

The Criminal Justice System

- Multiple criminal justice systems: federal, state, county, and city.
- Types of crimes
 - **Malum in se**: bad in itself, the conduct is bad (murder)
 - **Malum prohibitum**: prohibited by law, crime because of the law (drinking underage)
 - By jurisdiction: federal, state, and local
 - By severity:
 - Felony: punishable by more than one year
 - Misdemeanor: punishable by less than a year
 - Regulatory infractions: traffic violations
- Origins of Criminal Law
 - **Common law** – made by judges/English forefathers decisions adopted
 - **Statutory law** – made by legislatures, voted on
 - Adopted because if they pass bad legislature, we can vote them out of office
 - It's all for the people
 - Model Penal Code (MPC) – 1962, a thing to reference, some adopted the whole thing and some adopted parts of it (NC adopted some of it)
- The System Overview
 - Police Investigation
 - Arrest
 - Charging decision (indictment or complaint)
 - Initial appearance and arraignment (with a lawyer/date and charges)
 - Pre-trial motions
 - Plea bargaining
 - Trial
 - Verdict
 - Sentencing
 - Appeal
 - Habeas corpus petitions
- Crime v. Civil Wrong
 - **Civil** – compensatory (compensation)
 - Not about punishment
 - Focus on restoring the victim
 - **Criminal** – punishment
 - Focus on defendant
 - Know the statute is criminal because it's punished by jail time (as long as it's not against the Constitution)
 - Legislature can make a law about whatever they want including morality
 - Moral component – judgement of community condemnation (talking about felons)
 - Criminals harm society as a whole → society is the victim

Theories of Punishment

1. Deterrence

- a. General – deter society at large
 - i. Ex. The death penalty deters society
 - b. Specific – deter the defendant
- 2. Incapacitation**
- a. Keep them from committing crimes
 - b. Take them out of society
- 3. Rehabilitation**
- a. Get them away from the crime
 - b. Keep them out of prison once they get out
- 4. Retribution**
- a. An eye for an eye
 - b. They did society wrong, so they are being punished for it
- Theories of Punishment are relevant because it deals with **sentencing** and how long they could be in prison.
 - Law enforcement is not automatic, it is at their discretion.
 - **Prosecutor** also has discretion over the theories of punishment and **broad discretion** over whether to bring charges (too many cases to prosecute them all)
 - Prosecutor will bring conduct that is most flagrant, society is harmed the greatest, and the most provable

Grand Jury

- Issue **indictments**
- A check on prosecutorial discretion (really the only check)
- Required in federal court
- They decide if the prosecution has a case to bring to trial
- They just need **probable cause** (51%)

Article 2 of the Constitution gives the **executive** branch power to decide who to prosecute.

- The prosecution’s job is to seek “justice”
 - Convict the guilty
 - Not convict the innocent
- Defense does not have that responsibility
 - Allegiance is to the defendant
 - Zealously represent their client

I. Burden of proof

- a. Always on the prosecution
- b. Beyond a reasonable doubt
 - i. On all elements individually
 - ii. Keeps up the moral legitimacy of the system
- c. Appellate court does not review the jury’s verdict
 - i. Jackson v. Virginia Test: would a rational juror of fact have been able to conclude beyond a reasonable doubt

- d. US v. Jackson: The ATF came to Jackson's door and asked if he had any firearms in the house and he showed them that he had some ammunition. An Aaron Jackson from New York was a convicted felon from 18 years prior and as a felon it is illegal to have firearms or ammunition. They arrested Jackson and at trial only produced the previous conviction sheet as evidence against him. No direct evidence presented. Jury convicted Jackson, but he appealed claiming the government did not prove beyond a reasonable doubt that the convicted felon Aaron Jackson was actually him.
 - i. Government wanted to introduce a new rule: Conditional efficiency theory – the certificate is enough if the defendant doesn't contest it
 - 1. But the burden cannot go to the defense
 - 2. Not a real rule
 - ii. The government did not meet its burden
 - 1. No sufficiently compelling evidence (ex. Description, age, fingerprint, etc.)
 - 2. Failed to show a connection
 - 3. **Circumstantial evidence is enough if overwhelming**
 - a. Description, age, fingerprint
 - b. You never NEED direct evidence
- e. Two burdens of proof:
 - i. **Burden of Production** – on the prosecution's shoulders
 - 1. The defendant will move for a **directed verdict** if there isn't enough evidence; the prosecution must get past directed verdict to get to a jury
 - 2. Affirmative defenses are shifting
 - ii. **Burden of Persuasion** – on the prosecution
 - 1. To prove guilt **beyond a reasonable doubt**
 - a. Vague definition; not able to quantify it
- f. Levels of proof
 - i. Reasonable suspicion (lowest – for the police)
 - ii. Probable cause
 - iii. Preponderance of the evidence (over 50% sure)
 - iv. Clear and convincing
 - v. Beyond a reasonable doubt (used for crime; don't need 100% certainty)
- g. **Beyond a Reasonable Doubt**
 - i. The authority comes from In re Winship (1970)
 - 1. "No one shall. . . be deprived of life, liberty, or property without **due process of law.**" (Amendment 5, U.S. Constitution)
 - a. In a criminal case: life or liberty are at stake.
 - ii. Why BRD standard?
 - 1. Prosecutors won't bring cases that they do not have the proof for (check on governmental power)
 - 2. It keeps the people's confidence in the court system
 - 3. Gives the **presumption of innocence**
 - 4. **Blackstone's Formulation**
 - a. Better for 10 guilty to go free than 1 innocent person suffer.

II. Exploring the Boundaries of Punishment

- a. Kansas v. Hendricks: Hendricks was a repeat sexual predator. Admitted he had done it several times and if released he would do it again. Kansas had implemented the Sexually Violent Predator Act that said if there was some abnormality causing this person to have sexual predator tendencies, then it would be better for them to be committed away from society for the greater good. This was the first case this statute was used in.
 - i. The question: Is the Sexually Violent Predator Act lawful under Double Jeopardy?
 1. **Double Jeopardy** (5th Amendment)
 - a. One shot at each crime
 - b. Can't try the same thing more than one time until conviction
 - c. **Hung jury**: you can try again because there was not a verdict
 2. It is lawful and constitutional; still in use today.
 - ii. Not state shall pass an *ex post facto* law: at the time, you didn't know it was illegal
 1. We have laws to influence the way people behave
 2. If they don't know, they can't be held for it
 - iii. The government argument: **Civil commitment**, not criminal.
 1. Looking at the **legislative intent** of the statute: civil commitment procedure
 - a. Focus on mental state/abnormality (not if he did it or not)
 - b. Receiving treatment and rehabilitation
 - c. There's no scienter: level of knowledge needed to be responsible (criminal, not civil)
 2. It's in the **probate code**
 - a. Wills, trusts, and estates, etc.
 - b. Civil code
 - iv. When deciding if a statute is civil or criminal we look to the placement of the statute and the legislative intent.
 1. What is the practical effect (punitive in purpose or effect = it negates the civil)
 2. Defendant must come with clear proof that it is civil
 3. Cannot just move clearly criminal things to the probate code

III. Defining Crimes

- a. Elements two ways:
 - i. **Macro elements** – all crimes must have them
 1. If the prosecutor fails in one element, the government loses
 2. Statutes
 - a. Masses of information, you must find the elements
 - b. Look at other cases to check your elements
 - i. Jury instructions (discerned statute)

1. **Pattern jury instructions** (first thing to look at) help you find the elements
2. Endgame is the jury

ii. **Types of Macro elements:**

1. **Identification**

a. United States v. Chappell: Chappell allegedly robbed a bank, but there was no direct evidence to put him at the scene, only circumstantial evidence. He was seen at the dumpster where they found the clothes and mask, he rides a bike like the robber, didn't have a job but somehow bought a car that day, a man that found him on his porch identified him, and he confessed to three fellow inmates.

- i. Overwhelming circumstantial evidence
- ii. **Per curium** opinion – handed down by the appellate court with no one named as the author because they all three agree and it is not complicated. (doesn't have the same amount of weight as a signed opinion; not a lot of thought given)

iii. **Elements of 2113(a): bank robbery**

1. Defendant
 - a. This is what the defendant contests
 - b. SODDI defense: some other dude did it
 - c. The one print they found was not Chappell's and they did not recover the bait bills.
2. Through use of intimidation, force, or violence
3. Took money
4. That was in possession of a bank
- iv. Appellate court confirms his conviction because a reasonable juror could conclude that Chappell was the bank robber (Jackson v. Virginia standard)
- v. **Rule**: Circumstantial evidence can be enough for conviction.

b. United States v. Vance: Marshall and Vance are suspected of robbing two banks and one person being shot and killed. Marshall becomes the star witness against Vance and brings up some restaurant robberies that happened before the banks. Says a .44 caliber was used in all robberies and Vance charged the counter every time. Vance claims he was not the one with him.

