TO KILL A MOCKINGBIRD

BACK-UP TO LEGAL DISCUSSION TOPICS

Fifth Amendment

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.

Sixth Amendment

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 defense.

Fourteenth Amendment, 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.

Appointed Counsel

Atticus is appointed by Judge Taylor to represent Tom Robinson. May lawyers refuse an appointment? And what if they believe the defendant is guilty?

Every indigent defendant in a criminal trial has a constitutional right to the assistance of appointed counsel. *Gideon v. Wainwright*, 372 U.S. 335 (1963).

Rule 6.2 of the New Hampshire Rules of Professional Conduct provides that lawyers shall not seek to avoid appointment except for good cause as when "representing the client is likely to result in violation of the Rules of Professional Conduct or the law," or "the client or the cause is so repugnant to the lawyer as to be likely to impair the client-lawyer relationship or the lawyer's ability to represent the client." The American Bar Association's model rules are similar but also explicitly recognize that lawyers have a responsibility to assist in providing *pro bono* service and that "[an] individual lawyer fulfills this responsibility by accepting a fair share of unpopular matters or indigent or unpopular clients. A lawyer may also be subject to appointment by a court to serve unpopular clients or persons unable to afford legal services."

Once appointed, lawyers must provide constitutionally effective assistance of counsel. *Yarborough v Gentry*, 540 U.S. 1, 5 (2003) (*per curiam*) (Sixth Amendment guarantees the right to effective assistance of counsel in criminal prosecutions). Rule 1.3 of the New Hampshire Rules of Professional Responsibility provides that "A lawyer shall act with reasonable diligence and promptness in representing a client." The American Bar Association's model rule is more comprehensive. It provides that "[a] lawyer should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer, and take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A lawyer must also act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf."

The lawyer's obligation to represent his client effectively does not require that he or she engage in offensive tactics. Moreover, a lawyer must always act ethically. Rule 3.3 of the New Hampshire Rules of Professional Conduct, for example, provides, *inter alia*, that a lawyer may not knowingly misstate the facts or the law, or offer false evidence.

Discrimination in the Courthouse
Physical and Otherwise

Folks watching *To Kill a Mockingbird* may be interested in "Jim Crow laws." A "Jim Crow" law may have been responsible for the seating arrangement in the Maycomb County courthouse, in which the persons of color appear to be relegated to the "colored" balcony.

1. Physical discrimination in the courthouse and the "separate but equal" doctrine.

The Civil Rights Act of 1866 (now 42 U.S.C §1981) gives all persons (*e.g.*, regardless of race) the same rights--e.g., to make and enforce contracts, be subject to identical punishments, taxes, and other treatment by the government. In 1868, the Fourteenth Amendment was ratified, making the Bill of Rights applicable to the states.

In *Plessy v. Ferguson*, 163 U.S. 537 (1896), however, the Supreme Court upheld a Louisiana law calling for "separate but equal" accommodations for white and black railroad passengers. The *Plessy* decision gave legal validity to the system of segregation called "Jim Crow." Virtually all public facilities--*e.g.*, schools, restaurants, trains, theaters, drinking fountains--practiced total segregation of the races. (The name "Jim Crow" is derived from a black minstrel caricature popularized in a song during the 1830's.). *See e.g.*, *Regents of the University of California v. Bakke*, 438 U.S. 265 (1978) ("In the wake of *Plessy*, many States expanded their Jim Crow laws, which had up until that time been limited primarily to passenger trains and schools. The segregation of the races was extended to residential areas, parks, hospitals, theaters, waiting rooms, and bathrooms. There were even statutes and ordinances which authorized separate phone booths for Negroes and whites, which required that textbooks used by children of one race be kept separate from those used by the other, and which required that Negro and white prostitutes be kept in separate districts. In 1898, after *Plessy*, the Charlestown News and Courier printed a parody of Jim Crow laws: 'If there must be Jim Crow cars on the railroads, there should be Jim Crow cars on the street railways. Also on all passenger boats. . . . If there are to be Jim Crow cars, moreover, there should be Jim Crow waiting saloons at all stations, and Jim Crow eating houses. . . . There should

be Jim Crow sections of the jury box, and a separate Jim Crow dock and witness stand in every court--and a Jim Crow Bible for colored witnesses to kiss.' Woodward 68. The irony is that before many years had passed, with the exception of the Jim Crow witness stand, 'all the improbable applications of the principle suggested by the editor in derision had been put into practice--down to and including the Jim Crow Bible. Id., at 69.").

