

**A GOOD LAWYER  
Secrets  
Good Lawyers  
[And Their Best Clients]  
Already Know**

**Second Edition**

**Stephen W. Comiskey**

**A Good Lawyer®  
Just the Country's Lawyer ®  
Chaos, Ltd.  
Washington, DC**

**Distributed Courtesy of  
the Eleventh Judicial Conference  
United States Court of Appeals  
for Veterans Claims  
March 4-5, 2010**

*Special thanks to:*  
Judge Lawrence B. Hagel, Judge Robert N. Davis,  
Robert J. Bieber, Laura L. Medinas, and  
Patricia E. Scully  
of the  
U.S. Court of Appeals for Veterans Claims

*Printed by*  
Spectrum Printing & Graphics  
Rockville, MD

*Published by*  
Chaos Ltd.  
Washington, DC

Copyright 2010 by Stephen W. Comiskey

A Good Lawyer®

Just the Country's Lawyer®

All rights reserved including the right of reproduction in whole or in part in any form.

The author is grateful for permission to reprint from:

"Laws of the Navy" by Ronald Hopwood, from  
*Laws of the Navy and Other Poems*, John Murray  
(Publishers) Ltd.

*The Art of Cross Examination*, Francis L. Wellman,  
Copyright 1936 by The Macmillan Company, renewed  
1963 by Ethel Wellman, Simon & Schuster  
(Publishers)

A Good Lawyer and Just the Country's Lawyer are service marks owned by Stephen W. Comiskey.

Your comments, additional suggested guideposts, and book reviews are welcome. Send them to the author at:

Stephen W. Comiskey

P.O. Box 42167

Washington, DC 20015.

Printed in the United States of America

Library of Congress Catalog Card Number: 97-91879

ISBN: 0-9656804-0-1

## Dedication

**T**o my sons Barrett, Joe and Will  
and to my wife Sally  
for their love and  
for giving me time to write  
at the expense of time with them.

To my mother and father, Ruthie and Steve,  
for giving me a solid foundation  
upon which to build.

To my brother Patrick and sister Karen,  
to Barrett's wife, Jojo,  
and their daughters Tara and Sora,  
and to Sally's mother, father,  
and brother Sue, Si, and Tom Hunt.

And to my friends Dominick Abel, Bob & Pauly Ahrens, Birgit & Bernd Albers, George Albright, John & Blake Allen, David & Liz Armstrong, Rig & Mary Baldwin, Jack Barrett, Peter & Karen Beveridge, Stuart Bluestone, Dave Brahms, John & Debby Burton, Alex Carter, Jerry & Citsi Castro, Cliff & Cynthia Chapman, Hank Christensen, Kevin & Dawn Clancy, Mike Clark, Joe Coble, Anne Comiskey, Rori & Jessica Comiskey, David Darst, Bruce & Leigh Davey, Steve Denning, Jim & Kathryn Donald, Jim Donovan, Bruce & Deborah Downey, Al Ellis, Katie Emmons & John Matthewson, Chris Everett, Raul & Jean-Marie Fernandez, Pete Francescon, Gary Gait, Paul Gait, Wayne Gatewood, Lou Giannotti, Bob Gottke, Mike & Janet Gottlieb, Gail Graham, Tom & Jan Hagan, Nancy & John Hall, Sally Hall & Roger Ruckman, Pete & Thalia Henning, Jim & Tania Hosmer, Steve Hudock, Sam Huff, Patrick & Cheryl Hughes, Nancy Hunt, David & Nancy Huntley, Nelson Jones, Michael & Marlana Kain, Joe & Michele Kearney, Jack & Joanne Kemp, Kevin & Debbie Kernan, Mike Kessler, John Kiersted, Darris & Crystal Kilgour, Jim Kimsey, Knight & Ann Kiplinger, Pete Kirsch, Lauren & Andy Knapp, Nekki & Pete Lang, Ted Leonsis, Jimmy Lewis, Mike & Wendy Lincoln, Rusty & Mimsy Lindner, Rick Lottie, Charlie Lucas,

Ray & Jan Mackown, Tom Marechek, Mike & Ann Marino, Ed Mathias, Colleen, Scott, Catey, and Joe McAleer, Jack McDonnell, Rich & Mary Eileen McDonnell, Bob Mecoy, Buster & Lila Meeks, Greg & Marilou Merrill, Tim & Sherry Meyers, Karel Montor, Mario & Dana Morino, Angela & Chuck Muckenfuss, Terry Murray, Jack Nolan, Clare O'Connor, Patrick & Patricia O'Connor, Justin O'Connell, Michael Outlaw, Don & Suzy Patterson, Lee & Madeline Peeler, Perry Pendley, Seth Perlman, Peter & Gayle Petkas, Steve Potts, Carolyn & Hugh Rardin, Liz and Ann Reifsnyder, Dennis & Denise Reilly, Becky & Tom Rockwood, Tim Russert, Grover Russell, John & Ginny Sattler, Brandon Schelhorn, Art & Joan Schiller, Lia & Jake Schnackenberg, Richard Schubert, Tom & Betsy Scott, Carlton & Susan Sherwood, Ed Smith, Roger Socci, Steve Sorkin, Jacob Stein, Elinor & Bob Stewart, Carl Tamulevich, Bill Tully, Dave Vetter, Ernst & Sara Volgenau, Lisa Volgenau & Chris Fitzgerald, Al Voorhees, Bill & Ginny Voorhees, Terry Wanner, Matt & Marjorie Watson, Jim Webb, Josh & Sharon Weintraub, Jennifer & David Wiley, Dick Williamson, Skip Wray, Dennis Yatras, and April Young

for their faith that this would become  
a part of my legacy to my sons.

To the Marines and Sailors  
with whom it was my honor to serve.

To my coaches Ed Peery, Bildy Bilderback,  
Joe Marcino, and Steve Babyak for teaching me  
how to raise the bar myself.

And to those who also aim  
to master the art of lawyering.  
I hope you cherish the joy of the adventure.





# Contents

Foreword	xi
Introduction to the First Edition	xvii
I. The Players	1
II. The Tools	21
III. The Venues	47
IV. The Rules	63
V. Forever and Ever	83
Postscript:	91
50 Ways Clients Can Tell If They Have a Good Lawyer	
Appendices:	
The Constitution of the United States of America	103
Amendments	137
Index to the Constitution and Amendments	163



## Foreword

When a book is republished, the author, assuming still alive and thoughtful, faces the question: Should anything be changed? It is not an easy question to answer. It is a particularly difficult one for lawyers because we have trained ourselves to change things for the better, but we also know we can't rewrite forever. It's a mistake to gild the lily, but not every flower is a lily.

Harvard Law School Professor Roscoe Pound published his law student primer *An Introduction to the Philosophy of Law* based upon the Storrs Lectures he delivered to law students at the Law School of Yale University in 1921-22. In his preface to his Revised Edition published in 1953, when he was then a Professor at the University of California at Los Angeles Law School, Professor Pound wrote:

Problems of philosophy have arisen in the generation since the first edition

which have required rethinking of some of the things I said in 1921-22. Likewise discussions and recent theories of legal liability and some features of the law of property and of the law of contract, which have been developed throughout the world in recent decades, have called not only for rewriting of no little but also for considerable additions to the original text.

Columbia University Law School Professor Karl Llewellyn took a different tack on the question of rewriting and concluded in his Foreword to the 1950 reprinting of his original 1930 primer for law students on the essence of learning the law, *Bramble Bush: On Our Law and Its Study*:

As indicated already, and as is developed in the Afterword, this is not the book that I should write today. I feel a lack especially in the failure to get before the reader at the outset the idea of the crafts of the law, of their value to the

prospective craftsman, and of his obligation to those crafts. But there is at least this to be said in mitigation: the first craft of the law a man must learn is the craft of the law student; and to that one the lectures as written attempt to give both body and meaning.

These good lawyers' guideposts grew out of my desire in the early 1990's to collect some of the lawyering lessons I had learned over two decades of lawyering and to share them with others. I began by using them as outlines for my continuing legal education ethics and professionalism lectures to lawyers around the country. By publishing them in book form in 1997 I had initially hoped that these good lawyers' secrets would also "be used in law schools to give law students some guideposts for practicing law honorably and some compass points for ethics," and I wrote exactly that in the book's Introduction.

Although received by the practicing bar with reasonable favor, these guideposts have not to

date, to my knowledge, been regularly used in any law school curriculum. In fact, a few years after publishing them and having received some commendable reviews in the professional press, I sent two books to each of about 15 law school deans inviting them to keep one copy as a gift from me for their library and to pass the other copy on to their appropriate academic decision makers to consider including it somewhere in their law school's curriculum. All but one of those law school deans never responded at all. The single response letter said simply: "There is no place in a law school curriculum for this book."

For more than ten years now I have been planning and revising a rewrite of my original secrets, and stewing in my own juice over the law school community's apparent universal rejection of my precious guideposts. But now that the opportunity has actually arrived for me to make those major revisions, and perhaps include enough changes to entice law school professors and their law school curriculum coordinators, I have reconsidered and concluded that I have no reason to rewrite. I find myself more in agreement with

Professor Llewellyn than with Professor Pound. The seasoned practicing trial lawyer and entrepreneurial small businessman who was simultaneously trying cases, running his law firm, and writing and rewriting these secrets in the mid-1990's knew what he was writing about. He doesn't need nor deserve me rewriting his diary. So I republish his and my good lawyers' secrets with only modest changes as I would normally correct page proofs.

As to whether this primer for good lawyers should be requisite material for law students to learn, I'm not so certain anymore. Perhaps that's another indication of my different perspective now than when I was in the heat of the battles and first writing them. Perchance those discourteous law school deans who were the recipients of my unsolicited donations and inquiries backed into getting it right. I can accept that so long as their curriculum includes Professor Pound and Professor Llewellyn's law student primers.

If *Bramble Bush* is best read, reread, and learned by law school students throughout their law school years, for example, then *A Good*

*Lawyer* may likewise be best read, reread, and considered by practicing lawyers wanting to learn those crafts of the law, their value to those prospective craftsmen, and their obligations to those crafts that Professor Llewellyn regretted was missing from his law student primer. It would be my greatest legal legacy if, as Professor Pound and Professor Llewellyn's little books are among the books that all good law students have at the ready, my little book is among the books that all good lawyers have at the ready.

Peace be with you.

STEPHEN W. COMISKEY  
Washington, D.C.  
Winter 2010



# Introduction

**M**y goal in writing *A Good Lawyer* was to create a small book to be for all who practice law what Strunk and White's *The Elements of Style* is for all who write. A book by a lawyer for lawyers on the essence of lawyering. A book to be used by lawyers to help fill in the gaps that we don't currently teach or learn in law school, or find in the rules of evidence or procedure, but that we need to know to practice law and to do it honorably. I hope it also will be used in law schools to give law students some guideposts for practicing law honorably and some compass points for ethics.

There are approximately 800,000 practicing lawyers in the United States today. Over 50,000 men and women enter law school each year and more than 40,000 become new lawyers each year. This book says as succinctly as I could what I believe is rightfully expected of a good lawyer and hopefully it will be read, considered and talked about by lawyers and law students.

It is also a book for clients, potential clients and everyone curious about our legal system and legal processes. As we've seen in the last few years already, the conversation in America includes lawyers and lawyering more and more. I've tried here to speak to and about lawyers in useful practical terms that all who read it, whether or not they are lawyers, can understand and immediately use either to reinforce or reconsider their own beliefs or to discuss with their own lawyers.

The reader I always had in mind as I wrote it was a lawyer, of course, but looking over that lawyer's shoulder and also reading it was that lawyer's client. I hope it generates discussions between and among lawyers and our clients about what we should expect from each other.

Finally, I have included a complete copy of The Constitution of the United States of America as an Appendix. It's our Constitution that makes America so different from everywhere else in our world and every American should remember that it's our American lawyers who guarantee that our Constitutional rights of the citizens and

responsibilities of the government are honored.  
That's what all American lawyers do for all of us,  
every day.

