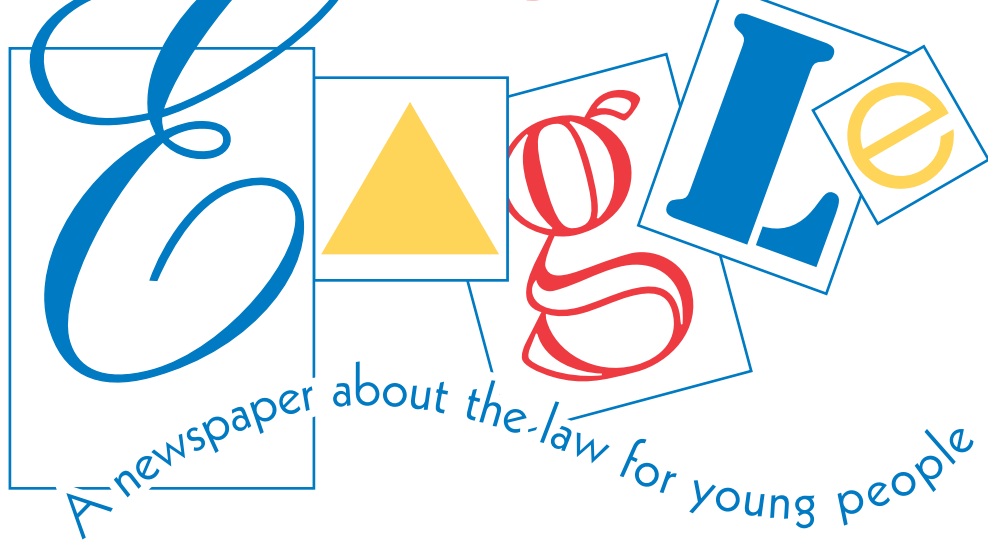


THE LEGAL



A newspaper about the law for young people

FALL 2000

The Run for the Presidency

by Roberta K. Glassner, Esq.

Congratulations! You are your party's candidate for President of the United States. The band is playing, the crowd is cheering and you're being showered with confetti and bombarded with red, white and blue balloons.



The Good News—you've given you the highest number of popular votes ever given to any candidate. You set a record.

The Bad News—you've lost the election.

How could I lose?

It can happen—and in three of the 51 elections for President since George Washington was elected in 1789, it has happened.

How can a candidate win the popular vote and lose the election? Every four years, on the Tuesday after the first Monday in November, Americans vote for the person they believe is best qualified to lead our country for the next four years.

This year's Presidential election will take place on Tuesday, November 7. You may be surprised to learn that it isn't really our votes that elect the President of the United States. The votes of a selected group of **delegates** from all the states, called the **electoral college**, meets after the popular vote has been counted and casts the vote that actually elects the President. The delegates' respective political parties nominate them for this prestigious position. A delegate is usually selected to recognize the dedication he or she has given to his or her respective party affiliation—either Democrat or Republican.

Here's the hitch. Not every state has the same number of electoral votes. The states with the largest populations have the most electoral votes—like California (54 votes), New York (33 votes) and Texas (32 votes). The states with small populations have the fewest electoral votes—like New Mexico (5 votes), Maine (4 votes) and Alaska (3 votes). New Jersey falls into the middle with 15 electoral votes.

No matter how great the popular vote may be for a

CONTINUED ON PAGE 3

Record Industry NOT Singing Napster's Tune

by Steven Richman, Esq.

If you watched your local news this summer you might have been surprised to see some of your favorite recording artists, such as Dr. Dre and members of Metallica. Instead of promoting their latest CD, these artists were speaking out about such things as **copyright** infringement and **fair use** of their music.

Along with their record companies, recording artists are up in arms over an online music service, which they believe is stealing their copyright-protected music. Napster, and other sites like it, allow people to access music over the Internet in the form of MP3 files, for free. Several major record labels would like to see Napster shut down and are suing the online company.

What is copyright and what does this mean to me?