- i. **404(b)**: admission of evidence **of other crimes** builds prejudice and is not allowed.
 1. **Except** when it shows a pattern that the defendant did the same thing every time
 2. **Motis aperondi**: same way, can show past crimes

- ii. **Rule:** You can prove identity with other acts and conspirator testimony.
- 2. **Actus reus:** there has to be an action and that action had to cause the crime (“the wrongful act”)
 - a. Voluntary act
 - i. Robinson v. California: police encounter the defendant on the street and see discoloration on his arms. He admits to occasional drug use and they arrest him for being a drug addict and he is convicted. The defendant argues it’s unconstitutional to punish an addiction; it’s cruel and unusual punishment (14th Amendment). The conviction is reversed.
 - 1. The 8th Amendment actually states cruel and an unusual punishment but the 14th states that no state shall make or enforce laws abridging the privileges or immunities of citizens (**Doctrine of Incorporation**).
 - 2. Drug addiction is a **status** that you can be every day
 - a. Double Jeopardy would take over and no longer be applicable.
 - b. “continuously guilty”
 - 3. It is **not voluntary to be an addict**
 - a. It is a status, not an act
 - b. Ex. Alcoholic, drug addict
 - 4. Use is an act → physical act
 - a. Still punishable
 - 5. **Rule:** People cannot be criminalized for a status.
 - ii. United States v. Flores-Alejo: The defendant was arrested for DWI with a child in the car. Once he got to jail, ICE found him. He was an illegal immigrant and had been deported from the U.S. and asked to leave three times before. The defendant tries to make the argument that being an illegal immigrant is a “status.”
 - 1. Actus reus: remaining in the U.S.
 - 2. 8 U.S. 1326(a): **“found in”** statute
 - a. Under a statutory duty to leave
 - b. They placed him in a position of not being able to leave but his unlawful action got him arrested and put there
 - 3. It is a continuing offense, not a “status”
 - 4. The “found in” statute does not go under the Robinson case
 - b. That causes (causation)

- i. **Cause in fact** (“but for” cause): Without the act, the result would not have happened.
 1. Paroline v. United States: Paroline possessed child pornography, two of which depicted an identifiable victim.
 - a. The injury is mental harm caused by the continuous and large circulation of the images. But the government can’t show the possession by Paroline would have increased or decreased the harm.
 - b. **Rule**: In the case of a child pornography victim, the government **does not have to show traditional “but for” causation**.
 - c. The defendant **must pay some amount to the victim** that equates to his role in it all (hard to determine) because he must face the harm caused and paying nothing would cause no one to ever have to pay a victim for possession of child pornography.
- ii. **Legal cause** (“proximate cause”): There must be a legal cause, legal consequences for the act and result; foreseeable harm because of the act.
 1. West v. Commonwealth: Husband and wife took on the duty to care for his sister when their mom passed away. West took her out of the program that was helping her, and she stayed in bed all the time until she got sick and they took her to the hospital. She died at the hospital from bed ulcers and malnourishment. The defendants claim they did not have a legal duty to care for her.
 - a. Appeal: they did have a legal duty to care for her because they accepted the responsibility voluntarily.
 - b. **General Rule**: Omission does not create liability, there must be a **legal duty**, not a moral one.
 - c. **4 Circumstances** when **omission** may lead to liability:
 - i. law imposes the care of another
 - ii. relationship status
 - iii. contractual duty
 - iv. voluntarily assumed the duty and you isolate them from others

(remove potential people to help them)

- d. The law is made so people do not inflict harm, not so they try to prevent it.
 - i. Legal duty to help if you create the danger (ex. Sell a pill to someone)
- e. KRS 209.020(6) (Kentucky Revised Code): A “**caretaker**” is one who assumed responsibility by volunteering, contract, or agreement. (in this case it was volunteering)
- c. The identifiable social harm (result)
- d. **Possession**: not an act, just possession.
 - i. United States v. Jameson: Felon in the backseat of a car when they get pulled over. He moves around before the police officer gets to the car. When they search the car they find a firearm in the floor where Jameson’s foot had been. Jameson disputes that he had possession.
 - 1. Testing whether a reasonable juror could have found that he had possession (affirmed)
 - 2. **Two Types** of Possession:
 - a. **Actual** – physical touching
 - b. **Constructive** – has the knowledge to hold the power and ability to exercise dominion and control
 - 3. Show the nexus → connection
 - a. Knowledge and access
 - b. Proximity is a factor, not determinative
 - 4. Joint possession and constructive possession – two people can constructively possess at the same time
 - 5. Application in this case
 - a. Proximity
 - b. Furtive movements
 - c. Inferred physical contact (foot on top)
 - d. Plain view and easily retrievable
 - e. Clear lighting
 - ii. State v. Sowry: the defendant was arrested and brought into jail where they searched him thoroughly and found marijuana in his pocket. He is charged with RC 2921: bringing drugs on detention grounds and he is convicted. Sowry appeals on insufficient evidence and that he should have been acquitted. Court ends up saying there is not sufficient evidence and no rational juror could have found he voluntarily brought it in.

1. Actus reus: conveyed
 - a. Original statute 2921 doesn't say voluntarily
 - b. Always assume (read in) voluntary, not punishing for a guilty mind alone (maxim-general truth)
 2. **Voluntary**: you thought and did the action
 - a. Not reflexive or convulsive
 - b. Person desired the action
 - c. Moral blameworthiness where the theories of punishment apply
 3. **Not voluntary**: conveyed but not voluntarily
 - a. In handcuffs/ state possession
 4. **Generally: look at the moment of the act**, but sometimes public policy intervenes, and we move the timeline. (ex. Drunk behind the wheel and passes out)
 5. **Model Penal Code (MPC)**: Not voluntary:
 - a. Reflex or convulsion
 - b. Bodily movement during unconsciousness or sleep
 - c. Conduct during hypnosis or resulting from hypnotic suggestion
 - d. Bodily movement that is not a product of the effort or determination of fact, either conscious or habitual
3. **Mens rea**: There must be an act and the "mind be guilty"; absent confession by the defendant, circumstantial evidence proves this element. (most often contested because it's hard to prove.)
- a. **2 Meanings**:
 - i. **Culpability meaning** (broad): morally blameworthy mindset. (ex. Shooting someone in self defense v. shooting someone to kill them)
 - ii. **Elemental meaning** (narrow): particular mental state required by the statute. (ex. Knowingly, intentionally (general or specific), willfully, recklessly, or negligently)
 - iii. **Ask what the particular mental state required by the statute is.**
 - b. **Knowingly**: MPC definition is (1) aware that his conduct is of that nature or that such circumstances exist; and (2) aware to a practical certainty that his conduct will cause such a result. (pg.30)
 - i. United States v. Pennington: The defendants were new truckers that picked up a load of what they believed to be tile that their broker suggested. Turns out there was 591 pounds of marijuana in the back of the truck. The

defendants were charged with possession with intent to distribute and convicted at trial. They appeal their conviction arguing the sufficiency of the evidence to their knowing. Appellate court affirms the jury's verdict.

1. Knowingly is the mens rea element of the statute. It is an element because it is important to get the right party.
 2. Statute elements: (1) **knowing** (2) possession of marijuana (3) with intent to distribute.
 3. **General rule:** control of the vehicle is enough to convict if the marijuana is visible and readily accessible.
 - a. **Exception:** not if it is hidden
 - i. Government contends it was not hidden in a compartment
 - ii. Court says it was hidden because it was not noticeable
 - b. Need other evidence:
 - i. Nervousness, inconsistent statements, implausible stories, large amounts of cash, or other relevant evidence.
 - ii. government says that since they took a long route and took too long that was enough circumstantial evidence.
 - c. The court was not convinced they knew, but by the rationale standard they affirm.
- ii. United States v. Shaw: Found Shaw with a sawed-off shotgun after a police chase. The gun was 16 ¼ inches when the minimum is 18 inches. Federal Statute (26 U.S.C. 5861(d), 5871) makes it illegal it is in the tax code. If you want to possess a sawed-off shotgun less than 18 inches or a machine gun you must pay a tax on it. Constitution doesn't give Congress the power to regulate firearms, but it does give power over the tax code. The defendant disputes knowing the shotgun was less than 18 inches.
1. The government doesn't ever have to prove the person was aware of the law.
 2. Staples: read knowledge into the statute; common law rule was that mens rea is a necessary element for criminal law. **There can be no crime without actus reus and mens rea.** Congress would need to

explicitly reject that requirement in the statute to get around it.

3. **General Rule:** all criminal offenses have mens rea requirement, it will be read in by the Court
 - a. **Strict liability:** no mens rea requirement.
 - b. **Default assumption** is that there is a mens rea term (read one in unless clear language not to)
 - c. In this situation, if they had failed to read it in this would be a strict liability statute and that was not Congress' intent.
 4. Defendant needs to show that it was a surprise
 - a. Circumstantial evidence shows it was not:
 - i. Familiarity with the firearm
 - ii. Knows about firearms in general
 - iii. External and readily observable
 - iv. The jury was able to see and hold it
- iii. United States v. Pierotti: the defendant was convicted of a misdemeanor of domestic violence. A year later he wants to purchase a gun for hunting. His sheriff friend and probation officer say since no felony he is good. Questionnaire at Walmart asks if he has ever been convicted of a misdemeanor crime of domestic violence and he checks yes. At the end it gives him an error message and he goes back and checks no. He fails to read the "more information" about the question. He argues he didn't know and thought the computer more knew about his conviction than he did, and the ostrich instructions should not have been read to the jury.
1. He should have known his conviction belonged on the questionnaire and he had the opportunity to check and he did not.
 2. Government's argument is that he deliberately chose not to find out the answer
 3. **Ostrich instruction:**
 - a. Guilty if he deliberately or strong suspicion that he avoided the truth
 - b. Helpful for the government: they didn't have actual knowledge
 - c. Prevents people from avoiding knowledge so that they have a defense when charged with a crime