Peace be with you.

STEPHEN W. COMISKEY

Washington, D.C.

Summer, 1997



## **I. The Players**

**T**he art of lawyering is not a science, it's not limited to licensed attorneys, nor is it subject to universal agreement. I began lawyering as a boot Marine Corps Second Lieutenant just graduated from The Basic School and the U.S. Naval Academy. It wasn't until a few years later that I actually graduated from The American University Washington College of Law, passed the bar exams and was licensed to practice law in Virginia and Maryland and waived into the bar of the District of Columbia.

Many of my Annapolis Navy and Marine contemporaries eventually left the service and became airline pilots. Whether in or out of the service, over the years they have trained for thousands of hours so that they will react appropriately and calmly in the few seconds of crisis that may occur in their aviation careers. At

the other extreme, lawyers have no training in crisis management, yet that's part of our legal practice almost every day.

Who are we lawyers? Our families, friends, neighbors and, most amazingly, total strangers, turn to us with their most personal and consequential matters and we all, both they and us, are confident we can assist them. And, if we're good lawyers, we do assist them. We manage crises. We work the problems. We do the deals. We try the cases. We serve our clients.

One navigation instructor's first words to my class years ago were: "You can pass this course by scoring 80 percent, but how many of you only want to make it home four out of five times?" In client representation, as in navigation, perfection is the only acceptable goal. The good lawyers' secrets are guideposts that provide some of the lawyering navigational aids to help us always find the harbor lights of home.

Shakespeare wrote: "All the world's a stage, and all the men and women merely players." When we're away from our homes, who lives in our lawyers' world with us? Who are

these players we share our stage with? Secretaries and staff, clients, opposing counsel, opposing counsel's clients, judges, clerks, court reporters, media reporters and journalists, the list is seemingly endless. Many of these players are not interested in assisting us and some are downright opposed to us accomplishing our goals for our clients. Yet we need to accomplish our mission and to make it home safely. Our opponents are trying to do the same. In the transactional arenas we perform in, it is easier for both of us to be successful. In the adversarial forums, it's considerably harder.

What are each of these player's expectations of us and how can we meet theirs as well as our own expectations and aspirations? How can we treat each of them as we want to be treated? How can we balance their competing demands on us and remain true to ourselves and to our clients? In the heat of the lawyering battles we need unwavering principles to guide us steadfastly. In the throes of the storms we need lighthouses and buoys to ensure we steer clear of dangers and distractions as we complete our

mission and return home. These good lawyers' secrets are the guideposts that serve those purposes. They serve us all. They serve us well.

\* \* \*

1. Lawyers are the custodians of the ideals of our society.
2. Honor, courage, and commitment are the heart and the soul and the body of a lawyer.
3. Lawyering is an art, not a science. It takes study, observation and experience to master the art of lawyering.
4. Lawyering is difficult. It requires continuous thinking—one of the things we all find hardest to do.
5. Lawyering requires working hard, but it's not hard work. Thinking is hard, but it's not hard work either. I can't define hard work



for you, but I know it when I see it. Long hours alone don't define hard work. People who do hard work for a living understand this. You should, too.

6. Trust your instincts, especially when interviewing prospective clients.
7. Try not to waste too much time thinking about why the other side did or didn't do something.
8. Be thankful for those who declare their opposition to you, they are much easier to deal with than those who masquerade as allies.
9. In the practice of law you have no friends, only opponents and potential opponents. Forewarned is forearmed.
10. Listen to those who disagree with you. It takes courage to confront you, so they may really have a point worth listening to.

11. Few counsel can successfully *use* the media. More often the media *use* counsel.
12. Find out as soon as possible whether the person you are dealing with has the authority to do, or to agree to, what you're proposing. Don't let others take your message or your offer to their decision maker. Demand to present it yourself.
13. Trial lawyers have a hard time delegating.
14. Be known as the lawyer who makes deals, not breaks them.
15. Create and propose legitimate, sound alternatives to get your client the desired result. Think of ways to accomplish things, not reasons why they won't work or can't be done. Be a *closer*.
16. Be known for your good business, as well as good legal judgment. They often are irretrievably intertwined.

17. If you listen to what your opponent says, read what your opponent writes, and think about what you've heard and read, then most of the time you'll know what to anticipate and you can plan accordingly.
18. Always ask yourself: Is this something I can, and should, do for my client, or would my client be better served if someone else did it? Ask yourself this question not only with respect to others on your staff, whose fees would be less expensive than yours, but also as to lawyers outside your law firm, who may specialize in that legal area.
19. If your goal is to persuade someone to do something that you want them to do, then don't be overly concerned with *why* they do it, if they *do* what you want them to do.
20. Know the preeminent practicing lawyers in the various legal specialties in your local bar well enough so that you can call them, not only to refer cases to them, or to bring them

in as specialists in matters you are handling, but also to see whether they agree that you can handle it, when you are considering taking on a new case in their specialty area of practice. If they know you, then they will usually give you their candid opinions. If you do decide to take on the case, they will oftentimes offer to be available for you to call when unusual things happen along the way.

21. Don't ask judges for advice, in or out of the courtroom.
22. The lawyer has to be the detail person. Check and recheck everything.
23. It is important that everyone that you deal with have universal faith in the accuracy of what you say and give to them.
24. You are the messenger, not the message.

25. Thank fellow lawyers who refer cases to you by taking them to breakfast or lunch. Do not volunteer that you will keep them posted on how the case is going. You have enough things to worry about, don't unnecessarily create more.
26. Don't create your own troubles. Leave that to your opponents.
27. Be proud of what you do and what you have done for each of your clients. It is your life's work and your personal and professional legacy, not only to your family, but to those who follow you to strive to master the art of lawyering.
28. Know who your client is.
29. Remember who your client is.
30. Only represent your client.
31. Don't surprise your client.

32. After each prospective client has told you their story, but before you tell them what you think, ask them what they want and why. Their responses may surprise you. After you've found out what *they* really want, then tell them honestly and realistically whether you can help them get it.
33. When a new client leaves your office they should stop worrying about their problem. You should tell them that they need to move on with their lives, to take care of their family and their business, and it is now your job to worry this case. This may be the most therapeutic thing you can do for your clients and the one thing each will remember and appreciate the most, forever.
34. Question your client only at a time and in a place where the answers will remain attorney/client-privileged information.
35. If you batted .333 for a baseball career you'd be enshrined at Cooperstown, New York, in

the Baseball Hall of Fame. Clients know home runs, extra base hits, even singles are hard to get. But if they believe that they had their day in court, and that you gave them three honorable and legitimate swings, with all your best efforts, they'll be satisfied that you served them well, and you will have, regardless of the outcome.

36. Don't expect thank you's or kudos from your clients. But savor them when they come.
37. If you give your clients your home phone number, then expect they'll call you at home.
38. No one but you should provide any information at any time to anybody. Train your staff from the outset that their job is to take in information and to write down questions to pass on to you, but that only you provide any information or answer any questions. There are no gray areas here. This is true, regardless of whether the caller is a client or opposing counsel. Even a

frustrated client, once you have explained it to them, should appreciate your diligence and absolute adherence to the attorney/client privilege.

39. Don't represent both the husband and the wife in a divorce proceeding, no matter how much they argue for it, nor how simple and straightforward the process may seem. Choose one or the other, and ensure that all documents reflect that spouse as your only client, especially if the other spouse chooses to represent themselves.
40. Be very wary of the prospective client who is currently represented by counsel, but shopping around for replacement counsel, unbeknownst to their present counsel.
41. Always be alert for potential conflicts of interest. Make a preliminary conflict check as soon as you know the name of the prospective client and the general subject matter of the representation. Resolve all



potential conflicts issues before undertaking any representation.

42. It's the recognition of the potential conflict of interest that's the hard part. Once identified as a potential conflict of interest, it's usually a straightforward exercise to determine whether or not there is a conflict.
43. Be familiar with the names and telephone numbers of the people who run the Federal, State, and local government services, agencies, and programs, as well as the private and not-for-profit organizations, so that you can recommend them to prospective clients who may have no legal remedy but who have definite needs for assistance. Make the initial call for them.
44. Lawyering does not require or condone any distraction from your own high moral and ethical standards. Be true to yourself and to those standards, always.

45. As a trial lawyer at trial you are a hired gun. If you try to be something more than that, you will be something less.
46. The trial lawyer at trial is a one-armed paperhanger, a multi-instrumented street musician and singer, and a one-person movie industry: producer, director, writer, set designer, stagehand, and star performer. Break a leg.
47. The court clerk, court reporter, and courtroom marshal are your best indicators of how you are doing at trial. Ask them. Listen to what they say.
48. Don't tell the jury that what you say is not evidence for them to consider. Persuade them by everything you do and say that what *you* say are the most important words they will hear.
49. Treat the judge as the first among equals.

50. Never assume the judge knows anything.
51. If you can't do it sincerely, don't do it. Little children and juries recognize, appreciate, and reward sincerity. Juries punish insincerity.
52. Watch other trial lawyers perform. Study their successes and failures. Take as your own whatever you can wear comfortably and naturally. But remember everything takes practice and few things feel comfortable or natural the first time you try them on.
53. A trial lawyer is not a good follower.
54. The assistance provided to trial lawyers by those in court clerks' offices is immeasurable and generously given. But it is not legal advice and provides you no safe harbor should it prove to be erroneous.

- 55. Choose and use your local counsel wisely. They should be invaluable. Make sure they are.
- 56. Search for and hire the best expert witnesses available and then keep the tightest rein possible on each of them. None of your experts should even think about doing something, writing something, or saying something, and certainly not spending any money, without checking with you first to pre-approve it.
- 57. Avoid familiarity with opposing counsel. Friendly is not a term your client should think of when describing your relationship with your opposing counsel. Civil and respectful, yes; friendly, no.
- 58. In court, argue to the judge about your opponent's arguments, not about your opponent. Judges abhor bickering between counsel.

59. Imagine a coin balanced on its edge in the center of a circle, heads facing north and tails facing south. As the trial lawyer you are stationed at one of the poles of the circle and your opponent is at the other. During the trial, the jury is walking around the circle hearing, alternatively, you and then your opponent, describe opposite sides of that same coin. Each of you is arguing accurately what you want the jury to see inside that circle. At the conclusion of the trial the jury will tell you which of you was more persuasive, not what's inside the circle.
60. In those jurisdictions where jury instructions precede closing arguments, the lawyer giving the *final* closing argument has an advantage over their opponent, because the jury stops walking around the circle facing that lawyer's side of the coin, and then retires to deliberate.

61. As the trial lawyer you should be the jury's teacher and you should use teaching techniques:
  1. Tell them what's going to happen (opening statement);
  2. Make it happen (direct and cross examination of witnesses; admission of evidence); and,
  3. Tell them what happened (closing argument).
62. When your opponent concentrates on the personalities involved (including yours), rather than on the facts, the issues and the law, it usually means that they think you're holding the winning cards and that distracting you is their best strategy. Don't fall for it. Stay on your course and win.

63. At trial, the more lawyers there are sitting at opposing counsel's table, the better off you are.
64. You don't learn any more about trying cases sitting in the *second chair*, than you learn about driving cars sitting in the passenger seat.
65. A trial lawyer must have the same intensity, ability to focus, and unwavering absolute self-confidence in themselves, their preparation for this moment, and the certainty of their eventual victory as an ace combat pilot in a single-engine jet fighter outnumbered in an aerial dogfight.

66. Each individual has their own personal dignity, just as they have their own personal shadow, that varies with the amount and angle of light shining on that person. Our democratic society, and our justice system within our democracy, will only last as long as we continue to recognize that that dignity, even of the weakest or the vilest amongst us, requires our equal treatment of every one of us under our laws. This is the lawyer's gospel. Be prepared to fight and to die for it.

