

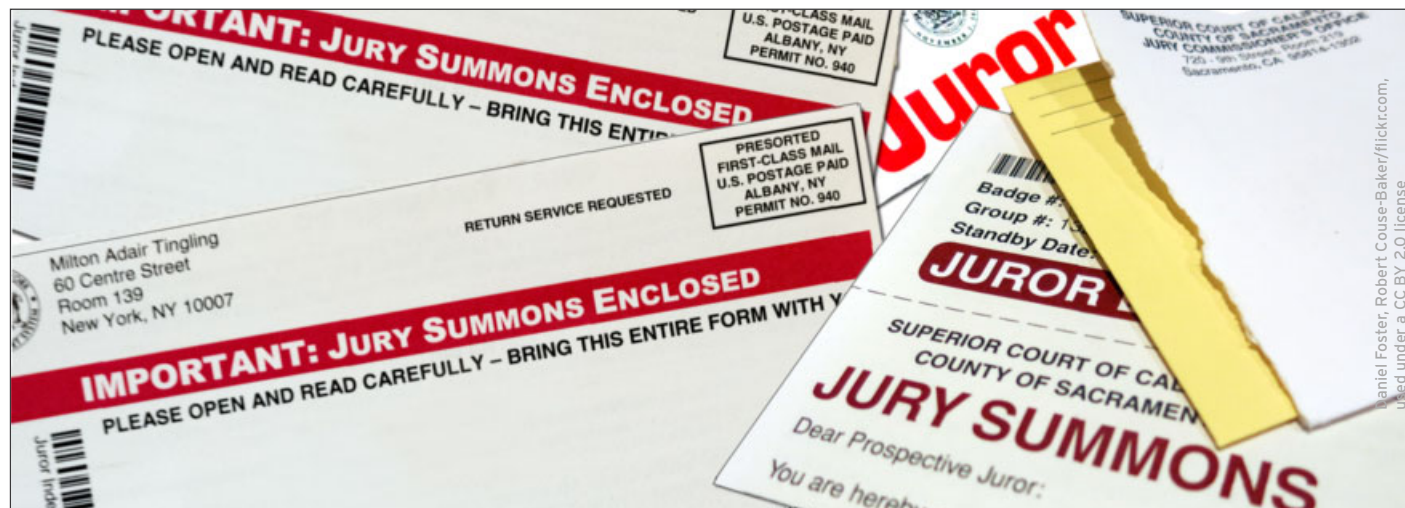
Bill of Rights in Action



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A JURY OF YOUR PEERS



When a U.S. citizen aged 18 or over receives a jury summons, like those pictured here, they are obligated to report for jury duty, unless they have a legally permissible excuse.

A jury of one's peers today in the United States refers to the right to a trial by an impartial jury chosen from a cross-section of the community. The Sixth Amendment to the U.S. Constitution guarantees this right. But this right has not always been protected when potential jurors were excluded because of their race, ethnicity, or gender.

Article III, Sec. 2, of the U.S. Constitution states that all crimes, except impeachment, "shall be by Jury, and such Trial shall be held in the State where the said crimes shall have been committed. . . ." However, this provision was for federal crimes only when enacted and did not apply to the states.

The Sixth Amendment, set forth in the Bill of Rights, expanded the right of federal criminal jury trials to be speedy, public, and decided by *impartial* jurors in the location where the alleged crime had been committed. The Seventh Amendment guaranteed a trial by jury in certain *civil court* cases.

A criminal case is one in which a defendant is accused of committing a crime (breaking a criminal law) and usually faces a punishment of jail or prison. A civil

case is any other dispute, including business, family, immigration, and landlord-tenant disputes.

After the Civil War, nearly all the fundamental rights in the Bill of Rights, including the right to a jury trial, were applied to the states by the newly enacted 14th Amendment. The Equal Protection Clause in the 14th Amendment prohibited any state "to deny to any person within its jurisdiction the equal protection of the laws."

How Jury Selection Works

Most criminal and civil trials in the U.S. today are conducted in state courts as the federal judicial system is much smaller. In addition, one can only bring a criminal or civil claim in federal court if there is a specific federal law that allows it. Most criminal and civil cases settle before trial, so only a small percentage of them ever reach a jury.

By tradition, criminal trials have 12 jurors, although some states have as few as six. Juvenile defendants and adults facing a maximum sentence of six months or less do not have a right to a jury trial. A defendant can

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Some Future Issues of Bill of Rights in Action Will Only Be Available Electronically!

Starting last fall 2020, we publish two issues of the quarterly *Bill of Rights in Action* in electronic format only and two issues in print and electronic format. To receive notification of when the electronic edition is available for download, sign up at www.crf-usa.org/bill-of-rights-in-action.

**SPECIAL
NOTICE**



Potential jurors waiting to enter a courtroom for the jury selection process.

waive or give up his or her right to a jury trial if the prosecutor agrees.

The jury pool is the group of potential jurors who are supposed to represent a cross-section of the people living in the community where the trial is taking place. However, each jury pool and the jurors selected from it do not have to represent an exact proportion of a community's racial, ethnic, or gender makeup.

The juror-selection process involves the trial judge and sometimes attorneys on both sides of the case questioning the potential jurors from the jury pool. If the judge decides a potential juror is clearly biased for one side or the other so that he or she cannot be impartial, or is otherwise unqualified, the judge will dismiss the person *for cause*. The attorneys also try to determine if a potential juror seems to be biased for or against one side or the other, even if that juror is not so biased that he or she should be dismissed by the court for cause.

During the jury-selection process in criminal and civil trials, each attorney has a certain number of *peremptory challenges*, often called “strikes,” to dismiss a potential juror without having to state any reason. Sometimes, an attorney might perceive a bias that is not clear enough to cause the court to dismiss that juror for cause. For example, if the defense attorney in a criminal case thinks a potential juror is predisposed to believe a police officer instead of his client, the defense attorney can use a peremptory challenge and strike that person. But there are limits if attorneys are accused of challenging jurors because of their race, ethnicity, or gender.

An *impartial* jury is important because it will hear different versions of the facts during a trial from both the *prosecution* and the *defense* in a criminal case, and from the *plaintiff* and the *defendant* in a civil case. The jury, not the judge, judges the credibility of witnesses and decides the verdict.

In criminal cases, the prosecution attorneys represent the state. Defense attorneys represent accused defendants. The prosecution must prove to the jury that the defendant is “guilty beyond a reasonable doubt”

which means the jury can only convict a defendant if there is no reasonable explanation for the crime other than that the defendant did it.