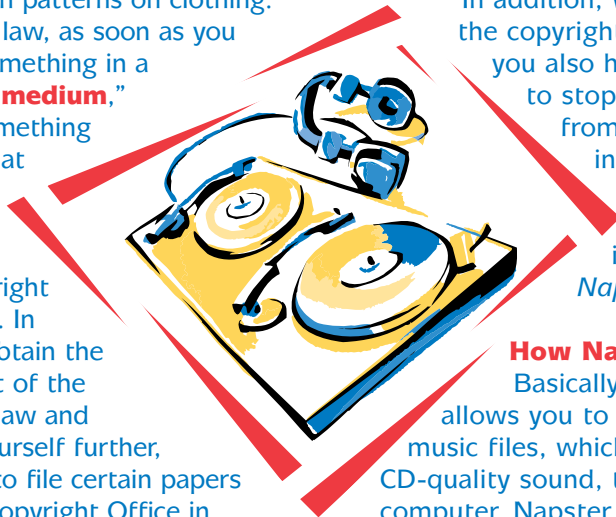
Copyright is a federal law that protects the way in which things are expressed. It does not protect an idea. For example, you can't

copyright the idea of a story about an evil empire controlling the galaxy, but you can copyright the screenplay for *Star Wars*. You can also copyright photographs, music, even patterns on clothing. Under the law, as soon as you express something in a **"tangible medium,"** that is, something physical that can be seen or heard, you have copyright protection. In order to obtain the full benefit of the copyright law and protect yourself further, you need to file certain papers with the Copyright Office in Washington, D.C.

When you have copyright protection, you also obtain the rights to what are called **derivative works**. For example, if you own the copyright for the *Star Wars* film, you also own the right to make a novel from it. And, if someone else is interested

in making a novel from your copyrighted screenplay, he or she must seek your permission and agree to pay for the use of your material.

In addition, when you own the copyright to something, you also have the right to stop other people from copying, or infringing on, your work. This is the issue in the *Napster* case.



How Napster works

Basically, Napster allows you to download MP3 music files, which produce near CD-quality sound, to your computer. Napster also has software that enables you to download MP3 music files from other people's computers as well, effectively allowing you to share or trade music without having to buy it. The record companies sued Napster claiming that this

CONTINUED ON PAGE 3

The Bill of Rights: Part Two

by Roberta K. Glassner, Esq.

Those legal eagles that were with us last year know that the Bill of Rights contains the first ten amendments to the U.S. Constitution. You read about and should be familiar with the first five amendments. For those just joining us, here's a quick recap:

- First Amendment—guarantees your constitutionally protected rights of freedom of religion, freedom of speech and freedom of the press.

- Second Amendment—concerns the right of Americans "to keep and bear arms."



- Third Amendment—deals with the obligation of giving rooms and meals to soldiers in private homes.

- Fourth Amendment—focuses on a right very important to you today—your right to privacy—and protects you against "unreasonable searches and seizures."

- Fifth Amendment—gives protection to anyone charged with a crime by the state and establishes the right of each person to be presumed innocent of a crime unless and until proven guilty. This amendment also guarantees that no one accused of a crime can be forced to testify against himself or herself, and that

no one can be placed in "double jeopardy"—which means to be tried twice for the same crime.

Protecting the rights of the accused

The next three amendments in the Bill of Rights—the Sixth, Seventh and Eighth Amendments—also protect the rights of persons accused of a criminal act. The Sixth Amendment guarantees the right to a speedy trial. Think how unfair it would be for an innocent person to sit in a jail cell for years waiting for his or her day in court.

The Sixth Amendment also gives the accused person—the

CONTINUED ON PAGE 2

INSIDE

Fib vs. Fact	pg. 2
I Want to Vote	pg. 3
Glossary	pg. 4

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Fib vs. Fact: When is a lie a crime?

by Barbara Sheehan

You've probably "sworn" to your friends at one time or another that you were telling the truth. But what if you swear in a court of law? Must you tell the truth? And what happens if you lie?