\* \* \*



## II. The Tools

While I have aggregated these good lawyers' secrets into various chapters in an attempt to give the reader a way of looking at each of them as part of a greater whole, this letterboxing approach is no more reasonable, or unreasonable, than dividing the law itself into separate and distinct law school courses. There are many ways, of course, to subdivide these secrets, or to subdivide the law itself for that matter. I've chosen one approach here; another might seem more reasonable to you. As with the law itself, I hope the form selected won't distract but will enhance their substance.

Abraham Lincoln once wrote, and it's still true today, not only for good lawyers, but for all who seek success: "The leading rule for the lawyer, as for the man of every other calling, is diligence."

But diligence comes with a price: legal fees. But lack of diligence often comes with a higher price: failure. Therein lies just one of the good lawyer's consistent dilemmas: How do you know when you have done enough to be certain of winning? When should you stop preparing? It cannot be put any simpler than Benjamin Franklin did in "Advice to a Young Tradesman, Written by an Old One:" "Time is money." Lincoln's lament that "A lawyer's time and advice are his stock in trade," only serves to underscore the good lawyer's problem.

Clients want cost-effective success and they are not usually concerned with the niceties or nuances of lawyering. Clients hope their lawyers are spending every waking moment only thinking and working on their case, but only charging them for ultimate success, or at least only charging them for substantial progress towards ultimate success. From a client's perspective it's a buyer's market. The sooner all lawyers recognize that we are in a service business and, therefore, the sooner all

lawyers force ourselves to serve all our clients, the sooner all our clients will be receptive to entertaining real discussions on the factual, legal, and ethical constraints involved with lawyering. Right now most just don't care.

This book will serve a useful purpose to the legal profession and to the public if it helps to continue the discussions between and among lawyers and their clients concerning defining good counsel and if those discussions reinforce the bridge of trust and understanding between all clients, not just the best ones, and all their lawyers, not just the good ones.

\* \* \*

1. Quiet contemplation is not a luxury, but a necessity, for a lawyer.
2. You are an artist. Be creative.

3. Use legal words and phrases for accuracy only and not for obscurity. Explain the legal terms in layman's terms to make sure your client understands what you're saying.
4. Read everything you can. Ideas will come to you while you are reading.
5. When you think of something or get an idea write it down as soon as possible, in a stream of consciousness manner, and as much of it as possible. Once you have it written down, then you can start rethinking it, revising it, or critically taking it apart.
6. Take notes whenever someone else is providing information, e.g., telephone calls, interviews, depositions, witness testimony. Draw a vertical line from top to bottom dividing each page: two thirds of the page to the left and one third to the right of the line. Write on every other line. Write fast

but legibly. Take down, as close to verbatim as you can, what the person is saying on the left side of the vertical line. As ideas for cross-examination, rehabilitation, or areas to probe, etc., come to you, write them on the right side of your vertical line directly across from where you've just written the speaker's relevant statements. [Anything you want to keep to yourself, for whatever reason, put in brackets.]

7. Tab, underline, highlight, and write in the margins of your legal texts and books, including this one. Personalize them with your cases, your comments, and your memories. It's part of your legacy.
8. Your reputation wins clients. Your performance wins trials. As with a professional golfer, it's only how you perform that matters. No one wins a trial, or a golf tournament, on reputation.

9. Your reputation is like your passport. It's critical that it be accurate and up to date. But once it gets you in the door it serves no further purpose. It's only what you do once you're there that counts.
  
10. Books I have at the ready:
  1. *The Bible* (Revised Standard Version), (American Bible Society).
  2. *The Book of Common Prayer*, (The Church Pension Fund).
  3. *The Art of Cross-Examination*, Wellman (Collier Books).
  4. *The Civil War*, Foote (Random House).
  5. *The Count of Monte Cristo*, Dumas (Bantam Classics).
  6. *The Dictionary of Cultural Literacy*, Hirsch, Kett & Trefil (Houghton Mifflin).
  7. *The Elements of Style*, Strunk & White (Macmillan).

8. *Fields of Fire*, Webb  
(Simon & Schuster).
9. *Gone With the Wind*, Mitchell  
(Simon & Schuster).
10. *Moral Man and Immoral Society: A  
Study of Ethics and Politics*, Niebuhr  
(Charles Scribner's Sons).
11. *The Riverside Shakespeare*  
(Houghton Mifflin).
12. *The Road Less Traveled*, Peck  
(Simon & Schuster).
13. *The True Believer: Thoughts on the  
Nature of Mass Movements*, Hoffer  
(HarperCollins).
14. *Webster's Ninth New Collegiate  
Dictionary* (Merriam-Webster).
15. *When Bad Things Happen to Good  
People*, Kushner (Avon Books).
16. *Thoughts of a Philosophical Fighter  
Pilot*, Stockdale (Hoover Institution  
on War, Revolution and Peace,  
Stanford University).

17. *First Class: Women Join the Ranks at the Naval Academy*, Disher (Bluejacket Books, Naval Institute Press).
18. *Bramble Bush: On Our Law and Its Study*, Llewellyn (Oceana Publications, Inc.).
19. *The Complete Novels of Jane Austen, Volumes One and Two* (Vintage Books, Random House).\*
20. *The Deep Blue Good-bye*, MacDonald (Fawcett Gold Medal, Ballantine Books, Random House) (The first of the 21 Travis McGee novels).\*
21. *Mr. Midshipman Hornblower*, Forester (Back Bay Books, Little, Brown and Company) (The first of the 11 Horatio Hornblower novels).\*
22. My Model Trial Notebook.

\*I try to read all of the books in one of these three series from start to finish each summer. It's like vacationing again with old friends in places we all love to return to.



11. Good judgment is learned and honed every day. It has little to do with your genes, your wealth, or your status in your community. It has everything to do with what you've learned from what you've done and from what you've seen. Pray for good judgment. It's the lifeblood of good counsel.
12. Don't complain and don't whine. Propose constructive alternatives and argue for their adoption.
13. Avoid using the fax machine for sensitive material. If you must use it for expediency purposes and your document contains attorney/client-privileged information or anything you'd prefer not to see on the front page of tomorrow's newspapers, then first double-check the telephone number with the prospective recipient and then fax it yourself.

14. If you are dealing with sensitive matters, consider whether or not any document, whether paper or electronic, really needs to be created. Consider oral briefings in person, with the client taking no notes.
15. Expect that anything entered into any electronic word processing system will be retrievable by your opponents.
16. Understand and be able to use by yourself, if necessary, every single thing in your law offices, e.g., word-processing programs, computer systems, telecommunications, networks, postage meter and scale, fax machines. Don't be absolutely dependent upon anyone other than yourself.
17. Don't wait for things to happen. As soon as you've accepted a case, make a plan and then begin executing that plan. Massage and retool it as the case progresses to and through completion.

18. Develop your own style.
19. Be unique without being flamboyant or outrageous.
20. All documents that you prepare for legislators and their staff should be written so that they can be inserted, as is, in the member's statements and speeches, legislative and committee reports, as well as the legislation itself. Do the staff and the member's work for them. Don't give them your requests as to what they should do, say, or write; write it yourself precisely the way you want it written or said and give it to them.
21. If everyone involved with the legislative process knows that what you give them is always accurate, then you stand the best chance of anyone of having your materials selected and your position accepted, if that's the direction the legislators decide to go.

22. By everything you say and do, ensure that your clients and your staff understand that you have no tolerance for dishonesty.
23. It's the *practice* of law and practice makes perfect. Practice every thing you can, every time you can. Practice spontaneity. Practice extemporization. Practice *everything*.
24. Be thankful that you are in a profession with unlimited possibilities to help individuals and society.
25. Be a responsible steward of your talents and use your persuasive skills appropriately.
26. Leave your mark.
27. Before beginning *any* work, make sure your client understands and agrees with your fee arrangement and billing procedures.

28. Have a simple, straightforward, and one-page "Client Information Sheet" that the prospective client can complete before meeting with you for the first time. This should provide you with basic information about the client, their spouse and children, if any, employment and Social Security Number. It should not ask for any information concerning the subject matter of the prospective legal representation.
29. Use a tailored "Legal Representation and Fee Agreement Letter" for each client and for each matter. Spell out in that letter from you to your client, at least: what the legal matter is; what the fee arrangement is; how often you will bill; what your expectations and the client's agreements are concerning timing of payments of your bills; any retainer provisions, including interest on retainers and replenishment of retainers; whether your legal representation includes the filing of a lawsuit and trial

representation; if so, whether it includes the appeal of any trial court rulings or orders; and, finally, the fact that you have made no promises of success to your client. Explain that costs are not included in legal fees, and that under all circumstances, the client will be responsible for all costs. Emphasize that you will keep costs to a minimum. At the conclusion of the letter and after your signature line, type "SEEN AND AGREED." Go over the Legal Representation and Fee Agreement Letter with your client and if the client agrees, have them sign as such under "SEEN AND AGREED" and date their signature. Keep the original in your file and give your client a copy of the signed letter agreement.

30. Keep the originals of the signed Legal Representation and Fee Agreement Letter and the completed Client Information Sheet together and in the same place in every case file.

31. As a final check, before you authorize anything that will be passed on to your client as a cost, imagine that your roles are reversed and that you are now the client: Do you want your money spent this way? If you do, then go ahead. If you have to think about it, then you probably don't.
32. When counseling prospective clients who have had their employment terminated and are questioning whether they have any legal remedies against their former employer, remember that the loss of their job follows only the loss of a loved one, or a catastrophic physical injury, in its devastating effect on a person. Do all that you can to preserve, or rejuvenate, that person's self-esteem and self-confidence. They should be encouraged to see what has happened to them as an opportunity to move forward, albeit in another direction, and not to become obsessed with "righting this wrong," or "vindicating their reputation." Most of the time there is no legal cause of

action against the former employer, since most of us are employees at will, but your counsel needs to go beyond that and to help that person understand and appreciate their continued value to themselves, to their family, and to society, notwithstanding the fact that they don't currently have a job. That is only a temporary condition.

33. A lawyer must constantly monitor the appropriate proximity to maintain with each client so that you are balancing the objectivity that distance provides with the subjectivity that closeness provides. That distance is different for each client. Don't get sucked in.
34. You do your client a disservice if you cannot maintain your objectivity about their case. Be passionately objective, if you must, but be objective.



35. Impress upon your clients who are buying or selling real property, especially homeowners, that it's the *contract* that's important, not the closing. You should at least be reviewing, if not drafting, any offer they are considering signing.
36. The law doesn't provide a remedy for every person's problems. But that doesn't mean that you shouldn't try to help them. Use your talents and your creativity to help people see and take advantage of opportunities for improvement.
37. Develop your *theory of the case* as soon as possible. Before trial keep fine tuning it so that everything you know about the case is compatible with your theory of the case.
38. Tailor your theory of the case to fit the *facts*, not the reverse.
39. There are no *facts* until the finder of facts rests.

40. Create and bring your proposed settlement agreement to trial, and if your opponent offers to settle on the courthouse steps, or during trial, make any necessary pen-and-ink changes to your settlement agreement and then execute the agreement right then and there, preferably in front of the trial judge in chambers.
41. It ain't over 'til the check's cashed.
42. Build your own Model Trial Notebook with tabs for each divisible portion of trial preparation and presentation, e.g., legal research, discovery, opening, witnesses, exhibits, closing, instructions. Whenever you read something that you agree with, cut it out and put it in your Model Trial Notebook. Then, read and reread your Model Trial Notebook.
43. Keep a separate trial notebook for each case you have, with tabs and sections that mirror your Model Trial Notebook. Start it when you open the casefile.

