CLERK OF THE DISTRICT COURT MANUAL

33.0 GLOSSARY OF LEGAL TERMS
MODIFIED AND SUPPLEMENTED FOR USE IN IDAHO

Revised April 2007

Legal terminology websites:
http://dictionary.law.com/
http://www.legal-definitions.com/

abstract of record—an abbreviated case history that is complete enough to show an appellate court that the questions presented for review have been reserved.
acknowledgment—a statement of acceptance of responsibility; the short declaration at the end of a legal paper showing that the paper was duly executed and acknowledged.
acquittal—the legal certification, usually by jury verdict, that an accused person is not guilty of the charged offense.
action in personam--(in per-so'nam)—an action determining the rights and interests of the parties themselves in the subject matter of the case.
action in rem--(in rem)—an action determining the title to property and the rights of the parties, not merely among themselves, but also against all persons at any time claiming an interest in that property.
adjudication—the legal process of resolving a dispute; the process of judicially deciding a case; also the judgment given.
administrative license suspension (ALS)—a law enforcement officer may seize the driver's license of an individual believed to be driving under the influence and issue a notice of suspension and a temporary driving permit to the driver. That individual the right to request a hearing within seven (7) days of the notice of suspension of his driver's license to show cause why he refused to submit to or to complete and pass evidentiary testing and why his driver's license should not be suspended. If the driver refused or failed to complete evidentiary testing and does not request a hearing before the court or did not prevail at the hearing, his driver's license will be suspended for one year for his first refusal and for two (2) years for the second refusal within ten (10) years. I.C. § 18-8002.
adversary system—the procedural system in the United States involving active and unhindered parties contesting with each other to put forth a case before an independent decision-maker.
affidavit—a voluntary declaration of facts written down and sworn to by the declarant before an officer authorized to administer oaths.
Alford plea—a guilty plea entered into by a defendant in connection with a plea bargain, without actually admitting guilt. *North Carolina v. Alford*, 400 U.S. 25, 91 S. Ct. 160 (1970).
alibi—a defense based on the physical impossibility of a defendant's guilt by placing the defendant in a location other than the scene of the crime at the relevant time.
allegation—something declared or asserted as a matter of fact, esp. in a legal pleading; a party's formal statement of a factual matter as being true or provable, without its having yet been proved.

alternative dispute resolution (ADR)—a procedure for settling a dispute by means other than litigation, such as arbitration, mediation, or minitrial. This process may occur prior to the filing of the civil action or may occur after the case is filed. A judge may choose to refer a case for alternative dispute resolution.

amended charge—in a criminal action, the prosecutor may petition the court to change the original charge to a less or more severe charge, typically as a consequence of a plea agreement. The reduced charged is known as an amended charge.

amicus curiae--(a-mi'kus ku'ri-e)—"friend of the court"; a person who is not a party to a lawsuit but who petitions the court or is requested by the court to file a brief in the action because that person has a strong interest in the subject matter.

ancillary bill or suit--(an'si-la-ri)—an action, either at law or in equity, that grows out of and is auxiliary to another suit and is filed to aid the primary suit, to enforce a prior judgment, or to impeach a prior decree.

annulment—A judicial or ecclesiastical declaration that a marriage is void. Unlike a divorce, an annulment establishes that marital status never existed in law. Grounds for annulment could include party under legal age, former spouse still living and former marriage still in force, either party of unsound mind, and consent obtained by fraud or force. I.C. § 32-501

answer—a defendant's first pleading that addresses the merits of the case, usually by denying the plaintiff's allegations.

appeal—a proceeding undertaken to have a decision reconsidered by bringing it to a higher authority; esp. the submission of a lower court's or agency's decision to a higher court for review and possible reversal.

appearance—a coming into court as a party or interested person, or as a lawyer on behalf of a party or interested person.

appellate court—a court having jurisdiction of appeal and review; not a "trial court." In Idaho, appeals from the magistrates division are taken to the district court. Appeals from the district court are taken to the Idaho Supreme Court.

appellant—a party who appeals a lower court's decision, usually seeking reversal of that decision.

arbitration—a method of dispute resolution involving one or more neutral third parties who are usually agreed to by the disputing parties and whose decision is binding.

arraignment—the defendant is brought before the court and advised of the charge against him or her and the rights he or she has. If the charge is a misdemeanor the defendant enters a plea in the magistrate division. If the charge is a felony and the defendant is bound over on a felony to answer the charge in district court, the defendant enters a plea in the district court.

arrest of judgment—the staying of a judgment after its entry; esp., a court's refusal to render or enforce a judgment because of a defect apparent from the record.

assigned judge—the judge who made the final determination in a case or to whom the case is currently assigned.

at issue—taking opposite sides; under dispute; in question.

attachment—the seizing of a person's property to secure a judgment or to be sold in satisfaction of a judgment.

attorney of record—the lawyer who appears for a party in a lawsuit and who is entitled to receive, on the party's behalf, all pleadings and other formal documents from the court and from other parties.