In civil cases, the standard of proof is lower than “beyond a reasonable doubt.” It is usually “preponderance of the evidence,” meaning that the jury need only find that there is greater than a 50 percent chance that one side’s claim is correct.

The U.S. Supreme Court recently held in *Ramos v Louisiana* that the U.S. Constitution requires a unanimous verdict in criminal cases, and that the 10-2 vote for conviction in that case was not enough.

Thus, a single juror who votes against the other jury members could prevent a verdict, resulting in a *hung jury* and possibly a new trial. Some jurisdictions require a unanimous verdict in civil jury trials while others do not.

The judge decides the sentence in most criminal cases when there is a guilty verdict. However, in death penalty cases, the jury typically decides whether capital punishment is appropriate in a second trial following a determination of guilt in the first trial.

Exclusion of Jurors Because of Their Race

Even after the 14th Amendment was ratified, Southern states passed laws allowing only white males to serve on juries. In 1880, the U.S. Supreme Court ruled in *Strauder v. West Virginia* that states that passed laws excluding Black people from juries because of their race violated the Equal Protection Clause. The Court declared Black people a *protected class* under the 14th Amendment.

Southern states persisted in passing laws that still discriminated against African Americans. For example, in order to vote, Black people often had to pass purposely tough reading tests that were not required of white people. Potential jurors were then chosen from all-white voter lists.

Exclusion of Jurors Because of Their Ethnicity

In 1951, Pete Hernandez, a Mexican-American man, was indicted for murder by an all-white grand jury in Jackson County, Texas, and convicted by an all-white trial jury. He was sentenced to 99 years in prison.

Hernandez’s lawyers appealed to the highest court of Texas. They argued that Mr. Hernandez was racially white but ethnically Mexican American. They pointed out that no Mexican-American jurors had been chosen from jury pools in Jackson County for 25 years, even though nearly 15 percent of the county’s population consisted of persons of Mexican or other Latin American ancestry.

The Texas high court affirmed Hernandez’s conviction, saying that Mexican Americans were “white” and not a protected class under the 14th Amendment. Hernandez appealed to the U.S. Supreme Court.

***Hernandez v. Texas* (1954)**

Chief Justice Earl Warren wrote the unanimous 9-0 decision in favor of Hernandez. Warren wrote that the 14th Amendment does not only apply to issues of discrimination between white people and Black people. Warren found that Hernandez belonged to a “distinct class” that had long suffered discrimination in Jackson County. Warren cited examples of segregation of Mexican Americans in Jackson County, including in schools, restaurants, and even the county courthouse restrooms where Hernandez was tried.

Warren concluded that, whether intentionally or not, the fact that no Mexican-American juror had been selected in the county for 25 years was proof enough of systematic discrimination against the ethnic group to which Hernandez belonged.

The unanimous Supreme Court ruled that, like African Americans, Mexican Americans and all other groups that could prove discrimination because of their ancestry or nationality were protected classes under the 14th Amendment’s Equal Protection Clause.

Pete Hernandez was retried with a more representative jury that again found him guilty. He was sentenced to 20 years in prison.

Exclusion of Jurors Because of Peremptory Challenges

After the *Hernandez v. Texas* decision in 1954, excluding jurors because of their race or ethnicity seemed to be finished. But some lawyers still tried to find a way around this ruling using the long tradition of peremptory challenges.

In 1965, the U.S. Supreme Court in *Swain v. Alabama*, enabled lawyers to use their peremptory challenges to exclude persons just because of their race. The Court ruled that unless a Black defendant could prove a state or county systematically discriminated against African Americans, prosecutors could use their peremptories to strike Black jurors.

***Batson v. Kentucky* (1986)**

James Batson, a Black man, was charged with burglary in Kentucky. During jury selection, the prosecutor used peremptory challenges to exclude all four Black members of the jury pool for Batson’s trial jury. An all-white jury then convicted Batson, and the judge sentenced him to 20 years in prison.

Batson appealed to the Kentucky Supreme Court, which affirmed the conviction because he failed to prove a systematic exclusion of African Americans from Kentucky juries. Batson appealed to the U.S. Supreme Court.

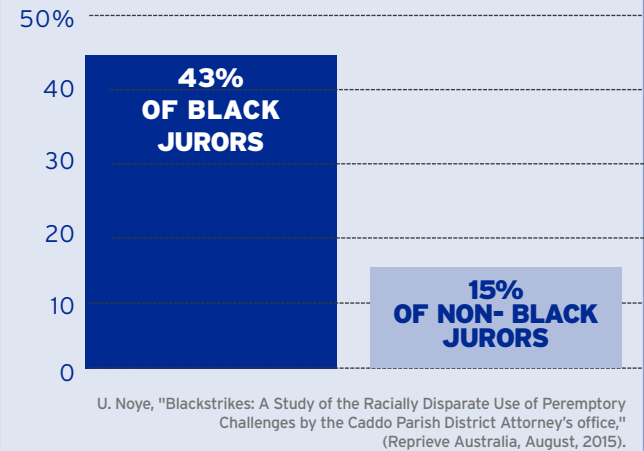
Justice Lewis Powell wrote the 7-2 majority decision for Batson. Powell first noted that the defense lawyers had made a reasonable challenge to the prosecutor that he had used his peremptories to exclude persons from Batson’s jury solely “on account of their race.”

Secondly, Powell wrote that the trial judge should have held a hearing on the defense challenge to the

PERCENTAGE OF JURORS STRUCK BY RACE

of 8,318 qualified jurors

Based on data collected from more than 300 felony jury trials in Caddo Parish, Louisiana, between 2003 and 2012.



prosecutor at the time the prosecutor made the challenge. The burden then would have shifted to the prosecutor to give neutral reasons for excluding the African Americans from Batson’s jury. An example of a neutral reason would have been that the juror was not excluded for his race but because he had prior negative experiences with the police that could give him a bias.

Powell concluded that peremptory challenges that excluded African Americans only because of their race violated the Equal Protection Clause. Later Supreme Court decisions extended the “Batson challenge” to ethnic groups that had been victims of discrimination. From then on, persons in protected classes only had to show discrimination against jurors in their own trials, not in jury pools generally.

James Batson decided not to risk a retrial and pleaded guilty. The court sentenced him to five years in prison.

The Batson challenge has been criticized by some because the “neutral explanations” given by attorneys for excluding jurors because of their race or ethnicity have almost always been accepted by trial judges. Supreme Court Justice Thurgood Marshall, in agreeing with the majority decision in *Batson*, commented, “The decision today will not end racial discrimination that peremptories inject into the jury-selection process. That goal can be accomplished only by eliminating peremptory challenges entirely.”