44. Create your jury instructions as soon as possible. Keep them in your trial notebook and keep revising them as the case becomes clearer and as your theory of the case crystallizes.
45. Object and fight ferociously to keep matters from the jury that are detrimental to your client or to your theory of the case. Otherwise, even if they are technically objectionable, don't object. Pick your fights.
46. Don't expect much more in answers to written interrogatories than names and addresses of the people involved and descriptions of the documents involved. No matter how artful your written interrogatories are, opposing counsel will usually try to find ways either to object or to provide nonresponsive answers. Therefore, realistically, the best use of written interrogatories is to determine who to depose and what documents to request be produced.

47. Use requests for admissions continuously and exhaustively. Write short, simple factual statements that provide no wriggle room for opposing counsel. The more you can get your opponent to admit, the less you will have to prove.
48. If you have any doubt as to whether any of the witnesses might not be at the civil trial, then take their *de benne esse* deposition prior to trial.
49. Use creative motions *in limine* to disrupt your opponent's theory of the case, to narrow the issues as much as possible, and to solidify your own theory of the case.
50. Don't take video depositions unless they are cost justified.
51. Unlike the civil trial court judge, the chancellor in equity is not so bound by precedent and caselaw that they are required to decide a particular case a certain way. Requesting equitable remedies in your

pleadings may lower the blindfold of Lady Justice just enough for the court to be able to craft sensible resolutions to the specific issues before it.

52. Create a "Trial Exhibit and Trial Testimony Table" for each case and continue to update it through trial. On the left margin separately list all the elements you will need evidence admitted on to prove your theory of the case. Across the top of that page, list all your witnesses. Draw horizontal lines between each of the elements you have to prove, and draw vertical lines between each of your witnesses. Write, in the appropriate boxes in this Table, the testimony expected and the exhibits that will be introduced and authenticated by each of your witnesses. Be prepared for objections and, if possible, have alternative witness testimony and methods of introduction ready to use, if necessary. At trial, and after each witness has testified appropriately and after each exhibit has been admitted, draw a line through that statement or exhibit. Stay in

direct examination of each witness until you have drawn a line through each entry in the column under their name in your Table. Do not rest your case until evidence has been admitted on each element in your theory of your case.

53. Remember, on direct examination at trial since you usually can't ask leading questions, it's the witness's *answers* that are important, not your *questions*. So a list of the *testimony* needed from each of your witnesses, found for example in your Trial Exhibit and Trial Testimony Table, is much more helpful for you to have and use during trial, than a list of the *questions* to ask your witnesses.
54. When defending the accused in a criminal case, the best that anyone may be able to do is negotiate a lesser punishment based upon a plea bargain to a lesser included offense. That alone may be a monumental success. But you may be the only one who ever knows or appreciates it.

55. Before sending them, proofread your bills from your client's perspective: Service; Satisfaction; Success.
56. Use a seven digit client/matter filing system: the first four digits for clients/the last three digits for matters for each client. E.g., 0050/004 is the fourth matter (*ABC Co. v. D*), for the 50th client (ABC Co.).
57. Keep your files alphabetically indexed by client.
58. Keep a "Pleadings File" that is indexed and only has in it documents that are in the court's file for that case.
59. At the same time(s) as you create and then update your own Pleadings File, provide your client with their own continually updated Pleadings File, including file folders, tabs, index and the pleadings themselves.

60. Keep a "Correspondence File" that is indexed and only has communications (letters, e-mails, notes of telephone conversations, faxes, etc.) in it related to that case.
61. Staple business cards of persons related to a particular case on the inside of the left side of the Correspondence File. Write additional names, addresses, and telephone numbers there as well.
62. Keep a "Data File" that is indexed and that includes everything else related to that case.
63. Use a *tickler file* religiously. Check it yourself every day to ensure that what needs to be completed that day gets done that day.
64. Whenever you take on a new case or matter, don't put the file down until you've satisfied yourself that you know what the statute of limitations is and then make the appropriate tickler file entries, including, especially, the date the statute of limitations expires, and



prior warnings to yourself that leave enough time for you to do all that needs to be done prior to that statute's expiration date.

65. Keep a "Chronological File" of everything you create and write, filed in reverse chronological order: most recent on top.
66. Hourly fee arrangements may not be the best fee structure for a particular legal matter. Explore alternatives with your client before settling on any fee arrangement.
67. Tailor each document you create to the needs of that client and that matter. Only use standard forms to assist you in creating the document your client needs.
68. Checklists are better than standard forms. Collect checklists from every source available and combine them with your own to create master checklists that you can use, and reuse, to craft the appropriate documents for each situation.



### III. The Venues

In 1903, the well-known New York trial lawyer, Francis L. Wellman, first published his now-legendary and undisputed classic, *The Art of Cross-Examination*. Borrowing from the original preface to that legal masterpiece, I, too, suggest that I am more a messenger than a creator:

In offering this book to the legal profession, I do not intend to arrogate to myself any superior knowledge upon the subject, excepting in so far as it may have been gleaned from actual experience. Nor have I attempted to treat the subject in any scientific, elaborate, or exhaustive way; but merely to make some suggestions upon the art of [lawyering], which have been gathered as a result of twenty-five years [of lawyering] during which time I

have [represented clients] drawn from all classes of the community.

If what is here written affords anything of instruction to the younger members of my profession, or of interest and entertainment to the public, it will amply justify the time taken from my summer vacation to put in readable form some points from my experience upon this most difficult subject.

It is sometimes said that, when discussing lawyering, one must make a distinction between those involved in a private-type practice and those involved in a corporate environment; and that is often the case. However, I have not here tried to cut so fine a slice. If some of the good lawyer's secrets and guideposts herein do not apply to you or to your practice, then just read on. If you're a practicing lawyer, you'll be back on the orienteering course in a few moments.

Good lawyers recognize other good lawyers. They can be found in every jurisdiction, in every courthouse, and in every law firm in the

country. But how can clients find one? How does a client spot and cut a good lawyer from the rest of the herd? Apparently Ralph Waldo Emerson must have needed a good lawyer one time, too. His thoughtful advice to other prospective clients, in *The Conduct of Life*, is worth considering: “The good lawyer is not the man who . . . qualifies all his qualifications, but who throws himself on your part so heartily that he can get you out of a scrape.” Good lawyers will do that for their clients. Every time. Everywhere.

\* \* \*

1. It's [*always*] Showtime.
2. At settlement: Leave something on the table. At trial: Take no prisoners.
3. Take a break from your practice, as much and as often as you can.
4. Know when to move on.

5. Sometimes the best thing you can do for a prospective client is to listen to their story. There are not always legal remedies for every wrong. Sometimes people just need your concurrence that they have been wronged and your encouragement to press on. Even for that person, you still have performed a valuable service, because now they truly can move on with their lives and not forever be upset with themselves for failing to file a lawsuit, misbelieving that it would have had some possibility of success.
6. If you think your prospective client has the facts to change the law in your jurisdiction on some point, before you suggest that course of action, carefully consider whether your client, and you, have the wherewithal and the determination to see the case through to its trial and appellate courts' completion. It may be better to bring in a legal gadfly organization at the outset, or to not accept the case at all, than to begin and

then later find out, for whatever reason, that you're not able to complete the mission.

7. Have faith in the legal system, but remember it's a hands-on operation, and the best results occur when your hands are controlling it.
8. Each law firm, from the smallest to the largest, has a tone or a morality to it that is consciously set by those in power at that firm. That firm's moral tone is usually well-known within its own local legal community. It remains constant, because attorneys comfortable with that morality seek employment at that firm and those uncomfortable with it either avoid working there, or leave once they recognize their incompatibility with it.
9. When leaving the private practice of law, investigate the costs of purchasing from your malpractice insurer the *tail* to your policy. It's usually cost efficient and provides protection for claims based on past

legal representations. Do everyone a favor and stay covered.

10. The practice of law is a calling, it is not a job. If it becomes just a job, consider refocusing your practice areas to reinspire yourself.
11. Don't become such a specialist that you have truly put all of your eggs in one basket. Develop and maintain several areas of legal expertise so that no changes in statute, caselaw, or the economy can make you obsolete. Likewise, don't depend upon one client for too much of your firm's income.
12. Lobbying requires more objectivity in your oral presentations and in your advocacy documents than does trial lawyering because the legislative process does not provide an opposing advocate who is aware of and who can question everything you say or write as the judicial process does.



13. Lobbying requires different persuasion and advocacy skills than trial lawyering because the legislative process is different than the judicial process. In the courtroom there are rules of procedure, rules of evidence, instructions to the jury, a judge and a marshal to make sure everyone is following the rules and paying attention to what's happening along the way with no distractions. There is a requirement that a verdict be delivered in a timely fashion; and there is a definite judicial appeal process and a final decision. Legislators, on the other hand, are bound by no rules of any real consequence, are not required to pay attention to the issues at hand, are always distracted because they are always running for office, often vote on a particular piece of legislation for reasons totally unrelated to that legislation, regularly ignore time requirements, and have no legislative appeal process for the members on the losing side once a bill is passed.

14. *A level playing field* doesn't exist. Don't expect one and don't bother arguing for one.
15. As a trial lawyer you should always try to settle your case, because by definition your client can live with a settlement they have agreed to. On the other hand, if you try the case and lose, the court's decision may include something your client really can't live with.
16. Before filing or responding to a divorce proceeding, encourage your client to consider whether they want to reconcile and preserve the marriage.
17. Encourage your clients to avoid real estate agents who will only propose what they've done before—or as I usually say—those who only know what they know. (And are unwilling to learn, or even consider, a different approach.)

18. Crafting an antenuptial (premarital) agreement for one of your clients about to be married may put your future lawyer-client relationship in jeopardy after the marriage. Don't expect that your client will defend you if it later gets too hot in the marital kitchen. *C'est la guerre.*
19. If you can't take on a prospective client's case, but you believe there may be some substance to their claim worth pursuing, then give them the names of several lawyers who are familiar with that legal specialty and tell them to use your name when contacting any of those lawyers.
20. A trial is theater with consequences.
21. Just as a screenwriter must require every word have a reason to be spoken, at trial everything you do and say must support your theory of the case.

22. In the courtroom, as in life, be careful what you ask for. You might get it.
23. In the preparation for and presentation of a trial, there are decisions made, and forks in the road taken, every day. Once you've decided to go a certain way, don't look back or second guess yourself.
24. The life of a case through its preparation and then presentation at trial is a roller coaster ride. Don't dwell on either the highs or the lows along the way. It's only the result that counts.
25. A trial lawyer *expects* to win, but *knows* and *understands* that it might not happen.
26. Take depositions of opposing counsel's witnesses at their workplace, office, or other place:
  1. Where they will feel most comfortable;

2. Where you will have the best chance that they will ramble on in their answers to your questions; and,
  3. Where, if they refer to a document in their answer, you will be in the best position to take a brief recess in the deposition to have them get it and then continue with the deposition as seamlessly as possible.
27. Do not consider future appearances, either before the same judge or against the same opposing counsel, in pursuing your zealous representation of your client. An enlightened bench and bar will understand your obligations to your current client and respect you for honoring them.
28. Visit and explore a courtroom unfamiliar to you, before you are called upon to perform in it. Sit in the jury box, the witness chair, and the judge's chair to see their views and lines of sight and to hear how well sound travels to and from them.

29. Arrive early enough on the first day of a jury trial to claim the counsel table closest to the jury. Don't relocate unless the judge requires it.
30. Make, and document, sincere reasonable efforts to work out all discovery issues outside of the courtroom. But no matter how meritorious your complaints about opposing counsel are, expect that the judge will be unmoved by them.
31. Punish opposing counsel for intransigence and unreasonableness by beating them unmercifully in court on the merits of the case, not by asking the judge to sanction them.
32. At depositions, especially those taken outside your regular geographical area of practice, do not agree to "the usual preliminary understandings." If opposing counsel has something specific in mind,

have them propose it to you on the record and then either agree to it or don't, also on the record.