Conditions for perjury

In a nutshell, lying to a judge or jury can land you in a heap of trouble—possibly even jail (a detention center for juveniles) if you are caught. The legal term for this is **perjury**. According to Passaic County First Assistant

Prosecutor Boris Moczula, several conditions must be met for perjury to exist.

First, perjury occurs when a person makes a false statement under oath in an official proceeding, such as a court trial. Also, the person making the statement must not believe it to be true. Finally, the statement must be **material**, or important to, the case. In other words, says Moczula, to be charged with perjury the statement must have the potential of impacting the course or outcome of the proceeding.

Taking the Fifth

So what if instead of lying, you decide to exercise your rights under the Fifth Amendment to the U.S. Constitution—that is, say nothing at all? This is an option if your purpose is to protect yourself.

"Everyone has the constitutional right to remain silent on the grounds that their testimony would be **incriminating** to them," says Moczula. "But there is no privilege that protects you from answering something that may incriminate someone else," he says.

CONTINUED ON PAGE 4

Bill of Rights

CONTINUED FROM PAGE 1

defendant—the right to a trial by an **impartial** jury. If you were called for jury duty and you knew the defendant, the judge or any of the lawyers, or had some involvement in the case, you would not be allowed to sit on the jury. If you had read about the case in the papers or heard about it on television and had made up your mind about the defendant's guilt or innocence, you would also not be allowed to sit on the jury because you would not be impartial.

Because of the Sixth Amendment, every person accused of a crime has the right to be represented by a lawyer at his or her trial. If the accused person cannot afford to hire a lawyer, the government must appoint one to represent the defendant at no charge.

The Seventh Amendment guarantees the right to a jury trial for both persons accused of a crime, and for those involved in certain civil cases as well. A criminal case involves an action committed against the law, such as murder, robbery or assault. A civil case, on the other hand, involves a non-criminal wrong, called a **tort**, which one person commits against another.

For example, let's say you are a passenger in your Mom's car and someone else's car crashes into yours. You and your Mom are injured as a result of this crash. Under the law, both you and your Mom could bring a **claim** against the driver of the car that struck and injured you. If you did bring a claim against that driver in court by filing a **lawsuit**, you would be involved in a civil case. As the one bringing the claim, you and your Mom would be the **plaintiffs** in the case. The other driver would be the defendant.

Under the Seventh Amendment, you would have the right to a trial by a jury. If the jury decides that the other driver was responsible for the accident and for causing you and your Mom to be injured, the jury can award money to **compensate** you. This would mean the driver would have to pay you for damages to your car and for your injuries.

Your civil case in New Jersey would be tried before a panel of

six jurors, whereas a jury of twelve hears a criminal case. The law requires that a **verdict** in a criminal case must be unanimous—based on agreement by all twelve jurors on the defendant's guilt or innocence. In a civil case, you need five out of six jurors to agree to decide the case.

Why do you think there are twice as many jurors in a criminal case as in a civil case? And why do you think the verdict must be unanimous? The framers of the U.S. Constitution considered the loss of personal freedom to be precious. Someone found guilty of a crime would be deprived of his freedom and sentenced to jail



or prison. Therefore, the jury has to be thoroughly convinced "beyond a reasonable doubt" to convict a person of a crime. In a civil case, the standard is decided by a "preponderance of the evidence," which means the evidence strongly supports one side over the other.

In the early days of this country, before the Seventh Amendment guaranteed a trial by jury, other ways were devised to prove a person's innocence or guilt. You may have read about the witch trials in Salem, Mass. There, a person accused of being a witch had her head held under water. If she died of drowning, it was said that proved she was guilty. If she managed to survive somehow, that proved her innocence. You can see that a speedy trial before an impartial jury with an attorney at your side is a little more fair.

The Eighth Amendment is also concerned with persons accused of crimes. This Amendment guarantees that no one in this country convicted of a crime may be subjected to cruel or unusual punishment.

There are many people who feel the death penalty is a form of cruel and unusual punishment, and this issue continues to be debated in courts throughout the country. In the New Jersey Constitution, however, the death penalty is not considered cruel and unusual punishment in certain circumstances. What do you think?

