

WEST'S
ENCYCLOPEDIA
of
AMERICAN
LAW

2ND EDITION

VOLUME 13



DICTIONARY AND INDEXES

WEST'S ENCYCLOPEDIA *of* AMERICAN LAW

2ND EDITION

VOLUME 13



DICTIONARY AND INDEXES

THOMSON

GALE

West's Encyclopedia of American Law, 2nd Edition

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WEST'S
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2ND EDITION

DEDICATION

West's Encyclopedia of American Law (WEAL) is dedicated to librarians and library patrons throughout the United States and beyond. Your interest in the American legal system helps to expand and fuel the framework of our Republic.



PREFACE

The U.S. legal system is admired around the world for the freedoms it allows the individual and the fairness with which it attempts to treat all persons. On the surface, it may seem simple, yet those who have delved into it know that this system of federal and state constitutions, statutes, regulations, and common-law decisions is elaborate and complex. It derives from the English common law, but includes principles older than England, along with some principles from other lands. The U.S. legal system, like many others, has a language all its own, but too often it is an unfamiliar language: many concepts are still phrased in Latin. The second edition of *West's Encyclopedia of American Law* (WEAL) explains legal terms and concepts in everyday language, however. It covers a wide variety of persons, entities, and events that have shaped the U.S. legal system and influenced public perceptions of it.

MAIN FEATURES OF THIS SET

Entries

This encyclopedia contains nearly 5,000 entries devoted to terms, concepts, events, movements, cases, and persons significant to U.S. law. Entries on legal terms contain a definition of the term, followed by explanatory text if necessary. Entries are arranged alphabetically in standard encyclopedia format for ease of use. A wide variety of additional features, listed later in this preface, provide interesting background and supplemental information.

Definitions Every entry on a legal term is followed by a definition, which appears at the beginning of the entry and is italicized. The Dictionary and Indexes volume includes a glossary containing all the definitions from WEAL.

Further Readings To facilitate further research, a list of Further Readings is included at the end of a majority of the main entries.

Cross-References WEAL provides two types of cross-references, within and following entries. Within the entries, terms are set in small capital letters—for example, LIEN—to indicate that they have their own entry in the encyclopedia. At the end of the entries, related entries the reader may wish to explore are listed alphabetically by title.

Blind cross-reference entries are also included to direct the user to other entries throughout the set.

In Focus Essays

In Focus essays accompany related entries and provide additional facts, details, and arguments on particularly interesting, important, or controversial issues raised by those entries. The subjects covered include hotly contested issues, such as abortion, capital punishment, and gay rights; detailed processes, such as the Food and Drug Administration's approval process for new drugs; and important historical or social issues, such as debates over the formation of the U.S. Constitution.

Sidebars

Sidebars provide brief highlights of some interesting facet of accompanying entries. They complement regular entries and In Focus essays by adding informative details. Sidebar topics include the Million Man March and the branches of the U.S. armed services. Sidebars appear at the top of a text page and are set in a box.

Biographies

WEAL profiles a wide variety of interesting and influential people—including lawyers, judges, government and civic leaders, and historical and modern figures—who have played a part in creating or shaping U.S. law. Each biography includes a timeline, which shows important moments in the subject's life as well as important historical events of the period. Biographies appear alphabetically by the subject's last name.

ADDITIONAL FEATURES OF THIS SET

Enhancements Throughout *WEAL*, readers will find a broad array of photographs, charts, graphs, manuscripts, legal forms, and other visual aids enhancing the ideas presented in the text.

Indexes *WEAL* features a cases index and a cumulative general index in a separate volume.

Appendixes

Three appendix volumes are included with *WEAL*, containing hundreds of pages of docu-

ments, laws, manuscripts, and forms fundamental to and characteristic of U.S. law.

Milestone Cases in the Law

A special Appendix volume entitled *Milestones in the Law*, allows readers to take a close look at landmark cases in U.S. law. Readers can explore the reasoning of the judges and the arguments of the attorneys that produced major decisions on important legal and social issues. Included in each Milestone are the opinions of the lower courts; the briefs presented by the parties to the U.S. Supreme Court; and the decision of the Supreme Court, including the majority opinion and all concurring and dissenting opinions for each case.