BAC (blood alcohol content)—the concentration of alcohol in one's bloodstream, expressed as a percentage; used to determine whether a person is legally intoxicated. It is unlawful for any person who has a BAC of 0.08 or greater to drive or be in actual physical control of a motor vehicle within the state of Idaho. I.C. § 18-8004

BAC hearing—a formal court hearing in which a person whose driver's license has been seized petitions the court to show cause why he refused to submit to or to complete and pass evidentiary testing and why his driver's license should not be suspended. I.C. § 18-8002.

bail—a security such as cash or a bond; esp., security required by a court for the release of a prisoner who must appear at a future time.

bail bond—a bond given to a court by a criminal defendant's surety, guaranteeing that the defendant will duly appear in court in the future; a bond given to obtain a prisoner's release and to secure the prisoner's appearance to answer legal process.

bail bond forfeiture—If the defendant fails to appear, the surety surrenders the amount of the bail to the court. The surety has 90 days to deliver the defendant to any Idaho peace officer, in which case the bail will be exonerated. I.C. § 19-2927.

bail bond exoneration—a process by which the bond money paid to the court to ensure an individual's appearance in court is returned to that individual, typically when that person has been found not guilty.

bailiff—a court officer who maintains order during court proceedings and is given custody of the jury.

banc—(bangk)—bench; the place where a court permanently or regularly sits. An "en banc sitting" is a meeting of all the judges of a court, as distinguished from the sitting of a single judge.

bankruptcy—a federal court proceeding, usually triggered by insolvency, in which a person is relieved of most debts and undergoes a judicially supervised reorganization or liquidation for the benefit of that person's creditors. A federal bankruptcy proceeding typically suspends any case activity in which the debtor may be involved in state courts.

bench—the raised area occupied by the judge in a courtroom.

bench warrant—a warrant issued directly by a judge to a law-enforcement officer, esp. for the arrest of a person who has been held in contempt, has been indicted, has disobeyed a subpoena, or has failed to appear for a hearing or trial.

bifurcated trial—a trial that is divided into two stages, such as for guilt and punishment or for liability and damages.

binding instruction—an instruction requiring a jury to find for one party and against the other if the jury determines that a given set of facts exists.

Bind over—to hold a defendant for proceedings in the district court upon a finding of probable cause at a preliminary hearing that the defendant committed a crime or upon a waiver of preliminary hearing by the defendant.

brief—a written statement setting out the legal contentions of a party in litigation, esp. on appeal; a document prepared by counsel as the basis for arguing a case, consisting of legal and factual arguments and the authorities in support of them. Also termed *legal brief*.

burden of proof—a party's duty to prove a disputed assertion or charge.
calendar call—a court session in which the judge calls each case awaiting trial, determines its status, and assigns a trial date.
caption—the introductory part of a court paper stating the names of the parties, the name of the court, the docket or file number, and the title of the action.
certification—written declaration verifying that a form is a true and correct copy of the original.
certiorari—(ser'shi-o-ra'ri)—an extraordinary writ issued by an appellate court, at its discretion, directing a lower court to deliver the record in the case for review. Proceedings for a writ of certiorari are not applicable in the Idaho judicial system, except as the United States Supreme Court may grant certiorari on a case decided by the Idaho Supreme Court.
challenge to the array—a legal challenge to the manner in which the entire jury panel was selected, usually for a failure to follow prescribe procedures designed to produce impartial juries.
chambers—private office or room of a judge.
change of venue—the transfer of a lawsuit from one locale to another, usually because of questions of fairness..
Child Protective Act—(commonly referred to as CPA)—the statutory law dealing with the protection of neglected or abused children. I.C. § 16-1601 et seq.
circumstantial evidence—evidence based on inference and not on personal knowledge or observation.
civil protection order—an order issued by the court upon a showing that there is an immediate and present danger of domestic violence to the petitioner. The order may grant the petitioner temporary custody of children, restrain a party from committing acts of domestic violence, exclude the respondent from the dwelling which the parties share or from the residence of the petitioner, require the respondent to participate in treatment or counseling services, or other relief as the court deems necessary for the protection of a family or household member, including orders or directives to a peace officer. I.C. § 39-6306
claim—the aggregate of operative facts giving rise to a right enforceable by a court; the assertion of an existing right; a demand for money or property to which one asserts a right.
CLASS (Case Load Analysis Support System)—a statewide computer system used to gather statistics and case information from courts throughout Idaho.
code—a collection of statutes systematically arranged into chapters, table of contents and index, and promulgated by legislative authority. I.C. Idaho Code
codicil--(kod'i-sil)—a supplement or addition to a will, not necessarily disposing of the entire estate but modifying, explaining or otherwise qualifying the will in some way.
commit—to send a person to prison or to a mental health facility, esp. by court order.
common law—the body of law derived from judicial decisions, rather than from statutes or constitutions.
commutation—the substitution in a particular case of a less severe punishment for a more severe one that has already been judicially imposed on the defendant.
comparative negligence—a plaintiff's own negligence that proportionately reduces the damages recoverable from a defendant.

competency--in the law of evidence, the presence of those characteristics which render a witness legally fit and qualified to give testimony. All witnesses are presumed competent. I.R.E. 601.

complaint—the initial pleading that starts a civil action and states the basis for the court's jurisdiction, the basis for the plaintiff's claim, and the demand for relief.

concurrent sentence—two or more sentences of jail time to be served simultaneously.

condemnation—the determination and declaration that certain property (esp. land) is assigned to public use, subject to reasonable compensation; the exercise of eminent domain by a governmental entity.