Plessy's validation of "separate but equal" segregation remained the law until 1954. In *Brown v. Board of Education*, 347 U.S. 483 (1954), the Supreme Court explicitly rejected the "separate but equal" doctrine. The Court reasoned that even where all-black and all-white schools were equal in terms of tangible factors, intangible factors necessarily prevented children who were restricted to all black schools from receiving equal educational opportunities. *See, e. g., Morgan v. Virginia*, 328 U.S. 373 (1946); *Sweatt v. Painter*, 339 U.S. 629 (1950); *McLaurin v. Oklahoma State Regents*, 339 U.S. 637 (1950).

During the following 10 years, the Court extended *Brown* to other public facilities.

And, in the 1960s, important civil rights provisions were added to the law, *e.g.*:

■In the Public Accommodations Title of the Civil Rights Act of 1964, 42 U.S.C. §2000 *et seq*, discrimination in the furnishing of public accommodations was banned, and made subject to private and governmental civil suits.

■Various provisions to ensure the right to vote were contained in the 1965 Voting Rights Act, 42 U.S.C. §1973, including measures to restrict the discriminatory use of literacy tests and other voter registration requirements.

■The Jury Selection and Service Act of 1968 states that "[i]t is the policy of the United States that all litigants in Federal courts entitled to trial by jury shall have the right to grand and petit juries selected at random from a fair cross section of the community in the district or division wherein the court convenes." 28 U.S.C. §1861. It further states that "[n]o citizen shall be excluded from service as a grand or petit juror in the district courts of the United States on account of race, color, religion, sex, national origin, or economic status." 28 U.S.C. §1862. The Act does not apply on its face to state courts, although the Sixth Amendment and these statutory

standards have been construed as "functional equivalents." *United States v. Hafen*, 726 F.2d 21, 22 n. 1 (1st Cir.1984).

■With respect to women, many states "continued to exclude women from jury service well into the present century, despite the fact that women attained suffrage upon ratification of the Nineteenth Amendment in 1920." *J.E.B. v. Alabama*, 511 U.S. 127 (1994) (intentional discrimination on the basis of gender by state actors in use of peremptory strikes in jury selection violates equal protection clause). "As late as 1961, three States, Alabama, Mississippi, and South Carolina, continued to exclude women from jury service....Indeed, Alabama did not recognize women as a 'cognizable group' for jury-service purposes until...1966." *Id.* "[S]upporters of the exclusion of women from juries tended to couch their objections in terms of the ostensible need to protect women from the ugliness and depravity of trials. Women were thought to be too fragile and virginal to withstand the polluted courtroom atmosphere." *Id.* Although the Supreme Court questioned the fairness of excluding women from juries in *Ballard v. United States*, 329 U.S. 187 (1946) ("a distinct quality is lost if either sex is excluded"), it wasn't until much later that it was willing to "translate its appreciation for the value of women's contribution to civic life into an enforceable right to equal treatment under state laws governing jury service." In 1975, in *Taylor v. Louisiana*, 419 U.S. 522, 530 (1975), the Court reversed a criminal conviction rendered by an all-male jury selected pursuant to a state law that excluded any woman who had not previously filed a written declaration of her desire to be subject to jury service. The Court held that "the exclusion of women from jury venires deprives a criminal defendant of his Sixth Amendment right to trial by an impartial jury drawn from a fair cross section of the community." *Taylor v. Louisiana*, 419 U.S. at 535–36.

2. Selecting a jury pool.

In the book, Scout notes that the jurors "seemed to be all farmers, but this was natural: townsfolk rarely sat on juries, they were either struck or excused." Atticus tells Jem and Scott that women can't sit on juries, and that "townsfolk often seek to be excused from juries to avoid making hard decisions or lose business." The movie adaptation shows the jury to consist solely of white men. Were black people excluded from jury service in 1935 in Alabama? Were women? May the state now exclude people from jury service based on race or gender (or other suspect classification)? If not systematically excluded, are there other causes for inadequate minority representation in our jury venires?