Primary Documents

There is also an Appendix volume containing more than 60 primary documents, such as the English Bill of Rights, Martin Luther King Jr.'s Letter from Birmingham Jail, and several presidential speeches.

Citations

Wherever possible, *WEAL* entries include citations for cases and statutes mentioned in the text. These allow readers wishing to do additional research to find the opinions and statutes cited. Two sample citations, with explanations of common citation terms, can be seen below and opposite.

Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed. 2d 694 (1966)

1 2 3 4 5 6 7

1. **Case title.** The title of the case is set in italics and indicates the names of the parties. The suit in this sample citation was between Ernesto A. Miranda and the state of Arizona.
2. **Reporter volume number.** The number preceding the reporter name indicates the reporter volume containing the case. (The volume number appears on the spine of the reporter, along with the reporter name.)
3. **Reporter name.** The reporter name is abbreviated. The suit in the sample citation is from the reporter, or series of books, called *U.S. Reports*, which contains cases from the U.S. Supreme Court. (Numerous reporters publish cases from the federal and state courts.)
4. **Reporter page.** The number following the reporter name indicates the reporter page on which the case begins.
5. **Additional reporter citation.** Many cases may be found in more than one reporter. The suit in the sample citation also appears in volume 86 of the *Supreme Court Reporter*, beginning on page 1602.
6. **Additional reporter citation.** The suit in the sample citation is also reported in volume 16 of the *Lawyer's Edition*, second series, beginning on page 694.
7. **Year of decision.** The year the court issued its decision in the case appears in parentheses at the end of the cite.

Brady Handgun Violence Prevention Act,	Pub. L. No. 103–159,	107	Stat. 1536	(18	U.S.C.A.	§§ 921–925A)
1	2	3	4	5	6	7
						8

1. *Statute title.*
2. *Public law number.* In the sample citation, the number 103 indicates that this law was passed by the 103d Congress, and the number 159 indicates that it was the 159th law passed by that Congress.
3. *Reporter volume number.* The number preceding the reporter name indicates the reporter volume containing the statute.
4. *Reporter name.* The reporter name is abbreviated. The statute in the sample citation is from *Statutes at Large*.
5. *Reporter page.* The number following the reporter name indicates the reporter page on which the statute begins.
6. *Title number.* Federal laws are divided into major sections with specific titles. The number preceding a reference to the *U.S. Code Annotated* is the title number. title 18 of the U.S. Code is Crimes and Criminal Procedure.
7. *Additional reporter.* The statute in the sample citation may also be found in the *U.S. Code Annotated*.
8. *Section number.* The section numbers following a reference to the *U.S. Code Annotated* indicate where the statute appears in that reporter.

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CONTENTS

VOLUME 1

Preface	iii
Contributors	vii
A–Ba	1
Abbreviations	507

VOLUME 2

Preface	iii
Contributors	vii
Be–Col	1
Abbreviations	511

VOLUME 3

Preface	iii
Contributors	vii
Com–Dor	1
Abbreviations	511

VOLUME 4

Preface	iii
Contributors	vii
Dou–Fre	1
Abbreviations	509

VOLUME 5

Preface	iii
Contributors	vii
Fri–Jam	1
Abbreviations	501

VOLUME 6

Preface	iii
Contributors	vii
Jap–Ma	1
Abbreviations	469

VOLUME 7

Preface	iii
Contributors	vii
Mc–Pl	1
Abbreviations	467

VOLUME 8

Preface	iii
Contributors	vii
Po–San	1
Abbreviations	461

VOLUME 9

Preface	iii
Contributors	vii
Sar–Ten	1
Abbreviations	465

VOLUME 10

Preface	iii
Contributors	vii
Ter–Z	1
Abbreviations	459

VOLUME 11

Milestones in the Law

VOLUME 12

Primary Documents

VOLUME 13

Dictionary of Legal Terms

Cases Index

General Index

CONTENTS

APPENDIX: DICTIONARY AND INDEXES

DICTIONARY OF LEGAL TERMS	1
CASES INDEX	211
GENERAL INDEX	257

DICTIONARY OF LEGAL TERMS



A fortiori: [*Latin, With stronger reason.*] This phrase is used in logic to denote an argument to the effect that because one ascertained fact exists, therefore another which is included in it or analogous to it and is less improbable, unusual, or surprising must also exist.