- d. "A deliberate effort to avoid guilty knowledge is all the guilty knowledge the law requires."
- 4. **2 requirements** for ostrich instructions:
 - a. The defendant is claiming lack of knowledge, **and**
 - b. Evidence that the defendant deliberately avoided learning the truth
- c. **Intent** = "purposely" (interchangeable)
 - i. **General Rule** (common law): person acted with the **conscious object** of causing the social harm
 - ii. United States v. Cortes-Caban: Cops in Puerto Rico were charged with possession with conspiracy to distribute. They were planting drugs on people to get them arrested. We are concerned with conspiracy to possess with intent to distribute.
 - 1. General intent: lower level of intent; just intent to perform the actus reus
 - 2. Statute has **specific intent**: intend the act (possess) and distribute
 - 3. **Specific Intent requires**:
 - a. proof of an intention by the actor to perform some future act or achieve some further consequence **beyond the conduct or result that constitutes the social harm of the offense**;
 - b. proof of some special motive for the conduct; OR
 - c. provides that the actor must be aware of a statutory attendant circumstance
 - d. None of the above is general intent crime
 - 4. The argument from the defendant is that they intended to fabricate evidence, not distribute
 - 5. Court says:
 - a. Distributing = transfer; not concerned with buying/selling
 - b. Transferring drugs between each other and to the person they want to arrest
 - c. Doesn't matter what the objective was
 - iii. United States v. Campos: Lawful search of a house revealed in the defendant's bedroom 50.6 grams of meth, a handgun, clip, and ammo. Found a pen downstairs, not in his bedroom, that had been used for meth.
 - 1. Statute elements:

- a. Possession of meth
 - b. Possession was knowingly
 - c. Intent to distribute the meth
 - i. He disputes this element
 - 2. Looking for specific intent
 - 3. Defendant says the meth was for him to use
 - a. Relies on pen with meth residue
 - 4. Trial judge says absent some more distribution evidence plus the user pen
 - a. Overturns jury verdict and gives new trial
 - b. No double jeopardy because he does not enter a verdict of his own
 - c. "miscarriage of justice may have occurred"
 - i. Intentionally let the jury give a verdict
 - 5. Appeal to 8th Circuit:
 - a. Reversed; upholds jury verdict of guilty
- iv. **Specific Intent:** adds other part (purpose/goal) mens rea
- v. **General Intent:** Just intend the actus reus
- vi. **Transferred Intent (MPC 2.03):** If a different person suffers the harm, intent transfers
 - 1. Can't intend to kill a dog (property) and transfer to killing a person
 - 2. You can transfer intent from a more serious intent to a less serious intent
 - 3. Intent transfers from: people to people and property to property

d. **Recklessly**

- i. People v. Hall: Hall flew off a knoll while skiing and hit the victim in the head causing injuries that later caused his death.
 - 1. District court at preliminary hearing dismissed the charges because not enough evidence
 - a. Probable cause standard: government appeals saying they did provide evidence
 - 2. Issue: whether there was probable cause to put it before a jury
 - a. Appellate court says yes assuming what the prosecution says can be proven
 - 3. Mens rea: **recklessly**
 - a. Consciously disregards a substantial and unjustifiable risk will occur
 - 4. **Must show:**
 - a. Consciously disregarded

- b. Substantial
 - c. Unjustifiable risk of
 - d. Death
 - 5. Unjustifiable:
 - a. Nature and purpose of act
 - b. Risk created by act
 - c. Is the risk worth the reward
 - i. Absent the risk, is it justified?
 - d. Conduct by the defendant that is a gross deviation from the standard care that a reasonable person would exercise
 - 6. It should have gone to a jury, and appellate judge sends it to one
 - ii. **Recklessness**
 - 1. Person is aware of the risk
 - a. **Conscious disregard**
 - 2. Did it regardless of knowing the risk
 - e. **Negligent**
 - i. Not aware of the risk, but should have been aware
 - ii. **Criminal Negligence**
 - 1. Disregarded
 - 2. Substantial
 - 3. Unjustifiable risk
 - 4. Of which they **should have been aware**
 - a. **Gross deviation** still applies
 - f. **Intentionally** – conscious object
 - g. **Knowingly** – practical certainty
 - h. **Recklessly** – consciously disregarded
 - i. Substantial: magnitude of the harm is very great
 - ii. Unjustified
 - i. **Negligently** – didn't know, but should have known
 - i. What would a reasonable person have done
4. **Concurrence**
 - a. Must simultaneously have
 - b. Actus reus, and
 - c. Mens rea
 - d. At time of actus reus they have mens rea
 - i. Act and intent at same time
 - ii. Timing
5. **Causation**
 - a. Matters when it is a “**results crime**” (ex. Homicide – result is death)
 - b. **2 types of causation:**

- i. **Proximate cause** (legal cause)
 - ii. **Actual cause** (“but for” cause)
- c. Both types need to be present
- d. **“but for”**: if you remove the defendant’s conduct, would the result have happened?
 - i. If yes = “but for” causation present and actual cause is established
- e. **Actual Cause (“but for”)**
 - i. State v. Lane: Defendant “swung” at the victim (didn’t say hit). Testimony from defendant’s cousin. Look at circumstantial evidence to put it together that the defendant hit the victim, he didn’t fake him out or miss him. EMTs saw no injuries so they arrested him for public intoxication. Next day he was unresponsive (a lot of time goes by) and taken to the hospital where he dies of a brain injury.
 - 1. Issue: was evidence sufficient to show the defendant’s conduct was the “but for” cause of death.
 - 2. Manslaughter statute
 - a. Unintentional killing
 - b. Without malice
 - c. Proximately caused by
 - i. An unlawful act that is not a felony nor naturally dangerous to human life; or
 - ii. A culpably negligent act or omission
 - 3. Argument that something else could have caused death was speculative
 - a. Jury had the right to reject this argument
 - b. Reasonable juror could have rejected and found him as the “but for” cause
 - ii. Oxendine v. State: Tyree assaulted the child first and he complained of stomach pain. Then defendant assaults the child and he is in continuous distress. The victim dies on the way to the hospital.
 - 1. Issue: whether Oxendine’s assault was the cause in fact of his son’s death.
 - 2. Holding: a rationale juror could not have found Oxendine’s conduct to have caused the death.
 - 3. State argues the defendant’s conduct accelerated the death
 - 4. **Acceleration theory**:

- a. If someone else started the timeline but you did something to cause it to happen sooner than it would have you are still accountable
 - b. “but for” the defendants conduct, would the death have happened when it did
 - 5. State’s experts could not say if it accelerated the death or not
 - 6. Defendant’s expert says it would have shortened his life (accelerated)
 - 7. Can’t just have speculation; **had to show the second assault caused him to die sooner**
 - a. They did not prove this with their medical experts
 - 8. Not enough proof for “but for” causation
 - a. Tried acceleration
 - b. No state witnesses could say if it accelerated it or not
 - 9. Came up with assault instead which is not a results crime
 - iii. Did the act cause the death at that time?
 - 1. When the victim died
 - 2. Must prove the reason they died was for that action/cause of death
 - iv. **Combined direct effect or multiple sufficient causes**
 - 1. Each act independently kills
 - 2. Hold both responsible
 - 3. **Concurrent sufficient causes**
 - a. Adopted as exception to “but for” causation
 - b. Unless medical testimony says otherwise
- f. **Proximate cause (legal cause)**
 - i. “but for” cause answered first then answer proximate (legal cause)
 - ii. Designed for fairness
 - 1. At one point does it become fair to charge someone with “but for”
 - 2. Too many intervening events that cut off the causal chain of events
 - iii. Have to prove through argument; a lot harder to prove
 - 1. Up to a jury, there’s no real test, just jury instruction
 - iv. Picks which “but for” cause is the proximate cause
 - v. **Direct causation:** nothing intervenes

- vi. **Intervening causation:** satisfy “but for” causes, but which one was the proximate cause
 - 1. Only guilty if the defendant’s voluntary act was the proximate cause
- vii. State v. Smith: The defendant punched the victim once; he was released from the hospital. He died later of diabetic ketoacidosis because he couldn’t remember to take his insulin. Deputy coroner lists blunt force trauma as the COD, the other corner says diabetic ketoacidosis.
 - 1. Defendant argues he was not the proximate cause of death, diabetes was.
 - 2. Issue: what was the proximate cause of death.
 - 3. Ruling: the punch was the proximate COD.
 - 4. Punch injured the brain and that injury lead him to be apathetic and fail to take his insulin which resulted in death
 - 5. It was **foreseeable** because punching someone in the head can cause brain injury
 - 6. The fact that he had diabetes doesn’t matter; **take the victim as you find him**
- viii. **Intervening Cause**
 - 1. Separate “but for” cause enters the picture **after** defendant’s voluntary act has occurred.
 - 2. **Foreseeability** is key
 - 3. Typical categories
 - a. 3rd party wrongdoing
 - b. Victim’s negligence
 - c. Suicidal act by victim
 - d. Act of God
- ix. **Intervening Superseding Causes**
 - 1. Sufficient to cut off the causal connection between the defendant and the result
 - 2. If it’s just an intervening cause = no cut off of causal chain
 - 3. If it’s intervening and superseding = causal connection broken
- x. **Key Factor: Foreseeability**
 - 1. Was the intervening event reasonably foreseeable to the defendant?
 - a. No → superseding cause, cuts off defendant’s responsibility
 - b. Yes → not superseding, defendant is responsible
 - 2. **Responsive/dependent** intervening event

- a. Generally foreseeable
 - b. Doesn't sever causal connection
 - c. **In response to or dependent upon** defendant's action
3. **Coincidental/Independent** intervening event
- a. Generally unforeseeable
 - b. Severs causal connection
 - c. A coincidence or independent of defendant's action