conformed copy—an exact copy of a document bearing written explanations of things that were not or could not be copied, such as a note on the document indicting that it was signed by a person whose signature appears on the original.

consecutive sentence—Two or more sentences of jail time to be served in sequence.

conservator—a guardian, protector, or preserver; a person or institute appointed to manage the financial affairs and property of an incapacitated person.

contempt of court—conduct that defies the authority or dignity of a court or legislature, punishable usually by fine or imprisonment. "Direct contempt" is contempt that is committed in open court, as when a lawyer insults a judge on the bench. "Indirect contempt" is contempt that is committed outside the court, as when a party disobeys a court order.

corroborating evidence—evidence that differs from but strengthens or confirms other evidence (esp. that which needs support).

costs—an allowance for expenses in prosecuting or defending a suit. On occasions this may include attorney fees.

counterclaim—a claim for relief asserted against an opposing party after an original claim has been made; esp., a defendant's claim in opposition to or as a setoff against the plaintiff's claim.

court reporter—a person who records testimony, stenographically or by electronic or other means, and when requested, prepares a transcript.

court trial—a trial before a judge without a jury. The judge then renders the decision. Also termed *bench trial*.

cross-claim—a claim asserted between codefendants or coplaintiffs in a case and that relates to the subject of the original claim or counterclaim.

cross-examination—the questioning of a witness at a trial or hearing, or in the taking of a deposition, by the party opposed to the one who called the witness. The cross-examiner is typically allowed to ask leading questions but is traditionally limited to matters covered on direct examination and to credibility issues.

Custody Review Board—the board created by the Idaho legislature for the purpose of reviewing cases of certain, older juveniles in the custody of the Idaho Department of Juvenile Corrections and to issue an opinion to the Director as to whether that juvenile should be released from state custody or should remain in custody for an extended period of time to address competency, accountability, and community protection.

damages—money claimed by, or ordered to be paid to, a person as compensation for loss or injury.

debtor exam—after judgment has been entered on behalf of the plaintiff against a defendant in a civil matter, the plaintiff will want to collect the property or money

ordered paid to him by the court. The defendant is then brought back to the court and placed under oath to determine where the defendant's resources are located.

declaratory judgment—a binding adjudication that establishes the rights and other legal relations of the parties without providing for or ordering enforcement.

decree—traditionally, a judicial decision in a court of equity, divorce, or probate—similar to a judgment of a court of law.

default—a "default" in an action of law occurs when a party omits to plead within the time allowed or fails to appear at the trial.

default judgment—a judgment entered against a defendant who has failed to plead or otherwise defend against the plaintiff's claim, often by failing to appear at trial, or who does not comply with an order, esp., an order to comply with a discovery request.

defendant—a person sued in a civil proceeding or accused in a criminal proceeding.

de novo—(de no'vo)—"anew." A "trial de novo" is the retrial of a case. An "appeal de novo" is an appeal in which the appellate court uses the trial court's record but reviews the evidence and law without deference to the trial court's ruling.

deponent—one who testifies by deposition.

deposition—a witness's out-of-court testimony that is reduced to writing for later use in court or for discovery purposes.

direct evidence—evidence that is based on personal knowledge or observation and that, if true, proves a fact without inference or presumption.

direct examination—the first questioning of a witness in a trial or other proceeding, conducted by the party who called the witness to testify.

directed verdict—a judgment entered on the order of a trial judge who takes over the fact-finding role of the jury because the evidence is so compelling that only one decision can reasonably follow or because it fails to establish a prima facie case.

discovery—the act or process of finding or learning something that was previously unknown. In Idaho the usual modes of discovery are depositions, interrogatories, requests for production of documents, and requests for admission.

dismissal without prejudice—a dismissal that does not bar the plaintiff from refilling the lawsuit within the applicable limitations period. A "dismissal with prejudice" bars the plaintiff from bringing or maintaining an action on the same claim or cause.

disqualification—a judge may disqualify him/herself or be disqualified from hearing a case. Judges may disqualify themselves if they know the party or otherwise have personal knowledge of circumstances associated with the case that would make it difficult for them to impartially hear the case. An attorney may disqualify a judge for cause if it is his/her opinion that the judge would not be able to hear the case in a fair and impartial manner.

dissent—a term commonly used to denote the disagreement of one or more judge of a court with the decision of the majority. To disagree with another or others; to render a minority opinion in the decision of a case; disagreement of an individual juror with the verdict, announced on the polling of the jury. (Ballentine's Law Dictionary)

district judge—a judge of the district court elected district wide or appointed by the governor following screening by the State Judicial Council. District judges have original jurisdiction in all cases, except for a few limited proceedings that may be initiated in the Supreme Court. However, by assignment many cases originate in the magistrates

division. The district court also hears appeals from decisions in the magistrates division and from various state agencies and commissions.

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

domestic relations—a generic categorization of cases dealing with marriage, divorce, adoption, child custody and support, and other family related issues.

domestic violence proceedings—a process in which a person may petition the court to issue an order of protection from a spouse or family member who has threatened or harmed the person seeking the domestic violence protective order.