A mensa et thoro: [*Latin, From table and bed.*] More commonly translated, “from bed and board.”

A posteriori: [*Latin, From the effect to the cause.*]

A priori: [*Latin, From the cause to the effect.*]

Ab initio: [*Latin, From the beginning; from the first act; from the inception.*] An agreement is said to be “void *ab initio*” if it has at no time had any legal validity. A party may be said to be a trespasser, an estate said to be good, an agreement or deed said to be void, or a marriage or act said to be unlawful, *ab initio*. Contrasted in this sense with EX POST FACTO, or with *postea*.

Abandonment: The surrender, relinquishment, disclaimer, or cession of property or of rights. Voluntary relinquishment of all right, title, claim, and possession, with the intention of not reclaiming it.

The giving up of a thing absolutely, without reference to any particular person or purpose. For example, vacating property with the intention of not returning, so that it may be appropriated by the next comer or finder. The voluntary relinquishment of possession of a thing by its owner with the intention of terminating ownership, but without vesting it in any other person. The relinquishing of all title, possession, or claim, or a virtual, intentional throwing away of property.

Term includes both the intention to abandon and the external act by which the intention is carried into effect. In determining whether someone has abandoned property or rights, the intention is the first and paramount object of inquiry, for there can be no abandonment without the intention to abandon.

Abandonment differs from surrender in that surrender requires an agreement, and also from FORFEITURE, in that forfeiture may be against the intention of the party alleged to have forfeited.

In the case of children, abandonment is the willful forsaking or forgoing of parental duties. Desertion as a legal concept, is similar in this respect, although broader in scope, covering both real and constructive situations; abandonment is generally seen as involving a specific and tangible forsaking or forgoing.

Abatement: A reduction, a decrease, or a diminution. The suspension or cessation, in whole or in part, of a continuing charge, such as rent.

Abatement of an action: An entire overthrow or destruction of a suit so that it is quashed and ended.

Abdication: Renunciation of the privileges and prerogatives of an office. The act of a sovereign in renouncing and relinquishing his or her government or throne, so that either the throne is left entirely vacant, or is filled by a successor appointed or elected beforehand. Also, where a magistrate or person in office voluntarily renounces or gives it up before the time of service has expired. It differs from resignation, in that resignation is made by one who has received an office from another and restores it into that person's hands, as an inferior into the hands of a superior; abdication is the relinquishment of an office which has devolved by act of law. It is said to be a renunciation, quitting, and relinquishing, so as to have nothing further to do with a thing, or the doing of such actions as are inconsistent with the holding of it. Voluntary and permanent withdrawal from power by a public official or monarch.

Abduction: The act of restraining another through the use or threat of DEADLY FORCE or through fraudulent persuasion. The requisite restraint generally requires that the abductor intend to prevent the liberation of the abductee. Some states require that the abductee be a minor or that the abductor intend to subject the abductee to prostitution or illicit sexual activity.

Abet: To encourage or incite another to commit a crime. This word is usually applied to aiding in the commission of a crime. To abet another to commit a murder is to command, procure, counsel, encourage, induce, or assist. To facilitate the commission of a crime, promote its accomplishment, or help in advancing or bringing it about.

In relation to charge of aiding and abetting, term includes knowledge of the perpetrator's wrongful purpose, and encouragement, promotion or counsel of another in the commission of the criminal offense.

A French word, *abeter*—to bait or excite an animal.

Abettor: One who commands, advises, instigates, or encourages another to commit a crime. A person who, being present, incites another to commit a crime, and thus becomes a principal. To be an *abettor*, the accused must have instigated or advised the commission of a crime or been present for the purpose of assisting in its commission; he or she must share criminal intent with which the crime was committed.

Abeyance: A lapse in succession during which there is no person in whom title is vested. In the law of estates, the condition of a freehold when there is no person in whom it is vested. In such cases the freehold has been said to be *in nubibus* (in the clouds), *in pendentibus* (in suspension); and *in gremio legis* (in the bosom of the law). Where there is a tenant of the freehold, the remainder or reversion in fee may exist for a time without any particular owner, in which case it is said to be in abeyance. A condition of being undetermined or in state of suspension or inactivity. In regard to sales to third parties of property acquired by county at TAX SALE, being held in *abeyance* means that certain rights or conditions are in expectancy.