6. Jurisdiction

a. Elements:

- i. Geographic jurisdiction
 - 1. The courthouse with the power to hear the case
 - 2. power to adjudicate
 - ii. Venue
 - 1. Place in a jurisdiction
 - 2. Which federal court; or which state court
 - iii. Federal jurisdiction
 - 1. Geographic: all places or waters subject to the jurisdiction except the Canal Zone
 - 2. Venue: prosecute where it occurred; which district it occurred in
- b. Jones v. State: tried and convicted in Fulton County. Did the government prove venue beyond a reasonable doubt? Police patrolled two counties, only evidence was the neighbor across the street.
- i. Prosecution needed to **prove** it, not just assume
 - ii. Example of government being sloppy
- c. Federal Criminal Jurisdiction
- i. **State** has primary responsibility for prosecuting criminal cases
 - ii. **Federal power** limited by Constitution which favors state power
 - iii. States have **general police power**
 - 1. Can pass laws that don't violate the Constitution
 - iv. Federal (Congress) has **limited power**
 - 1. Good policy and authority under the Constitution to pass laws
 - v. **Constitutional power** to legislate
 - 1. Commerce clause: power to regulate commerce between the states
 - 2. Postal clause: power to regulate the postal system; anything involving the mail
 - 3. Taxing clause: power to tax

- vi. **Federal nexus** (connection) required
 - 1. Requirement for federal jurisdiction
- d. Why federal criminal justice system?
 - i. Check on local government corruption
 - ii. Cross-jurisdictional crime
 - iii. Crimes affecting national issues
- e. United States v. McNeal: Main issue was credit union v. bank. Question of “deposits” or “accounts” according to the federal insurance. If not insured federally, it is a state matter.
 - i. Defendant argues that “accounts” wasn’t used like the statute says
 - ii. Federal insurance – federal pays back loss
 - 1. Want it because it affects them
 - 2. Want to deter from robbing federally insured banks
 - iii. Instruction on deposits/accounts doesn’t matter, only if they had federal insurance does it matter because if they didn’t it would be sent to state court
- f. **Dual sovereignty**- both state and federal can prosecute
- g. Common Federal Nexus Scenarios
 - i. Federal insurance for banks
 - ii. Federal employees harmed
 - 1. Murder of just anyone is state
 - 2. Postal worker on duty is federal
 - iii. Federal property crime
 - 1. Commit crime on property is federal
 - 2. Harm property is federal
 - iv. Immigration-related
 - v. Items transported in interstate commerce
 - 1. Guns, Kidnap victims, Child pornography, Stolen cars, etc.

7. Attendant circumstances

- iii. **Micro elements** – of specific crimes
 - 1. **Homicide** – Crime
 - a. Generally: justified homicides are not crimes
 - i. Police, self-defense, etc.
 - ii. Only crime if it is unlawful
 - b. Common Law Homicide
 - i. Murder → malice aforethought
 - ii. Manslaughter → no malice aforethought
 - c. Malice could be shown by:
 - i. Intent to kill (conscious object)
 - ii. Intent to inflict serious bodily injury
 - 1. To feel pain
 - 2. Not intent to kill, but it’s possible in the course

- iii. Depraved heart/extreme indifference
- iv. Felony murder
- d. Modern view
 - i. Some states have strict common law view
 - 1. No degrees or categories
 - 2. Just murder or manslaughter
 - ii. **Modern jurisdiction** (federal and NC)
 - 1. Death caused by another human being without justification
 - 2. Choose between: (criminal homicide)
 - a. **Murder**
 - i. First degree
 - ii. Second degree
 - b. **Manslaughter**
 - i. Voluntary
 - ii. Involuntary
 - c. Big difference is **mens rea**
 - iii. Federal Murder Statute: 1111(a):
 - 1. Definition of murder: unlawful killing of another human being with malice aforethought (common law)
 - a. First-degree: poison, lying in wait, willful, deliberate, malicious, premeditated, committed during these things (felony murder), part of pattern, etc. (intent to inflict bodily harm), perpetuated.
 - b. Second-degree: any other murder that isn't first-degree: still need malice aforethought
 - 2. **First-degree:**
 - a. Felony murder
 - b. Intent to inflict serious bodily injury (to a child)
 - c. Intent to kill (premeditation)
 - 3. **Second-degree:**
 - a. Intent to inflict serious bodily injury (to an adult)
 - b. Depraved heart/extreme indifference
- e. **2nd Degree murder elements:**
 - i. Jurisdiction and venue
 - ii. Defendant (ID)
 - iii. Unlawfully
 - iv. With malice aforethought
 - v. Caused the death of another
- f. **Malice required for 2nd degree:**

- i. Intentional killings that don't fit within the statutory definition of 1st degree
 - ii. Intent to cause serious bodily injury resulting in death
 - iii. Depraved heart/extreme indifference
- g. United States v. Milton: Shooting from a car into another car. The victim dies and is charged and convicted of 2nd degree murder.
 - i. Issue: whether there was sufficient evidence of malice aforethought
 - ii. Defendant argues he didn't shoot with malice, so it is manslaughter
 - 1. Court rejects because it is **depraved heart/extreme indifference**: wanton and depraved spirit, a mind bent on evil mischief without regard for human life.
 - iii. **Extreme recklessness**: distinguish from regular recklessness by a matter of degree, but it is up to the court to decide
- h. United States v. Houser: Defendant was a drunk and had a history of hitting the victim when he was drunk. On the night of the shooting he was in an argument with another guy outside the bar. Defendant walked over to his truck and got a gun out. He had words with the victim and then shot her in the neck.
 - i. Defendant argues it was an accident and that there was a failure of actus reus because she caused the gun to go off during a struggle
 - ii. Government says he meant to shoot her, and the jury convicted of 2nd degree murder
 - iii. Since that theory lost the first time, he tried a new one on appeal
 - 1. Acknowledges he did it
 - 2. Improper instruction = "extreme disregard"
 - a. Saying that it means people as a whole, not just her.
 - b. Court says it doesn't matter
 - iv. **Rule**: A jury can convict a defendant of 2nd degree murder under an extreme disregard theory even if the acts causing the victim's death were reckless only toward the victim herself.
- i. **2nd degree punishment**
 - i. Up to life in prison or whatever below that (judge has discretion)
 - ii. No capital punishment
- j. **1st degree murder elements**:
 - i. Jurisdiction and venue
 - ii. Defendant (ID)

- iii. Unlawfully
- iv. Caused the death of another
- v. With malice aforethought
- vi. With one of the following
 - 1. Premeditation
 - 2. BARRK (burglary, arson, rape, robbery, kidnapping)
 - 3. Assault and torture of a child
 - 4. During premeditated attempt to kill someone else
- k. United States v. Thomas: Defendant shoots and kills his ex-girlfriend who he believed to have vandalized his current girlfriend's place. He went to get a gun and left it at his girlfriend's place. When they got back, his ex-girlfriend was taunting him, and he walked up to her and shot her with the gun he had retrieved before. Defendant was charged and convicted of 1st degree murder based on premeditation. This court affirmed.
 - i. Rules of Premeditation: (ways to know)
 - 1. Result of planning or deliberation
 - 2. Time varies with circumstances
 - 3. Defendant consciously intends to kill (their goal)
 - ii. In this case:
 - 1. Got the gun, hid it and waited
 - 2. Walking towards her, he had time to think
 - 3. Got rid of weapon and went to his mom's house to see her because he knew what was coming
 - 4. Multiple shots, deciding to pull the trigger repeatedly (can be spun both ways depending on timing of the shots)
 - iii. Good evidence of premeditation:
 - 1. Going to a second location to get the weapon
- l. United States v. Shaw: Family was driving past a rest area and right as they got passed it a gunshot ripped through the backseat, killing one of their kids. Police found the vehicle they described seeing at the rest area and found the defendant in it with a hunting rifle.
 - i. Defendant questions the sufficiency of the evidence
 - ii. Rules:
 - 1. Not a specific amount of time, but has to be some appreciable time for reflection and consideration
 - 2. Need to show time of deliberation during that time
 - 3. Not just reacting (heat of passion)
 - 4. "cold blooded killer"
 - iii. Defendant lies and makes up crazy story that ultimately hurts him and helps the prosecution
 - iv. Evidence of premeditation

1. **Circumstantial**
 2. Pushed down area of leaves
 3. Fleas the scene
 4. Testimony of earlier passers saying he was pointing a gun down the highway
 5. Lying in wait
 6. **Can look at the behavior of someone after** the act to prove premeditation
- m. United States v. Bell: Defendant stabs other inmate in his cell and he bleeds to death. Evidence: 70 seconds is time to deliberate, he has the object used to kill in his pocket when he goes into the cell of the victim, no evidence of a struggle (heat of passion), Dixon watches as if keeping watch, has time to deliberate before, even time between walking from his cell to the victim's cell.
- i. **Premeditation**
 1. Reflection before acting
 2. How long?
 - a. Can be short (**no set time**)
 - b. **"appreciable time"** to reflect
 3. Not heat of passion
 - a. Can be angry
 - b. Was the anger so strong to overcome reason?
 - ii. **Factors to consider**
 1. Absence of provocation by deceased
 2. Conduct and statements of defendant before and after
 3. Threats before and after
 4. History of ill-will and bad blood
 5. Obtaining a weapon
 6. Evidence of motive
- n. **1st degree: Felony Murder**
- i. Common law doctrine we adopted
 - ii. If you intend to commit one felony and you do, and in the process, someone is killed, this is murder in the first degree
 - iii. What Felonies?
 1. BARRK (burglary, arson, rape, robbery, kidnapping)
 - iv. Why do we have it?
 1. Deterrence: careful felons
 2. Affirming human life value (best theory)
 - a. Valuing human life in all aspects
 3. Eases burden of proof for prosecution
 - a. Difficult to prove intent