In *Strauder v. West Virginia*, 100 U.S. 303, 307 (1880), the Supreme Court held that a state denies a black defendant equal protection of the laws when it puts him on trial before a jury from which members of his race have been purposefully excluded. "Purposeful racial discrimination in selection of the venire violates a defendant's right to equal protection because it denies him the protection that a trial by jury is intended to secure. The very idea of a jury is a body ... composed of the peers or equals of the person whose rights it is selected or summoned to determine; that is, of his neighbors, fellows, associates, persons having the same legal status in society as that which he holds." *Batson v. Kentucky*, 476 U.S. 79, 86 (1986), citing *Strauder*, 100 U.S. at 308. As noted in *Batson v. Kentucky*, 476 U.S. at 103 (Marshall, J., concurring), post-*Strauder*, "state officials…turned to somewhat more subtle ways of keeping blacks off jury venires," citing *Swain v. Alabama*, 380 U.S. 202, 231-238, (1965) (Goldberg, J., dissenting). This was probably the case in Maycomb County, Alabama in 1935. *See Norris v. Alabama*, 294 U.S. 587 (1935); *Rogers v. Alabama*, 192 U.S. 226 (1904).

How did the pernicious practice of excluding persons of color happen post-*Strauder*? In holding that racial discrimination in jury selection offends the Equal Protection Clause, the Court in *Strauder* recognized that a defendant has no right to a "petit jury composed in whole or in part of persons of his own race." 100 U.S. at 305. Rather, the defendant has the right to be tried by a jury whose members are selected pursuant to nondiscriminatory criteria. *Batson v. Kentucky*, 476 U.S. 79, 85–86 (1986). Racial animus can enter the system in how a state or federal court

establishes the jury pool from which a particular jury is drawn, or in how jurors are selected in a particular case.

In federal court, the Jury Service and Selection Act of 1968 requires that each judicial district devise a plan for randomly selecting jurors based on voter registration rolls or lists of actual jurors. In New Hampshire, N.H. Rev. Stat. Ann. § 500-A:6 requires prospective jurors to be chosen by "random drawing or by computer on a random basis." The process currently works this way:

> The Administrative Office of the Courts (AOC) annually prepares a master list of prospective grand and petit jurors for each county or judicial district. RSA 500-A:1, 2. The lists are "blended and compiled" from the voter rolls and from the records of the individuals who hold a New Hampshire drivers' license or identification card from the New Hampshire Department of Safety (DOS source list). RSA 500-A:1.****[The] names are alphabetized, and a start number is generated at random. Then, depending on the number of jurors needed, an interval number is chosen, "n." Beginning at a start number, every "nth" voter is selected.

State v. Addison, 161 N.H. 300, 306-307 (2010).

Once the venire is drawn, the Equal Protection Clause of the Fourteenth Amendment prohibits lawyers from using their right to challenge jurors to exclude persons from the petit jury based on their race or gender. *Batson v. Kentucky*, 476 U.S. 79, 96-98 (1986). *Batson* established a three-part test for evaluating whether a party's challenge violates the Constitution: "First, a defendant must make a *prima facie* showing that a peremptory challenge has been exercised on the basis of race; second, if that showing has been made, the prosecution must offer a race-neutral basis for striking the juror in question; and third, in light of the parties' submissions, the trial court must determine whether the defendant has shown purposeful discrimination." *Miller–El v. Cockrell,* 537 U.S. 322, 328–29 (2003) (citing *Batson,* 476 U.S. at 96–98).

Trial courts should also conduct a *voir dire* examination of prospective jurors to reveal if any potential juror has any bias, opinion, or prejudice that would affect his or her fair determination of the case. In *Mu'Min v. Virginia*, 500 U.S. 415, (1991), the Supreme Court concluded that a generalized but thorough inquiry into

the impartiality of prospective jurors was constitutionally required. 500 U.S. at 426. In cases where interracial capital crimes are at issue, trial courts should ask specific questions to guard against racial bias. 500 U.S. at 424. *See also Turner v. Murray*, 476 U.S. 28, 36–37 (1986) (holding that Due Process Clause entitled a death-penalty-eligible defendant to *voir dire* questioning on racial bias where the defendant was accused of an interracial crime); *see also Morgan v. Illinois*, 504 U.S. 719, 738–39 (1992) (state trial court, under Due Process Clause, may not refuse to inquire into whether a potential juror, regardless of facts in the case, would automatically impose the death sentence)

Lawyers may wish to point out how important it is for citizens to respond to jury summonses and to serve on juries. It is important, too, for persons of color to work within the court system to ensure that the court environment appears, and is, representative of and receptive to all people.

Burden of Proof; <u>Quality of Evidence</u>

Mayella Violet's testimony was purportedly direct, eyewitness evidence: is that enough evidence to convict someone of a serious crime?