In the old days in other countries, if you were found guilty of stealing a loaf of bread, you could have your hand cut off. Under the protection of the Eighth Amendment, that could never happen in the United States.

Numbers nine and ten

The Ninth Amendment states that you have other rights that are not set forth in detail in the U.S. Constitution. For example, you have the right to live anywhere you please, even though the U.S. Constitution doesn't say so specifically. You have the right to work at any job you choose. You can vote for any candidate you prefer—or not vote at all.

The last amendment in the Bill of Rights, the Tenth Amendment, gives power to state governments to make all other laws, not in the U.S. Constitution, which the state believes are necessary for life in a democratic nation in that particular state.

And still counting

Since the Bill of Rights was passed in 1789, 17 more amendments were added to the U.S. Constitution, including those concerning the abolition of slavery and voting rights for all citizens above the age of 18. Just as additional protections were added to the U.S. Constitution in the 200 years since that historic document was written, it is likely that even more amendments will be added in the years to come.

Can you think of any important rights that are not included in the Bill of Rights or in the other amendments to the U.S. Constitution? Can you think of any other freedoms you believe should be guaranteed and protected by constitutional law?

Roberta K. Glassner practices personal injury law and is an attorney with the New Brunswick law firm of Wyoker, Glassner, Weingartner, Gonzalez & Lockspeiser.

Napster's Tune

CONTINUED FROM PAGE 1

practice of trading was an **infringement**, or illegal copying of music to which the record companies held the copyright.

The record companies did not contend that Napster itself was making illegal copies, but that it was liable for **"vicarious"** or **"contributory"** infringement. In other words, by enabling people to trade music on its site, Napster was allowing copyright infringement to occur with its knowledge and participation.

Napster argued that it was protected under the Digital Millennium Copyright Act (DMCA) of 1998, in which the courts updated copyright laws to include digital media and limit the liability of internet service providers for copyright infringement committed by its users. In May, the trial court decided that the standards of the Digital Millennium Copyright Act did not apply to Napster. This was the first loss for Napster.

What is fair use?

Once it was determined that Napster was not protected by the DMCA, the record companies sought an **injunction**, which is an order of the court that compels someone to do something or stops them from doing something. At this stage of the case, the

motion was for a preliminary injunction, which means the court would have to believe that the record companies were likely to win after a trial, but that they needed relief now to prevent more damage. In this case, the damage was their loss of profits.

The record companies argued that Napster encouraged users to share music they did not own, which is *not* a fair use. Napster argued that people are allowed to copy music for personal use, just like when they use videotape recorders, which *is* a fair use. As an example, if you buy a CD, under the law you are allowed to tape that CD so that you may listen to it in a car, on the beach, etc. You are allowed to do this because you paid for the CD once.

What did the courts say?

On July 26, 2000, a federal court trial judge in San Francisco granted the preliminary injunction and ruled that Napster could not continue to provide a site for the trading of copyrighted songs. The court found that what Napster was doing is not "typical personal use

of music copies" and that people were getting music that would ordinarily cost them money for free. The next day, however, the appellate court overruled that decision and allowed Napster's site to continue to operate until the lawsuit was decided.

In its **brief** submitted to the court, Napster argued that the Audio Home Recording Act (AHRA) protects them and their users. The AHRA contains a clause that protects those that make copies of music for noncommercial use, that is as long as you do not sell the copies you make for profit, then you are not infringing on anyone's copyright. The brief goes on to note that Napster users' one-to-one sharing (from computer-to-computer) should not be considered public distribution, an element necessary to prove copyright infringement. Napster further contends that the record industry wants to control a technology (the Internet) that it views as competition.

At press time, oral arguments, which simply means an argument given by an attorney before a judge on behalf of his or her client, in the Napster case were scheduled for October 2.

What do the artists say?