Justice Marshall believed that it is often difficult for judges to determine if the racially neutral reason offered to strike a potential juror was true or just a convenient excuse for wanting to strike Black jurors. (Of course, if there were several other African Americans in the jury, and the prosecutor did not seek to strike them, this would suggest that the prosecutor’s racially neutral reason was truthful.)

In a 2016 case, *Foster v. Chapman*, the Supreme Court reviewed the 1987 death penalty conviction of an African-American defendant. The Supreme Court read internal documents from the prosecutor's office that revealed the prosecutor's plan to use peremptory challenges to exclude Black jurors. This contradicted the "neutral explanation" the prosecutor presented to the judge for excluding them, a clear violation of the Equal Protection Clause.

Exclusion of Jurors Because of Their Gender

Until well into the 20th century, many states barred or restricted women from serving on juries. Even shortly after women gained the right to vote in 1920, only 18 states and the Territory of Alaska allowed women on juries. In 1961, Alabama became the last state to stop barring female jurors.

J. E. B. v. Alabama (1994)

In a civil case, the state of Alabama, acting on behalf of T.B., the mother of a minor child, was suing J.E.B., the alleged father, for *paternity* and child support. (The court used initials to protect the privacy of the plaintiff mother and male defendant.) During jury selection, Alabama used its peremptory challenges to remove 9 out of 10 potential male jurors and J.E.B. used one of his peremptory challenges to remove the last male in the pool. The trial jury ended up all-female. The defense raised a *Batson* challenge, arguing that it should be extended to forbid gender-based peremptory challenges. But the trial judge rejected this. The jury found J.E.B. to be the father and the judge ordered child support.

J.E.B. appealed to the U.S. Supreme Court, claiming he was discriminated against because of his gender when Alabama excluded 9 out of 10 male jurors solely on the basis of their gender. Alabama claimed that it acted reasonably when it used its peremptories. It believed that male jurors were more likely to be sympathetic to a man in a paternity case, while women would be more favorable to the mother.

In a controversial decision, Justice Harry Blackmun wrote the 6-3 majority opinion in favor of the male defendant, J.E.B., rejecting Alabama's arguments because they were based on "group stereotypes rooted in, and reflective of, historical prejudice."

Blackmun concluded that "the Equal Protection Clause prohibits discrimination in jury selection on the basis of gender." He also said that it was improper for Alabama to assume that a person will be biased in a particular case simply because of the person's gender.

In a dissent to the *J.E.B. v. Alabama* decision, Justice Antonin Scalia warned against the elimination of all peremptory challenges, an important right of the accused. He wrote, ". . . the Court imperils a practice that had been considered an essential part of fair trial since the dawn of [English] common law. The Constitution of the United States neither requires nor permits this vandalizing of our people's traditions."

A jury of one's peers continues to be defined. Current federal law prohibits jurors from being excluded from jury service "on account of race, color, religion, sex, national origin, or economic status." In 2021, the House of Representatives passed a bill that would add a person's status as lesbian, gay, bisexual, or transgender (LGBT) to that list. Some jurisdictions already prohibit exclusions of LGBT people. But to expand the exclusion nationwide, the Senate would need to pass the bill, too, and the president would need to sign it into law.

WRITING & DISCUSSION

1. Should we do away with all peremptory challenges? Why or why not?
2. Do you agree with the U.S. Supreme Court decision in *Ramos v. Louisiana* that requires a unanimous verdict in criminal cases? Why or why not?
3. Should we do away with juries and leave it up to the judge to decide criminal cases? How about civil cases? Why or why not?

ACTIVITY: What Should the Judge Do?

The Supreme Court has ruled that potential jurors cannot be excluded solely because of their race, ethnicity, or gender (male or female). In small groups, decide what you think the trial judge in the following jury selection cases should do.

1. A gay man is being sued civilly by a straight man for not paying what is owed under a contract. During jury selection, a potential juror says that he is gay and that he can be an impartial juror. The plaintiff's lawyer uses a peremptory challenge to exclude him. What should the judge do?
2. A woman is charged criminally with stealing money from her own workplace. A potential juror is a businessman who is going through a divorce with his wife. He says he can be impartial in this trial, but the defense attorney fears that he will be biased against his client. The defense attorney uses a peremptory challenge to exclude him. What should the judge do?
3. A man is charged with murder, carrying a potential death-penalty sentence. During jury selection, a jury pool member says he is personally opposed the death penalty. He is willing to serve on the trial jury to determine guilt or innocence, but not to serve on the jury at the sentencing phase of the trial. The prosecutor asks the judge to exclude him for cause. What should the judge do?
4. A woman who is a Christian church member is being sued for civil trespassing. During jury selection, the plaintiff's lawyer uses peremptory challenges to exclude all Christians, even though some say they can be impartial jurors. What should the judge do?

PRIDE PIONEER: FRANK KAMENY AND THE EARLY GAY RIGHTS MOVEMENT



Frank Kameny holds the sign reading "Gay is Good" at a parade in New York City, 1970.

In 1958, astronomer Frank Kameny was fired from his job with the U.S. Army Map Service for being gay. At the time, there was a strong social stigma and widespread discrimination against gay men and women. Those who were dismissed from jobs for homosexuality were expected to accept their fate and to be ashamed. Kameny defied those expectations, appealed his firing, and helped to launch the movement for gay pride.

At the beginning of the gay rights movement, majority public opinion was generally hostile toward anyone identifying as gay, lesbian, bisexual, or transgender (then commonly referred to as "transsexual"). In 1950, a congressional committee released a report saying that gay people were unfit for federal employment. Three years later, President Dwight D. Eisenhower acted on the report by signing an executive order that barred gay men, lesbians, and bisexual people from federal employment.

In the 1950s and 1960s, local police in cities such as Los Angeles, New York City, and San Francisco frequently arrested people for dancing, kissing, or even holding hands in public if they were of the same sex. For such behavior, they could be charged with lewd conduct or some similar offense. Many states had laws against cross-dressing, or when someone dressed in a way that that was deemed not to match their gender. Police also raided bars where gay men and women could otherwise experience safety and acceptance.

Kameny's Early Activism

Franklin Edward Kameny grew up and eventually became a public figure in this time of discrimination. As a young man, Kameny was exceptionally bright. He entered Queens College at age 15 to study physics. His studies were interrupted when he was drafted into the U.S. Army during WWII. After serving in combat in Europe, he finished his undergraduate studies in New York and then earned his Ph.D. in astronomy at Harvard University.

