in the Office of the County Clerk, and two of the triplicate copies shall be  
28 immediately delivered by the Clerk to the Sheriff of Clark County, State of Nevada.

1 IT IS FURTHER ORDERED that one of the triplicate copies be delivered by the Sheriff  
2 to the Director of the Department of Prisons or to such person as the Director shall designate.  
3 The Sheriff is hereby directed to take charge of the said Defendant, ZANE MICHAEL  
4 FLOYD, and transport and safely deliver the prisoner, forthwith, to the Director of the  
5 Department of Prisons at the Nevada State Prison located at or near Carson City, State of  
6 Nevada, and said prisoner, ZANE MICHAEL FLOYD, is to be surrendered to the custody of  
7 the said Director of the Department of Prisons or to such authorized person so designated by  
8 the Director of the Department of Prisons, for the imprisonment and execution of the said  
9 Defendant, ZANE MICHAEL FLOYD, in accordance with the provisions of this SECOND  
10 Supplemental Warrant of Execution.

11 IT IS FURTHER ORDERED that in connection with the above facts and pursuant to  
12 the provisions of NRS 176.345, 176.355 and 176.357, the Director of the Department of  
13 Prisons, or such person as shall by him be designated, shall carry out said Judgment and  
14 Sentence by executing the said ZANE MICHAEL FLOYD, by the administration to him, said  
15 Defendant, ZANE MICHAEL FLOYD, an injection of a lethal drug, the drug or combination  
16 of drugs to be used for the execution to be selected by the Director of the Department of Prisons  
17 after consulting with the State Health Officer. Said execution to be within the limits of the  
18 State Prison, located at or near Carson City, State of Nevada, during the week commencing  
19 on the 7<sup>th</sup> day of June, 2021, in the presence of the Director of the Department of Prisons, and  
20 notify those members of the immediate family of the victim who have, pursuant to NRS  
21 176.357, requested to be informed of the time, date and place scheduled for the execution, and  
22 invite a competent physician, the county coroner, a psychiatrist and not less than six reputable  
23 citizens over the age of 21 years to be present at the execution. The director shall determine  
24 the maximum number of persons who may be present for the execution. The director shall  
25 give preference to those eligible members or representatives of the immediate family of the  
26 victim who requested, pursuant to NRS 176.357, to attend the execution. The execution must  
27 take place at the state prison and a person who has not been invited by the director may not  
28 witness the execution.

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ORDERED that said Defendant shall be safely kept and imprisoned by said Director until the Defendant is put to death by the injection of a lethal drug, or combination of drugs, and these presents shall be your authority so to do.

HEREIN FAIL NOT.

WITNESS, the HONORABLE MICHAEL VILLANI, this \_\_\_\_ day of April, 2021.

\_\_\_\_\_  
DISTRICT JUDGE

WITNESS my hand and seal  
this \_\_\_\_ day of April, 2021.  
Clerk Name, Clerk  
BY \_\_\_\_\_

1 **ORDR**  
2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 ALEXANDER CHEN  
6 Chief Deputy District Attorney  
7 Nevada Bar #010539  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 State of Nevada

12  
13 DISTRICT COURT  
14 CLARK COUNTY, NEVADA

15 THE STATE OF NEVADA, )

16 Plaintiff, )

17 -vs- )

18 ZANE MICHAEL FLOYD,  
19 #1619135 )

20 Defendant. )

Case No. 99C159897  
Dept No. XVII

21  
22 SECOND SUPPLEMENTAL ORDER OF EXECUTION

23 A JUDGMENT OF DEATH having been entered on the 21<sup>st</sup> day of July, 2000, against  
24 the above named Defendant, ZANE MICHAEL FLOYD, as a result of his having been found  
25 guilty of Counts II, III, IV and V Murder of the First Degree with Use of a Deadly Weapon,  
26 by a duly and legally impaneled Jury of twelve persons; and

27 WHEREAS, this Court has made inquiry into the facts and found no legal reasons  
28 against the execution of the Judgment of Death.

IT IS ORDERED that the Director of the Department of Prisons shall execute the  
Judgment of Death, during the week commencing on the 7<sup>th</sup> day of June, 2021.

DATED this \_\_\_\_ day of April, 2021.

\_\_\_\_\_  
DISTRICT JUDGE

F:\appellate\WPDOCS\Floyd, Zane Michael, 99C159897, 2nd death pprwrk 2021\Floyd Zane Michael 99C159897 Mtn.for Crt. Issue 2nd.

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DISTRICT COURT  
CLARK COUNTY, NEVADA

CASE NO. 99C159897

DEPT. NO. XVII

THE STATE OF NEVADA

To the Sheriff of Clark County, and the Warden or Officers in charge of the State Prison of  
the State of Nevada,

GREETINGS:

WHEREAS, ZANE MICHAEL FLOYD

Having entered a plea of Not Guilty to the crime of Counts II, III, IV, and V Murder With  
Use of a Deadly Weapon, and the Defendant having been found guilty by the Jury of the crimes  
of Counts II, III, IV, and V Murder of the First Degree With Use of a Deadly Weapon, and  
judgment having been pronounced against him that be punished by the imposition of the Death  
Penalty by the administration of an injection of a lethal drug or combination of drugs.  
All of which appears of record in the Office of the Clerk of said Court and a certified copy of  
the Judgment being attached hereto and made a part hereof.

Now this is to command you, the said Sheriff, to safely deliver the said ZANE MICHAEL  
FLOYD, into the custody of the said Warden or his duly authorized representative, when  
requested to do so,

and this is to command you, the said Warden, or your duly authorized deputy, to receive  
from the said Sheriff, the said ZANE MICHAEL FLOYD, to be sentenced as aforesaid, and  
that the said be put to death by an injection of a lethal drug or combination of drugs.

And these presents shall be your authority to do so. HEREIN FAIL NOT.

WITNESS, Honorable MICHAEL P. VILLANI, Judge of the said District Court at the  
Courthouse, in the County of Clark, this \_\_\_\_ day of April, 2021.

Witness my hand and the Seal of  
said Court, the day and year last  
above written.

\_\_\_\_\_  
Clerk

# EXHIBIT 1

# EXHIBIT 1



**FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

ZANE FLOYD,  
*Petitioner-Appellant,*

v.

TIMOTHY FILSON; ADAM PAUL  
LAXALT, Attorney General,  
*Respondents-Appellees.*

No. 14-99012

D.C. No.  
2:06-cv-00471-  
PMP-CWH

ORDER AND  
AMENDED  
OPINION

Appeal from the United States District Court  
for the District of Nevada  
Philip M. Pro, District Judge, Presiding

Argued and Submitted January 31, 2019  
San Francisco, California

Filed October 11, 2019  
Amended February 3, 2020

Before: Marsha S. Berzon, John B. Owens,  
and Michelle T. Friedland, Circuit Judges.

Order;  
Opinion by Judge Friedland

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**SUMMARY\***

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**Habeas Corpus / Death Penalty**

The panel affirmed the district court's denial of Zane Floyd's habeas corpus petition challenging his Nevada conviction and death sentence for four counts of first-degree murder.

As to Floyd's ineffective-assistance-of-trial-counsel claims raised for the first time in his second state petition, which the Nevada Supreme Court denied as untimely and successive, the panel held that because the claims would fail on the merits, it did not need to resolve whether section 34.726 of the Nevada Revised Statutes is adequate to bar federal review, or whether Floyd can overcome his procedural default. The panel held that Floyd's remaining ineffective-assistance-of-counsel claim that was raised and adjudicated in state court fails under AEDPA's deferential standards.

Regarding Floyd's claim that his constitutional rights were violated when the State's expert made reference during his testimony to test results that he had obtained from Floyd's expert, the panel held that the Nevada Supreme Court's conclusion on direct appeal that no constitutional error occurred was not contrary to or an unreasonable application of controlling Supreme Court case law.

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\* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

Regarding Floyd's claim that the trial court violated his constitutional rights by failing to grant a change of venue, the panel held that the district court did not err when it reasoned that AEDPA limited its review to those materials before the state courts that had rejected the venue claim.

Regarding Floyd's claim that the trial court violated his constitutional rights by permitting the mother of a victim to testify extensively during the penalty phase about her son's difficult life and previous experiences with violent crime, the panel held that the Nevada Supreme Court's conclusion that the admission of the testimony did not unduly prejudice Floyd was not contrary to or an objectively unreasonable application of clearly established federal law.

Reviewing under AEDPA, the panel held that the Nevada Supreme Court's determination that the prosecutor's improper statement that Floyd had committed "the worst massacre in the history of Las Vegas" was harmless was neither contrary to nor an unreasonable application of *Darden v. Wainwright*, 477 U.S. 168 (1986). Reviewing de novo, the panel held that several of the prosecutor's other statements—suggesting that other decisionmakers might ultimately decide whether Floyd received the death penalty, and implying that the jury could sentence Floyd to death to send a message to the community—were improper but did not so affect the fundamental fairness of the proceedings as to violate the Eighth Amendment or result in the denial of due process.

The panel declined to expand the certificate of appealability to include claims challenging Nevada's lethal injection protocol and courtroom security measures that caused certain jurors to see Floyd in prison garb and restraints.