The standard of proof in a criminal case is "beyond a reasonable doubt" and folks may be surprised to learn that the phrase does not itself appear in the United States Constitution. In *In re Winship*, 397 U.S. 358, 361 (1970), the Supreme Court of the United States explicitly held that the Due Process Clause of the Fourteenth Amendment protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged." *In re Winship*, 397 U.S. at 364. Amend. XIV ("nor shall the State deprive any person of life, liberty, or property, without due process of law").

The beyond-a-reasonable-doubt standard does not mean that a conviction may not be based on the uncorroborated testimony of a single person; it may. *State v. Hardy*, 120 N.H. 552, 554, (1980) (uncorroborated testimony of victim sufficient to sustain conviction on charge of attempt to commit aggravated sexual assault).

A conviction may also be based in whole or in part on circumstantial evidence. *See State v. Bird*, 122 N.H. 10, 17 (1982) ("It is well established in this State that circumstantial evidence may be sufficient to support a conviction if it excludes all other rational conclusions.")

The jury must be instructed on the standard, although the Constitution does not require that any particular form of words be used in advising the jury of the government's burden of proof. *Taylor v. Kentucky*, 436 U.S. 478, 485-486 (1978). So what does the term "beyond a reasonable doubt" mean? Should it mean, as Atticus wants, that the prosecution has proved its case "beyond a shadow of a doubt"? The Supreme Court has said that a reasonable doubt is, at a minimum, one based on reason, so "a fanciful doubt is not a reasonable doubt." *Victor v. Nebraska*, 511 U.S. 1, 17 (1994). What other guidance is there in understanding the term? In *Cage v. Louisiana*, 498 U.S. 39, 41 (1990), the Supreme Court reversed a conviction because of a faulty reasonable doubt instruction that joined the phase "to a moral certainty" with words like "substantial" and "grave"; together, these words suggested a higher degree of doubt than is required for acquittal under the reasonable-doubt standard. In *Jackson v. Virginia*, 443 U.S. 307, 315 (1979), the Court said the reasonable doubt instruction should impress upon the finder of fact the need to reach a "subjective state of near certitude" on the facts at issue.

The Court of Appeals for the First Circuit, recognizing that "reasonable doubt" is difficult to define, has said repeatedly that trial courts need not define the term for the jury. *See, for example, United States v. Van Anh*, 523 F.3d 43, 58 (1st Cir. 2008). In *State v. Wentworth*, 118 N.H. 832, 838–39 (1978), the Supreme Court for the State of New Hampshire proposed the following model language:

> Under our constitutions, all defendants in criminal cases are presumed to be innocent until proven guilty beyond a reasonable doubt. The burden of proving guilt is entirely on the State. The defendant does not have to prove his innocence. The defendant enters this courtroom as an innocent person, and you must consider him to be an innocent person, and you must consider him to be innocent until the State convinces you beyond a reasonable doubt that he is guilty of every element of the alleged offense. If, after all the evidence and arguments, you have a reasonable doubt as to the defendant's having committed any one or more of the elements of the offense, then you must find him not guilty.

> A "reasonable doubt" is just what the words would ordinarily imply. The use of the word reasonable means simply that the doubt must be reasonable rather than unreasonable; it must be a doubt based on reason. It is not a frivolous or fanciful doubt, nor is it one that can easily be explained away. Rather, it is such a doubt based upon reason as remains after consideration of all of the evidence that the State has offered against it. The test you must use is this: If you have a reasonable doubt as to whether the State has proved any one or more of the elements of the crime charged, you must find the defendant not guilty. However, if you find that the State has proved all of the elements of the offense charged beyond a reasonable doubt, you should find the defendant guilty.

Presumption of Innocence

"The principle that there is a presumption of innocence in favor of the accused is the undoubted law, axiomatic and elementary, and its enforcement lies at the foundation of the administration of our criminal law." *Coffin v. United States*, 156 U.S. 432, 455 (1895). The phrase "presumption of innocence" is not explicitly provided for in the United States Constitution, however. *In Estelle v. Williams*, 425 U.S. 501, 503 (1976), the Supreme Court stated that the presumption was an element of the right to a fair trial guaranteed under the Due Process Clause of the Fourteenth Amendment. 425 U.S. at 503. In *Taylor v. Kentucky*, 436 U.S. 478, 485-84 (1978), the Supreme Court held that "[w]hile use [in jury instructions] of the particular phrase 'presumption of innocence' —or any other form of words—may not be constitutionally mandated, the Due Process Clause of the Fourteenth Amendment must be held to safeguard against dilution of the principle that guilt is to be established by probative evidence and beyond a reasonable doubt.…[A]n instruction on the presumption of innocence…represents one means of protecting the accused's constitutional right to be judged solely on the basis of proof adduced at trial." (internal quotation marks and citation omitted).