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

easement—an interest in land owned by another person, consisting in the right to use or control the land, or an area above or below it, such as a roadway, gateway or water line.

embezzlement—the fraudulent taking of personal property with which one has been entrusted.

eminent domain—the inherent power of a governmental entity to take privately owned property, esp. land, and convert it to public use, subject to reasonable compensation for the taking.

en banc—on the bench; all judges of the court sitting together to hear a cause.

enjoin—to require a person to perform or to refrain from some act by writ of injunction from a court.

entrapment—a law-enforcement officer's or government agent's inducement of a person to commit a crime, by means of fraud or undue persuasion, in an attempt to later bring criminal prosecution against that person.

equitable action—an action that seeks equitable relief, such as an injunction or specific performance, as opposed to damages.

escheat—(es-cheet)—the reversion of property (esp. real property) to the state upon the death of an owner who has neither a will nor any legal heirs.

escrow—(es'kro)—a legal document or property delivered by a promisor to a third party to be held by the third party for a given amount of time or until the occurrence of a condition, at which time the third party is to hand over the document or property to the promisee.

estoppel—(es-top'el)—a bar that prevents one from asserting a claim or right that contradicts what one has said or done befire or what has been legally established as true.

et al.—an abbreviation of *et alia*, meaning "and others."

et seq.—an abbreviation of *et sequentes*, or *et sequentia*, meaning "and those that follow."

ex contractu—(ex kon-trak'tu)—in civil law rights and causes of action are divided into two classes: those arising ex contractu ("from a contract") and ex delicto ("from a tort").

ex delicto—(ex de-lik'to)—rights and causes of action arising from a wrong or "tort."

executor—A person named by a testator to carry out the provisions in the testator's will. In Idaho called a "personal representative."

exhibit—a document, record, or other tangible object formally introduced as evidence in court; also a document attached to and made part of a pleading, motion, contract, or other instrument.

ex parte—(ex par'tee)—On or from one party, usually without notice to or argument from the adverse party.
expert evidence—evidence about a scientific, technical, or professional issue given by a person qualified to testify because of familiarity with the subject or special training in the field.
ex post facto—(ex post fak'to)—"from a thing done afterward"; an act or fact occurring after some previous act or fact, and relating thereto; retroactively.
expunge—to destroy or erase.
extenuating circumstances—circumstances which render a crime less aggravated, heinous, or reprehensible than it would otherwise be.
extradition—the official surrender of an alleged criminal by one state or nation to another having jurisdiction over the crime charged.
fair arrest—any lawful physical restraint of another's liberty, whether in prison or elsewhere.
fair comment—a statement based on the writer's or speaker's honest opinion about a matter of public concern; fair comment is a defense to libel or slander.
fair preponderance—evidence sufficient to create in the minds of the triers of fact the belief that the party which bears the burden of proof has established its case.
false pretenses—the crime of knowingly obtaining title to another's personal property by misrepresenting a fact with the intent to defraud.
felony—a crime of a graver nature than a misdemeanor; an offense punishable by imprisonment in a penitentiary for more than a year or death.
fiduciary—(fi-du'shi-a-ri)—one who owes to another the duties of good faith, trust, confidence, and candor.
finding of fact—a determination by a judge, jury, or administrative agency of a fact supported by the evidence in the record, usually presented at the trial or a hearing.
forgery—the act of fraudulently making a false document or altering a real one to be used as if genuine.
fraud—a knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment.
fugitive warrant—a warrant that authorizes law-enforcement officers to take into custody a person who has fled from one state to another to avoid prosecution or punishment.
Full Faith and Credit—requires states to give effect to the legislative acts, public records, and judicial decisions of other states.
garnishment—a judicial proceeding in which a creditor asks the court to order a third party who is indebted to or is bailee for the debtor to turn over to the creditor any of the debtor's property held by that third party.
garnishee—a person or institution that is indebted to or is bailee for another whose property has been subjected to garnishment.
general assignment—the voluntary transfer, by a debtor, of all his property to a trustee for the benefit of all of his creditors.
grand jury—(see jury, grand).
gratuitous guest—in automobile law, the person riding at the invitation of the owner of a vehicle, or his authorized agent, without payment of a consideration or fare.