**COUNSEL**

Brad D. Levenson (argued) and David Anthony, Assistant Federal Public Defenders; Rene Valladares, Federal Public Defender; Office of the Federal Public Defender, Las Vegas, Nevada; for Petitioner-Appellant.

Jeffrey M. Conner (argued), Deputy Assistant Attorney General; Heidi Parry Stern, Chief Deputy Attorney General; Adam Paul Laxalt, Attorney General; Office of the Attorney General, Las Vegas, Nevada; for Respondents-Appellees.

H. Louis Sirkin, Santen & Hughes, Cincinnati, Ohio, for Amicus Curiae National Association for Public Defense.

Thomas C. Sand and Nicholas H. Pyle, Miller Nash Graham & Dunn LLP, Portland, Oregon, for Amicus Curiae The National Organization on Fetal Alcohol Syndrome.

Elizabeth Ballart and William Leiner, Disability Rights California, Oakland, California, for Amici Curiae Disability Law Center of Alaska, Disability Rights California, National Disability Rights Network, and Nevada Disability Advocacy & Law Center.

John L. Krieger, Dickinson Wright PLLC, Las Vegas, Nevada; Justin J. Bustos, Dickinson Wright PLLC, Reno, Nevada; for Amici Curiae Canadian Criminal Justice Professors, Litigators, and Expert Witnesses.

Lisa Rasmussen, Law Office of Lisa Rasmussen, Las Vegas, Nevada, for Amici Curiae The Directors of the Three Research Centers of Birmingham City University's School of Law.

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**ORDER**

The opinion filed on October 11, 2019, reported at 940 F.3d 1082, is amended as follows.

On page 12 of the slip opinion, following <whether Floyd can overcome his procedural default and obtain federal review of the merits of his ineffective assistance claims.>, insert the footnote <The arguments in Floyd's opening and reply briefs regarding section 34.726 of the Nevada Revised Statutes address the same ineffective assistance of counsel claims as do his *Martinez* arguments. In Floyd's petition for rehearing, he argues that we should reach other constitutional claims that were also procedurally defaulted by section 34.726. Floyd forfeited any such argument by failing to present it in his opening brief. See *Arpin v. Santa Clara Valley Transp. Agency*, 261 F.3d 912, 919 (9th Cir. 2001).>.

On page 14 of the slip opinion, replace <Floyd's counsel emphasized Floyd's developmental problems and mental illness> with <Floyd's counsel emphasized Floyd's developmental problems and emotional instability>.

On page 15 of the slip opinion, replace <Floyd's other mental illnesses> with <Floyd's other developmental problems>, and delete <on his mental state>.

On page 16 of the slip opinion, replace <the jury already had evidence before it that Floyd suffered from some mental illness and that his illness might have been related to his mother's alcohol use during pregnancy> with <the jury already had evidence before it that Floyd suffered from some developmental problems and that his issues might have been related to his mother's alcohol use during pregnancy>.

On page 17 of the slip opinion, replace <mental illness> with <developmental problems>.

On page 26 of the slip opinion, in the current footnote 5, replace <*Arpin v. Santa Clara Valley Transp. Agency*, 261 F.3d 912, 919 (9th Cir. 2001)> with <*Arpin*, 261 F.3d at 919>.

With these amendments, the panel has unanimously voted to deny Appellant's petition for panel rehearing and rehearing en banc. The full court has been advised of the petition for rehearing en banc, and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35. The petition for panel rehearing and rehearing en banc is accordingly **DENIED**. No further petitions for panel rehearing or rehearing en banc will be entertained.

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#### OPINION

FRIEDLAND, Circuit Judge:

In 1999, Petitioner-Appellant Zane Michael Floyd shot and killed four people at a Las Vegas supermarket. A Nevada jury found Floyd guilty of four counts of first-degree murder, as well as several related offenses, and sentenced him to death. After the Nevada Supreme Court upheld his conviction and sentence on direct appeal and denied a petition for postconviction relief, Floyd sought a writ of habeas corpus in the United States District Court for the District of Nevada. Following a stay during which Floyd filed an unsuccessful second petition for postconviction relief in state court, the district court denied the federal habeas petition but issued a certificate of appealability as to various claims now before us. We affirm the district court's

decision and deny Floyd's motion to expand the certificate of appealability.

I.

A.

Before dawn one morning in June 1999, Floyd called an escort service and asked the operator to send a female escort to his parents' home in Las Vegas, where he had been living since his discharge from the U.S. Marine Corps the previous year. When a young woman sent by the service arrived, Floyd threatened her with a shotgun and forced her to engage in vaginal and anal intercourse, digital penetration, and oral sex. At one point he removed a shell from his shotgun and showed it to her, telling her that her name was on it. He later put on a Marine Corps camouflage uniform and told her that he planned to kill the first nineteen people he saw that morning. Commenting that he would have already shot her had he had a smaller gun on him, he told the woman she had one minute to run before he would shoot her. She escaped.

Floyd then walked about fifteen minutes to an Albertsons supermarket near his home. When he arrived at 5:15 am, he immediately began firing on store employees. He shot and killed four Albertsons employees and wounded another. The store's security cameras captured these events.

When Floyd exited the store, local police were waiting outside. Officers arrested him, and he quickly admitted to shooting the people in the Albertsons. Prosecutors charged Floyd with offenses that included multiple counts of first-degree murder and indicated that they would seek the death penalty.

**B.**

Numerous psychiatric experts examined Floyd and explored his background. On the day of his arrest, Floyd's public defenders retained Dr. Jakob Camp, a forensic psychiatrist who examined Floyd for three hours. Dr. Camp concluded that Floyd did not suffer from a mental illness that would impair his ability to stand trial, noted that Floyd's experiences during and after his time in the Marines might have had a bearing on his actions that day, and suggested that counsel obtain Floyd's adolescent health records to learn more about an attention deficit/hyperactivity disorder ("ADHD") diagnosis for which Floyd had been previously treated with the drug Ritalin. Floyd's counsel eventually obtained records from two doctors who had treated Floyd's mental health issues as an adolescent that confirmed this type of diagnosis. Those doctors had diagnosed Floyd with attention deficit disorder ("ADD"), although they had also determined that Floyd did not have any significant cognitive deficits.

Shortly before trial, defense counsel also retained clinical neuropsychologist Dr. David L. Schmidt to conduct a full examination of Floyd. Dr. Schmidt concluded that Floyd suffered from ADHD and polysubstance abuse, but that he showed "[n]o clear evidence of chronic neuropsychological dysfunction." He also diagnosed Floyd with a personality disorder that included "[p]aranoid, [s]chizoid, and [a]ntisocial [f]eatures."

Discouraged by Dr. Schmidt's findings, which they worried would make Floyd unsympathetic to a jury, counsel turned to clinical neuropsychologist Dr. Thomas Kinsora. After reviewing Dr. Schmidt's report and a report from Floyd's childhood doctor, Dr. Kinsora was highly critical of Dr. Schmidt's work, questioning the validity of the tests that



Dr. Schmidt had conducted. Dr. Kinsora advised Floyd's counsel that it was "not clear whether or not a more comprehensive assessment would have revealed ongoing deficits or not," but that he "wouldn't be surprised to find some continued evidence of neurological problems" in light of the findings of one of the doctors who had examined Floyd as an adolescent. The defense subsequently unendorsed Dr. Schmidt as an expert, but not before the state trial court ordered it to provide the prosecution a copy of Dr. Schmidt's report along with the associated raw testing data.

Defense counsel also retained Dr. Frank E. Paul, a clinical psychologist and retired Navy officer, who investigated and described in detail Floyd's background and life history. Floyd's mother told Dr. Paul that she had used drugs and alcohol heavily earlier in her life, including when she was pregnant with her first child, but that she "stopped drinking and all drug use when she found herself pregnant with [Floyd] . . . but continued to smoke tobacco." Dr. Paul also learned of an incident in which Floyd, at the age of eight, was accused of anally penetrating a three-year-old boy. Dr. Paul further learned that Floyd began using drugs and alcohol extensively in high school. Dr. Paul described Floyd's Marine Corps deployment to the U.S. base at Guantanamo Bay, Cuba as difficult, explaining that Floyd struggled with the stress and monotony of the deployment and drank extremely heavily during that period. Defense counsel originally named Dr. Paul as an expert but did not call him at trial and never disclosed Dr. Paul's report to the prosecution.

At the guilt phase of Floyd's trial, the jury convicted him of four counts of first-degree murder with use of a deadly weapon, one count of attempted murder with use of a deadly

weapon, one count of burglary while in possession of a firearm, one count of first-degree kidnapping with use of a deadly weapon, and four counts of sexual assault with use of a deadly weapon.

During the penalty phase of Floyd's trial, the State argued that three statutory aggravating factors justified application of the death penalty: killing more than one person, killing people at random and without apparent motive, and knowingly creating a risk of death to more than one person. In arguing that mitigating circumstances weighed against imposition of the death penalty, the defense called (among other witnesses) two experts hired by defense counsel: Dr. Edward Dougherty, a psychologist specializing in learning disabilities and education; and Jorge Abreu, a consultant with an organization specializing in mitigation defense.