Kameny taught for a few years at Georgetown University before taking a job with the U.S. Army Map Service in 1957. Soon after he was hired, however, the Army found out that Kameny had been arrested in 1955 during a police "sting" operation for a consensual homosexual encounter. He was, consequently, fired from his position on the grounds of "immoral behavior."

Kameny did not accept his dismissal. He appealed his dismissal to the Civil Service Commission with the help of a lawyer. He claimed that he was not informed of what he had done that was supposedly "immoral." He had only been labeled "homosexual." But the commission barred him from federal employment. The stigma of his dismissal also made it very difficult for Kameny to get a job. Having no source of income, the available funds he had quickly ran out.

By 1958, Kameny had exhausted the appeals process. But he had one final possibility. He filed a *writ of certiorari*

with the United States Supreme Court, which is a legal filing requesting that the Supreme Court hear a case. Moreover, he did it *pro se*, which means that he drafted the writ himself, without the help of a lawyer.

In the writ, Kameny argued that the U.S. Army Map Service had no right to fire him for “immoral behavior” because homosexuality is not, in fact, immoral. The Supreme Court declined to hear Kameny’s case. But Kameny’s writ was an important step in the fight for gay rights.

At this time, people like Kameny who were accused of “indecent behavior” simply for their homosexuality usually either denied the charge or accepted their firing. Frank Kameny instead was ready to make his case that homosexuality was not “immoral” and was nothing to be ashamed of. After being fired, Kameny dedicated the remainder of his life to fighting for gay rights.

The Mattachine Society

Kameny, along with another activist named Jack Nichols, founded a chapter of the Mattachine Society in Washington, D.C., (MSW). The Mattachine Society had been founded in 1950 in Los Angeles, California, as an advocacy organization for gay men. Branches in other U.S. cities formed during the 1950s. It was named after a French secret society of unmarried men in the medieval and renaissance periods.

Kameny wanted the MSW to be more than what he called a “genteel, debating society.” He adapted what he learned from observing the Black civil rights movement to make the MSW more activist. He wanted the MSW to lead protests against the policies of the Civil Service Commission and to assist gay people with their legal struggles against discrimination.

In 1962, under Kameny’s and Nichols’s leadership, the MSW organized a massive letter-writing campaign to hundreds of elected federal officials. The following year, Kameny testified before congressional subcommittees for four-and-a-half hours against a bill to forbid the Mattachine Society from raising funds. The bill ultimately failed in the U.S. Senate.

When it became known in 1965 that the Communist government of Cuba had labor camps for lesbians and gay men, the MSW organized picket lines at federal buildings. Protesters carried signs that equated the U.S. government and Cuba in their repressive policies toward gay people. The protests were relatively small but they gained attention at notable locations such as the White House and — on the Fourth of July — Philadelphia’s Independence Hall.

At the picket lines, Kameny wanted participants to display a formal, professional image. He insisted that they not hold hands or show any public affection, and dress professionally. They had to follow a strict dress code, including jackets and ties for men and conservative dresses and heels for women.

Kameny and the MSW also helped gay Americans obtain security clearances, which were denied to anyone the government labeled homosexual. Gay immigrants were also barred from entering the United States. The MSW

THE LAVENDER SCARE

In the mid-20th century, the United States and the Soviet Union were the world’s two “superpowers.” They competed for influence across the globe. After World War II, many U.S. congressional leaders feared that the United States would adopt Soviet-style communism. The late 1940s and 1950s were a time known as the Red Scare as Senator Joseph McCarthy and others in Congress sought to expose secret leftists (communists and socialists) working within the U.S. government and military.

At that same time, gay, lesbian, and bisexual employees in the U.S. government were deemed suspicious and were swept up into fears around communism. Between the late 1940s and throughout the 1960s, thousands of government employees accused or suspected of being gay were fired or forced to resign in what has become known as the Lavender Scare. Frank Kameny, for example, was a target of the Lavender Scare.

Senator McCarthy and others in Congress associated gay people with communism for at least two reasons. First, gays and lesbians generally fell outside of the mainstream of society. Consequently, they tended to form independent social groups and subcultures. (Due to police repression, the groups were often secretive.) McCarthy feared that communists were more likely to infiltrate clandestine groups. Second, since homosexuality was cause for termination of employment or even criminal prosecution, gay employees were seen as particularly subject to blackmail by Soviet agents.

under Kameny fought people’s unjust firings and dismissals from the military, the closing of gay bars, and for the defense of those who they believed were entrapped by the police.

Towards Gay Liberation

On June 28, 1969, New York City police raided a gay bar called the Stonewall Inn. The police often raided gay and lesbian bars looking for evidence of crimes against “public morals” such as men holding hands, dancing together, or “cross-dressing.” Police could then temporarily shut a bar down and seize the bar’s alcohol.

Many of the gay and transgender patrons of the Stonewall Inn, however, refused to obey police orders that night. When some police officers began using force, the patrons fought back. The resulting Stonewall riots, or Stonewall uprising, lasted for several days. A new, more confrontational gay-rights movement began. Within months, activist newspapers with the word “Gay” in the title emerged in major cities.

Before Stonewall, gay-rights activism largely followed the orderly model set by Kameny, the Mattachine Society, and the lesbian advocacy group Daughters of Bilitis (taking their name from a fictional character associated with the ancient Greek poet Sappho). These activists emphasized a goal of working to have homosexual and bisexual people accepted by mainstream American society, or *assimilation*.

The post-Stonewall era of gay rights activism was different. Some gay-rights organizations openly allied themselves with more confrontational elements of the antiwar and Black

liberation movements such as the Black Panthers. Many more began to speak of “gay pride” and not assimilation. They encouraged gay people to “come out” by talking about being gay to friends, family, and the media.

Unlike some of his fellow activists from the earlier era, Kameny was comfortable with the new movement. With its emphasis on pride, the new activists became concerned as much with gay liberation as with gay rights. Inspired by Stokely Carmichael’s famous slogan “Black is beautiful,” Kameny coined the slogan “Gay is good.”

Kameny’s Later Activism

Prior to 1973, homosexuality was listed as a mental illness in the Diagnostic and Statistical Manual of Mental Disorders (DSM). The DSM is a standard, official guide used by mental health professionals such as psychiatrists, psychotherapists, and social workers. Kameny and other gay activists disrupted the 1970 and 1971 meetings of the American Psychological Association (APA, which publishes the DSM) in protest over the manual’s designation of homosexuality. “We’re not the problem!” Kameny shouted from the audience, “You’re the problem!” The activists advocated for understanding homosexuality as a normal expression of human sexuality.

By 1972, Kameny and lesbian activist and magazine editor Barbara Gittings were officially part of the program of the APA meeting. They spoke at the meeting on behalf of removing homosexuality from the list of mental disorders. Their efforts succeeded. The third edition of the DSM was published in 1973 without homosexuality listed in it.