While some rock stars—like Jon Bon Jovi, Christina Aguilera and Alanis Morissette—have been vocal about Napster's infringement, Dr. Dre and Metallica have actually brought their own lawsuits against the

online company. Limp Bizkit, whose free summer concert tour was sponsored by Napster, and rapper Chuck D from Public Enemy are supportive of Napster and other sites like it. These and other pro-Napster artists, like Courtney Love and Ben Folds Five, view the sites as a way for up-and-coming new bands to get their music heard by a large audience.

What's next?

While Napster and other sites like it may or may not have to pay large sums of money to compensate the record companies, the cases and the controversy continue. Many industry experts believe that regardless of the ultimate result in the Napster case, record companies will have to change the way they do business to accommodate the new technology of the Internet.

Steven Richman is an attorney with Gallagher, Briody & Butler in Princeton and is an active member of The Legal Eagle Editorial Advisory Board.

The Run for the Presidency

CONTINUED FROM PAGE 1

candidate it takes at least 270 electoral college votes out of a total 538 to elect the president. In our "winner takes all" system, the candidate who gets the most popular votes in a state gets *all* the electoral votes from that state.


So, even if you only lose by one popular vote in a state like California, your opponent will still get all 54 of California's electoral votes. Now you know why candidates tend to spend a lot of time campaigning in states with the most electoral votes.

That's how you, the candidate, could get millions of

popular votes in small states, but unless you get them in the big states with the most electoral votes as well, you could lose the election. In the elections of 1824, 1876 and 1888, that's just what happened. John Quincy Adams, Rutherford B. Hayes and Benjamin Harrison, respectively, had fewer popular votes than the other candidate, but were all elected president because they had more electoral votes.

Now You're 18 . . .

While you may not be voting in the November 2000 election, it won't be long before you are old enough to cast your vote for a President of the United States. All that will be required is that you are 18 years old and a citizen of the United States.

Although you'll be able to vote when you're 18, you will have to wait a little longer to run for president. You won't get your turn to stand among the balloons and the confetti until you're 35 years old, the minimum age for a United States president. And when you do make your run for the highest office in the land, here's hoping you get both the popular and the electoral votes, Mr. or Ms. President! 

Roberta K. Glassner practices personal injury law and is an attorney with the New Brunswick law firm of Wysoker, Glassner, Weingartner, Gonzalez & Lockspeiser.



I Want to Vote

Facts About Voting and the Office of President

To prepare you for the day you are able to vote, here are a few interesting facts:

- For almost a hundred years, between 1788 and 1870, the right to vote in this country was limited to white men only. In 1870, after the Civil War, the Fifteenth Amendment to the U.S. Constitution was passed giving the right to vote to citizens regardless of their race and color. Now *all men* who were citizens had the right to vote.
- Women had to wait (and campaign) for another 50 years—until 1920—when the Nineteenth Amendment was passed, and women finally won the same right to vote as men.
- Some presidents serve only one term, while those that are re-elected serve two. The only president to serve more than two terms was Franklin D. Roosevelt. He was elected to four terms.

After President Roosevelt's fourth election, the Twenty-Second Amendment was passed limiting the president to serving only two terms.

• Grover Cleveland, born in Caldwell, NJ, is the only President to serve two non-consecutive terms. He was elected in 1884, lost the election in 1888 to Benjamin Harrison and won the election of 1892. Cleveland died in 1908 at his home in Princeton, NJ.

• Your parents might not have been able to vote until they were 21 years old. In 1971, the Twenty-Fifth Amendment lowered the voting age to 18.

• November 2000 will mark our 52nd presidential election. Either Albert Gore or George W. Bush will be the 43rd person to hold the office of President of the United States.