Dr. Dougherty diagnosed Floyd with ADHD and a mixed personality disorder with borderline paranoid and depressive features. He also discussed the "prenatal stage" of Floyd's development, and commented that his mother "drank alcohol, and she used drugs during her pregnancy," including "during the first trimester." In rebuttal, the prosecution called Dr. Louis Mortillaro, a psychologist with a clinical neuropsychology certificate, who had briefly examined Floyd and reached conclusions similar to Dr. Schmidt's based on Dr. Schmidt's testing. Abreu painted a detailed picture of Floyd's life, drawing on many of the same facts that Dr. Paul's report had mentioned. He particularly noted Floyd's mother's heavy drinking, including during her pregnancies.

During closing arguments, defense counsel urged the jury to refrain from finding that a death sentence was warranted. The mitigating factors defense counsel relied on

in closing included Floyd's difficult childhood, his alcohol and substance abuse, his stressful military service, his ADD/ADHD, and his mother's substance abuse while she was pregnant with him.

After three days of deliberation, the jury sentenced Floyd to death. It found that all three statutory aggravating factors were present and that they outweighed Floyd's mitigating evidence.

**C.**

New counsel represented Floyd on his direct appeal, which the Nevada Supreme Court denied. *Floyd v. State*, 42 P.3d 249 (Nev. 2002) (per curiam). The U.S. Supreme Court then denied certiorari. *Floyd v. Nevada*, 537 U.S. 1196 (2003). Floyd filed a state petition for a writ of habeas corpus a little over a year later. The state trial court denied the petition on the merits, and the Nevada Supreme Court affirmed. *Floyd v. State*, No. 44868, 2006 Nev. LEXIS 851 (Nev. Feb. 16, 2006).

Floyd then filed a pro se habeas petition in the U.S. District Court for the District of Nevada. *See* 28 U.S.C. § 2254(a). The federal public defender was appointed as counsel and filed an amended petition with new allegations, including alleged ineffective assistance by Floyd's trial counsel. The district court agreed with the State that Floyd had not exhausted these new claims in state court and stayed the federal proceedings so he could do so.

Floyd filed a second state habeas petition that included the new claims of ineffective assistance of trial counsel. The state trial court denied this petition on the merits and as untimely filed. The Nevada Supreme Court affirmed, holding that Floyd's second petition was untimely and

successive. *Floyd v. State*, No. 51409, 2010 WL 4675234 (Nev. Nov. 17, 2010).

The federal district court then lifted the stay and reopened Floyd's habeas proceedings. It ultimately granted in part the State's motion to dismiss, concluding that Floyd's new claims that the Nevada Supreme Court had denied as untimely—including his new ineffective assistance of trial counsel claims—were procedurally defaulted, and that Floyd had not shown cause and prejudice for failing to raise his ineffective assistance of trial counsel claims in his first petition. See *Coleman v. Thompson*, 501 U.S. 722, 750 (1991). The district court went on to deny Floyd's remaining claims on the merits, but it issued a certificate of appealability as to several issues, including whether Floyd could show cause and prejudice for the default of his ineffective assistance of trial counsel claims.

Floyd appealed, pressing each of the certified issues and also arguing that we should expand the certificate of appealability to encompass two more. We evaluate each of his arguments in turn.

## II.

We review a district court's denial of habeas corpus de novo. *Robinson v. Ignacio*, 360 F.3d 1044, 1055 (9th Cir. 2004).

The Antiterrorism and Effective Death Penalty Act ("AEDPA") applies to Floyd's habeas petition. Under AEDPA, we may grant Floyd relief only if the Nevada Supreme Court's rejection of his claims "(1) was contrary to or involved an unreasonable application of clearly established federal law, or (2) was based on an unreasonable determination of the facts." *Davis v. Ayala*, 135 S. Ct. 2187,

2198 (2015). “[C]learly established federal law” in this context refers to law “as determined by the Supreme Court.” 28 U.S.C. § 2254(d)(1). “Although an appellate panel may . . . look to circuit precedent to ascertain whether it has already held that the particular point in issue is clearly established by Supreme Court precedent,” that precedent cannot “refine or sharpen a general principle of Supreme Court jurisprudence into a specific legal rule that th[e] Court has not announced.” *Marshall v. Rodgers*, 569 U.S. 58, 64 (2013) (per curiam).

### III.

Floyd asserts numerous claims of ineffective assistance of trial counsel. He raised most of these claims for the first time in his second state petition, prompting the Nevada Supreme Court to deny them as untimely and successive. *Floyd v. State*, No. 51409, 2010 WL 4675234, at \*1 (Nev. Nov. 17, 2010). The Nevada Supreme Court held that the ineffective assistance of counsel claims raised for the first time in Floyd’s second state habeas petition were procedurally barred under section 34.726 of the Nevada Revised Statutes, which states that absent “good cause shown for delay, a petition that challenges the validity of a judgment or sentence must be filed within 1 year” after conviction or remittitur of any denied appeal “taken from the judgment.” Nev. Rev. Stat. § 34.726(1).

Unless a petitioner can show “cause and prejudice,” federal courts in habeas actions will not consider claims decided in state court on a state law ground that is independent of any federal question and adequate to support the state court’s judgment. *Coleman v. Thompson*, 501 U.S. 722, 750 (1991). Floyd and the State disagree about whether section 34.726, as applied in his case, is adequate to bar

federal review.<sup>1</sup> Floyd contends that when he filed his second state habeas petition in 2007, Nevada did not clearly and consistently apply section 34.726 to bar successive petitions alleging ineffective assistance of counsel in capital cases. He further argues that, even if the state law is adequate, he can establish cause and prejudice under *Martinez v. Ryan*, 566 U.S. 1 (2012), based on ineffective assistance of initial state habeas counsel in failing to raise claims of ineffective assistance of trial counsel.

Given that Floyd's underlying ineffective assistance of trial counsel claims lack merit, we need not resolve whether the state law is adequate or, if it is, whether Floyd can overcome his procedural default and obtain federal review of the merits of his ineffective assistance claims.<sup>2</sup> See *Franklin v. Johnson*, 290 F.3d 1223, 1232 (9th Cir. 2002). Even if we held in Floyd's favor on either of those questions and thus reached the merits of Floyd's ineffective assistance

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<sup>1</sup> The Nevada Supreme Court also held that Floyd's new claims were barred by section 34.810 of the Nevada Revised Statutes, which requires dismissal of claims that could have been raised in an earlier proceeding. Nev. Rev. Stat. § 34.810(1)(b)(3). On appeal, the State does not contest the district court's determination that this application of section 34.810 was inadequate, and so it does not bar federal review, because the rule was not consistently applied at the time of Floyd's purported default.

<sup>2</sup> The arguments in Floyd's opening and reply briefs regarding section 34.726 of the Nevada Revised Statutes address the same ineffective assistance of counsel claims as do his *Martinez* arguments. In Floyd's petition for rehearing, he argues that we should reach other constitutional claims that were also procedurally defaulted by section 34.726. Floyd forfeited any such argument by failing to present it in his opening brief. See *Arpin v. Santa Clara Valley Transp. Agency*, 261 F.3d 912, 919 (9th Cir. 2001).

of trial counsel claims, we would affirm the district court's denial of relief.<sup>3</sup>

**A.**

To succeed on an ineffective assistance of counsel claim, Floyd must show that his counsel's performance "fell below an objective standard of reasonableness," and that, if so, there is "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984). With respect to the prejudice requirement, the Supreme Court has cautioned that "[t]he likelihood of a different result must be substantial, not just conceivable." *Harrington v. Richter*, 562 U.S. 86, 112 (2011). To determine the risk of such prejudice at the penalty phase of a capital trial, we consider whether it is reasonably probable that the jury otherwise "would have concluded that the balance of aggravating and mitigating circumstances did not warrant death" in light of "the totality of the evidence" against the petitioner. *Strickland*, 466 U.S. at 695.

**B.**

Floyd's primary ineffective assistance of trial counsel claim is that his trial counsel failed to investigate and present mitigation evidence showing that Floyd suffers from fetal alcohol spectrum disorder ("FASD") as a result of his mother's alcohol consumption while he was in utero. In

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<sup>3</sup> Nor is a remand to the district court for further evidentiary development appropriate because only "a habeas petitioner who asserts a *colorable* claim to relief . . . is entitled to an evidentiary hearing." *Siripongs v. Calderon*, 35 F.3d 1308, 1310 (9th Cir. 1994) (emphasis added).

support of this claim, Floyd offers a report from FASD expert Dr. Natalie Novick Brown. After reviewing the trial court record and other experts' examinations of Floyd, Dr. Brown concluded that Floyd suffered from FASD and that the disorder could explain his actions on the day of the shooting. Floyd argues it is reasonably probable that had jurors been presented with evidence of FASD and its effects, they would have spared him a death sentence. Floyd acknowledges that trial counsel consulted seven experts, none of whom diagnosed Floyd with FASD, but he contends that those experts were inadequately prepared and lacked the expertise to present proper mitigating evidence regarding FASD.