The federal government still officially barred gay men and women from employment in the 1970s. The MSW was also still active and continued to oppose the employment restriction. The Civil Service Commission finally lifted its restriction in 1975, allowing openly gay and bisexual people to hold federal jobs. The rules that had led to Kameny’s own dismissal from the Map Service in 1957 were now overturned.



President Barack Obama shakes Frank Kameny’s hand in the Oval Office in 2009 after signing a presidential memorandum extending some benefits to same-sex partners of federal employees.

Kameny has been recognized as a founding figure in the gay rights movement. Every June, in commemoration of Stonewall, there are LGBT pride parades all over the nation and in many countries throughout the world. In 2009, Kameny met with President Barack Obama and received an official apology from the U.S. government for his firing in 1957. Upon his death in 2011, Kameny was eulogized in a *New York Times* obituary for his important work in promoting pride.

WRITING & DISCUSSION

1. Describe the ways in which gay people were discriminated against in the United States at the time Frank Kameny was dismissed from the U.S. Army Map Service.
2. What major policies did Kameny challenge in his activism and in what ways did he challenge them? How did his actions lead to changes in public policy?
3. What major shift did the Stonewall riots cause in the gay rights movement? How did Kameny respond to this shift?

ACTIVITY: Strategizing Change

The people listed below are prominent figures in the movement for gay rights or the movement for lesbian, gay, bisexual, and transgender (LGBT) rights generally. Several of them were also involved in other movements and civic campaigns, such as women’s rights, Black civil rights, or serving in political office. With a partner, research one of these people. Create a slide presentation or other digital presentation that:

- 1) identifies the person, their role in civic campaigns or rights movements, and where in the United States they did their advocacy work;
- 2) describes any policies this person challenged (whether regarding LGBT rights or another issue) and what methods the person used; and
- 3) describes how the person’s actions contributed to changes in public policy.

Josephine Baker (1906-1975)
Michael Huffington (b. 1947)
Harvey Milk (1930-1978)
Bayard Rustin (1912-1987)

Barbara Gittings (1932-2007)
Marsha P. Johnson (1945-1992)
Jim Obergefell (b. 1966)
José Julio Sarria (b. 1922 or 1923)

Steven Craig Gunderson (b. 1951)
Billie Jean King (b. 1943)
Sylvia Rivera (1951-2002)

BRAZIL AND THE FUTURE OF THE AMAZON



This map illustrates the extent of the Amazon rainforest in South America. Into what countries does the Amazon rainforest span?

Brazil and its people have long played an important role in the Western Hemisphere and the rest of the world. It is one of the largest and most populous nations in the world and the home of most of the Amazon rainforest, known as the “lungs of the world.” Brazil experienced a military dictatorship for 21 years and currently experiences stark economic inequality and political violence. Many question the ability of the Brazilian government to protect the Amazon.

Geographically, Brazil is the largest country in Latin America and the sixth largest country in the world. (By comparison, the United States is the fourth largest in the world.) Unlike the rest of Latin America, which was colonized mostly by Spain and is now Spanish-speaking, Brazil was a colony of Portugal. More than 200 million inhabitants speak Portuguese. Brazil is the seventh most populous country in the world. (The U.S. is the third most populous.)

Brazil’s large population is also very diverse. Brazil is home to some 305 indigenous (or native) ethnic groups who speak around 274 different languages — the most of any country in South America. From the 16th to the 19th centuries, Brazil received more enslaved Africans brought to the Americas than any other place. (Brazil abolished slavery in 1888, making it the last country in the Americas to do so.) By 1930, immigrants from more than 60 countries had come to Brazil. Today, Brazil reflects that immigrant diversity and is home to immigrants from places as diverse as Italy, Japan, Lebanon, and Germany.

Brazil is also marked by profound economic inequality. According to the nonprofit Oxfam International, just the richest five percent of the population have the same income as the remaining 95 percent of the country.

Brazil’s Economy and the Amazon

The massive Amazon River basin, which is about twice the size of India, includes the Amazon rainforest. Brazil is home to about 60 percent of the rainforest. The Amazon is home to about 20 percent of all

sectors of Brazil’s economy, especially logging and mining. An April 2021 report found that over the past ten years, the rainforest had emitted more carbon than it retained.

Brazil is one of the top four food-producing countries in the world. It is the world’s biggest producer of sugarcane and coffee. It also produces massive amounts of soybeans, cotton, and forest products (timber and wood products, as well as palm oil and rubber). And Brazil raises more cattle for beef than any other country. The country’s economy depends significantly on all these agricultural products.

Mining is another important part of Brazil’s economy. It is among the world’s leading producers of iron ore (the main component of steel). Gold mining has also been on the rise in Brazil. While it is supposed to be regulated by the government, gold mining by illegal miners has increased dramatically and with devastating effects of water pollution and deforestation, or removal of trees from forests.

Brazil exports a great deal of its agricultural and mineral products to other countries. All Brazil’s products have an important quality in common: They require a lot of land to cultivate or extract. Past Brazilian governments have put important environmental protections in place to prevent the rainforest from being cleared for agriculture and mining. The country’s current president, Jair Bolsonaro, however, campaigned on loosening those restrictions and opening the rainforest up for more commercial activity.

The Election and Presidency of Jair Bolsonaro

Jair Bolsonaro took office as the president of Brazil in January 2019. He ran on a far-right platform that included pledges to take a hardline approach to law and order and revive Brazil’s economy. He called himself “proudly homophobic.” He advocated for police to be given more leeway to kill suspected criminals, suggesting that if a

policeman “kills 10, 15 or 20 . . . he needs to get a medal and not be prosecuted.”

The 2019 presidential race was marked by extreme polarization and political violence in Brazil. There were multiple politically motivated killings as well as extensive threats and violence directed at journalists. Most attacks were carried out by Bolsonaro’s supporters, with a few incidents attributed to supporters of his opponent, Fernando Haddad of the Workers’ Party (known as PT, its Portuguese acronym). Bolsonaro himself was stabbed and seriously wounded at a campaign rally in July 2018. It was not confirmed that the attack was politically motivated.

Bolsonaro had been part of extreme politics throughout his adult life. He joined the Brazilian army in 1977 and served for 15 years, reaching the rank of captain. From 1964 to 1985, Brazil was ruled by a brutal military dictatorship during which almost 5,000 elected representatives were removed from office, approximately 20,000 people were tortured, and over 400 people were killed or captured by the military and never seen again by their families. Bolsonaro later served in Brazil’s Congress for 27 years, representing Rio de Janeiro.