- v. 18 U.S.C. 1111(a)
 - 1. Perpetuation
 - a. Ongoing crime until person reaches a safe haven
 - b. Pursuit is still during crime
 - 2. Perpetuation includes **immediate attempt to escape**
 - 3. Difference is **time and distance** between crime and death
- vi. United States v. Garcia-Ortiz: The victim of a robbery kills one of the assailants. Defendant didn't kill the co-conspirator directly, but the felony murder statute doesn't require that the defendant pull the trigger.
 - 1. If you create the situation, you are responsible for the deaths that result regardless of who did the killing
 - 2. No regard to if the person who died was committing the felony
- o. **2 approaches to the killing by Non-felon**
 - i. **Proximate cause approach**
 - 1. Garcia-Ortiz approach
 - 2. For any death proximately caused by the defendant's commission of the underlying felony, regardless of who kills
 - ii. **Agency approach**
 - 1. Felony murder only if the killing is committed by the defendant or someone who is defendant's co-felon
 - 2. Would give different result in Garcia
- p. Connection between Felony and Death
 - i. Act in furtherance of the felony → death
 - ii. U.S. v. Saba
 - 1. Couldn't show death was connected to the kidnapping because no body was found
- q. **Quasi-felony murder statutes**
 - i. Type of crime resulting in death of any person...
 - ii. Examples:
 - 1. Drug dealing → death
 - 2. Alien smuggling → death
 - a. U.S. v. Pineda-Doval: smuggling illegal aliens and evaded police when they tried to stop him. They threw out spike strips and he hit them causing the car to flip and kill 10 people inside his car.

- i. Statute says if someone dies while you are smuggling aliens you get a long sentence
- ii. Not charged with murder
- iii. Conduct was foreseeable, this had happened to him twice before.

r. **Voluntary Manslaughter**

- i. Intentional killing without malice
- ii. "heat of passion" or "sudden quarrel"
 - 1. Typically, this is how you get to voluntary manslaughter
- iii. Distinction between 1st degree murder and voluntary manslaughter (huge difference between sentences)
- iv. Normal procedure:
 - 1. Government charges 1st degree
 - 2. Defendant claims heat of passion: voluntary manslaughter
- v. United States v. Quintero: Defendant's daughter dies from blunt force trauma to the head. Defendant claims it was from a fall off of his pickup truck. History of beating the child. Defendant's son testified that the defendant hurt her.
 - 1. He was acquitted of 1st degree by the trial judge, was acquitted of 2nd degree by the jury when they convicted of voluntary manslaughter, and the defendant appeals to try and get involuntary manslaughter.
 - 2. 1st degree murder, then lesser offenses:
 - a. 2nd degree murder
 - b. Voluntary manslaughter
 - c. Involuntary manslaughter
 - 3. Every time they are charged with a higher crime, also charging with the lesser offenses
- vi. **Procedural Steps:**
 - 1. Government charges with murder (usually 1st degree)
 - 2. Defendant claims he acted out of a heat of passion → voluntary manslaughter
 - 3. If the defendant brings evidence the judge will agree to instruct the jury on it
 - 4. Court agrees to instruct
 - a. Has to be evidence in the record to point to, to get lesser offenses

- 5. Government has to prove the absence of heat of passion (intentional killing)
- vii. Heat of passion is essentially a defense the defendant raises
- viii. Defendant cannot claim that the government failed to prove heat of passion because that is not their burden, their burden is to prove the absence of it. (Quintero)
- s. **Adequate Provocation/Heat of Passion**
 - i. Defendant killed the victim
 - ii. Defendant acted with mens rea that would otherwise constitute murder (usually intentionally)
 - 1. U.S. v. Serawop
 - iii. Defendant was adequately provoked into heat of passion
 - 1. Adequate: render an ordinary person (fair average disposition); what a reasonable person would have done during that event (did they have reason to be in that state of mind)
 - iv. No time to cool off
 - 1. "sudden" heat of passion
- t. **Adequate Provocation in Common Law**
 - i. 5 categories
 - 1. Aggravated assault or battery
 - 2. Mutual combat
 - 3. Commission of a serious crime against relative of defendant
 - 4. Illegal arrest
 - 5. Observation of spousal adultery (you have to witness it yourself)
 - ii. These remain ways to show, but they are not exclusive
- u. Modern approach:
 - i. No rigid categories
 - ii. Various factors and combinations could occur
 - iii. Exception:
 - 1. Words alone are not enough for adequate provocation unless stating a fact/allegation
 - 2. Calling someone a name is not enough
- v. **Involuntary Manslaughter**
 - i. An unintentional death
 - ii. Elements:
 - 1. Killing
 - 2. Another person
 - 3. During a misdemeanor, or
 - 4. During a lawful act without due caution, or
 - 5. A lawful act unlawfully

- iii. (last two are criminal negligence or simple recklessness)
- iv. United States v. Schmidt: Driving under the influence, swerved across the highway line and killed people. He was charged with involuntary manslaughter, but the argument for voluntary could be made.

1. **Criminal Negligence**

- a. **Gross deviation from the standard of care;** more than just simple negligence
- b. Defined differently in different jurisdictions
 - i. Regular recklessness and gross negligence
- c. **Key** = extent of risk to human life and extent of awareness by the defendant

- w. Common Conundrums

- i. 1st degree murder or voluntary manslaughter
- ii. 2nd degree murder or involuntary manslaughter (matter of degree)
 1. If someone dies during the commission of a crime
→ vandalism resulting in death is involuntary manslaughter

IV. **Self-defense**

- a. 5 categories of defenses:
 - i. Failure of Proof
 1. Not enough evidence to convict
 2. Government hasn't proven one of the elements
 - ii. Offense modification
 1. Attempting to get lesser offense
 2. Changing to a lower conviction
 3. Goes to jail, but for less time
 - iii. Justifications (affirmative)
 - iv. Excuses (affirmative)
 - v. Nonexculpatory public policy defenses
 1. Public policy violation
 2. Wrong way to go about it
- b. **Affirmative defense:** I did it, but I had a good reason.
 - i. Admit all the elements
 - ii. Turns to the defendant to prove the defense (burden shifts)
 1. Prove by preponderance of the evidence
 - iii. Once the defendant makes his case for his defense, the burden shifts back to the government to prove the affirmative defense is invalid
 1. Prove beyond a reasonable doubt
- c. **Justifications and Excuses** (affirmative)
 - i. Overview
 1. **Justification** (self-defense)

- a. Focus on the act, not the actor
 - b. Morally acceptable conduct by defendant
- 2. **Excuse** (insanity)
 - a. Focus on the actor, not the act
 - b. Act is morally unacceptable, but the actor is unworthy of blame
- ii. **Self-defense**
 - 1. Most common: 1st degree murder/sometimes 2nd degree
 - a. Maybe voluntary manslaughter
 - b. Assault/battery
 - 2. Why is it a defense
 - a. Self-preservation
 - b. Common law defense
 - c. Morality of killing changes when its kill or be killed
 - 3. U.S. v. Peterson: Victim is stealing parts from defendant's car; victim gets a weapon and challenges Peterson (who has a gun). Defendant says he shot to warn; the lug wrench came before the gun. Tries to argue based on the government's case that it was self-defense.
 - a. Jury decided voluntary manslaughter
 - i. Adequately provoked the victim by coming at him
 - ii. Mutual combat
 - b. Issue raised on appeal: whether the retreat/castle doctrine was wrong
 - i. Appellate court says it was correct
 - c. **General requirements of self-defense:**
 - i. Actual or apparent **threat of unlawful and immediate force** made against the defendant
 - ii. The defendant **actually** (subjective) and **reasonably** (objective) believed that threat placed him in imminent peril or death or serious bodily harm
 - iii. It was **necessary**
 - iv. It was **proportional**
 - d. **Three components of self-defense:**
 - i. **Necessity**
 - ii. **Reasonableness**
 - iii. **Proportionality**
 - 4. **Common Law Duty to Retreat**
 - a. If you could escape, it wasn't necessary to act in self-defense/use deadly force
 - b. If you didn't know it wasn't a way to retreat
 - c. Putting yourself in more harm, victim at a disadvantage and preserved life the defendant
 - d. Instinct is to fight; this would say put flight over fight
 - i. Look around for exit loses time/goes against instinct
 - 5. **Stand Your Ground Law**

- a. State rejected duty to retreat
- b. Stand and fight instead
- c. Slight **majority** rule
- d. Stand and use deadly force when it seems reasonably necessary to save himself
 - i. Fight can be your first response

6. **Castle Doctrine**

- a. Do not have to retreat in your own home ever
 - i. Doesn't matter if jurisdiction with duty to retreat rule
 - ii. This is an exception
- b. Would be dumb to surrender your own home to an intruder
- c. How far does it extend?
 - i. Unclear
 - ii. Majority says immediate adjacent to your home

7. **First Aggressor Rule**

- a. If you start the conflict and claim self-defense for your behavior during the conflict you cannot prevail
- b. Exceptions:
 - i. Losing first aggressor status
 - 1. Non-aggressor escalates the fight (non-deadly to deadly force)
 - 2. Retreat by first aggressor (essentially a new conflict)