Abiding conviction: A definite conviction of guilt derived from a thorough examination of the whole case. Used commonly to instruct juries on the frame of mind required for guilt proved BEYOND A REASONABLE DOUBT. A settled or fixed conviction.

Abjuration: A renunciation or ABANDONMENT by or upon oath. The renunciation under oath of one's citizenship or some other right or privilege.

Abode: One's home; habitation; place of dwelling; or residence. Ordinarily means "domicile." Living place impermanent in character. The place where a person dwells. Residence of a legal voter. Fixed place of residence for the time being. For SERVICE OF PROCESS, one's fixed place of residence for the time being; his or her "usual place of abode."

Abolition: The destruction, annihilation, abrogation, or extinguishment of anything, but especially things of a permanent nature—such as institutions, usages, or customs, as in the abolition of SLAVERY.

Abortion: The spontaneous or artificially induced expulsion of an embryo or fetus. As used in legal context, the term usually refers to induced abortion.

Abrogation: The destruction or annulling of a former law by an act of the legislative power, by constitutional authority, or by usage. It stands opposed to *rogation*; and is distinguished from derogation, which implies the taking away of only some part of a law; from SUBROGATION, which denotes the substitution of a clause; from *dispensation*, which only sets it aside in a particular instance; and from *antiquation*, which is the refusing to pass a law.

Abscond: To go in a clandestine manner out of the jurisdiction of the courts, or to lie concealed, in order to avoid their process. To hide, conceal, or absent oneself clandestinely, with the intent to avoid legal process. To postpone limitations. To flee from arresting or prosecuting officers of the state.

Absconding debtor: One who absconds from creditors to avoid payment of debts. A debtor who has intentionally concealed himself or herself from creditors, or withdrawn from the reach of their suits, with intent to frustrate their just demands. Such act was formerly an *act of bankruptcy*.

Absentee: One who has left, either temporarily or permanently, his or her domicile or usual place of residence or business. A person beyond the geographical borders of a state who has not authorized an agent to represent him or her in legal proceedings that may be commenced against him or her within the state.

Absentee voting: Participation in an election by qualified voters who are permitted to mail in their ballots.

Absolute: Complete; perfect; final; without any condition or incumbrance; as an absolute bond in distinction from a conditional bond. Unconditional; complete and perfect in itself; without relation to or dependence on other things or persons.

Free from conditions, limitations or qualifications, not dependent, or modified or affected by circumstances; that is, without any condition or restrictive provisions.

Absolute deed: A document used to transfer unrestricted title to property.

Abstention doctrine: The concept under which a federal court exercises its discretion and equitable powers and declines to decide a legal action over which it has jurisdiction pursuant to the Constitution and statutes where the state judiciary is capable of rendering a definitive ruling in the matter.

Abstract: To take or withdraw from; as, to abstract the funds of a bank. To remove or separate. To summarize or abridge.

Abstract of title: A condensed history, taken from public records or documents, of the ownership of a piece of land.

Abstraction: Taking from someone with an intent to injure or defraud.

Abuse: Everything that is contrary to good order established by usage. Departure from reasonable use; immoderate or improper use. Physical or mental maltreatment. Misuse. Deception.
To wrong in speech, reproach coarsely, disparage, revile, and malign.

Abuse excuse: Description of efforts by some criminal defendants to negate criminal responsibility by showing that they could not tell right from wrong due to abuse by their spouses or parents. Although this defense is not specifically recognized in substantive CRIMINAL LAW, it has been used successfully in some cases to prove, for example, the INSANITY DEFENSE.

Abuse of discretion: A failure to take into proper consideration the facts and law relating to a particular matter; an ARBITRARY or unreasonable departure from precedent and settled judicial custom.

Abuse of power: Improper use of authority by someone who has that authority because he or she holds a public office.

Abuse of process: The use of legal process to accomplish an unlawful purpose; causing a summons, writ, warrant, mandate, or any other process to issue from a court in order to accomplish some purpose not intended by the law.

Abusive: Tending to deceive; practicing abuse; prone to ill-treat by coarse, insulting words or harmful acts. Using ill treatment; injurious, improper, hurtful, offensive, reproachful.