guardian—one who has the legal authority and duty to care for another's person or property, esp. because of the other's infancy, incapacity, or disability.
guardian ad litem—(ad li'tem)— a guardian, usually a lawyer, appointed by the court to appear in a lawsuit on behalf of an incompetent or minor party.
habeas corpus—(ha'be-as kor'pus)—"that you have the body"; the name given a variety of writs whose object is to bring a person before a court or judge. In most common usage, it is directed to the official or person detaining another, commanding him to produce the body of the prisoner or person detained so the court may determine if such person has been denied his liberty without due process of law.
harmless error—an error that does not affect a party's substantive rights or the case's outcome.
hearsay—evidence not proceeding from the personal knowledge of the witness. It should be noted that the law on hearsay is one of the more complicated areas of the law of evidence with many qualifications and exceptions. "'Hearsay' is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." IRE 801.
holographic will—a will that is entirely handwritten by the testator. Idaho allows holographic wills; not all states do. The technical requirements for a valid holograph vary from state to state.
hostile witness—a witness who is biased against the examining party or who is unwilling to testify.
hung jury—a jury that cannot reach a verdict by the required voting margin.
hypothetical question—a trial device that solicits an expert witness's opinion based on assumptions treated as facts established by evidence.
impeachment of witness--an attack on the credibility of a witness by the testimony of other witnesses on evidence and by his own testimony during examination
implied contract—a contract in which the promise made by the obligor is not express, but inferred by his conduct or implied in law.
imputed negligence—negligence of one person charged to another; negligence resulting from a party's special relationship with another party who is originally negligent.
inadmissible—that which, under the established rules of evidence, cannot be admitted or received.
in camera—(in kam'e-ra)—"in a chamber"; in private.
incompetent evidence—evidence that is for any reason inadmissible.
indeterminate sentence--an indefinite sentence of "not to exceed" so many years, the exact term to be served being afterwards determined by parole authorities within the maximum limits set by the court or by statute.
indictment—the formal written accusation of a crime, made by a grand jury and presented to a court for prosecution against the accused person.
inferior court—any court subordinate to the chief appellate court in a particular judicial system.
information—a formal criminal charge made by a prosecutor without a grand-jury indictment.
infraction—a violation, usually of a rule or local ordinance, not punishable by incarceration.
injunction—a court order commanding or preventing an action.

in limine—"at the outset"; preliminarily, presented to only the judge, before or during trial.
instruction—a direction or guideline given by the judge to the jury concerning the law of the case.
inter alia—(in'ter a'li-a)—"among other things."
inter alios—(in'ter a'li-os)—"among other persons"; between others.
interlocutory—interim or temporary, not constituting a final resolution of the whole controversy.
interrogatories—written questions submitted to an opposing party in a lawsuit as part of discovery.
intervention—the entry into a lawsuit by a third party who, despite not being named a party to the action, has a personal stake in the outcome.
intestate—of or relating to a person who has died without a valid will.
ipso facto—"by the fact itself"; by the very nature of the situation.
irrelevant—evidence not relating to or applicable to the matter at issue; not supporting the issue.
ISTARS—an acronym for Idaho Statewide Trial Court Automated Records System. ISTARS is a computer system used by Idaho's trial courts to assist in the processing of all cases filed at the trial court level.
judgment—a court's final determination of the rights and obligations of the parties in a case.
jurisdiction—a government's general power to exercise authority over all persons and things within its territory.
jurisprudence—the philosophy of law; the study of the general or fundamental elements of a particular legal system, as opposed to its practical and concrete details.
jury—a group of persons selected according to law and given the power to decide questions of fact and return a verdict in the case submitted to them.
jury, grand—a jury of inquiry whose duty is to receive complaints and accusations in criminal cases, hear the evidence and find bills of indictment in cases where they are satisfied that there is probable cause that a crime was committed and that a trial ought to be held.
jury, petit—the ordinary jury of twelve (or fewer) persons summoned and empaneled in the trial of a specific civil or criminal case. So called to distinguish it from the grand jury.
Juvenile Corrections Act—(commonly referred to as the JCA)—the statutory law dealing with children charged with violations of the law other than traffic offenses. I.C. § 20-501 et seq.
leading questions—a question that suggests the answer to the person being interrogated; esp. a question that may be answered by a mere "yes" or "no." Generally prohibited on direct examination.
levy—a seizure; the legally sanctioned seizure and sale of property; the money obtained from such a sale.
libel—to defame someone in a permanent medium, esp. in writing.
lien—a legal right or interest that a creditor has in another's property, lasting usually until a debt or duty that it secures is satisfied.

limitation—a statutory period after which a lawsuit or prosecution cannot be brought in court.

lis pendens— "a pending lawsuit"; a notice, recorded in the chain of title to real property, required or permitted in some jurisdictions to warn all persons that certain property is the subject matter of litigation and that any interests acquired during the pendency of the suit are subject to its outcome.

litigate—to contest a suit in court; to test the validity of a claim by action.

locus delicti—(lo'kus de-lik'ti)—"place of the wrong"; the place where an offense is committed; the place where the last event necessary to making the actor liable occurs.

magistrate—a judge of the magistrates division of the district court. Magistrates have limited jurisdiction as determined by rules of the Supreme Court and the district court. They are selected by the Magistrates Commission and stand retention election on a "yes/no" ballot.

malfeasance—(mal-fe'zans)—a wrongful or unlawful act; esp., wrongdoing or misconduct by a public official.

malicious prosecution—the institution of a criminal or civil proceeding for an improper purpose and without probable cause. Once a wrongful prosecution has ended in the defendant's favor, he may sue for tort damages.

mandamus—a writ issued by a superior court to compel a lower court or a government officer to perform mandatory or purely ministerial duties correctly.

mandate—an order from an appellate court directing a lower court to take specific action.

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

material evidence—evidence having some logical connection with the consequential facts or the issues.

mediation—a method of nonbinding dispute resolution involving a neutral third party who tries to help the disputing parties reach a mutually agreeable solution.

mental disease or defect—(1) a defendant's lack of mental capacity to understand the proceedings against him or to assist in his own defense; (2) a mental condition in a defendant excluding responsibility for the commission of an offense.

mesne—(meen)—intermediate; intervening.

minutes—the official record of proceedings; e.g., court minutes.

misdemeanor—a crime that is less serious than a felony and is usually punishable by fine, penalty, forfeiture, or confinement (usually for less than a year) in a place other than a prison.

misfeasance—a lawful act preformed in a wrongful manner.

mistrial—a trial that the judge brings to an end, without a determination on the merits, because of a procedural error or serious misconduct occurring during the proceedings; a trial that ends inconclusively because the jury cannot agree on a verdict.