8. **Proportionality Principle**

- a. Non-deadly with non-deadly force
- b. Deadly with deadly
 - i. Not always but a general rule
- c. Future deadly (threat) cannot be met with deadly force in the present
 - i. Other options
 - ii. Self-defense when no other option

9. **Imperfect Self-defense**

- a. Mitigation defense: reduced sentence
- b. The defendant subjectively believes he needs deadly force
 - i. But a reasonable person would not have (objective)
- c. Perfect = objective (reasonable) and subjective
- d. Imperfect = subjective and unreasonable
- e. Result of imperfect self-defense:
 - i. Reduction in offense
 - ii. Reduction in penalty

iii. **Defense of Others**

- 1. Common law said only defense of others applied to family
 - a. "alter ego" rule: can defend third party strangers when they are the alter ego of the victim

- i. Only use self-defense if the person being beaten could use self-defense
 - ii. Couldn't defend first aggressors even if they didn't know they were in the wrong
 - 2. Modern approach: reasonable belief approach
 - a. MPC
 - b. Majority rule today
 - c. There was a reasonable belief by the actor that the person they defended was in imminent danger
 - i. Still act proportionally
 - d. Court adopts reasonableness approach (reasonable belief approach)
 - e. Defendant must show:
 - i. Used reasonable force
 - ii. The person was in serious imminent threat of death or bodily injury
 - iii. The person would have been justified using force themselves
 - f. Reasonably is:
 - i. Objective and subjective
 - ii. Proportional force

V. **Unlawfully Kill** Element

- a. What is life?
 - i. **"born alive" rule:** you have to be born alive to be killed
 - 1. Traditional **common law** rule
 - 2. An unborn fetus was not included within the definition of a person or human being and therefore the killing of a viable unborn child was not murder.
 - 3. At **common law**, someone (not mother) injures the unborn child and it dies in the womb, not murder
 - a. If the child dies after being born alive (crying) → murder
 - 4. Many states still follow the born alive rule
 - a. There is not a prevailing other approach
 - b. Other states have their own different way of approaching it
 - i. Ex. Viability, conception
 - ii. NC: new crime = "murder of unborn child"
 - 1. Unlawfully causes the death of an unborn child
 - 2. Except abortion
 - 3. Separate from 1st/2nd degree murder
 - 4. Created a whole new crime
- b. What is death?
 - i. **Two ways to show death:**
 - 1. Brain death
 - 2. Respiratory function failure

- a. These are alternatives, don't need both
 - ii. Traditional was cardiopulmonary
 - 1. Added brain death because of changes in technology
 - a. All three parts of the brain cease to function for brain death
 - iii. **The Year and a Day Rule**
 - 1. Traditional common law (minority)
 - 2. Victim dies within 1 year and 1 day of the defendant's act that inflicted the injury
 - 3. **Modern approach:**
 - a. Majority says there is no year and a day rule
 - b. There is no limit
- c. Generally: **euthanasia is not a valid defense**
 - i. Only a few exceptions in a few states allow physician suicide
 - ii. Never not by a physician

VI. Kidnapping

- a. Elements:
 - i. Defendant
 - ii. Knowingly and willingly
 - iii. Transports in interstate commerce (across state lines)
 - iv. A non-consenting person
 - v. Who is held, for ransom, reward, or otherwise (some type of criminal purpose)
- b. U.S. v. Ivy: Ex-boyfriend shot and killed her new boyfriend in front of her and took her with him. She made no attempt to escape or call the police for several days.
 - i. Violent behavior at the beginning with abuse in the past gave her reason to believe he would lash out if she tried to escape.

VII. Sexual Assault Crimes

- a. Traditional common law = rape
- b. Today = sexual assault crimes
- c. Traditional definition:
 - i. Carnal knowledge of a woman forcibly and against her will
 - ii. Males = defendants
 - iii. Females = victims
 - iv. Force = resistance required
 - v. Spousal immunity → did not recognize spousal rape
 - vi. Punishment = death
- d. Today: **sexual assault** (modern approach)
 - i. Gender neutral
 - ii. No spousal immunity
 - iii. No resistance required (force)
 - iv. Rape replaced with a **series of offenses** in many states
 - 1. Forcible
 - 2. Coercive
 - 3. Non-consensual
 - 4. Sexual assault of a minor

- 5. Statutory rape
 - v. No death penalty (8th amendment)
 - vi. could get life imprisonment though
- e. **Modern Distinctions** based on type of sexual conduct
 - i. Common law = only sexual conduct was vaginal rape that qualified as rape
 - ii. Today: **“Sexual Acts”**
 - 1. Vaginal sex
 - 2. Oral sex
 - 3. Anal sex
 - 4. Digital penetration (or object) if done to abuse, humiliate, harass, degrade, or arouse
 - iii. Today: **“Sexual Conduct”**
 - 1. Intentional touching of genitalia, buttocks, breast, with intent to abuse, humiliate, harass, degrade, arouse (under or over clothing)
- f. **Force**
 - i. **Definition:** physical force sufficient to overcome, restrain, or injure the victim
 - ii. U.S. v. Buckley: Boyfriend of victim’s stepsister. She said she wanted him to stop and tried to push him off.
 - 1. Key fact: she tried to push him off
 - 2. Timing issue
 - a. Doesn’t matter if he had already started the sexual act; just at some point during the act there is force
 - iii. **Threats**
 - 1. U.S. v. Denjen: Defendant is a lieutenant at a prison and the victim was an isolated inmate pending her trial. He was charged with forcible sexual assault.
 - a. Issue: was force used?
 - b. Holding: force was used
 - c. **Threats**
 - i. The use of a threat of harm is sufficient to coerce or compel submission by the victim = **force**
 - 2. the force does not have to be a part of the sexual act itself
 - a. force before is sufficient
 - b. used in order to make the consent happen
 - 3. in this case
 - a. he spreads her legs with his body
 - b. done to make the contact
 - c. pushed her back to make the contact
 - d. grabbed her jumpsuit/pinned her down with his weight
 - e. trapped in a cell with him in the doorway and she was isolated
- g. **Fraud and Rape Law**
 - i. 2 types
 - 1. **Fraud in the factum**
 - 2. **Fraud in the inducement**

- ii. Boro v. Superior Court: The defendant claims to be a doctor and plays on fear to get the victim to have intercourse with him. He lies saying that the only way to cure her is to have sex with someone that has been injected with the serum.
 - 1. Key: she consented to the act itself
 - 2. **Fraud in the factum**: deceived as to the act = **rape**
 - 3. Fraud in the inducement: know of the act, deceived as to another issue = not rape
 - 4. **Fraud in the inducement doesn't apply to doctors**
 - a. Some jurisdictions create this distinction
- iii. People v. Pham: Chiropractor touched several women inappropriately during their treatment. He was charged with sexual battery by fraud
 - 1. No requirement that a doctor state the touching was for a medical purpose → they were in his office for medical treatment, it should all be medical touching
 - 2. Fraud in the inducement and fraud in the factum still exist
 - a. Special exception

h. Consent

- i. **Express consent**: not required, **can be implied consent**
 - 1. Don't look at express words only
 - 2. Implied consent is allowed
- ii. Consent has to be **voluntary**
 - 1. Intoxication (influenced or free will?)
 - 2. History of the parties (abuse history → influence)
- iii. **Rejection does not need to be repeated**
 - 1. Victim does not have to repeat refusal at each stage (the no stands)
- iv. **Knowledge** of the lack of consent?
 - 1. Does the defendant need to know of the non-consent?
 - 2. **Prevailing approach**: do not have to prove the defendant's knowledge
 - a. Just knowledge of the sexual act
- v. **Mistake** regarding consent?
 - 1. Divided courts
 - 2. Courts that say knowledge by the defendant is required also say mistake is a defense
- vi. State v. Way (NC): Government says there was no consent ever given. The defendant says consent was given until there was pain.
 - 1. Jury question: what if she initially agrees to the act but withdraws consent during?
 - a. Trial judge:
 - i. After withdrawing of consent, continuation is rape
 - ii. Defendant is convicted
 - 2. Defendant appeals saying the instruction should have been the opposite
 - 3. Supreme Court of NC says the only thing they need is consent to penetration, after that it is not rape
 - a. Look at the moment of penetration, was consent given?