The presumption of innocence "cautions the jury to put away from their minds all the suspicion that arises from the arrest, the indictment, and the arraignment, and to reach their conclusion solely from the legal evidence adduced. In other words, the rule about burden of proof requires the prosecution by evidence to convince the

jury of the accused's guilt; while the presumption of innocence, too, requires this, [it] conveys for the jury a special and additional caution (which is perhaps only an implied corollary to the other) to consider, in the material for their belief, nothing but the evidence, i. e., no surmises based on the present situation of the accused. This caution is indeed particularly needed in criminal cases." *Taylor v. Kentucky*, 436 U.S. 478, 484-485 (1978) (citing Wigmore 407).

Right Against Self-Incrimination

Students may wonder if Tom Robinson had to testify, or otherwise offer evidence.

The Fifth Amendment provides that no person "shall be compelled in any criminal case to be a witness against himself." This protection means that a defendant may decline to testify at a criminal trial, or refuse to "answer official questions put to him in any other proceeding, civil or criminal, formal or informal, where the answers might incriminate him in future criminal proceedings." *Minn. v. Murphy*, 456 U.S. 420, 426 (1984). Comment by a prosecutor on a defendant's decision not to testify, or an instruction by the court that a defendant's silence is evidence of guilt, violates the Fifth Amendment guarantee against self-incrimination. *Griffin v. California*, 380 U.S. 609 (1965). Indirect comment (*e.g.*, by referring to uncontradicted evidence when the defendant was the only witness who could have provided any contradictory evidence) is also prohibited. *See United States v. Taylor*, 54 F.3d 967, 978 (1st Cir.1995). Moreover, when requested, a trial court must instruct the jury that it may not speculate on the defendant's decision not to testify. *Carter v. Kentucky*, 450 U.S. 288 (1981) ("Just as adverse comment on a defendant's silence cuts down on the privilege by making its assertion costly, the failure to limit the jurors' speculation on the meaning of that silence, when the defendant makes a timely request that a prophylactic instruction be given, exacts an impermissible toll on the full and free exercise of the privilege. Accordingly, we hold that a state trial judge has the constitutional obligation, upon proper request, to minimize the danger that the jury will give evidentiary weight to a defendant's failure to testify.").

Compelled Production of Non-Testimonial Evidence

The Fifth Amendment provides that that no person "shall be compelled in any criminal case to be a witness against himself." Compelling a criminal suspect to exhibit his identifying physical characteristics, such as a blood sample or fingerprints, is not the forced extraction of testimonial or communicative evidence contemplated by the Fifth Amendment. *United States v. Dionisio*, 410 U.S. 582 (1973) (voice exemplars); *United States v. Wade*, 388 U.S. 218 (1967) (compelling defendant to speak within hearing distance of witness); *Gilbert v. California*, 388 U.S. 266 (1967) (handwriting exemplars); *Schmerber v. California*, 384 U.S. 757 (1965) (blood samples). Prosecutors routinely obtain such exemplars prior to trial, during the investigatory phase of a case.

The prosecution may also ask the trial court to direct the defendant to exhibit some physical characteristics to the jury. So, if he had wanted to, the prosecutor in *To Kill a Mockingbird* could have asked Judge Taylor to direct Tom Robinson to use his left hand. *United States v. Santana*, 175 F.3d 57, 64, n.7 (1st Cir. 1999) (government could have asked trial court to direct defendant, who was wearing headset, to display ears), citing *Holt v. United States*, 218 U.S. 245 (1910); *United States v. Silvestri*, 790 F.2d 186, 189 (1st Cir. 1989) (compelling defendant to stand up and identify himself after witness described defendant).

The law regarding the compelled production of documents is not included here, as that issue is not raised by *To Kill a Mockingbird*, and involves a somewhat complicated area of law.

Prosecutorial Discretion and Selective Prosecution

Might the state have chosen to decline to charge Tom Robinson, as it declined to charge Arthur "Boo" Radley?