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

moot—unsettled or undecided; having no practical significance.

moral turpitude—conduct that is contrary to justice, honesty, or morality.

motion in limine—a pretrial request that certain inadmissible not be referred to or offered at trial; usually made when the mere mention of evidence would prejudice the jury against the party.
multiplicity of actions—the existence of two or more lawsuits litigating the same issue against the same defendant.
murder—the unlawful killing of a human being with malice aforethought, either express or implied.
negligence—the failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation.
next friend—a person who appears in a lawsuit to act for the benefit of an incompetent or minor plaintiff, but who is not a party to the lawsuit and is not appointed as a guardian.
no bill—a grand jury's notation that insufficient evidence exists for an indictment on a criminal charge.
no contact order—a court order that prevents one person from having any contact with another.
nolo contender—"I do not wish to contend"; defendant neither admits or denies a crime but accepts punishment as if he/she were guilty.
nominal party—a party who, having some interest in the subject matter of a lawsuit, will not be affected by any judgment but is nonetheless joined in the lawsuit to avoid procedural defects.
non compos mentis—(non kom'pos)—"not master of one's mind"; insane.
non obstante veredicto—(non ob-stan'te ve-re-dik'to)--notwithstanding the verdict. A judgment entered by order of court for one party, even though a jury verdict has been rendered for the opposing party.
notice to produce—in pretrial discovery, a party's written request that another party provide specified documents or other tangible things for inspection and copying.
nunc pro tunc—"now for then"; having a retroactive legal effect through a court's inherent power.
oath—a solemn declaration, accompanied by a swearing to God or a revered person or thing, that one's statement is true or that one will be bound to a promise.
objection—a formal statement opposing something that has occurred, or is about to occur, in court and seeking the judge's immediate ruling on the point.
of counsel—an attorney employed to assist in the preparation or management of the case, or its presentation on appeal, but who is not the principal attorney of record.
opinion evidence—a witness's belief, thought, or inference about a disputed fact.
order to show cause hearing--a hearing in which a person is ordered to appear in court and explain why the party took (or failed to take) some action or why the court should or should not grant some relief.
out of court—one who has no legal status in court is said to be "out of court," i.e., he is not before the court. For example, when a plaintiff, by some act of omission or commission, shows that he is unable to maintain his action, he is frequently said to have put himself "out of court."
own recognizance—the release of a defendant in a criminal case in which the court takes the defendant's word that he or she will appear for a scheduled matter or when told to appear.
panel—a list of persons summoned as potential jurors.

parol-evidence rule—the principle that a writing intended by the parties to be a final embodiment of their agreement cannot be modified by evidence that adds to, varies, or contradicts the writing..

parole—the release of a prisoner from imprisonment before the full sentence has been served.

party—one by or against whom a lawsuit is brought.

peremptory challenge—one of a party's limited number of challenges that need not be supported by any reason, although a party may not use such a challenge in a way that discriminates against a protected minority.

perjury—the act or an instance of a person's deliberately making material false or misleading statements while under oath.

petit jury—see jury, petit.

petition—a formal written request presented to a court or other official body.

plaintiff—the party who brings a civil suit in a court of law.

plea bargain—a negotiated agreement between a prosecutor and a criminal defendant whereby the defendant pleads guilty to a lessor offense or to one of multiple charges in exchange for some concession by the prosecutor, usually a more lenient sentence or a dismissal of the other charges.

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

polling the jury—the asking of each how member of a jury individually voted.

post-conviction relief—the procedure for a prisoner to request a court to vacate or correct a conviction or sentence.

power of attorney--an instrument granting someone authority to act as agent or attorney-in-fact for the grantor.

prejudicial error—synonymous with "reversible error"; an error that affects a party's substantive rights or the case's outcome, and is thus ground for reversal if the party properly objected.

preliminary hearing—a hearing held in the magistrates division on a felony charge to determine whether there is sufficient evidence to prosecute an accused person.

pretrial hearing—an informal meeting at which opposing attorneys confer, usually with the judge, to work toward the disposition of the case by discussing matters of evidence and narrowing the issues that will be tried..

preponderance of evidence—the greater weight of the evidence; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other.

presentment—a formal written accusation returned by a grand jury on its own initiative, without a prosecutor's previous indictment request.

presumption of fact—a type of rebuttable presumption that may be, but as a matter of law need not be, drawn from another established fact or group of facts.

presumption of law—a legal assumption that a court is required to make if certain facts are established and no contradictory evidence is produced.