—Roberta K. Glassner



GLOSSARY

brief—a formal statement of a client's case to a court of law in a trial.

claim—a demand in court for something (i.e., money) that the plaintiff believes is owed him or her.

compensate—to offset an error or wrong committed, most often in the form of money.

contributory—intentionally contributing to, in this case, copyright infringement.

copyright—a federal law that protects an author's work from being stolen.

corroboration—to confirm with evidence.

defendant—a person accused of a crime or wrongdoing.

delegate—a person that acts on behalf of another person or group of people.

derivative works—works that are generated from another form of the same work.

electoral college—the body that elects the president and vice-president of the United States.

evidence—proof of something (i.e., a crime); can be either physical (something that can be held) or in the form of witness testimony.

falsification—a lie.

fair use—in this case, typical personal use of music.

impartial—to remain objective and treat all others fairly.

incriminate—to show proof of a person's involvement in a crime.

infringement—violation of a contract, regulation or right.

injunction—an order of the court that compels someone to do something or stops them from doing something.

irreparable—beyond repair.

lawsuit—a case before a court.

material—important to, or having the potential of impacting the outcome of a court proceeding.

motion—a proposal made to a court.

perjury—lying to a judge or jury while under oath.

plaintiff—person or persons bringing a civil lawsuit against another person or entity.

tangible medium—a medium (i.e., a song, a photograph, etc.) that can be perceived.

tort—a civil wrong or injury for which the injured party is entitled to compensation.

verdict—the outcome of a trial; the decision of a jury.

vicarious—indirect; in this case assisting others in copyright infringement.