Bolsonaro has long praised the dictatorship years, calling them a “glorious” part of Brazil’s history. After becoming president, his administration placed more than 6,000 retired and active-duty military personnel in government positions including key cabinet roles. One such appointment was the next CEO of Petrobras, the state-owned multinational oil and petroleum corporation. There is a stronger military presence in the civilian government today than existed during the dictatorship.

From the outset of the coronavirus pandemic, President Bolsonaro downplayed its seriousness. He criticized state governors and city officials who imposed lockdowns. He also questioned the safety and efficacy of vaccines, including suggesting that the Pfizer shot might have extraordinary unknown side effects, even turning someone “into a crocodile.”

Bolsonaro and Climate Change

Since Bolsonaro took office, his administration got rid of numerous environmental protection rules and cut funding to agencies responsible for enforcing environmental protections. The administration also encouraged the clearing and occupation of land in the Amazon by ranchers, loggers, and miners.

Indigenous people who live in the rainforest have a track record of being highly effective stewards of the environment. However, the Bolsonaro administration cut funding and powers of the government agency responsible for indigenous interests. Within two years of Bolsonaro taking office, miners and loggers illegally invaded indigenous land, and seven indigenous leaders were killed.

In 2019, illegal gold miners deforested an area the size of 10,000 soccer fields through expanded mining operations. Deforestation in 2019 was four times higher than it had been in the previous two years.



Brazilian President Jair Bolsonaro in 2019.

Bolsonaro and other Brazilian officials attended the Climate Leaders Summit convened by U.S. President Joe Biden to mark Earth Day in April 2021. At the meeting, Bolsonaro pledged to end illegal deforestation in Brazil by 2030, for the country to become carbon neutral by 2050, and to double Brazil’s budget for enforcement of environmental rules.

At the summit, Bolsonaro asked the United States to provide Brazil with \$1 billion in aid to pay for efforts to protect and conserve the rainforest in the Amazon. The day after the summit, Bolsonaro approved a 24 percent cut to the budget of Brazil’s ministry responsible for the environment, as well as other agencies under its supervision.

Where Does Brazil Go From Here?

The future of Bolsonaro’s presidency and what it may mean for Brazil and global climate change remain big questions for the country. Candidates he backed in local elections across the country in 2020 mostly lost. According to a March 2021 poll reported in Brazil’s largest newspaper, Bolsonaro has maintained a loyal base of followers throughout the country, even as his approval ratings have declined overall. Supporters like college administrator Silvia Rodrigues Farias see Bolsonaro as someone taking on “globalists” who are using the pandemic to exert greater control over societies around the world. She praises him for “fighting this every day.” Bolsonaro will be up for reelection in 2022.

His main rival will likely be former president, Luiz Inácio Lula da Silva (aka “Lula”), who served two terms as president of Brazil, from 2003 to 2011. He was a member of the PT and an extremely popular president. His presidency was marked by sweeping social welfare

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Protesters in Brazil's neighboring country Argentina demonstrate against Bolsonaro's climate policies, 2019.

reforms, including a massive campaign to eradicate hunger and to provide financial assistance to poor families. In 2017, Lula was convicted on corruption charges for accepting \$1.2 million in bribes while serving as president. He was sentenced to nine and a half years in prison. These convictions prevented him from running for president again.

After appeals, Brazil's Supreme Court in 2021 annulled Lula's convictions. The Supreme Court found that the federal court that tried Lula did not have jurisdiction to do so. Sergio Moro, the judge who presided over the case against Lula, was later found to have conspired with the prosecution and to have used illegal procedures to convict Lula.

The court's 2021 decision does not mean that Lula is innocent of the charges against him. Prosecutors must

restart their case against him in a new jurisdiction where Lula's case has been moved. But the court's decision does mean Lula is eligible to run for office again, which will add drama to Brazil's 2022 election. Polls show Lula is expected to win in a landslide when pitted against Bolsonaro.

Many of Brazil's democratic institutions — including the courts and the press — have resisted anti-democratic moves by the Bolsonaro administration. In a cabinet meeting in May 2020, the president announced that he wanted to send in troops to close the country's Supreme Court. Two of his close advisors, both generals, talked him out of it.

It is difficult to know what a continued Bolsonaro administration may mean for the Amazon rainforest, an environmental resource that is essential

for human and much animal life across the entire planet. At the same time, the world will also continue to demand and depend on many of Brazil's major exports. Observers across the globe will continue to watch how Brazil's people decide to pursue their country's motto, "Order and Progress."

WRITING & DISCUSSION

1. Explain the importance of Brazil to the world economy and environment.
2. How did President Jair Bolsonaro come to power? What were the effects of his administration on indigenous people, the Amazon rainforest, and Brazilian society?
3. Should the U.S. give \$1 billion in aid to Brazil? Why or why not?

ACTIVITY: The International Community and the Amazon

From Brazil to the United States to Europe, governments, nongovernmental organizations (NGOs), and even corporations have been weighing in with recommendations and strategies for responding to Amazon deforestation.

1. Examine the following proposals and discuss in a small group which one you think would be most effective and why. Also, decide which proposal you think would involve civic engagement by average Americans the most. You may also propose another option that is not listed here. Each group should choose a spokesperson to share their group's decision and reasons.
 - Private corporations, such as supermarket chains, should boycott Brazilian agricultural and mineral products to pressure the government to restrict logging and mining interests in the Amazon.
 - Governments, including the United States, should pass laws and regulations to ban imports that rely on deforestation in Brazil.
 - Brazilian indigenous and environmental NGOs should call upon governments to put pressure on the Brazilian government to stop deforestation in the Amazon.
 - The U.S. and Brazilian administrations should negotiate a deal in which the U.S. provides economic aid to Brazil in return for Brazil stopping deforestation.
2. After all groups have presented, write a paragraph about which proposal or proposals you think would be most effective and why.

Standards Addressed

A Jury of Your Peers

California History-Social Science Standard 12.2: Students evaluate and take and defend positions on the scope and limits of rights and obligations as democratic citizens, the relationship among them, and how they are secured. (1) Discuss the meaning and importance of each of the rights guaranteed under the Bill of Rights and how each is secured. . . . (3) Discuss the individual's legal obligations to obey the law, serve as a juror, and pay taxes.

California History-Social Science Standard 12.5: Students summarize landmark U. S. Supreme Court interpretations of the Constitution and its amendments. (1) Understand the changing interpretations of the Bill of Rights over time, including interpretations of the . . . equal protection of the law clauses of the Fourteenth Amendment. (4) Explain the controversies that have resulted over changing interpretations of civil rights. . . .