4. Was just overturned and we are no longer the last state that follows this
- i. **“Statutory Rape”**
 - i. Two general categories
 1. **Age-based** (difference in age)
 2. **Position-based** (power imbalance)
 - a. Ex. Position of authority over a kid
 - ii. No force and consent provided so it is not traditional forcible sexual assault
 - iii. Generally, didn’t exist at common law
 - iv. The purpose is to protect children and recognize they are unable to effectively consent
 - v. NC: consenting age is 16
 1. NC Sexual Activity with a Student Law
 - a. Defendant is a teacher, administrator, student teacher, coach, or school safety officer
 - b. Engages in vaginal intercourse or other sexual conduct
 - c. With a student
 - d. At any time while the student and defendant were in the same school, but before the victim stopped being a student
 - vi. State v. Jabowski: 15-year-old victim; 35-year-old defendant. The victim produced evidence that she was 19. Defendant tried the affirmative defense of fraud.
 1. Issue: is intentional misrepresentation of age a defense to statutory rape
 - a. No, it is not
 2. Statute says **mistake is not a defense**
 - a. He tried to say fraud is different because it is intentional deception
 3. Only **mens rea** required: you knew you were having sex = **strict liability** crime
 4. Avoids complexities for the protection of children (public policy)
 - a. The risk should always be on the adult
 5. This is the **majority rule**
 - a. Other courts have adopted fraud as a defense (affirmative defense)

VIII. Inchoate Crimes

- a. “unfinished” crimes
- b. Most common:
 - i. Attempt
 - ii. Conspiracy
 - iii. Solicitation (accomplice liability)
- c. **Attempt**
 - i. Charging failed criminals; we do it to deter and to get people to not try it again; we want to prevent the outcome
 - ii. Very prevalent: everywhere in statutes
 - iii. Punishment scheme

1. Failed punished less than completed crime
 2. Sometimes ½ of the completed sentence
 3. NC: drops a level of crime
- iv. 2 types of attempt:
1. Complete/imperfect: did everything in his power to complete it but something outside the defendant's control stopped it
 2. Incomplete: there was an action left for the defendant to complete the goal; something/someone intervened
 3. No distinction between these in the law
- v. **The Conundrum**
1. Mere **preparation or perpetration**
 - a. When the defendant crosses the line toward perpetration
 - b. Mere preparation = no attempt
 - c. Perpetration = attempt
 - d. **Majority: substantial step**
- vi. **Elements of Attempt:**
1. **Intent to violate the statute/commit crime** (specific intent to commit the target offense)
 - a. Specific intent for every attempt
 - i. Actus reus go to border and to complete the crime as result of the actus reus
 - ii. Must intend the crime
 - b. The action was a substantial step toward the goal of completing the crime
 2. **Take a substantial step toward commission of target offense**
 - a. Move from mere preparation to perpetration
 - b. Issue: should the government have had to put the substantial step specific in the indictment?
 - i. Supreme Court says the government did it correctly
 1. Attempt is a generally known word and the government shouldn't have to define the word
 2. It encompasses the overt act and intent
 3. Don't have to list how, just have to say attempt
 - ii. What were the acts?
 1. Providing false ID
 2. Lying to agent that he was legal
 - c. **Substantial step:**
 - i. Depends on facts and circumstances
 - ii. Corroborate strongly the firmness of defendant's criminal intent
 1. Shows firmness by whole heartedly in it
 - iii. Conduct necessary to completion of the offense
 1. Important to the crime

- d. Key question: would a reasonable observer who sees this conclude that he engaged in that conduct with the goal of committing the target crime?

d. **Merger Rule**

- i. Upon completion of the attempted offense, the attempt merges into the completed crime
 - 1. Can't charge attempted crime with one that has been completed
 - 2. Attempted murder changes to murder when the victim dies

e. **Conspiracy**

- i. Conspiracy = crime (you don't have to commit the crime)
- ii. **There is no merger**; conspiracy is its own **separate crime** = charged with conspiracy and completed crime
- iii. Idea that conspiracy is a separate evil apart from the action of committing the crime
 - 1. More likely to do it when you agree with others (accountability/peer pressure)
- iv. Co-conspirator evidence can be brought in even if it's hearsay
- v. Can get venue for everyone by acts of one co-conspirator in an area
- vi. Conspiracy **committed upon agreement and overt act** taken in furtherance
- vii. **Two types** of federal conspiracies:
 - 1. **General** conspiracy statute
 - a. Applies to all crimes
 - 2. **Specialized** conspiracy statutes
 - a. Ex. Drugs, money laundering, mail and wire fraud
 - b. Do not require an overt act and raised penalty
- viii. **Elements** generally:
 - 1. Two or more people intentionally agreed to commit the crime
 - 2. Defendant intentionally and voluntarily joined the conspiracy with the goal that the underlying crime be committed
 - 3. Overt act committed in furtherance of the crime (general only)
- ix. **Key: agreement**
- x. U.S. v. Burton: No evidence the defendant was in the bank. Government's theory is that he agreed to provide the getaway car. Defendant claims his car was stolen.
 - 1. **Mere association alone is not agreement**: you can hang out with bad people
 - 2. Facts and circumstances show there was an agreement by Burton = conspiracy
 - a. Jury can infer from the circumstances
- xi. U.S. v. Grassi: Conspiracy to distribute controlled substance and transfer unregistered firearms. Government can only get drugs. Grassi says insufficient evidence of agreement to transfer firearms.
 - 1. Grassi never participated in a firearms conversation because they could only show he was present (throw out that count)

2. He was there but did not agree (mere association)
 - a. Knew of the conversation but didn't agree or participate themselves (passively present)
3. Need knowledge and association and other circumstantial evidence may be enough to show agreement

xii. **The Overt Act Requirement**

1. A member of the conspiracy did one of the overt acts described in the indictment for the purpose of advancing or helping the conspiracy
 - a. Does not need to be substantial, can be minor and does not have to be illegal
 - b. Just needs to further the conspiracy
2. Purpose is to give people an out → don't do anything so you aren't conspiring
 - a. Shows seriousness
3. U.S. v. Mohammed: defendant charged with conspiracy to commit mail fraud. He challenges the overt acts in the indictment.
 - a. Additional overt acts were in the instruction instead of the indictment
 - b. He said he needed to be proven to commit an act
 - c. Only one of the coconspirators needs to take an overt act, it does not need to be the defendant
 - d. Inclusion of some overt acts in an indictment does not bar proof of other acts

xiii. **Pinkerton Liability Rule**: "the overt act of one partner in crime is attributable to all"

1. All members of a conspiracy are responsible for acts of the other members if:
 - a. Acts are committed to help **advance/further the conspiracy**; and
 - b. Are within the **reasonably foreseeable** scope of the agreement

xiv. There can be **no conspiracy with a government informer** who secretly intends to frustrate the conspiracy

1. need at least two non-government agents in the conspiracy to have one

f. **Solicitation**

i. **Elements:**

1. Commanding, encouraging, or requesting that another person
2. Commit a crime
3. Intent that the other person commits the crime
4. Defendant's intent is strongly corroborated

ii. Federal = violent crimes only

iii. State = broader

iv. It is a **separate crime**

v. The crime does not actually have to be committed; just one person making the request

- vi. U.S. v. White: White supremacist soliciting murder of a juror who was on the jury of convicting another white supremacist.
 - 1. The government needed to show White posted with intent
 - a. Was there an offer or promised payment of other benefit?
 - b. Threat to do it
 - c. He repeatedly solicited the commission of the offense or expressly stated his seriousness
 - d. He knew or believed that the solicitee had previously committed a serious offense, or
 - e. Provided what is needed for the crime
 - 2. Don't need to show that someone in particular was actually solicited
 - 3. Not free speech because there is not free speech to solicit crimes
- vii. The **merger rule applies**
 - 1. Upon completion of the crime = it merges into the target offense
 - 2. Attempt to complete the crime = merges into attempt
 - a. No more solicitation
- viii. **Punishable as a principal**
 - 1. Solicitor doesn't commit the crime, but he is held liable for whatever the crime is committed
- ix. Solicitation is a **stand-alone crime** when no one does anything
 - 1. Merges into conspiracy or attempt
 - 2. A precursor to other crimes → if any of these happen solicitation goes away = merges
 - 3. When person being solicited agrees = conspiracy
- g. **Accomplice Liability: Aiding and Abetting**
 - i. Common law
 - 1. Principal = person who committed the crime
 - 2. Accessory = getaway driver
 - a. Punished differently
 - ii. Modern approach
 - 1. **Punishable as principal** = all the same
 - 2. You never charge someone with aiding and abetting
 - a. Charge them with the crime committed
 - b. Punishable as principal
 - c. Not a separate crime
 - 3. Aiding and abetting is a theory, not a crime
 - a. **Charged with crime you aided and abetted**
 - b. Not complete until completion of the target offense
 - iii. **Elements:**
 - 1. The defendant assisted or encouraged another in the commission of a crime either before or during the crime
 - 2. Intent to assist with crime
 - 3. Another actually commits the crime

- iv. The cheer leader of a crime is an aider and abetter and they are charged with the crime
 - v. U.S. v. Simpson: The defendant drove Grotte to the bank robbery and knew of the gun he possessed. She was charged with possession of a firearm in the bank robbery and charged with bank robbery.
 - 1. She is punishable as principal
 - 2. Tries to argue double jeopardy
 - a. Congress intent: clearly show intent for two separate crimes
 - 3. Also tries to argue she didn't commit the crime
 - a. Rejected because of accomplice liability
 - b. It doesn't matter if she knew about the gun
- h. Conspiracy or Aiding and Abetting**
- i. Conspiracy
 - 1. Agree with 2 or more people to commit a crime
 - 2. Overt act (if required)
 - 3. Target crime does not need to occur
 - 4. Separate crime
 - ii. Aiding and abetting
 - 1. Defendant assists or encourages the principal in the completion of the crime
 - 2. The crime has to occur
 - 3. Not a separate crime, theory of responsibility
 - iii. Pinkerton liability
 - 1. Some situations with Pinkerton but not aiding and abetting
 - 2. Broader than aiding and abetting
- i. Accessory after the fact**
- i. separate crime
 - 1. before and during the crime are charged as principal
 - 2. charged apart from the principal
 - a. charge people for accessory after the fact
 - ii. lower sentence
 - iii. no involvement in preparation or commission (that would be aiding and abetting)
 - iv. "the clean-up crew"
 - v. U.S. v. Calderon: A gang war/turf war. The defendant picks up the shooter after a crime and she is charged with accessory after the fact to murder. She argues she didn't know the guy was dead or dying and she can't be charged with accessory to murder. She says it would be attempted murder or something lower.
 - 1. Government needs to prove:
 - a. Knowledge that a crime has been committed
 - 2. They couldn't show she knew the victim was dead or dying and the conviction was reversed on insufficient evidence
 - vi. **Key:** person is not involved in the actual commission of the crime or before the crime