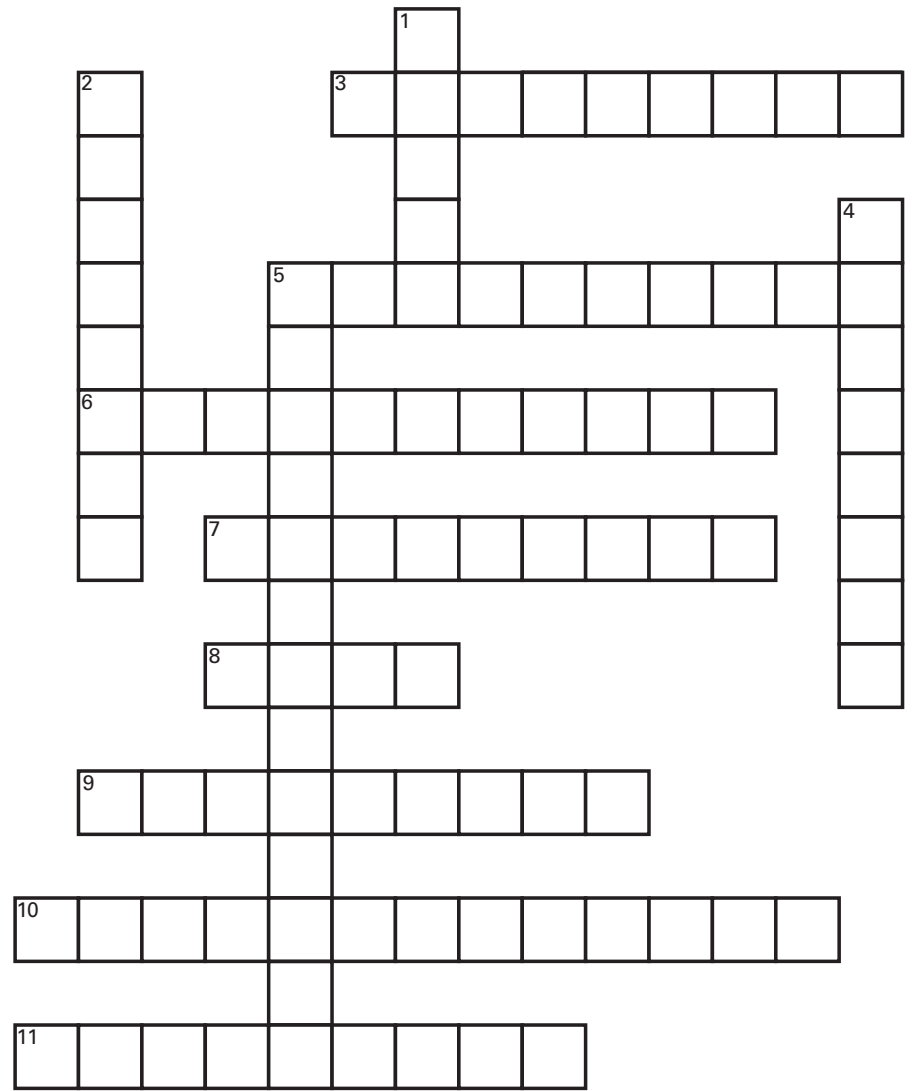
Crossword

ACROSS

- Person or persons bringing a civil lawsuit against another person or entity
- To offset an error or wrong committed, most often in the form of money
- To show proof of a person's involvement in a crime
- A federal law that protects an author's work from being stolen
- A civil wrong or injury for which the injured party is entitled to compensation
- To remain objective and treat all others fairly
- A lie
- A person accused of a crime or wrongdoing

DOWN

- A demand in court for something (i.e., money) that the plaintiff believes is owed him or her
- Important to, or having the potential of impacting the outcome of a court proceeding
- A person that acts on behalf of another person or group of people
- To confirm with evidence



Crossword solution below

Fib vs. Fact: When is a lie a crime?

CONTINUED FROM PAGE 2

In other words, if a friend committed a crime and you were questioned about it, you could not "take the Fifth" to protect your friend.

Taking back a lie

What if you make a false statement under oath and then wish to take it back? Would you still be subject to perjury charges?

If you've made a **falsification** and, before the termination of the proceeding you take it back, you will not be charged with perjury as long as the lie has not gotten to the point where it has caused **irreparable** harm, says Moczula.

"The idea," he notes, "is to encourage people to remedy a situation of lying."

He said, she said

You say one thing in court and another witness says you're

lying. Can this result in a perjury charge?

No, it cannot, says Moczula. At a minimum, he says "you need more **corroboration** than one other person saying that [a piece of testimony] is not true." For example, you would need a number of people coming forward or some other kind of **evidence**.

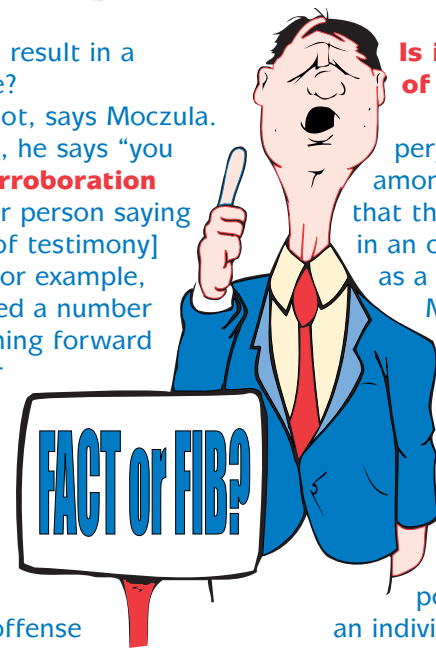
Punishment for perjury

Perjury is considered a third-degree offense and carries with it a punishment of three to five years in jail for adults, says Moczula. While there is a separate grading system for juveniles, they may also be charged with committing perjury and mandated to serve time in a detention center if they are found guilty.

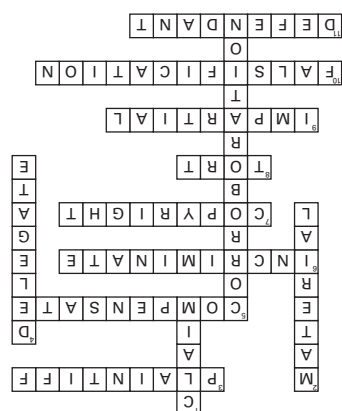
Is it okay to lie outside of a court?

The conditions for perjury are strict and, among other things, require that the falsification be made in an official proceeding, such as a court trial. However, Moczula points out that "lying in many different settings may make you criminally liable, particularly if giving false information to law enforcement." For example, providing false information to a police officer may make an individual liable for a fourth-degree crime.

Of course, most of the time when you're wrestling with the truth, you're involved in much less serious matters than court cases and official police business. Just the same, honesty is the best policy. 🗡️



Crossword solution



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