probable cause hearing—a hearing to determine whether there is sufficient evidence to warrant the filing of a charge against a defendant.
probate—the judicial process by which a testamentary document is established to be a valid will; the proving of a will to the satisfaction of the court.
probation—a court-imposed criminal sentence that, subject to stated conditions, releases a convicted person into the community instead of sending the criminal to jail or prison.
probation violation—a person who has been found guilty or has admitted to committing a crime is often placed on probation by a judge. Typically there are conditions attached to probation that if they are not fulfilled, will result in violation of conditions of probation and may result in a probation being revoked.
pro se—representing himself or herself; without a lawyer.
prosecutor—a legal officer who represents the government in criminal proceedings.
proximate cause—a cause that directly produces and without which the event would not have occurred.
public defender—an attorney that is provided to defend an individual charged with a criminal offense who cannot afford to hire a private attorney.
punitive damages—damages awarded in addition to actual damages when the defendant acted with recklessness, malice, or deceit; punitive damages are intended to punish and therefore deter blameworthy conduct.
QDRO called "quad-row"—"Qualified Domestic Relations Order"; a special order used to accomplish payment of retirement or pension benefits to an ex-spouse.
quash--to terminate; to annul or make void.
quasi judicial—(kwa'si)—authority or discretion vested in an officer, wherein his acts are that of a judicial character.
quid pro quo—"something for something"; a thing that is exchanged for another thing of more or less equal value.
quo warranto—(kwo wo-ran'to)—a writ issuable by the state, through which it demands an individual to show by what right he exercises an authority which can only be exercised through grant or franchise emanating from the state.
reasonable doubt—an accused person is entitled to acquittal if, in the minds of the jury, his guilt has not been proved beyond a "reasonable doubt"; that state of the minds of jurors in which they cannot say they feel an abiding conviction as to the truth of the charge.
rebuttal—in-court contradiction of an adverse party's evidence; the time given to a party to present contradictory evidence or arguments.
recusal—removal of oneself as judge or policy-maker in a particular matter, esp. because of a conflict of interest.
redirect examination—a second direct examination, after cross-examination, the scope ordinarily being limited to matters covered during cross-examination.
reduced charge—see amended charge
referee—a person to whom a cause pending in a court is referred by the court to take testimony, hear the parties, and report thereon to the court. He is an officer exercising judicial powers and is an arm of the court for a specific purpose.
register of actions—a chronological history of the events associated with a court case. The register of actions is typically maintained in a computerized format on the ISTARS computer.

remand—to order back to custody or send back; e.g., a defendant being remanded to the custody of the sheriff or on appeal being remanded to the lower court.
remittitur of record—the document filed with the Supreme Court Clerk's Office containing the decision made by the Supreme Court or Court of Appeals, usually remanding to lower court once appeal decided.
removal, order of—an order by a court directing the transfer of a cause to another court.
reply—the plaintiff's response to the defendant's counterclaim, plea, or answer.
respondent—the party against whom an appeal is taken; the party against whom a motion or petition is filed.
rest—a party is said to "rest" or "rest his case" when he has presented all the evidence he intends to offer.
retained jurisdiction—a judge, after sentencing an individual to a correctional institution may retain jurisdiction over that individual, which typically lasts 180 days. At the end of that time, the prisoner is returned to the court where his/her progress is evaluated to determine whether the original sentence should be imposed or the individual should be allowed on probation.
retainer—a client's authorization for a lawyer to act in a case; a fee paid to a lawyer to secure legal representation.
reviewed and retained—a generic term that indicates that a judge has reviewed a case file for progress and wishes to allow it to be retained on his calendar.
Rule 11 Plea Agreement—Idaho Criminal Rule 11—an agreement that the parties put together which may be binding or not binding.
Rule 35—Idaho Criminal Rule 35—a motion to reconsider sentence.
Rule 60(b)—Idaho Civil Rule 60(b)—a motion stating grounds for relief from a judgment or order.
rule of court—a rule governing the practice or procedure in a given court. Rules of court are either general or special: the former are the regulations by which the practice of the court is governed; the latter are special orders made in particular relief cases.
rule nisi, or rule to show cause—(ni'si)—a court order that will become absolute unless the adversely affected party shows the court, within a specified time, why it should be set aside.
search, unreasonable—an examination without authority of law of one's premises or person with a view to discovering stolen contraband or illicit property or some evidence of guilt to be used in prosecuting a crime.
search warrant—a judge's written order authorizing a law-enforcement officer to conduct a search of a specified place and to seize evidence.
self-defense—the use of force to protect oneself, one's family, or one's property from a real or threatened attack. The law of "self defense" justifies an act done in the reasonable belief of immediate danger. When acting in justifiable self-defense, a person may not be punished criminally nor held responsible for civil damages.
sentence—the judgment that a court formally pronounces after finding a criminal defendant guilty; the punishment imposed on a criminal wrongdoer.
separate maintenance—money paid by one married person to another for support if they are no longer living as husband and wife.