We need not resolve whether Floyd's counsel's performance was deficient in failing to present expert testimony that Floyd suffers from FASD. Even assuming it was, there is no reasonable probability that, had the jury heard from an FASD expert, it would have concluded that mitigating factors outweighed aggravating factors such that Floyd did not deserve a death sentence.

The State presented an extremely weighty set of aggravating factors at sentencing. First, the State charged that Floyd "created a great risk of death to more than one person by means of a weapon, device or course of action which would normally be hazardous to the lives of more than one person." Nev. Rev. Stat. § 200.033(3). Second, it alleged that Floyd killed more than one person (indeed, four) during the course of the offense that led to his conviction. *See id.* § 200.033(12). Third, it alleged that the killings were at random and without apparent motive, because Floyd "just went to a place where he knew 18 people would be and shot everybody he could see." *See id.* § 200.033(9). The jury



unanimously found that all three aggravating circumstances existed with regard to all four victims.

In response, Floyd's counsel emphasized Floyd's developmental problems and emotional instability, issues exacerbated by his early life experiences and military service. Counsel's mitigation arguments included multiple references to Floyd's mother's drinking while Floyd was in utero—a point that both mitigation consultant Abreu and Dr. Dougherty emphasized as well. Counsel and Dr. Dougherty both explicitly opined that Floyd's mother's substance abuse might be to blame for Floyd's mental condition. All in all, Floyd's counsel argued that Floyd acted “under the influence of extreme mental or emotional disturbance,” and that he “suffer[ed] from the effects, early effects of his mother's drinking, her ingested alcohol, drugs early on in her pregnancy.”

Consistent with these defense arguments, the mitigation instructions submitted to the jury included that Floyd's “[m]other use[d] alcohol and drugs during early pregnancy,” that Floyd had been born prematurely, that the murders were committed while Floyd was under the influence of “[e]xtreme [m]ental or [e]motional [d]isturbance,” and that Floyd had been “[i]nsufficiently [t]reated for ADHD [and] other [e]motional-[b]ehavioral [p]roblems including [d]epression.” Maternal alcohol and drug use was the first mitigating factor on the list.

Given the defense's focus on Floyd's mother's drinking during pregnancy and its effects, testimony by an FASD expert would likely not have changed any juror's balancing of mitigating versus aggravating circumstances. For Floyd to have been prejudiced by the lack of testimony by an FASD expert, at least one juror would have had to have considered a formal FASD diagnosis more severe and

debilitating than ADD/ADHD and Floyd's other developmental problems, which the defense had suggested included effects of his mother's drinking and drug use during pregnancy, but without using FASD terminology. In other words, at least one juror would have had to view a formal FASD diagnosis as a weightier mitigating factor than those presented. And that juror would have had to have placed so much additional weight on the FASD defense as to cause the mitigating circumstances to outweigh the State's significant aggravating evidence, even though they did not on the record before the jury. Both the limited additional contribution of the FASD mitigating factor as compared with the mitigation evidence presented and the especially shocking nature of Floyd's crime, during which he killed multiple unarmed people at close range, without provocation, and in their workplace, makes that switch in outcome unlikely. Given that the jury already had evidence before it that Floyd suffered from some developmental problems and that his issues might have been related to his mother's alcohol use during pregnancy, and given the extreme aggravating circumstances, it seems very unlikely—and so not reasonably probable—that any juror would have had these reactions.

This conclusion comports with our previous holdings that a capital petitioner is not necessarily prejudiced when counsel fails to introduce evidence that differs somewhat in degree, but not type, from that presented in mitigation. In *Bible v. Ryan*, 571 F.3d 860 (9th Cir. 2009), for instance, we held that a capital petitioner was not prejudiced by his attorney's failure to introduce medical evidence that he suffered from neurological damage. *Id.* at 870. We reasoned that because counsel presented evidence that the petitioner might have had brain damage from persistent drug and alcohol abuse, along with evidence of childhood events that

could have led to brain damage, medical evidence of neurological damage would have been different only in degree. *Id.* at 871. Floyd’s FASD argument resembles that of the petitioner in *Bible*—the jury heard the evidence that would have supported the FASD diagnosis as well as the implication that the evidence explained Floyd’s behavior. And like the petitioner in *Bible*, who “murdered a nine-year-old child in an especially cruel manner,” Floyd “has a significant amount of aggravating circumstances that he would need to overcome,” *id.* at 872, making it unlikely that the jury would have imposed a different sentence based on mitigating evidence that differed only in degree from that which Floyd presented at trial.

Floyd urges us to follow the Fourth Circuit’s decision in *Williams v. Stirling*, 914 F.3d 302 (4th Cir. 2019), *petition for cert. docketed*, No. 18-1495 (May 31, 2019), in which that court affirmed a district court’s conclusion that a capital petitioner’s counsel had performed constitutionally deficiently in failing to present evidence of fetal alcohol syndrome in mitigation, and that the petitioner was prejudiced by this failure. *Id.* at 319. In some cases, FASD evidence might be sufficiently “different from . . . other evidence of mental illness and behavioral issues” to raise a reasonable probability that a juror would not have imposed the death penalty had it been presented. *Id.* at 318. But much distinguishes Floyd’s case from that of the petitioner in *Williams*. Floyd’s lawyers and experts explicitly argued that his mother’s alcohol use while she was pregnant led to his developmental problems in some form and therefore helped explain his actions, whereas trial counsel in *Williams* investigated the petitioner’s mother’s drinking “as evidence of [the petitioner’s] difficult childhood, not of [fetal alcohol-related disorders]” and never offered evidence to the jury that the drinking could have caused Williams’s cognitive

issues. *Id.* at 309. The State submitted against Floyd three aggravating factors, all involving a multiple-victim shooting, whereas in *Williams* “the State only presented one aggravating factor: that the [single] murder occurred in the commission of a kidnapping.” *Id.* at 318. The jury that imposed the death sentence on Floyd did not report difficulty reaching a verdict, whereas in *Williams* “the jury sent a note to the trial court stating it was deadlocked nine to three in favor of death.” *Id.* at 308. In short, the petitioner in *Williams* was prejudiced because his lawyers presented a much weaker-than-available mitigation argument that was insufficient to overcome an also weak aggravating argument that clearly troubled some jurors.<sup>4</sup> That was not the situation here. We also note that our conclusion is consistent with the Fifth Circuit’s in *Trevino v. Davis*, 861 F.3d 545 (5th Cir. 2017), *cert. denied*, 138 S. Ct. 1793 (2018), in which that court rejected an ineffective assistance of counsel claim relating to the failure to present mitigating evidence of an FASD diagnosis because the evidence would have been outweighed by what the court viewed as very substantial aggravating evidence. *Id.* at 549–51.

Floyd further argues that counsel provided deficient performance in the penalty phase by failing to call Dr. Paul, the consulting military and mental health expert, to testify about Floyd’s military service, early life, and other matters. We are skeptical that declining to call this expert was constitutionally deficient. *See Hinton v. Alabama*, 571 U.S.

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<sup>4</sup> Floyd’s postconviction investigator interviewed one juror who stated that evidence of a “serious mental illness” would have “weighed heavily” in her sentencing-phase deliberations. It does not follow that this juror would have deemed FASD a sufficiently severe condition to mitigate Floyd’s offenses, especially because she appears to have considered insufficient the existing evidence of potential ties between maternal alcohol use and Floyd’s state of mind.

263, 275 (2014) (“The selection of an expert witness is a paradigmatic example of the type of ‘strategic choic[e]’ that, when made ‘after thorough investigation of [the] law and facts,’ is ‘virtually unchallengeable.’” (alterations in original) (quoting *Strickland*, 466 U.S. at 690)). Even assuming that counsel’s choice in this regard was deficient, it did not prejudice Floyd. Like Floyd’s FASD evidence, Dr. Paul’s testimony would have been largely cumulative of the evidence of Floyd’s substance abuse and mental health struggles actually presented at trial, and the testimony therefore would have done little to offset the weighty aggravating evidence against Floyd.

### C.

Floyd argues that his trial counsel’s conduct during jury selection amounted to ineffective assistance of counsel. We disagree. Much of his argument supposes that various decisions by the trial court prejudiced him during jury selection, that those decisions were erroneous, and that his counsel was ineffective in failing to object to or otherwise remedy these errors. But most of the trial court decisions he challenges were not errors at all, and with respect to any that may have been errors, we conclude that his counsel acted within the bounds of professional competence in responding to the court’s decisions.

For example, Floyd contends that his counsel erred in failing to successfully object to the trial court’s dismissal of two prospective jurors. Floyd first argues that the trial court improperly or pretextually removed one venireperson from the venire for cause. Even assuming that the trial court erred in doing so, this does not show that Floyd’s counsel was ineffective. On the contrary, Floyd’s counsel attempted to rehabilitate the prospective jurors who had expressed hesitation about the death penalty, including the juror in

question, and to allay the court's concerns. After the juror stated that she had scruples about the death penalty, counsel elicited a response from her that she "would have to follow the law." But she then admitted that she would "invariably in all cases give a sentence less than death," and the trial court dismissed her for cause.