33. Before any depositions are taken, know whether or not, in that jurisdiction, deposition testimony can be used to support motions for summary judgment.
34. Either you, or your local counsel, should select your court reporter for depositions. Do not let your opposing counsel select a court reporter for *your* depositions.
35. Agree to the rates for the court reporter's services, e.g., original transcript and one copy, additional copies, an electronic version of the transcript, travel costs, etc., before you hire the court reporter. Have the court reporter send you those rates in writing, so you can bring them with you to the deposition. Confirm with the court reporter, before starting the deposition, the rates agreed to.

36. If you are ever going to be late for a court appearance, and hopefully this will never occur, call the judge's chambers as soon as you realize it and give them a reason why you will be late and an expected time of arrival at the court. Trial lawyers are prepared and punctual, always. Being late sends the wrong message to the court, to your client, and to your opponents.
37. The last vestige remaining in our society today of the feudal concept of one person having absolute dominion and control over their own fiefdom is the trial court judge in their own courtroom.
38. If you want to be a good trial lawyer, then get into a busy prosecutor's shop, or a busy public defender's shop, right out of law school for a trial lawyering internship. Be famous at that office for taking on more cases than anyone else, for taking the cases no one else wants, and for dedicating yourself to



your cases. Live at the courthouse every day. Try as many cases to a jury as possible and as often as possible.

39. Spend at least as long as it took you to get through law school and pass the bar in this trial lawyering internship. It will pay you dividends for the rest of your life, whether or not you ever try another criminal case again. And whether or not you ever try a civil case. You will not only never forget how to ride this trial lawyering bicycle, but you will have learned and perfected bicycle riding like a circus performer. Trials will forever be just another day at the office for you.
40. Expect that at least one of the parties will raise a new issue at closing or attempt to revisit a settled issue. Even so, don't let the deal fall apart at closing, unless it's your client that's trying to back out. If that's the case, then at the earliest possible time determine whether or not you really want to continue to represent that client.

41. Praise in public. Criticize in private.
42. Whether it's praise or criticism, tell your staff your conclusions, give them a chance to respond, listen to what they say, then make sure everyone moves on.

\* \* \*

## IV. The Rules

My goals in writing this book were threefold. First, I wanted to provide to counselors, whether seasoned or not, some *secrets* of good lawyers that are seemingly arbitrarily scattered around the lawyering landscape. They seem obvious to me now, and known by all good lawyers, but they weren't so obvious to me along the way to today. They were usually learned first-hand, in the lawyering arena itself. Some may trigger personal memories in lawyers' and readers' minds of their own experiences that have led them to similar conclusions. Perhaps younger members of my profession can learn some of them without the pain.

Second, I wanted to provide to all clients help in recognizing good lawyering skills in their own counsel. From a client's perspective, there is no substitute for good counsel, but unfortunately in

the heat of the civil or criminal battle, any advice or strategy may seem sensible at the time. Most clients, especially new clients, don't have a yardstick to measure their counsel against, or the time or resources for a second legal opinion. If all clients, not just the good lawyers' best clients, are also aware of some of these same legal secrets, then all clients can more easily recognize when the counsel they receive is on course and on glidepath and when it is not.

Finally, I wanted to show some of the tension involved in the lawyer-client dynamic that is not often discussed. In that very fluid relationship there may not be a real appreciation by one for what's driving the other, or any true understanding of what each can and can't do or will and won't do. One definition of good lawyers might include: With their heads in the clouds and their feet on the ground, but in the shoes of their clients. As you read the good lawyer's counsel in these pages, think of each of these good lawyer's secrets as a guidepost located somewhere on a continuum from heavenly idealism to pedestrian pragmatism.

The client is a reality check for the lawyer and, likewise, the lawyer for the client. Good lawyers know that the ends alone cannot justify the means. This conflict, only one among many potential lawyer-client conflicts, often causes tension at the nexus of the lawyer-client relationship. Hopefully, the awareness of these good lawyer's guideposts by all clients will help them and their lawyers to appreciate that tension and use it to strengthen and not weaken the relationship.

Law school professors use what they call the *Socratic Method* to teach law students the law. Students' questions are *answered* by the law professors with other questions asked back to the students. This Socratic Method, at its best, forces the law students to think themselves through to their own questions' answers. On the other hand, medical school students use rote memorization to learn for themselves as much medical lore as the medical schools then think is known.

Whether the schooling influences the practice, or the practice drives the schooling is academic, but for each of these professions, legal and medical, the results, as seen by the lawyers'

clients and the physicians' patients, are quite different. Lawyers spend seemingly endless hours researching, writing, theorizing, strategizing, rewriting, and thinking. Physicians, on the other hand, even the most otherwise sensible and cerebral ones, often prescribe from the hip and diagnose on the run, as if each patient were an emergency room situation. Yet good physicians do have one rule they follow above all others. The same first rule that good lawyers also prescribe to. It comes from *The Physician's Oath*, first delivered by Hippocrates, and still sensible counsel for all good physicians and for all good lawyers twenty-four hundred years later: First do no harm.

\* \* \*

1. Not everything requires a Supreme Court brief.
2. Try not to equivocate.
3. Never underestimate your opponent.

4. Don't make idle threats, it undermines your credibility.
5. Don't embarrass your opponent.
6. On a weekly basis, review all your open matters to ensure that each one is being worked appropriately and that nothing has fallen through the cracks.
7. Never promise success to your client.
8. Remember the attorney/client privilege. Is there a "need to know?" Loose lips sink ships.
9. Ignore prospective clients' assurances to you that the prospective defendants: "Will cave in as soon as they know there is a lawyer involved;" "Will settle because they can't afford any bad publicity;" "Have always settled cases like this in the past;" and that the prospective clients have heard that similarly situated predecessors "Settled for

a 'bundle' of money and never even had to file any lawsuit.” Suggest to those prospective clients that if any of that is actually true, then they should be hiring the lawyers who accomplished those results, and not you.

10. Ignore earlier counsel freely given to prospective clients by other lawyers that they may have talked with who have “confirmed” that the client does, in fact, have a “great case” or “great facts,” but, for whatever reason, those lawyers are unable or unwilling to represent that prospective client. Again, suggest to those prospective clients that if their case were such a sure thing those same lawyers would have handed it off themselves, and not put the onus back on the client to find appropriate counsel.
11. Keep an accurate, detailed, and updated accounting of the law firm's trust account(s) such that it could be produced on a moment's notice. Train yourself to



understand and believe that your continued professional life could depend on such an instantaneous and accurate production of that accounting.

12. Ensure that the law firm's checking account never has any client's money in it. Never commingle any client's funds with your own. Never. Not even for a moment.
13. If you decide not to take on a case after meeting with a prospective client, then either in person or by telephone:
  1. Tell them that you're not going to be able to represent them;
  2. Tell them why you've come to that conclusion;
  3. Encourage them to meet with and to seek the opinions of other lawyers; and,
  4. Remind them of the statute(s) of limitations that may be involved.

Follow that conversation with a letter to them to the same effect. Include with that

letter, as enclosures, the originals of all documents the prospective client may have left with you to review. Also, include as a statement in that letter that you have kept no copies of any documents except a copy of this letter. During your conversation, ask the prospective client if they would prefer to come to your offices and pick up your letter and their documents rather than have you mail them. Do whichever one the prospective client wants.

14. Understand that sometimes you, or your staff, will become the target for abuse from everyone, including your client, for reasons that have nothing to do with you or your counsel, but just because you're available and they're frustrated. This, too, will pass.
15. As each case progresses, share with your client your decisions and your thought processes concerning the moral and ethical issues presented, in addition to the legal and factual ones.

16. Don't let any misguided loyalty to your client undermine your loyalty to yourself, your ideals, your family, and your profession.
17. Anticipate your opponent's counter-arguments, but don't unnecessarily address them before they're made.
18. At trial, only ask questions to which you know the answers. And don't stop asking until you get those answers.
19. Don't accept nonresponsive replies from witnesses or deponents. Keep asking the question until it is answered or the Court makes you move on, making an objection for the record before you do.
20. Learn when to stop asking questions. Once you get your answer, move on. Don't gild the lily.
21. Do not assume a settlement attitude.

22. An Asian expression translates: Talk, Talk, Fight, Fight. To me that means once the lawsuit has been filed, and especially when you are discussing settlement, keep the trial preparation pedal to the metal.
23. Unless you have something to say, don't say anything. Let your opponent, the witness, or the deponent fill the silence. It will pay off.
24. There is no magic to mastering the facts, the issues, and the law concerning any case. It just takes all your time.
25. Life is what's happening while you're trying cases.
26. Know more about the case, including the smallest, seemingly most irrelevant details, than anyone. Not only know more about the case than your opponents, of course, but also know more about it than your own expert witnesses.

27. Prepare your witnesses for depositions with the same zeal and precautionary instructions that you use for witness trial preparation.
28. Don't expect the judge to take sides between counsel; rather, expect the judge to criticize both counsel for inappropriate conduct, regardless of the actual facts of the disagreement between counsel.
29. During depositions, listen to what the deponent says and then ask follow-on questions based upon the deponent's *answers* to your questions, in addition to those based upon your prepared areas of inquiry.
30. At depositions, ask simple and straightforward questions. Remember, it's an information discovery process, not a trial performance.
31. There is no need for exaggerated theatrics at depositions.

32. Don't be afraid to use Biblical, literary, or historical references to make your points to the jury, especially in closing. Using such stories and references can put your case into a framework that the jury is familiar with and that they can understand and relate to.
33. Have one calendar that has all of your professional as well as personal schedules and obligations on it. Always bring that calendar to court with you.
34. It's hard for trial lawyers to empathize with judges, since most trial lawyers have never been judges. But as former trial lawyers, most judges recognize and appreciate good trial counsel and understand the conflicting demands made upon lawyers.
35. The critical question is not whether a civil case of yours will settle, since most civil cases do settle, but: For what amount will it settle? The best insurance policy available to guarantee that your case will settle for

your best number is perfectly preparing yourself for trial.

36. There is a difference between having a *motions practice* and having a real *trial practice*. But since most well-prepared cases settle, even the best trial lawyers sometimes, therefore, wind up with a *motions practice*.
37. There is a difference between a *litigator* and a *trial lawyer*. Be the *trial lawyer*.
38. When defending the accused in a homicide case, your best theory of the case, albeit often unspoken, may be: The deceased deserved to die and my guy was the right guy for the job.
39. In a criminal defense case, your potential client, the accused, decides:
  1. Whether to plead guilty or not guilty;
  2. Whether or not to plea bargain and if so what to accept;

3. Whether or not to take the stand and testify; and,
4. Whether or not to appeal any conviction.

All other matters should be ultimately decided by you as counsel, e.g., strategies, theory of the case, defense(s) to use or abandon, objections. If your prospective client is unwilling to agree to this arrangement, strongly consider not beginning the relationship.

40. As the criminal defense counsel, do not concede anything. Make the prosecutor prove beyond a reasonable doubt every element of every offense charged against your client.
41. It's the prosecutor's job at trial, not the criminal defense counsel's, to create an error-free trial record.
42. It's the criminal defense counsel's job at trial to achieve a finding of not guilty for your



client, not to intentionally introduce errors at the trial court level to be later argued on appeal.

43. Criminal defense counsel who have never been prosecutors are more cynical of and have less faith in the criminal justice system than those who once were prosecutors.
44. It is no exaggeration to say that, as the accused's criminal defense counsel, you are all that stands between that accused and the State or the Federal government's oftentimes massive police and prosecution machinery. Be the zealous advocate for that accused who you would want defending you if your roles were reversed.
45. If a client offers to pay you now or later, choose now.
46. Leave it at the office.

47. Don't join anything for possible client acquisition reasons, join—and participate—because you enjoy and support the activity.
48. No loose pages. For want of a nail the Kingdom was lost.
49. If it's costing your client money, remember the law of diminishing returns.
50. Have an office celebration tradition, including toasts, to share successes with your staff.
51. No one should ever answer a call from the media or the press except you.
52. As often as possible tell your secretary and your staff why you are doing what you are doing. Forcing yourself to explain the reasoning of your decisions not only helps to ensure that you've thought them through, but also provides your staff with a better

understanding of what it is that you expect from them.