State and federal prosecutors have broad discretion not to institute charges. *United States v. Armstrong*, 517 U.S. 456, 464 (1996). Prosecutors also have broad authority to decide whether to investigate possible criminal conduct, grant immunity, negotiate a plea bargain, and to dismiss charges. *See, for example, United States v. LaBonte*, 520 U.S. 751, 752 (1977) (decision to prosecute and what charge to bring are within broad prosecutorial discretion); *Rinaldi v. United States*, 434 U.S. 22, 29-30 (1977) (*per curiam*) (prosecutor may dismiss unless dismissal would be disservice to public interested). "Although prosecutorial discretion is broad, it is not "unfettered," but rather is "subject to constitutional constraints." *United States v. Batchelder*, 442 U.S. 114, 125 (1979). In particular, the decision to prosecute may not be deliberately based upon an unjustifiable standard such as race, religion, or other arbitrary classification, *Wayte v. United States*, 470 U.S. 598, 608 (1985), including the exercise of protected statutory and constitutional rights. *United States v. Goodwin*, 457 U.S. 368, 372 (1982).

Insufficiency of Evidence

Sheriff Tate testified that Mayella Violet was banged up on the right side of her face, and that there were finger marks all around her neck. The evidence also established, however, that Tom Robinson's left side was "useless." Although the prosecutor here did not seem enlightened, would he have been able to do something to "stop the case" once he realized that Tom could not have caused Mayella Violet's injuries? Did Judge Taylor have the power to put an end to the obvious injustice of the trial? Does community pressure--say, in cases of alleged violence against women--play a role in the prosecution's exercise, or the court's exercise, of this authority? Should it?

Federal Rule of Criminal Procedure 29 requires the trial court, upon the defendant's motion, to enter a judgment of acquittal after the government closes its evidence or after the close of all the evidence, on any charged offense for which

evidence is insufficient to sustain a conviction. The State of New Hampshire has a similar procedure called a JNOV, or judgment notwithstanding the verdict.

In evaluating the sufficiency of evidence, "the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt….This familiar standard gives full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts. Once a defendant has been found guilty of the crime charged, the factfinder's role as weigher of the evidence is preserved through a legal conclusion that upon judicial review all of the evidence is to be considered in the light most favorable to the prosecution. The criterion thus impinges upon 'jury' discretion only to the extent necessary to guarantee the fundamental protection of due process of law." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). In determining the sufficiency of the evidence against a defendant, the court must resolve any evidentiary conflicts or credibility issues in favor of the verdict. See *United States v. Ruiz*, 105 F.3d 1492, 1495 (1st Cir.1997). *See State v. Spinale*, 156 N.H. 456 (2007) ("on a motion for JNOV…, the trial court uphold[s] the jury's verdict unless no rational trier of fact could find guilt beyond a reasonable doubt, considering all the evidence and all reasonable inferences therefrom in the light most favorable to the State.*** In considering a motion for JNOV, the [trial] court cannot weigh the evidence or inquire into the credibility of the witnesses, and if the evidence adduced at trial is conflicting, or if several reasonable inferences may be drawn, the motion should be denied.*** "[W]e will reinstate the jury's verdict unless no rational trier of fact could find guilt beyond a reasonable doubt, considering all the evidence and all reasonable inferences therefrom in the light most favorable to the State.") (internal quotation marks and citations omitted).

Imposition of the Death Penalty

In both the State of New Hampshire and federal court, the death penalty is controlled by a statute that requires the jury's consideration of a number of aggravating factors (for example, whether the defendant committed the crime after substantial planning and whether the defendant previously caused someone's death) and mitigating factors (for example, whether the defendant committed the offense under severe mental or emotional disturbance). Interestingly, for purposes of discussing issues raised in *To Kill a Mockingbird*, both N.H. Rev. Stat. Ann. § 630:5

and the Federal Death Penalty Act, 18 U.S.C. §§ 3591–3598, require the appellate court reviewing a death penalty verdict to consider whether the sentence of death was imposed under the influence of passion, prejudice, or any other arbitrary factor. The Federal Death Penalty Act also requires that the jury be specially instructed that "in considering whether a sentence of death is justified, it shall not consider the race, color, religious beliefs, national origin, or sex of the defendant or of any victim and that the jury is not to recommend a sentence of death unless it has concluded that it would recommend a sentence of death for the crime in question no matter what the race, color, religious beliefs, national origin, or sex of the defendant or of any victim may be." 18 U.S.C.A. § 3593. Each juror must also sign a certificate attesting "that consideration of the race, color, religious beliefs, national origin, or sex of the defendant or any victim was not involved in reaching his or her individual decision and that the individual juror would have made the same recommendation regarding a sentence for the crime in question no matter what the race, color, religious beliefs, national origin, or sex of the defendant or any victim may be." *Id.*

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