California History-Social Science Framework, Ch. 17, p. 434: As this course progresses, students will learn about the responsibilities they have or will soon have as voting members of an informed electorate. They consider the following question: What rights and responsibilities does a citizen have in a democracy? . . . They will learn that all citizens deserve equal treatment under the law, safeguarded from arbitrary or discriminatory treatment by the government. . . .

National Civics Standard 18: Understands the role and importance of law in the American Constitutional system and issues regarding the judicial protection of individual rights. High School (4): Knows historical and contemporary illustrations of the idea of equal protection of the laws for all persons (e.g., Fourteenth Amendment . . .). High School (5): Understands how the individual's rights to life, liberty, and property are protected by the trial and appellate levels of the judicial process and by the principal varieties of law (e.g., constitutional, criminal, and civil law). High School (8): Knows historical and contemporary instances in which judicial protections have not been extended to all persons and instances in which judicial protections have been extended to those deprived of them in the past.

Pride Pioneer: Frank Kameny and the Early Gay Rights Movement

California History-Social Science Standard 11.10: Students analyze the development of federal civil rights and voting rights. (4) Examine the roles of civil rights advocates

California History-Social Science Framework, Ch. 16, p. 411: Hysteria over national security extended to homosexuals, considered vulnerable to blackmail and thus likely to reveal national secrets. The public Red Scare overlapped with a Lavender Scare. Congress held closed-door hearings on the threat posed by homosexuals in sensitive government positions. A systematic investigation, interrogation, and firing of thousands of suspected gay men and lesbians from federal government positions extended into surveillance and persecution of suspected lesbians and gay men in state and local government, education, and private industry. Students may debate whether such actions served national security and public interests and consider how the Lavender Scare shaped attitudes and policies related to LGBT people from the 1950s to the present. Ch. 16, p. 421: Students may consider figures such as Alfred Kinsey, Harry Hay, Jose Sarria, Del Martin and Phyllis Lyon, Frank Kameny, Sylvia Rivera, and Harvey Milk. By the mid-1970s,

LGBT mobilization led to successes: the American Psychiatric Association stopped diagnosing homosexuality as a mental illness; 17 states had repealed laws criminalizing gay sexual behavior; 36 cities had passed laws banning antigay discrimination; and gay-identified neighborhoods had emerged in major cities.

National U.S. History Standard 31: Understands economic, social, and cultural developments in the contemporary United States. High School (5): Understands major contemporary social issues and the groups involved (e.g., the emergence of the Gay Liberation Movement and civil rights of gay Americans).

Brazil and the Future of the Amazon

California History-Social Science Standard 10.10: Students analyze instances of nation-building in the contemporary world in at least two of the following regions or countries: the Middle East, Africa, Mexico and other parts of Latin America, and China. (1) Understand the challenges in the regions, including their geopolitical, cultural, military, and economic significance and the international relationships in which they are involved. (2) Describe the recent history of the regions, including political divisions and systems, key leaders, religious issues, natural features, resources, and population patterns. (3) Discuss the important trends in the regions today and whether they appear to serve the cause of individual freedom and democracy.

California History-Social Science Standard 12.9: Students analyze the origins, characteristics, and development of different political systems across time, with emphasis on the quest for political democracy, its advances, and its obstacles. (8) Identify the successes of relatively new democracies in Africa, Asia, and Latin America and the ideas, leaders, and general societal conditions that have launched and sustained, or failed to sustain, them.

California History-Social Science Framework, Ch. 15, p. 375: . . . Meanwhile, climate change has contributed to political and economic upheavals that are changing patterns of human migration and fueling regional conflicts. Elsewhere, countries such as Brazil have broken out of former patterns of Cold War subservience and economic dependency to become dominant regional and, increasingly, global powers. The present global scene now appears less predictable, less hierarchical, and—potentially—less stable than in past centuries.

National World History Standard 44: Understands the search for community, stability, and peace in an interdependent world. High School (5): Understands the role of political ideology, religion, and ethnicity in shaping modern governments (e.g., the strengths of democratic institutions and civic culture in different countries and challenges to civil society in democratic states; how successful democratic reform movements have been in challenging authoritarian governments in Africa, Asia, and Latin America . . .).

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(Continued on page 13.)



California State Seal of Civic Engagement



The California State Seal of Civic Engagement (SSCE) is a seal to be placed on the diplomas of graduating California high school students who, according to the California Department of Education, have demonstrated “excellence in civics education and participation, and an understanding of the United States Constitution, the California Constitution, and the democratic system of government.”

Criteria

The five criteria presented below are meant to provide a framework for making determinations of student qualifications required to earn the SSCE.

1. Engagement

Be engaged in academic work in a productive way.

2. Understanding

Demonstrate a competent understanding of United States and California constitutions; functions and governance of local governments; tribal government structures and organizations; the role of the citizen in a constitutional democracy; and democratic principles, concepts, and processes.

CRF Resources

Go to bit.ly/caciv-resource for balanced, interactive, and enriching lessons to supplement learning in U.S. history, world history, and U.S. government courses, as well as current civic issues, to meet Criteria 1 and 2.

3. Participation

Participate in one or more informed civic engagement project(s) that address real-world problems and require students to identify and inquire into civic needs or problems, consider varied responses, take action, and reflect on efforts.

CRF Resources

Go to crfcap.org for access to three core lessons to get your students active in planning and executing their civic engagement projects to meet Criteria 3.

4. Demonstration

Demonstrate civic knowledge, skills, and dispositions through self-reflection.

CRF Resources

Through Civic Action Project (bit.ly/caciv-cap), students have opportunities to reflect on their civic learning with the CAP Project Report, present their civic actions in multimedia formats, and share their projects in culminating activities to inform and educate others in their community to meet Criteria 4 (bit.ly/caciv-culminate).

5. Character Traits

Exhibit character traits that reflect civic-mindedness and a commitment to positively impact the classroom, school, community and/or society.

CRF Resources

Students can exhibit the character traits of civic-mindedness (bit.ly/caciv-character) when they demonstrate their civic dispositions in Criteria 4. Students will document their character traits, including concern for the public good, having a sense of civic duty, and appreciation of multiple perspectives, through writing, video, audio, graphics, and digital presentations.

Earning the Seal

Local school districts are encouraged to create specific, local criteria based on the state's five criteria. Check with your district or county superintendent's office on local criteria and deadlines for submitting proof of eligibility of students.