53. Help your client understand why it may be shortsighted to allow the other side to prepare the initial document. In the *Battle of the Forms* versus the *Battle of the Bills* discussions with your client, you should understand that your client's argument is that the legal bills are real and must be paid now, whereas your proposed document language, anticipating possible hypotheticals and determining now how to deal with them, may be a lesser priority to your client. Work hard and efficiently to find the compromise language that reasonably protects your client, but that's not *overkill* or *overbill*.
54. It is the unusual business deal that is driven by tax purposes or principally done for tax reasons. A business deal should be legal and make sense for sound financial reasons

first, and then, of course, have acceptable tax consequences.

55. Always consider the potential tax consequences of your clients' matters. If the possible risks or the possible rewards are high, then have competent tax counsel provide their opinion to you and your clients before you recommend and choose any course of action.
56. Don't require that a prospective employee already be a trained legal secretary. Be willing to train someone if they have the intelligence, the enthusiasm, and the desire to learn and to work with you. It's worth the additional effort to train staff your way, rather than to retrain someone else's staff.
57. To see whether duplicate originals or copies are, in fact, exactly the same, put two of the pages with the same page number together, one on top of the other, and then hold them up to a light source. If they are identical,

each letter will overlap perfectly and it will be obvious with just a glance. If they're not identical, be glad you've done your job.

58. If some of the words on a copy of a document provided to you are very light, you can enhance their readability by going over them with a highlighter.
59. Remember, no matter how honorable and meritorious your efforts may be for your clients, the practice of law is a business, not a charity. Your family expects you to make enough money to maintain, if not improve, their standard of living. Don't disappoint them.
60. Getting paid as a trial lawyer is very important because the judge will not release you as trial counsel, either civil or criminal, unless there is substitute counsel to replace you. (And good luck finding substitute counsel when you tell them you're not getting paid.)

61. A living person has no heirs.
62. Adverse possession: OCEAN  
Open,  
Continuous,  
Exclusive,  
Adverse, and  
Notorious.

\* \* \*

## **V. Forever and Ever**

### **Marine Corps Leadership Traits**

- Integrity
- Knowledge
- Courage
- Decisiveness
- Dependability
- Initiative
- Tact
- Justice
- Enthusiasm
- Bearing
- Endurance
- Unselfishness
- Loyalty
- Judgment

## **Marine Corps Principles of Leadership**

- Take responsibility for your actions and the actions of your Marines.
- Know yourself and seek improvement.
- Set the example.
- Develop your subordinates.
- Ensure that an order is understood, then supervise it and carry it through to completion.
- Know your Marines and look after their welfare.
- Keep everyone informed.
- Set goals you can reach.
- Make sound and timely decisions.
- Know your job.
- Train your unit as a team.

As counsel for our clients, we are warriors with words. Those readers personally familiar with the Marine Corps may remember the 14 Marine Leadership Traits and the 11 Marine Leadership Principles: the time-tested and successfully proven traits and principles of combat warriors. These



leadership secrets of the Marine Corps are repeated here as additional guideposts for you to consider weaving into your own life and practice. Incorporate them into your own counsel as you continue zealously to represent your clients while steadfastly remaining true to yourself, to your ideals, to your family, and to our country. Lawyers *are* the custodians of the ideals of our society and our countrymen justifiably expect only our best in return for the privilege of being licensed to practice law. You are a professional. Be inclusive. Share all your secrets of good lawyering with all your clients. Always. *Semper fidelis.*

\* \* \*

1. Protect your family.
2. Strive for excellence.
3. Excellence without arrogance.
4. Excellence with humility.
5. Demand respect, don't command it.

6. Be patient with those who don't have your knowledge, education, or good fortune.
7. Proofread everything you write as if it were going to be on the front page of tomorrow's newspapers.

They prosper who burn in the morning  
The letters they wrote overnight.

*The Laws of the Navy,  
Admiral Ronald A. Hopwood*

8. Be overprepared.
9. Don't always do what you always do.
10. As often as possible: KISS  
Keep  
It  
Short and  
Simple
11. Don't dip your pen in the company inkwell.

12. Your secretary is not your spouse.
13. Never assume anything.
14. Some like the priest, some like the priest's wife. Learn to recognize the difference.
15. Refuse to accept less than your best from yourself.
16. Be true to your word.
17. If it's important, be shamelessly persistent. Be relentless.
18. Treat *everyone* the way you expect to be treated.
19. Never expect anyone to keep a secret. If you are sharing something with them, then expect that they will likewise share it with others.

20. There is no such thing as *off the record* when dealing with the media.
21. For most people most of the time, unless you can provide them with a reason why it's in their own best interests to do something, they will prefer to maintain the status quo.
22. No record was ever set on a full stomach.
23. Know your weaknesses. Work hard either to make them your strengths or to minimize their chance of affecting your success.
24. Before you begin writing anything, determine who your reader is. Write only for that reader.
25. Keep rewriting until you get it right.
26. As soon as you realize that you will be late for any meeting or appointment, call the office where you are scheduled to meet, tell them you will be late, and give them an expected time of arrival.

27. Return telephone messages the same day that you receive them.
28. Make your own telephone calls.
29. Send brief and sincere handwritten thank you letters when people extend courtesies to you. When you receive exceptional service or unusual assistance, remember the names and circumstances and send a letter of praise to that person's employer.
30. Keep your sense of humor. It will help sustain you through the hard times and it will help you enjoy the good times even more.
31. Use your successes to reinforce your commitment to perfect preparation, and use your setbacks to reinforce your commitment to perfect preparation.

- 32. Take the time to enjoy the satisfaction and fulfillment of each of your successes large or small.
- 33. Where honesty and integrity are concerned, permit yourself no rationalizations. Be vigilant. Honesty and integrity are lost insidiously.
- 34. You can delegate authority, but not responsibility.
- 35. If you're treading water, then you're losing ground.
- 36. If it's important, do it in person.
- 37. Pray.

\* \* \*

## **Postscript: 50 Ways Clients Can Tell If They Have A Good Lawyer**

**G**ood lawyers recognize other good lawyers. They can be found in every jurisdiction, in every courthouse, and in every law firm in the Country. But how can clients find a good lawyer? How *does* a client spot and cut a good lawyer from the rest of the herd? Are there similar traits and principles that all good lawyers try to follow? I think there are.

I also think that if clients know what those traits and principles are and look for them in their own lawyers, they will have objective ways to measure their own lawyer's good lawyering skills. This objective analysis should be done simultaneously with their subjective measurement

of their own lawyer's successes concerning that particular matter. But just as in any tournament, the top-seeded player or team might not actually win that tournament. Likewise, a good lawyer will not always prevail. But if they don't prevail, it won't be for lack of preparation or for lack of trying. There may be another good lawyer on the other side of that case, for example, and they both can't achieve their separate client's conflicting goals. There's also the small matter of the facts at hand. Sometimes you just don't have good facts. There's only so much even a good lawyer can do with bad facts.

So for you readers who have been clients, who are now clients, or who may someday (perhaps sooner than you'd wish) become a lawyer's client, here are 50 ways to find out how high you would rank your lawyer on basic good lawyering skills. Before you start, however, remember two universal truths: things are not usually as simple as they first seem to be; and, nobody's perfect.

With those final words of caution I invite you to compare your lawyer with these objective



standards. So that we're all clear on what I've done here, I've taken some of the guideposts from *A Good Lawyer* and restated them as traits and principles you should look for in your lawyer. If you've personally had a lawyer, or now have a lawyer, I'm optimistic that you'll find that not only are you personally satisfied, or even very satisfied, with your own lawyer's work, but that you will also rank your lawyer, objectively, as a good lawyer, too. That's because most lawyers really are good lawyers.

Here then are some of the traits and principles of a good lawyer.

\* \* \*

A good lawyer:

1. Is always honest and truthful.
2. Listens; and speaks sincerely, or not at all.
3. Is the messenger, not the message.

4. Knows who the client is, remembers who the client is, only represents the client, and doesn't surprise the client.
5. Keeps the client aware of developments in a timely manner.
6. Returns the client's phone calls and inquiries promptly.
7. Proposes legitimate and sound alternatives to get the client to the desired end result and argues for their adoption. Makes deals, doesn't break them. A good lawyer is a *closer*.
8. Asks the client what the client wants and why. After hearing that answer, a good lawyer then tells the client whether that lawyer believes they can help the client achieve those goals.

9. Is willing to tell the client that the law sometimes doesn't offer a remedy to every particular problem.
10. After hearing the situation and accepting the responsibilities of taking on the case, a good lawyer then tells the client that is it that lawyer who will now worry that problem, not that client anymore, and that that client needs to move on to protect and preserve their family, their job, and their work.
11. Never underestimates an opponent and never embarrasses anyone.
12. Has a positive attitude, is enthusiastic and creative, but does not promise success.
13. Explains everything discussed in terms that the client can understand and doesn't use legal terms without explaining them.

14. Has a good reputation with their fellow lawyers and in the local community in general.
15. Doesn't wait for things to happen, but has a flexible plan and begins executing that plan as soon as reasonably possible.
16. Is unique, but not flamboyant or outrageous.
17. Before beginning any work, makes sure the client understands and agrees with the fee arrangements and the billing procedures. A good lawyer uses simple and easily understood written legal representation and fee agreements, tailored to each client, bills understandably based upon those fee agreements and then stands behind those bills.
18. Sets and meets deadlines or explains why they're not being met.

19. Normally uses checklists, rather than standard forms, to create the appropriate business documents.
20. Shares with the client the lawyer's decisions and thought processes concerning the moral and ethical issues presented in addition to the legal and factual ones.
21. Quickly becomes the most knowledgeable person about the facts in the case and even while settling the case does not assume a settlement attitude.
22. Is shamelessly persistent and relentless in their pursuit of what is important.
23. Has a sense of humor and keeps it.
24. Questions their client only at a time and in a place where the answers will remain attorney/client-privileged information and always honors the attorney/client privilege.

25. Understands that lawyering requires working hard, but that it's not hard work. Long hours alone don't define hard work. People who do hard work for a living understand this and good lawyers do, too.
26. Treats everyone with the same respect and dignity that that lawyer expects to be treated with.
27. Is civilized with and respectful to opposing counsel, but not familiar or friendly with them.
28. Treats the judge as the first among equals.
29. Never assumes anything and especially never assumes the judge knows anything.
30. Doesn't ask judges for advice in or out of the courtroom.
31. At trial has the same intensity, ability to focus, and unwavering absolute self-

confidence in themselves, their preparation for that moment, and the certainty of their victory as an ace combat pilot in a single-engine jet fighter outnumbered in an aerial dogfight.

32. Strives for excellence. Excellence without arrogance. Excellence with humility.
33. Is patient with those who don't have that lawyer's knowledge, education, or good fortune.
34. Is proud of being a lawyer and how they have served each of their clients.
35. Has good judgment, the lifeblood of good counsel, and is known for their good business, as well as good legal judgment.
36. Is wary of the prospective client who is currently represented by counsel, but shopping around for replacement counsel, unbeknownst to their present counsel.

- 37. Is always alert for potential conflicts of interest and investigates and resolves all potential conflicts issues before undertaking any representation.
- 38. Understands that good lawyering does not require or condone any distraction from their own high personal, professional, moral, and ethical standards.
- 39. Is thankful that they are in a profession with unlimited possibilities to help individuals and society.
- 40. Is a responsible steward of their talents and uses their persuasive skills appropriately.
- 41. Leaves their mark.
- 42. Continuously monitors the appropriate proximity to maintain with each client to balance the objectivity that distance provides with the subjectivity that closeness provides



and understands that that distance is different for each client.