Abut: To reach; to touch. To touch at the end; be contiguous; join at a border or boundary; terminate on; end at; border on; reach or touch with an end. The term *abutting* implies a closer proximity than the term *adjacent*.

Academic freedom: The right to teach as one sees fit, but not necessarily the right to teach evil. The term encompasses much more than teaching-related speech rights of teachers.

Academic year: That period of time necessary to complete an actual course of study during a school year.

Accede: To consent or to agree, as to accede to another's point of view. To enter an office or to accept a position, as to accede to the presidency.

Acceleration: A hastening; a shortening of the time until some event takes place.

Acceleration clause: The provision in a credit agreement, such as a mortgage, note, bond, or deed of trust, that allows the lender to require immediate payment of all money due if certain conditions occur before the time that payment would otherwise be due.

Acceptance: An express act or implication by conduct that manifests assent to the terms of an offer in a manner invited or required by the offer so that a binding contract is formed. The exercise of power conferred by an offer by performance of some act. The act of a person to whom something is offered or tendered by another, whereby the offeree demonstrates through an act invited by the offer an intention of retaining the subject of the offer.

Access: Freedom of approach or communication; or the means, power, or opportunity of approaching, communicating, or passing to and from. Sometimes importing the occurrence of sexual intercourse; otherwise as importing opportunity of communication for that purpose as between HUSBAND AND WIFE.

In real property law, the term *access* denotes the right vested in the owner of the land that adjoins a road or other highway to go and return from his own land to the highway without obstruction. *Access* to property does not necessarily carry with it possession.

For purposes of establishing element of access by defendant in COPYRIGHT infringement action, *access* is ordinarily defined as opportunity to copy.

Accession: Coming into possession of a right or office; increase; augmentation; addition.

The right to all that one's own property produces, whether that property be movable or immovable; and the right to that which is united to it by accession, either naturally or artificially. The right to own things that become a part of something already owned.

A principle derived from the CIVIL LAW, by which the owner of property becomes entitled to all that it produces, and to all that is added or united to it, either naturally or artificially (that is, by the labor or skill of another) even where such addition extends to a change of form or materials; and by which, on the other hand, the possessor of property becomes entitled to it, as against the original owner, where the addition made to it by skill and labor is of greater value than the property itself, or where the change effected in its form is so great as to render it impossible to restore it to its original shape.

Generally, *accession* signifies acquisition of title to PERSONAL PROPERTY by bestowing labor on it that converts it into an entirely different thing or by incorporation of property into a union with other property.

The commencement or inauguration of a sovereign's reign.

Accessory: Aiding or contributing in a secondary way or assisting in or contributing to as a subordinate.

In CRIMINAL LAW, contributing to or aiding in the commission of a crime. One who, without being present at the commission of an offense, becomes guilty of such offense, not as a chief actor, but as a participant, as by command, advice, instigation, or concealment; either before or after the fact or commission.

One who aids, abets, commands, or counsels another in the commission of a crime.

Accident: The word *accident* is derived from the Latin verb *accidere*, signifying "fall upon, befall, happen, chance." In its most commonly accepted meaning, or in its ordinary or popular sense, the word may be defined as meaning: some sudden and unexpected event taking place without expectation, upon the instant, rather than something that continues, progresses or develops; something happening by chance; something unforeseen, unexpected, unusual, extraordinary, or phenomenal, taking place not according to the usual course of things or events, out of the range of ordinary calculations; that which exists or occurs abnormally, or an uncommon occurrence. The word may be employed as denoting a calamity, casualty, catastrophe, disaster, an undesirable or unfortunate happening; any unexpected personal injury resulting from any unlooked for mishap or occurrence; any unpleasant or unfortunate occurrence that causes injury, loss, suffering, or death; some untoward occurrence aside from the usual course of events. An event that takes place without one's foresight or expectation; an undesigned, sudden, and unexpected event.

Accidental death benefit: A provision of a life insurance policy stating that if the insured—the person whose life has been insured—dies in an accident, the beneficiary of the policy—the person to whom its proceeds are payable—will receive twice the face value of the policy.

Accidental killing: A death caused by a lawful act done under the reasonable belief that no harm was likely to result.