1. Needs to know they committed a crime and helped them
2. **Key element = knowledge**
3. Focused on timing → happens after the crime
 - a. Accomplish liability → happens before or during
4. Generally, don't need to know what the crime was
 - a. Except murder → need to show they knew the victim was dead or dying

j. **Abandonment and Withdrawal**

- i. **General Rule** = doesn't matter/not a defense
 1. Attempt – substantial step; conspiracy – agreement
 - a. Completed and you can't get out of them
 2. Majority: no defense
 3. **One exception:** (circumstance)
 - a. Pinkerton liability rule
 - i. Conspiracy → liable for their actions if reasonably foreseeable and in furtherance of the conspiracy
 - ii. Conspiracy is over when someone withdraws
 1. Not a defense because there was a conspiracy
 2. But they are not liable for what happens after they are out of it
- ii. How to Withdrawal
 1. Affirmatively
 - a. Depends on the court but generally look for the person communicating directly to their coconspirator that they withdrawal
 - b. Can't just disappear or not show up
 - c. If situation where the cannot withdrawal safely; go to the police and inform them of the conspiracy and that is a withdraw
 2. Small conspiracy → tell everyone in the conspiracy you withdraw
 3. Big conspiracy → tell whoever you report to/deal with

IX. **Burglary**

- a. Common law (NC and state bar)
- b. **Elements:**
 - i. Break
 - ii. Enter
 - iii. Dwelling house of another
 - iv. At night
 - v. With the intent to commit a felony inside
- c. Specific intent → more than just intending the actus reus
- d. **Breaking**
 - i. Need to be a trespassory entry **created by the defendant**; creating an opening into the dwelling
 1. Entering an existing opening is not breaking = not burglary
 2. Opening an unlocked closed door → created an opening

- ii. No destructive force required
- iii. **Constructive breaking**
 - 1. Created an opening by fraud, deception, or threatened violence
- e. **Entering**
 - i. **Any part of the burglar's body** enters the house = entering
 - ii. If burglar enters by putting an **instrument inside** to commit the felony
 - 1. Not to commit the breaking – it needs to be used to commit the felony
 - 2. Can be used for both but only if used for that intent
- f. **Dwelling House of Another**
 - i. Curtilage of the house is considered dwelling house of another
 - 1. Needs to be directly associated, close to the home/sleeping place
 - 2. Look at circumstances/facts
- g. **With Intent to commit a felony inside**
 - i. Lack of concurrence with breaking and entering
 - ii. If mens rea is not present, → no intent → no burglary
- h. **Nighttime**
 - i. Between sunset and sunrise
 - ii. It changes with the seasons
 - iii. No focus on time

X. **Larceny**

- a. Theft/larceny = same
- b. Common law
- c. **Elements**
 - i. Unauthorized taking (“caption”)
 - 1. Securing control over the item
 - ii. Carrying away (“asportation”)
 - 1. Slight change in position of the item
 - iii. Personal property of another
 - iv. With the intent to permanently deprive another of the property
- d. Larceny is the core; other offenses are built off of it
- e. **Larceny by trick**
 - i. **look at the moment of taking**; they must take **possession** of the property
 - 1. different from taking “title”
 - 2. **false pretenses** → you got “title” to the item, not just possession
 - 3. taking “title” or “ownership” by trickery
 - ii. Purchase = **false pretenses**
 - iii. Borrow/rent = **larceny by trick**
- f. People v. Shannon: they let him go through with the crime to show his intent and help the case for larceny.
 - i. **Asportation**
 - 1. Just need some movement, doesn't need to be out of the store
 - 2. Severed possession of custody of owner and in possession of thief
 - 3. Just a brief moment/slight movement
 - 4. Not an unconditional return of the clothes

- 5. Shoplifting: intent to deprive the store of money here; need intent to deprive the store of some property
- g. Not larceny to take a thing for a **temporary purpose** and intend to return it
- h. Vehicle taking with intent to return it = joyriding
 - i. Unless you destroy the property before you bring it back = permanent deprivation
- i. Doesn't matter if you **steal from a thief**, you are still a thief = committed larceny
 - i. No such thing as finders-takers: must make a reasonable effort to find the true owner
- j. Misdemeanor Larceny and Felony Larceny
 - i. Over \$1,000 = felony
 - ii. Look at market value or replacement value, if market value cannot be determined
 - iii. Sentimental value is not a factor
 - iv. Do not include sales tax → just the price

XI. **Embezzlement**

- a. Lawful possession (unlawful possession = larceny) at the outset
- b. Moment of taking/possession
 - i. Lawful: larceny
 - ii. Unlawful: larceny
- c. **Elements:**
 - i. Defendant took possession lawfully
 - ii. Converted possession for your own benefit
- d. State v. Stahl: clerk at store with drop-box (only access to the manager). Only control over the cash register. Takes money from the cash register and the drop-box. At the time, the amount to exceed for embezzlement was over \$100. He was convicted of embezzlement.
 - i. Court overturns and changes to larceny
 - ii. Should have been separate crimes charged of larceny and embezzlement
- e. **Key: entrusted lawfully** with the property/money
 - i. Look at **moment of possession**

XII. **Robbery**

- a. Larceny plus 2 elements
- b. Added
 - i. By force or fear
 - ii. From the person or immediate presence and control
- c. People v. Gomez: victim is not present at taking initially. Victim follows the defendant and the defendant shoots at him as he is following.
 - i. Court says the force or fear and immediate presence can be **satisfied during the taking or the carrying away**
 - 1. don't need both
- d. U.S. v. Burnley: Robbed a bank without using threat/force. Claims without that, no robbery.
 - i. **Fear = intimidation**

1. Even without express threat; still intimidated through circumstances
2. Infer if they don't comply, something would happen to them
3. Ordinary reasonable person standard
4. Explicit threats not required

XIII. Defenses

- a. Entitled to defenses under the Constitution
- b. Types
 - i. **Failure of Proof** Defense
 1. **Mistake of fact**
 - a. Negates the mens rea element
 - b. Modern rule = mistake of fact must be:
 - i. **Honest and reasonable under the circumstances**
 - ii. Ex. Knowingly possess cocaine
 1. Facts and circumstances
 - c. **Ignorance of law is never a defense**
 - i. Only **exception** is when the statute says the person must know of the law (statutory requirement knowledge be shown)
 2. **Alibi** (failure of proof = identification)
 - a. SODDI defense
 - b. **Defendant claims he wasn't there**
 - c. Rare defense
 - d. **Written notice** to government before trial:
 - i. **Specific places** he claims to have been
 - ii. Name and addresses of **witnesses** he intends to rely on
 1. You can't surprise the government with it
 2. Potential to mislead the jury if no notice
 - e. Notice to the government required for alibi, public authority, and insanity
 - f. Specific instructions required
 - i. U.S. v. Zuniga: refused to instruct on alibi at trial. The court of appeals reversed.
 1. **If evidence is established, the instruction should be given**
 3. **Public Authority**
 - a. Committed a crime **at the request of the government** (informants)
 - b. Knowingly acted in violation of criminal law, but did so **based on reasonable reliance on the authorization by a government official** to have to file notice
 - c. Notice requirements:
 - i. Agency or intelligence agency
 - ii. Agency member who supervised
 - iii. Time frame

- d. **Affirmative defense**
 - i. You admit every element of the crime but claim a different reason why they should not be convicted
 - ii. Burden on the defendant to prove the defense
 - 1. Preponderance of the evidence
 - 2. Goes back to the government to disprove if they meet their burden
 - e. U.S. v. Alvarado: Defendant became a rogue informant. He was a confidential informant several occasions. His previous agreements had expired, and he was told to stop. He never attempted to inform the government
 - i. Very narrow defense for CIs
 - ii. **Requirements to assert and succeed:**
 - 1. Federal law enforcement official **authorized** the defendant to commit the particular act
 - a. Either expressed, or
 - b. Communications in course of dealing to lead a reasonable person to believe
 - 2. Official **had the authority**
 - 3. The defendant **reasonably relied** on the authorization
4. **Duress**
- a. Affirmative defense
 - b. **Applies when:**
 - i. Threat of imminent death or serious bodily harm (can be to a third party)
 - ii. No reasonable, legal alternative
 - iii. The defendant was not responsible for creating the threat
 - c. You **cannot raise duress as a defense to murder**
 - i. Only self-defense to murder
 - ii. Public policy: innocent lives
5. **Necessity**
- a. Choice of two evils
 - b. Duress → another human placing you in a position
 - c. Necessity → other outside circumstances put you in that position
 - d. You can't assert necessity when there were **other reasonable means** to get rid of one of the evils
 - e. **Economic necessity is not** an available defense
 - f. **Not a defense to murder**
6. **Insanity**
- a. Very rare/successful
 - b. Different approaches
 - i. **Majority: M'Nagten Rule**

1. At the time of the crime, the defendant suffered from mental disease or defect
2. That rendered defendant unable to know what he was doing, or
3. If the defendant did know what he was doing, the defendant did not know the wrongfulness of his actions

c. **Key principles**

i. Affirmative defense

ii. **Mental disease or defect**

1. Little guidance on what it is
2. Not the same as mental illness
3. Safe to say:
 - a. Schizophrenia
 - b. Bipolar disorder
4. Legal determination; not medical determination
 - a. Only evidence from the doctor is what disease is