43. Maintains their objectivity about the client's case. Good lawyers may be passionate about their cases, but they remain objective.
44. Takes a break from their legal practice, as much and as often as they can.
45. Leaves something on the table at settlement, but takes no prisoners at trial.
46. Knows when to move on.
47. Has faith in the legal system, but remembers that it's a hands-on operation whose best results occur when that lawyer's hands control it.
48. Doesn't let the possibility or probability of future appearances, either before the same judge or against the same opposing counsel,

affect their zealous representation of their current client.

- 49. Encourages the client to continue to trust the client's own instincts and to question the lawyer when the client is unsure of what or why things are or are not happening.
- 50. Knows that our democratic society and our justice system within our democracy will only last as long as we all continue to recognize that the personal dignity of each individual, even of the meekest or the vilest amongst us, requires our equal treatment of every one of us under our laws. This is the good lawyer's gospel. American lawyers are prepared to fight and to die for it.

The inescapable conclusion about a good lawyer is that the more a client knows about and works with that lawyer, the more comfortable and confident that client becomes with that lawyer and especially with that lawyer's competence to handle that matter for that client.

# **The Constitution of the United States of America**

**W**e the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

## **Article I**

*Section 1.* All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

*Section 2.* The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

[Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not Taxed, three fifths of all other Persons.]<sup>1</sup> The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten

Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

*Section 3.* The Senate of the United States shall be composed of two Senators from each State, [chosen by the Legislature thereof,]<sup>2</sup> for six Years; and each Senator shall have one Vote.

Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and the third Class at the Expiration of the sixth Year, so that one third may be chosen every second Year; [and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.]<sup>3</sup>

No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

The Senate shall chuse their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States.

The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present.

Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of Honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

*Section 4.* The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at

any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

The Congress shall assemble at least once in every Year, and such Meeting shall be [on the first Monday in December,]<sup>4</sup> unless they shall by Law appoint a different Day.

*Section 5.* Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member.

Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question



shall, at the Desire of one fifth of those Present, be entered on the Journal.

Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

*Section 6.* The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been

increased during such time: and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

*Section 7.* All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills. Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by Yeas and Nays, and the Names of

the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

*Section 8.* The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the

United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

To borrow Money on the credit of the United States;

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

To establish a uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

To establish Post Offices and post Roads;

To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

To constitute Tribunals inferior to the supreme Court;

To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;

To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

To provide and maintain a Navy;

To make Rules for the Government and Regulation of the land and naval Forces;

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States

respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;--And

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

*Section 9.* The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand

eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

No Bill of Attainder or ex post facto Law shall be passed.

No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.<sup>5</sup>

No Tax or Duty shall be laid on Articles exported from any State.

No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another: nor shall Vessels bound to, or from, one State, be obliged to enter, clear or pay Duties in another.

No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and

Account of Receipts and Expenditures of all public Money shall be published from time to time.

No Title of Nobility shall be granted by the United States: and no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

*Section 10.* No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing it's inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such



Laws shall be subject to the Revision and Controul of the Congress.

No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

## **Article II**

*Section 1.* The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows:

Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of

Trust or Profit under the United States, shall be appointed an Elector.

[The Electors shall meet in their respective States, and vote by Ballot for two Persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having the greatest Number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such Majority, and have an equal Number of Votes, then the House of Representatives shall immediately chuse by Ballot one of them for President; and if no Person have a Majority, then from the five highest on the List the said House shall in like Manner chuse the President. But in

chusing the President, the Votes shall be taken by States, the Representation from each State having one Vote; A quorum for this Purpose shall consist of a Member or Members from two thirds of the States, and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice President.]<sup>6</sup>

The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States.

[In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the Same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.]<sup>7</sup>

The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be increased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.

Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation:—"I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my

Ability, preserve, protect and defend the Constitution of the United States."

*Section 2.* The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the

Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the end of their next Session.

*Section 3.* He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

*Section 4.* The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

## **Article III**

*Section 1.* The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

*Section 2.* The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of

admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—[between a State and Citizens of another State;—]<sup>8</sup> between Citizens of different States;—between Citizens of the same State claiming Lands under Grants of different States, [and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.]<sup>9</sup>

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at



such Place or Places as the Congress may by Law have directed.

*Section 3.* Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

## Article IV

*Section 1.* Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records, and Proceedings shall be proved, and the Effect thereof.

*Section 2.* The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

[No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such

Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.]]<sup>10</sup>

*Section 3.* New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

*Section 4.* The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the

Legislature cannot be convened) against domestic Violence.

## **Article V**

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

## Article VI

All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a

Qualification to any Office or public Trust under the United States.

## **Article VII**

The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same.

Done in Convention by the Unanimous Consent of the States present the Seventeenth Day of September in the Year of our Lord one thousand seven hundred and Eighty seven and of the Independence of the United States of America the Twelfth

In Witness whereof We have hereunto subscribed our Names,

George Washington--President and deputy from  
Virginia

New Hampshire: John Langdon, Nicholas Gilman

Massachusetts: Nathaniel Gorham, Rufus King

Connecticut: William Samuel Johnson, Roger Sherman

New York: Alexander Hamilton

New Jersey: William Livingston, David Brearly, William Paterson, Jonathan Dayton

Pennsylvania: Benjamin Franklin, Thomas Mifflin, Robert Morris, George Clymer, Thomas FitzSimons, Jared Ingersoll, James Wilson, Gouverneur Morris

Delaware: George Read, Gunning Bedford, Jr., John Dickinson, Richard Bassett, Jacob Broom

Maryland: James McHenry, Daniel of Saint Thomas Jenifer, Daniel Carroll

Virginia: John Blair, James Madison, Jr.

North Carolina: William Blount, Richard Dobbs  
Spaight, Hugh Williamson

South Carolina: J. Rutledge, Charles Cotesworth  
Pinckney, Charles Pinckney, Pierce  
Butler

Georgia: William Few, Abraham Baldwin

Attest: William Jackson, Secretary

*In Convention. Monday,  
September 17th 1787.  
Present  
The States of*

New Hampshire, Massachusetts, Connecticut, Mr.  
Hamilton from New York, New Jersey,  
Pennsylvania, Delaware, Maryland, Virginia,  
North Carolina, South Carolina and Georgia.

*Resolved,*

That the preceeding Constitution be laid before the  
United States in Congress assembled, and that it is



the Opinion of this Convention, that it should afterwards be submitted to a Convention of Delegates, chosen in each State by the People thereof, under the Recommendation of its Legislature, for their Assent and Ratification; and that each Convention assenting to, and ratifying the Same, should give Notice thereof to the United States in Congress assembled. Resolved, That it is the Opinion of this Convention, that as soon as the Conventions of nine States shall have ratified this Constitution, the United States in Congress assembled should fix a Day on which Electors should be appointed by the States which shall have ratified the same, and a Day on which the Electors should assemble to vote for the President, and the Time and Place for commencing Proceedings under this Constitution.

That after such Publication the Electors should be appointed, and the Senators and Representatives elected: That the Electors should meet on the Day fixed for the Election of the President, and should transmit their Votes certified, signed, sealed and directed, as the Constitution requires, to the Secretary of the United States in

Congress assembled, that the Senators and Representatives should convene at the Time and Place assigned; that the Senators should appoint a President of the Senate, for the sole Purpose of receiving, opening and counting the Votes for President; and, that after he shall be chosen, the Congress, together with the President, should, without Delay, proceed to execute this Constitution.

By the unanimous Order of the Convention

W. JACKSON, Secretary

George WASHINGTON, President

CONGRESS OF THE UNITED STATES  
begun and held at the City of New York  
on Wednesday the fourth of March,  
one thousand seven hundred and eighty nine<sup>11</sup>

THE Conventions of a number of the States, having at the time of their adopting the Constitution, expressed a desire, in order to prevent misconstruction or abuse of its powers, that further declaratory and restrictive clauses should be added: And as extending the ground of public confidence in the Government, will best ensure the beneficent ends of its institution:

RESOLVED by the Senate and House of Representatives of the United States of America, in Congress assembled, two thirds of both Houses concurring, that the following Articles be proposed to the Legislatures of the several States, as amendments to the Constitution of the United States, all or any of which Articles, when ratified by three fourths of the said Legislatures, to be valid

to all intents and purposes, as part of the said Constitution; viz.

ARTICLES in addition to, and Amendment of the Constitution of the United States of America, proposed by Congress, and ratified by the Legislatures of the several States, pursuant to the fifth Article of the original Constitution . . .

FREDERICK AUGUSTUS MUHLENBERG,  
Speaker of the House of Representatives.

JOHN ADAMS,  
Vice-President of the United States, and  
President of the Senate

ATTEST,  
JOHN BECKLEY,  
Clerk of the House of Representatives.  
SAM. A. OTIS, Secretary of the Senate.

**AMENDMENTS  
TO THE CONSTITUTION  
OF THE  
UNITED STATES OF AMERICA  
AMENDMENT I<sup>12</sup>**

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

**AMENDMENT II**

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

### **AMENDMENT III**

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

### **AMENDMENT IV**

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

### **AMENDMENT V**

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or

public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

## **AMENDMENT VI**

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.

## **AMENDMENT VII**

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

## **AMENDMENT VIII**

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

## **AMENDMENT IX**

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.



## **AMENDMENT X**

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

## **AMENDMENT XI**

(Ratified February 7, 1795)

The Judicial Power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

## AMENDMENT XII

(Ratified June 15, 1804)

The Electors shall meet in their respective states, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;—The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;—The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the

persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. [And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President.—]<sup>13</sup> The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of

the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

## AMENDMENT XIII

(Ratified December 6, 1865)

*Section 1.* Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

*Section 2.* Congress shall have power to enforce this article by appropriate legislation.

## AMENDMENT XIV

(Ratified July 9, 1868)

*Section 1.* All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

*Section 2.* Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male

inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

*Section 3.* No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

*Section 4.* The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

*Section 5.* The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

## **AMENDMENT XV**

(Ratified February 3, 1870)

*Section 1.* The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

*Section 2.* The Congress shall have power to enforce this article by appropriate legislation.

## **AMENDMENT XVI**

(Ratified February 3, 1913)

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.



## AMENDMENT XVII

(Ratified April 8, 1913)

The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: *Provided*, That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

## AMENDMENT XVIII

(Ratified January 16, 1919)

(Repealed by Amendment XXI)

*[Section 1.* After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

*Section 2.* The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation.

*Section 3.* This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.]

## **AMENDMENT XIX**

(Ratified August 18, 1920)

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

Congress shall have power to enforce this article by appropriate legislation.

## **AMENDMENT XX**

(Ratified January 23, 1933)

*Section 1.* The terms of the President and Vice President shall end at noon on the 20th day of January, and the terms of Senators and Representatives at noon on the 3d day of January, of the years in which such terms would have ended if this article had not been ratified; and the terms of their successors shall then begin.

*Section 2.* The Congress shall assemble at least once in every year, and such meeting shall

begin at noon on the 3d day of January, unless they shall by law appoint a different day.

*Section 3.* If, at the time fixed for the beginning of the term of the President, the President elect shall have died, the Vice President elect shall become President. If a President shall not have been chosen before the time fixed for the beginning of his term, or if the President elect shall have failed to qualify, then the Vice President elect shall act as President until a President shall have qualified; and the Congress may by law provide for the case wherein neither a President elect nor a Vice President elect shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice President shall have qualified.

*Section 4.* The Congress may by law provide for the case of the death of any of the persons from whom the House of Representatives may choose a President whenever the right of choice shall have devolved upon them, and for the case of the death of any of the persons from whom

the Senate may choose a Vice President whenever the right of choice shall have devolved upon them.

*Section 5.* Sections 1 and 2 shall take effect on the 15th day of October following the ratification of this article.

*Section 6.* This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission.

## AMENDMENT XXI

(Ratified December 5, 1933)

*Section 1.* The eighteenth article of amendment to the Constitution of the United States is hereby repealed.