separation or exclusion of witnesses—an order of the court requiring all witnesses, except the plaintiff or defendant, to remain outside the courtroom until each is called to testify to prevent them from hearing the testimony of others.
sequestration—holding a jury separate and apart from outside contact to prevent tampering and exposure to public.
sheriff—a county's chief police officer, usually elected, who in most jurisdictions acts as a custodian of the county jail, executes civil and criminal process, and carries out judicial mandates within the county.
sine qua non—(si'ne kwa non)—"without which not"; an indispensable condition or thing; something upon which something else depends.
slander—a defamatory statement expressed in a transitory form, esp. speech.
small claims—known as the "peoples' court," the small claims court handles disputes between people that involve monetary amounts of less than $3,000. No jury trials are available in small claims nor are attorneys allowed to argue in small claims court.
Soldiers and Sailors Relief Act—a federal law that allows civil matters in which soldiers or sailors are involved to be suspended if the soldier or sailor is called into active duty during a national emergency.
specific performance—a court-ordered remedy that requires precise fulfillment of a legal or contractual obligation when monetary damages are inappropriate or inadequate, as when the sale of real estate or a rare article are involved.
stare decisis--(sta're de-si'sis)—"to stand by things decided"; the doctrine of precedent, under which it is necessary for a court to follow earlier judicial decisions when the same points arise again in litigation.
state's evidence—testimony provided by one criminal defendant—under a promise or immunity or reduced sentence—against another criminal defendant.
statute—a law passed by a legislative body.
statute of limitations—a statute establishing a time for suing in a civil case, based on the date when the claim accrued (as when the injury occurred or was discovered).
stay—the postponement or halting of a proceeding, judgment, or the like.
stipulation—a voluntary agreement between opposing parties concerning some relevant point.
subpoena—a writ commanding a person to appear before a court or other tribunal, subject to a penalty for failing to comply.
subpoena duces tecum—a subpoena ordering the witness to appear and to bring specified documents or records.
substantive law—the part of the law that creates, defines, and regulates the rights, duties, and powers of parties.
sue—to institute a lawsuit against another party.
summons—a court document used to commence a civil or criminal action or court proceeding which serves as a means of acquiring jurisdiction over a party.
supersedeas—(su per-se'de-as)—"you shall desist"; a writ or bond that suspends a judgment creditor's power to levy execution, usually pending appeal.
talesman—(talz'man)—a person selected from among the bystanders in court to serve as a juror when the original jury panel has become deficient in number.
testimony—evidence that a competent witness under oath or affirmation gives at trial or in an affidavit or deposition.

tort—a civil wrong for which a remedy may be obtained, usually in the form of damages.
Tort Claims Act—statutory provisions setting forth the conditions for bringing actions against the state, state agencies, and employees.
transcript—a handwritten, printed, or typed copy of testimony given orally; esp., the official record of proceedings in a trial or hearing, as taken down by a court reporter.
transitory—actions are "transitory" when they might have taken place anywhere, and are "local" when they could occur only in some particular place.
trial de novo—(de no'vo)—a new trial on the entire case—that is, on both questions of fact and issues of law—conducted as if there had been no trial in the first instance.
true bill—in criminal practice, the endorsement made by a grand jury upon a bill of indictment when they find sufficient evidence to warrant a criminal charge.
under advisement—if during the course of a hearing, a question is posed that requires the judge to do research and make a decision, the judge may request the attorney to provide legal basis for their arguments. Upon receipt of those legal arguments, the judge takes the case under advisement to review the matter and to render a decision.
undue influence—the improper use of power or trust in a way that deprives a person of free will and substitutes another's objective.
unlawful detainer—the unjustifiable retention of the possession of real property by one whose original entry was unlawful, as when a tenant holds over after lease termination despite the landlord's demand for possession.
usury—the charging of an illegal rate of interest; an illegally high rate of interest.
vacate—to nullify or cancel; make void; invalidate.
venire—(ve-ni're)—a panel of persons who have been selected for jury duty and from among whom the jurors are to be chosen.
venireman—(ve-ni're-man)—a prospective juror; a member of the jury panel.
venue—(ven'u)—the proper or possible place for the trial of a lawsuit, usually because the place has some connection with the events that have given rise to the lawsuit.
verdict—a jury's finding or decision on the factual issues of a case.
view—the visual observance by the court or jury of the scene or place of a crime or event.
voir dire—(vwor der)—"to speak the truth"; a preliminary examination of a prospective juror by a judge or lawyer to decide whether the prospect is qualified and suitable to serve on a jury.
waiver of immunity—the act of giving up the right against self-incrimination and proceeding to testify.
waiver of speedy trial—state law requires that a defendant be tried within a specified period of time. A defendant may waive that right to either greatly accelerate the criminal proceeding or to allow it to continue beyond the speedy trial deadline.
warrant of arrest—a warrant, issued only on probable cause, directing a law-enforcement officer to arrest and bring a person to court.
weight of evidence—the persuasiveness of some evidence in comparison with other evidence.
well—the area of the court where attorneys and their clients sit in the courtroom. There is usually a wall between the well and the spectators of the court.
will—a document by which a person directs his or her estate to be distributed upon death.
willful—voluntary and intentional, but not necessarily malicious.

with prejudice—with loss of all rights; in a way that finally disposes of a party's claim and bars any future action on that claim.
withheld judgment--a criminal disposition in which a judge grants probation and other conditions deemed appropriate. If the defendant successfully completes the conditions as outlined by the judge, the judge will then dismiss the withheld judgment and the case, resulting in the defendant having a clean record.
without prejudice—without loss of any rights; in a way that does not harm or cancel the legal rights or privileges of a party.
witness—one who sees, knows, or vouches for something; one who gives testimony, under oath or affirmation (1) in person, (2) by oral or written deposition, or (3) by affidavit.
writ—a court's written order, in the name of a state or other competent legal authority, commanding the addressee to do or refrain from doing some specified act.