Contacts for questions and for PD:

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Landmarks: Historic U.S. Supreme Court Decisions

Linked to U.S. history and civics standards

Grades 9-12

U.S. Supreme Court cases have greatly affected U.S. history. Let your students discover some of the most important cases. Each reading in the student text focuses on one case, giving historical background, outlining the decision, and explaining its significance.

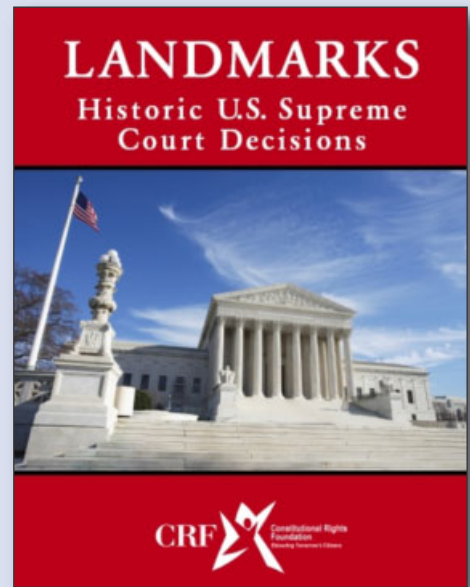
A separate teacher's guide contains lesson plans for each reading. The plans include focus activities, discussion questions with suggested answers, step-by-step instructions for interactive activities, and debriefing questions and suggestions.

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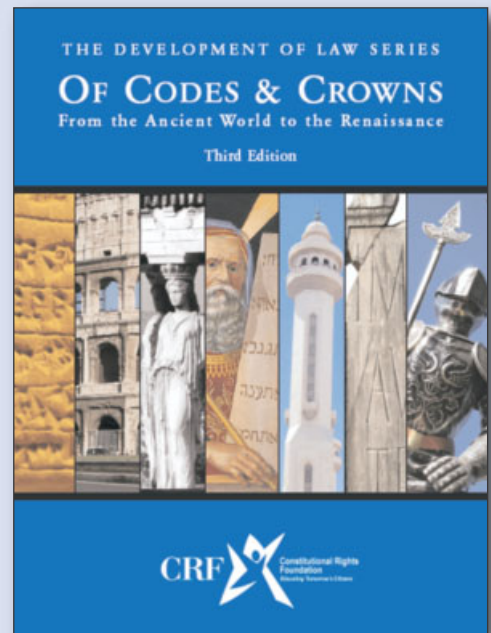
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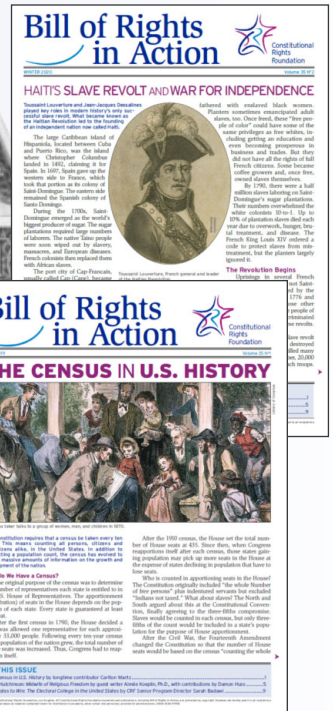
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People v. Meadows A Mock Trial Designed for the Classroom Grades 6-12

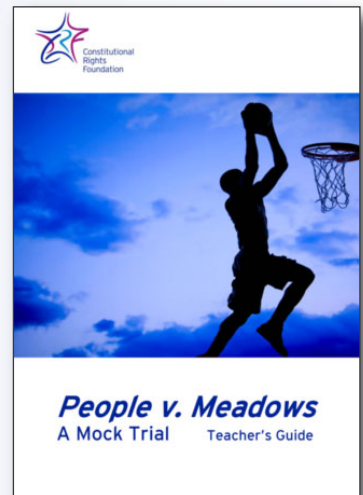
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People v. Croddy

Burglary, Aiding and Abetting and Accessory After the Fact

Featuring a pretrial argument on the Fifth Amendment Grades 6-12

People v. Croddy is the trial of Lee Croddy who hosts a popular YouTube channel. Croddy has been charged with two counts: (1) aiding and abetting in the commission of first-degree burglary by another, and (2) accessory after the fact. Croddy posts videos on Youtube in which Croddy discusses topics Croddy believes are suppressed by the government. One favorite topic of Croddy's is government cover-ups related to UFOs. Croddy attracted the attention of an enthusiastic fan, Remi Montoya. For almost a year, Montoya and Croddy communicated frequently in non-public Twitter group chats.

During one group chat, Croddy shared a short video clip that included an image of government documents. The documents contained personal information about an official named Drew Marshak who allegedly had information about UFOs. A few days later, Montoya stole a briefcase from Marshak's home and copied files from Marshak's computer. In a brief confrontation, Montoya hit Marshak in the face. Montoya later pleaded guilty to first-degree burglary and assault on a peace officer.

The prosecution alleges that Lee Croddy aided and abetted Montoya in the burglary. The prosecution will present evidence that Croddy showed a video with Marshak's information to Montoya and others in the group chat while instructing Montoya to "take what's ours" from Marshak and that Montoya acted under Croddy's influence. The prosecution further alleges that Croddy let Montoya spend the night in Croddy's home after the burglary, knowing that Montoya had committed a crime.

The defense argues that Lee Croddy did not knowingly aid or abet Montoya in any crime. The defense will present evidence that Croddy merely intended to build camaraderie within a political movement for government transparency through Croddy's videos, chat messages, and text messages. Therefore, the defense argues that Croddy did not have the intent to aid or abet Montoya's criminal acts. Furthermore, Croddy had no knowledge of the crimes after they occurred, and so was not an accessory after the fact.

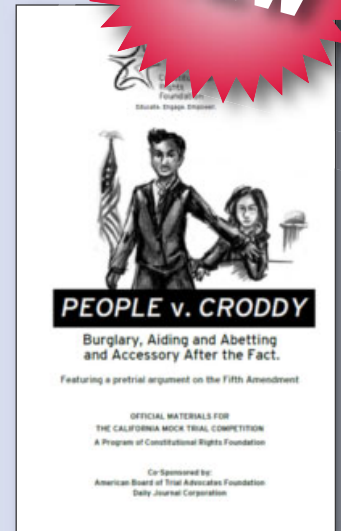
The pretrial issue centers on the Fifth Amendment protection against self-incrimination and as set forth in *Miranda v. Arizona*. The issue is whether or not the circumstances surrounding Lee Croddy's interaction with the police amounted to custodial interrogation. If so, the circumstances would require the protection of the Fifth Amendment and would have required the officer to read the defendant the Miranda warnings prior to interrogation.

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