Floyd next argues that the court improperly dismissed a second venireperson for improper concerns about language ability. After it came to light that this prospective juror was not a native English speaker, defense counsel questioned him about his degree from an English-speaking university. Nonetheless, the court concluded that the juror's English fluency was insufficient, stating that it could "not take a chance where the stakes [were] so high to both sides."

That the trial court dismissed these two potential jurors does not mean that counsel's attempts to rehabilitate them were deficient and that competent counsel would have sufficiently rehabilitated the two to keep them on the jury, especially because the court appears to have had legitimate concerns about both.

Floyd similarly argues that because the trial court refused to excuse allegedly biased venirepersons for cause, counsel wasted peremptory challenges on striking those individuals from the jury pool. It appears, however, that the trial court made no error by refusing to dismiss the prospective jurors in question. One of them, for instance, retracted her statement that she could not consider a sentence of life with parole after the trial court clarified that she was only required to "at least consider" it. And again, even if the trial court erred, Floyd's counsel's reaction was within the realm of permissible strategic choices: counsel chose between the two (admittedly unattractive) options of spending a peremptory challenge or taking the risk of seating a juror that counsel

had concluded would be unfavorable to Floyd. In other words, Floyd's counsel was not ineffective for attempting to make the best of the trial court's alleged errors.

Finally, Floyd contends in general terms that the voir dire format, in which the prosecution questioned all prospective jurors before the defense was permitted to question any, was prejudicial or caused his counsel to be ineffective. We struggle to discern precisely Floyd's theory of deficient performance or of prejudice. Even assuming that the trial court's format was prejudicial, counsel did object to it by moving for "attorney conducted, sequestered individual *voir dire*." Trial counsel's attempt to challenge the trial court's procedures shows diligence, not ineffectiveness.

Moreover, Floyd's lawyers had the opportunity to individually question numerous prospective jurors, eliciting information about their views on topics including the death penalty, psychology, alcoholism, and how they would behave in a jury room. Counsel's decision not to further question each venireperson about his or her exposure to media coverage of the shooting and ability to consider mitigating evidence was not deficient. The questionnaires that every prospective juror completed asked about these issues, and the trial court asked all prospective jurors if "there [is] anybody among you who feels unable to set aside what they've read, seen, or heard" about the case. Floyd's counsel were entitled to rely on those responses, and their mere failure to inquire further does not render their performance deficient. *See Fields v. Woodford*, 309 F.3d 1095, 1108 (9th Cir. 2002) ("[W]e cannot say that failure to inquire beyond the court's voir dire was outside the range of reasonable strategic choice or that it would have affected the outcome."); *Wilson v. Henry*, 185 F.3d 986, 991 (9th Cir. 1999) (rejecting argument "that trial counsel rendered

ineffective assistance by failing to focus on his client's criminal history during voir dire to discover potential juror prejudice and determine whether jurors could follow limiting instructions on such a history").

**D.**

Floyd's counsel was not ineffective in cross-examining the State's penalty-phase psychological expert witness, Dr. Mortillaro. Dr. Mortillaro reviewed the guilt-phase record materials and other psychological experts' reports and data, including Dr. Schmidt's unfavorable test results that the defense provided the prosecution in discovery before it un-endorsed Dr. Schmidt. Dr. Mortillaro also interviewed Floyd himself. Based on these materials, Dr. Mortillaro opined that—contrary to defense expert Dr. Dougherty's testimony—Floyd had not suffered brain damage, was of average IQ, did not suffer delusions, could tell right from wrong, and was not mentally ill.

On cross-examination, defense counsel elicited testimony from Dr. Mortillaro that he had only interviewed Floyd for about ninety minutes and that he had only received Dr. Dougherty's report the day before. Counsel also attempted to undermine Dr. Mortillaro's reliance on Floyd's scores from tests administered by Dr. Schmidt as the basis for Dr. Mortillaro's conclusion, arguing that the results should have been thrown out entirely. Counsel succeeded in getting Dr. Mortillaro to admit that any individual psychologist has significant discretion in deciding whether the test score was valid enough to allow reliance on the raw data. Counsel then pointed out that Dr. Dougherty had looked at the same data and diagnosed Floyd with dissociative personality disorder rather than borderline personality disorder, and he elicited an admission from



Dr. Mortillaro that individuals with borderline personality disorder may show dissociative symptoms.

Finally, counsel attempted to undermine Dr. Mortillaro's minimization of Floyd's ADD/ADHD. Counsel presented Dr. Mortillaro with his own prior testimony from another matter in which Dr. Mortillaro had stated "that 70 percent of those with attention deficit [disorder] still have it as an adult." Dr. Mortillaro also conceded that even if a patient were to "outgrow" ADD or ADHD, the fallout from the childhood disorder "would stay with them."

Floyd generally faults counsel for choosing to rely on cross-examination of Dr. Mortillaro rather than calling Floyd's other consulting expert, Dr. Kinsora, to rebut Dr. Mortillaro's testimony. The caselaw does not support Floyd's argument. In prior cases in which we and other circuits have recognized constitutionally deficient cross-examination, there were glaring failures to ask even basic questions, not—as here—a strategic choice between one means of undermining the witness and another. *See, e.g., Reynoso v. Giurbino*, 462 F.3d 1099, 1112–13 (9th Cir. 2006) (counsel ineffective for failing to ask *any* questions about a \$25,000 reward that might have motivated key witnesses' testimony against the defendant); *Higgins v. Renico*, 470 F.3d 624, 633 (6th Cir. 2006) (ineffective assistance where counsel did not cross-examine key prosecution witness at all because he felt unprepared to do so, even though he "had plenty of ammunition with which to impeach [the witness's] testimony").

Floyd does not contend that counsel failed altogether to cross-examine Dr. Mortillaro about key issues, but rather that he failed to do so in a manner that Floyd now believes would have been more effective. But Floyd's counsel did attempt to impeach Dr. Mortillaro's testimony, including

with information counsel obtained from experts he had hired. This was not constitutionally deficient performance.

**E.**

Floyd argues that his trial counsel was ineffective for failing to object to various jury instructions. Many of the arguments against the instructions Floyd now challenges would not have been legally supported or would have been foreclosed by then-governing law, so counsel was not ineffective for failing to raise them.

First, we disagree with Floyd that the jury should have been instructed at the penalty phase that it could impose a death sentence only if it found that aggravating factors outweighed mitigating factors beyond a reasonable doubt. Floyd contends that the Supreme Court's decision in *Apprendi v. New Jersey*, 530 U.S. 466 (2000), required that the jury instructions include such a statement about burden of proof. The Court in *Apprendi* held that, subject to an exception for prior convictions, "any *fact* that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." *Id.* at 490 (emphasis added). Floyd characterizes the balance of aggravating and mitigating circumstances as a "fact" governed by this rule.

The federal courts of appeals that have considered this argument have uniformly rejected it, holding that a jury's balancing inquiry in a capital case is a subjective and moral one, not a factual one. See *United States v. Gabrion*, 719 F.3d 511, 532–33 (6th Cir. 2013) (en banc); *United States v. Runyon*, 707 F.3d 475, 516 (4th Cir. 2013); *United States v. Barrett*, 496 F.3d 1079, 1107–08 (10th Cir. 2007); *United States v. Fields*, 483 F.3d 313, 346 (5th Cir. 2007); *United States v. Sampson*, 486 F.3d 13, 31–32 (1st Cir.

2007); *United States v. Purkey*, 428 F.3d 738, 749–50 (8th Cir. 2005).<sup>5</sup> Floyd’s proposed instruction thus hardly flowed naturally from *Apprendi*, which did not involve a capital case and was decided just months before Floyd’s trial began. Floyd’s counsel was not deficient for failing to make an argument that was untested, an extension of newly minted law, and (judging from the weight of subsequent authority) likely to fail. *See Engle v. Isaac*, 456 U.S. 107, 134 (1982) (“[T]he Constitution guarantees criminal defendants only a fair trial and a competent attorney. It does not insure that defense counsel will recognize and raise every conceivable constitutional claim.”).

Second, Floyd’s counsel was not ineffective for failing to challenge on constitutional grounds the penalty-phase jury instructions for the aggravating circumstance that “[t]he murder was committed upon one or more persons at random and without apparent motive.” At the time of Floyd’s trial, the Nevada Supreme Court had already rejected an identical constitutional challenge to this aggravating factor. *See Geary v. State*, 930 P.2d 719, 727 (Nev. 1996). Counsel was not ineffective for failing to raise this argument.

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<sup>5</sup> We have never directly ruled on this question—nor do we today—but we have at least twice expressed our skepticism of Floyd’s view. *See Ybarra v. Filson*, 869 F.3d 1016, 1030–31 (9th Cir. 2017); *United States v. Mitchell*, 502 F.3d 931, 993–94 (9th Cir. 2007). Floyd also argues that counsel should have requested a reasonable doubt instruction based on the Supreme Court’s decision in *Ring v. Arizona*, 536 U.S. 584 (2002), which applied the principle from *Apprendi* to hold that every sentence-enhancing fact, “no matter how the State labels it,” must be found beyond reasonable doubt. *Id.* at 602. *Ring* was decided two years after Floyd’s trial. In addition, *Ybarra* and *Mitchell*, as well as other circuits’ decisions rejecting that argument, post-date *Ring* and thus defeat this version of Floyd’s claim as well.