Accidental vein: An imprecise term that refers generally to a continuous body of a mineral or mineralized rock filling a seam other than the principal vein that led to the discovery of the mining claim or location.

Accidents of navigation: Mishaps that are peculiar to travel by sea or to normal navigation; accidents caused at sea by the action of the elements, rather than by a failure to exercise good handling, working, or navigating of a ship. Such accidents could not have been avoided by the exercise of nautical skill or prudence.

Accommodation endorsement: The act of a third person—the accommodation party—in writing his or her name on the back of a COMMERCIAL PAPER without any consideration, but merely to benefit the person to whom the paper is payable or to enable the person who made the document—the maker—to obtain money or credit on it.

Accommodation paper: A type of COMMERCIAL PAPER (such as a bill or note promising that money will be paid to someone) that is signed by another person—the accommodation party—as a favor to the promisor—the accommodated party—so that credit may be extended to him or her on the basis of the paper.

Accommodation party: One who signs a COMMERCIAL PAPER for the purpose of lending his or her name and credit to another party to the document—the accommodated party—to help that party obtain a loan or an extension of credit.

Accompany: To go along with; to go with or to attend as a companion or associate.

Accomplice: One who knowingly, voluntarily, and with common intent unites with the principal offender in the commission of a crime. One who is in some way concerned or associated in commission of crime; partaker of guilt; one who aids or assists, or is an ACCESSORY. One who is guilty of complicity in crime charged, either by being present and aiding or abetting in it, or having advised and encouraged it, though absent from place when it was committed, though mere presence, ACQUIESCENCE, or silence, in the absence of a duty to act, is not enough, no matter how reprehensible it may be, to constitute one an accomplice. One is liable as an accomplice to the crime of another if he or she gave assistance or encouragement or failed to perform a legal duty to prevent it with the intent thereby to promote or facilitate commission of the crime.

Accomplice witness: A witness to a crime who, either as principal, ACCOMPLICE, or ACCESSORY, was connected with the crime by unlawful act or omission on his or her part, transpiring either before, at time of, or after commission of the offense, and whether or not he or she was present and participated in the crime.

Accord: An agreement that settles a dispute, generally requiring an obligee to accept a compromise or satisfaction from the obligor with something less than what was originally demanded. Also often used synonymously with treaty.

Accord and satisfaction: A method of discharging a claim whereby the parties agree to give and accept something in settlement of the claim and perform the agreement, the *accord* being the agreement and the *satisfaction* its execution or performance, and it is a new contract substituted for an old contract which is thereby discharged, or for an obligation or CAUSE OF ACTION which is settled, and must have all of the elements of a valid contract.

Accouchement: The act of giving birth to a child.

Account: A written list of transactions, noting money owed and money paid; a detailed statement of mutual demands arising out of a contract or a fiduciary relationship.

Account, action on: A civil lawsuit maintained under the COMMON LAW to recover money owed on an account.

Account payable: A debt owed by a business that arises in the normal course of its dealings, that has not been replaced by a note from another debtor, and that is not necessarily due or past due.

Account receivable: A debt owed by a business that arises in the normal course of dealings and is not supported by a negotiable instrument.

Account rendered: A statement of transactions made out by a creditor and presented to the debtor.

Account stated: An amount that accurately states money due to a creditor; a debt arising out of transactions between a debtor and creditor that has been reduced to a balance due for the items of account.

Accountant: A person who has the requisite skill and experience in establishing and maintaining accurate financial records for an individual or a business. The duties of an accountant may include designing and controlling systems of records, auditing books, and preparing financial statements. An accountant may give tax advice and prepare tax returns.

Accounting: A system of recording or settling accounts in financial transactions; the methods of determining income and expenses for tax and other financial purposes. Also, one of the remedies available for enforcing a right or redressing a wrong asserted in a lawsuit.

Accredit: To give official authorization or status. To recognize as having sufficient academic standards to qualify graduates for higher education or for professional practice. In INTERNATIONAL LAW: (1) To acknowledge; to receive as an envoy and give that person credit and rank accordingly. (2) To send with credentials as an envoy. This latter use is now the accepted one.

Accredited law school: A law school that has been approved by the state and the Association of American Law Schools (AALS), the AMERICAN BAR ASSOCIATION (ABA), or both.