*Section 2.* The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

*Section 3.* This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by conventions in the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

## AMENDMENT XXII

(Ratified February 27, 1951)

*Section 1.* No person shall be elected to the office of the President more than twice, and no person who has held the office of President, or acted as President, for more than two years of a term to which some other person was elected President shall be elected to the office of the President more than once. But this article shall not apply to any person holding the office of President when this article was proposed by the Congress, and shall not prevent any person who may be holding the office of President, or acting as President, during the term within which this article becomes operative from holding the office of President or acting as President during the remainder of such term.

*Section 2.* This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several states within seven years

from the date of its submission to the states by the Congress.

## **AMENDMENT XXIII**

(Ratified March 29, 1961)

*Section 1.* The District constituting the seat of government of the United States shall appoint in such manner as the Congress may direct:

A number of electors of President and Vice President equal to the whole number of Senators and Representatives in Congress to which the District would be entitled if it were a state, but in no event more than the least populous State; they shall be in addition to those appointed by the States, but they shall be considered, for the purposes of the election of President and Vice President, to be electors appointed by a State; and they shall meet in the District and perform such duties as provided by the twelfth article of amendment.

*Section 2.* The Congress shall have power to enforce this article by appropriate legislation.



## **AMENDMENT XXIV**

(Ratified January 23, 1964)

*Section 1.* The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any state by reason of failure to pay any poll tax or other tax.

*Section 2.* The Congress shall have power to enforce this article by appropriate legislation.

## **AMENDMENT XXV**

(Ratified February 10, 1967)

*Section 1.* In case of the removal of the President from office or of his death or resignation, the Vice President shall become President.

*Section 2.* Whenever there is a vacancy in the office of the Vice President, the President shall nominate a Vice President who shall take office upon confirmation by a majority vote of both Houses of Congress.

*Section 3.* Whenever the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that he is unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Vice President as Acting President.

*Section 4.* Whenever the Vice President and a majority of either the principal officers of the executive departments or of such other body as Congress may by law provide, transmit to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to

discharge the powers and duties of his office, the Vice President shall immediately assume the powers and duties of the office as Acting President.

Thereafter, when the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that no inability exists, he shall resume the powers and duties of his office unless the Vice President and a majority of either the principal officers of the executive department or of such other body as Congress may by law provide, transmit within four days to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office. Thereupon Congress shall decide the issue, assembling within forty-eight hours for that purpose if not in session. If the Congress, within twenty-one days after receipt of the latter written declaration, or, if Congress is not in session, within twenty-one days after Congress is required to assemble, determines by two-thirds vote of both Houses that the President is unable to discharge the powers and duties of his office, the

Vice President shall continue to discharge the same as Acting President; otherwise, the President shall resume the powers and duties of his office.

## **AMENDMENT XXVI**

(Ratified July 1, 1971)

*Section 1.* The right of citizens of the United States, who are 18 years of age or older, to vote, shall not be denied or abridged by the United States or any state on account of age.

*Section 2.* The Congress shall have the power to enforce this article by appropriate legislation.

**AMENDMENT XXVII**

(Ratified May 19, 1992)

No law varying the compensation for the services of the Senators and Representatives, shall take effect, until an election of Representatives shall have intervened.

**NOTES**

1. Changed by section 2 of the Fourteenth Amendment.
2. Changed by the Seventeenth Amendment.
3. Changed by the Seventeenth Amendment.
4. Changed by section 2 of the Twentieth Amendment.
5. See Sixteenth Amendment.
6. Changed by the Twelfth Amendment.
7. Changed by the Twenty-Fifth Amendment.
8. Changed by the Eleventh Amendment.
9. Changed by the Eleventh Amendment.

10. Changed by the Thirteenth Amendment.
11. On September 25, 1789, Congress transmitted to the State legislatures twelve proposed Amendments, two of which, having to do with Congressional representation and Congressional pay, were not adopted. The remaining ten Amendments became known as the Bill of Rights.
12. The first ten Amendments (Bill of Rights) were ratified effective December 15, 1791.
13. Superseded by section 3 of the Twentieth Amendment.

## **Index to the Constitution and Amendments**

	<u>Articles, Section</u> <u>Amendments, Section</u>	<u>Page</u>
Admiralty & maritime cases	III,2	124
Advice and consent	II,2	121
Age, as qualification for		
Public office		
President	II,1	119
Representatives	I,2	104
Senators	I,3	106
Voting	26thA	160
Ambassadors		
Case controversies	III,2	123
President's power	II,2-3	121-22
Amendment procedure	V	128

Appellate jurisdiction	III,2	124
Appointment power	II,2	121
Appointments, temporary	17thA	149
Apportionment of representatives	I,2; 14thA,2	104; 145
Appropriations	I,8-9	111-16
Arms, right to bear	2dA	137
Army	II,2	121
Assembly, right of	1stA	137
Authors	I,8	112
Bail, excessive	8thA	140
Bankruptcy, Congress' power	I,8	112
Bill of Rights (Amend.1-10)	1stA-10thA	137-41
Bills	I,7	110
Bills of attainder	I,9-10	115,116
Borrowing, Congress' power	I,8	120



Cabinet officers' reports	II,2	121
Census	I,2	104
Chief Justice, role in		
impeachment trials	I,3	107
Commander in Chief	II,2	121
Commerce, Congress' power	I,8	112
Commission of officers	II,3	122
Compact	I,10	117
Congress		
Annual meetings	I,4; 20thA	108;151
Declaring war	I,8	113
Legislative proceedings	I,5	108
Members' compensation		
and privileges	I,6	109
Organization	I,1	103
Powers	I,8; 12thA	111;142
Special sessions	II,3	122
Congressional Record (Journal)	I,5	108
Constitution, purpose	Preamble	103
Contracts, interference by states	I,10	116

Controversies, court cases	III,2	124
Conventions	V;VII;	128;130;
	21stA	154
Copyrights & patents,		
Congress' power	I,8	112
Counsel, right to	6thA	139
Counterfeiting, Congress'		
power to punish	I,8	112
Courts ( <i>see</i> Judiciary)		
Criminal proceedings, rights		
of accused	5thA;6thA	138;139
Currency, Congress' power	I,8	112
Defense, Congress' power	I,8	111
District of Columbia	I,8;23rdA	114;156
Double jeopardy	5thA	138
Due process of laws	5thA;	138
	14thA,1	145

---

Electoral college	II,1;12thA;	117;142
	23rdA	156
Equal protection of laws	14thA,1	145
Equity	II,2;11thA	121;141
Ex post facto laws	I,9-10	115,116
Extradition of fugitives by states	IV,2	126
Fines, excessive	8thA	140
Foreign affairs, President's		
power	II,2	121
Foreign commerce, Congress'		
power	I,8	112
"Full faith and credit" clause	IV,1	126
General welfare, Congress'		
power	I,8	111
Grand jury indictments	5thA	138
Grievances, redress of	1stA	137

Habeas corpus	I,9	115
House of Representatives		
Election to & eligibility for	I,2	104
Members' terms of office	I,2; I,6	104;109
Speaker of	I,2;	105;
	25thA, 3-4	158,158
Special powers		
Impeachment	I,2	105
Presidential elections	II,1;12thA	117;142
Revenue bills	I,7	110
States' representation in	I,2	104
Vacancies	I,2	105
Immunities ( <i>see</i> Privileges and immunities)		
Impeachment		
Officials subject to	II,4	123
Penalties	I,3	107
Power of, lodge in House	I,2	105
Reasons	II,4	123

---

Trials, Senate	I,3	107
Indians, commerce with,		
Congress' power	I,8	112
Inhabitant ( <i>see</i> Resident)	I,2;I,3	104;106
International law, Congress'		
power	I,8	112
Inventors	I,8	112
Judiciary		
Inferior courts	I,8;III,1	113;123
Judicial review	III,2	124
Jurisdiction	III,2	124
Nomination & confirmation		
of judges	II,2	121
Supreme Court	III,1	123
Terms of office &		
compensation	III,1	123
Jury trials	III,2; 6thA; 7thA	124;139; 140

"Lame duck" amendment	20thA	151
Liquor	18thA; 21stA	150; 154
Marque and reprisal, letters of	I,8;10	113;116
Militia (Military)	2dA;5thA	137;138
Congress' powers	I,8	113
President's powers	II,2	121
Money	I,8	111, 112
National debt	VI	129
Native Americans ( <i>see</i> Indians)		
Naturalization	I,8	112
Navy	I,8;II,2	113;121
"Necessary and proper" clause	I,8	114
Nominate	II,2;25thA	121;158
Oath of office, federal and state	II,1;VI	120;129
Original jurisdiction	III,2	124

Pardons and reprieves,		
President's power	II,2	121
People, powers reserved to	10thA	141
Persons	14thA	145
Petition the government,		
right to	1stA	137
"Pocket veto"	I,7	111
Poll tax, prohibition	24thA,1	157
Post offices and roads,		
Congress' power	I,8	112
Presidency, succession to	III;20thA; 25thA	120;152; 157
President		
Disability	25thA,3	158
Election	II,1;12thA; 22dA;23rdA	117;142; 155;156
Eligibility for office	II,1	119
Legislation, role in	I,7	110
Oath of office	II,1	120
Powers & duties	II,2-3	121-22

Terms of office & compensation	II,1	117, 120
Press, freedom of	1stA	137
Privileges and immunities (of citizens)	IV,2;14thA,1	126;145
Prohibition	18thA;21stA	150;154
Property, taking for public use	5thA	139
Punishments, cruel and unusual	8thA	140
Race	15thA	148
Ratification of Constitution	V;VII	128;130
Religion, freedom of	1stA	137
Religious tests	VI	129
Resident ( <i>see</i> Inhabitant)	II,1	119
Search and seizure	4thA	138
Seas, Congress' power	I,8	113
Secrecy	I,5	108
Self-incrimination	5thA	139



## Senate

Election to & eligibility for	I,3	106
Equal representation of states	V	128
Officers	I,3	107
President of	I,3;12thA	106;142
President of, pro tempore	I,3; 25thA,3-4	107; 158,158

## Special powers

Impeachment trials	I,3	107
Presidential appointments	II,2	121
Treaties	II,2	121
Terms of office	I,3;I,6	105;109
Vacancies	17thA	149
Slavery, prohibition of	13thA; 14thA,4	144; 147
Soldiers, quartering of	3rdA	138
Speech, freedom of	1stA	137
Spending, Congress' power	I,8	111
State of Union message	II,3	122

## States

And federal elections	I,4	107
Formation & admission		
to union	IV,3	127
Powers requiring consent		
of Congress	I,10	116
Powers reserved to	10thA	141
Protection against invasion,		
violence	IV,4	127
Republican form of		
government guaranteed	IV,4	127
Suits against	III,2;11thA	124;141
Sundays	I,7	111
Supreme law of the land		
(Constitution)	VI	129
Taxing power, in general	I,7-8	110,110
Direct taxes prohibited	I,9	115
Income taxes permitted	16thA	148

---

Territories	IV,3	127
Titles of nobility	I,9	116
Treason	III,3	125
Treaty(ies)	I,10;II,2; III,2;VI	116;121; 123;129
Trial	I,3;III,2; 6thA;7thA	107;124; 139;140
Veto, President's power	I,7	110
Vice-Presidency, succession to	20thA;25thA	152;158
Vice-President Conditions for assuming Presidency	II,1;20thA; 25thA	120;152; 158
Declaring President disabled, role in	25thA,4	158
Senate, role in	I,3;12thA	106;142
Term of office	II,1	117

Voting rights	14thA;24thA	145;157
Blacks, former slaves	15thA,1	148
Eighteen-year-olds	26thA	160
Women	19thA	151
War powers ( <i>see</i> Congress, declaring war, powers; President, powers & duties; States, protection against invasion)		
Warrants	4thA	138
Weights and measures, standards of	I,8	112

# Notes