Third, no *Strickland* violation occurred when Floyd’s counsel declined to challenge a guilt-phase jury instruction that premeditation, an element of first-degree murder, “may be as instantaneous as successive thoughts of the mind.” Even assuming that this instruction was improper and that counsel’s decision not to challenge it was unreasonable, no prejudice resulted from use of the instruction. The jury had before it significant evidence that Floyd’s premeditation occurred in more than an instant. Among other things, he told his sexual assault victim that he planned to kill the first nineteen people he saw, then walked for fifteen minutes carrying the shotgun that he used to perpetrate the murders. Even if counsel had succeeded in striking the “instantaneous premeditation” instruction, there is no reasonable probability that the jury would have found a lack of premeditation as a result. *See Strickland*, 466 U.S. at 694.

**F.**

Floyd’s remaining claim of ineffective assistance—that his trial counsel should have objected to Nevada’s use of the “great risk of death” aggravating circumstance—was raised and adjudicated in state court, so we review it under AEDPA’s deferential standards. The claim fails under those standards.

Floyd contends that his trial counsel should have objected to this aggravating circumstance as duplicative of another aggravating circumstance—the “multiple murders” factor—that the State charged. *See Nev. Rev. Stat. § 200.033(3)*. Initial post-conviction counsel presented a nearly identical argument<sup>6</sup> to the Nevada Supreme Court,

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<sup>6</sup> To the extent Floyd is now making a new argument that this aggravating circumstance was impermissibly vague, we hold that

which rejected it on the merits. The Nevada Supreme Court held that the two aggravators were based on different facts and served different state interests. It reasoned that “[o]ne is directed against indiscriminately dangerous conduct by a murderer, regardless of whether it causes more than one death; the other is directed against murderers who kill more than one victim, regardless of whether their conduct was indiscriminate or precise.” *Floyd v. State*, No. 44868, 2006 Nev. LEXIS 851 (Nev. Feb. 16, 2006). Floyd argues in a conclusory fashion that this decision was “arbitrary and capricious” such that it was contrary to or an unreasonable application of clearly established federal law, but he cites no controlling Supreme Court precedent relevant to this argument. His briefing focuses entirely on the legislative history of Nevada’s aggravating factors and what he contends are two conflicting strains of doctrine in that state’s jurisprudence on the “great risk of death factor.” These state law issues are not grounds for federal habeas relief, and we are aware of no clearly established federal law that the Nevada Supreme Court’s determination might have contravened. *See* 28 U.S.C. § 2254(d); *Williams v. Taylor*, 529 U.S. 362, 412 (2000) (holding that “clearly established Federal law” refers only to U.S. Supreme Court decisions at time of alleged violation).

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argument lacks merit. “[N]ot every ambiguity, inconsistency, or deficiency in a jury instruction rises to the level of a due process violation.” *Middleton v. McNeil*, 541 U.S. 433, 437 (2004) (per curiam). To the extent that Floyd is making a new argument in his reply brief that substantial evidence did not support this jury instruction, we hold that Floyd forfeited any such argument by failing to articulate it in his opening brief. *See Arpin*, 261 F.3d at 919.

IV.

Floyd argues that his constitutional rights were violated when the State's expert, Dr. Mortillaro, made reference during his testimony to test results that he had obtained from Floyd's expert, Dr. Schmidt. The Nevada Supreme Court's conclusion on direct appeal that no constitutional error occurred, *Floyd v. State*, 42 P.3d 249, 258–59 (Nev. 2002) (per curiam), was not contrary to or an unreasonable application of controlling Supreme Court caselaw.

Floyd argues at length that the Nevada Supreme Court wrongly determined that Dr. Schmidt's report was not privileged work product.<sup>7</sup> Although the Nevada Supreme

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<sup>7</sup> Floyd argues that his counsel were ordered to turn over Dr. Schmidt's report "before defense counsel had even seen the report of their expert." That assertion is misleading. The court ordered the defense to provide a copy of Dr. Schmidt's report "before the close of business on June 15, 2000." Dr. Schmidt's report is dated June 13, 2000. In his declaration, Floyd's counsel describes a phone call with Dr. Schmidt on June 14 where Dr. Schmidt informed counsel that he was "unable to find any neurological basis for Mr. Floyd's actions." "Upon talking with Dr. Schmidt," counsel "became skeptical about the quality of his testing and decided to hire Dr. Kinsora" to review Dr. Schmidt's testing and analysis. So Floyd's counsel knew basically what would be in Dr. Schmidt's report before they turned it over, whether or not they had seen the actual report. Counsel had the opportunity to withdraw Dr. Schmidt as an expert before turning over his report, as they previously had done with Dr. Paul, but failed to do so. And Floyd's counsel admits that there was "no strategic reason to turn over a report that [they] were not sure about using." In light of this timeline, Floyd's argument that the prosecution's use of Dr. Schmidt's data violated the work-product privilege might be more accurately framed as a result of a poor strategic choice on defense counsel's part not to withdraw Dr. Schmidt as an expert, which could in turn be grounds for an ineffective assistance of counsel claim. See *McClure v. Thompson*, 323 F.3d 1233, 1242–43 (9th Cir. 2003). But no such claim is before us.

Court drew on federal authority in reaching that conclusion, Floyd “simply challenges the correctness of the state evidentiary rulings,” and “he has alleged no deprivation of federal rights” that could entitle him to relief. *Gutierrez v. Griggs*, 695 F.2d 1195, 1197 (9th Cir. 1983). He similarly argues that the Nevada Supreme Court misapplied its own precedent, but a state court’s misreading of *state* law is not a ground for federal habeas relief.

*Ake v. Oklahoma*, 470 U.S. 68 (1985), does not support Floyd’s challenge to the use of Schmidt’s report either. The Supreme Court in *Ake* held that “due process requires access to a psychiatric examination on relevant issues, to the testimony of the psychiatrist, and to assistance in preparation at the sentencing phase” of a capital case. *Id.* at 84. Floyd received ample psychiatric evaluations and assistance prior to sentencing, so *Ake* has little bearing here.

Floyd further contends that our extension of *Ake* in *Smith v. McCormick*, 914 F.2d 1153, 1158–59 (9th Cir. 1990), should have compelled the Nevada Supreme Court to reach a different result. In *Smith*, we held that a capital defendant’s due process rights<sup>8</sup> were violated when, instead of permitting an independent psychiatric evaluation, the trial court ordered a psychiatrist to examine the defendant and

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<sup>8</sup> Floyd asserted in passing in his opening brief before this court that the disclosure and use of Dr. Schmidt’s report violated his Fifth Amendment rights against self-incrimination but provided no developed argument supporting that assertion. We therefore express no view on that issue. See e.g., *Greenwood v. FAA*, 28 F.3d 971, 977 (9th Cir. 1994) (“We review only issues which are argued specifically and distinctly in a party’s opening brief. We will not manufacture arguments for an appellant, and a bare assertion does not preserve a claim, particularly when, as here, a host of other issues are presented for review.” (internal citations omitted)).

report directly to the court at a resentencing hearing. *Id.* at 1159–60. We reasoned that the petitioner’s “counsel was entitled to a confidential assessment of such an evaluation, and the strategic opportunity to pursue other, more favorable, arguments for mitigation.” *Id.* at 1160.

Floyd appears to argue that because, under *Smith*, a defendant is entitled to a confidential assessment of the state-provided psychiatric assessment and the chance to pursue other strategies, he was entitled to claw back a document that was disclosed in connection with designating an expert to testify after he reversed course and removed the expert from his witness list. The holding in *Smith* did not encompass what Floyd seeks here, so the Nevada Supreme Court did not act contrary to our precedent. And, in any event, Floyd’s proposed rule is not clearly established by any Supreme Court decision. *Marshall v. Rodgers*, 569 U.S. 58, 64 (2013) (per curiam).

Indeed, the Supreme Court has held that mandatory disclosure schemes are permissible in criminal trials as long as they do not structurally disadvantage the defendant. *See Wardius v. Oregon*, 412 U.S. 470, 472 (1973) (“We hold that the Due Process Clause of the Fourteenth Amendment forbids enforcement of alibi rules *unless reciprocal discovery rights are given to criminal defendants.*” (emphasis added)). Nevada provides for reciprocal discovery, as it did at the time of Floyd’s trial, so *Wardius* was not contravened here. *See Nev. Rev. Stat. § 174.234* (1999).



V.

Floyd next contends that the trial court violated his constitutional rights by failing to grant a change of venue.<sup>9</sup> He argues that the district court erred when it rejected this claim in part on the ground that, of the 115 news articles Floyd submitted with his federal habeas petition to attempt to show that the jury was exposed to prejudicial pretrial publicity about his case, only three were in the record before the state courts. Relying on *Cullen v. Pinholster*, 563 U.S. 170 (2011), the district court reasoned that AEDPA limited its review to those materials before the state courts that had rejected Floyd's venue claim. *See id.* at 185 ("If a claim has been adjudicated on the merits by a state court, a federal habeas petitioner must overcome the limitation of § 2254(d)(1) on the record that was before that state court.").

The district court did not err. Floyd argues that, under *Dickens v. Ryan*, 740 F.3d 1302 (9th Cir. 2014) (en banc), the district court misapplied *Pinholster* to bar consideration of his 112 new articles. Floyd's reliance on *Dickens* is misplaced. In *Dickens*, we held that AEDPA (as interpreted in *Pinholster*) did not bar a federal court from considering new evidence introduced to support a *Martinez* motion alleging ineffective assistance of trial and postconviction counsel as cause and prejudice for a procedural default. *Dickens*, 740 F.3d at 1319–20. Here, by contrast, Floyd faults the district court for failing to consider new evidence

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<sup>9</sup> In Floyd's opening brief, he asserts in a section heading that the district court also erred by failing to consider his claim that the trial court violated his rights by refusing to sever the sexual assault charges against him from the murder charges. But he does not actually argue this point or explain the alleged error, so we consider any such argument forfeited. *See Arpin v. Santa Clara Valley Transp. Agency*, 261 F.3d 912, 919 (9th Cir. 2001).

in the context of a change of venue claim decided on its merits in the state court and so reviewed under AEDPA deference. Floyd's theory about how the Nevada Supreme Court erred has nothing to do with trial counsel's performance and therefore does not implicate the *Dickens* rule.

Because Floyd makes no argument beyond the district court's refusal to consider these documents—which we conclude was not error—we need not consider whether the Nevada Supreme Court's denial of Floyd's venue claim was contrary to or unreasonably applied clearly established federal law.

## VI.

Floyd argues, as he did on direct appeal, that the trial court violated his constitutional rights by permitting the mother of victim Thomas Darnell to testify extensively during the penalty phase about her son's difficult life and previous experiences with violent crime. The Nevada Supreme Court held that parts of Nall's testimony "exceeded the scope of appropriate victim impact testimony" and should not have been admitted under state evidentiary law, but that their admission did not unduly prejudice Floyd such that it rendered the proceeding fundamentally unfair. *Floyd v. State*, 42 P.3d 249, 262 (Nev. 2002) (per curiam). The Nevada Supreme Court's rejection of this claim was not contrary to or an objectively unreasonable application of clearly established federal law. 28 U.S.C. § 2254(d).

The prosecution called Mona Nall, Darnell's mother, to offer victim impact testimony during the penalty phase of trial. Nall told the jury how Darnell had thrived in the face of serious learning and developmental disabilities, going on to form close relationships with his family and members of

the community. She testified that “the hurt has gone so deep” for those affected by his death. Nall also recounted an incident years earlier in which Darnell and his family had been kidnapped by two men who held the family hostage and sexually assaulted Nall’s daughter. Defense counsel objected twice to this testimony and the trial court admonished the prosecution to “get to th[e] point.”

The Nevada Supreme Court did not unreasonably apply the relevant clearly established federal law in rejecting Floyd’s claim that this testimony violated his due process rights. In *Payne v. Tennessee*, 501 U.S. 808 (1991), the Supreme Court held that in a penalty-phase capital trial, “if the State chooses to permit the admission of victim impact evidence and prosecutorial argument on that subject, the Eighth Amendment erects no *per se* bar.” *Id.* at 827. The Court added that “[i]n the event that evidence is introduced that is so unduly prejudicial that it renders the trial fundamentally unfair, the Due Process Clause of the Fourteenth Amendment provides a mechanism for relief.” *Id.* at 825 (citing *Darden v. Wainwright*, 477 U.S. 168, 179–83 (1986)).

Like the Nevada Supreme Court, we are troubled by the admission of some of Nall’s testimony. That court determined that although *Payne* did not necessarily bar Nall’s testimony about the hostage-taking and kidnapping incident, those parts of her testimony should not have been admitted under state evidentiary law because of its limited relevance and high risk of prejudice. We are additionally concerned about the propriety of Nall’s testimony about Darnell’s early life and developmental difficulties because of its limited relevance to Floyd’s impact on the victims (or on people close to and surviving them) and its potential risk of prejudice. Eliciting extensive testimony about a horrible

crime that had nothing to do with the defendant risks inappropriately affecting jurors who might feel that the victim's family should be vindicated for all of its tragedies, not just for the one caused by Floyd.

Nevertheless, it was not unreasonable for the Nevada Supreme Court to conclude that the admission of Nall's testimony did not render Floyd's trial fundamentally unfair. Given the strength of the prosecution's aggravating case against Floyd, it seems unlikely that the jury was substantially swayed by the irrelevant parts of Nall's testimony. The same characteristics that made Nall's testimony so objectionable—that it had nothing to do with Floyd's crimes or, at times, with Floyd's victims—could have diminished the testimony's effect on the jury.

The prosecutor indirectly referenced the irrelevant portions of Nall's testimony in closing argument when he commented on “the tremendous tragedies . . . that Mona has suffered and had suffered with her son over the years, so many tragedies, so many hardships.” But this comment lacked detail and was in the context of a long description of the victim impact of Floyd's crime, so the prosecution does not appear to have relied extensively on the improper testimony. In the face of the robust aggravating evidence that the State presented, the Nevada Supreme Court did not unreasonably apply clearly established Supreme Court law by holding that Floyd was not prejudiced by Nall's statement or by the prosecutor's references to it, so there was no due process violation. *See Payne*, 501 U.S. at 825. For the same reasons, any error in permitting Nall's testimony about Darnell's early life was harmless as there is no evidence that the testimony had “substantial and injurious effect or influence in determining the jury's verdict.” *Brecht v.*

*Abrahamson*, 507 U.S. 619, 638 (1993) (quotation marks omitted).

## VII.

Floyd challenges numerous statements made by the prosecution as misconduct amounting to constitutional error.<sup>10</sup> We agree that a subset of these statements was improper, but we hold that the impropriety is not a ground for habeas relief under the relevant standards of review.

The due process clause provides the constitutional framework against which we evaluate Floyd's claims of prosecutorial misconduct. "The relevant question" under clearly established law "is whether the prosecutors' comments 'so infected the trial with unfairness as to make the resulting conviction a denial of due process.'" *Darden v. Wainwright*, 477 U.S. 168, 181 (1986) (quoting *Donnelly v. DeChristoforo*, 416 U.S. 637, 643 (1974)); see also *Parker v. Matthews*, 567 U.S. 37, 45 (2012) (per curiam) (holding that *Darden* provides relevant clearly established law on habeas review of claims that statements by prosecutors amounted to prosecutorial misconduct). In making that determination, courts look to various

*Darden* factors—i.e., the weight of the evidence, the prominence of the comment in the context of the entire trial, whether the prosecution misstated the evidence, whether the judge instructed the jury to disregard the comment, whether the comment was invited by defense counsel in its summation and

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<sup>10</sup> The district court determined that Floyd had exhausted all of these claims, and the State does not challenge that ruling.

whether defense counsel had an adequate opportunity to rebut the comment.

*Hein v. Sullivan*, 601 F.3d 897, 914 (9th Cir. 2010). As the Supreme Court emphasized in *Darden*, “it is not enough that the prosecutors’ remarks were undesirable or even universally condemned,” 477 U.S. at 181 (citation omitted), because the effect on the trial as a whole needs to be evaluated in context. See *United States v. Young*, 470 U.S. 1, 17–20 (1985) (prosecutor’s exhortation that the jury “do its job” and statements of personal belief were improper, but they did not have prejudicial effect on the trial as a whole in light of the comments’ context and overwhelming evidence of guilt).

A.

In his direct appeal and first habeas petition, Floyd presented several claims that the prosecutor’s statements amounted to misconduct; we review those adjudicated claims under AEDPA. We agree with the Nevada Supreme Court that the prosecutor’s contention that Floyd had committed “the worst massacre in the history of Las Vegas” was improper. *Floyd v. State*, 42 P.3d 249, 260–61 (Nev. 2002) (per curiam). That court’s further determination that the comment was harmless, *id.* at 261, was not unreasonable. Although the Nevada Supreme Court cited the state’s codified harmless error doctrine, see Nev. Rev. Stat. § 178.598, and not *Darden*, its reasoning can also be understood as concluding that Floyd had not shown that the misconduct “so infected the trial with unfairness” as to work a denial of his due process rights. *Darden*, 477 U.S. at 181 (quotation marks omitted).

This conclusion was not objectively unreasonable under the *Darden* factors. Although the “worst massacre”

comment came late in the trial and was not invited by the defense, the weight of the evidence against Floyd and the fact that the comment was not egregiously inflammatory make the Nevada Supreme Court's determination reasonable. In *Darden*, for instance, the prosecutor made a series of comments far more inflammatory than this one.<sup>11</sup> The Supreme Court nonetheless held that those comments did not render the petitioner's trial fundamentally unfair in light of the defense's response and the strong evidence against the petitioner. *Id.* at 180–83. And although the trial court here did not specifically direct jurors to ignore the prosecutor's "worst massacre" comments, it did instruct them that "arguments and opinions of counsel are not evidence." The Nevada Supreme Court's determination was therefore neither contrary to nor an unreasonable application of *Darden*.

### B.

Floyd raised additional claims in his second state habeas petition that statements by the prosecutor amounted to misconduct. The Nevada Supreme Court held that those claims were procedurally barred, *Floyd v. State*, No. 51409, 2010 WL 4675234, at \*1 (Nev. Nov. 17, 2010), but because

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<sup>11</sup> *Darden* enumerated a few of the prosecutor's statements: "He shouldn't be out of his cell unless he has a leash on him and a prison guard at the other end of that leash." "I wish [the victim] had had a shotgun in his hand when he walked in the back door and blown [the petitioner's] face off. I wish that I could see him sitting here with no face, blown away by a shotgun." "I wish someone had walked in the back door and blown his head off at that point." "He fired in the boy's back, number five, saving one [round]. Didn't get a chance to use it. I wish he had used it on himself." "I wish he had been killed in the accident, but he wasn't. Again, we are unlucky that time." 477 U.S. at 180 n.12.

the State has forfeited any objection to the district court's decision to review them on the merits nonetheless, we consider them de novo.

Most of these claims are meritless, but we note two troubling arguments made by the prosecution. We find improper one set of statements characterizing the jury's role in imposing the death penalty. At the penalty phase, the prosecution told the jury that "you're not killing him," that "[y]ou are part of a shared process," and that "even after you render your verdict, there's a process that continues." These comments suggested that other decisionmakers might ultimately decide whether Floyd received the death penalty. They therefore present concerns under *Caldwell v. Mississippi*, 472 U.S. 320, 328–29 (1985), which held that the Eighth Amendment makes it "constitutionally impermissible to rest a death sentence on a determination made by a sentencer who has been led to believe that the responsibility for determining the appropriateness of the defendant's death rests elsewhere."

Nevertheless, these comments did not "so affect the fundamental fairness of the sentencing proceeding as to violate the Eighth Amendment." *Id.* at 340. The statements did not quite as clearly suggest to the jury that Floyd would not be executed as did the offending remark in *Caldwell*. *See id.* at 325–26 ("[Y]our decision is not the final decision"; "[T]he decision you render is automatically reviewable by the Supreme Court."). Defense counsel emphasized the jury's responsibility during his closing argument, telling the jurors, "[w]e sit before you and we ask whether or not you're going to kill somebody." Moreover, the jury instructions clearly stated that the jurors "must assume that the sentence will be carried out." This sufficiently avoided any "uncorrected" suggestion that the responsibility for any



ultimate determination of death will rest with others,” so as to not require reversal. *Id.* at 333 (emphasis added).

The prosecution also argued during the penalty phase that the death penalty “sends a message to others in our community, not just that there is a punishment for a certain crime, but that there is justice.” This statement inappropriately implies that the jury could sentence Floyd to death to send a message, rather than making “an *individualized* determination.” *Zant v. Stephens*, 462 U.S. 862, 879 (1983). The harm of this statement was mitigated in part by jury instructions that emphasized the jury’s responsibility to weigh the specific aggravating and mitigating circumstances of the case. Both the defense and the prosecution also repeatedly emphasized and relied on the specific details of the crime at hand, encouraging the jury to make a determination based on the individual facts of the case. Finally, we agree with the district court’s holding that, in context, these comments did not “incite the passions of the jurors” and “did not include any overt instruction to the jury to impose the death penalty . . . to send a message to the community.” In light of the other arguments made at trial, and the strong evidence against Floyd, the improper argument by the prosecution did not “so infect[] the trial with unfairness as to make the resulting conviction a denial of due process.” *Darden*, 477 U.S. at 181 (quotation marks omitted).

### VIII.

Floyd advances on appeal two claims outside the certificate of appealability issued by the district court. These uncertified claims challenge Nevada’s lethal injection protocol and courtroom security measures that caused certain jurors to see Floyd in prison garb and restraints. We

construe this portion of his briefing as a motion to expand the certificate of appealability. 9th Cir. R. 22-1(e).

A petitioner meets his burden for a certificate of appealability if he can make “a ‘substantial showing of the denial of a constitutional right,’ accomplished by ‘demonstrating that jurists of reason could disagree with the district court’s resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further.’” *Turner v. McEwen*, 819 F.3d 1171, 1178 n.2 (9th Cir. 2016) (first quoting 28 U.S.C. § 2253(c)(2); and then quoting *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003)). Floyd makes no such showing here, and we therefore deny his motion to expand the certificate of appealability.

First, Floyd’s uncertified challenge to Nevada’s lethal injection protocol—a three-drug sequence of the anesthetic midazolam, the opioid fentanyl, and the paralytic cisactracurium—is not yet ripe. In 2018, the manufacturer of Nevada’s supply of midazolam brought an action to enjoin its product’s use in executions. The manufacturer won, obtaining a preliminary injunction, *Alvogen v. Nevada*, No. A-18-777312-B (Nev. Dist. Ct. Sept. 28, 2018), which is currently on appeal to the Nevada Supreme Court. *See State v. Alvogen, Inc.*, Nos. 77100, 77365 (Nev. 2019). As a result, for all practical purposes, Nevada presently has no execution protocol that it could apply to Floyd. A method-of-execution challenge is not ripe when the respondent state has no protocol that can be implemented at the time of the challenge. *See Payton v. Cullen*, 658 F.3d 890, 893 (9th Cir. 2011) (claim unripe because no protocol in place following state court invalidation of existing protocol). We cannot determine what drugs Nevada might attempt to use to execute Floyd, and we cannot adjudicate the

constitutionality of an unknown protocol. Floyd's claim is therefore unripe for federal review because "the injury is speculative and may never occur." *Portman v. County of Santa Clara*, 995 F.2d 898, 902 (9th Cir. 1993) (citation omitted).

Second, Floyd's uncertified and procedurally defaulted argument that his trial counsel was ineffective for failing to challenge various courtroom security measures fails. In Floyd's second state habeas petition and instant federal petition, he contended that his trial counsel failed to object to the trial court's forcing him to appear at voir dire in a prison uniform and restraints. The Nevada Supreme Court dismissed this claim as untimely and successive because it was first raised in Floyd's second state petition, *Floyd v. State*, No. 51409, 2010 WL 4675234, at \*1 (Nev. Nov. 17, 2010), and the district court dismissed it as procedurally defaulted. As with Floyd's other defaulted ineffective assistance of counsel claims, because of the underlying claim's weakness, we need not resolve whether the state law under which it was deemed defaulted is adequate or whether Floyd may show cause and prejudice under *Martinez v. Ryan*, 566 U.S. 1 (2012).

In light of the overwhelming evidence of Floyd's guilt and the weight of the aggravating factors against him, any reasonable jurist would agree that the courtroom security measures had no substantial effect on the jury's verdicts. See *Walker v. Martel*, 709 F.3d 925, 930–31 (9th Cir. 2013) (reversing the grant of habeas relief on a shackling-related ineffective assistance claim because the prejudicial effect of shackles was "trivial" compared to aggravating evidence against defendant who killed multiple victims during armed robberies); *Larson v. Palmateer*, 515 F.3d 1057, 1064 (9th Cir. 2008) (holding that when evidence against the

defendant is overwhelming, prejudice from shackling is mitigated). Even if trial counsel should have objected to the restraints, Floyd was not prejudiced by that failure. *See Harrington v. Richter*, 562 U.S. 86, 111 (2011) (explaining that *Strickland*'s prejudice prong "asks whether it is reasonably likely the result would have been different." (quotation marks and citation omitted)).

We therefore deny the motion to expand the certificate of appealability as to both uncertified claims.

**IX.**

For the foregoing reasons, we **AFFIRM** the district court's denial of habeas relief.

# EXHIBIT 2

# EXHIBIT 2

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

**FILED**

NOV 05 2020

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

ZANE FLOYD,

Petitioner - Appellant,

v.

TIMOTHY FILSON, Warden and  
ADAM PAUL LAXALT, Attorney  
General,

Respondents - Appellees.

No. 14-99012

D.C. No. 2:06-cv-00471-PMP-CWH  
U.S. District Court for Nevada, Las  
Vegas

**MANDATE**

The judgment of this Court, entered October 11, 2019, and amended  
February 3, 2020, takes effect this date.

This constitutes the formal mandate of this Court issued pursuant to Rule  
41(a) of the Federal Rules of Appellate Procedure.

FOR THE COURT:

MOLLY C. DWYER  
CLERK OF COURT

By: Rhonda Roberts  
Deputy Clerk  
Ninth Circuit Rule 27-7

# EXHIBIT 3

# EXHIBIT 3

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

ZANE FLOYD

Petitioner-Appellant,

vs.

TIMOTHY FILSON, Warden and  
ADAM PAUL LAXALT, Attorney  
General,

Respondents-Appellees.

District No. 2:06-cv-00471-RFB-CWH

U.S.C.A. No. 14-99012

ORDER ON MANDATE

The above-entitled cause having been before the United States Court of Appeals for the Ninth Circuit, and the Court of Appeals having on 10/11/2019, issued its judgment AFFIRMING the judgment of the District Court, and the Court being fully advised in the premises, NOW, THEREFORE, IT IS ORDERED that the mandate be spread upon the records of this Court.

Dated this 6th day of November, 2020.,

  
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Richard F. Boulware, II  
United States District Judge